



**ORDINARY MEETING OF COUNCIL
TO BE HELD ON TUESDAY, 7 DECEMBER 2004 AT 7.00PM
LEVEL 3, COUNCIL CHAMBERS**

A G E N D A
**** ** * * * * ***

NOTE: For full details, see Council's website –
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 23 November 2004

Minutes numbered 556 to 583

MINUTES FROM THE MAYOR

PETITIONS

PT.1 **Support UTS Kuring-gai Being Maintained As A UTS University Campus (Fifty-Nine [59] Signatures)**

File: S03664

"We, the undersigned:

1. Support UTS Kuring-gai being maintained as a UTS University Campus.
2. Do not support the sale of the campus for residential or other development.
3. Recognise the environmental and heritage value of the UTS Kuring-gai campus and the value that the campus provides for the local community."

PT.2 **134 To 138 Eastern Road, Wahroonga - Proposed Earthworks (Seventy-One [71] Signatures)**

File: DA1163/03-3

"We, the undersigned, believe that all of the plans so far submitted for an entranceway off Eastern Road to the above site are unacceptable. We feel that an entranceway on Eastern Road will cause irreversible damage to the environment, heritage values and character of our area. The loss of trees, the loss of the "bushland" atmosphere, the introduction of large retaining walls, the lack of screening to the new development and the introduction of a median strip on Eastern Road are all out of character to the area and unacceptable to the residents. We consider that an entrance off Burns Road, in the location of the current cross over and letterbox, would be a better solution for all parties and should be thoroughly investigated, in consultation with the residents, prior to any final decision.

We also petition the Council to reconsider the question of the addition of land to widen the narrow section of the Turiban Creek Reserve, a proposal of long standing and incorporated in the original Planning Scheme for Ku-ring-gai. Such addition was previously proposed as the developer's contribution to Open Space and recreation to be dedicated upon subdivision."

REPORTS FROM COMMITTEES

Minutes of Ku-ring-gai Traffic Committee

File: S02110

Meeting held 25 November 2004

Minutes numbered KTC28 to KTC31

Minutes of Inspections Committee

File: S02131

Meeting held 27 November 2004

Minutes numbered INS21 & INS22

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 29 Miowera Road, North Turramurra - Subdivision Of One (1) Allotment To Create Four (4) Allotments 1

File: DA0440/04

Ward: Wahroonga
Applicant: Lindsay Little & Associates Pty Ltd.
Owner: K. & L. Myles

Determination of a Development Application for the subdivision of 29 Miowera Road, North Turramurra

Recommendation:

Approval

GB.2 143 To 145 Pentecost Street, Turramurra - Child Care Centre 39

File: 1692/03

Ward: Wahroonga
Applicant: T. Vincent
Owner: J. & N. Fung

Determination of a Development Application for a child care centre.

Recommendation:

Approval

GB.3 71 Beechworth Road, Pymble - Detached Dual Occupancy 95

File: DA0406/04

Ward: Comenarra
Applicant: S & P Kapar, C/- Glendinning Minto and Associates Pty Ltd
Owner: S & P Kapar

Determination of an application for a detached dual occupancy development.

Recommendation:

Approval

GB.4 1225 Pacific Highway, Turramurra - SEPP 5 Development Comprising Of 6 Units 138

File: 1239/02

Ward: Wahroonga
Applicant: John Bourke
Owner: Rinback Pty Ltd

To determine a development application for a SEPP 5 development comprising of 6 units.

Recommendation:

Approval

GB.5 62a To 64a Killeaton Street, St Ives - Supplementary Report 195

File: DA0458/04

To address matters raised at the site inspection of 13 November 2004 and for Council to determine a Development Application for the demolition of existing structures and construction of a Seniors Living development of 10 units.

Recommendation:

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

GB.6 St Ives Showground Heritage Craft Fair - Renewal Of 2 Year Licence Option 304

File: S02195

For Council to consider exercising its option for the extension of the licence with the operator of the Heritage Craft Fair.

Recommendation:

That Council exercise the option for the 2 year period to be granted to the Heritage Craft Fair operator to allow the Heritage Craft Fair continued operation commencing 2 January 2005.

GB.7 4 Porters Lane, St Ives - Option To Renew Lease 312

File: P52677

To advise Council of the YMCA of Sydney exercising its option to renew the lease for the premises at 4 Porters Lane St Ives.

Recommendation:

That Council authorise the exercise of the option by the YMCA of Sydney for the premises at 4 Porters Lane, St. Ives to continue to operate their various programs.

GB.8 5 To 7 Gilroy Road, Turramurra - Option To Renew Licence 315

File: S02351

To advise Council of the tenants of the Ku-ring-gai Support Services Centre exercising their options to renew their licences for the premises located at 5-7 Gilroy Road, Turramurra.

Recommendation:

That Council authorise the exercise of the option by Easy Care Gardening Service Inc; Ku-ring-gai Meals on Wheels, and the Hornsby Ku-ring-gai Community Aged/Disabled Transport Service Inc. for the premises at 5-7 Gilroy Road, Turramurra.

GB.9 Application To Amend The Ku-ring-gai Planning Scheme Ordinance In Relation To Exclusion Of Vulnerable Communities In Bushfire Prone Areas 318

File: S02151, S02643

To allow Council to assess the merits of amending the Ku-ring-gai Planning Scheme Ordinance (KPSO) to limit the further increase of vulnerable communities in the cross hatched areas of the "Bush Fire Evacuation Risk Map" and to prohibit the further subdivision of land in order to create separately titled dwellings within these areas.

Recommendation:

That Council resolve to amend the KPSO to prohibit the further subdivision of land in order to create separately titled dwellings within the cross hatched areas of the "Bush Fire Evacuation Risk Map" and that future proposed developments catering for vulnerable communities be subject to legislative considerations, Section 100B of the Rural Fires Act, relating to bush fire evacuation risk at the time of assessment.

GB.10 1a Kalang Avenue, Killara - S96 - Deletion Of Building Footprint And Setbacks As Conditioned In Consent To DA 3702/93 339

File: DA3702/93

Ward: Gordon
Applicant: Paul Williams
Owner: Paul Williams

To determine s96 application to delete two conditions of consent requiring future development on the site to adhere to building footprint and setback requirements as shown on the approved plans.

Recommendation:

Approval

GB.11 **1a Kalang Avenue, Killara - Erection Of A New Dwelling House**

356

File: DA0319/04

Ward: Gordon

Applicant: Paul Williams

Owner: Paul Williams

To determine development application No. 319/04, which seeks consent for the erection of a new dwelling on the subject property.

Recommendation:

Approval

EXTRA REPORTS CIRCULATED AT MEETING

MOTIONS OF WHICH DUE NOTICE HAS BEEN GIVEN

NM.1 **657 To 661 Pacific Highway, Killara - Draft LEP 202**

404

File: S02029

Notice of Rescission from Councillors T Hall, A Andrew & N Ebbeck dated 23 November 2004.

We, the undersigned, move:

That the decision not to proceed with the rezoning of 657 to 661 Pacific Highway, Killara is hereby rescinded and the Officer's recommendation to adopt Draft LEP 202 be approved.

BUSINESS WITHOUT NOTICE - SUBJECT TO CLAUSE 14 OF MEETING REGULATION

QUESTIONS WITHOUT NOTICE

INSPECTIONS COMMITTEE - SETTING OF TIME, DATE AND RENDEZVOUS

CONFIDENTIAL BUSINESS TO BE DEALT WITH IN CLOSED MEETING - PRESS & PUBLIC EXCLUDED

The Item listed hereunder is recommended for consideration in Closed Meeting, Press & Public excluded for the reason stated below:

C.1 Panel Of External Providers Of Legal Services
(Section 10A(2)(g) - Advice concerning litigation)

1

File: S03869

Report by General Manager dated 19 November 2004.

Brian Bell
General Manager

**** ** * ** * ** * ** * ** * ** * ** * ** * ** * ** * ** ***

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.*

PETITION

SUPPORT UTS KURING-GAI BEING MAINTAINED AS A UTS UNIVERSITY CAMPUS (FIFTY-NINE [59] SIGNATURES)

"We, the undersigned:

1. Support UTS Kuring-gai being maintained as a UTS University Campus.
2. Do not support the sale of the campus for residential or other development.
3. Recognise the environmental and heritage value of the UTS Kuring-gai campus and the value that the campus provides for the local community."

RECOMMENDATION

That the Petition be received and referred to the appropriate officer of Council for attention.

PETITION

134 TO 138 EASTERN ROAD, WAHROONGA - PROPOSED EARTHWORKS (SEVENTY-ONE [71] SIGNATURES)

"We, the undersigned, believe that all of the plans so far submitted for an entranceway off Eastern Road to the above site are unacceptable. We feel that an entranceway on Eastern Road will cause irreversible damage to the environment, heritage values and character of our area. The loss of trees, the loss of the "bushland" atmosphere, the introduction of large retaining walls, the lack of screening to the new development and the introduction of a median strip on Eastern Road are all out of character to the area and unacceptable to the residents. We consider that an entrance off Burns Road, in the location of the current cross over and letterbox, would be a better solution for all parties and should be thoroughly investigated, in consultation with the residents, prior to any final decision.

We also petition the Council to reconsider the question of the addition of land to widen the narrow section of the Turiban Creek Reserve, a proposal of long standing and incorporated in the original Planning Scheme for Ku-ring-gai. Such addition was previously proposed as the developer's contribution to Open Space and recreation to be dedicated upon subdivision."

RECOMMENDATION

That the Petition be received and referred to the appropriate officer of Council for attention.

Item 1

DEVELOPMENT APPLICATION

SUMMARY SHEET

REPORT TITLE:	29 MIOWERA ROAD, NORTH TURRAMURRA - SUBDIVISION OF ONE (1) ALLOTMENT TO CREATE FOUR (4) ALLOTMENTS
WARD:	Wahroonga
DEVELOPMENT APPLICATION N^o:	0440/04
SUBJECT LAND:	29 Miowera Road, North Turrumurra DA0440/04DA0440/04DA0440/04DA0440/ 04
APPLICANT:	Lindsay Little & Associates Pty Ltd.
OWNER:	K. & L. Myles
DESIGNER:	Lindsay Little & Associates Pty Ltd.
PRESENT USE:	Residential dwelling
ZONING:	Residential 2C
HERITAGE:	No
PERMISSIBLE UNDER:	Ku-ring-gai Planning Scheme Ordinance
COUNCIL'S POLICIES APPLICABLE:	KPSO, Subdivision Code, DCP 38
COMPLIANCE WITH CODES/POLICIES:	No
GOVERNMENT POLICIES APPLICABLE:	SEPP 55, SEPP 1
COMPLIANCE WITH GOVERNMENT POLICIES:	Yes
DATE LODGED:	30 April 2004
40 DAY PERIOD EXPIRED:	9 June 2004
PROPOSAL:	Subdivision of one (1) allotment to create four (4) allotments
RECOMMENDATION:	Approval

Item 1

DEVELOPMENT APPLICATION N^o 0440/04
PREMISES: 29 MIOWERA ROAD, NORTH
TURRAMURRA
PROPOSAL: SUBDIVISION OF ONE (1) ALLOTMENT TO
CREATE FOUR (4) ALLOTMENTS
APPLICANT: LINDSAY LITTLE & ASSOCIATES PTY
LTD.
OWNER: K. & L. MYLES
DESIGNER: LINDSAY LITTLE & ASSOCIATES PTY
LTD.

PURPOSE FOR REPORT

Determination of a Development Application for the subdivision of 29 Miowera Road, North Turrumurra

EXECUTIVE SUMMARY

Issues:

- Vehicle access
- Lot configuration

Submissions: Eleven objections received.

Land & Environment Court Appeal: No appeal lodged

Recommendation: 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:

DA 0440/04

- Application lodged 30 April 2004.
- Further information letter sent 13 May 2004 requesting information on watercourse located on site.
- Referral sent to Rural Fire Services on 13 May 2004.
- Further information satisfying Council letter received 3 of June 2004.

Item 1

- Referral sent to the Department of Infrastructure, Planning and Natural Resources 4 June 2004.
- Further information letter sent 13 September 2004 requesting compliance schedule in relation to the existing dwelling and Lot 12.
- Unsatisfactory proposal letter sent 17 September 2004. Issues raised:
 - Landscaping concerns relating to tree removal on Lot 11.
 - Access handle width and location.
 - Dimensions of Lot 11.
 - Absence of provision for letterboxes.
- Meeting with applicant, agent and Council staff held at Council officers 18 October 2004.
- Amended subdivision plan and Statement of Environmental Effects satisfying planning concerns received 2 November 2004.

THE SITE AND SURROUNDING AREA

The site

Visual Character Study Category:	1945 to 1968
Lot Number:	1
DP Number:	227380
Area:	5,366m ²
Heritage Affected:	No
Bush Fire Prone Land:	No
Endangered Species:	No
Urban Bushland:	No
Contaminated Land:	No

The subject allotment is legally described as Lot 1 in D.P. 227380 and has a site area of 5,366m². The site is located on the eastern and low side of Miowera Road and is of irregular triangular shape. The allotment has an average slope of 14% from west to east. The western (street) boundary measures 15.24m, the northern (side) boundary has a combined length of 133.415m, while the rear (eastern) boundary has a length of 82.385m and the southern (side) boundary measures 95.84m.

The site contains a single level, brick and tile dwelling, located adjacent to the southern side boundary and set back approximately 54.3m from the front boundary.

The site is extensively planted, with a concentration of shrubs and trees along the western and northern boundaries. The majority of the site is an open, landscaped, area, with a significant lawn comprising the eastern portion of the site. The site contains a number of significant trees, although the majority are of low ornamental value. Significant trees include two Sydney Bluegums, a Forest Oak, a Red Bloodwood, two Cypress pines, a Camellia, a Gordonia, a Black Wattle and a Himalayan Cedar.

Item 1

Access is gained from Miowera Road, with the driveway having a diagonal alignment adjacent to the western boundary. The site is burdened by a 1.83m wide drainage easement, running adjacent to the western and northern side boundaries and directed to the adjoining site to the rear at 5 Stephanie Place. A 3.05m wide drainage easement runs adjacent to the lower part of the southern boundary and accommodates an open channel watercourse. The easement also covers 27 Miowera Road, upstream of the site and runs into 3 Stephanie Place.

29 Miowera Street.



Existing dwelling at 29 Miowera Road to be retained on proposed Lot 12.



Item 1

View of subject site toward the east.



View of existing driveway leading down from Miowera Road, with dense landscaping either side.



Surrounding development:

The surrounding area is residential, with an eclectic mix of architectural designs and elements. Dwellings within the locality are one and two storey residences, with a newly constructed two storey dwelling located in close proximity to the southern boundary at 27 Miowera Road. The

Item 1

adjoining property to the north, 35 Miowera Road, contains a single level weatherboard dwelling elevated above the subject site. The site is bounded by residential properties in Normurra Avenue and Stephanie Place to the south and east, respectively. Landscaping in the area is typical of that found within other residential streets within the Municipality.

Neighbouring dwelling at 35 Miowera Road to the north.



Neighbouring dwelling at 27 Miowera Road to the south.



Item 1

Neighbouring dwelling at 5 Stephanie Place to the east.



Neighbouring dwelling at 28 Normurra Avenue to the south.



Item 1

THE PROPOSAL

Consent is sought for subdivision of one allotment into four Torrens title lots. Proposed lots 11, 13 and 14 will be vacant. Proposed lot 12 will contain the existing dwelling. The existing driveway is to be extended and realigned to service all lots and will include a passing area at the street frontage and over the northern-most portion of lot 11. Reciprocal rights of way are proposed over the driveway.

The proposal has the following indices:

Proposed Lot 11:

Area = 1153.70m² (excluding access handle)

Irregular shaped allotment with a frontage of 8.24m to Miowera Road. Vehicle access is to Miowera Road by right of carriage way over a shared access handle.

Dimensions = north: 17.115m, north-west (combined): 44.5m, west: 8.24m, east: 54m, south: 46.14m.

Proposed Lot 12 (existing dwelling):

Area = 1351.50m² (excluding access handle)

Battle-axe lot with a frontage of 1m to Miowera Road. Vehicle access is to Miowera Road by right of carriage way over a shared access handle. The site contains an existing single storey dwelling.

Dimensions = north: 25.5m, west: 54m (excluding length of access handle), east: 54m, south: 25.5m.

Proposed Lot 13:

Area = 1306.08m² (excluding access handle)

Battle-axe lot with a frontage of 1m to Miowera Road. Vehicle access is to Miowera Road by right of carriage way over a shared access handle.

Dimensions = north: 24.20m, west: 54m (excluding length of access handle), east: 54m, south: 24.20m.

Proposed Lot 14:

Area = 1318.50 m² (excluding access handle)

Battle-axe lot with a frontage of 1m to Miowera Road. Vehicle access is to Miowera Road by right of carriage way over a shared access handle.

Dimensions = north: 35.20m, west: 36.64m (excluding length of access handle), east: 28.385m, south: 57.7m.

Amended Plans lodged 2 November 2004

- Lot 11 net site area amended to 1153.7m² from 1035m².
- Lot 12 net site area amended to 1351.5m² from 1300m².

Item 1

- Lot 13 net site area amended to 1306.8m² from 1300m².
- Lot 14 net site area amended to 1318.5m² from 1300m².
- All access handles realigned and increased in width from 0.5m to 1m. Reciprocal Rights of Way to be granted over driveway.
- Driveway relocated adjacent to north-western boundary with a 2m setback from the common boundary and provision made for letterboxes.

CONSULTATION - COMMUNITY

In accordance with Council's Notifications Policy, adjoining owners were given notice of the application. In response, the following submissions were received:

Original scheme dated 20 April 2004

1. R. & K. Walker – 6 Stephanie Place, North Turrumurra
2. S. & K. Butel – 2 Du Fair Street, North Turrumurra
3. Y. Holland & K. Sperka – 41A Miowera Road, North Turrumurra
4. L. Cakebread – 4 Normurra Avenue, North Turrumurra
5. H. & S. Jones – 3 Stafford Place, North Turrumurra
6. D. & P Regan – 5 Stephanie Place, North Turrumurra
7. M. Waggett - 4 Stephanie Place, North Turrumurra
8. G. & Y. Cohen – 34 Banks Avenue, North Turrumurra
9. Northern Turrumurra Action Group – PO Box 3071, North Turrumurra
10. B. Cannon – 40 Miowera Road, North Turrumurra
11. C. & V. Gold – 42 Miowera Road, North Turrumurra

The submissions raised the following issues:

The objectors from 4, 5 and 6 Stephanie Place have raised concerns in relation to existing drainage and sewerage problems in the immediate locality becoming exacerbated by the proposed subdivision and future construction of dwellings on the resultant lots. The objectors from 41A Miowera Road are concerned that the drainage easement between the subject site and their own, may not adequately cope with the volume of rainwater, particularly during high rainfall. The objector from 3 Stafford Place is concerned that Lot 14 would become waterlogged due to the sloping grade of the site and that a dwelling on that lot would interfere with natural drainage.

Council's Engineer supports the proposal, subject to conditions (**refer Conditions 36-41, 49-53, 61-68**). Council's Engineer has commented that the construction of interallotment drainage and collection and re-use/detention of runoff from any new dwellings will alleviate the existing stormwater drainage problems to some extent. One neighbour also raised the matter of sewerage infrastructure. The applicant will be required to obtain a Section 73 Certificate from Sydney Water and if any additional works are required to service any new dwellings, these will be carried out as part of that development. The Department of Infrastructure Planning and Natural Resources (DIPNR) also support the proposal, subject to conditions (**refer Conditions 4-30**).

Item 1

Any subsequent proposal to construct a dwelling on any of the lots will require consideration against DCP 38 and DCP 47, relating to building design and stormwater requirements.

It is further noted that the building platforms shown on the submitted subdivision plan are indicative only and for the purpose of demonstrating that a dwelling could be accommodated on the proposed allotments. Any approval given for the proposed subdivision excludes possible future building platforms associated with Lots 11, 13 and 14.

Potential habitat loss due to vegetation removal.

The subject site is well landscaped, with a number of mature trees and dense plantings of shrub and less ornamental trees, providing a general habitat for wildlife. Council's Landscape Officer supports the proposal, subject to conditions, including retention of three trees on Lot 11 indicated for removal (**refer Conditions 42-48, 59-60, 70-71**).

Adequate provision has been made for landscaping between the proposed driveway and the southern and north-western boundary. Similarly, the proposal indicates sufficient area available for landscaping along all site boundaries. As part of a development application for any subsequent residential construction, detailed landscape plans would be required.

Increase in residential density and the potential implications of evacuation of North Turrumurra in the event of a bushfire.

The subject site is located within the SEPP 5 and SEPP 53 exclusion zone, which was imposed to restrict certain residential development in response to concerns regarding evacuation of the north Turrumurra area. Concerns were raised in relation to the evacuation of older persons and the potential significant increase in dwelling density should SEPP 53 dual occupancy provisions remain applicable. However, the subdivision of sites within this part of Turrumurra remains permissible under the KPSO, subject to prescriptive development standards.

It would appear that the logic in retaining subdivision as a development option within North Turrumurra, was on the basis that the development standards of the KPSO limit the number of sites suitable for subdivision, as opposed to the less restrictive minimum allotment size standards of SEPP 53.

Although, the subject site is not located within a bushfire prone area, the proposal has been referred to the Rural Fire Services, in consideration of any potential implications for evacuation in the event of a bushfire. The RFS raises no concerns or special consideration in relation to bushfire matters.

Objectors from 4, 5 and 6 Stephanie Place and 3 Stafford Place have raised concerns regarding loss of privacy, due to vegetation removal and future construction of dwellings on the vacant allotments.

Item 1

The proposal indicates sufficient area is available for adequate landscaping along all site boundaries. Council's Landscape Officer supports the proposal, subject to conditions, which include retention of significant trees (**refer Conditions 42-48, 59-60, 70-71**). The proposal also includes adequate provision for landscaping between the driveway and the southern and north-western boundaries.

Any future development applications for dwellings on the respective lots will require both fencing and landscaping detail to ensure appropriate screening. Any such development application would need to demonstrate consistency with the standards and residential objectives of the KPSO and the design requirements of DCP 38. These include, built upon area, building height and building line setbacks.

Ingress and egress from the site and poor driver sightlines.

All four allotments will utilise the same driveway to enter and exit the site. The existing driveway will be increased in width at the road frontage to 5.5m, to enable the passing of vehicles. This will ensure vehicles do not queue, either on the street or upon exiting the site. The existing, 5.4m wide, road reserve means vehicles will not be entering the roadway directly upon exiting the site. This provides more time for drivers of exiting vehicles to adjust to traffic flow and more time when entering to accommodate pedestrians.

The proposed allotments indicate sufficient area for on-site manoeuvring, so that all vehicles will exit the site in a forward direction. While Miowera Road rises up to the site from the south, there are adequate driver sightlines to enable the safe and efficient ingress and egress of vehicles.

Adverse impact on existing infrastructure. In particular, existing problems of low water pressure and electrical blackouts in the area and the likelihood of the surface of Miowera Road deteriorating further.

Council's engineer can support the proposal, subject to conditions (**refer Conditions 36-41, 49-53, 61-68**). The four allotments can be adequately serviced by infrastructure, including power, sewer and water. The proposal will not result in a level of traffic generation that will lead to an inordinate degree of deterioration in the surface of Miowera Road.

Potential loss of character due to an increase in residential density.

The KPSO is permissive in allowing subdivision down to a minimum allotment size. In this regard, the proposed subdivision is compliant with this development standard.

Item 1

Potential decline in property values as a result of the proposed subdivision.

Any potential impact on residential property values is not a relevant s79C consideration.

Amended plans dated 21 October 2004

The amended plans were not re-notified, as the changes relate to a re-alignment of the driveway serving all lots, with an increased setback from the boundary with 35 Miowera Road. The amended plans maintain sufficient provision for landscaping between the driveway and site boundaries. The amendments also maintain the four allotments as originally proposed, with only minor adjustment to lot sizes and access configuration. Access handles adjacent to the southern boundary have been deleted and provision made for letterboxes. Overall, the proposal remains substantially the same as that originally notified and addresses concerns raised by Council with regard to site access and lot configuration.

The amendments would not likely result in any increased or additional potential impact on the environment above or beyond that associated with the application as originally proposed.

CONSULTATION - WITHIN COUNCIL

Engineering

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

"Amended plans have been submitted, which show a revised lot layout and driveway location. The proposed driveway has been shifted to the west of the existing driveway. This will mean that the structure will be partly above the existing ground level on the eastern side and may require some excavation on the western side. The new driveway will have to be constructed in conjunction with the subdivision works.

The Department has specified in the General Terms of Agreement that a riparian zone be established 5 metres from the top of the bank of the watercourse, and has recommended that a Restriction on Use be placed on the titles by means of the Section 88B Instrument. This has been included in the recommended conditions.

In summary Development Engineers are satisfied with the engineering aspects of the proposed development, subject to the placement of engineering conditions of consent on any approval issued (refer Conditions 36-41, 49-53, 61-68).

Landscaping

Council's Landscape and Tree Assessment Officer has commented on the proposal as follows:

"This application is supported subject to conditions (refer Conditions 42-48, 59-60, 70-71).

Item 1

The subject site is located on the eastern (lower) side of Miowera Road, just north of Normurra Avenue. It is an irregular shaped property of 5362 square metres area that exhibits a southeasterly aspect and falls 15 metres between its southwestern and southeastern corners.

An elongated, single storey, brick and tile dwelling occupies the property. It is accessed by an asphalt driveway that traverses the northwestern slope and turns back across the front of the dwelling to the attached double garage at its southern (side) end.

The property has an open landscape character of extensive lawns with group/row plantings of small to medium sized trees. Several weed species have established within the planting areas.

Two drainage easements, located along portions of the property's northwestern and southern boundaries, divert overland flow from the property.

Most of the trees are of low ornamental value being exempt, short lived species, or of poor health and condition, however, the following trees, identified in the applicant's Tree Site Analysis Plan, are worth preserving: T1, T2, T3, T4, T46, T51, T53, T54, T55 and T56. Tree 1 is a particularly imposing landscape element that should be preserved on site. It is located adjacent to the central eastern boundary of proposed Lot 14.

*The proposed drainage easement across Lot 13 could be realigned to the eastern boundary to minimise its constraint upon the lot as the row of *Alnus jorullensis* (Evergreen Alder) is exempt.*

Centralizing the driveway access point along the Miowera Road boundary and routing it parallel to the site's northwestern boundary will favorably increase the useable area of proposed Lot 11."

CONSULTATION – OUTSIDE COUNCIL

Department of Infrastructure Planning and Natural Resources

The proposal is integrated development on the basis that also requires a Part 3A permit from the Department of Infrastructure Planning and Natural Resources under the Rivers and Foreshores Improvement Act 1948, due to it involving works within 40 metres of a water course.

Accordingly, the development has been referred to the Department of Infrastructure, Planning and Natural Resources for comment. Their response is as follows:

"The Department of Infrastructure, Planning and Natural Resources has determined that a 3A permit is required in relation to this development. The Department has identified that the proposal presented will cause works to occur within 40m of a foreshore, or the top of bank of a "river", as defined under the Rivers and Foreshores Improvement Act. The enclosed

Item 1

attachment is the Departments' General Terms of Approval, (GTA) as required under the Environmental Planning and Assessment Regulations Division 3, all of which must be included as part of any consent given by the consent authority" (Refer Conditions 4-30).

Rural Fire Services

Although the subject site is not located within a Bushfire zone, the application was referred to the Rural Fire Services in consideration of the site being located within a SEPP (Seniors Living) and SEPP 53 exclusion zone and the potential impact of the subdivision on evacuation of the peninsula in the event of a bushfire.

In response, the Rural Fire Services has stated that the proposal raises no concerns or special consideration in relation to bushfire matters.

STATUTORY PROVISIONS

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.

Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River

The site is within the catchment of the Hawkesbury River and, as such, the development is subject to the provisions of this environmental planning instrument. The aim of SREP 20 is to “protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.”

The SREP requires consideration of a number of matters such as water quality, flora and fauna, wetlands and heritage etc.

The proposed development meets the general strategies of the SREP. Council's Development Engineer and DIPNR have recommended conditions (**refer Conditions 36-41, 49-53, 61-68 and 4-30**). However, as the development does not consist of any new structures and subsequent stormwater disposal provisions at this time, it is not necessary to make provision for rainwater tanks or similar to be incorporated to enable the reuse of stormwater for irrigation purposes. Strategies for water quantity setout in Clause 6 (4), whereby the reuse of water is encouraged wherever possible, can be appropriately dealt with at the time a development application is lodged for construction of dwellings on the respective lots.

Item 1

Ku-ring-gai Planning Scheme Ordinance (KPSO)

Development Standard	Proposals Numeric Compliance	Complies
Site Area: 5366m ²		
Subdivision for dwelling houses		
<ul style="list-style-type: none"> • Site area: 929m² (min) 	Lot 11: 1153.7m ²	YES
	Lot 12: 1351.5m ² (excl. access)	YES
	Lot 13: 1306.8m ² (excl. access)	YES
	Lot 14: 1318.5m ² (excl. access)	YES
<ul style="list-style-type: none"> • Site width: 1300m² (battle-axe) (exclusive of access corridor) 		
<ul style="list-style-type: none"> • Site width: 18m (min) at a distance of 12.2m from the street alignment 	Lot 11: 8.24m	NO
<ul style="list-style-type: none"> • Access handle width: 4.6m (min) as measured at the street alignment 	Lot 12: 1m	NO
	Lot 13: 1m	NO
	Lot 14: 1m	NO

Subdivision requirements

- *Site width*

The proposal does not comply with the minimum allotment width specified in the KPSO. Clause 58B(c)(i) requires a minimum allotment width of 18m, at a distance of 12.2m from the street alignment for lots other than battleaxe allotments, not having frontage to a main road or country road. Lot 11 fronts Miowera Road and has a width of 8.24m at a distance of 12.2m from the street alignment. The applicant has lodged a SEPP 1 objection to vary the development standard. An assessment against SEPP 1 provisions is detailed below:

Purpose of the development standard

The intent of the standard is to ensure an adequate site area is available to accommodate residential development that could be reasonably expected to meet the Residential Zone aims and objectives in Schedule 9 of the KPSO and the design requirements of Development Control Plan 38. In particular, the standard aims to ensure an allotment size capable of accommodating residential development that will maintain streetscape amenity and the landscape and residential character of the surrounding environment.

The applicant has provided the following reasons to justify non-compliance:

- The existing site has a frontage of 15.24m to Miowera Road, which already does not comply with development standard set out in the KPSO.

Item 1

- The proposal does not reduce the effective width of the site, but provides rights of carriageway for lots 12, 13 and 14.
- The proposal will provide a single vehicular crossing to serve all lots.
- The existing 5.5m wide street verge ensures suitable site distances in both directions along Miowera Road.
- The access corridor is sufficiently separated from the side boundaries to minimize noise impacts from vehicles entering or existing the site.
- Lot 11 could be considered as a battle-axe allotment, in which case the site frontage requirements are satisfied.
- Lot 11 is of sufficient design and area to provide a dwelling that complies with Council's DCP 38 and KPSO and will allow for vehicles to enter and leave the site in a forward direction.

Is compliance unreasonable or unnecessary

In this instance, compliance is considered unnecessary as Lot 11 will have an area in excess of 929m², with sufficient width over the remainder of the site to accommodate a building platform that would be in accordance with the aims and objectives set out in Schedule 9 of the KPSO and the design requirements of DCP 38. The shape and dimensions of Lot 11 do not result in a configuration that would place an undue burden on the subsequent development of the allotment or preclude consistency of development with the KPSO and DCP 38. Lot 11 will be able to likely accommodate an appropriate level of soft landscaping and built-upon area.

All allotments will be served by a single vehicle crossing, as is the case at present, with adequate driver sightlines for vehicles entering and exiting the site. Adequate separation of the driveway from side boundaries is provided to accommodate screen planting and to minimise vehicle noise for adjoining sites.

The proposed non-compliance will not result in an undue impact on the environment. Accordingly, strict compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case.

Is application consistent with the aims of the policy set out in clause 3?

For the reasons stated above, the application would still be consistent with Clause 3 and the objects specified in section 5 (a)(i) and (ii) of the Act.

The proposed non-compliance will not adversely impact on streetscape amenity, landscape character or traffic safety. Accordingly, the SEPP1 objection has merit and compliance with the development standard is unnecessary. It is considered that granting of development consent would be consistent with the aims and objectives set out in Clause 3.

Item 1

- *Access handle*

The proposal does not comply with the minimum access width development standard specified in the KPSO. Clause 58B(c)(iii) requires a minimum access corridor of 4.6m for each battleaxe allotment. Lots 12, 13 and 14 are provided with a 1m frontage to Miowera Road and have a shared access corridor to Miowera Road, with a width ranging from 5m to 9.9m.. Reciprocal rights of carriageway are proposed over the access handle. The applicant has lodged a SEPP 1 objection to vary the standard in this instance. An assessment against SEPP 1 provisions is detailed below:

Purpose of the development standard

The intent of the standard is to ensure adequate access width to accommodate standard motor vehicles, but also emergency and delivery vehicles associated with residential activity. The specified width is required to allow for the passing of vehicles on driveways serving battleaxe lots, without the need to reverse manoeuvre along access handles or, where reverse manoeuvring is required, an adequate width is provided to accommodate such movements.

The applicant has provided the following reasons to justify non-compliance:

- Lots 11, 12, 13 and 14 will have reciprocal rights of way over the access handles, with a combined width ranging from 5m to 9.9m.
- Provision has been made for a passing bay.
- Planting strips of variable widths are provided.
- The access corridor width meets the requirements of the AS2890.1 and provides convenient and safe access to and from the site.

Is compliance unreasonable or unnecessary

In this instance, compliance is considered unnecessary and unreasonable as sufficient provision has been made for landscaping between the access corridor and the northern and north-western boundary. The majority of the access corridor will have a width of 3m, with rights of carriageway granted over the access handles serving Lots 12, 13 and 14. Provision has been made for a vehicle passing bay and the lots are of sufficient dimension and area to accommodate on-site manoeuvring, thereby negating any need for reverse manoeuvring in either direction along the driveway.

Although the driveway will follow the gradient of the site and slope down from the street frontage, a suitable grade can be achieved to ensure the safe and efficient ingress and egress of vehicles to and from the site. The alignment of the driveway is appropriate to ensure adequate driver sightlines. The existing, 5.5m wide, street berm ensures sufficient driver sightlines in both directions along Miowera Road for vehicles exiting the site. The access handles and driveway are also of sufficient width to accommodate emergency and delivery vehicles and are clear of any intrusion by buildings.

Item 1

Is application consistent with the aims of the policy set out in clause 3?

For the reasons stated above, the application is consistent with Clause 3 and the objects specified in section 5 (a)(i) and (ii) of the Act.

The proposed non-compliance will not adversely impact on traffic safety, the streetscape, or landscape amenity of the surrounding residential zone. Accordingly, the SEPP1 objection has merit and compliance with the development standard is unnecessary and unreasonable in the circumstances. It is considered that granting of development consent would be consistent with the aims and objectives set out in Clause 3.

Aims and objectives for residential zones

The development: (i) maintains the amenity and environmental character of the residential zone; and (ii) allows for residential development compatible with the character of the area. Consequently, the aims of the KPSO have been satisfied.

POLICY PROVISIONS

Subdivision Code

COMPLIANCE TABLE		
Development Standard	Proposals Numeric Compliance	Complies
Site Area: 5366m²		
Subdivision		
<ul style="list-style-type: none"> Site area: 929m² (min) 	Lot 11:1153.7m ²	YES
<ul style="list-style-type: none"> : 1300m² (battle-axe) (excl. access) 	Lot 12: 1351m ² (excl. access)	YES
	Lot 13: 1306.8m ² (excl. access)	YES
	Lot 14: 1318.5m ² (excl. access)	YES
<ul style="list-style-type: none"> Site width: 18.29m (min) at a distance of 12.2m from the street alignment 	Lot 11:15.24m	NO
<ul style="list-style-type: none"> Access handle width: 9.12m (min) as measured at the street alignment 	Lot 11:6m	NO
	Lot 12: 3m	NO
	Lot 13: 3m	NO
	Lot 14: 3m	NO

Item 1

Subdivision:

- *Site width*

Non-compliance with the site width requirement for Lot 11 has been discussed under the KPSO provisions above. It is considered that the SEPP 1 objection can be supported as sufficient area of appropriate dimension is provided for Lot 11 to enable the construction of a dwelling that could be expected to meet the objectives and policies of Schedule 9 of the KPSO and the design requirements of Development Control Plan 38.

- *Access handle*

Non-compliance with the access corridor width requirement for Lots 12, 13 and 14 has been discussed under the KPSO provisions above. It is considered that the SEPP 1 objection can be supported as sufficient width has been provided with reciprocal rights of carriageway to ensure the safe and efficient ingress and egress of vehicles to and from all allotments. The driveway design incorporates sufficient width at the street frontage to enable the passing of two vehicles and includes a passing bay with a width of 5.4m, approximately 30m from the street frontage.

Ku-ring-gai Residential Design Manual – Development Control Plan 38

The subject site is located within the Residential 2C zone. The existing dwelling will be retained on Lot 12. The following table indicates how the existing dwelling on the proposed, smaller, allotment would fare in relation to DCP 38 controls.

Development Control	Proposals Numeric Compliance	Complies
5.1 Streetscape:		
Building Setbacks (s.5.1.3) <ul style="list-style-type: none"> • Long boundaries (Battleaxe allotment): 3.8m • Short boundaries: 12m 	7.9m (west), 3.9m (east) (existing) 13.8m (north) (existing) 4.3m (south)	YES YES NO
Side & Rear Fences (s.5.1.5)	1.8m lapped and capped timber	YES
Height of Building (s.5.2.2) <ul style="list-style-type: none"> • 2 storey (max) and 7m (site <20° slope) 	1 storey (existing)	YES
Building Height Plane (s.5.2.3) 45° from horizontal at any point 3m above boundary		YES
Roof Line (s.5.2.6) <ul style="list-style-type: none"> • Roof Height (5m – one storey) • Roof Pitch 35° (max) 	<5m (existing) <35 degrees (existing)	YES YES

Item 1

Built-Up Area (s.5.2.7) 52% (max)	40.1% (547.02m ²)	YES
Unrelieved wall length (s.5.2.8) 12m (min)	17m (west elevation) (existing)	NO
Solar Access (5.2.11) 4h solar access to adjoining properties between 9am to 3pm	>4 hours to Lots 11, 13 & 14, and 26 & 28 Normurra Avenue.	YES
Cut & Fill (s.5.2.15) <ul style="list-style-type: none"> • max cut 900mm • max cut & fill across building area of 1800mm and 900mm • no cut or fill within side setbacks 	<900mm <900mm, <1800mm	YES YES YES
5.3 Open Space & Landscaping:		
Soft Landscaping Area (5.3.3) 48% (min)	59.9 %	YES
Tree Replenishment (s.5.3.6) 7 Trees Required	<7 trees	NO
Useable Open Space (s.5.3.8) Min depth 5m and min area 50m ²	Depth >5m, Area >100m ²	YES
5.5 Access & Parking:		
No. of Car Parking Spaces (s.5.5.1) 2 spaces behind building line	2 spaces for dwelling (existing)	YES

- **Setbacks**

The existing dwelling does not comply with the 12m setback requirement in relation to the southern boundary. This is an existing situation and it is not proposed to increase the height of the existing dwelling. There is sufficient setback to enable screen planting along all common boundaries. Accordingly, there will be no impact on the adjoining sites at 26 and 28 Normurra Avenue.

- **Unrelieved walls**

The western elevation of the existing dwelling has a continuous wall length of 17m. However, this is an existing situation, with modification to the dwelling proposed. The dwelling complies with the setback requirements in relation to the western boundary. Accordingly, there will be no impact on Lot 11, being the adjoining allotment to the west.

- **Trees**

Lot 12 is of sufficient dimension to accommodate seven trees, as required under DCP 38 (**refer Condition 69**).

Section 94 Plan

The development attracts a section 94 contribution of \$49,838.88, which is required to be paid by **Condition No. 56**.

Item 1

LIKELY IMPACTS

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

SUITABILITY OF THE SITE

The site is suitable for the proposed development.

ANY SUBMISSIONS

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

PUBLIC INTEREST

The approval of the application is considered to be in the 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 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, is of the opinion that the objections under *State Environmental Planning Policy No. 1 – Development Standards* to Clauses 58B 3(c)(iii) and 58B 3(c)(i) of the Ku-ring-gai Planning Scheme Ordinance are well founded. The Council is also of the opinion that strict compliance with the development standards is unreasonable and unnecessary in the circumstances of this case as Lot 11 is of sufficient width to accommodate residential development in general accordance with Council requirements. The proposed access corridor is of sufficient width to provide for the safe and efficient movement of vehicles associated with the allotments and there will be no undue impact on streetscape or landscape character and amenity.

Item 1

AND

THAT the Council, as the consent authority, being satisfied that the objections under SEPP No. 1 are well founded and also being of the opinion that the granting of consent to DA 0440/04 is consistent with the aims of the Policy, grant development consent to DA 0440/04 for Torrens title subdivision of one allotment into four on land at 29 Miowera Road, North Turrumurra, 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 9136 ~ 2B2, dated 21 October 2004, drawn by N.K. Bennett & O'Donnell, and endorsed with Council's approval stamp, except where amended by the following conditions:
2. The works set forth in the plans and specifications and approved under this consent, once commenced, shall be completed within two (2) years from the date of commencement.
3. 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.
4. Irrespective of the granting of this consent or approval by any other Authority, work is not to commence in, or within a horizontal distance of 40m from the top of the bank of, the stream without the prior issue of a Part 3A permit by DIPNR.
5. Any Part 3A permit so issued is to be renewed on an annual basis until all works and all rehabilitation, including maintenance, have been satisfactorily completed in accordance with the permit conditions.
6. If, in the opinion of a DIPNR officer, any activity is being carried-out in such a manner that it may damage or detrimentally affect the stream, such activity shall cease immediately, and any restoration carried out, upon oral or written direction of such officer.
7. Work as executed survey plans of a standard acceptable to DIPNR shall be provided to DIPNR upon request.
8. If the permit conditions have been breached, the permit holder shall restore the site in accordance with the permit conditions and as directed by DIPNR. If any breach of the permit conditions requires a special site inspection by DIPNR, then the permit holder shall pay a fee prescribed by DIPNR for this inspection and all subsequent breach inspections.
9. Operations shall not cause damage or increase erosion of the adjacent stream bed or banks. The permit holder shall carry out any instructions given by DIPNR with a view to preventing damage to the stream bed or banks.
10. Any vegetation or other material removed from the area of operations shall be disposed of so that the material cannot be swept back into the stream during a flood.

Item 1

11. When the works are to cease, DIPNR is to be notified in writing one month in advance of the cessation of the operation.
12. Work is to be carried out in accordance with any conditions imposed by other government agencies, provided such conditions do not conflict with these conditions or the conditions on the 3A permit.
13. All works proposed must be designed, constructed and operated so they do not cause erosion, sedimentation, or increase flood levels in the watercourse, and do minimise adverse impacts on aquatic and riparian environments.
14. Work is to be carried out in accordance with drawings and any management plans required by these conditions, and approved by DIPNR, and which will accompany the 3A Permit.
15. Detailed designs and the location of proposed stormwater outlets and any necessary scour protection works are to be prepared and implemented by a person(s) with relevant knowledge, qualifications and experience. The stormwater outlet design must comply with the DIPNR guideline, Stormwater Outlet Structures to Streams (Attachment A) to the satisfaction of Council and DIPNR, and approved by DIPNR, prior to the issue of the Part 3A Permit.
16. Any other services, utilities or infrastructure not shown on the submitted plans including unforeseen roads or other access, cycleways, drainage works, crossings, communications, water, electricity or gas supply that involves excavations on "Protected Land" (as defined in the Rivers and Foreshores Improvement Act, 1948) or that may effect flows, are not to be implemented without the prior approval of DIPNR.
17. A Soil and Water Management Plan (S&WMP) for all site works is to be prepared by a person(s) with relevant knowledge, qualifications and experience in the preparation of such plans, in consultation with, and with the approval of DIPNR prior to the issue of the Part 3A Permit. The S&WMP is to cover all aspects of soil and water management requirements for the site that could impact on the stream and must include details of staging, monitoring, management responsibilities, maintenance and decommissioning requirements. The S&WMP must meet the requirements outlined in the NSW Department of Housing's "Managing Urban Stormwater: Soils and Construction" (1998) manual (the "Blue Book").
18. A Vegetation Management Plan (VMP) is to be prepared a person(s) with relevant knowledge, qualifications and experience, in consultation with, and with the approval of, DIPNR prior to the issue of the Part 3A Permit in accordance with, but not limited to DIPNR guidelines on How to prepare a Vegetation Management Plan (Attachment B). The VMP is to fully address all issues relating to the protection, establishment and maintenance of the riparian zone. Details must also be provided on the method, timing and cost of implementing the VMP, the decommissioning of any temporary soil and water management controls and the rehabilitation of the affected areas.

Item 1

19. A riparian zone, consisting of local native plant species, is to be established along all watercourses on the Site where they are adjacent to disturbed areas. The extent of the riparian zones required is as follows:

- An minimum of 5 metres measured horizontally and at right angles to the flow from the top of the bank, on both sides of the creek within the property boundary.

The aim of establishing riparian zones is to create a continuous native vegetation corridor to ensure bed and bank stability and to mitigate any adverse impacts of the proposed development on the streams. The riparian zone is to be addressed in the Vegetation Management Plan, in consultation with, and with the approval of DIPNR.

20. The riparian zone is to consist of a diverse range of native plant species local to the area and is to be densely planted and fully structured (ie trees, shrubs and groundcovers). Trees and shrubs are to be planted at approximately equal numbers at an average density of one plant per square metre. Groundcover species are to be planted at an average density of at least four plants per square metre in addition to trees and shrubs.

21. The area covered by the Vegetation Management Plan must be maintained and monitored for a period of two years following final planting and primary bush regeneration works to ensure successful native vegetation establishment. Maintenance must include any watering, weed control, replacement of plant losses, disease and insect control, mulching etc, necessary for successful plant establishment.

22. Points of constriction or any other places where scour is likely within or near any protected waters or any part of the riparian zones on the Site, are to be suitably protected against scour. Designs, based on predicted velocities and scour potential, are to be prepared by, and implemented under the supervision of, a person with relevant knowledge, qualifications and experience to industry standards, and to the satisfaction of Council and DIPNR, and approved by DIPNR.

23. All permanent rock scour protection must consist of hard and durable run-of-quarry rock, sized to resist predicted scour velocities. Rock must be angular and blocky rather than flat, to ensure a good "bind" and to resist negative hydraulic pressure. Rock is to be placed over a 200mm deep layer of 140mm median size angular cobbles over geotextile to prevent erosion of underlying fine bed sediments and to facilitate placement.

24. All finished rock rip-rap surfaces are to be rough, and evenly aligned with the adjoining bed, bank and floodplain profile and must not reduce the capacity of protected waters in any way.

25. All rock and cobbles installed for scour protection are to be packed with topsoil and the crevasses in the rip-rap planted with local native sedges and rushes, to further stabilise the works and to increase riparian zone values and functions.

26. Wire mesh structures and concrete grouting are not permitted for use with rip rap scour protection unless shown on plans approved by DIPNR.

Item 1

27. All works within protected waters are to be monitored after each major storm event for the duration of any Part 3A permit issued by DIPNR. Stabilisation works consisting of soft-engineered designs are to be undertaken as required, after seeking advice and approval from DIPNR, if there are signs of erosion or instability of protected waters.
28. All works within protected waters must be consistent with the requirements of NSW Fisheries.
29. As a pre-condition to the granting of the Part 3A Permit, cash or a bank guarantee from any bank licensed pursuant to the Banking Act 1959 (Cth) may be required to be provided in favour of DIPNR, for an amount equal to the cost of rehabilitation in accordance with the Vegetation Management Plan, required by condition 16 and subject to the approval of DIPNR. If a bank guarantee is to be provided it must be in the format of Attachment C. The moneys will be held until such time as the plan and any specified maintenance period are complete. The sum held may be reduced on application to DIPNR, subject to the satisfactory completion of stages of restoration. DIPNR may at any time, and more than once and without notice to the Permit holder, demand all or part of the moneys available under the bank guarantee, if in its opinion, the Permit holder has failed at any time to meet the performance criteria set out in the Plan.
30. All erosion and sediment control measures are to be implemented and maintained, during the course of the works, and for as long as necessary after the completion of earthworks, to prevent sediment and dirty water entering the river system.
31. 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.
32. 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.

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.

33. 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

Item 1

site and a telephone number for contact outside working hours. The sign may only be removed on satisfactory completion of the works.

34. The applicant is advised that the Construction Certificate plans and specifications must comply with the provisions of the Building Code of Australia.
35. 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.
36. Stormwater runoff from new or existing hard surfaces generating runoff or landscaped areas that are not at natural ground level shall be piped to the watercourse within the site. New drainage line connections to the watercourse shall conform and comply with the requirements described in sections 5.5 of Councils Water Management Development Control Plan 47, available in hard copy at Council and on the Council website.
37. For stormwater control all paved areas are to be drained to the main drainage system. This may require the installation of suitable cut-off structures, inlets and/or barriers that direct runoff to the formal drainage system.
38. The provision of drainage infrastructure to each proposed lot, generally in accordance with the Concept Stormwater Drainage Plan, AFCE Environment + Building Drawing 343448/D2, dated Apr 04, but also including the stormwater quality control measures described in section 8.3.1 of Councils Water Management Development Control Plan 47.
39. 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.**
40. The provision of temporary sediment and erosion control facilities in accordance with the approved Environmental Site Management Plan 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.
41. 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.

Item 1

Please refer to “Your Business” section of Sydney Water’s web site at 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.

- 42. 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.
- 43. Any imported fill material shall be restricted to material from the local soil landscape on which the site is located or be derived from sandstone geology sites.
- 44. 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 Arborist/Horticulturist, with a minimum qualification of the Horticulture Certificate or Tree Surgery Certificate:

No./Tree/Location

51 / *Camellia sasanqua* (Chinese Camellia) / Adjacent to the southeastern side of the driveway and RL 140.09.

- 45. No mechanical excavation for the approved DRIVEWAY RETAINING WALL shall be undertaken within the specified radius of the trunk/s of the following tree/s until root pruning by hand along the perimeter line of such works is completed:

No./Tree/Location

Radius From Trunk

51 / <i>Camellia sasanqua</i> (Chinese Camellia)	3 metres
Adjacent to the southeastern side of the driveway and RL 140.09.	

- 46. 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.
- 47. 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.
- 48. 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 canopy of the following tree/s 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:

Item 1

No./Tree/Location	Radius in Metres
1 / <i>Eucalyptus saligna</i> (Sydney Blue Gum) Adjacent to the central eastern boundary of Lot 14.	9 metres

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

49. 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.**

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.

50. Design details for the proposed driveway, including certification by the designing engineer that the pavement will be adequate for construction vehicles associated with future development of the lots, are to be submitted to and approved by the Principal Certifying Authority prior to issue of the Construction Certificate. The vehicular crossing and driveway are to be 5.5 metres minimum for a distance of 6 metres from the road frontage, and passing opportunities are to be provided generally every 30 metres as recommended in AS2890.1-2004 Off street car parking.
51. Prior to issue of the Construction Certificate the applicant shall submit, for approval by the Principal Certifying Authority (PCA), a Site Environmental Management Plan prepared in

Item 1

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).

52. 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 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 future 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.
53. Permanent stormwater quality control measures shall be provided in accordance with Section 8.3.1 of Council's Water Management DCP 47 (available on the Council website). Details shall be provided to and approved by the Principal Certifying Authority prior to issue of the Construction Certificate.
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.
55. 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.
56. 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 TWO (2) ADDITIONAL ALLOTMENTS IS CURRENTLY \$49,838.88. 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

Item 1

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 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.	Acquisition of Open Space -Wahroonga	\$7,851.00
8.	Koola Park upgrade and reconfiguration	\$143.09
9.	North Turramurra Sportsfield development	\$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

CONDITIONS TO BE COMPLIED WITH PRIOR TO WORK COMMENCING

57. 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.
58. 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.

Item 1

- 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.

59. 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 DRIVEWAY 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:

No./Tree/Location	Radius From Trunk
46 / <i>Cedrus deodara</i> (Himalayan Cedar) Adjacent to the outside of the driveway's first bend from the Miowera Road boundary.	6 metres
51 / <i>Camellia sasanqua</i> (Chinese Camellia) Adjacent to the southeastern side of the driveway and RL 140.09.	3 metres
54 / <i>Chamaecyparis obtusa</i> 'Crippsii' (Golden Cripps Cypress) Adjacent to the southeastern side of the driveway RL's 138.84 and 138.19.	4 metres
56 / <i>Callicoma serratifolia</i> (Black Wattle) Adjacent to the southeastern side of the driveway and RL 138.19.	2 metres

60. 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.

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 THE ISSUE OF A SUBDIVISION CERTIFICATE

61. Construction of the stormwater management measures and driveway access to each lot is to be completed prior to release of the linen plan/ issue of the subdivision certificate. The designing engineer is to certify that the works have been constructed in accordance with the approved plans. Certification and a works-as-executed plan(s) is to be submitted to and approved by the Principal Certifying Authority prior to release of the linen plan.

Item 1

62. Prior to release of the linen plan/issue of the subdivision certificate, 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 must be fully repaired to the satisfaction of Council's Development Engineer and at no cost to Council.
63. The applicant is to create a Positive Covenant and Restriction-on-Use on the title of the subject property under Section 88B of the Conveyancing Act 1919, burdening the property with the requirement to maintain the riparian zone recommended by the Department of Infrastructure, Planning and Natural Resources (DIPNR). The restriction is to be over a zone which is a minimum of 5 metres measured horizontally and at right angles to the flow from the top of the bank of the watercourse within the property. The terms of the instruments are to be to the satisfaction of DIPNR. DIPNR is to be named as the authority whose consent is required to release, vary or modify the restriction.
64. Prior to release of the linen plan/issue of the subdivision certificate, the Section 73 Sydney Water compliance certificate which refers to the subdivision application must be obtained and submitted to the Council.
65. For endorsement of the linen plan/issue of the subdivision certificate, the applicant shall submit an original plan of subdivision plus six (6) copies, suitable for endorsement by Council. The following details must be submitted with the plan of subdivision and copies:
 - a. The endorsement fee current at the time of lodgment,
 - b. The 88B Instruments plus six (6) copies,
 - c. A copy of all works-as-executed plans required under the consent,
 - d. All Surveyor's and/or Consulting Engineer's certification(s) required under this consent,
 - e. The Section 73 (Sydney Water) Compliance Certificate for the subdivision.

Council will check the consent conditions on the subdivision. Failure to submit the required information will delay endorsement of the linen plan, and may require payment of rechecking fees.

Note 1: Plans of subdivision and copies must not be folded.

Note 2: Council will not accept bonds in lieu of completing subdivision works.

66. For endorsement of the linen plan / subdivision certificate issue, the Applicant shall submit an original instrument under Section 88B of the Conveyancing Act with the plan of subdivision, plus six (6) copies. This is to create any required easements, rights-of-carriageway, positive covenants, restrictions-on-use or other burdens/benefits as may be required. Ku-ring-gai Council must be named as the authority whose consent is required to release, vary or modify the same.
67. The applicant shall create all burdens including but not limited to drainage easements, easements for services and rights-of-carriageway, as required. A registered surveyor is to

Item 1

certify, prior to release of the linen plan/issue of the subdivision certificate, that all existing interallotment drainage lines, services and/or driveways are fully contained within the proposed burdens and/or that future provision of such are fully covered by the proposed burdens. Alternatively, where the surveyor is of the opinion that no interallotment easements or rights-of-carriageway are required, then certification to this effect must be submitted to the Principal Certifying Authority (PCA).

68. Prior to release of the linen plan/issue of the subdivision certificate, separate underground electricity, gas, telstra, sewer and water services, or appropriate conduits for the same, shall be provided to each allotment. A suitably qualified and experienced engineer or surveyor is to provide certification that all new lots have ready underground access to the services of electricity, gas, Telstra, sewer and water.
69. Lot numbers 11, 12, 13 and 14 shall support a minimum number of 7 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 trees, and additional trees to be planted, shall be shown on the Landscape Plan/Site Plan. The plan shall be submitted to Council and approved by Council's Landscape Development Officer. Tree planting shall be completed prior to release of the Certificate of Subdivision.
70. The 7 tree/s to be planted within Lot 12 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.

To protect and enhance native vegetation for the conservation and promotion of biodiversity, at least 50% of the tree plantings shall be selected from the Sydney Sandstone Gully Forest assemblage of vascular plants (included) as the site is located between 100 and 300 metres from bushland.

71. 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 Certificate of Subdivision.

Plant Species

Ageratina adenophora (Crofton Weed)
Ageratina riparia (Mist Weed)
Asparagus densiflorus (Asparagus Fern)
Cinnamomum camphora (Camphor laurel)
Cortaderia selloana (Pampas grass)
Cotoneaster sp. (Cotoneaster)
Erigeron karvinskianus (Seaside Daisy)
Hedychium gardnerianum (Ginger lily)

Item 1

Jasminum polyanthum (Jasminum)
Ligustrum lucidum (Large-leaved Privet)
Ligustrum sinense (Small-leaved Privet)
Lonicera japonica (Honeysuckle)
Nephrolepis cordifolia (Fishbone fern)
Raphiolepis indica (Indian Hawthorn)
Rubus fruticosus (Blackberry)
Senna pendula (Cassia)
Tradescantia albiflora (Wandering Jew)

Mark Leotta
Team Leader – Northern
Team
Development Assessment

Matthew Prendergast
Manager
Development Assessment
Services

Michael Miocic
Director
Development and Regulation

Attachments: **Location Sketch**
 Site Plan/Subdivision Plan
 Drainage Plan

Item 2

DEVELOPMENT APPLICATION

SUMMARY SHEET

REPORT TITLE:	143 TO 145 PENTECOST STREET, TURRAMURRA - CHILD CARE CENTRE.
WARD:	Wahroonga
DEVELOPMENT APPLICATION N^o:	1692/03
SUBJECT LAND:	143 to 145 Pentecost Street, Turrumurra
APPLICANT:	T. Vincent
OWNER:	J. & N. Fung
DESIGNER:	Noel Bell, Ridley Smith & Partners
PRESENT USE:	Residential
ZONING:	Residential 2C
HERITAGE:	No
PERMISSIBLE UNDER:	Ku-ring-gai Planning Scheme Ordinance
COUNCIL'S POLICIES APPLICABLE:	Ku-ring-gai Planning Scheme Ordinance, Development Control Plan 38, Development Control Plan 43, Development Control Plan 31, Development Control Plan 28, Development Control Plan 40, Ku-ring-gai Council Policy On Child Care Centres
COMPLIANCE WITH CODES/POLICIES:	Yes
GOVERNMENT POLICIES APPLICABLE:	SEPP 55, SREP 20
COMPLIANCE WITH GOVERNMENT POLICIES:	Yes
DATE LODGED:	22 December 2003
40 DAY PERIOD EXPIRED:	31 January 2004
PROPOSAL:	Child Care Centre
RECOMMENDATION:	Approval

Item 2

DEVELOPMENT APPLICATION N^o 1692/03
PREMISES: 143-145 PENTECOST STREET,
TURRAMURRA
PROPOSAL: CHILD CARE CENTRE
APPLICANT: T. VINCENT
OWNER: J. & N. FUNG
DESIGNER NOEL BELL, RIDLEY SMITH & PARTNERS

PURPOSE FOR REPORT

Determination of a Development Application for a child care centre.

EXECUTIVE SUMMARY

Issues:

- Streetscape
- Parking
- Acoustic and visual privacy
- Landscaping

Submissions: Forty four (44) submissions.

Land & Environment Court Appeal: No appeal lodged.

Recommendation: 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:

DA1692/03

- Letter sent to applicant on 25 May 2004 requesting further information and consideration of design options in relation to drainage, car parking layout and landscaping.
- Meeting held on 7 June 2004 with Council staff and applicant to discuss matters raised in Council's letter of 25 May 2004.

Item 2

- Letter received from applicant on 30 July 2004 responding to issues raised by Council. Amended drainage and car parking layout plans submitted along with an arborist's report.
- Further information requested 20 September 2004 in relation to built-upon area and floor space ratio, subsequent to amendments made by applicant.
- Letter and revised site and landscape plan received 21 October 2004.
- Letter received from applicant 22 October 2004 satisfying Council's request.

THE SITE AND SURROUNDING AREA

The site

Visual Character Study Category:	1945-1968
Lot Number:	16
DP Number:	573346
Area:	2244m ²
Heritage Affected:	No
Bush Fire Prone Land:	No
Endangered Species:	No
Urban Bushland:	No
Contaminated Land:	No

The subject allotment is legally described as Lot 16 in D.P 573346 and is located on the northern side of Pentecost Avenue. The subject allotment is essentially a double site, with an area of 2244m² and is of irregular shape. The southern (front) boundary measures 37.195m, the northern (rear) boundary, 35.61m and the western and eastern boundaries measure 63.3m and 61.925m, respectively. The site falls from south-west to north-east. A grassed retention pit is located in the rear, north-west, corner and the site supports six trees; five of which are located in the rear yard.

The site contains a large, predominantly two storey, brick and tile dwelling built in the early 1990s and set back 11.7m to 14.9m from the front boundary. When viewed from the rear and side elevation, the dwelling presents as three storeys, due to the inclusion of the basement level and the sloping topography. The dwelling has three levels of accommodation, including seven bedrooms and three large living areas. The site is served by two vehicle crossings connected in a semi-circular driveway arrangement. An existing driveway runs adjacent to the western (side) boundary to the rear of the site. The property is fenced and gated along the street frontage. The fence ranges in height from 1.8m to 2.4m at the eastern extent and comprises a solid block component, with 1.1m high transparent metal infills. The driveway gates have a maximum height of 2m and 2.5m, respectively and are comprised of metal palisades.

Item 2

143-145 Pentecost Avenue, Turrumurra.



Front yard view of 143-145 Pentecost Avenue.



Item 2

Rear view of dwelling and proposed childcare centre.



Surrounding development:

The surrounding area comprises a mix of architectural styles and designs, with a range of one and two storey dwellings. The adjoining site to the west, being 147 Pentecost Avenue, contains a two storey dwelling aligned in a north-westerly direction away from the subject site but set back approximately 1m from the common boundary between the two allotments.

The eastern boundary adjoins 141 Pentecost Avenue and 122A Bannockburn Road. Both sites contain two storey dwellings, with rear yards backing onto the subject site. The dwelling at 141 Pentecost Avenue is set back approximately 9m from the common boundary. The building at 122A Bannockburn Road is set back approximately 7.2m from the front boundary.

The property at 122 Bannockburn Road is long and narrow site and runs the length of the rear boundary of the subject allotment. This site contains a single storey dwelling in close proximity to the common boundary. An in-ground swimming pool and tennis court, associated with 122 Bannockburn Road, are located adjacent to the common boundary.

Front building lines on both sides of Pentecost Avenue are generally consistent, with the dwelling at 140 Pentecost Avenue, directly opposite the subject site, set further back than surrounding or opposing development.

Item 2

Neighbouring dwelling at 147 Pentecost Avenue to the west (side boundary).



View of the neighbouring dwelling at 147 Pentecost Avenue to the west, from the second level deck of the dwelling on the subject site.



Item 2

View of the neighbouring dwelling at 122A Bannockburn Road to the east (side boundary).



View of the neighbouring dwelling at 122 Bannockburn Road to the north (rear boundary).



Item 2

View of neighbouring tennis court at 122 Bannockburn Road to the north, with retention pit at the rear of the subject site in the foreground.



THE PROPOSAL

Consent is sought to establish and operate a child care centre in conjunction with retention in part of the existing dwelling.

It is proposed to provide a new, long-day care centre for a total of thirty six (36) children between the ages of 0 to 5 years. Sixteen of the children will be between the age of 0-3 years and twenty children between the ages of 3-5 years.

Eleven on-site car parks are proposed for the child care centre, with 8 in front of the building and 3 located at the rear of the site. One car park space is to be designated for disabled persons within the front car parking area. The existing double garage is to be retained for use by the residents of the dwelling. It is also proposed to retain the two existing vehicle crossings and existing driveway running along the western side boundary. Vehicles will enter the site from Pentecost Avenue by the western-most driveway and exit by the eastern-most driveway.

The proposed hours of operation are 8.30am to 4.30pm Monday to Friday. There will be five full-time staff and one director. The director will reside on the premises.

Item 2

The proposal will involve the removal of one oak tree located in the rear yard and an existing Conifer within the front yard. A sign measuring 1750mm x 900mm is proposed to be affixed to the existing front fence to identify the child care centre.

The proposal comprises the following modifications to the existing dwelling and site to accommodate the child care centre:

- Conversion of two large, residential living areas and bedrooms at the lower and upper level to accommodate the child care centre.
- Extension of the upper level deck by 22m² to provide sufficient outdoor play space adjacent to the upper playroom area.
- Installation of a 2.4m - 1.5m high acoustic glass screen barrier to the upper level deck.
- Construction of a 3m high brick wall between the lower outdoor play area and the car parking access area.
- Demolition of several internal walls to provide a suitable layout.
- Excavation for the lower playroom and storage area, reshaping of the rear playground area and construction of the rear car park.
- Provision of eight car parking spaces in the front yard area and 3 spaces to the rear of the site.
- Provision of mobility impaired access to the play areas and staff areas.
- Installation of a stormwater detention tank within the front yard.
- Installation of playground equipment, including a sand pit at the rear of the building.

Amended plans lodged 30 July 2004

- An increase in on-site car parking spaces in the front yard from seven to eight.
- Realignment of car parking spaces within the front yard from a 90 degrees arrangement adjacent to the front boundary, to an angled layout directly in front of the building.
- Deletion of landscaped area adjoining the pedestrian gate and removal of an existing tree within that area to accommodate vehicle manoeuvring.
- Addition of a planting area adjacent to the western elevation of the rear deck area and western boundary, including a proposed tree.
- Porous paving to be utilised in the rear car parking area and the northern portion of the driveway, adjacent to the western (side) boundary.

Amended Plans lodged 21 October 2004

Item 2

- Deletion of some 7.5m² of paved area between the garage and front entry to the dwelling and replacement with landscaping.
- Inclusion of landscaping within the setback between the front boundary and existing fence.
- Inclusion of landscaping along the east (side) boundary of the front yard parking area.
- Inclusion of landscaping along the western-most extent of the front elevation and an increase in landscaping along the western elevation of the building.

CONSULTATION - COMMUNITY

In accordance with Council's Notification Policy, adjoining owners were given notice of the application. A total of 44 submissions in opposition were received:

Original Scheme dated 22 December 2003.

NAME	ADDRESS	SUBURB
1. Mr A G Gapes	114 Bannockburn Avenue	Pymble
2. Mr G & Mrs S Clarke	101 Bobbin Head Road	Turrumurra
3. Ms L Lennard	124 Bannockburn Road	Turrumurra
4. Mr B Morrison	124 Bannockburn Road	Turrumurra
5. L Hickson	5 Reely Street	Pymble
6. Philip Longley	126 Pentecost Avenue	Turrumurra
7. R & F Moore	130 Pentecost Avenue	Turrumurra
8. Mrs S C Robertson	151 Pentecost Avenue	Turrumurra
9. Mr K & Mrs A Quinn	131 Pentecost Avenue	Turrumurra
10. Mrs M Parle	92 Bobbin Head Road	Turrumurra
11. Mr D Wilcox	108 Pentecost Avenue	Turrumurra
12. Mr I & Mrs C Gilmour	109 Pentecost Avenue	Turrumurra
13. D & M Balchin	89 Bannockburn Road	Turrumurra
14. G Blackett & C Cooke	132 Pentecost Avenue	Turrumurra
15. Mr C & Mrs A Seccombe	141 Pentecost Avenue	Turrumurra
16. D Short	119 Pentecost Avenue	Turrumurra
17. S Steigrad	135 Pentecost Avenue	Turrumurra
18. P S Palmer	133 Pentecost Avenue	Turrumurra
19. K B Lee	122A Bannockburn Road	Turrumurra
20. B M Robertson	140 Pentecost Avenue	Turrumurra
21. J & M Costa Bir	128 Pentecost Avenue	Turrumurra
22. P & M Campbell	12 Reely Street	Turrumurra

Item 2

23. M Marshall	77 Bannockburn Road	Turrumurra
24. T & Y Wong	Unit 303, Oi Yung House, Yau Oi Estate, Tuen Mun	Hong Kong
25. D & B Wilkinson	126 Bannockburn Road	Turrumurra
26. E & S Murray	144 Pentecost Avenue	Turrumurra
27. B Lowe	7 Reely Street	Turrumurra
28. R B Vaughan	147 Pentecost Avenue	Turrumurra
29. Mr K & Mrs P O'Shaughnessy	137 Pentecost Avenue	Turrumurra
30. Mr J & Mrs C Kaleski	10 Reely Street	Pymble
31. J Marsh	90 Bobbin Head Road	Turrumurra
32. Mrs A Terblanche	146 Pentecost Avenue	Turrumurra
33. Mr W & Mrs D Williams	9 Reely Street	Pymble
34. Mr P Rouch	136 Pentecost Avenue	Turrumurra
35. Joan L Willis	87 Bannockburn Road	Turrumurra
36. Andrew & Louise Sauter	149 Pentecost Avenue	Turrumurra
37. Mrs A Rouch	136 Pentecost Avenue	Turrumurra
38. Ms D Hooper	79 Bannockburn Road	Turrumurra
39. Dr R & Mrs Y Cairns	1 Fairlawn Avenue	Turrumurra
40. Mr D & Mrs P Sandoe	"Selborne" 6 Fairlawn Avenue	Turrumurra
41. Mrs M Schaafsma	33 Boomerang Street	Turrumurra
42. S Ottery	116 Pentecost Avenue	Turrumurra
43. J R Wulff	34 Ku-ring-gai Avenue	Turrumurra
44. Mr K Sprem	1 Rawson Crescent	Pymble

The submissions raised the following issues:

Proposed on-site car parking is insufficient in number to accommodate likely demand and parents would choose to drop and pick up children at the kerb, creating implications for children's safety and the safe and efficient flow of traffic along this part of Pentecost Avenue.

The objector from 147 Pentecost Avenue, being the adjoining site to the west, commissioned a traffic report, prepared by Hutcheson Transport Solutions Pty Limited, to assess the proposal in relation to traffic matters. That report raised concerns over the dimensions of several of the proposed on-site car parking spaces and recommended that all pick up and delivery occur on site.

Council's Strategic Traffic Engineer has reviewed the proposal, the report prepared by Hutcheson Transport Solutions Pty Limited and the traffic comments prepared by Project Planning Associates, dated 16 October 2003 and 1 April 2004.

Item 2

Council's Traffic Engineer supports the proposal, subject to conditions. These include increased separation between car space No. 4 and the building to improve pedestrian access and an increase in driveway width at the boundary. A further condition is recommended requiring deletion of the proposed landscaping between the garage and front entry to the dwelling and replacement with a pathway for pedestrians (**refer Conditions 7, 8 and 4**).

The proposal can comply with the parking dimension and access requirements of DCP 43 and AS2890.1. The car park layout is convenient in that visitor parking will be located in front of the building, with the three car park spaces at the rear designated for staff use only. To ensure that the rear car parks are used by staff only, a condition is recommended requiring a sign to be erected at the top of the driveway advising that visitor parking is not available at the rear of the building (**refer Condition 5**).

The proposal complies with the requirement of 1 car park space per 4 children as set out in DCP 43. The proposal includes 11 on-site car park spaces where DCP 43 requires 9 spaces. As the director will be resident, they will park in the garage and not utilise any of the spaces associated with the child care centre. The applicant also advises that children can be dropped off any time between 8.30am and 9am, with pick up between 3.00pm to 4.30pm. This will help disperse on-site parking demand generated by the centre.

Pentecost Avenue is serviced by the public bus network and parents will have the option of utilising public transport to get to the child care centre. It is also reasonable to expect that some of the children will be from families resident in the surrounding area and walking to and from the centre will be an option.

Council's Traffic Engineer has further recommended that "No Stopping" restrictions on both sides of Pentecost Avenue, fronting the development, be installed by the applicant, subject to Ku-ring-gai Traffic Committee approval. This is to ensure parents do not choose to drop off and pick up children on the street. However, this is not necessary as the proposal is compliant with Council's car parking and vehicle access requirements. Subsequently, the proposal can accommodate the drop off and pick up of children on site and will not generate an increase in on-street parking demand.

Traffic congestion along Pentecost Avenue, particularly during peak hour traffic. Objectors are concerned that traffic generation associated with the proposed childcare centre will exacerbate existing problems. This would exacerbate existing traffic safety problems or lead to increased traffic accidents in the locality. Concern was also expressed with regard to driver/pedestrian conflict as children are dropped off and picked up from the childcare centre.

The estimated increase in traffic flows associated with the child care centre is in the order of an additional 30-35 vehicle trips per hour during commuter peak periods (based on RTA Guidelines). Council's Traffic Engineer is satisfied that the likely increase in traffic flows generated by the proposal can be absorbed into the existing traffic environment, without an adverse impact on the safe and efficient flow of traffic in the surrounding road network. The applicant also advises that drop off is any time between 8.30am and 9am, with pick up between 3.00pm to 4.30pm. This will help disperse traffic flows generated by the child care centre.

Item 2

The objector from 147 Pentecost Avenue, the adjoining site to the west, commissioned a traffic report prepared by Hutcheson Transport Solutions Pty Limited to assess the proposal in relation to traffic matters. That report raised concerns over the dimensions of several of the proposed on-site car park spaces and recommended that all pick up and delivery occur on site. The report did not find that the proposed child care centre would generate a sufficient volume of traffic so as to adversely impact existing traffic flows. Rather, the report concluded that the on-site parking arrangements as originally proposed would potentially lead to traffic conflict with parents accessing the site.

In response to Council concerns regarding the original parking layout, the applicant has amended the on-site parking arrangement by locating four angled spaces directly in front of the building, with three spaces located adjacent to the eastern side boundary. The number of visitor spaces has also been increased from seven to eight. As noted under *Parking* above, compliance with DCP 43 and AS2890.1 - 1993 can be achieved and Council's Traffic Engineer supports the proposal, subject to conditions (**refer Conditions 4 - 11 and 44**).

Safe ingress and egress of vehicles to and from the site given the busy nature of Pentecost Avenue.

The site has two vehicle entrances, with unimpeded sightlines in both directions along Pentecost Avenue. The western-most driveway will serve as the entry to the site, with vehicles exiting from the eastern-most driveway. A condition is recommended requiring markings to indicate this arrangement (**refer Condition 6**). Council's Traffic Engineer has confirmed that driver sightlines are sufficient to ensure no undue impact on traffic or pedestrian safety, subject to there being no obstruction by proposed planting in the nature strip (**refer Condition 44**).

The proposal includes sufficient area for on-site manoeuvring, so that all vehicles will exit the site in a forward direction. The existing 5.5m wide road reserve also means vehicles will not be entering the roadway directly upon exiting the site. This provides more time for drivers to adjust to traffic flow and notice pedestrians when entering and exiting the site.

Child safety and the on-site car park areas.

The proposal includes areas of pedestrian separation, both within the front and rear car park areas. Council's Traffic Engineer supports the proposal, subject to conditions, including increased width of pedestrian access in front of car space No. 4, a pathway along the front of the building and relocation of an entry gate opposite car space No. 1 (**refer Conditions 7, 4 and 11**). The proposal also includes child proof fencing, restricting child access to the car parking areas. These measures are in addition to supervision of children by parents and staff. Accordingly, the proposal is unlikely to result in risk to child safety.

A commercial activity in a residential area would compromise the character and visual amenity of the surrounding environment.

Child care centres are permissible within the Residential 2C zone under the KPSO. The proposed activity is directly connected to the residential environment by the provision of a community service. The site will also retain a residential component, accommodating the family who will

Item 2

operate the childcare centre. The front façade of the building, including fencing, will remain largely unaltered and will continue to present as a residential building.

Overall, the site retains an appropriate ratio of built-upon area to soft landscaping and can accommodate a sufficient number of trees to ensure a suitable level of landscape amenity. The proposal is supported by Council's Landscape Officer, subject to conditions (**refer Conditions 40-44, 56-60 and 69**).

Council's Landscape Officer has commented that, due to the front car park layout, there is very little opportunity for landscaping within the front yard, with the exception of an existing 500mm wide planting strip in front of the front fence. At present, front yard landscaping is largely confined to a grassed area between the driveway crossings with a single tree growing within this area. The existing front fence and gates prevent any clear views of the front yard in any case. Given the existing level of front yard landscaping visible from the street, the provision of adequate soft landscaping (including trees) to the rear of the site and the use of the property as a child care centre requiring the provision of eleven car parking spaces, an absence of landscaping within the front yard, will not unduly impact streetscape amenity.

A condition is recommended requiring the western, eastern and northern boundary to have appropriate fencing and screen planting to ensure the visual amenity of the adjoining sites at 141 and 147 Pentecost Avenue and 122 and 122A Bannockburn Road (**refer Conditions 12 and 57**).

Although a childcare centre as a permissible activity in the zone will differ in design and function to residential activity, the proposal maintains an appropriate level of amenity for adjoining and surrounding sites commensurate with what could be reasonably expected of such a development. Accordingly, the proposal will not adversely impact the existing residential character or visual amenity of the area.

A commercial activity within a residential area will set a precedent for subsequent applications for other commercial activity within the locality.

Under the Ku-ring-gai Planning Scheme Ordinance (KPSO), child care centres are a permissible activity within the Residential 2C zone and are an accepted community service. The establishment of a child care centre does not by default, allow other commercial activity to operate within a residential zone. Rather, the KPSO specifies non-residential activities that may be considered for approval within residential zones and also specifies those that cannot. For those non-residential land uses that may be considered for approval within a residential zone, a development application is required, with assessment on a case by case basis.

Noise generated by the proposed child care centre and the associated use of the existing indoor swimming pool.

The applicant has not proposed to use the existing indoor pool in association with the child care centre, as indicated on the submitted plans and stated in the Statement of Environmental Effects. A condition is recommended to ensure this (**refer Condition 14**).

Item 2

The applicant has submitted a noise report prepared by Renzo Tonin & Associates. The applicant has incorporated the recommendations of that report into the design of the child care centre. The proposal includes an acoustic fence, with a height of 2.3m along the western elevation of the upper level deck and a 1.5m high acoustic fence along the remaining elevations of the same deck. The play area below the upper level deck will be enclosed by a 230mm thick and 3m high brick wall along the western (side) elevation. The deck and play area will be set back approximately 3.7m from the western boundary, 17.5m from the northern (rear) boundary and 10m from the eastern (side) boundary.

Further, the proposed hours of operation are confined to weekdays only between 8.30am and 4.30pm. Outside these hours, the property will be utilised only as a residence. Appropriate acoustic insulation measures have been incorporated into the design of the child care centre and, given that the centre will not be operating in the early morning, evenings or on the weekends, the development will not unduly impact upon the amenity of surrounding residents.

Council's Community Development Officer has recommended operating hours of 7.30am to 6.00pm, Monday to Friday, to better meet demand for long-day child care. Should the applicant wish to extend the hours of operation beyond those currently proposed, they will be required to seek amendment to any consent granted under section 96 of the Environmental Planning and Assessment Act.

Accordingly, any acoustic impact on adjoining properties and, in particular 141 and 147 Pentecost Avenue, 122 and 122A Bannockburn Road, will be within acceptable levels. The opposing site, at 140 Pentecost Avenue, is sufficiently remote from the site to ensure no adverse impact.

Overlooking of balconies and private open space areas of 147 Pentecost Avenue.

While the dwelling on the adjoining site at 147 Pentecost Avenue is located in close proximity to the common boundary, (approximately 1m at the closest point) the dwelling is orientated away from the subject site, with a north-westerly orientation. The proposed upper level deck is also aligned so that it curves away from the common boundary. Subsequently, the objector's balcony is located 8.4m to 14m from the upper level deck of the child care centre. The proposal includes a 2.4m high, toughened, translucent glass screen along the western elevation of the upper level deck and a 1.5m high, toughened, translucent glass screen along the remaining elevations (**refer Condition 13**). Coupled with the separation distance of the play areas from all common boundaries, this will ensure no unreasonable privacy impacts to 147 Pentecost Avenue.

A condition is recommended requiring the western, eastern and northern boundaries have appropriate fencing and screen planting to ensure the visual privacy of the adjoining sites, given the location of car parking in the rear yard (**refer Conditions 12 and 57**). Accordingly, the child care centre will not have any adverse impact on the privacy of 147 Pentecost Avenue or on any other adjoining properties.

Item 2

Overshadowing of 147 Pentecost Avenue.

The proposal will not result in the undue shading of 147 Pentecost Avenue or any other adjoining site. The applicant has submitted shadow diagrams that indicate that all adjoining sites will receive a minimum of 4 hours of solar access throughout the year, in accordance with the minimum solar access requirement under DCP 38.

Loss of views from 147 Pentecost Avenue.

Any views in the immediate locality are localised. The alignment and orientation of the dwelling and outdoor living areas at 147 Pentecost Avenue are generally to the north-west and away from the subject site. The proposed modifications to the subject dwelling will have no impact on any views to the east of the neighbouring site. An appropriate area of soft landscaping is proposed, primarily in the rear yard and that Council's Landscape officer supports the proposal, subject to conditions, including the planting of suitable specimen trees (**refer Conditions 40-44, 56-60 and 69**).

Potential flooding of 141 Pentecost Avenue and 122 Bannockburn Road.

In response to Council concerns relating to drainage, the applicant has amended their drainage plan to include an on-site detention tank located within the front yard, with roof runoff directed to the tank and gravity feed to the street. Council's Development Engineer supports the proposal, subject to conditions (**refer conditions 45-49, 61-65, 71-73**).

Waste disposal facilities.

The proposal includes provision of waste storage facilities, located in the eastern portion of the front yard. It is recommended that a waste management plan be required (**refer Condition 55**). The applicant will also be required to comply with the waste requirements of Department of Community Services in obtaining a DoCS licence for the child care centre.

Likelihood of children from the child care centre climbing the fence to enter the pool at 122 Bannockburn Road.

The owner of the pool at 122 Bannockburn Road has a legal obligation to ensure fencing of their swimming pool complies with the Swimming Pools Act, 1992, regardless of the adjoining land use. Notwithstanding this requirement, the proposed child care centre is similarly under a legal obligation to ensure that all outdoor play areas are appropriately fenced. The proposal includes installation of a new child proof fence to a height of 1.2m, to the furthest extent of the rear car park area. This is in addition to a gated, 1.5m high, toughened glass fence around the designated outdoor play area.

Safety issues with retention of the existing indoor swimming pool.

It is not proposed to use the existing indoor swimming pool in association with the child care centre (**refer Condition 14**). The applicant has provided a Social Impact Report that states the safety

Item 2

measures necessary to obtain a licence from the Department of Community Services and a statement that the proposal will comply with those requirements.

Proximity of the child care centre to a micro cell site located outside 153 Pentecost Avenue and potential adverse health effects on children.

There is no recognised data that confirms such cell sites constitute an unacceptable health risk. The cell site is required to comply with relevant Australian safety standards.

Visual impact of the proposed signage.

The proposal includes installation of a single sign, adjacent to the pedestrian gate on the front fence. The sign is to measure 1750mm x 950mm and indicate the name of the centre, hours of operation and contact details. The dimensions of the proposed sign are acceptable in the context of the streetscape. Surrounding residential development is eclectic in design and scale, with no particular architectural style predominant. The subject site is essentially a double lot with a frontage of 37.195m and an existing front fence to a maximum height of 2.4m. The existing dwelling is a large two storey building, extending over the majority of the frontage of the site. When viewed against the bulk of the existing dwelling and existing fencing detail, the proposed signage will be small scale and unlikely to adversely impact upon the streetscape.

Approval of the childcare centre will result in a decrease in property values for surrounding sites.

The effect of any proposed development on adjoining or surrounding property values is not a valid planning consideration under s79C of the Environmental Planning and Assessment Act.

Amended plans dated 21 October 2004.

The amended plans were not notified pursuant to Council's Notification Policy as the changes relate to a re-alignment of the internal car parking layout and involve the provision of one additional car park over that originally proposed. No amendments to the scale, bulk and form of the building have been proposed nor to the scale and intensity of the child care activity. Overall, the proposal remains substantially the same as that originally notified and addresses concerns raised by Council with regard to parking layout and stormwater management.

The amended proposal would not result in increased or additional potential impact on the environment above or beyond that already associated with the application as originally notified.

CONSULTATION - WITHIN COUNCIL

Engineering

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

Item 2

“The amended plans were submitted following a meeting held on 7 June 2004 attended by the applicants, their consultants and Council officers.

The application was submitted in 2003, therefore Council’s Stormwater Management Manual applies. At the meeting the option of providing retention and re-use for the development, to assist with achieving gravity drainage to the street drainage system, was raised. However, the applicant’s consulting engineer was not favourably disposed to this option.

With regard to the stormwater drainage plans submitted, Harris Page has shown that all the roof water being conveyed to an augmented on site detention system under the front carpark. This system will have an internal height of 0.6 metres and gravity fall to the street gutter and is therefore acceptable. The pipe conveying runoff from the rear roof and terrace has been designed for the 100 year ARI which is desirable to minimise the likelihood of overflows.

The rear carpark is to be of porous paving and will provide some degree of stormwater retention on site. Light traffic only is expected to use this area, so the permeability of the system will be maintained, given regular maintenance as described in Section A6.6 of DCP 47. The equivalent area is approximately 130m². The driveway leading to the rear carpark will remain concrete because it is at a slope greater than 5%. The porous paving will need to comply with the requirements given in DCP 47, with regard to design and capacity. Details of the materials to be used will be required before issue of a Construction Certificate.

The integrity of the existing dispersal system will have to be confirmed and remedial works can be carried out in conjunction with construction works if required.

It is considered that with the removal of roofwater which currently drains to this system (area A3 on the stormwater concept plan), and the provision of porous paving for retention, the runoff to the system will not be increased. In conjunction with any upgrading works required to the dispersal trench system, this should result in an improvement to stormwater management at the rear of the site.”

Conditions as recommended by the Development Control Engineer have been included with the recommendation (**refer Conditions 45-49, 61-65, 71-73**).

Landscaping

Council’s Landscape and Tree Assessment Officer has commented on the proposal as follows:

“An amended proposal and arborist report has been received for proposed the child care centre. The proposal will result in the removal of one liquidambar styraciflua 12m high rear poor condition, one Cupressocyparis leylandii 9m high front, one Quercus robur 12m high rear fair condition storm damage Main leader damaged and decayed, one Angophora floribunda 15m high rear fair condition storm damaged structurally suspect.

Considering the arborists report and my own assessment, I have no objections to the removal of these trees, although I did consider that the oak particularly required further assessment. I

Item 2

note that the two most significant trees on site, the oak and angophora have both suffered from storm damage in the past and are to some degree structurally suspect.

The Oak has a damaged main leader which has a significant decay stub, and likelihood of internal decay. Other areas of smaller diameter deadwood within the canopy and epicormic growth in evidence to its trunk would indicate declining health and vigour. While I would prefer to see the tree retained, given the location of the tree within the play area and lack of options for this area to be placed elsewhere, the low visibility of the tree from surrounding areas, potential detrimental impacts of the play area on the root zone and the questionable structural soundness of a portion of this tree I do not believe the tree is suitable for retention as part of this proposal.

The Angophora has obvious old storm damage and wounding to the trunk and of wood decay to the wound. Evidence of longicorn beetle attack and dieback indicate that the tree is under stress and in poor condition.

In general, the amended scheme, while improving the vehicle parking and circulation issues, has less soft areas, particularly to the front than the previous scheme. There is also very limited to no scope to provide screen planting to either boundary immediately adjacent to the development.

There is scope for some screen planting to the rear and side boundaries and also tree planting to the rear.

In general, the lack of landscape areas to the curtilage of the building and loss of soft area to the frontage is less than ideal. The development of the front setback also reduces the area available for canopy planting to the frontage not withstanding tree planting proposed on the nature strip under electrical wires. Canopy trees will therefore be restricted to the rear of this site.”

The proposed removal of the oak tree, located within the designated play area, is acceptable on the basis that the tree is structurally compromised and may present a very real risk to the safety of persons and property should limb failure occur. The play area is appropriately located in relation to the existing building and maximises setbacks from common boundaries.

While the proposal does not provide front yard landscaping typical of standard residential development, the proposal is for a non-residential activity that is required to comply with stricter parking provisions than a residential activity.

The proposal is able to maintain an appropriate ratio of soft landscaping to built-upon area in general accordance with a residential environment. The rear of the site can accommodate a sufficient number of large trees and screen planting and fencing can ensure the visual privacy and amenity of adjoining sites.

Conditions recommended by the Landscape and Tree Assessment Officer have been included in the recommendation (**refer Conditions 40-44, 56-60 and 69**).

Item 2

Traffic

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

"I refer to previous traffic comments dated 5 and 14 May 2004 concerning the above Application, which found that parking provision was in accordance with Council's Car Parking Code, but there were concerns that the layout of the parking provision at the front of the site could cause vehicle-pedestrian conflicts during pick up/set down periods. Concerns about car parking dimensions were also raised, and that there was the potential for parents/carers to park in Pentecost Avenue during set down/pick up times. Since then, the Applicant has revised the layout of the parking to address the concerns raised.

The revised parking arrangement now has 4 angled car spaces adjacent to the main building, which would improve pedestrian access between the childcare entry and those 4 spaces. The three spaces adjacent to the eastern boundary have been lengthened so that their overall length is 5.4m, which complies with Council's Car Parking Code.

There are some concerns relating to the location of the childproof gate at the childcare entry and the resulting width available between it and car space no.7. According to the plans, there is only about 0.4m separating the end of the car space and the childcare entry gate. It is suggested that the gate could possibly be relocated to the eastern end of the fenced enclosure. This would allow access via the covered area in front of the house entry, and would reduce conflicts between cars accessing space no.7 and pedestrians entering/leaving the gate. Similarly, there are concerns about possible conflicts between a car accessing space no.4 and pedestrians moving between the childcare entry and space no.s 1-3. According to the plans, this space would be about 0.4m, which is considered to be insufficient. There should be more separation between space no.4 and the corner of the existing garage so that a clear path for pedestrians is available between the childcare entry and space no.s 1-3.

The relocation of 4 spaces adjacent to the main building has resulted in a tighter turning circle and the entry and exit points. In particular, the entry gate would impact on the swept path of the 85% vehicle, and would cause access difficulties. A wider entry point may be required. Similarly, there could be access difficulties for the 85% vehicle leaving the car park via the exit gate, especially if this gate cannot swing around back onto the front boundary fence. In any case, both entry and exit points would present considerable access difficulties for the 99.8% vehicle, which includes larger 4-wheel drives such as Toyota 100 Series Landcruiser as well as people-movers such as the Chrysler Voyager. Given the likelihood of such vehicles using the car park, access for the 99.8% vehicle should be improved.

In summary, the new location of 4 spaces adjacent to the building is considered to be acceptable, subject to the applicant addressing potential pedestrian-vehicle conflict points between the 4 spaces and the building, and providing sufficient manoeuvring space at the entry and exit points for the 99.8% vehicle. The applicant should be required to install 'No Stopping' restrictions on both sides of Pentecost Avenue fronting the development, subject to Ku-ring-gai Traffic Committee approval.

Item 2

Traffic Generation

The Roads and Traffic Authority’s Guide to Traffic Generating Developments suggests the following traffic generation rates:

<i>Centre Type</i>	<i>Peak Vehicle Trips Per Child</i>		
	<i>7-9am</i>	<i>2.30-4pm</i>	<i>4-6pm</i>
<i>Pre-school</i>	<i>1.4</i>	<i>0.8</i>	<i>-</i>

An assumption is made that the peak vehicle trips occur in 1 hour, and based on these rates, it could be expected that the proposed child care centre could generate 55 trips during the morning peak hour and 32 trips during the afternoon peak hour. The morning peak hour trips could be considered to be 30 trips entering and 25 trips leaving the site, and the afternoon peak hour trips could be considered to be 16 trips entering and 16 trips leaving the site.

The traffic report accompanying the application yielded the same morning peak traffic generation (55 trips), but broke the trips down to 23 in and 22 out (not equal to 55). The projected post-development Level of Service of the site entry and exit was found by the consultant to be A (good operation) in both morning and afternoon peaks. This was achieved by modeling the entry and exit driveways as separate intersections. The modeling results did not change significantly even with 30 trips entering and 25 trips leaving the site during the morning peak hour.

Site inspections were undertaken on 16 March from 3.30pm-4.30pm and on 17 March from 8am-9am to observe the in-situ traffic conditions. During the afternoon peak, traffic conditions in the vicinity of the development were generally good. Queued vehicles in Pentecost Avenue at the traffic signals at Bobbin Head Road were observed occasionally to queue just east of Reely Street. The access driveways to the site were generally not affected by queued vehicles.

During the morning peak, traffic conditions in the vicinity of the development were also generally good. On 2 occasions, there was queuing of traffic at the marked footcrossing near Bannockburn Road that extended to the western end of the site, otherwise conditions were free flowing, with sufficient turning opportunities for access into or out of the site.

In both morning and afternoon inspections, it was observed that the signals at the intersection of Pentecost Avenue and Bobbin Head Road provide a ‘platooning’ effect for eastbound traffic on Pentecost Avenue. This appeared to create ample gaps in traffic in the vicinity of the site. Also, during the inspections, no school related pick-up or set down activity was observed on Pentecost Avenue or at the northern end of Reely Street.

For the purpose of Council’s Traffic and Transport Base Study, consultants GHD suggested environmental capacity for a major collector road, such as Pentecost Avenue, would be

Item 2

between 5,000 vpd and 10,000 vpd. There could be 8300 vpd currently using the section of Pentecost Avenue near the site. Therefore the current traffic volumes in this section would indicate that flows are within those limits. The additional traffic generated by the site would not be a significant additional impact to these volumes. The Base Study notes, however, that other sections of Pentecost Avenue (between Mona Vale Road and Merrivale Road) have exceeded 10,000 vpd.

Access Points and Circulation

For a car park with 10 spaces, high parking turnover (during pick up/set down operation) off a 'local' road, DCP 43 specifies a Category 1 driveway (combined entry/exit) as a minimum requirement. It is proposed to access the site from separate entry and exit driveway (effectively a Category 3 driveway), therefore the proposal satisfies the access driveway category required by DCP43.

Entry and exit points should be appropriately labelled to avoid conflicts at the access points or within the circulation aisle at the front of the site.

Bobbin Head Road/Pentecost Avenue/Boomerang Street signalised intersection

Modeling of the existing traffic volumes at this intersection was undertaken by the Applicant's traffic consultant and yielded a Level of Service A (good operation). Modeling undertaken by Council staff of the same volumes resulted in Level of Service C (satisfactory) for the morning and afternoon peak hour. Site inspections confirm that the queue lengths observed in Pentecost Avenue generally agree with the queue lengths modeled by Council staff.

In the proposed scenario, modeling by the consultant indicates no change to the Level of Service (A). Modeling by Council staff also indicates no change to the Level of Service (C). Therefore, it is not considered that the traffic generated by the proposed development would have significant additional impact on this intersection. Also, based on the average queue lengths modeled and observed, it is not considered that queued vehicles in Pentecost Avenue (at Bobbin Head Road traffic signals) would impact on access into/out of the site from 8am-9am and from 3.30pm-4.30pm.

The intersection of Bobbin Head Road with Pentecost Avenue/Boomerang Street has an adverse collision history involving right turning vehicles from Bobbin Head Road into Pentecost Avenue and Boomerang Street. However, given the traffic generation of the site, and assuming that arrivals to the site from the west are evenly distributed across the Bobbin Head Road and Boomerang Street legs of the intersection, the increase in right turn movements from Bobbin Head Road to Pentecost Avenue would be minimal.

The intersection was nominated in the 2004/2005 National Black Spot Program for treatment consisting of fully controlled right turn arrows/right turn bays in Bobbin Head Road, to address the right turn collision history. Conditions for pedestrians crossing at these signals would also be improved. This treatment would result in a Level of Service of D at the intersection (operating near capacity). However, the modeling revealed that the queue

Item 2

lengths in Pentecost Avenue would not increase significantly as a result of the treatment, and should not impact on the access points of the proposed child care centre.

Pentecost Avenue/Bannockburn Road Intersection

This intersection has been nominated in the Roads and Traffic Authority's Black Spot program for funding in the 2004/2005 year. The treatment proposed is a roundabout, to address a history of right angle collisions. It is proposed to relocate the existing marked footcrossing some 20m-30m further east in Pentecost Avenue, so that the crossing is clear of the intersection area and that the number of conflicting movements between vehicles and pedestrians is reduced."

Conditions as recommended by the Strategic Traffic Engineer have been included with the recommendation (**refer Conditions 4-11 and 44**).

Community Development: Children's Services.

Council's Community Development Officer: Children's Services has commented on the proposal as follows:

"The DA will be examined in terms of Ku-ring-gai Council's Policy on Child Care Centres. For the purpose of this memo, this policy will be referred to as Council's Policy.

Comments will be made on the following sections of Council's Policy:

- *Aims of the policy*
- *Development consent*
- *Outdoor play area*
- *Indoor areas*
- *Accessibility*
- *Dual use – child care centre /dwelling*
- *Conversion of existing buildings to child care centres*
- *Inconsistency with policy.*
- *Requirements of other Council departments*

Demand for Long Day Care Places:

Long day care services in the Ku-ring-gai Local Government Area are experiencing high community demand for child care places with the majority of long day care centres experiencing full utilisation rates. Local long day care centres contacted in March 2004 reported services with wait lists with 100-300 children names. The highest community requests for child care places are from families with children 0-3 years of age.

Census 2001 data from the Australian Bureau of Statistics indicated an increase of 452 children in the 0-4 years age group residing in the Ku-ring-gai Local Government Area. The rise of children's numbers in the Ku-ring-gai area continues to produce high demands for long day care services.

Item 2

New residents moving into the Ku-ring-gai area are also reporting difficulty in obtaining long day care places. Local children's services, DoCS children's services advisors and parents frequently contact Council about the need for more long day care services and request Council's assistance on this matter.

Aims of the Policy:

The applicant has met the aims of Council's Policy by:

Providing a children's service to meet the needs of the community (Council Policy Point 2.1.a). Large wait lists for children's services will be reduced by the proposed provision of the 36 new, long day care places.

Providing a site that is a functional and pleasant environment for their users (Council Policy Point 2.1.b). The proposed centre's plans have been viewed by the NSW Department of Community Services (DoCS) and Council's CDO:CS. The plans provide a functional and pleasant environment of indoor and outdoor spaces for children.

Providing an environment that is compatible with it's situated environment (Council Policy Point 2.1.c). The proposal aims to provide an environment compatible to its situated environment as indicated by site plan DA01, the building plan DA02 and the landscape plan DA05.

Minimising the impact of the long day care centre on surrounding residential areas (Council Policy Point 2.1.d). Noise and traffic issues appear to be minimal as expressed in the Traffic Report and Environmental Impact Assessment.

The proposal satisfies the aims of Council's Policy on Child Care Centres.

Development Consent:

To comply with Council's Policy, the applicant is required to advise DoCS of the latest plans and seek their approval. Council has received written documentation from DoCS confirming DoCS has sighted the plans (DA01, DA02, DA03) and indicated that the indoor and outdoor space is adequate for 36 children.

The proposal satisfies the Council's Policy on Development Consent by gaining DoCS approval for the plans.

Outdoor Play Area:

The proposal intends to house 16 children aged 0-3 years in the upstairs outdoor play area. The 175 square meters (sqm) provided is sufficient outdoor space for 8 children aged 0-2 years and 8 children aged 2-3 years and exceeds Council's requirement of 148sqm by 27sqm.

The proposal intends to house 20 children aged 3-5 years in the downstairs outdoor play area. The 240.3 sqm of play area provided is sufficient space for the 20 children and exceeds Council's requirement of 230sqm by 10 sqm.

The proposal meets Council's Policy for outdoor play area requirement by providing a total of 415 sqm for 36 children, thus exceeding Council's outdoor play area requirement by 37sqm.

Item 2

The floor plan DA02 show the design elements of the building include accessible indoor/outdoor play areas, conveniently located toileting areas and clear visual supervision of upstairs and downstairs playrooms and the outdoor areas.

A combination of varied play surfaces seen in Landscape Plan DA05 is proposed. The developer has informed DoCS that the upstairs 0-3 years outdoor play area surface will be furnished with softfall material. Whilst this is not stated on the plans this issue will be addressed by DoCS when the centre applies for DoCS licensing after construction. The configuration of the outdoor play area will require DoCS approval under the NSW Centre Based and Mobile Child Care Services Regulation (No 2) 1996, therefore DoCS will be responsible for ensuring softfall surfaces and outdoor equipment meet state licensing standards.

The proposal satisfies Council's Policy on outdoor play area requirements.

Indoor Areas:

Council's Policy requires a minimum of 3.25 sqm of unencumbered indoor play space for each child. The proposal provides 60.1sqm of space for the 16 children in the 0-3 years upstairs playroom and 64.9 sqm of space for the 20 children in the 3-5 years downstairs playroom. A total of 125sqm of indoor play area provided by the playrooms adheres to Council's Policy.

The proposal's floor plan DA02 adheres to Council's indoor requirements by providing a storeroom for each playroom, including space for bed storage and lockers for children's belongings. The floor plan also indicates the presence of an upstairs office, downstairs staffroom and outdoor and indoor storage areas in both playrooms as required in point 5.4 of Council's Policy. The staff room will provide an area for staff's belongings, toilets for staff are available both upstairs and downstairs and a kitchen is present in both levels.

The proposal satisfies Council's Policy on indoor area requirements.

Accessibility:

There is a continuous path of travel for the upper floor of the proposed long day care centre. A continuous wheelchair path is also present for the lower floor. The upstairs 0-3 years children's area can be accessed by traveling from the front car park through to the front entrance and then continued to the upper play room and upper outdoor play area. The downstairs 3-5 year old children's area can be accessed by the rear car park, through the outdoor 3-5 play area and into then into the playroom. Both levels have an accessible toilet and an accessible a car park space.

The proposal addresses the access issues of families by providing wheelchair routes for the upstairs and downstairs long day care area. The two levels can be accessed independently without the need to use internal or external stairs.

Item 2

The Social Impact Statement mentions the centre intends to operate from 8.00am – 5.00pm, Monday to Friday, for 48 weeks per year. To accommodate working families, standard long day care operation times of 7.30am – 6.00pm may be more accessible to these families. The developers may wish to consider extending their operation hours from to 7.30am – 6.00pm to be more accessible to working families.

The proposal satisfies Council's Policy on accessibility requirements.

Dual Use – Child Care Centre / Dwelling:

The Site Plan DA01 and Floor Plan DA02 show that distinct and separate outdoor play areas are provided for children.

The proposal satisfies Council's Policy Dual Use requirement point 9.2.

Conversion of Existing Buildings to Child Care Centres:

No variance to Council's Policy is needed as the proposal has met requirements for outdoor play area, indoor play area and access issues.

Inconsistencies with Policy:

No inconsistencies with Council's Policy are identified in the CDO:CS comments.

Conclusion:

DoCS has reviewed the plans and given their approval to the sighted plans. The CDO:CS has reviewed the DA and found the proposal for 143-145 Pentecost Avenue, Turrumurra complies with Council's Policy. Based on the above factors, there are no objections to the proposal for the new 36 place long day care centre from the CDO:CS."

The condition recommended by the Community Development Officer has been included in the recommendation (**refer Condition 2**).

CONSULTATION - OUTSIDE COUNCIL

New South Wales Department of Community Services

The proposal was referred to the New South Wales Department of Community Services who have confirmed that the submitted plans are suitable in meeting the requirements of Centre based and Mobile Child Care Services Regulation 1987, as governed by the Children (Care and Protection) Act 1987.

PROVISIONS OF RELEVANT LEGISLATION

State Environmental Planning Policy No. 55 – Remediation of Land

Item 2

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.

Other SEPPs or SREPs

State Environmental Planning Policy No. 64 – Advertising and Signage

The provisions of SEPP 64 require Council to consider the compatibility of signage with the desired amenity and visual character of an area, whether the sign provides effective communication in suitable locations and is of high quality design and finish. Schedule 1 of SEPP 64 specifies assessment criteria.

Character of the area.

The sign will be located on an existing fence within an established residential area. The sign will advertise a community service that is permissible under the KPSO within the Residential 2C zone.

Special areas.

The proposed signage does not detract from the amenity or visual quality of any environmentally sensitive residential areas, heritage areas, natural or other conservation areas, open space areas, waterways, or rural landscapes.

Views.

The proposed sign will have no impact on any views.

Streetscape, setting or landscape.

The sign will advertise the activity proposed on site and will contain relevant information related to the child care centre. The sign will measure 1750mm x 900mm and will be affixed 900mm above ground level to an existing 1.8m to 2.4m high front fence. The site is essentially a double lot and has a frontage of 37.195m. The site contains a large two storey dwelling extending the majority of the frontage width. When viewed against the bulk of the existing fence and dwelling, the proposed sign is minor and acceptable.

Surrounding residential development displays a wide variety of architectural designs and elements, front fence detailing and dwelling size. When viewed in the context of the wider streetscape, the proposed signage, by virtue of its minor scale, will not adversely impact on streetscape amenity.

Site and building.

The proposed sign is consistent in scale, bulk and form to the existing dwelling and fence.

Item 2

Associated devices and logos.

No safety devices, platforms, lighting devices or logos have been proposed.

Illumination.

No illumination has been proposed.

Safety.

The sign will be affixed to the front fence and will not obstruct driver sightlines or otherwise adversely impact the safety of pedestrians or traffic.

The proposed sign is acceptable against the assessment criteria of SEPP 64.

Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River

The site is within the catchment of the Hawkesbury River and, as such, the development is subject to the provisions of this environmental planning instrument. The aim of SREP 20 is to “protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.”

The SREP requires consideration of a number of matters such as water quality, flora and fauna, wetlands and heritage etc.

The proposed development meets the general strategies of the SREP. Appropriate conditions are recommended to control runoff and sediment from the site during construction and detain stormwater through an on site detention system (refer **Conditions 45-49, 56, 61-65, 71-73**).

Ku-ring-gai Planning Scheme Ordinance (KPSO)

The proposed use is permissible within the Residential 2C zone.

COMPLIANCE TABLE		
Development standard	Proposed	Complies
Building height 8m (max)	8.2m (existing)	NO
Built-upon area 60% (max)	59.7% (1339.7m ²)	YES

Item 2

Height of Buildings (cl.46):

The existing dwelling has a maximum height of 8.2m. The proposed additions and alterations will have a maximum height of 5.45m and will not increase the overall height of the dwelling. Accordingly, the proposal is acceptable in this regard and a SEPP 1 objection is not required.

Built-upon areas (cl.60(C)):

The proposal, as amended 21 October 2004, indicates a BUA of 59.7%, being compliant with the 60% development standard. However, a condition has been recommended requiring deletion of the proposed landscaping between the garage and front entry to the dwelling to accommodate a pedestrian pathway (**refer Condition 4**). This is to minimise potential traffic/pedestrian conflict within the site as much as possible. This is also in accordance with the Department of Community Services document 'Guidelines in Early Childhood Physical Environments'. However, this will result in a BUA of approximately 60.15%. To ensure BUA does not exceed 60%, a condition is recommended requiring the kerb overhangs for parking spaces 9 – 11, including a similar depth of the turning area, to comprise soft landscaping (**refer Condition 4**).

Aims and Objectives for Residential Zones

The development: (i) provides satisfactory levels of solar access and privacy to surrounding properties; (ii) is of an appropriate bulk, scale and design commensurate with the proposed use of the site for a childcare centre and location within a residential environment, particularly in consideration of the large size of the site, (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.

POLICY PROVISIONS

Ku-ring-gai Residential Design Manual – Development Control Plan 38

The subject site is located within the Residential 2C zone. While the proposed use is not residential in nature, it is proposed to retain the existing residential component on site and the activity will be located within a residential area. Accordingly, DCP 38 serves as a useful guide as to the suitability of the proposal within this context.

COMPLIANCE TABLE		
Development Control	Proposals Numeric Compliance	Complies
5.1 Streetscape:		
Building Setbacks (s.5.1.3) <ul style="list-style-type: none"> • Front Setback: <ul style="list-style-type: none"> 11m (Ave) -75% front elevation 9m (min) – 25% front elevation 	11.7m (existing)	YES

Item 2

<ul style="list-style-type: none"> Side Setback: Ground Floor: 4.3m(min) 1st Floor: 5.4m (min) Rear Setback: 12m(min) 	3.4m to 4.4m (west) 3.4m to 4.4m (west) 17.5m	NO NO YES
Front Fences (s.5.1.5)		
<ul style="list-style-type: none"> Height: 1.2m(max) 	1.8m to 2.4m (existing)	NO
Side & Rear Fences (s.5.1.5)	existing	N/A
5.2 Building Form:		
FSR (s.5.2.1) 0.30:1 (max)	0.19:1 (for residential component) 0.44:1 (childcare centre & dwelling)	YES NO
Height of Building (s.5.2.2)		
<ul style="list-style-type: none"> 2 storey (max) and 7m (site <20° slope) 	3 storey & 8.2m (existing)	NO NO
Building Height Plane (s.5.2.3) 45° from horizontal at any point 3m above boundary	complies	YES
First Floor (s.5.2.4)		
<ul style="list-style-type: none"> <40% total FSR 	26.7%	YES
Roof Line (s.5.2.6)		
<ul style="list-style-type: none"> Roof Height (3m – two⁺ storey) Roof Pitch 35° (max) 	Flat pitch Flat pitch	YES YES
Built-Upon Area (s.5.2.7) 50% (1122m ²) (max)	60.15% (1350m ²)	NO
Unrelieved wall length (s.5.2.8) 12m (min)	15.5m (west elevation)	NO
Solar Access (5.2.11) 4h solar access to adjoining properties between 9am to 3pm	>4 hours to 141 and 147 Pentecost Avenue, 122 and 122A Bannockburn Road	YES
Cut & Fill (s.5.2.15)		
<ul style="list-style-type: none"> max cut 900mm max cut & fill across building area of 1800mm and 900mm no cut or fill within side setbacks 	<900mm <900mm, <1800mm	YES YES YES
5.3 Open Space & Landscaping:		
Soft Landscaping Area (5.3.3) 50% (1122m ²) (min)	40.3% (904.3m ²)	NO
Tree Replenishment (s.5.3.6) 10 Trees Required	2 trees provided	NO
Useable Open Space (s.5.3.8) Min depth 5m and min area 50m ²	Depth >5m, Area >100m ²	YES
5.5 Access & Parking:		
No. of Car Parking Spaces (s.5.5.1) 2 spaces behind building line	2 spaces for dwelling (existing)	YES
Size of Car Parking Space (s.5.5.2) 5.4m x 6m	5.9m x 6.8m (existing garage)	YES
Driveway Width (s.5.5.6) 3.5m	2 x 3.4m	NO
5.7 Ancillary Facilities:		
Swimming Pools (s.5.7.1)	Existing indoor pool	YES

Item 2

Site planning & environmental constraints (Part 4)

The proposal is supported by Council's Landscape Officer and Engineer, subject to the conditions listed earlier in this report. An appropriate area of the site will comprise soft landscaping and stormwater flows can be suitably managed. The proposal utilises an existing building resource to accommodate a non-residential activity, subject to additions and alterations. The proposal will not result in an undue amount of earthworks on site, an increase in overall building height nor will it adversely impact stormwater management.

Streetscape (Part 5.1)

The proposed modification of the existing dwelling is primarily to the rear, with only a minor alteration to the front façade. The dwelling will continue to present as a large residence to Pentecost Avenue.

In order to satisfy Council's parking provisions for child care centres, the applicant has proposed to utilise the whole of the front yard for nine car parking spaces and associated manoeuvring area. At present, a significant portion of the front yard is already paved, with an area of soft landscaping located between the two vehicle crossings. The existing 1.8 to 2.4m high front fence, which is to be retained, already screens the front yard from direct view. The front fence is set back 500mm from the front boundary and it is proposed to landscape this area.

The proposal maintains the existing building line setback and the car parking layout is commensurate with the proposed use of the site for a child care centre. The site is located within a residential environment that contains dwellings of a wide range of architectural designs and scale, fencing and landscaping detail. When viewed within the context of the wider streetscape, the proposal will not unduly compromise the existing streetscape.

Building form (Part 5.2)

The proposed additions and alterations are consistent in scale, bulk and form to the existing dwelling. The proposal involves only minor alteration to the dwelling façade. The majority of the works will not be visible from the street. The subject site is essentially a double allotment with a large site area, accommodating a correspondingly large residence. The existing dwelling already occupies the majority of the width of the site and this will not alter under the current proposal.

The proposed use of the dwelling to accommodate a childcare centre necessitates specific design requirements, particularly with regard to the dimensions of indoor and outdoor areas. Given the large area of the allotment, the scale of the existing dwelling and the separation distances in relation to the common boundaries, the proposed additions and alterations are acceptable.

The proposal will result in an FSR of 0.44:1 for the childcare centre and dwelling combined. The existing FSR on site is 0.35:1. Under the definition of Floor Space Ratio in the KPSO, deck areas are excluded from any such calculation.

Item 2

Notwithstanding both a variation in definition of floor space ratio under DCP 38 and the KPSO and a non-compliance with the former, the intent of the control is to limit the scale and bulk of development on any given site to ensure no undue dominance or privacy impacts on surrounding development, including the streetscape.

As stated above, DCP 38 applies to residential development and strict compliance with the FSR provision cannot summarily be applied to a non-residential activity. Rather, FSR needs to be considered in conjunction with other design requirements that also aim to ensure an appropriate level of amenity is maintained for surrounding sites. In this regard, the proposal is compliant with a 3m and 45 degrees height plane and the additions and alterations will not increase the overall height of the building.

Further, adequate setbacks from common boundaries have been proposed, with elements such as acoustic fencing, translucent glazing, boundary fencing and screen planting incorporated into the overall design to maintain an appropriate level of visual and acoustic privacy for surrounding sites.

The proposal will comply with built-upon area requirements, subject to a condition. There is sufficient area on site to accommodate soft landscaping to compensate the requirement for a pedestrian pathway along the front of the building (**refer Condition 4**). Although the western elevation will have an unrelieved façade of 15.5m, the proposal will maintain an appropriate level of visual amenity for the adjoining site at 147 Pentecost Avenue. The western elevation will utilise varied external finishes and detailing. The building also steps down in height, commensurate with the site contours.

As the subject site is a wide allotment, DCP 38 provisions require a setback of 4.3m from the western and eastern side boundaries. The proposal will infringe the setback requirement in relation to the western boundary as the building will have a setback of 3.4m to 4.4m at both the ground and upper level. The proposal will maintain the existing building line and incorporates acoustic fencing with translucent glazing to ensure the visual and acoustic privacy of the adjoining site at 147 Pentecost Avenue. The western elevation contains one bathroom and one staff room window associated with the childcare centre. The proposal will not result in undue overlooking of the adjoining site. The building also complies with a 3m and 45 degrees building height plane and the maximum building height control. Accordingly, there will not be undue imposition of built form over the site at 147 Pentecost Avenue.

Open space & landscape (Part 5.3)

Council's Landscape Officer supports the proposal, subject to conditions listed earlier in this report. Although the proposal does not strictly comply with the landscape coverage expected of residential zoned sites, the site can accommodate trees in accordance with the requirements of DCP 38. The residential component will retain access to private open space that complies with the dimension requirements.

Privacy & security (Part 5.4)

The proposal raises no security issues.

Item 2

Visual and acoustic privacy has been discussed under Consultation - Community, earlier in this report. In summation, the proposal will maintain an appropriate level of amenity for adjoining sites and, in particular, the site at 147 Pentecost Avenue. Adequate separation distances are provided in relation to the common boundaries. The proposed play areas, including the upper level deck, will be fenced by translucent glass acoustic fencing. The area along the western elevation, below the upper level deck, will comprise a brick wall with glass blocks for daylight penetration.

The existing driveway, adjacent to the western boundary, will be retained and provide access to the rear car park area. To minimise vehicle noise, a condition is recommended that the three car parks to the rear be retained for staff use only (**refer Condition 5**). This will limit the frequency and number of vehicle movements along the driveway. It is further recommended that the existing solid timber boundary fencing be extended the full length of the western boundary to a height of 1.8m, where currently there is a wire mesh fence. Similarly, a solid timber fence to a height of 1.8m is recommended in lieu of the existing wire mesh fence along the northern and eastern boundaries (**refer Condition 12**). This is in conjunction with screen planting along all site boundaries (**refer Condition 56**).

Access & parking (Part 5.5)

The proposal includes retention of the two vehicle crossings serving the site and retention of the double garage for the parking of residents' cars. Eight car parks are provided in the front of the dwelling and 3 car parks at the rear for the use of staff and parents of the child care centre.

The proposal can comply with the requirements of DCP 43 and AS 2890.1. Council's Traffic Officer supports the proposal, subject to conditions, including an increased width of the entry and exit driveways to provide sufficient vehicle manoeuvring space within the site (**refer Condition 8**).

Design Elements – Water Management (Part 5.6)

Council's Development Engineer supports the proposal, subject to conditions (**refer Conditions 45-49, 61-66, 71-73**). The proposal also includes the use of 'semi-porous' type paving for the car parks located at the rear of the site and a portion of the driveway, adjacent to the western boundary.

Ancillary facilities (Part 5.7)

The proposal will include children's play equipment, located within the fenced play area. Acoustic fencing and sufficient separation distance from common boundaries will ensure there will be no adverse visual or acoustic impact on adjoining properties.

Managing construction or demolition (Part 6)

Standard conditions of consent are recommended to appropriately address any potential adverse effects arising during construction (**refer Conditions 16-82**).

Item 2

Development Control Plan 40 – Waste Management

Appropriate waste management facilities have been provided on site. A condition is recommended requiring submission of a detailed waste management plan to the satisfaction of Council (**refer Conditions 55**).

Development Control Plan No. 31 – Access

The proposal complies with access requirements. Council's Traffic Engineer and Community Development Officer- Children's Services support the proposal, subject to conditions (**refer Conditions 2, 4-11 and 44**).

Development Control Plan No. 43 – Car Parking

The proposal complies with DCP 43 which requires the provision of 1 parking space per every 4 children. Council's Traffic Engineer supports the proposal, subject to conditions (**refer Conditions 4-11 and 44**).

Development Control Plan No. 28 – Advertising Signs

Signage within the residential zone is not specifically covered by DCP 28, with the exception of signage related to home occupations. Signage within a residential zone is not prohibited by SEPP 64. Notwithstanding this omission, clause 3 of DCP 28 sets out aims and objectives which require the consideration of existing residential character, sympathy in architectural style and scale to the surrounding built environment, and maintenance of pedestrian and traffic safety. The proposal has been assessed against these matters and found to be acceptable under SEPP 64 criteria earlier in this report and is also acceptable under DCP 28.

Ku-ring-gai Policy on Childcare Centres (LEP 177)

Council's Community Development Officer – Children's Services has assessed the proposal against the above LEP with the exception of Part 6 *Planting* and Part 8 *Car Parking and Manoeuvring* (refer *Consultation within Council* earlier in this report). The proposal complies with the Childcare Centre policy. The Department of Community services has also reviewed the plans and provided written approval.

Council's Community Development Officer – Children's Services has recommended that the hours of operation be extended to 7.30am to 6.00pm Monday to Friday, to make the child care centre more accessible to working families. However, any change to the hours of operation proposed would require amendment under section 96 of the EP & A Act, should consent be granted to this development application.

Item 2

Part 6 and 8 of the Policy are deemed to have been satisfied as Council's Landscape Officer and Traffic Engineer can support the proposal, subject to conditions.

LIKELY IMPACTS

All likely impacts have been discussed in this report.

SUITABILITY OF THE SITE

The site is suitable for the proposed development. Council's Development Engineer can support the proposal, subject to conditions.

ANY SUBMISSIONS

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

PUBLIC INTEREST

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

ANY OTHER RELEVANT MATTERS CONSIDERATIONS NOT ALREADY ADDRESSED

There are no other matters for discussion.

CONCLUSION

Child care centres are a permissible non-residential activity with the Residential 2C zone. Council's Community Development Officer – Children's Services has confirmed there is a definitive need for long-day child care within Ku-ring-gai. The proposal complies with the Ku-ring-gai Council Policy on Child Care Centres and the written approval of the NSW Department of Community Services has been obtained.

Moreover, in consideration of the intended use, an appropriate level of amenity can be maintained for surrounding properties and the site can be adequately landscaped. Further, the safe and efficient flow of traffic in the surrounding road network will not be unduly impacted, subject to the conditions recommended. There is unlikely to be any significant impact on the existing or likely future amenity of the neighbourhood.

Item 2

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 1692/03 for retention and conversion of part of an existing dwelling for use as a child care centre with associated additions and alterations on land at 143 – 145 Pentecost Avenue, Turramurra, 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 plans labelled Project No. 03069 DA01, dated as revised 12 October 2004, DA02 and DA 03, dated as revised 17 July 2004, all drawn by Noel Bell, Ridley Smith & Partners, and endorsed with Council's approval stamp, except where amended by the following conditions:
2. The maximum number of staff on-site at any one time shall be six (inclusive of management). The maximum number of children at the child care centre shall not exceed 36 at any one time and shall comprise the following age groups and numbers.
 - 8 children aged 0-2 years of age
 - 8 children aged 2-3 years of age
 - 20 children aged 3-6 years of age
3. The child care centre shall operate between the hours of 8.30am to 4.30pm, Monday to Friday.
4. The proposed landscaping between the garage and front entry to the dwelling shall be deleted and replaced with a pathway for pedestrians. The existing front step to the dwelling is to be modified to better accommodate pedestrian access to the child care centre entrance. To compensate for the removal of the landscaping, the kerb overhangs associated with parking spaces 9 to 11, including a similar depth of the 'turning area', shall comprise soft landscaping.
5. The car parking spaces labeled 9, 10 and 11 located at the rear of the building are to be for the exclusive use of staff. A sign is to be erected at the top of the driveway, leading from the front car park to the rear, indicating that parking for staff vehicles only is available at the rear of the site.
6. The western-most driveway along the front boundary shall be marked with a painted arrow indicating "entry only". The eastern-most driveway shall be marked with a painted arrow indicating "exit only".

Item 2

7. Car park space No. 4 shall be set back 500mm from the corner of the garage to enable pedestrian access between the car parking space and the building wall.
8. The driveways are to be increased in width at the front fence line to enable sufficient access for the 99.8% vehicle.
9. The pedestrian gate within the front fence is to be located clear of the swing radius of the driveway gates.
10. Pedestrian access to the child care centre from within the front car parking area is to be clearly indicated by painted markings.
11. The front entry gate to the child care centre is to be located at the eastern elevation of the childproof fence to ensure sufficient access for pedestrians given the proximity of car park 7 to the fence.
12. A solid timber, lapped and capped fence, to a height of 1.8m is to be erected along the western, eastern and northern boundaries of the site where currently there is no solid fencing.
13. Translucent glass is to be utilised in all laminated glass fencing and/or acoustic fencing associated with the play areas. Details are to be shown on the Construction Certificate plans.
14. The existing indoor swimming pool shall not be used in association with the child care centre.
15. External finishes and colours are to be sympathetic to the surrounding environment. Samples of materials and finishes are to be submitted to the Principle Certifying Authority prior to the issue of a Construction Certificate.
16. All building works shall comply with the Building Code of Australia.
17. 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.
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 an Occupation Certificate has been issued.
19. 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.
20. 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

Item 2

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.

21. 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.

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.

22. 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.
23. A sign shall be erected in a prominent position on the site which states the name and contact details of the Principal Certifying Authority.
24. The applicant is advised that the Construction Certificate plans and specifications must comply with the provisions of the Building Code of Australia.
25. 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.
26. The demolition is to be carried out in accordance with the guidelines contained in Australian Standard 2601-1991: The Demolition of Structures.
27. Access to demolition sites shall be protected as directed by the Principal Certifying Authority by the use of suitable fences or hoardings.
28. 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.
29. 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.

Item 2

30. 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.

31. Erosion control measures shall be provided on demolition sites to prevent the siltation of watercourses and drainage systems.
32. 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;
 - 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.
33. 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.
34. All combustible material shall be removed from the site on a daily basis. Material shall not be burnt on the site.
35. 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.
36. Trees and vegetation on a site shall not be disturbed except with the approval of the Council.
37. Adequate precautions shall be taken to ensure the protection of adjoining premises and persons therein from damage and injury during the process of demolition.

Item 2

38. 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.
39. All demolition materials of value for re-use either on-site or elsewhere, shall be separated and made available for re-cycling.
40. 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.

41. The landscape works shall be completed prior to issue of final Certificate of Compliance and maintained in a satisfactory condition at all times.
42. Tree planting to satisfy tree retention/replenishment requirements shall be completed prior to the issue of the final Certificate of Compliance.
43. 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.
44. On completion of the LANDSCAPE WORKS/TREE PLANTING OR SCREEN PLANTING, the Principal Certifying Authority shall ensure the correct installation, faithful to the landscape plan and conditions of consent, prior to issue of Final Certificate of Compliance.

The following tree species shall be planted, at no cost to Council, in the nature strip fronting the property along Pentecost Ave. The tree/s used shall be 25 litre container size specimen/s:

Tree Species

Tristaniopsis laurina

The trees required to be planted in the nature strip are to be located and maintained in accordance with accepted arboricultural practice to ensure adequate driver sightlines for vehicles entering and exiting the subject site.

45. Stormwater runoff from all roof areas and as much of the front carpark as practicable shall be piped to the street drainage system, via an augmented on site detention system. If required, new drainage line connections to the street system shall conform and comply with the relevant

Item 2

detail within Council's Plan No. 82/024 ("Connections of Drainage Lines to Kerb and R.C.Pipe"). To ensure compliance with this condition, a Certificate from the installer is to be submitted to the Principal Certifying Authority prior to issue of the Final Compliance Certificate.

46. Stormwater runoff from the remaining driveway and porous paving at the rear is to be piped/conveyed to the existing dispersal trench system.
47. To maintain capacity of the public drainage system, an on-site stormwater detention system must 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.

NOTE 1: The on-site stormwater detention system and property drainage 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).

NOTE 2: 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.

NOTE 3: 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.

NOTE 4: If a landscaped surface type detention system is used the storage volume required is to be increased by 20%.

NOTE 5: The standard Council On-Site Stormwater Detention Calculation Sheet is to be completed and included on design drawings. This is available from Council upon request.

48. 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*

Item 2

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.

49. 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.

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

50. 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.
51. 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).
52. 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.

Item 2

53. 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.
54. Submission, for approval by the Principal Certifying Authority (PCA) prior to issue of the Construction Certificate, of a Soil and Erosion Control Plan prepared in accordance with the NSW Department of Housing document "Managing Urban Stormwater – Soils and Construction" (1998) by a suitably qualified and experienced engineer or surveyor. Such controls should include but not be limited to appropriately sized sediment basins, diversion systems, appropriate controls for each stage of works identified and barrier fencing which maximises and protects areas which are not to be disturbed. The plan must also specify inspection and maintenance regimes and responsibilities and rehabilitation measures.
55. A Waste Management Plan shall be prepared in accordance with Council's Waste Management Development Policy to the satisfaction of Council prior to the issue of a Construction Certificate.
56. 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 amended landscape plan shall be approved by the Principal Certifying Authority prior to the release of the Construction Certificate.

The following amendments shall apply:

- Screen planting capable of attaining a height of 6m shall be planted along the eastern, western and northern boundaries.
- Screen planting capable of attaining a height of 1.5m shall be planted in the setback between the front fence and the front boundary.

Item 2

- Planting shall be in mulched garden beds and be of minimum 200mm pot size and planted at minimum of 1.5m centres.
- The plan shall include full details of species locations and numbers of proposed plant material as well as documenting existing vegetation on site.

57. The property shall support a minimum number of 7 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.
58. The 5 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. The trees to be planted are to be of minimum pot size 25 litre and of these trees at least 3 are to be locally occurring native trees and at least 1 of these is to be an Angophora floribunda.
59. A cash bond/bank guarantee of \$ 2000 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 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.

60. 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.

61. Prior to the commencement of any works on site and prior to issue of the Construction Certificate the applicant must submit, for review by Council Engineers, a Traffic Control Plan, and a Parking and Delivery Management Plan specific to the subject site. This is due to the location of the development site near a school, shopping centre or other location of heavy pedestrian generation, and on a collector road. The plan must be prepared by a qualified

Item 2

civil/traffic engineer in accordance with the documents SAA HB81.1 – 1996 – “Field Guide for Traffic Control at Works on Roads – Part 1” and RTA “Traffic Control at Work Sites (1998)”. The following matters must be addressed:

Heavy vehicle routes

- a. Safe points of vehicular access to the construction site and details of the proposed route of heavy vehicles servicing the site. Light traffic roads and those subject to a load limit are to be avoided.

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 and details of traffic control for the site, including provision of a flag person to control vehicle movements to and from the site.
- b. How safe egress for vehicles will be controlled on those occasions where forward egress is not possible.
- c. 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.

Stages

- a. The Traffic Control Plan and Parking and Delivery Management 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.

NOTE 1: The Traffic Control Plan and Parking and Delivery Management Plan shall be submitted to and reviewed by Council, attention Development Engineer. A written acknowledgment from Council shall be obtained prior to the issue of the Construction Certificate. 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.

NOTE 2: 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.

62. Prior to issue of the Construction Certificate the applicant shall submit, for approval by the Principal Certifying Authority (PCA), written certification from a qualified civil/hydraulic engineer or licensed plumber relating to connection of the additional runoff generated from the

Item 2

rear carpark into the existing dispersal system. To ensure the existing dispersal system is operating satisfactorily, the Certificate shall specify:

- a. That the dimensions of underground trenches comply with Council's standard trench detail.
- b. The satisfactory condition of the existing system and satisfactory capacity for continued use after the development and
- c. That there will be no deleterious effect on existing, adjacent or downstream properties as a result of the continued use of the existing system.

The inspecting engineer/plumber must also include with the certification a sketch plan of the dispersal system.

If the system is not in a satisfactory condition, then new dispersal trenches are to be installed. A typical detail of the trench can be provided by Council upon request.

NOTE 1: The dispersal trenches shall be 700mm wide x 700mm deep x 1.0 metre run/10m² of area to be drained. Trenches shall be fitted with half round PVC (450mm diameter) dome section backfilled with crushed or round river gravel to within 150mm of surface level, surrounded with suitable geofabric and finished with topsoil.

NOTE 2: Trenches are to be at least 5 metres from private property boundaries and 3 metres from the footings of any structure.

NOTE 3: A suitably designed litter and coarse sediment 450mm square grated arrestor pit is to be provided immediately upstream of the dispersal trench.

NOTE 4: The trench is not to require excavation 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).

NOTE 5: A certificate from the installer is to be submitted to the Principal Certifying Authority prior to issue of the Final Compliance Certificate with respect to this condition being satisfied.

63. Full design drawings of the proposed method of achieving the requirements for on-site stormwater detention and all supporting calculations are to be prepared by a suitably qualified and experienced civil/hydraulic engineer in accordance with Council requirements. These must be submitted to and approved by the Principal Certifying Authority prior to issue of the Construction Certificate.
64. The property drainage system (including but not limited to gutters, downpipes, pits, joints, flushing facilities and all ancillary plumbing) shall be designed and based upon a 235mm/hr rainfall intensity for a duration of five (5) minutes (1:50 year storm recurrence) for impervious surfaces, except where 100 year capacity is required to minimise overflows, in which case the

Item 2

design rainfall intensity shall be 257mm/hr for five minute duration. Design drawings and calculations are to be prepared by a suitably qualified and experienced civil/hydraulic engineer in accordance with Council's Stormwater Management Manual and the national Plumbing and Drainage Code. These must be submitted to and approved by the Principal Certifying Authority prior to issue of the Construction Certificate.

NOTE 1: The property drainage 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 works will not affect the longevity of the subject tree(s).

NOTE 2: If the proposed drainage system involves piping underneath or within the building then the designer is to certify that the design is in accordance with AS3500.3.2:1998 and the BCA.

NOTE 3: All enclosed floor areas, including habitable and garage floor levels, are to be safeguarded from outside stormwater runoff ingress by suitable differences in finished levels, grading and provision of stormwater collection devices.

65. Details of the proposed porous paving to the rear carpark are to be submitted to and approved by the Principal Certifying Authority prior to issue of the Construction Certificate. Porous paving is to comply with the requirements of Council's Water Management DCP 47 Section A6.6.
66. 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.
67. 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.
68. 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.

CONDITIONS TO BE COMPLIED WITH PRIOR TO OCCUPATION

Item 2

69. 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 Certificate of Subdivision.

Plant Species

Cinnamomum camphora (Camphor laurel), *Cotoneaster sp.* (Cotoneaster), *Ligustrum lucidum* (Large-leaved Privet), *Ligustrum sinense* (Small-leaved Privet) *Toxicodendron succedaneum* (Rhus Tree), *Jasminum polyanthum* (Jasminum) *Hedera helix* (English Ivy),

70. 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.
71. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate, 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 at no cost to Council.
72. 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 and the porous paving 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 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.
73. 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 engineer or the installing plumbing contractor to the Principal Certifying Authority (PCA), that:

Item 2

- a. The components of the new drainage system have been installed in accordance with the Plumbing and Drainage code AS3500.3.2 and by a licensed plumbing contractor, and
- b. The stormwater drainage works have been carried out in accordance with the approved Construction Certificate drainage plans and Councils Stormwater Management Manual.

BUILDING CONDITIONS

74. 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.
75. Any mechanical ventilation installed in a dwelling shall comply with the requirements of Part 3.8.5.0 of the Building Code of Australia Housing Provisions. Documentary evidence of compliance is to be obtained from a suitably qualified person and submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.
76. 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).
77. A fully detailed first floor joist layout (in duplicate) complying with the National Timber Framing Code or accompanied by a structural engineer's Certificate of Adequacy shall be submitted to and approved by the Principal Certifying Authority.
78. 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

Item 2

horizontal elements within the balustrade or other barrier between 150mm and 760mm above the floor must not facilitate climbing.

79. 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 equaling a maximum 700mm or minimum 550mm. The Risers and Goings shall be uniform throughout the length of the stairway.

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

- a. A smoke alarm system complying with Part 3.7.2 of the Building Code of Australia Housing Provisions; or
- b. Smoke alarms which:
 - i. 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
 - ii. are connected to the mains and have a standby power supply; and
 - iii. 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.

81. 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.

Item 2

82. The following are required details and must be submitted to the Council on completion of the works. 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. Wet area waterproofing details complying with the Building Code of Australia.
 - b. Mechanical ventilation details complying with Australian Standard 1684 Mechanical Ventilation & Airconditioning.
 - c. Glazing details complying with AS 1288-1989 Glass in Buildings and Installation Code.
 - d. Stormwater disposal details complying with Council's Stormwater Management Manual and/or other conditions of this consent.
 - e. A Compliance Certificate from a suitably qualified person that the child care centre and additions and alterations complies with the relevant deemed to satisfy provisions of the Building Code of Australia.
 - f. Waterproofing of walls/floors below ground level to prevent the entry of water into the building.

Mark Leotta
Team Leader – Northern Team
Development Assessment

Matthew Prendergast
Manager
Development Assessment
Services

Michael Miocic
Director
Development and Regulation

Attachments: **Location Sketch**
 Site Analysis
 Elevations
 Landscape Plan

DEVELOPMENT APPLICATION

SUMMARY SHEET

REPORT TITLE:	71 BEECHWORTH ROAD, PYMBLE - DETACHED DUAL OCCUPANCY
WARD:	Comenarra
DEVELOPMENT APPLICATION N^o:	406/04
SUBJECT LAND:	71 Beechworth Road, Pymble
APPLICANT:	S & P Kapar, C/- Glendinning Minto and Associates Pty Ltd
OWNER:	S & P Kapar
DESIGNER:	Hans Waldmann & Associates
PRESENT USE:	Residential
ZONING:	Residential C
HERITAGE:	No
PERMISSIBLE UNDER:	State Environmental Planning Policy No 53
COUNCIL'S POLICIES APPLICABLE:	Ku-ring-gai Planning Scheme Ordinance. Development Control No 40 & Policy for Construction & Demolition Waste Management. DCP No 43 – Car Parking. DCP No 47 – Water Management. Dual Occupancy Code.
COMPLIANCE WITH CODES/POLICIES:	No
GOVERNMENT POLICIES APPLICABLE:	SEPP 53 & 55
COMPLIANCE WITH GOVERNMENT POLICIES:	Yes
DATE LODGED:	3 April 2004
40 DAY PERIOD EXPIRED:	28 June 2004
PROPOSAL:	Detached Dual Occupancy
RECOMMENDATION:	Approval

Item 3

DEVELOPMENT APPLICATION N^o 406/04
PREMISES: 71 BEECHWORTH ROAD, PYMBLE
PROPOSAL: DETACHED DUAL OCCUPANCY
APPLICANT: S & P KAPAR, C/- GLENDINNING MINTO
AND ASSOCIATES PTY LTD
OWNER: S & P KAPAR
DESIGNER: HANS WALDMANN & ASSOCIATES

PURPOSE FOR REPORT

Determination of an application for a detached dual occupancy development.

EXECUTIVE SUMMARY

Issues: Front and side setbacks.
Encroachment of the building height envelope.
First floor exceeds 40% of the ground floor space ratio.

Submissions: 9 submissions received.

Land & Environment Court Appeal: Not lodged.

Recommendation: Approval

THE SITE & SURROUNDING DEVELOPMENT

The site

Zoning: Residential C
Visual Character Study Category: 1945-1968
Lot Number: 30
DP Number: 22115
Area: 1565m²
Frontage: 18.29 metres
Side of Street: North
Cross Fall: Site falls to the street
Stormwater Drainage: Beechworth Road drainage system
Heritage Affected: No
Required Setback: 12 metres
Integrated Development: No
Bush Fire Prone Land: Yes, bushfire prone vegetation buffer
Endangered Species: No
Urban Bushland: No
Contaminated Land: No
Section 94 Contribution: Yes

Item 3

The site, which is known as 71 Beechworth Road, Pymble being Lot 30 in DP 22115, is located on the north side of Beechworth Road, between Dakara Close and Lawley Crescent. The site is zoned Residential "2C" and is surrounded by similarly zoned properties of single and two-storey construction.

The site has a frontage of 18.29 metres, an eastern boundary depth of 54.99 metres, western boundary depth of 73.34 metres (rear) boundary length of 35.26 metres and an area of 1565m².

The site contains an existing single storey brick dwelling with a tile roof, swimming pool, garden shed and a timber out building. The existing dwelling is located in the centre of the lot. There are numerous trees on the site, with most located at the rear. The land slopes in a southerly direction towards the street, except for the rear which has a slight slope to the north-western corner. Two thirds of the site has an approximate 1.16 metres fall to the street.

The site has been categorised in Council's Visual Character Study as being in an area that was developed between 1945 and 1968.

PROPOSED DEVELOPMENT

The proposal is to demolish the existing dwelling, swimming pool, metal garden shed, timber out building and construct a detached dual occupancy. Details of the development are as follows:

Dwelling No 1 is a two-storey tile dwelling house. The front porch set back is approximately 10.65 metres from Beechworth Road and the remaining major part of the dwelling setback is 12 metres. The dwelling will have side set backs of 2 metres to the western boundary and 4.2 metres to the eastern boundary.

The dwelling consists of entry, garage, living, dining, games room, family, meals, kitchen, laundry, sauna, study and guest room with ensuite on the ground floor. The first floor consists of three bedrooms, bathroom, ensuite, toilet, rumpus room and balcony.

Dwelling No 2 is a two-storey dwelling house. This dwelling is located at the rear section of the site and will be set back 4.11 metres from the rear boundary, 2.827 metres from the western and 1.5 metres from the eastern boundary side boundaries, respectively.

Vehicular access to both dwellings will be from Beechworth Road via the existing crossing.

CONSULTATION - COMMUNITY

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

Submissions from the following were received:

K Bisset
V Cheung

69 Beechworth Road, Pymble
73 Beechworth Road, Pymble

Item 3

JDB & ML Noakes	76 Beechworth Road, Pymble
CS & PJ Viertel	77 Beechworth Road, Pymble
C Sydenham	79 Beechworth Road, Pymble
DL & PA Redfern	83 Beechworth Road, Pymble
P & J Kneeshaw	85 Beechworth Road, Pymble
R Sawyer	86 Beechworth Road, Pymble
RJ Fisher	91 Beechworth Road, Pymble

Issues raised were as follows:

Doubling the population and allowing blocks being subdivided.

Development of the site for dual occupancy development is permissible under SEPP53. Subdivision of the site, whilst not proposed at this stage is permissible under Council's KPSO.

Fire hazard

Concern was raised that the additional dwelling will be a fire hazard as it is in a bushfire area.

The property is located in a bushfire prone area (vegetation buffer) and, as required in Section 79BA of the Environmental Planning & Assessment Act 1979, the development application was referred to the NSW Rural Fire Services for advice.

The NSW Rural Fire Service raised no objections, subject to compliance with conditions, which have been included in the recommendation. (**Refer Condition Nos 54 to 57**).

Traffic burden

The concern was that the additional dwelling will cause a traffic burden on the roads.

Vehicular traffic generated from the development will not be significant and will not impact the amenity afforded to the neighbouring properties. Council's Development engineers raised no concerns in regard to traffic.

Stretched infrastructure - water/power

There is no evidence to suggest that the additional dwelling will impact on the current infrastructure relating to water and power.

Threat to flora and fauna, destruction of trees, greater water run-off, noise, light, pollution.

Two (*Eucalyptus pilularis* (Blackbutt)) are shown to be removed but can be retained which has been required by Council's Landscape Development Officer. (**Refer Condition No 62**). Retention of the indigenous canopy trees is important for fauna habitat.

Separate dwellings will create precedence and begin the destruction of the area.

Item 3

Dual occupancy developments are permissible within residential zones pursuant to Part 16 of SEPP No 53.

Reduction of the remaining non-hard area.

Council's Dual Occupancy Development Control Code Part 4.9.3 requires maximum built-upon area of 40%, the proposed development provides 45.4%. This minor increase will not impact on the required area for landscaping or stormwater runoff. Council's Landscape Development Officer and Development Control Engineer support the proposed development.

Breach of covenant

When the subdivision for thirty two lots was approved on 14 October 1954 a covenant was placed on the title that stated as follows:

"That not more than one main building shall be erected on the said land and no building shall be erected within 40 feet (12.192 metres) of the street alignment as now fixed."

Hence the **Condition No 62** requiring the two Eucalyptus pilularis (Blackbutt) trees to be retained.

Part 1 subclause 8 of the State Environmental Planning Policy No 53 refers to suspension of certain covenants. This means any agreement, covenant or similar instrument imposing restrictions on the erection of buildings cannot be used to prohibit the construction of two dwellings on the one allotment.

Moreover, S28 of the Environmental Planning and Assessment Act provides that private covenants do not operate so as to prevent the issue of development consent to development proposals that do not operate with the terms of such covenants.

The porch and bay window are the only portions of House No 1 that are forward of the covenant set back from the front boundary facing Beechworth Road. It should be noted that the existing front terrace, with roof over, is set back 10.85 metres, hence currently breaches the covenant. The porch and bay window with setbacks of 10.65 metres and 11.4 metres are a minor breach of the 12 metres building setback and meets the objectives of Part 4.9 of Council's Dual Occupancy Development Control Code, not impacting on neighbours' amenity and first floor setback to reduce visual bulk of the building.

Object to the visual bulk due to non-compliance

The ceiling height to House No 1 of 5.9 metres complies with Council's Code maximum of 8 metres and the rear dwelling (House No 2) has ceiling height of 6.3 metres and overall ridge height of 7.2 metres. Council's Development Control Code design requirements for the dwelling furthest from the street should not exceed 3.6 metres to ceiling and overall height of 7 metres.

Although House No 2 is two-storeys and could not comply with the 3.6 metres maximum ceiling height, the dwelling presents itself as a single storey when viewed from the front (south elevation). The first floor level of House No 2 is mostly contained within the roof space.

House No 2 breaches the building height plane.

Part 4.9.5 of Council's Dual Occupancy Code requires that dwelling furthest from the street frontage should not exceed a building height plane projected at an angle of 45° from a vertical distance of 1.5 metres above ground level at any boundary of the site.

The only encroachments of the building height plane for House No 2 are a small portion of the gable to the eastern elevation of Bedroom 4 and the north-east corner of the eave outside of the theatre room. Both encroachments are minor and will have no impact on the solar access to the adjoining development nor do they result in a development of unacceptable built form.

Not in keeping with surrounding development.

Both dwellings are consistent with other two-storey residences and provide good architectural relief and modulation to avoid a bulky appearance.

The side and rear setbacks allow sufficient area for screen planting that will allow for the development to be read within a landscaped setting.

Privacy impact 73 Beechworth Road family room.

House No 2 is the closest dwelling to No 73 Beechworth Road and the distance between the habitable rooms of both dwellings is over 14.5 metres. There is only one bathroom window to the first floor of House No 2 facing 73 Beechworth and it is over 19 metres away.

Given the separation, the existing trees and proposed landscaping, there will be no adverse impacts on 73 Beechworth Road.

Request that the wire dividing fence between 71 and 73 Beechworth be replaced with standard paling fence.

The request for the solid fence is to lessen views into the yard of 73 Beechworth Road.

The recommendation from the NSW Rural Fire Service requires all fencing shall be constructed from non-combustible materials. This excludes paling fences and, as mentioned above, the existing and proposed planting will provide adequate privacy to the residence at 73 Beechworth Road.

House No 1 does not comply with FSR.

The first floor of House No 1 does not comply with Council's Dual Occupancy Code design requirements of 40% maximum floor space ratio. The first floor is 68% of the ground floor. The non-compliance is acceptable for this development due to the large separation, (7.5 metres from No 69 Beechworth Road and over 25 metres from No 67 Beechworth Road) between House No 1 and adjoining buildings. Also, House No 2 is sufficiently articulated to reduce its bulk and scale.

Poor access to public transport, shops or facilities.

Item 3

There is no public transport for access to shops or other facilities. Access to the shops would normally be by vehicle as the public buses are only available on Pacific Highway. The steep grade up Beechworth Road to the Pacific Highway would not be suitable for anyone reliant on wheelchair for access.

CONSULTATION - WITHIN COUNCIL

Landscape Development Officer

This application is supported subject to conditions.

Impact of proposal upon trees.

The applicant proposes the removal of 5 trees in relation to redeveloping the property as a detached dual occupancy. The trees are identified on the survey plan, prepared by Mepstead & Associates Pty Ltd and dated 11.8.03, and in the Tree Site Analysis plan, prepared by Footprint Green Pty Ltd and dated 13th November 2003.

Eleven trees have been removed from the property prior to Landscape Services inspection for this application, however, 9 trees remain. Of these 5 trees are proposed to be removed as following:

- 122 - Stenocarpus sinuatus (Firewheel Tree), of 6 metres height and 1 metre canopy spread, is located within the driveway turning area forward of the double garage of proposed Residence 2.*
- 124 - Pittosporum eugenioides 'Variegata' (Variegated Tarata), of 4 metres height and 2 metres canopy spread, is located within the driveway to proposed Residence 2.*
- 138 - Eucalyptus pilularis (Blackbutt), of 25 metres height and originally of 12 metres canopy spread, although due to 1 limb and some branch removals from its eastern side, its canopy spread has been substantially reduced on its inner property side. The applicant's tree report comments that this tree has not been substantially pruned.*
- 139 - Acer palmatum (Japanese Maple), of 4 metres height and 6 metres canopy spread, is located 2 metres of the northwestern corner of proposed Residence 2.*
- 148 - Eucalyptus pilularis (Blackbutt), of 25 metres height and 15 metres canopy spread, is located near the property's central rear boundary. One limb and some branches have been removed from the southern side of this tree thereby substantially reducing its canopy spread to the south. There appears to be no storm damage as claimed in the applicant's tree report.*

Comments.

There is no objection to the removal of trees 122, 124 and 139 for the proposed development works as they are semi mature trees located within the rear garden and are insignificant in the landscape. Trees 138 and 148 are healthy trees that have long life expectancies and

Item 3

contribute substantially (particularly tree 148) to the treed skyline of the locality. These trees are clearly visible viewed from Beechworth Road.

It appears that trees 138 and 148 have been nominated for removal on the basis of their proximity and perceived future threat to proposed Residence 2, however, the canopies of these trees will not overhang the new dwelling. The proposed dwelling will be approximately 6 metres from Tree 138 and 4 metres from Tree 148 which, in this instance, is supportable as not excavation is required within the Critical Root Zones of the trees. Both trees (138 and 148) are to be retained in relation to future development of the subject property.

Landscape plan.

An amended landscape plan is required as the submitted plan shows the removal of Trees 138 and 148 which are to be retained.

Stormwater drainage plan.

The proposed surface detention area location is satisfactory. The re-use rainwater tank for proposed Residence 2 should be relocated to the internal angle between the garage and the pantry to free up space for boundary screen planting. Council's Development Control Engineer is in agreement to this.

Development Control Engineer

This application is recommended for approval, subject to the engineering conditions shown:

The application was lodged on 23 April 2004, so is subject to DCP 47 - Water Management.

The front portion of the site, as well as runoff from the proposed rear dwelling, will have gravity fall to the street gutter. The development is therefore Type 4, Location A. The stormwater concept plan submitted, AFCE Drawing 343359/D2/0, dated 3/2004, includes a 5000 litre retention and re-use system for each dwelling, as well as stormwater dispersal, on site detention and a grass strip in the driveway to reduce built-upon area. This is satisfactory.

CONSULTATION OUTSIDE COUNCIL

NSW Rural Fire Service

In accordance with the provisions of Section 79BA of the Environmental Planning & Assessment Act 1979, Council has consulted with the Commissioner of the NSW Rural Fire Service, concerning measures to be taken with respect to the protection of persons, property and the environment from danger that may arise from a bushfire. The comments provided by the Rural Fire Service are as follows:

Based upon an assessment of the plans and documentation received for the proposal, the NSW Rural Fire Service, in respect to bushfire matters, raised no objections subject to conditions which have been included in the recommendations. (Refer Conditions Nos 54 to 57).

Item 3

STATUTORY PROVISIONS

State Environmental Planning Policy No 53

COMPLIANCE TABLE		
Development standards	Proposed	Complies
Allotment size (cl.19(1)(a)) 600m ² detached dual occ. (min)	1565 m ²	YES
Floor space ratio (cl.19(1)(b)) 0.5:1 (max)	0.45:1	YES
Car parking (cl.20) Dwelling 1: 2 car spaces (min) Dwelling 2: 2 car spaces (min)	Dwelling 1: 2 car spaces Dwelling 2: 2 car spaces	YES YES

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 this regard.

Streetscape (cl.32(a)):

House No 1 is of contemporary design and would be fairly large, spreading down the site with greater side setbacks than the existing residence. The proposed setback from the street is forward of the adjoining dwellings, but, due to a bend in the front boundary and the generous side setbacks, will not have an adverse impact on the streetscape. Although the adjoining residence at 73 Beechworth Road is set back over 40 metres from the front boundary, it would be unreasonable to require House No 1 to have a similar setback.

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

Houses 1 and 2 are located at least 7 to 8 metres from the adjoining residences which allows for sufficient area for screen planting along the boundary to preserve the privacy for neighbouring properties.

With the large setbacks between the adjoining building, visual and acoustic privacy to neighbouring properties will be maintained.

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

The design and siting of the new dual occupancy buildings will provide at least 3 hours of solar access between 9.00am and 3.00pm to north-facing windows, living rooms and outdoor living areas of adjoining developments. Likewise, adjoining premises will have at least 4 hours of solar access and are not affected by the proposed development.

Item 3

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

Stormwater (cl.32(d)):

The front portion of the site, as well as runoff from the proposed rear dwelling, will have gravity fall to the street gutter. The development is therefore Type 4, Location A. The stormwater concept plan submitted, AFCE Drawing 343359/D2/0, dated 3/2004, includes a 5000 litres retention and re-use system for each dwelling, as well as stormwater dispersal, on site detention.

Council's Development Assessment Engineer has no objection to the proposal and has provided conditions in respect of stormwater disposal. **(Refer Conditions Nos 45 to 47)**

Crime prevention (cl.32(e)):

Both houses have their front entry facing the street which will ensure good observation of the street and anyone approaching the front door.

Accessibility (cl.32(f)):

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

Waste management (cl.32(g)):

There is adequate space within the curtilage of each dwelling to provide for waste management.

Visual bulk (cl.32(h)):

The visual 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

Item 3

- (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
Building height 8m (max)	House 1: 5.9 metres House 2: 6.3 metres The following information is not a statutory control. This information is provided for the benefit of Councillors: Height to roof ridge - House 1: 9.05 metres Height to roof ridge - House 2: 7.2 metres Height to eaves line – House 1: 8.85 metres Height to eaves line – House 2: 7 metres	YES YES
Built-upon area 60% (max)	45.4%	YES
Notional built-upon area	House 1: 49.3% House 2: 40.1%	YES YES

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 has been provided and is satisfactory.

Development Control Plan No 43 - Car Parking

The proposal complies with DCP 43 which requires the provision of 4 parking spaces.

Development Control Plan No 47 Water Management

The stormwater concept plan submitted, AFCE Drawing 343359/D2/0, dated 3/2004, includes a 5000 litres retention and re-use system for each dwelling, as well as stormwater dispersal, on site detention and a grass strip in the driveway to reduce built-upon area. 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 72).**

See comments by Development Assessment Engineer.

Council’s Dual Occupancy Development Control Code

COMPLIANCE TABLE

Item 3

Development control	Proposed	Complies
4.2 Streetscape:		
Roof pitch <ul style="list-style-type: none"> • 3m roof height-2 storey (max) • Roof pitch 35⁰ (max) 	House 1: 3.1 metres House 2: 1.2 metres House 1: 27 ⁰ House 2: 27.5 ⁰	NO YES YES YES
4.3 Visual and acoustic privacy:		
Visual privacy <ul style="list-style-type: none"> • Windows to habitable rooms setback 9m from neighbouring windows (min) 	House 1: 7.5 metres House 2: 15.5 metres	NO YES
4.4 Solar access and design for climate:		
Solar access <ul style="list-style-type: none"> • Dual occupancy receive 3+ hours of solar access between 9am and 3pm (min) • Neighbouring properties receive 3+ hours of solar access between 9am and 3pm (min) 	House 1: 3+ hours solar access received House 2: 3+ hours solar access received All neighbouring properties receive 3+ hours solar access	YES YES YES
Energy efficiency <ul style="list-style-type: none"> • Thermal assessment (60%) 	68%	YES
4.7 Accessibility:		
Vehicular access and car parking dimensions <ul style="list-style-type: none"> • Garage – 3.1m x 5.4m (min) 	Both garages have minimum dimensions of 6.0 x 6.0 metres.	YES
4.9 Visual bulk:		
Building setbacks <ul style="list-style-type: none"> • Front building line: Minimum setback: 12.0 metres 	House 1: 10.65 to 12.0 metres	NO

Item 3

<ul style="list-style-type: none"> Side setback: <p>House 1 Ground Floor: 2.0 metres (min) 1st Floor: 2.5 metres (min)</p> <p>House 2 Ground Floor: 3.0 metres 1st Floor: 2.5 metres</p> <ul style="list-style-type: none"> Rear setback: 9.6 metres (min) 	<p>House 1: Site width 2.0 metres Ground Floor: Varies from 1.995 to 2.248 metres 1st Floor: 3.5 metres</p> <p>House 2: Varies from 1.5 metres to 2.827 metres 1st Floor: 9.4 metres</p> <p>House 2: 4.11 metres</p>	<p>YES</p> <p>YES</p> <p>NO</p> <p>YES</p> <p>NO</p>
<p>Building form</p> <ul style="list-style-type: none"> Unrelieved wall length: 8.0 metres (max) Total building length: 24.0 metres (max) 	<p>House 1: 9.19 metres House 2: 12.02 metres</p> <p>House 1: 20.86 metres House 2: 22.5 metres</p>	<p>NO</p> <p>NO</p> <p>YES</p> <p>YES</p>
<p>Built-upon area</p> <ul style="list-style-type: none"> Total built upon area (max): 40% Notional built-upon area 	<p>45.4%</p> <p>House 1: 49.3% House 2: 40.1%</p>	<p>NO</p> <p>NO</p> <p>NO</p>
<p>Floor space ratio</p> <ul style="list-style-type: none"> FSR (max): 0.5:1 1st floor – 40% 	<p>0.45:1</p> <p>House 1: 68% House 2: 29.9%</p>	<p>YES</p> <p>NO</p> <p>YES</p>
<p>Height of buildings</p> <ul style="list-style-type: none"> Dwelling (fronting street): 8.0 metres (max) Rear dwelling: 3.6m (max) Building envelope: 45⁰ from horizontal at any point 3m above boundary 	<p>House 1: 5.9 metres</p> <p>House 2: 6.3 metres</p> <p>House 1 complies</p> <p>House 2 East boundary: 300mm encroachment</p>	<p>YES</p> <p>NO</p> <p>NO</p>
<p>Cut and fill (building works)</p>		

Item 3

<ul style="list-style-type: none"> Cut & fill: 900mm & Total 1800mm (max) 	House 1: 300mm (cut) & 300mm (fill) House 2: 400mm (cut) & 600mm (fill)	YES YES
Section 5: Landscaping & Open Space		
Total soft landscaping : 60% (min)	54.6%	NO
Notional soft landscaping:	House 1: 50.7% House 2: 59.9%	NO NO
Tree retention and refurbishment <ul style="list-style-type: none"> No. of Trees: 8 (min) 	5 trees remain 3 additional trees required by condition	YES
Cut & fill (landscaping) <ul style="list-style-type: none"> Cut & Fill: 900mm & Total 1800mm 	Cut and fill associated with the dwellings will not impact existing trees.	YES
Open space provisions <ul style="list-style-type: none"> Area: 100m² or 2 x 75m² areas (min) Min dimension 5m x 5m (min) Grade: 1 in 8 (max) 50% receives 3+ hours solar access (min) 	House 1: 97.5m ² House 2: 240m ² House 1: 8m House 2: 26.5m House 1: 1 in 8 House 2: 1 in 12 House 1: Open space receives 3+ hours solar access House 2: Open space receives 3+ hours solar access	NO YES YES YES YES YES

Roof pitch

The roof height of House No 2 exceeds the 3 metres maximum roof height by 100mm. This non-compliance is minor and does not result in any amenity impact on the surrounding properties or streetscape.

Window setback from neighbouring windows

The Guest Bedroom window to House No 1 is located 7.5 metres instead of 9.0 metres away from the adjoining premises No 69. The existing vegetation along with that proposed, which is required

Item 3

to attain a minimum height of 3 metres (**refer Condition 66**) will provide adequate screening between the buildings to preserve amenity and privacy.

Building setbacks

The existing roof over the front patio is set back 10.85 metres and the proposed porch is set back 10.65 metres from the front boundary. The additional 200mm encroachment is not considered to have an adverse impact on the amenity of the adjoining properties or streetscape.

In this area of Beechworth Road there are varying front set backs, ranging generally from 9 metres to 12 metres due to the changes in the topography of the land to each site.

House No 1 has the main wall of the ground floor set back 12 metres from the front boundary alignment and the 1st floor 13.5 metres from the front boundary. These setbacks are consistent with the existing dwelling house and adjoining dwelling house to the east. The increased set back to the first floor will help reduce the visual bulk of the dwelling.

Unrelieved wall length

The western wall of House No 1 has one wall of 9.19 metres and House No 2's northern wall has 12.02 metres, both exceed the maximum of 8 metres.

However, the non-compliant western wall of House No 1 is acceptable as it is only single storey in height, with the 1st floor set back 1.5 metres which provides relief to the overall height of the building. The northern wall of House No 2 has a similar situation with a 1.5 metres set back to the 1st floor.

Built-upon area

The proposed built-upon area exceeds the 40% maximum by 5.4%. This minor increase does not impact on the proposed landscaping or impact on the stormwater infiltration.

Floor space ratio

The 1st floor level of House No 1 exceeds the maximum 40% of total floor space by 28%. The non-compliance is acceptable for this development due to the large separation between the proposed House No 1 and adjoining buildings. Also the dwelling is well articulated to reduce visual bulk and scale.

Building height

House No 2 is two-storeys and does not comply with the 3.6 metres height control. The proposed height of 6.3 metres height will not impact on the surrounding properties, with the 1st floor being mainly contained in the roof space and set well back from the rear and side boundaries. In addition, the proposed landscaping will reduce the visual bulk of the 1st floor level.

Building envelope

Item 3

House No 2 gable end encroaches the envelope by approximately 300mm. This non-compliance is minor and not sufficient to warrant any modification to the roof. The gable end is at least 6.0 metres from the eastern boundary and will have no impact on the adjoining property.

Soft landscape area

Section 5 of Council's Dual Occupancy Code requires a minimum of 60% of the site for soft landscape area, the proposed development has a soft landscaped area of 54.6%. Council's Landscape Development Officer raised no objections to the shortfall of soft landscape area as sufficient open space is provided.

Tree retention and refurbishment

The property requires the provision of 3 additional trees so as to comply with the 8 trees minimum for a site of 1565m² (**refer Condition No 64**).

Open space provisions

House No 1 has an open space of 97.5m², deficient by 2.5m². This non-compliance is minimal and raises no issues, given the additional area of approximately 15m² located on the eastern side of the study/kitchen area. The area provided is more than adequate for the private recreation of future occupants.

SECTION 94 CONTRIBUTION PLAN

The development attracts a Section 94 contribution of \$12,459.72 which is required to be paid by (**Condition No 59**).

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.

ANY SUBMISSIONS

All submissions received have been considered in the assessment of 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

Item 3

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 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 406/04 for demolition of existing dwelling, swimming pool, metal garden shed, timber outbuilding and construction of a detached dual occupancy development at 71 Beechworth Road, Pymble being Lot 30, DP 22115 be approved 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 to be in accordance with Development Application No 406/04 lodged with Council on 23 April 2004 and Development Application plans prepared by Hans Waldmann and Associates, Drawing Nos 801-01-04, 801-02-04 and 801-03-04 dated January 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.

Administration

4. 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 an Occupation Certificate has been issued.
5. 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.

Construction

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

Item 3

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.

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.

9. 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.
10. A sign shall be erected in a prominent position on the site which states the name and contact details of the Principal Certifying Authority.
11. To maintain existing ground levels all excavated material shall be removed from the site.
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.

Special

14. Your attention is directed to the operation of the Commonwealth Disability Discrimination Act 1992, which may impose greater obligations on providing access to disabled persons other than compliance with the Building Code of Australia. You are advised to seek advice from the Human Rights and Equal Opportunity Commission (phone (02) 9284 9600) in respect of your application.

To ensure compliance with the Building Code of Australia, the theatre room window in the northern wall of House No 2 is to be increased in size to provide adequate natural light and ventilation.

Demolition

Item 3

15. The demolition is to be carried out in accordance with the guidelines contained in Australian Standard 2601-1991: The Demolition of Structures.
16. Access to demolition sites shall be protected as directed by the Principal Certifying Authority by the use of suitable fences or hoardings.
17. 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.
18. 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.
19. 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.
20. The requirements and standards imposed by the Authority, its consultants or contractors shall be complied with.
21. Erosion control measures shall be provided on demolition sites to prevent the siltation of watercourses and drainage systems.
22. 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;
 - 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.

Item 3

23. 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.
24. 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.
25. All combustible material shall be removed from the site on a daily basis. Material shall not be burnt on the site.
26. 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.
27. Trees and vegetation on a site shall not be disturbed except with the approval of the Council.
28. Adequate precautions shall be taken to ensure the protection of adjoining premises and persons therein from damage and injury during the process of demolition.
29. 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.
30. 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.
31. A photo record of the buildings to be demolished and vegetation on site is to be submitted to Council for archival purposes.
32. 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.

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.
33. All demolition materials of value for re-use either on-site or elsewhere, shall be separated and made available for re-cycling.

Item 3

Landscape

34. 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.

35. The landscape works, including screen planting and tree replenishment shall be completed prior to issue of final Certificate of Compliance and maintained in a satisfactory condition at all times.
36. Any imported fill material shall be restricted to material from the local soil landscape on which the site is located or be derived from sandstone geology sites.
37. All excavation carried out within the specified radius of the trunk/s of the following tree/s shall be hand dug:

No/Tree/Location	Radius From Trunk
48 / <i>Cedrus deodara</i> (Himalayan Cedar) Adjacent to and near the southern end of the property's western (side) boundary.	5 metres

38. On completion of the landscape works including tree planting and 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.
39. 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
Asparagus densiflorus (Asparagus Fern)
Chlorophytum comosum (Spider Plant)
Cinnamomum camphora (Camphor laurel)
Hedera helix (English Ivy)
Hedera sp. (Ivy)
Hedychium gardnerianum (Ginger lily)

Item 3

Nephrolepis cordifolia (Fishbone fern)
Olea europaea subsp. africana (African Olive)
Tradescantia albiflora (Wandering Jew)

40. 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.

Engineering

41. 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.
42. 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.
43. For stormwater control all paved areas are to be drained to the main drainage system. This may require the installation of suitable cut-off structures, inlets and/or barriers that direct runoff to the formal drainage system.
44. 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.**
45. 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.
46. 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.

Item 3

Please refer to “Your Business” section of Sydney Water’s web site at 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.

Applicant's Bushfire Consultant

Asset Protection Zone

47. To provide reasonable and satisfactory approach to bushfire safety for the proposed development, occupants and fire fighters the following conditions are to be complied with:

- a) That the areas around the existing and the new dwellings be retained as mown lawns, maintained gardens, paths and individual trees.

Dwelling Garden Positions

- b) That gardens containing timber or bark mulch are not located directly below the windows of any dwelling. Such gardens are to be a minimum of 1.0m radius from a window.
- c) That gardens located against the external wall of any dwelling shall not contain shrubs larger than 1.0m in height.

Building Construction (AS3959)

Front Dwelling Building Construction

48. There is no level of construction required under AS3959-1999 for the front dwelling, however we have recommended the following to protect from ember attack:

- That all open-able windows shall be screened with aluminium, steel or bronze metal mesh having a maximum aperture size of 1.8mm to prevent ember attack.
- That all external doors shall be fitted with weather strips or draft excluders (sliding doors are excluded).
- All external doors, other than the front door, shall be screened with aluminium, steel or bronze metal mesh at 1.8mm aperture size.
- That all gutters and valleys be provided with materials designed to prevent the accumulation of leaf litter. These gutter protector materials shall have a flammability index of <5. ('Guttergard' leaf guard or similar)

Rear Dwelling Building Construction

Item 3

49. That all aspects of the rear dwelling meet the standards set out in AS3959-1999 for Level 2 construction, in particular:
- a) That all external walls, other than the brick veneer, shall be constructed of non-combustible materials such as weathertex, A/C sheet or plank or mini-orb, Blue Board or other non-combustible cladding. • That window frames are either non-combustible, fire-retardant-treated timber or DAR hardwood.
 - b) That all open-able windows shall be screened with steel or bronze metal mesh having a maximum aperture size of 1.8mm to prevent ember attack. (Aluminium shall not be used).
 - c) That all external doors shall be fitted with weather strips or draft excluders (aluminium sliding doors are excluded).
 - d) All external doors, other than the front door, shall be screened with steel or bronze metal mesh at 1.8mm aperture size.
 - e) That plastic external air vents or registers shall not be used.
 - f) That metal mesh screens shall be provided to all vents and weep holes. The aperture size shall be not more than 1.8mm. (Aluminium shall not be used).
 - g) That the whole of the roof shall be of non-combustible material, eg colour bond style metal sheeting or cement / clay tiles or masonry shingles.
 - h) That the whole of the roof system shall be sarked. Sarking shall have a flammability index of not more than 5.
 - i) That all eaves shall be fully enclosed and the fascia or gaps between the rafters shall be sealed. Any lining and or joining strips shall be non-combustible.
 - j) That all fascias shall be of non-combustible construction.
 - k) That all gutters, valleys and downpipes shall be of non-combustible materials.
 - l) That all gutters and valleys be provided with materials designed to prevent the accumulation of leaf litter. These gutter protector materials shall have a flammability index of <5. ('Guttergard' leaf guard or similar)
 - m) That all exposed external water pipes shall be of metal.
 - n) That where LPG gas bottles are installed they shall be positioned with the safety valves facing away from the building or at a location having the least bushfire impact. All gas cylinders shall have clearly marked gas shut off valves positioned for easy access by fire fighters.

NSW Rural Fire Service

50. Construction shall comply with AS3959 – 1999 Level 2 'Construction of Buildings in bushfire prone areas'.
51. The structure shall incorporate gutterless roofing or leafless guttering to prevent the build-up of flammable material.
52. The entire property shall be managed as an 'Inner Protection Area' as outlined within Section 4.2.2 in Planning for Bushfire Protection 2001.
53. All fencing shall be constructed from non-combustible materials.

Item 3

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

Administration

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 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. 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.

Item 3

- 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.

Construction

- 58. To protect the amenity of the adjoining property, all fill under the slab is to be contained by dropped edge beams. Engineers details are to be submitted to and approved by the Principal Certifying Authority prior to the issue of the Construction Certificate.

Special

- 59. 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 ADDITIONAL DWELLING IS CURRENTLY \$12,459.72. 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 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. Acquisition of Open Space - Pymble	\$1,966.00
8. Koola Park upgrade and reconfiguration	\$143.09
9. North Turramurra Sportsfield development	\$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

Item 3

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

Landscape

60. The following changes shall be shown on the plans submitted with the Construction Certificate:

- Tree 138 - *Eucalyptus pilularis* (Blackbutt) and Tree 148 - *Eucalyptus pilularis* (Blackbutt) shall be retained and shown to be retained all plans;
- the rainwater re-use tank shall be located in the internal corner between the rear of the garage and the pantry for Residence 2 to provide more space for boundary screen planting.

61. 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.

62. 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.

NOTE: 1. Tree 138 - *Eucalyptus pilularis* (Blackbutt) and Tree 148 - *Eucalyptus pilularis* (Blackbutt) are to be retained and shown on the landscape plan, as well as, the screen planting required below and 1 additional indigenous tree.

The plan must be submitted to Council and approved by Council's Landscape Development Officer prior to the release of the Construction Certificate.

63. A plan detailing screen planting of the property's western, northeastern and eastern 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 3 metres.

64. The property shall support a minimum number of 8 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.

Item 3

65. The single tree to be planted shall be an indigenous tree and 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.
66. A CASH BOND/BANK GUARANTEE of \$2,000 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 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.

67. A CASH BOND/BANK GUARANTEE of \$10,000 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.

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.

No./Tree/Location

138 / *Eucalyptus pilularis* (Blackbutt) / Adjacent to and towards the northern end of the property's western (side) boundary.

140 and 141 / 2x*Eucalyptus pilularis* (Blackbutt) / Adjacent to and near the northern end of the property's western (side) boundary.

148 / *Eucalyptus pilularis* (Blackbutt) / Close to the property's northeastern (rear) boundary.

48 / *Cedrus deodara* (Himalayan Cedar)/Front Western boundary

68. 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.

Item 3

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.

Engineering

69. 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/retention system. The design shall be generally based on the concept plan 343359/0 by AFCE Environment + Building , and shall be advanced for construction issue purposes. 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 100m² roof area for each 5000 litres of storage. 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.
70. 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.
71. 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.

CONDITIONS TO BE COMPLIED WITH PRIOR TO WORK COMMENCING

Administration

72. 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.

Item 3

Pollution

- 73. To preserve and enhance the natural environment, the downslope side of the proposed construction area of the site is to be enclosed with a suitable erosion control barrier (e.g. straw bales or geofabric fence) along contour before any other work on the site commences.
- 74. To preserve and enhance the natural environment, all soil erosion and sediment control structures shall be inspected following each storm event and any necessary maintenance work shall be undertaken to ensure their continued proper operation. Sediment shall be removed from the soil erosion and sediment control structures when no more than forty percent (40%) capacity has been reached. These structures shall continue in proper operation until all development activities have been completed and the site fully stabilised.

Special

- 75. A Compliance Certificate pursuant to Section 73 Sydney Water Act 1994, as evidence of compliance with the provisions of Division 9 of that Act, to be obtained from Sydney Water prior to the commencement of any work on the site.

Landscape

- 76. 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.

No./Tree/Location	Radius in Metres
140 / <i>Eucalyptus pilularis</i> (Blackbutt) Adjacent to and near the northern end of the property's western (side) boundary.	6.5m
141 / <i>Eucalyptus pilularis</i> (Blackbutt) Close to and near the northern end of the property's western (side) boundary.	5m
142 / <i>Syncarpia glomulifera</i> (Turpentine) Close to and near the northern end of the property's western (side) boundary.	3m
149 / <i>Angophora costata</i> (Sydney Red Gum) Adjacent to the property's central northeastern (rear) boundary.	5m

- 77. 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 approved RESIDENCE 1 and 2 shall be fenced off for the specified radius from the trunk to prevent any activities, storage or the

Item 3

disposal of materials within the fenced area. The fence/s shall be maintained intact until the completion of all demolition/building work on site:

No/Tree/Location	Radius From Trunk
48 / <i>Cedrus deodara</i> (Himalayan Cedar) Adjacent to and near the southern end of the property's western (side) boundary.	5m
138 / <i>Eucalyptus pilularis</i> (Blackbutt) Adjacent to and towards the northern end of the property's western (side) boundary.	6m
148 / <i>Eucalyptus pilularis</i> (Blackbutt) Close to the property's northeastern (rear) boundary.	6m

78. 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.
79. 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

Administration

80. 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.

Construction

81. 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.

Landscape

Item 3

82. On completion of the landscape works, 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 the Occupation Certificate.
83. 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 site stormwater detention/ 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 detention/ 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.

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 in the form of a request using forms 13PC and 13RPA. The relative location of the reuse and retention facility, in relation to the building footprint, must be shown on a scale sketch, attached as an annexure to the request forms.

84. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance 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.

85. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate, 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 at no cost to Council.
86. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate, the Section 73 Sydney Water compliance certificate must be obtained and submitted to the Principal Certifying Authority (PCA).
87. 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

Item 3

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.
- 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)

Item 3

- Storage volume(s) provided and supporting calculations/documentation.

88. 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)

89. 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
- 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.

90. 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.

Item 3

BUILDING CONDITIONS

Construction

91. 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.
92. Any mechanical ventilation installed in a dwelling shall comply with the requirements of Part 3.8.5.0 of the Building Code of Australia Housing Provisions. Documentary evidence of compliance is to be obtained from a suitably qualified person and submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.
93. To ensure compliance with this determination the building shall be set out by a Registered Surveyor and the Survey Report shall be lodged with the Principal Certifying Authority prior to the external wall construction proceeding above floor level.
94. 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).
95. 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.
96. 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.
97. For fire safety an automatic fire detection and alarm system shall be installed throughout the dwelling in accordance with the following requirements:

Item 3

- a. A smoke alarm system complying with Part 3.7.2 of the Building Code of Australia Housing Provisions; or
- b. Smoke alarms which:
 - i. 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
 - ii. are connected to the mains and have a standby power supply; and
 - iii. 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.

98. 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.

100. The following are required details and must be submitted to the Council on completion of the works. 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. Wet area waterproofing details complying with the Building Code of Australia.
- b. Mechanical ventilation details complying with Australian Standard 1684 Mechanical Ventilation & Airconditioning.
- c. Glazing details complying with AS 1288-1989 Glass in Buildings and Installation Code.
- d. Stormwater disposal details complying with Council's Stormwater Management Manual and/or other conditions of this consent.

101. The following are required details and must be submitted to the Council on completion of the works. 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.

Item 3

- a. A Compliance Certificate that the building is protected and complies with Australian Standard 3959 Construction of Buildings in Bushfire Prone Areas.

Tony Bailey
Team Leader, Comenarra Ward

Michael Miocic
Director Development & Regulation

Attachments:

- Locality Plan**
- Architecturals (2)**
- Site Plan**
- Shadow Plan**
- Site Analysis**
- Landscape concept**

Item 4

DEVELOPMENT APPLICATION

SUMMARY SHEET

REPORT TITLE:	1225 PACIFIC HIGHWAY, TURRAMURRA - SEPP 5 DEVELOPMENT COMPRISING OF 6 UNITS
WARD:	Wahroonga
DEVELOPMENT APPLICATION N^o:	1239/02
SUBJECT LAND:	1225 Pacific Highway, Turrumurra
APPLICANT:	John Bourke
OWNER:	Rinback Pty Ltd
DESIGNER:	HPDR Architects
PRESENT USE:	Single Residential
ZONING:	Residential 2 (C2)
HERITAGE:	No
PERMISSIBLE UNDER:	Ku-ring-gai Planning Scheme Ordinance
COUNCIL'S POLICIES APPLICABLE:	KPSO, DCP 43, DCP 40, DCP 31, DCP 47, Draft LEP 194, Draft LEP 21
COMPLIANCE WITH CODES/POLICIES:	Yes
GOVERNMENT POLICIES APPLICABLE:	SEPP5, SEPP 55, SREP 20
COMPLIANCE WITH GOVERNMENT POLICIES:	Yes
DATE LODGED:	3 September 2002 14 October 2203 (Amended plans) 5 October 2004 (Amended plans)
40 DAY PERIOD EXPIRED:	13 October 2002
PROPOSAL:	SEPP 5 Development comprising 6 units
RECOMMENDATION:	Approval

Item 4

DEVELOPMENT APPLICATION N^o 1239/02
PREMISES: 1225 PACIFIC HIGHWAY, TURRAMURRA
PROPOSAL: SEPP 5 DEVELOPMENT COMPRISING OF
6 UNITS
APPLICANT: JOHN BOURKE
OWNER: RINBACK PTY LTD
DESIGNER: HPDR ARCHITECTS

PURPOSE FOR REPORT

To determine a development application for a SEPP 5 development comprising of 6 units.

EXECUTIVE SUMMARY

- Issues:**
- FSR in excess of 0.5:1
 - Pedestrian and traffic safety
- Submissions:**
- 5 submissions in response to original plans
 - No submissions in response to 1st revised plans
 - 2 submissions in response to 2nd revised plans
- Recommendation:** Approval

HISTORY

Development Application 1239/02

Following neighbour notification, Council wrote to the applicant on 8 April 2003 raising concern with the demolition of the existing dwelling and requested a detailed heritage assessment. Amended plans were submitted on 14 October 2003 which provided for retention of the existing dwelling. Neighbours were subsequently notified of the amended plans on 25 November 2003.

Upon consideration of the revised plans, further concerns in respect of internal amenity, setbacks, traffic safety and landscape treatment were raised by Council staff. Further correspondence and a number of meetings were held with the applicant and applicant's representative in attempt to resolve these issues.

Revised plans were received on 5 October 2004, in response to these issues. The revised plans were subsequently notified on 19 October 2004 to 2 November 2004.

Site history

There is no site history relevant to the determination of this development application.

Item 4

THE SITE

Zoning:	Residential 2 C
Visual Character Study Category:	Pre 1920
Lot Number:	9
DP Number:	17642
Area:	1651m ²
Side of Street:	Northern
Cross Fall:	To front and rear from central crest
Stormwater Drainage:	Predominantly to Ku-ring-gai Avenue
Heritage Affected:	No - Deferred Item
Required Setback:	12.0 metres
Integrated Development:	No
Bush Fire Prone Land:	No
Endangered Species:	No
Urban Bushland:	No
Contaminated Land:	Yes

SITE DESCRIPTION

The subject site comprises Lot 9, DP 17642 and is known as 1225 Pacific Highway, Turramurra. It is located at the corner of Pacific Highway and Ku-ring-gai Avenue.

The subject site is a long rectangular shape, with a total area of 1,651sqm. It has an irregular shaped frontage adjacent to the intersection of Pacific Highway and Ku-ring-gai Ave. The site has a small crest mid-way, with a fall of approximately 2 metres to the rear (north) and to the street (south).

The site is occupied by a two storey brick and tile dwelling, described as being a simplified version of the Inter-war Old English idiom from the 1930's. Its architectural style is characterised by variegated red-brown walling of texture brick and includes features such as arches of rubbed bricks, sills of moulded bricks, a decorative parapet, diagonal brick bonding, some imitation half-timbering and some leaded windows. These elements are visible from Ku-ring-gai Ave and Pacific Highway.

Vehicular access to the site is via a 3m driveway along the eastern boundary, at the intersection of Pacific Highway and Ku-ring-gai Ave. Entry/exit to the site from the Pacific Highway is restricted to left in/left out.

The subject site marks a transition between residential and commercial land use zonings. Residential development adjoins the subject site to the north and east. The site is located on the fringe of the residential precinct identified by the National Trust as the "Turramurra Urban Conservation Area". To the west of the site is a Mobile service station and electricity sub-station. The Turramurra commercial district commences approximately 100 metres from the site.

THE PROPOSAL

Item 4

This development application was amended by the applicant on 5 October 2004. The amended plans differ significantly from the original application. The development as currently proposed includes:

- restoration of the existing building and conversion into 2 x 3 bedroom SEPP 5 units (NB the original proposal involved the demolition of the existing dwelling);
- construction of 4 x 3 bedroom SEPP 5 units in a two storey building to the rear of the existing building;
- basement car parking for 14 cars, (12 for residents and 2 for visitors) ;
- demolition of the existing garage;
- restoration of the existing front fence;
- construction of a letterbox/entry shelter;
- landscape planting; and
- stormwater drainage works.

The revised proposed development results in the following indices:

Gross floor area: 840.77m²
Floor space ratio: 0.509:1

CONSULTATION - COMMUNITY

In accordance with Council's Notifications policy, adjoining owners were given the opportunity to comment on the development application as follows:

Original Plans 18 September 2002 and 18 October 2003. A notice advising of the application was placed in the North Shore Times on 18/9/02 and 25/9/02.

Revised Plans 25 November 2003 to 16 December 2003

2nd Revised Plans: 19 October 2004 to 2 November 2004

Five (5) submissions were received by Council in response to the original plans:

1. Mr C D Campbell, 11 Ku-ring-gai Ave Turramurra
2. M Chaldecott, 16 Grosvenor Rd Lindfield
3. Mr Christopher Bradbury, 12 Ku-ring-gai Ave Turramurra
4. Lorenzo Petrucci, 2 Ku-ring-gai Ave Turramurra
5. PJ & JA Lucas, 4 Ku-ring-gai Ave Turramurra

- *Risk of creating a wall of units along the Highway;*

The type of development along Pacific Highway will depend on the zoning of the allotments that adjoin and are in close proximity of the highway. The proposal seeks consent under the provisions of SEPP 5 which allows a floor space ratio of 0.5:1. Whilst the development marginally

Item 4

exceeds this FSR, compliance would not significantly alter the appearance of the proposal. The proposal complies with the height standard under SEPP5.

- *What policing of SEPP 5 developments does Council do?*

A condition is recommended requiring a restriction on the land title restricting the occupation of the premises to those as set permissible under SEPP 5 (see **Condition 7**).

- *Opportunities to lower height would be beneficial, such as by greater excavation or modifying roof pitch;*
- *The height of the building needs to be lowered to minimise impact on privacy.*

The revised plans have reduced the overall height of the proposal by 800mm to 1070mm through stepping the building along the contours of the site. Additionally, the setback to the basement carpark has been increased by 500mm to allow for a 2.0 metres setback to enable the provision of vegetation to alleviate overlooking of No 2 Ku-ring-gai Avenue. It is proposed that Unit 6, which is adjacent to the dwelling on No 2 Ku-ring-gai Avenue, will be provided with a planter box along the eastern portion of the balcony to reduce any potential privacy impacts.

The dwelling on No 2 Ku-ring-gai Avenue is orientated east to west and has minimal windows in the southern elevation which are limited to the first floor. Furthermore, this area of the allotment serves as a side access from the front to the rear of the allotment only and does not appear to have any amenity value for the residents.

- *Plant advanced trees along eastern boundary;*

There is sufficient area for screen planting to be provided to ensure the privacy of the adjoining property is maintained and to maintain landscaped character. A condition requiring semi-advanced species is recommended (see **Condition 59**).

- *Requirement for trees ignored;*

Council's Landscape Development Officer has recommended conditions requiring tree planting in accordance with Council's Tree Replenishment Policy (see **Condition 73**).

- *Levies collected should be used in local area, eg for improved pedestrian pavement or closure of Ku-ring-gai Ave and alternative traffic management.*

The collection of Section 94 contributions is imposed as a condition to be satisfied prior to the release of a Construction Certificate. These monies will be managed in accordance with Council's Section 94 Contributions Plan.

Item 4

- ***Why is it necessary for the development to have 3 bedrooms per unit?***

There is no necessity in providing 3 bedroom units under SEPP 5. This is simply what is being proposed by the applicant.

- ***Character and ambience of region will be ruined;***

The revised plans entail the retention of the existing dwelling, sufficient setbacks to enable screen planting and an articulated building to the rear. It is a considerable improvement to the original application and is sympathetic to the character of the existing area.

- ***Significant shadows on neighbouring properties;***

The shadow diagrams indicate that the proposal will cause overshadowing to the adjoining service station and front setback of the subject allotment during the morning period in the winter solstice. At noon, the proposal will result in shadows over the subject allotment only. It is only during the afternoon period, at the winter solstice that the proposal will overshadow the adjoining properties. The shadow cast will impact the western elevation of No 2 Ku-ring-gai Avenue and the front garden of No 4 Ku-ring-gai Avenue. The extent of shadow cast will not adversely impact upon the amenity afforded to the adjoining properties. In addition, the shadow cast will not limit the solar access of these properties to less than 4 hours which is acceptable.

- ***Request solid tall fence erected along shared property boundary***

The fence along the common boundary between the subject property and No 2 Ku-ring-gai Avenue appears to be reasonably new and does not need to be replaced. Screen planting within the setback of the proposal will soften the views from the first floor windows in the adjoining property.

- ***Density too great for site***

The density of the proposal has been reduced via the revised plans to 0.509:1. Whilst this FSR exceeds the FSR of 0.5:1 set out in SEPP 5, the non-compliance is minor (only 15m²) and acceptable in that the bulk of the building is consistent with other similar type development in the municipality.

- ***Overbearing and visually intrusive, impacting on privacy***

The revised plans indicate a minimum 6.6 metres setback to the eastern (side) boundary adjacent to No 4 Ku-ring-gai Avenue. Additionally, as the location of the development is adjacent to the front garden and garages of the dwelling at No 4 Ku-ring-gai Avenue and the ground level of the subject allotment is higher than the objector's property, the development will not be highly visible from the living rooms or rear private open space of the objectors property. The development maintains adequate privacy to No 4 Ku-ring-gai Avenue.

Item 4

- ***Inconsistent with the heritage values of the adjacent residential properties***

The revised plans have modified the proposal to involve the retention of the existing dwelling which has potential heritage value. The retention of this dwelling will mean that the impact on the streetscape is negligible.

- ***Landscape buffer is nonsense and could become a safety/maintenance hazard.***

The provision of landscape planters and screen planting within the setbacks of the proposal will assist in alleviating privacy and visual bulk impacts to the adjoining properties. Appropriate species should be chosen in order to avoid potential hazards to the future residents and adjoining properties. (refer Conditions Nos 59 & 72)

- ***Vehicle and pedestrian safety.***

Council's Development Control Engineer has made comment on traffic and safety issues under the heading '*Consultation – within Council - Council's Development Control Engineer*'.

Amended plans dated 5 October 2004

Two submissions were received in response to the amended plans as follows:

- 1. Trevor Thompson, 14 Ku-ring-gai Avenue, Turrumurra.**
- 2. PJ & JA Lucas, 4 Ku-ring-gai Ave Turrumurra**

- ***Safety concerns due to the location of the site within close vicinity to the intersection with Pacific Highway and parking of vehicles during peak hours. Suggest the provision of 'no parking' signs to provide greater visibility.***

Vehicle access to the subject property would be as it currently is, via a driveway located on the northern extreme of the eastern boundary. This driveway provides access to and from Ku-ring-gai Avenue, however it is within close proximity to the intersection with Pacific Highway. Council's Development Control Engineer has raised concern with this arrangement. However, given that this is an existing situation, the RTA will not permit a crossing from the site to Pacific Highway and a median strip can be provided (subject to conditions of consent – **refer Condition No 66**), Council's Engineer is willing to support the proposal.

Further comments with regard to this matter have been provided by Council's Development Control Engineer under the heading '*Consultation – within Council - Council's Development Control Engineer*' above.

CONSULTATION - WITHIN COUNCIL

Landscaping

Item 4

Council's Landscape and Tree Assessment Officer has commented on the proposal as follows:

Amended Plans

The Jacaranda mimosifolia (Jacaranda) located on the western boundary will no longer be affected by the proposed retaining wall as the level of the ground floor area has been lowered to a level slightly above existing soil levels.

The subject Jacaranda is to be indicated on the plans. Amended plans are to be submitted prior to the release of the CC. (Refer Condition No70)

Impact on Trees

The proposed driveway will impact on a Eucalyptus nicholii (Small Leaved Peppermint) 12 metres high in fair condition located on the eastern boundary near the front entrance. It is likely that the construction of the driveway will have an adverse impact on the subject tree however, as it is considered to be of moderate landscape value no objection is raised.

Landscape Proposal

The landscape plan is conceptual only and a more detailed plan will be required to be submitted prior to the release of the Construction Certificate. (Refer Condition No 71)

There is sufficient space for screen planting for the proposed development at the rear of the existing dwelling. However, screen planting along the sides of the existing dwelling is limited due to the proposed driveway and path. It should be noted however, that in relation to screen planting along the sides of the existing dwelling, the proposed changes will not have any more impact on the adjoining properties than the existing situation. Planting forward of the existing dwelling will be increased substantially.

The Landscape section has advised that they will support the application, subject to conditions which have been included within the recommendation (**See Conditions Nos 48-49, 71-78, 84-87 & 100**).

Heritage/Urban Design

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

This house is a substantial well built house and included as a contributory item in the draft Ku-ring-gai Avenue Conservation Area.

My initial concern with this site was the proposed demolition of the existing house. From a heritage management point of view, demolition of a contributory item should be avoided. Now that the application was amended to retain it and adapt for 2 dwellings and add new buildings at the rear, my concerns are largely abated.

Item 4

The earlier SEPP 5 application, was referred to Council's Heritage Committee and no issues were raised. This application in comparison to the original application amends the layout to provide better solar orientation. The new layout would provide comfortable dwellings and allow retention of the existing house. However I have the following concerns:

Existing windows to be restored with double glazing. *This is a preferred option, however, as no detail is provided, I am concerned at how this is to be achieved. I would suggest a new window and frame be installed on the inside that is simple in design so that the original windows will not be compromised. I suggest a condition be inserted so that details be submitted to heritage advisor for approval to his satisfaction. (Refer Condition 51).*

Conversion of entry into bathroom. *I understand this amendment was done to allow a better orientation and layout for the dwelling. I have no objection, but I am concerned with the detail and design of the new windows on the front façade and suggest a condition be inserted so that details of the new work be submitted to heritage advisor for approval to his satisfaction (Refer Condition 52).*

Demolition. *A lot of internal fabric is proposed to be removed, including the stair. I accept that given its status as a contributory item in a Conservation area, the interiors are not specifically included and that it would be difficult to retain. I recommend that photographic recording to Heritage Council Guidelines be undertaken before any work commences (Refer Condition 53).*

Fence. *There is a note to restore the existing fence. Details should be sought as the drawings do not indicate a fence anything like the existing. I suggest details should be sought as a condition to be subject to the satisfaction of the Heritage Advisor (Refer Condition 6).*

In conclusion, I find the heritage issues largely acceptable and suggest the above be inserted in any approval as conditions.

Engineering

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

No engineering objections, subject to imposition of engineering Conditions.

This application was lodged well before Water Management DCP 47 came into force and accordingly will be assessed and conditioned in accordance with the now superseded Stormwater Management Manual.

This assessment assumes no subdivision is proposed under this DA.

Item 4

Comments are offered on the latest plans as follows [NB. The comments made by Council's Development Control Engineer on the previous plans have been attached to this report (Refer Attachment A)]:

Vehicle Access

The Applicant has further modified the proposal to include a revised central median in Ku-ring Gai Avenue to prevent vehicles driving through the Pacific Hwy/Ku-ring Gai Ave intersection. I have liaised with Council Traffic /Design Engineers regarding the concept design and they have raised no objections. A condition is to be placed requiring the Applicant to submit a detailed design for Roads Act approval (prior to Construction Certificate) (Refer Condition 66).

Vehicle accommodation comments

Revised parking layout for unit 1 garage is somewhat unconventional, however, complies with the Australian Standard 2890.1 – 2004 "Off-Street car parking". Given its broad dimensions, vehicles will be able to access and egress these spaces with a maximum three point turn, which is acceptable for residential situations.

Dimensions of other parking spaces comply with the requirements of the relevant State Environment Planning Policy in that minimum carspace dimensions meet or exceed 6m x 3.2m. Aisle widths comply with Australian Standard 2890.1 – 2004 "Off-Street car parking". Driveway widths comply with Australian Standard 2890.1 – 2004 "Off-Street car parking". A passing area has been provided at the vehicular entry point to the site and the grade in this location is acceptable. A convex mirror will be required (conditioned) at strategic location on the driveway to inform ingress and egressing vehicles of each other's presence (Refer Condition 69).

Internal Waste collection area is not required, as the number of units is less than seven.

Driveway grades and transitions comply with Australian Standard 2890.1 1993 – "Off street Car Parking ". A condition will be imposed so that the development satisfies the requirements of the relevant State Environment Planning Policy in that minimum headroom of 2.5m has been provided (Refer Condition 98).

The number of parking spaces at 14 exceeds the requirements of the State Environment Planning Policy (9 spaces) based on 0.5 spaces per bedroom (18 Bedrooms). It is envisaged, given the width of the parking spaces at 3.2 metres and the generous aisle width, that all vehicles will be able to leave the site in a forward direction with a three-point turn.

Accordingly, the proposed vehicle access and accommodation arrangements are considered satisfactory for approval, subject to the conditions shown in this response.

Item 4

Flooding and Overland comments

The site is located in a localised high point within the catchment and accordingly the potential impact of overland flows is negligible. No further comments necessary.

Impacts on Council Infrastructure and associated works – comments

Works required under this DA on Council Land will include those associated with the construction of the new driveway crossing. An RTA requirement for the driveway exit is that “All exiting vehicles are to be left out only” (refer RTA integrated referral response dated 15th November 2002, reference CAC 02/4163). In this respect and as discussed above, I will condition that a central concrete median strip be constructed in Ku-ring Gai Avenue, to prevent vehicles driving into the intersection and hence enforcing this requirement. The Applicant is to submit (via condition) a detailed design for this median, to be approved prior to issue of the Construction Certificate. These works must be approved under section 138 the Roads Act 1993. (Refer Condition 66)

A bond of \$15,000 (via Condition No 67) will be applied to this development based on the large scale of the works and potential for damage to Council property, including frontage roads, kerbs. The bond will also cover any incomplete works required under this consent including completion of the central median.

Site drainage comments

Council on-site detention and drainage requirement to be applied via conditions as shown. (Refer Conditions 60-63, 93-94)

Geotechnical / Structural Comments

This proposal will involve a substantial level of excavation for the basement level. There is not a large offset for the excavations from the southern boundary. It is expected that these excavations may be in the zone of influence of neighbouring property. To ensure that the method of excavation and construction (including temporary and permanent support measures) are satisfactory for the type of construction and the founding material on the site, a geotechnical investigation and report is to be carried prior to any excavations, and prior to the Construction Certificate being issued. (Refer Conditions 41 & 82). Excavations are to be carried out by a contractor with excavation experience, in accordance with the recommendations of the submitted geotechnical report. This condition on is also included (Refer Condition 82).

Council’s Development Control Engineer has reviewed this application and subsequent reports submitted by the applicant and is not convinced that the access point will provide safe ingress/egress to the site. However, as the RTA have indicated that the proposed SEPP 5 would not make the existing vehicular access point ‘any worse or less desirable’ and that they would not support an access point from Pacific Highway, Council’s Engineer is prepared to accept the use of the existing driveway, subject to the imposition of conditions as noted above.

Item 4

CONSULTATION - OUTSIDE COUNCIL

NSW Police Service

The original application was referred to the NSW Police Service for comment. A letter was received by Council dated 11 October 2002 from the Acting Sergeant, Ku-ring-gai Traffic Services, NSW Police Service. This letter states that “*in principal there are no Police objections*”. However to protect pedestrian safety, it is requested that any approval require an accredited traffic control person to assist pedestrians crossing the driveway during demolition and construction.

A Construction Traffic Management Plan and accredited traffic control person are required by a condition of consent (**Refer Condition 83**).

Roads and Traffic Authority

The original application was referred to the Roads and Traffic Authority (RTA) for comment, given that the proposal adjoins a classified road. A letter was received by Council from the RTA's Landuse Development Manager dated 15 November 2002. This letter identified a number of matters to be considered by Council in the assessment of the proposal. Council's Development Control Engineer has considered this letter and comments and has recommended appropriate conditions (**refer Conditions Nos 42, 45, 66, 69 & 83**).

A subsequent letter from the RTA's Development Assessment Manager dated 24 June 2003 states:

The RTA's well considered opinion is that it would be less safe for all road users to provide vehicular access to the development from Pacific Highway than Ku-ring-gai Avenue...The alternative access location on Pacific Highway is not favoured or preferred by the RTA and concurrence for this alternative access would not be granted.

Given that the revised plans do not alter the arrangement for vehicle access or egress from the site and the comments provided above, the revised plans were not referred to the RTA for comment.

STATUTORY PROVISIONS OF RELEVANT LEGISLATION

State Environmental Planning Policy No. 5

The application for the construction of six dwellings has been made under the provisions of State Environmental Planning Policy No 5. The proposal is permissible with Council's consent pursuant to Clause 4(1)(b)(iv) SEPP 5 as the subject allotment is zoned Residential 2 (C2).

Clause 12 lists matters for consideration that must be satisfied before development consent can be granted.

Clause 13 specifies development standards. A summary of compliance with Clauses 12 and 13 is included in the following table:

Item 4

Clause	Standard	Compliance
Clause 12(1), (2)	Access to shops, banks, other retail and commercial services, community services and recreation facilities and the practice of a general medical practitioner.	YES. A wide range of retail, commercial and medical services are available in easy walking distance at Turramurra. A limited range of grocery items are also available from the Mobil service station located adjacent to the site. Community and recreational services (eg library, park) are also available in local area. The Turramurra bus/rail interchange is located within 400m of the site.
Clause 12(2A)	Reasonable access to home delivered meals, personal care and home nursing and assistance with housework.	YES. The original Access Assessment Report (dated 26 August 2002) indicates the availability of these services on a user-pays basis.
Clause 12(3)	Availability of facilities and services when housing is ready for occupation.	NOT APPLICABLE. Given the small scale of the proposed development, no services are being provided on-site.
Clause 12(4)	Water and sewer	YES. Correspondence from Sydney Water has been submitted confirming the requirements to enable such provisions.
Clause 13(2)	Maximum height of 8 metres or less. A building adjacent to a boundary of the site must not be more than 2 storeys in height	YES. The buildings will not exceed two storeys or 8 metres in height.
Clause 13(3)	Site frontage of at least 15 metres width	YES. The site has a frontage to Pacific Highway of 21.5 metres and a total frontage of 25.28 metres.

Clause 13A lists development standards specifically relating to access and useability that must be complied with before development consent can be granted.

Clause	Standard	Compliance
Clause 13A(2)(a) Wheelchair access	100% of dwellings have access to public road or internal road/driveway OR 50% where internal gradient exceeds 1:10	YES. The Access Report indicates that this is achieved via the covered walkway and lift.

Item 4

Clause 13A(2)(b)	10% of dwellings satisfying Clause 13A(2)(a) to have wheelchair access to a public road	YES. 100% of the dwellings will have wheelchair access to Ku-ring-gai Avenue
Clause 13A(2)(c)	Wheelchair access to be available to all common areas and facilities associated with the development	YES. The Access Report indicates that a ramped path provides access to the communal garden.
Clause 13A(2)(d)	10% of dwellings satisfying clause 13A(2)(a) to have wheelchair access to essential areas in the dwelling	YES. Unit 4 will satisfy this requirement.
Clause 13A(4)	Security Lighting	YES. (Refer Condition 11).
Clause 13A(5)	Letterboxes	YES. A central location is proposed for the letterboxes which is adjacent to the street entry and accessible. Condition 12 requires the letterboxes to be lockable.
Clause 13A(6)	Car parking dimensions regarding size, clearance and garage door.	YES. The access report and assessment of the proposal indicates the carparking meets such requirements, subject to conditions (Refer Conditions 13 & 98).
Clause 13A(7)	Accessible entry	YES. The access report and assessment of the proposal indicates the proposal meets such requirements, subject to condition (Refer Condition 13).
Clause 13A(8)	Key access	YES. (Refer Condition 13)
Clause 13A(9)	Interior dimensions	YES. The Access report indicates that the interior dimensions meet this requirement.
Clause 13A(10)	Living room and dining room	YES. The access report and assessment of the proposal indicates the proposal meets such requirements, subject to condition (Refer Condition 13).
Clause 13A(11)	Kitchen standards	YES. The access report and assessment of the proposal indicates the proposal meets such requirements, subject to condition (Refer Condition 58).
Clause 13A(12)	Main bedroom standards	YES. The access report and assessment of the proposal indicates the proposal

Item 4

		meets such requirements, subject to condition (Refer Condition 13).
Clause 13A(13) and (14)	Bathroom standards and accessible toilet	YES. The access report and assessment of the proposal indicates the proposal meets such requirements, subject to condition (Refer Condition 58).
Clause 13A(15)	Access to kitchen, main bedroom, bathroom and toilet	NOT APPLICABLE. The application does not propose multi storey self contained dwellings. .
Clause 13A(16)	Laundry standards	YES. The access report and assessment of the proposal indicates the proposal meets such requirements, subject to conditions (Refer Condition 13).
Clause 13A(17)	Storage standards	YES. The access report and assessment of the proposal indicates the proposal meets such requirements, subject to condition (Refer Condition 13).
Clause 13A(18)	Door handles	YES. The access report and assessment of the proposal indicates the proposal meets such requirements, subject to condition (Refer Condition 13).
Clause 13A(19)	Surface finishes	YES. (Refer Condition 13)
Clause 13A(20)	Ancillary items	YES. (Refer Condition 13)
Clause 13A(21)	Garbage	NO. A garbage storage room is provided in the basement. A SEPP 1 objection has been submitted.
Clause 13A(22)	Public housing provision	NOT APPLICABLE.

In light of the proposal's non-compliance with Clause 13A(21) (location of garbage storage room), the applicant has submitted an objection under the provisions of State Environmental Planning Policy No 1.

a. What is the underlying object or purpose of the development standard

The object or purpose of the standard is unclear beyond requiring the development to include a provision for the storage of garbage outside. The standard does not specify outside 'what' the provision is to be located nor does it indicate the reasons it should be outside. Given the garbage storage area is proposed within the basement garage, it cannot be deemed to be 'outside' as required by the standard.

It is assumed that the purpose for requiring the storage area to be outside is to ensure appropriate health standards for the future residents and easy access to all residents.

Item 4

b. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

The storage area proposed is located in the basement garage and will be provided with ventilation and separation from the garages through the provision of a door. This location will enable the garbage area to be accessed by all future residents of the development and ensure adequate health standards within the dwellings, therefore meeting the underlying objectives of the standard. Strict compliance with the standard is therefore unnecessary and unreasonable.

c. *Is the granting of consent to the development application consistent with the aims of the policy set out in cl 3?*

Yes, the granting of consent to the development application is consistent with the objects set out in Clause 5 of the Environmental Planning and Assessment Act 1979. Strict compliance with the standard would require an outside storage area, which given the proposal and site, would likely be located forward of the existing dwelling, thus resulting in restriction of views to the existing dwelling which has heritage value.

Clause 14 includes development standards that cannot be used as grounds for refusal of an application where the proposal complies with specified criteria. A summary of compliance with this clause is provided as follows:

Clause	Standard	Proposed	Compliance
Clause 14(a) Building Height	8 metres or less in height	6.7 metres for the existing dwelling & 6.68 metres to new dwelling	YES
Clause 14(b) Density and Scale	Floorspace ratio of 0.5:1	0.509:1	NO
Clause 14(c) Landscaped Area	Landscaped area of 35sqm per dwelling	Total 630.5m ² or 105.08m ² per dwelling	YES
Clause 14(d) Parking	0.5 spaces per bedroom (studies are treated as bedrooms) therefore (6 x 3) x 0.5 = 9	12 spaces proposed	YES
Clause 14(e) Visitor Parking	The proposed development is less than 8 dwellings, but is situated on a clearway	2 visitors spaces provided	YES
Clause 14(f) Landscaped Areas	Area which is not built upon, paved or otherwise sealed having soil of sufficient depth to support the growth of trees and shrubs, an area of width	An area of approximately 272sqm is provided at the rear.	YES

Item 4

	(21.3) x 15% of length (75) = 239sqm. Preferably located at rear.	Additional areas at front of site.	
Clause 14(g) Private open space	15sqm for dwellings at ground level	All dwellings are provided with an area which exceeds the requirement.	YES
	With an area of 3m x 3m and accessible from a living area.	The terraces provided to the ground floor unit within the existing dwelling is not accessible from the living room.	NO

Non compliance with FSR standard

In light of the proposals non-compliance with Clause 14(b) the applicant has submitted an objection under the provisions of State Environmental Planning Policy No 1.

a. *What is the underlying object or purpose of the development standard*

The object or purpose of the standard is not stated; however given this is a standard which cannot be used as a ground for refusal, if compliance is achieved, the purpose of the standard is to establish a “benchmark” for density and scale. In the instance that a consent authority considers the resultant development inappropriate (in the case that it does not achieve compliance) it may refuse the development application.

b. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

Compliance with the standard would result in a gross floor area of 825.5 m², whilst the proposal entails a gross floor area of 840.77 m², a variance of 15.27 m². Whilst it may be possible to revise the proposal to enable compliance, such revisions are unlikely to be visually evident when viewing the proposal from the street or adjoining properties. The properties within the immediate vicinity of the site are generally characterised by large prestigious dwellings and the proposal is consistent with this character.

Item 4

Given that the standard seeks to benchmark the density and scale, the aims of the SEPP seek to ensure design that is sympathetic to the surrounding area and the area consists of large developments, the proposal will achieve development consistent with the overall aims of the SEPP and the standard.

Consequently, compliance with the standard would be unnecessary in the circumstances of the case.

c. Is the granting of consent to the development application consistent with the aims of the policy set out in cl 3?

Yes, the granting of consent to the development application is consistent with the objects set out in Clause 5 of the Environmental Planning and Assessment Act 1979.

Non compliance with private open space standard

In light of the proposal's non-compliance with Clause 14(g) the applicant has submitted an objection under the provisions of State Environmental Planning Policy No 1.

a. What is the underlying object or purpose of the development standard

The object or purpose of the standard is not stated; however it requires a minimum of 3 metre wide x 3 metre long open space area accessible from a living area located on the ground floor of a dwelling. It is therefore seeking to provide area deemed sufficient in size and accessibility for its purpose.

Given this is a standard which cannot be used as a ground for refusal, if compliance is achieved, the purpose of the standard is to establish a "benchmark" for private open space. In the instance that a consent authority considers the resultant development inappropriate (in the case that it does not achieve compliance), it may refuse the development application.

b. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Unit 2 is provided with two open space areas (Eastern terrace 2.9 x 5.9 metres and western terrace 3.7 x 3.3 metres) on the northern side of the existing dwelling. However due to the constraints of retaining the existing dwelling and making the best practicable use of solar heating by locating the living rooms on the north-eastern side of the dwelling, the open space area, accessible from the living area, does not meet the minimum requirements.

The second terrace, providing private open space to this unit which is accessible via the entry, does meet the minimum requirement.

The area provided, that is accessible from the living areas, is sufficient in size to provide a table and two chairs. The proposed dwelling is provided with sufficient private open space for the purpose of the development given that the total open space area exceeds the minimum of 15sqm in total by 9.81sqm. Additionally, the primary balcony access from the living room has a depth of 2.1 metres

Item 4

and therefore exceeds the 2.0 metre minimum depth requirement as recommended in 'The Residential Flat Code'.

c. *Is the granting of consent to the development application consistent with the aims of the policy set out in cl 3?*

Yes, the granting of consent to the development application is consistent with the objects set out in Clause 5 of the Environmental Planning and Assessment Act 1979.

Given the nature and purpose of the standard, the granting of consent to a proposal which marginally exceeds that standard but where there is almost complete compliance with all other provisions of SEPP5 and where compliance would have no discernable effect on amenity either for the future occupiers of the development or for adjoining residents, would not be inconsistent with the aim of SEPP1 which is *"to provide flexibility in the application of planning controls"*

Clause 19 of SEPP 5 is relevant as the proposed development is within the vicinity of a number of heritage items (as listed in Schedule 7 of the Ku-ring-gai Planning Scheme Ordinance 1971).

However, these items are of local significance and, therefore, consultation with the Heritage Council is not required. The listed heritage items include:

- 1 Ku-ring-gai Ave, Turrumurra;
- 8 Ku-ring-gai Ave, Turrumurra;
- 12 Ku-ring-gai Ave, Turrumurra;
- 17 Ku-ring-gai Ave, Turrumurra;
- 26 Ku-ring-gai Ave, Turrumurra; and
- 1312 Pacific Hwy, Turrumurra.

In addition, the site is proposed to be included within a Heritage Conservation Area as proposed by draft Local Environmental Plan No 21. This draft LEP has, however, not yet been gazetted. Notwithstanding, the Statement of Heritage Impact prepared by Robert Irving concludes that the proposed development:

"will not compromise the acknowledged heritage significance of the Conservation Area of which it is part" and *"that the effect upon the existing property is benign"*.

A site analysis plan and written statement have been submitted (drawing 14600 Rev D) in accordance with **Clause 24** of SEPP 5.

Clause 25 of SEPP 5 requires that consent must not be granted unless Council is satisfied that adequate regard has been given to the following design principles.

(a) Neighbourhood amenity and streetscape

The retention of the existing dwelling means that the proposed development will have little visual impact on the surrounding streetscape of Ku-ring-gai Avenue. As noted by Council's

Item 4

Heritage and Urban Design Advisor, the character of the area relies on the predominant roofing and walling materials and it is proposed that this architectural theme be incorporated into the development via a condition of consent (**refer Condition No 50**).

The proposal will, however, be visible from Pacific Highway, with views obtained through the existing service station. The proposed building to the rear of the existing dwelling is well articulated and will be partially screened by the existing building on the adjoining service station. The revised plans provide for a 2.0 metres setback to the basement garage and a minimum setback of 2.75 metres to the wall of the proposed structure, thereby providing sufficient area to sustain softening vegetation.

(b) Visual and acoustic privacy

The subject site is adjoined by three residential properties, No 2 Ku-ring-gai Avenue, No 4 Ku-ring-gai Avenue and 1A Turrumurra Avenue.

No 2 Ku-ring-gai Avenue has a minimum setback of approximately 1.5 metres to the common boundary with the subject site. There are a number of windows in this dwellings western elevation, however, these are on the first floor and are to bedrooms. The open space area between the common boundary and the dwelling is a side access and is unlikely to be impacted by the proposal.

No 4 Ku-ring-gai Avenue has a minimum setback of approximately 1.5 metres from the garage to the common boundary with the subject site. The western elevation of the dwelling on this site does not contain any windows and a large proportion of this elevation is the attached garage. The proposed development is aligned with the front garden and garage of the dwelling at 4 Ku-ring-gai Avenue and is unlikely to adversely impact the privacy or amenity of this property.

No 1A Turrumurra Avenue is located within close vicinity to the common boundary with the subject site, however, supports significant screen adjacent to this boundary. The proposal is set back over 10.0 metres to the wall of the building and 7.0 metres to the verandah from the common boundary. The setback of the proposal, existing screening vegetation and proposed screening vegetation will ensure the privacy of the adjoining property will be maintained.

The proposed development is set well back from the adjoining residential development on the northern and eastern boundaries, with the setbacks varying from 4.6 metres to 9.9 metres to the wall and 2.2 metres to 6.7 metres to the terraces, therefore it will not have a significant impact on the visual or acoustic privacy of these properties. The provision of a planter box on the verandah of Unit 6 adjacent to the dwelling on the adjoining property (2 Ku-ring-gai Avenue) will also assist in ensuring adequate levels of privacy are maintained. To further enhance this privacy, a condition requiring screen planting attaining a height between 4.0 and 6.0 metres adjacent to the northern and eastern boundaries is proposed (**refer Condition 72**).

The proposal has been revised to enable acoustic and visual privacy between the units by ensuring bedrooms do not adjoin living areas in adjoining units, windows to bedrooms are not

Item 4

accessible from the common pathway and increased sill heights have been provided to rooms where they have the potential to overlook or be overlooked from adjoining units. Such revisions have resulted in a development that will achieve an acceptable level of amenity for the future residents.

Windows on the western elevation have been minimised, thereby reducing the exposure to traffic noise from Pacific Highway.

(c) Solar access and design for climate

All units enjoy natural solar access and opportunities for cross ventilation. Each of the proposed units achieves a NatHERS rating of 3.5 - 4 Stars.

The revised plans include modification to the layout of the units contained within the existing dwelling to enable a high level of solar access and internal amenity.

The shadow diagrams submitted with the application demonstrate that afternoon shadows will fall on the adjoining residential development to the east only after noon during the winter solstice. The shadow cast during this time will have a maximum extent of 4.0 metres on the rear private open space area of 2 Ku-ring-gai Avenue and the front garden of 4 Ku-ring-gai Avenue, effecting less than 4.0 metres of the northern elevation at 2 Ku-ring-gai Avenue. The shadow cast on the front garden of 2 Ku-ring-gai Avenue at this time is from the existing dwelling. The proposal will not adversely impact the amenity enjoyed by No 2 or 4 Ku-ring-gai Avenue and complies with the accepted standards.

(d) Stormwater

Council's Development Control Engineer has provided comments and conditions in relation to the proposed stormwater disposal concept. The stormwater will be directed to Council's existing stormwater system in Ku-ring-gai Ave, via roof collection and basement sump. The increased run off is to be dealt with by an onsite detention system.

(e) Crime prevention

Units 1 & 2 will have views of Kur-ring-gai Avenue and Pacific Highway and approaches to the site. Occupants of all units will be able to view the approaches to their front door.

(f) Accessibility

Due to the topography of the site and the location of the proposed dwellings and driveway, the proposed development will have convenient, attractive and safe pedestrian links to public transport and local facilities and services. Access to parking for residents is available along one continuous path of travel.

(g) Waste Management

Item 4

Waste management will be required to comply with Council's DCP 40. The Statement of Environmental Effects states:

"Arrangements would be made for a contractor (probably the person responsible for maintenance of the grounds and common areas) to remove bins from the storage area to the kerbside for collection by Council's normal collection services."

Appropriate provision has been proposed to ensure recycling can be maximised as required by the SEPP.

The objective of Part 3 of SEPP 5 is "to establish a process that encourages good design in residential development allowed by this Policy". The proposed development responds to the subject site and contributes to the streetscape character.

State Environmental Planning Policy No 55 – Remediation of Land

An Environmental Site Assessment has been prepared by Environmental Investigations to determine whether there is any hydrocarbon contamination which may have migrated to the site from the adjacent service station.

Following a range of site investigations, the assessment concludes that:

"the site presents no risks to human health, the environment or the aesthetic enjoyment of the land, and is suitable for the proposed residential land use."

On this basis, remediation of the site is not required and the site is suitable for the proposed use therefore meeting the requirements of SEPP 55.

Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River

The site is within the catchment of the Hawkesbury River and, as such, the land and development are subject to the provisions of this environmental planning instrument. The aim of SREP20 is to

"protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context."

The SREP requires consideration of a number of matters such as water quality, water quantity, flora and fauna, wetlands and heritage etc.

The proposed development is considered to meet the general strategies of the SREP, however Clause 6 (4) sets out strategies for water quantity whereby the reuse of water is encouraged wherever possible. As the development consists of a new structure and new stormwater disposal provisions, it is recommended that the provision of rainwater tanks or similar be incorporated to enable the reuse of stormwater for irrigation purposes. Appropriate conditions are recommended to control runoff and sediment from the site during construction, reuse water for irrigation purposes and detain stormwater through an on-site detention system (**refer Conditions Nos 64 & 81**).

Item 4

Ku-ring-gai Planning Scheme Ordinance, 1971

There are no development standards applicable to this development pursuant to KPSO. Further, SEPP 5 specifically sets aside any planning controls of the KPSO which would prevent a development that is compliant with the standards and considerations of the SEPP.

Schedule 9 of the Planning Scheme Ordinance sets out aims and objectives for residential zones, which are still applicable to the proposed development. These aims and objectives refer to such matters as streetscape character, amenity, solar access, tree replacement etc. These matters are also referred to in SEPP 5 and assessment of the proposed development against such has been undertaken elsewhere in this report.

Clause 61E of the Planning Scheme Ordinance relates to development in the vicinity of heritage items. The following items are located in close proximity to, but do not adjoin, the subject site:

- 1 Ku-ring-gai Ave, Turrumurra;
- Mildura, 8 Ku-ring-gai Ave, Turrumurra;
- Shalimar, 12 Ku-ring-gai Ave, Turrumurra;
- Wychwood, 17 Ku-ring-gai Ave, Turrumurra;
- Shalimar, 26 Ku-ring-gai Ave, Turrumurra; and
- Brampton House, 1312 Pacific Hwy, Turrumurra.

The proposed development is consistent with the existing development on-site and is sympathetic to the surrounding draft conservation area. Therefore, it is considered that the proposed development will not directly impact on any of these heritage buildings.

Draft Ku-ring-gai (Heritage Conservation) Local Environmental Plan No 21

The aim of Draft LEP 21 is to formally recognise three urban conservation areas within the Ku-ring-gai Local Government Area. The subject site falls within the proposed Turrumurra Urban Conservation Area. The development is sympathetic to the character of the Conservation Area.

POLICY PROVISIONS

Development Control Plan No. 31 – Access

Access within the development has been considered in relation to clause 13A of SEPP 5. The information contained within the applicant's Statement of Environmental Effects and Access Report is considered satisfactory. The proposal meets the requirements of the DCP.

Development Control Plan No. 40 – Waste Management

The proposed development complies with the provisions of DCP40. A Waste Management Plan has been submitted in accordance with the DCP and this covers both the demolition and construction phases. On-going waste management will be in accordance with Council's regular

Item 4

kerb side collection. A garbage room is provided within the basement of the proposed development.

Development Control Plan No. 43 – Car Parking

This DCP has been considered, and the proposal complies with SEPP 5 in relation to number of parking spaces. SEPP 5 overrides Council’s parking DCP. The proposal meets the requirements of the DCP

Development Control Code 1/2003 – Housing for Older People or People with a Disability

Council’s Code includes reference to the statutory development standards of SEPP 5 in relation to height, density, landscaped area and parking. The Code also provides guidelines relating to standards considered by Council to be more appropriate to the Ku-ring-gai area.

The following table presents an analysis of the development against the provisions of Council’s Code:

Control	Proposed	Compliance
Zoning	Residential	YES
500m to local shops	Approx 270m	YES
250m to public transport	Approx 160m	YES
Site analysis required	Matter addressed in SEPP 5 assessment	YES
SEPP 5 development standards	Matter addressed in SEPP 5 assessment	YES
Sympathetic design	Matter addressed in SEPP 5 assessment	YES
Buildings to address street	Matter addressed in SEPP 5 assessment	YES
Minimise visual impact of driveway	Existing driveway crossing retained	YES
No bland building facades	Existing building retained. Additions well articulated.	YES
Emphasise entry	Each dwelling is provided with an entry way that can be clearly identified upon entering the site.	YES
Match setbacks	Existing building retained.	YES
Level private open space	Each dwelling is provided with a terrace/courtyard easily accessible from the living areas.	YES
1.8 metres high courtyard fences	Fences and walls are to be provided as required.	YES
Living areas linked to open space	Private open spaces are linked to the main internal living areas of their respective dwellings.	YES
Landscaping to enhance and screen	Landscaping is to be provided to embellish that which exists on the site.	YES
Significant trees	Addressed in “Consultation within	YES

Item 4

	Council".	
Car parking to meet demand	Addressed in SEPP 5 assessment.	YES
Energy efficiency	Dwellings and private open space are well orientated to enable adequate ambient light and sunlight penetration.	YES
Privacy	Addressed in SEPP 5 assessment.	YES
Lighting	Addressed in SEPP 5 assessment.	YES
Waste collection	Addressed in SEPP 5 assessment.	YES
Letterboxes, TV antenna, services, house numbers	Lockable letterboxes are provided adjacent to the main pedestrian entry.	YES
Covered entry porch	Each dwelling is provided with a covered accessible entry.	YES
Internal space location, wall length, hobby space and eating areas	All dwellings are of generous size to accommodate a range of occupancy requirements.	YES
Bedroom design	All bedrooms are easily accessible	YES
10% adaptable housing	Addressed in SEPP 5 assessment.	YES
Support services	Support services are available to the proposed development depending on the needs of the likely occupants.	YES

Likely Impacts

Potential impacts associated with the proposed development relate primarily to the construction phase. These impacts are short-term and can be appropriately managed. A detailed Sedimentation and Erosion Control Plan and a Construction Traffic Management Plan are required by a recommended condition of consent to ensure impacts are minimised (**refer Condition No 83**).

Potential privacy and overshadowing impacts have been discussed previously in this report and it is concluded that these will not be significant.

Appropriate conditions of consent are also recommended requiring appropriate landscaping to reduce the visual impact of the proposal from the adjoining properties (**refer Conditions Nos No 72 &100**).

The traffic generated by the proposed development is estimated to be between 6-12 trips per day. If the trips currently generated by the existing dwelling are subtracted, the likely additional traffic will not be significant and can be easily accommodated by the existing road network.

Suitability of the Site

The site is appropriate for a SEPP 5 development. There are no site building hazards such as bushfire, flooding or land contamination and the site is not located within an area identified as being environmentally sensitive. The site is close to public transport services.

Item 4

Concerns have been raised by Council's Development Engineer regarding the suitability of the existing driveway in terms of safety and ease of maneuverability. However, based on advice from the RTA, the proposed arrangement is accepted.

Site investigations have shown that the site is not contaminated.

The site is not identified as Bushfire prone.

The site has previously been extensively cleared and is not occupied by urban bushland. No threatened species of flora or fauna have been identified.

Any Submissions

Submissions received in response to the original and revised application have been addressed under 'Consultation- Community' above .

Public Interest

The aims of SEPP 5 include the provision of housing that will increase the supply and diversity of housing that meets the needs of older people or people with a disability, make efficient use of existing infrastructure and be of good design. The proposed development will meet all these aims.

Any other Relevant Matters Considerations Not Already Addressed

Section 94 contributions will be payable prior to the release of a Construction Certificate to the value of \$22 339 (5 x \$4467.80) for the additional 5 dwellings proposed (**See Condition 57**).

CONCLUSION

Having regard to Section 79C of the Environmental Planning and Assessment Act 1979 the proposed development will provide a housing choice in an appropriate building form and provide a high level of amenity for people over the age of 55 and people with a disability. Additionally, the proposal will not result in any significant impacts, subject to compliance with the recommended conditions. It therefore meets the aims and objectives of State Environmental Planning Policy No 5.

RECOMMENDATION

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

Item 4

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:
 - 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:

Item 4

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:
 - 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.

Item 4

- 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 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.

Item 4

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, 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.

Item 4

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.
30. 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
 - 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.

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

Item 4

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 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.

Item 4

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.
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 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.

Item 4

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

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 be 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

Item 4

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 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.

Item 4

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

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.

Item 4

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 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).

Item 4

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

Item 4

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 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

Item 4

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.

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.

Item 4

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.

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.

Item 4

- 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 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

Item 4

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.

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

Item 4

- 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

- 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.

Item 4

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	Radius in Metres
<i>Liquidambar styraciflua</i> (Liquidambar) Southern boundary near front entrance.	3 metres

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:
- Construction of the new driveway crossing and layback in accordance with the levels and specifications issued by Council,
 - Any sections of damaged grass verge are to be fully replaced with a non-friable turf of native variety to match existing.
 - 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,

Item 4

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 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.

Item 4

- 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
- 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).

Item 4

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
 - 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.

R Josey
**Acting Team Leader,
Wahroonga Ward**

M Prendergast
**Manager
Development Assessment
Services**

M Miocic
**Director
Development &
Regulation**

62A TO 64A KILLEATON STREET, ST IVES - SUPPLEMENTARY REPORT

EXECUTIVE SUMMARY

PURPOSE OF REPORT:	To address matters raised at the site inspection of 13 November 2004 and for Council to determine a Development Application for the demolition of existing structures and construction of a Seniors Living development of 10 units.
BACKGROUND:	Council at its meeting of 9 November 2004 deferred consideration of the application pending a site inspection.
COMMENTS:	The matters raised at the site inspection are addressed in this report.
RECOMMENDATION:	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 November 2004 and for Council to determine a Development Application for the demolition of existing structures and construction of a Seniors Living development of 10 units.

BACKGROUND

An assessment report was prepared and considered by Council on 9 November 2004 where Council resolved to defer determination pending a site inspection. The site inspection was carried out on Saturday, 13 November 2004. The following matters were raised at the site inspection and are addressed accordingly:

1. Height of the building

Councillors expressed concern with respect to the number of storeys proposed and the overall height of Building 2 in relation to No.58 Killeaton Street, St Ives.

Response: The ridge level of Building 2 is RL170.80, with an eave of RL167.93. The ridge level of No.58 is RL166.9, with an eaves level of RL164.9. Whilst the height of Building 2 is higher than No.58, the ground does slope from Building 2 down to No.58 Cowan (by at least 1 metre). Furthermore, the setback provided on this boundary is of sufficient distance to ensure that the height difference will not be dominant in the context of the surrounding built environment.

2. Trees

The trees to be removed on 62A Killeaton Street were identified. Councillors requested that Council's Landscape Assessment Officer provides reasons for the recommendation for the removal of these trees.

Response: There are 3 x *Taxodium distichum* (Swamp Cypress) 9 to 13 metres high located on the western boundary. Two of the Cypress are in poor to fair condition, with evidence of dieback within the canopy and the other has been incorrectly pruned in the past which has resulted in an unstable branching structure. The long term retention of these trees, regardless of the proposed development, is not considered viable.

There is also an *Ulmus sp.* (Elm) 12 metres high located at the rear of Building 2. This has low landscape value, as does the *Bauhinia sp.* (Butterfly Bush) 8 metres high, and both are in fair condition.

Located at the rear of Building 2 is a *Cedrus deodara* (Himalayan Cedar) 14 metres high, with crown lifted to 4 metres. Pruning in the past has altered the natural form of the tree decreasing its landscape value. This tree would more than likely survive the impact of the proposed works and could potentially be retained. However, the ad-hoc nature of the existing tree planting along the southern boundary has resulted in over-crowding leading to suppressed canopy growth. The long term retention of this tree is not considered viable.

Item 5

DA0458/04
29 November 2004

2 x *Prunus sp.* (*Prunus*) 4 to 6 metres high in good condition. Low landscape value.

Pittosporum eugenioides 'Variegata' (*Variegated Tarata*) 8 metres high in good condition but low landscape value.

Ficus microcarpa 'Variegata' (*Variegated Hills Weeping Fig*) 9 metres high and in good condition. Low landscape value. This is not considered an appropriate species for suburban gardens due to its very dense, massive, canopies and invasive roots.

Castanospermum australe (*Moreton Bay Chestnut*) 12 metres high and in fair condition. There is evidence of dieback in the canopy. The long term retention of this tree, regardless of the proposed development, is not considered viable.

Therefore, a total of 13 trees are to be removed, with only 1 of the trees, the *Cedrus deodara* (*Himalayan Cedar*), considered to have any landscape value. For reasons discussed above the long term retention of this tree is limited. A total of 14 trees are to be retained, 8 of which are located at the rear of Building 2, with another 10 trees, that attain a height of 13 metres, to be planted.

Councillors raised further concern with respect to the impact of the development on the Blue Gum located at No.58 Killeaton Street. The tree is adjacent to the location for the proposed swimming pool on 62A to 64A Killeaton Street.

Response: The subject *Eucalyptus saligna* (*Sydney Blue Gum*) is 18 metres high in good condition, with a Diameter Breast Height of 500mm. The proposed pool will be located 4.2 metres from the tree's trunk and offset to the southern and eastern section of the tree's root zone. The proposed excavation will not occur within the critical root zone and will only affect a small section of the primary root zone. The coping around the pool will be located approximately 0.5 metre above natural ground level. Due to these factors, the impact on the tree will be negligible.

A number of conditions have been imposed to protect the subject tree including a tree protection bond of \$6,000.00 (*refer Condition No. 77*).

Due to the close proximity of the trees to be retained at the rear of Building 2, Councillors have requested a report to be provided on the potential impacts on the trees.

Response: There is only one tree, a *Nyssa sylvatica* (*Tupelo*) 15 metres high in good condition which will be impacted upon by proposed Building 2. The subject tree will be located 6 metres from Building 2. A planter box and adjoining terrace areas at the rear of Building 2 will be located approximately 3 to 4 metres from the subject tree. The excavation for these works will occur within the primary root zone along one side of the tree only. These works will not affect the long term health of the subject tree.

A number of conditions have been imposed to protect the subject tree, including a tree protection bond of \$6,000.00 (*refer Condition No. 77*).

Item 5

DA0458/04
29 November 2004

The remaining trees to be retained at the rear of Building 2 are located at least 5 metres from the proposed rear terrace and some 9 metres from the rear wall of the dwellings. No other trees located at the rear of Building 2 will be affected by the proposed dwellings.

Councillors expressed concern with respect to the impacts that heavy vehicles associated with the construction of the development may have on existing trees located on the nature strip of the private road leading to 62A to 64A Killeaton Street, and trees on the development site, particularly trees with a canopy spread across the private road.

Response: The private road from Kitchener Road is 6 metres wide and well defined. There is 1 tree located on the nature strip along the private road, a *Quercus palustris* (Pin Oak). This should not be affected as it is located at a slightly higher level off to the side of the road. Only some minor low branches are likely to be affected.

There is also a *Liquidambar styraciflua* (Liquidambar) located within private property, 68 Killeaton St. This will also not be affected as it is situated at a higher level than the road.

Council's Development Engineers have also imposed a condition that a Traffic Control Plan is to be submitted. This plan has to demonstrate the safe ingress and regress of vehicles during demolition and construction (*Refer Condition No 96*).

The site is also to be monitored by an arborist during construction works (*refer Condition 62*).

3. Built-upon area

It was considered by Councillors that the development proposes a large paved area. Councillors requested that staff confirm the built-upon area.

Response: A re-calculation of the built upon area has been undertaken, which provided a measurement of 2120m² over a 4420m² site, or 48% built-upon area. This is roughly in line with the applicant's initial provision of 2194m² or 49% built-upon area.

4. Visual privacy

The Councillors expressed concern with respect to the impact of the living room windows and balconies on the first floor of Building 2 facing the dwelling at No.58 Killeaton Street.

Response: This has been discussed within the previous Council Report, under 'Visual and Acoustic Privacy'. It was thought that, given the setback provided (a distance of some 6.5 metres from 58 Killeaton Street to the wall of Building 2), the planter boxes provided, and the screen landscaping having a height of 6-8 metres, will be sufficient to ensure visual privacy to the adjoining neighbour and to the intended residents.

Item 5

DA0458/04
29 November 2004

Councillors also expressed concern with respect to the potential impacts on the visual privacy of Building 2 as a result of the location and height of Building 1.

Response: While there are height differences between the two buildings which would usually give rise to amenity issues, the following factors resolve any privacy issues:

- The two buildings are staggered, which means that living areas and terraces between the two buildings are not aligned;
- Where one building does not have planting or screening in front of the windows/terraces, the other building has screening to ensure privacy;
- The separation distances provided will allow for suitable screen planting, including *Prunus blireana* (Double Flowering Plum) to a height of 3 metres, and *Hymenosporum flavum* (Native Frangipani) to a height of 7 metres. These, in combination with the above, will ensure privacy.

5. Acoustic privacy

The Councillors expressed concern with respect to the acoustic impacts on No.62 Killeaton Street as the communal open space and swimming pool will be located in close proximity to the dwelling.

Response: The swimming pool is located between 1.7 – 3.0 metres from the boundary of 62 Killeaton. A paved area with gazebo is also proposed. This is located further from the boundary, at least 3.5 metres distant. This paved area would be more likely to have persons enjoying the poolside and talking amongst themselves. It is considered that the distance provided, in combination with the limited number of units (10 only), will mean limited impact on No.62 Killeaton Street.

6. Traffic

Councillors were concerned with the potential impact on the private road as a result of having heavy vehicle use during the demolition and construction phases.

Response: **Condition 95** requires a dilapidation report on the existing right of way prior to work commencing. A copy of this report will also be provided to the other property owners who benefit from the right of way. **Condition 108** requires that the applicants reseal the right of way at their own expense prior to occupation. It is considered that these conditions address and potential impacts upon the private road.

Concern was raised on the potential impact of the additional traffic on Killeaton Street and the impact of construction vehicles on the existing traffic flows of Killeaton Street.

Response: With regard to construction vehicles, a traffic control plan will be required, as part of the conditions of consent, to be provided prior to commencement of any works (**refer Condition 96**). With regard to the traffic generation, the Roads and Traffic Authority were consulted on the application and did not object to the development, nor recommend any conditions, as the access arrangements from Killeaton Street are not proposed to change and the traffic generation was considered to be minimal.

Item 5

DA0458/04
29 November 2004

A calculation using the rate given in the RTA Guide to Traffic Generating Developments for aged care (ie 0.1-0.2 vehicular movements per dwelling), gives an estimated traffic generation for the 10 dwellings of 20 daily trips, with 2.0 evening peak hour vehicle trips. The existing three dwelling entitlement (even though Lot 103 remains vacant), would generate 2.5 vehicle trips in peak hour (at 0.85 movements per dwelling). Therefore the development would generate an apparent net decrease in traffic using the right of way.

7. Excavation and basement car park

The design of the basement of car park includes two projections of one metre along the eastern and western walls. Councillors requested staff to confirm the need for the projections as their removal will provide greater separation from adjoining properties.

Response: These two projections of 1.0 metres are required to allow for car maneuvering space. It is considered that the setbacks provided, even with these 1.0 metre projections, will provide sufficient space between dwellings.

It was further requested that staff confirm the extent of the excavation for the basement car park. Councillors seek clarification on the hatching outside the external wall of the basement car park on Basement Plan DA-02. It is not clear whether the excavation area includes the hatched area.

Response: Discussion has been undertaken with the architect, who advises that the hatched area simply denotes ground – it does not indicate cut or fill.

8. Recycling of materials

Councillors have requested that the sandstone used in the construction of the existing retaining wall at the rear of 62A Killeaton Street should be recycled and used elsewhere on the site.

Response: An appropriate condition is recommended (*refer Condition 66A*).

9. Liability

Councillors expressed concern over potential liability issues that may arise as a result of the development adjoining Pymble Golf Course.

Response: The development of a site adjoining a golf course for the purposes of a seniors living development, is not likely to result in any liability issues. Residential development adjoining golf courses is not uncommon and issues regarding golf balls being hit into developments are generally recognised by the golf club and appropriately responded to.

10. Garbage collection

Council has requested staff to provide a report on the associated costs of servicing medium density developments with small garbage collection vehicles.

Item 5

DA0458/04
29 November 2004

Response: This has been noted and drawn to the attention of Council's Technical Services and Planning Policy. It should be noted however, that this development is in accordance with Council's DCP40, which requires on site storage and collection by Council's vehicles.

11. Other matters

The applicant has, since the initial report to Council, raised three issues:

- *Property owners*

The properties have now changed ownership. The current registered owners of the property are R. Jackson and Colonial State Properties. This is noted.

- *Condition 62*

Condition 62 requires monthly arborist inspections of the trees to be retained. The applicant considers this onerous and has requested that this be revised to 3 monthly inspections. Discussion has been undertaken with Council's Landscape Officers, who advise that, without further justification and reasoning, this condition should not be amended. Without knowledge of the length of construction and the time of year at which construction is to take place, it is not recommended to reduce the number of inspections required.

- *Condition 89*

Condition 89 of the initial Council report required the submission of a sample board prior to work commencing. This has already been provided, and thus **Condition 89** is recommended to be deleted. Condition 1 has also been altered to include materials.

RECOMMENDATION

That Council, as the consent authority, grant development consent to DA0458/04 for the demolition of the existing structures on site, the construction of a SEPP (Seniors Living) 2004 development comprising 10 units, and strata subdivision of the resultant dwellings, on land at 62A-64A Killeaton Street, 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 to be in accordance with Development Application No.0458/04 and Development Application plans as follows:

Fortey and Grant Architecture, reference:

DA01 Amendment B, Site Plan, dated 12.08.04, received 13.08.04

DA02 Amendment D, Basement Plan, dated 15.09.04, received 15.09.04

DA03 Amendment C, Ground Floor Plan, dated 12.08.04, received 13.08.04

DA04 Amendment A, First Floor Plan, dated 27.04.04, received 06.05.04

DA05 Amendment B, Second Floor Plan, dated 12.08.04, received 13.08.04

DA06 Amendment B, Roof Plan, dated 12.08.04, received 13.08.04

Item 5

DA0458/04
29 November 2004

DA07 Amendment B, Elevations, dated 12.08.04, received 13.08.04

DA08 Amendment B, Sections, dated 11.08.04, received 13.08.04

Kneebone and Beretta, reference:

56979-2, Concept Drainage Plan, dated 04.05.04, received 06.05.04.

and sample board materials of bricks and tiles as submitted, except as where amended by the following conditions.

2. 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 an Occupation Certificate has been issued.
3. 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.
4. For the purpose of health and amenity, the disposal of backwash and/or the emptying of a swimming pool into a reserve, watercourse, easement or stormwater drainage system is prohibited. These waters are to discharge via a drainage line into the Sydney Water's sewer. Permission is to be obtained from the Sydney Water prior to the emptying of any pool to the sewer.
5. To ensure compliance with the relevant standards, an effective and approved safety fence with self closing gate complying with the minimum requirements of Australian Standard 1926-1986 "Fences and Gates for Private Swimming Pools" shall be provided to the Principal Certifying Authority's satisfaction in the location indicated on the approved plans prior to any water being placed in the pool.
6. For stormwater control, provision shall be made for the collection and disposal of all run-off surface waters from paved areas, recontoured areas, pool overflow and higher levels. All collected waters are to be dispersed without causing nuisance to the adjoining properties.
7. For safety purposes, depth markers shall be provided at both ends of the pool.
8. For safety purposes, prior to the pool being filled a weather resistant poster detailing expired air resuscitation (mouth to mouth) methods shall be affixed within plain sight of the pool. A sign/notice with the words "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL" shall be erected in clear view and in close proximity to the pool.
9. All filtration equipment shall be located in the position as shown on plan, unless as varied by this consent. Where the filtration and electrical equipment is located near a boundary, such equipment shall be positioned not closer than 150mm from the boundary fencing, if any, and electrical conduits and fittings or circulation pipes shall not be attached to any part of the fencing. Filtration or other equipment shall not be

Item 5

DA0458/04
29 November 2004

installed in the area of the side boundary setback of the dwelling or outbuilding unless that side boundary setback is greater than 1500mm. For the purpose of residential amenity, the filtration motor pump unit shall be housed in a sound attenuating enclosure and located where indicated on the approved plans or as varied by this consent.

10. A balustrade shall be provided where the pool concourse stands more than 1.0 metre above the finished ground level.
11. To maintain the existing ground levels all spoil shall be removed from the site. Sites shall not be re-shaped, re-contoured, nor the levels on any part of the site altered without the consent of the Council being obtained beforehand.
12. To ensure structural stability wherever the soil conditions so require, a retaining wall or other approved method of preventing the movement of soil shall be provided and adequate provision shall be made for drainage.
13. The swimming pool is to be made safe during construction by the erection of temporary safety fence to the satisfaction of the Principal Certifying Authority.
14. To ensure compliance with the Swimming Pools Act, 1992, the existing boundary fence, forming part of the safety fencing to enclose the pool shall be upgraded or otherwise so altered or reconstructed so as to comply with the provisions of Australian Standard 1926-1986 "Fences and Gates for Private Swimming Pools". The overall height of the dividing fence is not to exceed 1.8 metres in height above the natural ground level. Attention is directed to any obligations or responsibilities under the Dividing Fences Act in respect of adjoining property owners which may arise in respect of this matter and enquiries in this regard may be made at the nearest Local Court.
15. 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.
16. 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.
17. **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,

Item 5

DA0458/04
29 November 2004

power operated woodworking machines, 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.

18. 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.
19. A sign shall be erected in a prominent position on the site which states the name and contact details of the Principal Certifying Authority.
20. All excavations shall be properly guarded and protected with hoardings or fencing to prevent them from being dangerous to life and property.
21. Any excavation of rock involving hydraulic or compressed air rock hammers or other excavation equipment shall comply with the requirements of Council's Code for the Control and Regulation of Noise on Building Sites.
22. No rock breaking or other machinery for the excavation, drilling or removal of rock shall be used on the site without the prior approval of the Principal Certifying Authority. Should rock breaking or associated machinery be required, the following details are to be submitted to the Principal Certifying Authority for consideration:
 - a. The type and size of machinery proposed.
 - b. The routes of all trucks to convey material to and from the site.
 - c. A report by a Geotechnical Engineer detailing the measures recommended in undertaking the work so as to prevent any damage to any adjoining or nearby buildings.
23. The applicant is advised that the Construction Certificate plans and specifications must comply with the provisions of the Building Code of Australia.
24. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
25. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

Item 5

DA0458/04
29 November 2004

26. 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.

27. 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.
28. Any fencing and associated footings shall be constructed entirely within the boundaries of the property.
29. The demolition is to be carried out in accordance with the guidelines contained in Australian Standard 2601-1991: The Demolition of Structures.
30. Access to demolition sites shall be protected as directed by the Principal Certifying Authority by the use of suitable fences or hoardings.
31. 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.
32. 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.
33. Erosion control measures shall be provided on demolition sites to prevent the siltation of watercourses and drainage systems.

Item 5

DA0458/04
29 November 2004

34. 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;
 - 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.
35. 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.
36. 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.
37. All combustible material shall be removed from the site on a daily basis. Material shall not be burnt on the site.
38. 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.
39. Trees and vegetation on a site shall not be disturbed except with the approval of the Council.
40. Adequate precautions shall be taken to ensure the protection of adjoining premises and persons therein from damage and injury during the process of demolition.
41. 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.
42. 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.

Item 5

DA0458/04
29 November 2004

43. A photo record of the buildings to be demolished and vegetation on site is to be submitted to Council for archival purposes.
44. 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.

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.
45. All demolition materials of value for re-use either on-site or elsewhere, shall be separated and made available for re-cycling.
46. "Peep holes" shall be provided to the entrance doors of all units for personal security.
47. Stormwater runoff from all hard surfaces generating runoff or landscaped areas which are not at natural ground level shall be piped to the interallotment stormwater drainage line benefitting the subject site. The interallotment line is to be covered by the necessary easement for drainage which may exist or need to be created under this consent.
48. A mandatory rainwater re-use tank system, together with the additional on-site stormwater detention/retention requirements described in chapter 6 of Councils 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.
49. For stormwater control a 200mm wide grated channel/trench drain with a heavy-duty removable galvanised grate is to be provided in front of the garage door and connected to the main stormwater drainage system. The channel drain shall have outlet of minimum diameter 150mm to prevent blockage by debris.
50. For stormwater control all paved areas are to be drained to the main drainage system. This may require the installation of suitable cut-off structures, inlets and/or barriers that direct runoff to the formal drainage system.
51. A maintenance period of six (6) months shall apply to the work in the public road reserve carried out by the applicant after works have been completed to Council's satisfaction. In that period, the applicant shall be liable for any section of the work

Item 5

DA0458/04
29 November 2004

which fails to perform in the manner outlined in Council's specifications, or as would reasonably be expected under the operating conditions.

52. 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.
53. 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.**
54. 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.
55. 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".
56. For the purpose of any inspections by Council engineers, the corresponding fees set out in Councils adopted Schedule of Fees and Charges are payable to Council. A re-inspection fee per visit may be charged where work is unprepared at the requested time of inspection, or where remedial work is unsatisfactory and a further inspection is required. Engineering fees must be paid in full prior to any final consent from Council.
57. 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 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

Item 5

DA0458/04
29 November 2004

Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

- 58. In order to allow unrestricted access for Council waste collection vehicles to the basement garbage storage area, no doors or gates shall be provided in the access driveways to the basement carpark which would prevent this service.
- 59. Stormwater quality control measures, as described in chapter 8 of Councils 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.
- 60. 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.

- 61. 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.
- 62. The trees to be retained shall be inspected, monitored and treated when necessary by a qualified Arborist before, during and after completion of development works to ensure their long term survival. Regular reports from the Arborist to the Council shall be required at monthly intervals. Documentary evidence of compliance with this condition shall be submitted to Council with the final Certificate of Compliance.
- 63. No mechanical excavation of the proposed structure shall be undertaken within the specified radius of the trunk/s of the following tree/s until root pruning by hand along the perimeter line of such works is completed:

Tree/Location	Radius From Trunk
<i>Eucalyptus saligna</i> (Sydney Blue Gum)	6 metres

- 64. The landscape works shall be completed prior to issue of final Certificate of Compliance and maintained in a satisfactory condition at all times.
- 65. Prior to the issue of the Construction Certificate, the applicant shall submit for approval of the Principal Certifying Authority, documentary evidence demonstrating

Item 5

DA0458/04
29 November 2004

that the Plan of Consolidation of Lots 103, 104, 105 in DP263569 has been registered at the Department of Lands.

- 66. The private courtyards to Dwellings 2.01 and 2.02 are to be limited to the area as identified on plan *DA03 Amendment C*. The remainder of the area is to be available as common property as shown on the plan, with the path providing access to the area being made accessible in accordance with AS 1428. Details are to be provided for approval with the construction certificate.
- 66A The existing sandstone used in the construction of the retaining wall at the rear of 62A Killeaton Street shall be recycled and reused elsewhere on site.

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

- 67. 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.

- 68. 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).
- 69. 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

Item 5

DA0458/04
29 November 2004

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.

70. 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.

71. 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 SEVEN (7) ADDITIONAL DWELLINGS/LOTS IS CURRENTLY \$84, 828.10. 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 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. Acquisition of Open Space - St Ives	\$7,851.00
8. Koola Park upgrade and reconfiguration	\$143.09
9. North Turramurra Sportsfield development	\$986.80

Item 5

DA0458/04
29 November 2004

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

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. 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.

The landscape plan shall include the following amendments;

- The landscape plan shall comply with the approved drainage details.
 - In accordance with Council's Tree Replenishment Policy at least 10 trees that attain a height of 13 metres are required.
74. The property shall support a minimum number of 24 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.
75. The 10 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.

Item 5

DA0458/04
29 November 2004

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 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.

77. A CASH BOND/BANK GUARANTEE of \$6,000.00 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

Eucalyptus saligna (Sydney Blue Gum)

/Adjoining property No. 56 – 58 Killeaton Street, adjacent to the north western boundary

2 x *Liquidambar styraciflua* (Liquidambar)

/South western corner

Araucaria heterophylla (Norfolk Island Pine)

/South western corner

3 x *Nyssa sylvatica* (Tupelo)

/Southern boundary adjacent to Units 2.01 & 2.02

2 x *Ulmus glabra* ‘Lutescens’ (Golden Elm)

/Southern boundary adjacent to Unit 2.01.

Taxodium distichum (Swamp Cypress)

Item 5

DA0458/04
29 November 2004

/Centre of southern boundary

Tilia cordata (Small-leaved European Linden)

/South eastern corner

Cedrus deodara (Himalayan Cedar)

/Northern boundary, adjacent to Unit 2.01

Castanospermum australe (Moreton Bay Chestnut)

/Adjacent to driveway entrance

Macadamia tetraphylla (Macadamia)

/Adjacent to driveway entrance

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.

To preserve the following trees the drainage lines located on the southern side of the dwelling shall be relocated from beneath the canopies of the specified trees. Alternatively the excavation for the installation of the stormwater shall be carried out using the thrust boring method.

Thrust boring shall be carried out at least 600mm beneath natural ground surface to minimise damage to the trees root systems.

Amended drainage details indicating these works shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Tree/Location

3 x *Nyssa sylvatica* (Tupelo)

/Southern boundary adjacent to Units 2.01 & 2.02

2 x *Ulmus glabra* 'Lutescens' (Golden Elm)

/Southern boundary adjacent to Unit 2.01.

Taxodium distichum (Swamp Cypress)

/Centre of southern boundary

Tilia cordata (Small-leaved European Linden)

/South eastern corner

79. Prior to the issue of the Construction Certificate, longitudinal driveway sections are to be prepared by a qualified civil/traffic engineer and be submitted for approval by the

Item 5

DA0458/04
29 November 2004

Principal Certifying Authority (PCA). These profiles are to be at 1:100 scale along both edges of the proposed driveway, starting from the centreline of the frontage street carriageway to the proposed basement parking slab. The driveway profiles must demonstrate the following:

- a. That vehicular access can be obtained using grades of 25% (1 in 4) maximum and
- b. That all changes in grade (transitions) comply with Australian Standard 2890.1 – “Off-street car parking” (refer clause 2.5.3) to prevent the scraping of the underside of vehicles.

If a new driveway crossing is proposed then the longitudinal sections must incorporate the driveway crossing levels as issued by Council upon prior application.

80. 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 for Senior Living (particularly relating to height clearances and space dimensions) and
 - b. Australian Standard 2890.1 – 2004 “Off-street car parking” and
 - c. The 2.5 metres headroom requirement under DCP40 for waste collection trucks (where internal collection is required).
 - d. No doors or gates are provided in the access driveways to the basement carpark which would prevent unrestricted access for internal garbage collection from the basement garbage storage area.
81. 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).
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. 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, including stormwater

Item 5

DA0458/04
29 November 2004

quality control measures. 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.

84. The Applicant must carry out the following infrastructure works in the Public Road, unless the works have already been completed.
- Upgrade footpaths and kerb ramps between the subject site and Cowan Road, and construct a pedestrian refuge in Cowan Road, to comply with AS1428.1 and the Seniors Living Policy, as recommended in the Access Assessment Report prepared by Accessibility Solutions dated 8 April 2004.

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 Public Road, 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 the infrastructure works on Council property, full engineering drawings (plans, sections and elevations) and specifications for the infrastructure works are to be prepared by a suitably qualified and experienced consulting civil engineer. These must be submitted and approved by Council prior to issue of the Construction Certificate. Construction of the works must proceed in accordance with any conditions attached to the Council *Roads Act 1993* approval.

All works are to be designed in accordance with Council's "Specification for Road and Drainage Works". In addition, the drawings must detail existing services and trees affected by the works, erosion control requirements and 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 Traffic Control at Work Sites (1998).

NOTE 1: A minimum of three (3) weeks will be required for assessment of Roads Act submissions. Early submission is highly recommended to avoid delays in obtaining a Construction Certificate.

NOTE 2: An engineering assessment fee (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees.

Item 5

DA0458/04
29 November 2004

NOTE 3: Plans and specifications must be marked to the attention of Council's 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.

85. **Prior** to the issue of a Construction Certificate the applicant shall lodge a \$20,000 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.
86. 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/retention system. The design shall be generally based on the concept plan 56979/A by Kneebone & Beretta, advanced for construction purposes, except that **water quality measures** as described in Chapter 8 of DCP 47 are to be provided. 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 100m² roof area for each 5000 litres of storage. 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.
87. Prior to issue of the Construction Certificate, a revised plan shall be submitted to demonstrate that the shared entrance areas to the two buildings are able to be locked, in accordance with the Crime Prevention Clause 35(b) of SEPP (Seniors Living) 2004.

CONDITIONS TO BE COMPLIED WITH PRIOR TO WORK COMMENCING

88. 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.

Item 5

DA0458/04
29 November 2004

89. 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
2 x <i>Liquidambar styraciflua</i> (Liquidambar) / South western corner	4 metres
<i>Araucaria heterophylla</i> (Norfolk Island Pine) / South western corner	4 metres
3 x <i>Nyssa sylvatica</i> (Tupelo) / Southern boundary adjacent to Units 2.01 & 2.02	3 metres
2 x <i>Ulmus glabra</i> 'Lutescens' (Golden Elm) / Southern boundary adjacent to Unit 2.01.	3 metres
<i>Taxodium distichum</i> (Swamp Cypress) / Centre of southern boundary	3 metres
<i>Tilia cordata</i> (Small-leafed European Linden) / South eastern corner	4 metres
<i>Cedrus deodara</i> (Himalayan Cedar) / Northern boundary, adjacent to Unit 2.01	4 metres
<i>Castanospermum australe</i> (Moreton Bay Chestnut) / Adjacent to driveway entrance	1 metre
<i>Macadamia tetraphylla</i> (Macadamia) / Adjacent to driveway entrance	1 metre
2 x <i>Diospyros kaki</i> (Chinese Persimmon) / Centre of southern boundary	3 metres

90. 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.

91. 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

Item 5

DA0458/04
29 November 2004

all relevant monies and compliance with any other conditions of approval, work may commence.

92. Council property adjoining the construction site must be fully supported at all times during all excavation, demolition and building construction works. Details of shoring, propping and anchoring of works adjoining Council property, prepared by a qualified Structural Engineer or Geotechnical Engineer, must be submitted for the approval of the Principal Certifying Authority (PCA), before the commencement of the works, and prior to issue of the Construction Certificate. Backfilling of excavations adjoining Council property or any void remaining at completion of construction between the building and Council property must be fully compacted prior to the completion of works.
93. Prior to the commencement of any works on the site, the applicant shall submit, for approval by the Principal Certifying Authority (PCA), certification from a suitably qualified and experienced civil/hydraulic engineer that:
 - a. The existing pipes within the interallotment drainage easement system to be utilised, not to be reconstructed, are in satisfactory condition and
 - b. The existing pipes to be utilised have hydraulic capacity to carry design flowrates and/or detention system overflows (where detention systems are to be provided) from the subject property as far as the approved point of discharge to the public drainage system.

Where it is found that the existing pipes are in disrepair or will have insufficient hydraulic capacity to carry additional flows from the approved development the Applicant shall submit full design documentation for an upgraded interallotment drainage system from the subject property to the approved point of discharge to the public drainage system. This design documentation shall be approved by the Principal Certifying Authority (PCA), prior to commencement of any works on the site. Plans are to be prepared by a suitably qualified and experienced consulting civil/hydraulic engineer in accordance with in accordance with Council's Water Management DCP 47 (available on Councils website and at Customer Services) and the Plumbing and Drainage Code (AS3500). New pipes within the downstream easement drainage system must be sized to have adequate capacity to carry design flowrates, or detention system overflows where detention systems are to be provided, from the subject property. The following details must be included:

- a. Plan view of interallotment system to scale showing dimensions, location and reduced levels of all pits, grates, pipe inverts, flushing facilities and exact point of discharge,
- b. The contributing catchment calculations and supporting pipe sizing information,
- c. Longitudinal section showing existing ground levels and proposed pipe invert levels, grades and flow capacities,
- d. Surrounding survey detail including all trees within seven (7) metres of the proposed drainage system,

Item 5

DA0458/04
29 November 2004

- e. Means to preserve the root systems of trees within seven (7) metres of the drainage system.
94. Prior to the commencement of any other works on the site, with the exception of tree protection and erosion and sediment control measures, the construction of the required interallotment drainage system must be completed in full. The designing engineer or equivalent professional engineer must supervise the works. At the completion of works, and prior to issue of the Construction Certificate, the following shall be submitted to the Principal Certifying Authority (PCA):
- a. Certification from the supervising engineer that that the as-constructed works comply with the approved interallotment design documentation, and
 - b. A full works-as-executed drawing of the as built drainage line (dimensions, grades, materials, invert levels) prepared by a registered surveyor, and
 - c. Certification from the surveyor that all drainage structures are wholly contained within the drainage easement(s).
95. Prior to the commencement of any works on the site the applicant is to provide to Council a dilapidation report prepared by a suitably qualified engineer, including photographs, of the existing right of way/ private road. A copy of the report shall also be provided to the other property owners who benefit from the right of way.
96. Due to the location of the development site off a main road, the applicant must submit, for review by Council Engineers, a Traffic Control Plan. The plan must be prepared by a qualified civil/traffic engineer in accordance with the documents SAA HB81.1 – 1996 – “Field Guide for Traffic Control at Works on Roads – Part 1” and RTA “Traffic Control at Work Sites (1998)”. The following matters must be addressed:

Heavy vehicle routes

- a. Safe points of vehicular access to the construction site and details of the proposed route of heavy vehicles servicing the site. Light traffic roads and those subject to a load limit are to be avoided.

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 and details of traffic control for the site, including provision of a flagperson to control vehicle movements to and from the site.
- b. How safe egress for vehicles will be controlled on those occasions where forward egress is not possible.
- c. How pedestrians will be safely managed across the frontage of the site.

Parking control

Item 5

DA0458/04
29 November 2004

- a. The provision of on-site parking for employee, tradesperson and construction vehicles.

Stages

- a. The Traffic Control 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.

NOTE 1: The Traffic Control Plan shall be submitted to and reviewed by Council, attention Development Engineer. A written acknowledgment from Council shall be obtained prior to the issue of the Construction Certificate. 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.

NOTE 2: 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.

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

97. An easement for waste collection is to be created prior to occupation of the development. This is to permit legal access for Council, Council's contractors and their vehicles over the subject property for the purpose of collecting waste from the property. The terms of the easement are to indemnify Council and Council's contractors against damages to private land or property whilst in the course of carrying out waste collection services. The terms of the easement are to be generally in accordance with Council's draft terms for an easement for waste collection.
98. For endorsement of the linen plan/issue of the subdivision certificate, the Applicant shall submit an original plan of subdivision plus six (6) copies, suitable for endorsement by the consent authority. The following details **must** be submitted with the plan of Subdivision and its (5) copies, where Council is the consent authority:
 - a. The endorsement fee current at the time of lodgment.
 - b. The 88B Instruments plus six (6) copies,
 - c. A copy of the Occupation Certificate,
 - d. The Consulting Engineer's certification of the on-site stormwater detention/retention facility. This must be on the standard Council on-site detention certification sheet, available from Council's customer services.
 - e. A copy of all works-as-executed plans required under the consent,
 - f. All Surveyor's and/or Consulting Engineer's certification(s) required under this consent,
 - g. The Section 73 (Sydney Water) Compliance Certificate.

Item 5

DA0458/04
29 November 2004

Council officers will check the consent conditions on the subdivision. Failure to submit the required information will delay endorsement of the linen plan, and may require payment of rechecking fees.

Note 1: Plans of subdivision and copies must not be folded.

Note 2: Council will not accept bonds in lieu of completing subdivision works.

Note 3: If the certifying authority is not Council, then a copy of all of the above must be provided to Council

99. For endorsement of the linen plan / subdivision certificate issue, the Applicant shall submit an original instrument under Section 88B of the Conveyancing Act with the plan of subdivision, plus six (6) copies. This is to create any required easements, rights-of-carriageway, positive covenants, restrictions-on-use or other burdens/benefits as may be required. Ku-ring-gai Council must be named as the authority whose consent is required to release, vary or modify the same.
100. Prior to release of the linen plan/issue of the subdivision certificate, the applicant shall create all burdens including but not limited to drainage easements, easements for services and rights-of-carriageway, as required. A registered surveyor is to certify, prior to release of the linen plan/issue of the subdivision certificate, that all existing interallotment drainage lines, services and/or driveways are fully contained within the proposed burdens and/or that future provision of such are fully covered by the proposed burdens. Alternatively, where the surveyor is of the opinion that no interallotment easements or rights-of-carriageway are required, then certification to this effect must be submitted to the Principal Certifying Authority (PCA).
101. Prior to release of the linen plan/occupation of the development, the creation 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 for Seniors Living.
 - 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.
102. All parking spaces and all areas of common property, including visitor car parking spaces and on-site detention facilities, which are to be common property, must be included on the final plans of strata subdivision.
103. At the completion of works and prior to occupation of the development/release of the plan of subdivision, a second dilapidation report must be completed on the structural and visible condition of the entire right of carriageway servicing the site, recording conditions of all features originally assessed prior to the commencement of works. The report must be submitted to Council. Any damage to the shared driveway as a result of construction shall be repaired in full at the applicant's cost.

CONDITIONS TO BE COMPLIED WITH PRIOR TO OCCUPATION

104. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate, 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 at no cost to Council.
105. 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/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 instrument for protection of on-site detention/ 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.

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 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.

106. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance 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.

107. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance 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

Item 5

DA0458/04
29 November 2004

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.

108. Prior to the issue of an Occupation Certificate, the applicant is to reseal the private existing right of way at their own expense in accordance with any relevant standards.
109. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate, the Section 73 Sydney Water compliance certificate must be obtained and submitted to the Principal Certifying Authority (PCA).
110. 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 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 Seniors Living SEPP (as last amended), and
 - b. The as-constructed carpark complies with the approved Construction Certificate plans, and
 - c. The vehicular headroom requirements of:
 - the Seniors Living SEPP (as last amended) for accessible parking spaces, and
 - Australian Standard 2890.1 - "Off-street car parking", and
 - 2.44m height clearance for waste collection trucks (DCP 40) are met from the public street into and within the applicable areas of the basement carpark, and
 - 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.
 - e. No doors or gates have been provided in the access driveways to the basement carpark, which would prevent unrestricted access for internal garbage collection from the basement garbage storage area.
111. Prior to issue of an Occupation Certificate, Certification and a Works-as-Executed (WAE) plan, in relation to the as-built on-site detention/ retention and re-use 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:

Item 5

DA0458/04
29 November 2004

- 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)
112. 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)

Item 5

DA0458/04
29 November 2004

- 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.
- 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.

113. 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
- 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.

Item 5

DA0458/04
29 November 2004

- c. Gradients of drainage lines, materials and dimensions.
114. Prior to the release of any Occupation Certificate, a sign indicating the location of the visitor parking shall be erected at the intersection of the basement carpark access driveway and the main driveway to the development.

BUILDING CONDITIONS

115. 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.
116. To ensure compliance with this determination the building shall be set out by a Registered Surveyor and the Survey Report shall be lodged with the Principal Certifying Authority prior to the external wall construction proceeding above floor level.
117. 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.
118. 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

Item 5

DA0458/04
29 November 2004

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.

119. For fire safety an automatic fire detection and alarm system shall be installed throughout the dwelling in accordance with the following requirements:
- a. A smoke alarm system complying with Part 3.7.2 of the Building Code of Australia Housing Provisions; or
 - b. Smoke alarms which:
 - i. 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
 - ii. are connected to the mains and have a standby power supply; and
 - iii. 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.

120. 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.

121. The following are required details and must be submitted to the Council on completion of the works. 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. Wet area waterproofing details complying with the Building Code of Australia.

Item 5

DA0458/04
29 November 2004

- b. Mechanical ventilation details complying with Australian Standard 1684 Mechanical Ventilation & Airconditioning.
- c. Glazing details complying with AS 1288-1989 Glass in Buildings and Installation Code.
- d. Stormwater disposal details complying with Council's Stormwater Management Manual and/or other conditions of this consent.
- e. Waterproofing of walls/floors below ground level to prevent the entry of water into the building.
- f. A Registered Surveyor's Report on completion of footings but before external walls are above floor level verifying compliance with this consent.
- g. A Compliance Certificate that the development complies with the relevant design standards of clauses 52(1), 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70 & 71 of State Environmental Planning Policy (Seniors Living) 2004.

Kerrin Lithgow
Executive Planner – Development Assessment

Matthew Prendergast
Manager Development Assessment

Scott Cox
Team Leader – Development Assessment Team
Central

Michael Miocic
Director Development & Regulation

Attachments:

- Location Sketch**
- Site Analysis**
- Site Plan**
- Elevations**
- Sections**
- Shadow Diagrams**
- Landscape Plan**
- Original Report to Council meeting of 9 November 2004**
- Floor Plans (Confidential)**
- Letter from Applicant (Colonial State Properties) to Council addressing Councillors concerns dated 19.11.04**

ST IVES SHOWGROUND HERITAGE CRAFT FAIR - RENEWAL OF 2 YEAR LICENCE OPTION

EXECUTIVE SUMMARY

PURPOSE OF REPORT:	For Council to consider exercising its option for the extension of the licence with the operator of the Heritage Craft Fair.
BACKGROUND:	The current 3-year with a 2-year option licence for operations of the Heritage Craft Fair, between the St Ives Showground Reserve Trust, managed by Council and the Heritage Craft Fair, is due to expire on 1 January 2005 and the licensee has expressed an interest in exercising the 2 year option.
COMMENTS:	The Heritage Craft Fair contributes a substantial proportion of the income received from activities undertaken at the Showground facility. Car parking fees received are placed in a restricted asset account specifically for the implementation of initiatives to reduce environmental impacts of the use of the facility on the surrounding environment and the facility itself.
RECOMMENDATION:	That Council exercise the option for the 2 year period to be granted to the Heritage Craft Fair operator to allow the Heritage Craft Fair continued operation commencing 2 January 2005.

PURPOSE OF REPORT

For Council to consider exercising its option for the extension of the licence with the operator of the Heritage Craft Fair.

BACKGROUND

The St Ives Showground is an area of Crown land dedicated for the purpose of "Showground and Public Recreation" and its management framework is addressed by the St Ives Showground Plan of Management adopted by Council in June 1999 and subsequently by the Minister in September 1999.

The Showground represents one of Ku-ring-gai's most popular facilities and caters for a wide and diverse range of community interests. Visitation levels approach 300,000 persons per year.

Use of this facility includes Model Flying Club, Mini Wheels Club, dog training clubs, Radio Control Electric Car Club, Agricultural and Horticultural shows, a variety of commercial businesses, soccer training, equestrian activities, general picnic, special events, Organic Food and Farmers Market and playground usage by the wider community.

The Heritage Craft Fair has operated at the St Ives Showground site since October 1998, initially on a casual booking basis and from January 2000 on a temporary licence.

On 4 December 2001 Council resolved a 5 year licence for the Heritage Craft Fair. The resolution of Council read as follows:

- A. That Council grant a 3-year licence to the Heritage Craft Fair for the use of areas at the St Ives Showground as outlined in this report, commencing on 1 January 2002 on the terms and conditions outlined in this report with a 2-year option (subject to Council resolution).*
- B. That within 6 months of the commencement of the licence, Council, traffic and parking management plans be submitted to, and approved by the General Manager addressing, but not limited to, the issues outlined in this report.*
- C. That subsequent to Council approval, the 3-year licence (with an option of a further 2-years subject to Council resolution) be submitted to the Department of Land and Water Conservation, for the Minister's consent.*
- D. That the Mayor and General Manager be authorised to execute all necessary licence documents.*
- E. That the Council seal be affixed to the licence.*
- F. That a restricted Asset Account be created from which funds drawn from car parking activities and increases in income over existing levels.*

Item 6

S02195
15 November 2004

The resolution included a requirement to address issues of traffic management into, within and out of the site, parking management including the potential for avoiding or minimising environmental impacts and the preparation of an event management plan for the showground.

These plans have all been subsequently completed and enacted. The implementation of traffic management plan for ingress and egress to the facility in particular is currently being phased in as it has a number of implications for event holders, both large and small.

In conjunction with these activities staff have also prepared an initial report on the sustainable carrying capacity of the site. The plan identifies a number of actions to reduce the impacts of storm water run off and damage to vegetation (both bushland and developed areas of the facility) from use of the showground.

In general terms the licence allows the operator to run up to 13 fairs excluding January utilising up to 50% of the showground and up to 250 stalls in return for a licence fee. The licence also provided for an increase in the number of stalls up to 400 upon development consent for this increase being achieved. A fee for carparking is also provided for in the licence agreement.

The Heritage Craft Fair Operator has applied for development consent to increase the number of stalls to the maximum 400 allowed under the licence. Consent was granted on 23 July 2004, although that consent has not yet been acted upon.

The initial period of three years will expire at the end of December 2004 and a Council resolution is required to enact the 2 year option.

COMMENTS

The Heritage Craft Fair has provided a number of positive outcomes to date for the showground and Ku-ring-gai generally. The fairs are well attended by the local community and visitors, are consistent with the character and principles of the showground and provide the single largest source of revenue for Council at the showground.

The implementation of event traffic plans for access to and exit from and movement within the site, including parking will impact on the obligations of many users of the facility including the Heritage Craft Fair.

Recommendations from the investigation into the sustainable carrying capacity of the Showground are currently being enacted wherever possible. Recommendations requiring capital expenditure will be included within the Conservation Management Plan, identified as a key performance indicator in the current Management Plan (2004-2009) subject to receiving a Metropolitan Greenspace Grant. Proposed works will be able to be part funded by amounts transferred to the St. Ives Showground Restricted Asset Account. A proportion of funds from this licence and other at the Showground are transferred to the Restricted Asset Account.

Item 6

S02195
15 November 2004

The Licensee has applied for an increase in the number of allowed stalls and this Development Application was granted on 23 July 2004

Conditions of note contained in the licence that will be upheld as part of the option included the following:

Table 1

1	The first Sunday of every month excluding January, with a night market in November and December or substitute days where directed by Council's authorised representatives.
2	Trading times to be from 9am to 3pm with set up times between 7am to 9am and 3 pm to 5pm. For the 2 night markets, trading times to be 1:00pm and 9pm and set up times between 11am to 1pm and 9 pm to 11pm.
3	To comply with Council's Open Space Special Event Booking Guideline per event.
4	That the fair organiser comply with the recommendations and conditions of the Sydney Regional Development Advisory Committee and the strategies of the RTA Traffic Management Plan submitted in the licence applications at the Fair's cost.
5	That the licence complies with the original consent conditions of DA No 5775/98 and the amended DA.
6	That the fair operated in the area on the attached map (Attachment 1). Any proposed change from these areas must be approved by Council's authorised representative and in accordance with Council's Fees and Charges.
7	The designated parking areas at the Showground will be in accordance with Council's traffic and car-parking management plans.
8	A \$2000 bond will be held for the proposed 13 events per year in the event of damage to the showground site (to include the designated parking areas, Douglas Pickering Pavilion and Louise Lennon Pavilion, amenity blocks and stall-holder areas).
9	After each event, Council's ranger and the Licensee will review the state of the licenced area to discuss costs to repair any damage caused to the designated areas used for the fair, including area surfaces, environmental qualities and infrastructure.
10	Should any part of the \$2,000 bond be used to repair the showground, then the licensee will be required to ensure that the total bond equals \$2,000 for the remainder of the events.
11	The Heritage Craft Fair organisers have agreed to undertake the cleaning of the toilet facilities and amenities adjacent to the Douglas Pickering Pavilion (between picnic areas 1 & 2).
12	The Heritage Craft Fair will supply garbage bins, empty bins throughout the day as required and at the conclusion of the Fair into a lockable disposal bin, supplied by the Fair organisers, leaving the sites in a clean, tidy and safe manner.
13	That within 6 months of the commencement of this agreement the licensee complete to the satisfaction of the General Manager an event management plan for the overall conduct of the event be prepared.

CONSULTATION

The Department of Infrastructure, Planning and Natural Resources (DIPNR) (formally Department of Land and Water Conservation) confirmed on 15 May 2001 that they have no objections to the 5-year licence.

Discussions have been undertaken with the licensee in regard to the option in the licence. The licensee has provided a letter of support for the option being taken by Council. (Attachment 2)

FINANCIAL CONSIDERATIONS

See Attachment 3 for financial details relating to the licence.

The increase in income from this licence over 2001/2002 levels has been resolved to be transferred to the St Ives Showground Restricted Asset Account. The total amount identified for transfer to the Restricted Account over the 5 year period of this licence is approximately \$45,000.

A \$2,000 bond is held for the 13 events in the event of damage to the licenced area.

After each event, Council's ranger at the site and the Licensee review the state of the Licenced area to identify any damages. To date, no damage as a consequence of the Heritage Craft Fair has been identified.

CONSULTATION WITH OTHER COUNCIL DEPARTMENTS

Open Space consulted with Finance and Business Development Department about the 3-year licence with an option of a further 2 years and in preparation and financial modeling for the creation of the restricted Asset Account. Extensive consultation has also occurred between Open Space, Development Control and Technical Services with regards to the Traffic Management Plans and Traffic Control plans.

SUMMARY

The Heritage Craft Fair has provided a number of positive outcomes to date for the Showground and Ku-ring-gai generally. The fairs are well represented by the community and an extremely popular local event that's in keeping with the rural character and principles of the showground.

The current Licensee has indicated strong interest in securing the option for the remainder of the licence period. Without this licence, Council's level of subsidy at the site would be substantially higher than current.

Item 6

S02195
15 November 2004

The issue of overall sustainability at the facility is critical and implementation of identified measures as recommended in the Plan of Management and the Traffic and Parking Management Plan has contributed to formalising set parking areas, exclusion of sensitive parking areas, signage, better management of surface runoff and as a consequence, improved maintenance activities in general.

The ongoing transfer of funds into the Restricted Asset account is crucial for the implementation of environmental remediation works and specific works associated with the Plan of Management and Traffic and Parking Management Plan.

RECOMMENDATION

- A. That Council exercise the 2-year option period commencing 2 January 2005 to the Heritage Craft Fair operator.
- B. That the Mayor and General Manager be authorised to execute all necessary licence documents.
- C. That the Council Seal be affixed to the licence.
- D. That funds drawn from car-parking activities and all increases in licence revenue over 2001/2003 levels be deposited into the Restricted Asset account to fund environmental remediation and specific works associated with the Plan of Management and Traffic and Parking Management Plans.

Amanda Colbey
Manager Parks, Sport & Recreation

Steven Head
Director Open Space

Attachments:

- 1. Map of licensed area.**
- 2. Letter of support (8 July 2004)**
- 3. Financial Details - confidential**

4 PORTERS LANE, ST IVES - OPTION TO RENEW LEASE

EXECUTIVE SUMMARY

PURPOSE OF REPORT:	To advise Council of the YMCA of Sydney exercising its option to renew the lease for the premises at 4 Porters Lane St Ives.
BACKGROUND:	The lease for the YMCA of Sydney expires on 31 December 2004 with that agreement containing an option to renew for a further 3 years.
COMMENTS:	The YMCA of Sydney has exercised their option to renew as per the terms of the lease.
RECOMMENDATION:	That Council authorise the exercise of the option by the YMCA of Sydney for the premises at 4 Porters Lane, St. Ives to continue to operate their various programs.

PURPOSE OF REPORT

To advise Council of the YMCA of Sydney exercising its option to renew the lease for the premises at 4 Porters Lane St Ives.

BACKGROUND

Council is the owner of the former St. Ives Public school Assembly Hall comprising Lot 1 DP 816806, zoned Special Uses "A" Municipal Purposes and classified as Community Land

On 19 November 2004 Council resolved to grant a 2 year lease with a 3 year option to the YMCA of Sydney to operate a range of recreational and educational services and programs to the community. The initial 2 year lease commenced on 1 January 2003 and expires on 31 December 2004.

COMMENTS

The YMCA of Sydney under the conditions of the lease has exercised the option to renew the lease for a further 3 years.

The YMCA of Sydney has had an active program and service network in the St. Ives area since the late 1980s. They have been meeting their responsibilities as a tenant and have complied with the conditions as set out in Council's Policy for Leasing Council Property to Community Organisations. Given this it is recommended that the YMCA of Sydney be granted a renewal of its lease.

Being an option to renew, the conditions of the previous lease stand with the exception of the exclusion of the renewal (option) clause. A condition of the original lease included a provision that the option lease be subject to Council's leasing policy at the time.

CONSULTATION

The YMCA have indicated to Council that they wish to renew their lease as per the terms of the current agreement.

FINANCIAL CONSIDERATIONS

The current rental being paid by the YMCA of Sydney is \$8,822pa and is subject to annual CPI adjustments throughout the option period.

CONSULTATION WITH OTHER COUNCIL DEPARTMENTS

Not applicable.

SUMMARY

The lessee has exercised their option to renew and have fulfilled their obligations under the term of the lease. Accordingly, it is recommended that Council grant the renewal of the lease. The conditions of the original lease stand and are reflective of the leasing policy at the time.

RECOMMENDATION

- A. That Council receive and note the exercise of option and approve the grant of a 3 year lease to the YMCA of Sydney over Council premises at 4 Porters Lane, St. Ives.
- B. That the Mayor and General Manager be authorised be authorised to execute all necessary lease documents
- C. That Council authorise the affixing of the common seal of Council to the lease agreement

Stephen Plumb
COMMUNITY FACILITIES COORDINATOR

Janice Bevan
DIRECTOR COMMUNITY SERVICES

5 TO 7 GILROY ROAD, TURRAMURRA - OPTION TO RENEW LICENCE

EXECUTIVE SUMMARY

PURPOSE OF REPORT:

To advise Council of the tenants of the Ku-ring-gai Support Services Centre exercising their options to renew their licences for the premises located at 5-7 Gilroy Road, Turramurra.

BACKGROUND:

The licences for Easy Care Gardening Service Inc; Ku-ring-gai Meals on Wheels and the Hornsby Ku-ring-gai Community Aged/Disabled Transport Service Inc. expire on 31 January 2005 with that agreement containing an option to renew for a further 3 years.

COMMENTS:

The tenants of the Ku-ring-gai Support Services Centre have exercised their option to renew as per the terms of the licence.

RECOMMENDATION:

That Council authorise the exercise of the option by Easy Care Gardening Service Inc; Ku-ring-gai Meals on Wheels, and the Hornsby Ku-ring-gai Community Aged/Disabled Transport Service Inc. for the premises at 5-7 Gilroy Road, Turramurra.

PURPOSE OF REPORT

To advise Council of the tenants of the Ku-ring-gai Support Services Centre exercising their options to renew their licences for the premises located at 5-7 Gilroy Road, Turramurra.

BACKGROUND

Council is the owner Lot 1 DP 840070, zoned Business 3 (b) (B2) Commercial Services and classified as Operational Land.

On 17 December 2002 Council resolved to grant a 2 year licence with a 3 year option to the following HACC funded community organisations:

- Easy Care Gardening Service Inc.
- Ku-ring-gai Meals on Wheels Inc.
- Hornsby Ku-ring-gai Community Aged/Disabled Transport Service Inc.

The initial 2 year licence commenced on 1 February 2003 and expires on 31 January 2005.

COMMENTS

The tenants at the centre, under the conditions of the licence, have exercised their options to renew their licences with Council for a further 3 years.

Easy Care Gardening Service Inc.

This service assists frail aged and younger people with a disability to retain their independence by providing gardening services at their home. They occupy area 1 and half of the garage at the centre.

Ku-ring-gai Meals on Wheels Inc.

The Ku-ring-gai Meals on Wheels service provides freshly cooked nourishing meals to the frail aged, carers and people with a disability in the area. They occupy an office, kitchen and dining room at the centre.

Hornsby Ku-ring-gai Community Aged/Disabled Transport Service Inc.

The activities of the service provide assistance in transporting disadvantaged who live independently in the community to various services and activities which helps them in maintaining their quality of life. They currently occupy 2 rooms at the centre and half of the adjacent garage.

All tenants have been meeting their responsibilities as a tenant and have complied with the conditions as set out in Council's Policy for Leasing Council Property to Community Organisations. Given this, it is recommended that they be granted a renewal of its licence.

Being an option to renew, the conditions of the previous licence stand with the exception of the exclusion of the renewal (option) clause. A condition of the original licence included a provision that the option licence be subject to Council's leasing policy at the time.

CONSULTATION

All tenants have exercised their option to renew as per the terms of the licence.

FINANCIAL CONSIDERATIONS

The current rentals being paid by each tenant are:

Easy Care Gardening Service Inc.
\$1,859pa

Ku-ring-gai Meals on Wheels Inc.
\$5,605pa

Hornsby Ku-ring-gai Community Aged/Disabled Transport Service Inc.
\$2,900

and are subject to annual CPI adjustments throughout the option period.

CONSULTATION WITH OTHER COUNCIL DEPARTMENTS

Not applicable.

SUMMARY

The tenants have exercised their option to renew and have fulfilled their obligations under the term of the licence. Accordingly, Council is obliged to grant the renewal of the licence. The conditions of the original licence stand and are reflective of the leasing policy at the time.

RECOMMENDATION

- A. That Council receive and note the exercise of option from the following organisations:
- Easy Care Gardening Services Inc.
 - Ku-ring-gai Meals on Wheels Inc.
 - Hornsby Ku-ring-gai Community Aged Disabled Transport Service Inc. and approve the grant of a 3 year licence to those organisations over Council premises at 5-7 Gilroy Road, Turramurra.
- B. That the Mayor and General Manager be authorised be authorised to execute all necessary licence documents.
- C. That Council authorise the affixing of the common seal of Council to the licence agreement.

Stephen Plumb
COMMUNITY FACILITIES COORDINATOR

Janice Bevan
DIRECTOR COMMUNITY SERVICES

APPLICATION TO AMEND THE KU-RING-GAI PLANNING SCHEME ORDINANCE IN RELATION TO EXCLUSION OF VULNERABLE COMMUNITIES IN BUSHFIRE PRONE AREAS

EXECUTIVE SUMMARY

PURPOSE OF REPORT:	To allow Council to assess the merits of amending the Ku-ring-gai Planning Scheme Ordinance (KPSO) to limit the further increase of vulnerable communities in the cross hatched areas of the "Bush Fire Evacuation Risk Map" and to prohibit the further subdivision of land in order to create separately titled dwellings within these areas.
BACKGROUND:	The proposal seeks to restrict the further subdivision of land in bushfire prone areas in a manner similar to that which currently applies to dual occupancy and SEPP (Seniors Living) development taking into account resident concerns and recent Court findings and to limit further development catering for vulnerable communities in these areas as these require significant levels of assisted evacuation in times of emergency.
COMMENTS:	The prohibition of further subdivision of land within bushfire prone areas is considered acceptable due to problems of efficient evacuation in times of emergency resulting from the increase of the permanent resident population. However, applying the same prohibition to developments that cater for vulnerable communities is likely to deny existing residents from having access to the services that are needed.
RECOMMENDATION:	That Council resolve to amend the KPSO to prohibit the further subdivision of land in order to create separately titled dwellings within the cross hatched areas of the "Bush Fire Evacuation Risk Map" and that future proposed developments catering for vulnerable communities be subject to legislative considerations, Section 100B of the Rural Fires Act, relating to bush fire evacuation risk at the time of assessment.

PURPOSE OF REPORT

To allow Council to assess the merits of amending the Ku-ring-gai Planning Scheme Ordinance (KPSO) to limit the further increase of vulnerable communities in the cross hatched areas of the "Bush Fire Evacuation Risk Map" and to prohibit the further subdivision of land in order to create separately titled dwellings within these areas.

BACKGROUND

Areas shown as cross hatched on the *Bush Fire Evacuation Risk Map* currently prohibit dual occupancy development and development for under State Environmental Planning Policy (Seniors Living).

Recent Court Findings

In December 2003, Council was in the Land and Environment Court to defend a 'Deemed Refusal' for the demolition of an existing dwelling and the construction of a staged 'State Environmental Planning Policy 53- Metropolitan Residential Development' (SEPP53) dual occupancy development comprising 8 dwellings and Torrens Title and Community Title sub-division at 385, Bobbin Head Rd, North Turramurra (DA No. 677-682) in the case of "*The Dubler Group Pty Ltd vs. Ku-ring-gai Council*".

For the case, 'Statements of Evidence' were provided by "Traffic, Environmental and Forensic Engineers (TEF)" and Dr. Anthony Green of the University of NSW School of Safety Science. In their concluding comments, both consultants said they believe that the North Turramurra Peninsula is already unsatisfactory in terms of possibility to evacuate its population in case of major bushfire and that any further addition to the population would only exacerbate the situation, particularly in regard to the elderly and other members of the community that would require assisted evacuation.

On the second day of the case, 19 December 2003, the Minister for Infrastructure, Planning and Natural Resources gazetted 'Amendment 10' to SEPP 53, effectively prohibiting dual occupancy developments, such as that proposed by the application on land within the cross hatched on the *Bush Fire Evacuation Risk Map*. The Minister did not include any Transitional Provisions with the amendment. The Minister stated that "*the ban has been implemented as a safety measure, is immediate and will apply to development applications already lodged with consent authorities... The NSW government is determined to safeguard older persons and people with disabilities who are the most vulnerable when fast evacuation is needed*". ([Attachment 1](#))

On 24 December 2003, the Court found that in light of 'Amendment 10' to SEPP53, the proposed development should not be allowed to go ahead. The applicant challenged the Court's finding, claiming that the amendment had not been justifiably made and should not apply to his development application. Justice Pain dismissed the appeal, stating that although the amendment only applied to a small section of the state "*The opinion held by the Minister that the role to be played by 'Amendment 10' reducing the likelihood that vulnerable populations are to be located within bushfire prone areas is of significance for environmental planning for the state cannot, in my*

Item 9

S02151 S02643
26 November 2004

opinion be regarded as being so unreasonable that no reasonable person [Minister] could make it”.

Resident Concerns

On 26 March, 2004, Council received a letter from the North Turrumurra Action Group (NTAG) who expressed concern that current planning controls allow further development catering for vulnerable communities (such as nursing homes, schools, pre-schools and hospitals) as these developments may increase the number of people who require special assistance in times of bushfire emergency, increasing overall evacuation times in the cross hatched areas of the *Bush Fire Evacuation Risk Map*. NTAG is also concerned that the further subdivision of properties to create separately titled dwellings is contributing to this problem.

NTAG sought a prohibition on any further increase of these activities in the cross hatched areas and a prohibition on the number of beds or day care places for the existing identified vulnerable communities. However, NTAG would not like these prohibitions apply to non-residential community facilities that cater for the populations already resident in the area or dwelling renovations including an increase in bedrooms for individual dwellings.

Council Resolutions

At the Council meeting held on 24 August, 2004, Councillor Ebbeck raised a “Question without Notice” that:

Council officers bring back a report to Council to amend the KPSO for the areas shown as cross hatched on the ‘Bushfire Evacuation Risk Map so that:

- 1. Additional development which adds to the population of vulnerable groups (child care centres, nursing homes, etc) is prohibited*
- 2. Additional development likely to increase the population such as subdivision is prohibited*

Any such amendments to the KPSO would require the preparation and adoption of a Local Environmental Plan (LEP) in accordance with the provisions of the *Environmental Planning and Assessment Act 1979*.

COMMENTS

On the Department of Infrastructure, Planning and Natural Resources (DIPNR) website, a page titled “Bush Fire Protection Notice” is included as one of the department’s “*Plans for Action*”. On this page, DIPNR refers to the term “High Risk Developments” ([Attachment 2](#)) for developments catering for community groups that are generally more difficult to evacuate or are potentially more susceptible during a bushfire emergency. The developments classified as “High Risk” by DIPNR include those identified by NTAG, however, DIPNR states that this term is not included in any legislation that directly prohibits such developments in bush fire prone areas, including the cross hatched areas of the ‘Bush Fire Evacuation Risk Map’.

Legislative Considerations

Item 9

S02151 S02643
26 November 2004Rural Fires Act 1997

Under Section 100B of the *Rural Fires Act 1997*, the Commissioner of the NSW Rural Fire Service may issue a 'Bush Fire Safety Authority' for the subdivision of Bush Fire Prone Land or the development of such land for a 'Special Fire Protection Purpose' (**Attachment 3**). Bush Fire Prone Land is shown on the *Bush Fire Evacuation Risk Map* as shaded red, orange or yellow. As a consequence of *Section 100B* of the Act, these developments are subject to the considerations of *Clause 46* of the *Rural Fires Regulation 2002* (**Attachment 4**) which looks at such things as the adequacy of water supplies for fire fighting and the ability of the roads to allow residents to safely evacuate. At the current time, this section of the Act does not apply to the unshaded (white) land of the cross hatched areas of the *Bush Fire Evacuation Risk Map*.

Ministerial Directive No. G20- Planning For Bushfire Protection of Section 117(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act, 1979)

In 2002, Ministerial Directive No. G20 (**Attachment 5**) was introduced with the intention of protecting life, property and the environment from bush fire hazards. The directive contains provisions that enable Councils, in the preparation of Local Environmental Plans, to introduce controls which avoid placing inappropriate developments in hazardous areas. At the current time, this directive only applies to Bush Fire Prone Land and does not apply to the unshaded (white) land in the cross hatched areas of the *Bush Fire Evacuation Risk Map*.

If the unshaded (white) land of the cross hatched areas become recognised as Bush Fire Prone Land, all proposed subdivisions for residential purposes and "Special Fire Protection Purpose" will subsequently become subject to *Section 100B* of the *Rural Fires Act 1997* and its associated considerations. Furthermore, Council will be able to introduce controls that avoid placing "High Risk" developments in such areas, including those identified by NTAG, when preparing Local Environmental Plans under the provisions of Ministerial Directive No. G20.

Issues Relating to the Prohibition of Services

Ku-ring-gai LGA has several key facilities within the cross hatched areas of the Bush Fire Evacuation Risk Map eg hospitals, schools and pre schools that contain vulnerable populations. In the coming years, Ku-ring-gai may expect a significant increase in population creating a higher demand for services such as Hospitals and Child Care Centres. These community services meet the needs of both those that live within the Ku-ring-gai local government area and those living externally. An overall ban on the establishment or expansion of these services (eg Sydney Adventist Hospital in Wahroonga) will have a major impact upon the ability of these services to meet current and future demand.

In the case of land zoned Special Uses "A" and Special Uses "A1" under DLEP 200, Council resolved on 24 August, 2004:

Land in zones Special Uses "A" and Special Uses "A1"

38C (1) The Council is not to grant its consent to the carrying out of development for a hospital on lands zoned Special Uses "A"; and

Item 9

S02151 S02643
26 November 2004

Special Uses "A1" where the land falls within lands identified on the Ku-ring-gai Council Bush Fire Prone Land map in any of the following categories:

- *Bushfire Prone Vegetation Category 1*
- *Bushfire Prone Vegetation Category 2*
- *Bushfire Prone Vegetation Buffer 100m and 30m*
- *SEPP5 Exclusion*

(2) Subclause (1) does not apply to land which has a hospital which is established and operating with consent on 24 August 2004.

Options for Council's consideration to address the issues

Council has three options to limit future increases in vulnerable populations within the cross hatched *Bush Fire Evacuation Risk Map* areas.

Option 1:

Prohibit any further subdivision of land for the purpose of creating separately titled dwellings and totally prohibit any new development or intensification of existing facilities catering for vulnerable communities (such as schools, pre-schools and nursing homes) in the cross hatched areas of the Bush Fire Evacuation Risk Map

This option is likely to reduce the bushfire evacuation risk issues by restricting further significant increase of the resident populations within the area. However, the existing residents and community in general will be denied access to new and additional services that are likely to be needed in the future, particularly in areas such as North Turramurra.

Option 2:

Prohibit any further subdivision of land for the purpose of creating separately titled dwellings and prohibit any further development catering for vulnerable communities in these areas, excluding hospitals which would be subject to the provisions of Section 100B of the Rural Fires Act 1997.

This option would allow Hospitals, (eg. Sydney Adventist Hospital, Wahroonga) to establish and expand their services as they serve both the local and external community in times of emergency. However, other services eg. schools, pre schools and nursing homes would not be permitted.

Option 3:

Prohibit any further subdivision of land for the purpose of creating separately titled dwellings and require all further development classified by the Section 100B of the Rural Fires Act 1997 as "Special Fire Protection Purposes" within these areas to be subject to the provisions of this section of the Act.

This is the preferred option as it is reasonable and will require an appropriate assessment of individual proposals by the relevant authorities of potential evacuation risks created for vulnerable communities in times of a bush fire emergency while allowing important services (where

Item 9

S02151 S02643
26 November 2004

appropriate) to establish and expand, providing they can meet the *Section 100B* requirements of the *Rural Fires Act 1997*.

Land within the B2 Corridor

Council is currently in the process of completing Draft LEP201- Abandoned B2 Road Corridor between The Comenarra Parkway, Wahroonga and Kissing Point Road, South Turramurra.

This area partially includes some land within the Corridor that may be re-subdivided to accommodate asset protection zones and therefore a prohibition on new residential subdivision should exclude the B2 Corridor lands that fall within the cross hatched areas of the *Bush Fire Evacuation Risk Map*.

CONSULTATION

A meeting was held with representatives of NTAG in order to allow them to clarify their proposal. The meeting was attended by staff from Council's Planning and Environment Division and Councillor Nick Ebbeck of the Wahroonga Ward. Issues discussed at the meeting relate to those covered by this report.

FINANCIAL CONSIDERATIONS

Staff resources and advertising, the cost of which are to be covered by Council's Planning Department operating budget.

CONSULTATION WITH OTHER COUNCIL DEPARTMENTS

A meeting was held by Council's Planning and Environment Department with representatives from Open Space, Community Services and Development and Regulation Departments. Issues raised at the meeting relate to those covered by this report.

SUMMARY

The proposal to amend the Ku-ring-gai Planning Scheme Ordinance in order to exclude the further subdivision of land for the purpose of creating separately titled dwellings within the cross hatched areas of the *Bush Fire Evacuation Risk Map* is considered acceptable, given the likelihood of increased population placing greater levels of strain on the carrying capacity of the road networks in times of emergency and the decisions by the Minister in relation to exclusion of further development for the purpose of SEPP53 dual occupancies and SEPP (Seniors Living) accommodation.

However, given the likely future increased demand for community services that cater for children, older persons or people with a disability, a prohibition on the establishment and expansion of such services is not practical. To ensure the development of these services is carried out responsibly;

Item 9

S02151 S02643
26 November 2004

applications should be subject to the provisions of *Section 100B* of the *Rural Fires Act, 1997*. In order to amend the KPSO, a Local Environmental Plan is required.

RECOMMENDATION

- A. That Council resolve to prepare a Local Environmental Plan to amend the Ku-ring-gai Planning Scheme Ordinance (KPSO) in order to prohibit any new development for the subdivision of land that could lawfully be used for residential purposes within the cross hatched areas of the Bush Fire Evacuation Risk Map with the exception of land known as the B2 Corridor, The Comenarra Parkway, Wahroonga and Kissing Point Road, Turramurra.
- B. That the Local Environmental Plan be worded to make it clear that all proposed developments, including the alteration, addition and other works of existing developments identified as a "Special Fire Protection Purpose" under *Section 100B* of the *Rural Fires Act 1997* located within the existing cross hatched areas of the *Bush Fire Evacuation Risk Map* (that are not located within Bush Fire Prone Land Category 1 or 2) be subject to the considerations of that section of the Act.
- C. That the Local Environmental Plan be worded so as not to provide intensification of existing use rights for the identified developments.
- D. 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 *Environmental Planning and Assessment Act 1979*, and notify relevant authorities in accordance with Section 62 of the Act.
- E. That the Draft Plan be placed on exhibition and notified in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*, and Regulations.
- F. That a report be brought back to Council at the end of the exhibition period.

Antony Fabbro
Manager Strategic Planning

Leta Webb
Director Planning & Environment

- Attachments:**
- 1. Minister DIPNR statement 19 December 2003.
 - 2. "High Risk Developments" from DIPNR website.
 - 3. Section 100B of the Rural Fire Act 1997.
 - 4. Clause 46 Rural Fires Regulation 2002.
 - 5. Ministerial Directive No. G20.

DEVELOPMENT APPLICATION

SUMMARY SHEET

REPORT TITLE:	1A KALANG AVENUE, KILLARA - S96 - DELETION OF BUILDING FOOTPRINT AND SETBACKS AS CONDITIONED IN CONSENT TO DA 3702/93
WARD:	Gordon
DEVELOPMENT APPLICATION N^o:	3702/93A
SUBJECT LAND:	1A Kalang Avenue, Killara
APPLICANT:	Paul Williams
OWNER:	Paul Williams
DESIGNER:	N/A
PRESENT USE:	Vacant Residential Land
ZONING:	Residential 2B
HERITAGE:	No
PERMISSIBLE UNDER:	Ku-ring-gai Planning Scheme Ordinance
COUNCIL'S POLICIES APPLICABLE:	Ku-ring-gai Planning Scheme Ordinance
COMPLIANCE WITH CODES/POLICIES:	Yes
GOVERNMENT POLICIES APPLICABLE:	N/A
COMPLIANCE WITH GOVERNMENT POLICIES:	Not Applicable
DATE LODGED:	9 March 2004
40 DAY PERIOD EXPIRED:	18 April 2004
PROPOSAL:	S96 - Deletion of building footprint and setbacks as conditioned in consent to DA 3702/93
RECOMMENDATION:	Approval

Item 10

DEVELOPMENT APPLICATION N^o 3702/93A
PREMISES: 1A KALANG AVENUE, KILLARA
PROPOSAL: S96 - DELETION OF BUILDING
FOOTPRINT AND SETBACKS AS
CONDITIONED IN CONSENT TO DA
3702/93
APPLICANT: PAUL WILLIAMS
OWNER: PAUL WILLIAMS
DESIGNER N/A

PURPOSE FOR REPORT

To determine s96 application to delete two conditions of consent requiring future development on the site to adhere to building footprint and setback requirements as shown on the approved plans.

EXECUTIVE SUMMARY

Issues: Validity of Condition No 10 and the implications of deleting this condition.

Submissions 3

Land and Environment Court Appeal: No appeal lodged

Recommendation: Approval

HISTORY

19.12.2001 Lodgement of s96 application to modify the 1993 development consent (DA 3702/93) to remove Conditions 4 & 10 relating to the future development on the site adhering to a building footprint and setback requirements as set out on the approved plans as well as complying with DCP 6.

14.6.2001 S96 application to DA 3702/93 approved under delegation of the Manager of Development Control. The approval was based on the view that the modification of the DA did not result in a substantially different DA. Furthermore, it was considered that a condition requiring future development to adhere to an indicative building footprint was ultra vires, as the development application only sought approval for subdivision works.

June 2002 Class 4 proceeding by Tao and Lynne De Haas (adjoining neighbours at No. 1B Kalang Avenue), and Ronald Daubaras (adjoining neighbour at No. 41 Illeroy Avenue) against the

Item 10

validity of the amended development consent. The primary issue of the Class 4 proceedings was whether delegations had been correctly utilised in the approval of the application under a delegated authority.

11.2.2003

Decision by Justice Cowdroy of the Land and Environment Court invalidating the consent to DA 1754/01 and the related s96 modification to DA 3702/93.

The Court found that Council had not fulfilled its statutory duties under the EP & A Act in relation to the processing and determination of DA 1754/01 and the related s96 modification.

The Court was of the opinion that:

- (i) The Council had no power to approve a dwelling house in excess of 8m in the absence of a SEPP 1 objection being lodged by the applicant;
- (ii) The Council did not act correctly in requiring the surrender of the development consent which it had issued and in issuing a subsequent development consent with an amended condition requiring a reduction in the height of the building; and
- (iii) That the s96 determination was invalid as it had been determined by an officer of the Council without the necessary delegation to make such a decision.

19.3.2004

Lodgement of a new s96 application seeking approval to amend DA3702/93 through the deletion of Conditions 4 & 10. This s96 application seeks the same modification as the previous s96 application.

THE SITE AND SURROUNDING AREA

The site

Zoning:	Residential 2B
Visual Character Study Category:	1945-1968 (land is vacant)
Lot Number:	101
DP Number:	875236
Area:	991.9m ²
Side of Street:	Low
Cross Fall:	South-east to north-west

Item 10

Stormwater Drainage:	Yes, to Council's drainage reserve
Heritage Affected:	No
Required Setback:	N/A
Integrated Development:	Yes
Bush Fire Prone Land:	Yes, Bushfire Prone Vegetation Buffer
Endangered Species:	No
Urban Bushland:	No
Contaminated Land:	No

The subject site is an irregularly shaped allotment located at the northern end of the cul-de-sac of Kalang Avenue. The site has an approximate width of 30.4m and a variable depth, ranging from 32 to 39 metres.

The subject site slopes towards its north-west corner, with an 11m fall over the site. The slope is steepest in its central portion. The southern corner of the site consists of an elevated platform which is suitable for potential development.

The subject site is the result of a subdivision approved pursuant to DA 3702/93. Both vehicular and pedestrian access is via an existing concrete driveway from Kalang Avenue. The site has a legal right of access over this driveway (Lot 11, DP 619620).

There are 14 existing trees on the property, all of which are to be retained under the subject proposal.

Except for an old outhouse, there are no existing buildings on the site.

Adjacent to the western boundary of the property is a Council drainage easement, with a partly-open and partly-piped watercourse. Part of the easement also functions as a public pathway, between Kalang Avenue and Illeroy Avenue to the north, used by local residents.

Surrounding development

The surrounding development consists of a mix of single, double and three storey houses, many of which are substantial in scale and bulk. There is no established architectural style. The predominant character of the area can be described as one of individual houses with large well-vegetated open spaces around them.

The two immediately adjoining properties can be described as follows:

- (i) 1B Kalang Avenue (formerly known as 45 Illeroy Avenue) – a substantial, two-three storey house in brick and tile construction, built post 1968. This house has a ground floor level of RL116.43 and sits 8-9m above the eastern part of the subject site. The level close to the eastern site boundary is around RL116.00 but then drops away significantly to the northern and western site boundaries.
- (ii) 41 Illeroy Avenue – a modest one-two storey house in brick and tile construction, also built post 1968. The rear yard of this house with an RL of 107.55 is directly below the

Item 10

subject site, and approximately 8-9m lower than the centre of the site of the proposed dwelling where the existing ground level is RL115.91.

THE PROPOSED MODIFICATION

Under the provisions of s96(2) of the EPA&A 1979, the application seeks the deletion of Conditions Nos 4 and 10 from DA 3702/93, for subdivision of No 41 Illeroy Avenue into 2 allotments. Conditions 4 and 10 are as follows:

Condition 4:

“Any future dwelling is to comply with Council’s DCP No. 6”.

Condition 10:

“Any future residential development of the site to be in accordance with the building height plane, setback and building platform requirements detailed in Drawing Nos. TP1 and TP2 dated 5th October 1993 which forms part of this approval.”

A copy of the 1993 consent and building footprint drawings as required by Condition 10 is attached (refer Annexure A).

CONSULTATION - COMMUNITY

The proposal was advertised and notified in accordance with the Ku-ring-gai Notification Policy between 27 April and 15 May 2004. Three submissions were received from:

1. Mr Brian Perkins of 9 Kalang Avenue
2. Mr Paul Limmer of 4 Illeroy Avenue
3. Mr Ronald Daubaras of 41 Illeroy Avenue

The objections raised the following issues:

When the subdivision was proposed in 1993, Council undertook extensive investigations into the most suitable manner in which the subdivided property should be developed. Subsequently, conditions were set by Council that were designed to ensure there would be minimal adverse impact on the environment, the adjoining public reserve and walkway and surrounding properties.

Our understanding is that, in setting these conditions, Council was fully aware at the time of the difficulties a future developer would face. Consequently, the conditions, as determined, while taking this into consideration, also took into account the interests of all other parties concerned, including those of us who are regular users of the public walkway.

As far as we can see, nothing material has changed, which would provide a reason for Council to reconsider its earlier decision in relation to this subdivision.”

Item 10

The decision to restrict a future building on the land is now considered inappropriate because the application had only been for subdivision.

In addition, the building envelope was only indicative and not based on detailed investigations in relation to the best possible design for the site, as has been suggested by the objector. Points from the report of the Chief Town Planner in 1993, Mr C Young, pertaining to how the building envelope was derived are provided, and addressed under the relevant heading below:

1. The basis of the 5m set back from the shared boundary with No 45 Illeroy Avenue (now known as 1B Kalang Avenue) was the edge of an existing substantial rocky outcrop. It was felt that a new house should be positioned below this edge so as to protect the privacy and solar access of the existing house at No 45 Illeroy Avenue.
2. The basis for the location of the building platform on the eastern-most part of the subject site was the fact that this part of the site had minimal vegetation and any resultant house built on this part of the site would have an outlook over the roof area of No 41 Illeroy Avenue rather than the private indoor and outdoor living areas of No 41 Illeroy Avenue.
3. To accommodate a reasonably-sized building platform on the eastern part of the site, the set back to the common boundary with No 41 Illeroy Avenue needed to be 3m.
4. The basis of the location of the building platform at a varied set back from Kalang Avenue of 1.2m to 9m (at the south-easternmost corner) was the edge of a rock outcrop at the highest point of the site, the edge of which is exactly 9m from the accessway, and an existing carport at 1.2m from the accessway, which connects with Kalang Avenue.
5. Supplementary to the building footprint was a building height control plane stated to be applicable only to the eastern edge of the footprint. This control was not intended to restrict the ridge height of any proposed dwelling, just the height of walls on the eastern-most elevation of the building.

The building height plane varies from 3-5m along vertical sections and takes into account ground levels 5m in from the north-eastern side boundary.

The purpose of this control was to protect outlooks and retain access to sunlight to living areas and front balcony areas of 1B Kalang Avenue.

In relation to points 1 and 5. above, whilst the 5m eastern side setback and variable 3-5m high building height plane on the eastern perimeter of the footprint, may have been one option to ensure that the privacy and solar access of the existing house at 1B Kalang Avenue was not affected, other options to satisfy the same objective do exist, including an alternative building footprint such as that proposed under the current DA for a new dwelling on the site (DA319/04).

In regards to the stated concern for light and solar access to the house at No.1B Kalang Avenue, it is noted that this house is 8-9m higher than the subject property, and as such the potential for

Item 10

overshadowing from a 2-3 storey development stepping down the site of 1A Kalang Avenue, is significantly reduced.

The building platform proposed under DA 319/04 locates the proposed dwelling between 8m to 20m from the boundary with No 41 Illeroy Avenue, which allows for greater separation and more intensive screen planting on the northern part of the site. Solar access to the dwelling is also improved under the current DA for a new dwelling house (DA 319/04).

In relation to points 2 and 3 above, the 1993 building footprint has merit in that it confines overlooking and visual impact from any new dwelling on 1B Kalang Avenue to the eastern part of No. 41 Illeroy Avenue and leaves the western section less affected. (The western part of No. 41 Illeroy Avenue is the more utilized part of the open space area of this property.) As such, the desire of the property owner to retain this condition is understandable.

However, the approved building footprint on the eastern part of the site will have poor solar access, due to orientation of the property and morning shadows from the existing 2-3 storey house at No. 1B Kalang Avenue. The impact of this overshadowing would be accentuated by the steepness of the topography, resulting in significant overshadowing of the subject site.

It should be noted that in a series of reports to Council in 1993 by C Young, Chief Town Planner at the time, it was stated that there should be flexibility in the determination of appropriate set backs to Kalang Avenue, based on the merits of any future residential development considered for the site. There was already a carport located 1.2m from the front property boundary of the subject site to the driveway of the adjoining property, such that the building envelope was configured to incorporate the location of this carport at the reduced setback.

Notwithstanding the above, the current application is subject to assessment pursuant to DCP38, Council's current Development Control Plan. All new dwellings and dwelling additions in Kuring-gai must now be assessed against this DCP.

When Mr and Mrs De Haas purchased their property in 1999, they were aware of the 1993 subdivision consent and Condition 10 that related to the building platform restrictions and the building height plane/setback restrictions. They therefore had realistic expectations that any future dwelling would be built within those requirements. The applicant purchased the subject site with the conditions on the subdivision consent and was therefore fully aware of these restrictions. It is unreasonable to allow a change to a condition of consent that will cause a significant increase in loss of amenity to adjoining properties, with no adequate reasons provided as to why the building footprint and building height plane should be exceeded to such a degree.

The subject building envelope has not been created as a legal restriction on land, and can, therefore, be amended by Council, as planning controls and circumstances change over time.

Notwithstanding this, the proposed deletion of Condition 10 will not have an adverse impact on the amenity of No 1B Kalang Avenue as development subject to assessment against DCP38 provides greater protection of amenity afforded to No 1B Kalang Avenue than development adhering to the approved building envelope for the following reasons:

Item 10

- A dwelling built in accordance with this envelope would be subject to significant overshadowing from the existing house at No. 1B Kalang Avenue and would therefore have poor solar access;
- The eastern elevation of the dwelling would be built only 5m from the eastern boundary with 1B Kalang Avenue, creating privacy concerns for both residents of the new dwelling and residents of 1B Kalang Avenue; and
- The setback of the dwelling to the northern boundary with No. 41 Illeroy Avenue would only be 3m. This would be the only part of the house with full northerly sun. This means that living areas and/or terraces would be located only 3m from the shared boundary with No. 41 Illeroy Avenue, potentially creating serious issues of overlooking and loss of privacy.

Any current proposal must be considered against DCP 38, which requires Council to consider amenity issues in far greater detail than would occur under Condition 10 and former DCP 6. Generally speaking, the proposed dwelling subject of DA 319/04 provides for greater separation between the new dwelling and both existing dwellings at No 41 Illeroy Avenue, and No. 1B Kalang Avenue, creating more opportunities for screen planting.

A satisfactory and more modest residence could be built on the footprint designated in DA3702/93, which would meet all the conditions relating to setback and height, be in harmony with the environment and the adjoining public space and cause minimal adverse impact on surrounding properties.

There could be any number of design solutions for a house on the subject site. The 1993 building footprint required by Condition 10 is not necessarily the best location for a new house. The house proposed under DA319/04 is only a 4 bedroom house with one main living area. This is not considered an excessively-sized house for the area. With a floor area of 327m² and a floor space ratio of .33:1, the proposal fully complies with Council's controls under DCP38.

Condition 10 was required so that there would be minimal environmental impact. After inspecting the site it is very obvious that Condition 10 was required to prevent detrimental impact to the public walkway between Illeroy and Kalang Avenues. The building proposed in DA319/04 is not on the footprint as required by Condition 10. The building is bulky (total height when viewed from walkway exceeds 12 metres) with a minimal setback from the walkway.

The matter of the environmental impact of any proposed building on the site, on the public walkway, is fully considered in a separate report as part of the assessment of DA 319/04 under DCP 38.

In their wisdom, Council officers in 1993 decided that Condition 10 was required to prevent direct overlooking of No. 41 Illeroy Avenue and to provide a sympathetic development of 1A Kalang Avenue.

This is a design issue which relates to Council's consideration of DA 319/04 against DCP 38. Refer to the associated report relating to DA 319/04.

The effect of removing conditions 4 and 10 of DA3702/93 will result in the following:

1 The removal of the building footprint and the requirements of setbacks.

An alternative and acceptable building footprint is proposed under DA 319/04.

2. Devaluation of our home at 41 Illeroy Avenue.

There is no evidence that the house at No 41 Illeroy will be devalued, providing measures are implemented to ensure a satisfactory level of landscaping, including screen planting.

3. Loss of park like views from our home.

There will be a loss of view to the south (view of hillside), but this would have occurred with the erection of any house on Lot 101.

4. Loss of privacy from inside our house, our backyard and the sideyard.

The potential loss of privacy to No.41 Illeroy is recognized as the major impact of any residential dwelling on 1B Kalang Avenue. Requirements relating to reduction of windows, obscure glazing of windows, height and type of balcony railings in the new dwelling, can be imposed to ensure that overlooking is minimised. Intensive screen planting along the northern boundary, and a new solid 1.8m boundary fence, will also assist in reducing privacy impacts. These requirements are fully detailed in the associated report on DA319/04.

5. Insufficient setbacks from public walkway.

The set backs proposed in DA 319/04 to the public walkway range from 2.8 to 4.8m, and these are considered adequate.

6. Altering the visual character of the area.

The addition of the proposed home to the area is not inconsistent with the prevailing mix of home types and sizes, such that the visual character will not be substantially or unacceptably altered.

STATUTORY PROVISIONS

S96(2) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

Development must be substantially the same development

The development proposed in DA3702/93 was for subdivision. Subdivision of the original property occurred. Removal of conditions 4 and 10 of the 1993 development consent does not alter the nature of development dealt with by the 1993 consent.

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

Item 10

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 submission do not warrant refusal of the application.

Relevant matters under Section 79C of the Act

The environmental impact of deleting the approved building footprint in favour of an alternative building footprint for a dwelling house has been considered, as well as the suitability of the site for the alternative footprint and resultant dwelling. In both cases, it is concluded that the building footprint in the current proposal for a dwelling (DA319/04) is preferable in terms of proposed setbacks and solar access, to the building footprint specified in development consent under DA3702/1993 for subdivision of 41 Illeroy Avenue.

ASSESSMENT OF PROPOSED MODIFICATION OF DA3702/1993

Condition 4:

"Any future dwelling is to comply with Council's DCP No. 6".

The argument put forward by the applicant for removal of this condition is as follows:

"It is submitted that this is an unnecessary condition. It is also submitted that it cannot be satisfied as DCP No.6 has been repealed. The erection of a dwelling on the site requires separate consent and will be assessed against the relevant controls in place at the time of lodgement of the future development application."

DCP6 is no longer a relevant document and has been repealed. The current application (DA 319/04) for the construction of a new dwelling is being assessed against the current Residential Design Code DCP 38.

Condition 10:

"Any future residential development of the site to be in accordance with the building height plane, setback and building platform requirements detailed in Drawing Nos. TP1 and TP2 dated 5th October 1993 which forms part of this approval."

The argument put forward by the applicant for removal of this condition is as follows:

"The lot created by the subdivision satisfied Council's requirements in respect of lot area and lot dimension. It also satisfied the requirements of Clause 43 of the Ku-ring-gai Planning Scheme Ordinance to enable the erection of a dwelling on the site. An application has been prepared which responds more appropriately to the site constraints that would be

Item 10

achievable by constructing a dwelling on the "approved" building footprint. The proposal sits within the building height plane envelope requirements of DCP38"

The argument proposed by the applicant is accepted in terms of the compliance of the original subdivision with the requirements in the KPSO. The performance of the current DA 319/2004 for a new dwelling house in terms of DCP38 is dealt with in the associated report in respect of this matter.

The building envelope requirement was never incorporated as part of any legal instrument such as a Section 88B instrument, restricting the use of the land.

There is nothing to prevent an applicant from lodging a variation to any previous development consent. The proposed modification must be assessed on its planning merits.

This report has questioned the basis of the planning arguments which derived the 1993 building footprint and height plane control. It is considered reasonable that an alternative building footprint is possible. It is concluded that the variation to the footprint will provide for an acceptable building design to that which would have been achieved under the approved building footprint. Development assessed and approved under DCP38 will satisfy the necessary criteria resulting in satisfactory residential development under the Environmental Planning and Assessment Act, 1979.

CONCLUSION

Having regard to the provisions of s96(2) of the Environmental Planning and Assessment Act, the proposed modification 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 consent to the modification of DA 3702/1993 by the deletion of Conditions 4 and 10 as follows:

Condition 4:

"Any future dwelling is to comply with Council's DCP No. 6".

Condition 10:

"Any future residential development of the site to be in accordance with the building height plane, setback and building platform requirements detailed in Drawing Nos. TP1 and TP2 dated 5th October 1993 which forms part of this approval."

Ursula Lang
Executive Planner – Central Team

Scott Cox
Team Leader, Central Team

M Prendergast
Manager
Development Assessment Services

M Miocic
Director
Development & Regulation

Attachments: Appendix A - 1993 Development Consent (DA 3702/93)

DEVELOPMENT APPLICATION

SUMMARY SHEET

REPORT TITLE:	1A KALANG AVENUE, KILLARA - ERECTION OF A NEW DWELLING HOUSE
WARD:	Gordon
DEVELOPMENT APPLICATION N^o:	319/04
SUBJECT LAND:	1A Kalang Avenue, Killara
APPLICANT:	Paul Williams
OWNER:	Paul Williams
DESIGNER:	Unknown
PRESENT USE:	Vacant land - previously residential
ZONING:	Residential 2B
HERITAGE:	No
PERMISSIBLE UNDER:	Ku-ring-gai Planning Scheme Ordinance
COUNCIL'S POLICIES APPLICABLE:	Ku-ring-gai Planning Scheme Ordinance, Development Control Plan 38, Development Control Plan 40, Development Control Plan 43 and Development Control Plan 47
COMPLIANCE WITH CODES/POLICIES:	No
GOVERNMENT POLICIES APPLICABLE:	State Environmental Planning Policy No 55
COMPLIANCE WITH GOVERNMENT POLICIES:	Yes
DATE LODGED:	31 March 2004 8 September 2004 – Amended plans
40 DAY PERIOD EXPIRED:	10 May 2004
PROPOSAL:	Erection of a new dwelling house
RECOMMENDATION:	Approval

Item 11

DEVELOPMENT APPLICATION N^o 319/04
PREMISES: 1A KALANG AVENUE, KILLARA
PROPOSAL: ERECTION OF A NEW DWELLING HOUSE
APPLICANT: PAUL WILLIAMS
OWNER: PAUL WILLIAMS
DESIGNER: UNKNOWN

PURPOSE FOR REPORT

To determine development application No. 319/04, which seeks consent for the erection of a new dwelling on the subject property.

This matter has been referred to Council by the Director of Development and Regulation due to its history, which includes prior Class I and Class IV proceedings in the Land and Environment Court.

EXECUTIVE SUMMARY

Issues: Areas of non-compliance with DCP38 - ie front and side setbacks, privacy and suitability of proposed design for the site.

Submissions: 11

Land & Environment Court Appeal: No appeal lodged

Recommendation: Approval

HISTORY

The property has a detailed history from the time of its initial subdivision in 1993, as shown below:

1993	Development consent granted to DA3702/1993 for subdivision of No 41 Illeroy Avenue, creating Lot 100 accommodating the existing dwelling facing Illeroy Avenue and Lot 101, a newly-created vacant lot (No 1A Kalang Avenue). The approval of the DA was subject to a condition that required future development on Lot 101 to be in accordance with a plan showing a building envelope.
19.12.2001	Lodgement of DA 1754/01 for the demolition of the existing carport and shed and erection of a new dwelling house at 1A Kalang Avenue.
19.12.2001	Lodgement of s96 application to modify the 1993 development consent to remove the conditions relating to the building envelope.
4.2.2002	DCP 38 is adopted by Council.

Item 11

- 12.6.2002 Council grants development consent to DA 1754/01 for the demolition of an existing carport and shed and erection of a new dwelling house.
- 14.6.2002 S96 application to modify the consent to DA 3702/93 was approved under delegation of the then Manager of Development Control, based on the view that the modification of the development consent did not result in a substantially different development. Furthermore, it was considered that the condition requiring future development to adhere to an indicative building footprint was ultra-vires, as the original development consent was only for subdivision.
- June 2002 Class 4 proceedings commenced by Tao and Lynne De Haas of 1B Kalang Avenue and Ronald Daubaras of 41 Illeroy Avenue challenging the validity of the development consent to DA1754/01 and the s96 approval for DA3702/93.
- The key issues of the proceedings were:
- (i) whether Council had the power to issue development consent for a building exceeding 8m in height contrary to the relevant development standard in the KPSO in the absence of a SEPP 1 objection;
 - (ii) whether Council acted properly in requiring surrender of the consent and issuing a new development consent in the absence of a new development application;
- and in relation to the s96,
- (iii) whether delegation had been correctly utilised in issuing the s96 consent under delegated authority; and
 - (iv) whether the s96 application should have been publicly notified pursuant to s119 of the Environmental Planning and Assessment Regulation.
- June 2002 Applicant commenced development by the removal of trees allowed to be removed under Development Consent DA1754/01.
- 11.7.2002 Lodgement of DA 947/02 for the erection of a new dwelling house at 1A Kalang Avenue. (Plans slightly different to DA 1754/01)
- 11.2.2003 Decision by Justice Cowdroy of the Land and Environment & Court invalidating the consent to DA 1754/01 and the related s96 modification to DA 3702/93.
- The Court found that Council had not fulfilled its statutory duties under the EP & A Act in relation to the processing and determination of DA 1754/01 and the related s96 modification.

Item 11

The Court was of the opinion that:

(i) The Council had no power to approve a dwelling house in excess of 8m in height in the absence of a SEPP 1 objection being lodged by the applicant;

(ii) The Council did not act correctly in requiring the surrender of the development consent which it had issued and in issuing a subsequent development consent with an amended condition requiring a reduction in the height of the building; and

(iii) That the s96 determination was invalid as it had been determined by an officer of the Council without the necessary delegation to make such a decision.

25.2.2003

Council refused DA 947/02 following consideration of a report prepared by an independent consultant (Sam Renouf of Emerald Logic) which recommended refusal.

The key reasons for refusal were:

- The Development Application did not maintain or improve the existing amenity and environmental character of the residential zone and is contrary to Schedule 9 of the KPSO;
- The development failed to address the constraints of the site with regard to building form and siting;
- The development resulted in adverse affects on privacy, and was unsatisfactory in respect of visual bulk and non-compliant setbacks;
- The development resulted in detrimental impacts upon neighbour amenity and privacy;
- The dwelling had not been designed to minimise overlooking and dominated adjoining development;
- The development resulted in significant impact on existing vegetation and the development did not provide opportunity for replacement trees;
- The development had insufficient setback to the public reserve and inadequate screen tree planting to minimise the visual bulk;
- The development provided inadequate information with regard to extent of cut and fill across the site, and retaining walls provided;
- The development was contrary to the public interest; and
- Issues raised by objectors warranted refusal of the application.

March 2003

The applicant lodged an appeal in the Land and Environment Court against Council's refusal of DA947/02.

21.3.2003

Land and Environment Court dismissed the appeal against the refusal of DA 947/02 primarily on the grounds raised in Council's case, including poor design having regard to the site constraints; visual mass of the proposed building and inappropriate design elements to ameliorate the loss of amenity to the adjoining

Item 11

premises. In particular, Commissioner Hoffman, in delivering his judgement, remarked that the proposal:

- failed to address the objectives of the KPSO in relation to development in a Residential 2(b) zone;
- contemplated excessive excavation along the side boundary to prevent adequate deep soil landscaping to soften the impact from the adjoining premises;
- provided for two unnecessary penetrations into the building height plane;
- exceeded the floor space ratio and height limit.
- had an unacceptable front setback; and
- generally failed to comply with the performance criteria set out in DCP 38.

20.2.2004 Current s96 application lodged to remove the building envelope required by DA3702/93 and as outlined above (Refer associated report).

31.4.2004 Current DA 319/04 lodged for the erection of a new dwelling.

THE SITE AND SURROUNDING AREA

The site

Zoning:	Residential 2B
Visual Character Study Category:	1945 – 1968 (land is vacant)
Lot Number:	101
DP Number:	875236
Area:	991.9m ²
Side of Street:	Low
Cross Fall:	South-east to north-west
Stormwater Drainage:	Yes, to Council's drainage reserve
Heritage Affected:	No
Required Setback:	9 metres
Integrated Development:	Yes
Bush Fire Prone Land:	Yes, Bushfire Prone Vegetation Buffer
Endangered Species:	No
Urban Bushland:	No
Contaminated Land:	No

The subject site is an irregularly shaped allotment located at the northern end of the cul-de-sac of Kalang Avenue. The site has an approximate width of 30.4m and a variable depth, ranging from 32 to 39 metres.

The subject site slopes towards its north-west corner, with an 11m fall over the site. The slope is steepest in the central portion of the site. The southern corner of the site consists of an elevated platform which is suitable for potential development.

Item 11

The subject site is the result of a subdivision approved pursuant to DA 3702/93. Both vehicular and pedestrian access is via an existing concrete driveway from Kalang Avenue. The site has a legal right of access over this driveway (Lot 11, DP 619620).

There are 14 existing trees on the property, all of which are to be retained under the subject proposal.

Except for an old outhouse, there are no existing buildings on the site.

Adjacent to the western boundary of the property is a Council drainage easement, with a partly-open and partly-piped watercourse. Part of the easement also functions as a public pathway, between Kalang Avenue and Illeroy Avenue to the north, used by local residents.

Surrounding development

The surrounding development consists of a mix of single, double and three storey houses, many of which are substantial in scale and bulk. There is no established architectural style. The predominant character of the area can be described as one of individual houses with large well-vegetated open spaces around them.

The two immediately adjoining properties can be described as follows:

- (i) 1B Kalang Avenue – a substantial, two-three storey house of brick and tile construction, built post 1968. This house has a ground floor level of 116.43RL and sits 8-9m above the eastern part of the subject site. The level close to the eastern site boundary is approximately 116.00RL but then drops away significantly to the northern and western site boundaries.

Council, at its meeting of 7 September 2004, approved a detached dual occupancy on the northern part of this property with access from Illeroy Avenue.

- (ii) 41 Illeroy Avenue – a modest one-two storey house in brick and tile construction, also built post 1968. The rear yard of this house, with an RL of 107.55, is directly below the subject site and approximately 8-9m lower than the centre of the site of the proposed dwelling where the existing ground level is RL115.91.

THE PROPOSAL

The proposal is to construct a new part two/part three-storey, four-bedroom dwelling house, stepping down the slope in three distinct floor levels. A two-car garage is also proposed, with access from Kalang Avenue over adjoining Lot 11 over which there is legal right of way.

The current Development Application incorporates a number of changes to the application which was refused by both Council and the Land and Environment Court, ie DA947/02. These changes include:

Item 11

- Changes to floor plan (removal of studio and reduction in room sizes);
- Reduction in overall floor area of 98m² or 23%;
- Reduction in building height by 1.65m (taken from the top of the ridge);
- Increase to minimum setback to eastern boundary of 2.16m;
- Increase to minimum setback to western boundary of 1.807m;
- Increase to minimum rear setback of 0.8m;
- Decrease of minimum front setback of 0.31m;
- Amendments and corrections to the associated Landscape Plan;
- Reduction in roof pitch to from 27.5° to 22.5°
- Reduction in built-upon area from 38% to 30%.

As well as a reduction in the size of the building (98m² reduction in floor space), overall built upon area (8%) and height (due to amended ceiling heights and amended roof design), the following improvements have occurred. The living area of the proposed dwelling is located further from the boundary with 1B Kalang Avenue (ie eastern boundary) creating greater separation to this neighbour. The increase of the setback to the western boundary with the public walkway improves the visual impact of the building as perceived from the walkway and provides more space to provide screen planting. The increase to the rear setback creates greater separation from No. 41 Illeroy Avenue and provides more space to accommodate screening of the development.

The proposed footprint, spanning the allotment in an east-west orientation, enjoys good solar access. By comparison, solar access would be significantly reduced under the approved 1993 building footprint which is concentrated on the eastern portion of the site, at a setback of 5m from the eastern site boundary and oriented in a north-south direction.

In total, the above amendments have improved the performance of the proposed development against the objectives of DCP38 over that of the previously refused application. The amendments have also adequately addressed issues which formed the basis of Council's refusal of the previous development proposal.

CONSULTATION - COMMUNITY

Original scheme dated 5 March 2004

The proposal was advertised and notified in accordance with the Ku-ring-gai Notification Policy between 5 and 18 April 2004. In response, the following submissions were received:

1. Mr and Mrs De Haas of 1B Kalang Avenue
2. Mr Daubaras of 41 Illeroy Avenue
3. Ms Anne Cohen of 7 Kalang Avenue
4. Mr and Mrs Perkins of 9 Kalang Avenue
5. Ms Linda Gunn and Mr Richard Read 11 Kalang Avenue
6. Mr H Seidler of 13 Kalang Avenue
7. Mr Reichardt of 2 Kalang Avenue

Item 11

8. Mr Paul Limmer of 4 Kalang Avenue
9. Mr Ross Peacock of 8 Kalang Avenue
10. Mrs Druce of 10 Kalang Avenue
11. Mr and Mrs Delprado of 3 Maytone

The objections raised the following issues:

New plans lodged which are only slightly different to previous plans, considered by the Land and Environment Court

The current proposal is different to the application previously refused by Council and the Land and Environment Court. These differences have been described above.

The house has an unacceptable bulk and scale and is out of character with other buildings in proximity to it.

The proposed dwelling has a floor space ratio of 0.33:1 which is within the range specified in DCP38 of between 0.3:1 and 0.37:1. It complies with the maximum height of 8m. It has some non-compliant setbacks on the southern and western boundaries but these are considered justified due to the topography of the site. (A full justification for the reduced setbacks is provided further in this report). There are substantial two and three storey buildings in the surrounding area of mixed architectural design. The proposed dwelling house is stepped down the slope and will not be out-of-character with other developments in the locality.

Overlooking of the walkway from Kalang Avenue to Illeroy Avenue, from a substantial 4 storey structure.

The proposed house is two/three storeys and will partially overlook the narrow public walkway from garage windows, two bathroom windows, a storage area at the middle level, and an access doorway connecting with the lowest floor level comprising three bedrooms. The walkway will also be capable of being overlooked from the western end of the living area balcony, although this is more than 12m from the western boundary.

This is not considered to be an adverse impact of the design, as the public walkway will benefit from passive surveillance to assist in crime prevention.

The house does not comply with the building height plane.

There is one minor encroachment into the building height plane. The encroachment occurs on the western elevation, at the south-western corner of the garage. The extent of the non-compliance is 750mm taken at right angles to the extruding corner of the garage. The encroachment does not result in any adverse impacts upon surrounding properties, nor does the encroachment result in a development that has a bulk and scale inconsistent with surrounding developments.

The proposed house does not comply with the setbacks and building platform as set out in Drawings Nos TP1 And TP2 dated 5 October 1993, which was condition 10 of the consent to the

Item 11

consolidation and subdivision in DA 3702/1993. Modification of this consent was declared invalid by the Court so the condition still applies.

The proposed dwelling is not consistent with Drawing Nos. TP1 and TP2 dated 5 October 1993 and as referenced by Condition No 10 to the consent to DA 3702/93 – (subdivision).

The subject DA is a new Development Application and is required under the Environmental Planning and Assessment Act, to be assessed on its merits. A concurrent s96 application to modify the subdivision consent to DA3702/93 has been lodged and is subject of a concurrent but separate report which considers this issue. Given the dependence of the dwelling house DA on the outcome of the s96 application to remove the building envelope condition, it is critical that both applications are determined concurrently.

The house should comply with the conditions of the 1993 consent as a house of more modest proportions is what was intended by that DA.

Development application 3702/93 sought consent only for the subdivision of the site to create two (2) allotments of land. This DA did not seek consent for the erection of a house on the newly created allotment of land. The applicant has a legal right to apply for development consent for a different scheme under a new Development Application, notwithstanding any previous development consents.

A new court case will cost the Council money at ratepayers expense.

No appeal to the Land & Environment Court has been lodged.

The development application contravenes the objectives of Council's DCP38.

Notwithstanding breaches in terms of front setback; side setback (minor); building height plane (minor); and extent of cut and fill; the proposal satisfies the objectives of DCP 38 in that:

- (i) The development will be reasonably sympathetic to the street and locality in which it is proposed;
- (ii) The development will have adequate open space and landscaping;
- (iii) The development will have an energy efficient design; and
- (iv) The development can ensure that any detrimental impact, to adjoining neighbours can be appropriately addressed.

The development fails to meet the open space and landscape objectives and assessment criteria in DCP 38, which include the siting of the development to allow significant screening of the dwelling from adjacent street and the public walkway

The development is compliant with both the soft landscaping private open space controls of DCP38, providing almost twice the minimum of soft landscaping which is required. The creation of usable recreation area for the house requires the provision of retaining walls and terracing. However, this approach does not prevent landscaping of the site, including the use of canopy and screen trees.

Item 11

The proposed siting of the dwelling does not diminish the opportunity to properly enhance the site with landscaping, and provide screening to both the public walkway and No. 41 Illeroy Avenue.

The development fails to comply with standards set by Council, including building height plane, street setbacks, side setbacks, unrelieved walls, height of building, and cut and fill.

The development does depart from several numeric controls prescribed in Council's DCP 38. This is discussed further in the report.

The proposed dwelling will shade the public walkway

Overshadowing of the walkway from the proposed house will occur during morning hours only (winter solstice). The extent of overshadowing is considered acceptable as it does not unreasonably impact on amenity afforded to users of the walkway.

The proposed dwelling will result in the loss of the walkway as a wildlife corridor between reserves.

There is no impact to the wildlife corridor from the proposed development as the site is not part of any identified wildlife corridor.

Proposed dwelling will have an unacceptable impact on the amenity of adjoining properties

With conditions relating to landscaping, external finishes and privacy (**refer Conditions Nos 4-7, 42-45, and 58**) the proposed development will not create unacceptable impacts on the amenity of adjoining properties.

Proposal is higher than 8m which is the maximum

The Ku-ring-gai Planning Scheme Ordinance has a clear definition of "height". It is defined as the distance from natural ground level (NGL) (ie existing pre-development site level as shown on a recently prepared survey plan submitted with the application) to the underside of the ceiling. The calculable height of the proposal has been carefully measured and there is no part of the proposal which exceeds the 8m height limit even though technically the house is a three storey structure.

The worst case is at the north-west corner of the ground floor lounge where the natural ground level is RL111.8 and the design ceiling height is RL119.2, resulting in a maximum height of 7.4m. Compliance with Council's 8 metres height standard has been verified by the applicant's surveyor - refer **Annexure C** and also checked and confirmed by Council staff.

Amended plans dated 8 September 2004.

Amended Plans were received on 8 September 2004 correcting a numeric error in one of the setbacks on the western boundary. Given the minor nature of this correction, it was not considered necessary to notify the amendment.

CONSULTATION - WITHIN COUNCIL

Item 11

Landscaping

Council's Landscape and Tree Assessment Officer has commented on the proposal as follows:

*"The landscape plan is generally satisfactory except in showing the full extent of excavation around the eastern end of the building and some areas where not enough planting is proposed. Details regarding a possible retaining wall are provided, and if a retaining wall is found to be necessary, will need to be certified by a Geotechnical Engineer (**Refer condition No 7**). (Other landscape conditions include **Conditions 42-46 and 59-63** mainly relating to screen planting, retention and protection of trees and weed removal).*

Engineering

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

"This application is recommended for approval subject to the engineering conditions shown:

The concept is similar to that which was the subject of DA 1754/01. I have referred to that file for previous engineering discussions, including the matter of legal vehicular access to the property.

Under the current DA, access to the proposed garage is via the portion of the property which was Lot 12 of DP619620. This is the appropriate means of vehicular access to the property over Lot 11. No works will be required within the former Lot 12, as a concrete stand area already exists.

The property has gravity drainage to the public drainage system. The on-site detention design is the same design which was submitted with the previous application. This design has several shortcomings including:

- *Excessive depth (up to 750mm over the discharge control pit, when the maximum allowable under Council's Stormwater Management Manual is 300mm, unless childproof fencing is provided) ;*
- *Pipe laying is shown within the canopy of a tree in the adjacent reserve.*

*These matters are resolved by **Condition 38**.*

The application was lodged on 31 March, and is therefore subject to Council's Stormwater Management Manual 1993. However, it is considered that a retention and re-use system, in line with DCP 47 Water Management (effective 7 April) would be more appropriate for this site than a conventional on site detention system, given its topography. The recommended conditions have been formulated to allow a choice to be made."

Item 11

The matters of concern raised by the Engineer have been dealt with in the proposed conditions of development consent (**refer Conditions Nos 35-41, 53-55 and 66-70**).

CONSULTATION – OUTSIDE COUNCIL

Department of Infrastructure Planning and Natural Resources

The proposal is Integrated Development on the basis that it requires a Part 3A permit from the Department of Infrastructure Planning and Natural Resources under the Rivers and Foreshores Improvement Act 1948, due to it involving excavation within 40 metres of a watercourse.

Accordingly, the development has been referred to the Department of Infrastructure Planning and Natural Resource for comment. Its response is as follows:

“The Department of Infrastructure, Planning and Natural Resources has reviewed the subject development application for works within 40m of a watercourse/foreshore for the purposes of the Rivers Foreshores Improvement Act (1948). The department proposes to issue General Terms of Approval for the development as presented.”

The General Terms of Approval are contained within **Condition Nos 20(i) to (vii)**.

Rural Fire Service

In accordance with the provisions of section 79BA of the Environmental Planning and Assessment Act 1979, Council has consulted with the Commissioner of the NSW Rural Fire Service, concerning measures to be taken with respect to the protection of persons, property and the environment from danger that may arise from a bush fire. The Rural Fire Service has provided standard terms to be applied to the development for the purposes of bushfire protection (**refer Condition No 46 (i to iv)**).

STATUTORY PROVISIONS

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP55 required 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. Further investigation is not warranted in this case.

Ku-ring-gai Planning Scheme Ordinance (KPSO)

COMPLIANCE TABLE			
Development Standard		Proposals Numeric Compliance	Complies
Site Area	991 m²		
Building Height	8m (max)	7.4 at the highest point being at the north-west corner of the ground floor lounge where the natural surface level is RL 111.8m and the ceiling height is RL 119.2	YES

Item 11

Built-Upon Area 60%(594m2)(max)	30% (298m ²)	YES
--	--------------------------	------------

Aims and Objectives for Residential Zones

The development: (i) provides satisfactory levels of solar access and, subject to conditions, would provide an acceptable level of 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 of the KPSO can be satisfied.

POLICY PROVISIONS

DCP 38 - Ku-Ring-Gai Residential Design Manual

COMPLIANCE TABLE		
Development Control	Proposals Numeric Compliance	Complies
Section 5: Design Elements		
5.1 Streetscape:		
Building Setbacks (s.5.1.3)		
(i) Front Setback: At least 75% of the front elevation of the building is set back not less than the specified average setback (11m) and the balance of the building frontage (not more than 25%) may be located up to the minimum setback (9m).	Variable setback – 1.2m to the edge of the driveway of 1B Kalang Avenue and 2.6m to Kalang Avenue, at the western wall of the dwelling.	NO
(ii) Side Setbacks: 9% of site width for single storey = 2.79m	<ul style="list-style-type: none"> • 3.16m to eastern boundary (laundry and kitchen wall – no windows) , including 6.5m to terrace extending northward from kitchen/dining/lounge area • 3.42 for the lowest floor level (bedrooms) adjacent the western boundary 	YES YES

Item 11

12% for two storey component or 3.7m	2.8 to western boundary for the garage; 4.2m at the point 5m back from the front of the building at which a second floor is set in under the garage and also part of the lower ground floor, being therefore 3 storey for a 2m section of building	YES
(iii) Rear Setback: 25% of average site depth (8.2m)	Variable – 8m to over 20m	YES
5.2 Building Form:		
FSR (s.5.2.1) 367m ² or within range of 0.3:1 and 0.37 max	327.1m ² = 0.33:1	YES
Height of Building (s.5.2.2) 2 storey (max) and 8m (site >20° slope) 3 storey permitted in certain circumstances	Part 2 and Part 3 storey (sloping site) & Less than 8m	YES
	The dwelling is single storey at its uppermost level close to the southern site boundary with Kalang Avenue and then steps down the site with parts of the building being 3 storey. From No. 41 Illeroy Avenue, the development will appear as three-storey even though it is stepped. There is adequate area to screen the development to reduce its impact on this neighbour. Excavation is not considered excessive although it exceeds Council's limit of 900mm by 1.6m. This deep cut is necessary to keep the dwelling as close as possible to the steeply sloping site to reduce fill, and to minimize the height of the building. As such it is considered that circumstances exist to justify a three-storey dwelling on the subject site.	YES
Building Height Plane (s.5.2.3) 45° from horizontal at any point 3m above boundary	Minor encroachment of up to 750mm at the south-western corner of the building (ie south-west corner of garage)	NO
First Floor (s.5.2.4)		

Item 11

(i) Setbacks: 4.65m based on 15% of average site width (min)	As the building steps down the slope, it is single level in relation to the side boundaries for the bulk of the building elevation, even though it is partially 2-3 storey in a small 2m section where the 3 floor planes intersect. The control does not apply.	N/A
(ii) FSR: < 40% total FSR	Ground level is 160m ² ; Lower floor 1 is 75m ² ; lower floor 2 is 92m ² . Each floor plane only partially overlaps with that of the floor below. The control does not apply.	N/A
Roof Line (s.5.2.6)		
(i) Roof Height (5m – single storey)	Variable but up to 4m	YES
(ii) Roof Pitch 35 ⁰ (max)	22.5 ⁰	YES
Built-Upon Area (s.5.2.7)		
54% (536m ²) (max)	30% (298m ²)	YES
Unrelieved wall length (s.5.2.8)		
8m (min)	All elevations are well articulated. The northern wall extending across the kitchen living and dining area is 15m in length, but is relieved by a curved balcony.	YES
Solar Access (5.2.11)		
4 hours solar access to adjoining properties between 9am to 3pm	The adjoining dwelling at 1B Kalang will receive 4 hours + of solar access.	YES
Energy Efficiency (5.2.12)		
Thermal Assessment Score 60% NB: This rating system has now been superseded by BASIX	The applicant has obtained a BASIX Certificate from DIPNR and achieved the necessary number of points	YES
Cut & Fill (s.5.2.15)		
(i) max cut 900mm	2.5m cut into slope to accommodate Bedroom 1	NO
(ii) max cut & fill across building area of 1800mm and 900mm	2.5m (cut)	NO
(iii) no cut or fill within side setbacks	Cut within eastern and southern setback	NO
5.3 Open Space & Landscaping:		
Soft Landscaping Area (5.3.3)		
44% (436m ²) (min)	70% soft landscaping	YES
Landscaping Cut & Fill (5.3.7)		

Item 11

(i) max cut or fill 500mm relative to natural ground	Landscape Plan is satisfactory except for excavation details at eastern end of building and need for additional planting. Revised landscape plan to be submitted, with additional detail on retaining walls if they are found to be necessary	NO
(ii) no cut & fill within 2m of boundary	The rock outcrop in the south eastern portion of the site will need to be cut to accommodate the laundry and part of the living area, as well as an accessway pathway adjacent to the building. This is within 2m of the southern property boundary adjacent to the driveway of 1B Kalang Avenue.	NO
Useable Open Space (s.5.3.8) Min depth 5m and min area 50m ²	50m ² area to be provided in rear yard	YES
5.5 Access & Parking:		
No. of Car Parking Spaces (s.5.5.1) 2 spaces behind building line	2 spaces forward of the building line	NO
Size of Car Parking Space (s.5.5.2) 5.6m x 5.4m	6 x 6.5m	YES

The following is an assessment of the above areas in which the proposal is non-compliant.

Non compliance in relation to front and side setbacks, and the provision of the garage structure forward of the building line.

To strictly apply the 9m setback would be impractical and unreasonable in relation to the subject site.

The reduced front setbacks are justified by the significant slope of the land and limits to and location of the existing level 'buildable' platform adjacent to the southern (front) site boundary. Increasing the front setbacks, would mean the need for additional fill and excavation to accommodate a dwelling on the land. Also, there would be greater impacts on the privacy of the dwelling below the subject site (No 41 Illeroy Avenue) if the building was to be pushed closer to its northern (rear) boundary. The proposed setbacks to Kalang Avenue result in distances to the northern boundary of between 8 and 24m which can be used for screening the development. As such, it is considered that the reduced front setbacks are justified.

The reduced western (side) setback is a variation to only one part of the building which is three-storey and only 2m in width. The variation has minimal consequence and no adverse impacts as the site adjoins a 10m wide drainage reserve.

Site planning & environmental constraints (Part 4)

Item 11

The site slopes 11m from the south-eastern corner to the north-western corner.

There will be no overlooking to any part of the dwelling house of 1B Kalang Avenue, as this property is considerably higher than the subject site.

There will be some overlooking of 41 Illeroy Avenue due to the nature of the topography of the site. In the proposed design, there will be potential overlooking from the balcony and windows of the ground level kitchen, living and dining area; from balcony and windows of the middle level main bedroom, and from windows of the lowest level bedrooms.

The distance between the northern wall of the proposed dwelling and the boundary with No 41 Illeroy Avenue varies from 8 to 20 metres, and there is a change in level of between 8-9m.

The following measures are proposed to address privacy to No. 41 Illeroy Avenue:

1. Reduction of the number of windows on the northern elevation. (**See Condition No. 4**);
2. Requirement for translucent glazing of windows in the bathrooms, stairwells and internal corridors. (**See Condition No. 4**);
3. Requirement for dense screen planting along the northern boundary, adjacent to No. 41 Illeroy Avenue. (**See Condition No. 7**);
4. Requirement for the provision of a new solid fence (1.8m high) on the northern boundary.
5. Increase in height of balcony balustrade to 1.1m high to minimise overlooking from people seated on the balcony, to the rear yard area of No. 41 Illeroy. The 1.1m high balustrade is to be of translucent glass. As such, a person seated on the balcony will only have a view of the roof of 41 Illeroy Avenue and no view of the private courtyard.

This has been determined by calculating sight lines from a person of average to tall height (1.0-1.9m) seated on the balcony of the proposed building at the point where the balcony is the closest distance to No. 41 Illeroy Avenue. Theoretically, this western end of the balcony is the point where overlooking would be at its worst. Refer diagram at **Annexure 4 and Condition No 5**).

Streetscape (Part 5.1)

The dwelling will appear as single storey from Kalang Avenue. Landscaping, external building finishes, fencing and paving design will be an important consideration as the building completes the vista of Kalang Avenue. Details of external finishes will be required by a condition of development consent (**refer Condition No 58**).

Although the Kalang Avenue setbacks are significantly below Council's 9m standard, the topography and configuration of the site in this location justify the variation. In particular, the end of Kalang Avenue without a normal turning circle and the irregular shape and angle of the driveway which serves 1B Kalang Avenue result in a situation wherein the location of the proposed dwelling will not result in any adverse impact on the streetscape.

Item 11

The dwelling will affect views of the hillside as seen from properties in Illeroy Avenue and the drainage reserve. In this regard it will appear as a substantial dwelling which steps down the slope, from its upper point close to Kalang Avenue, to its lowest point adjacent to No. 41 Illeroy Avenue. Views of an existing rock outcrop above the level of the proposed house have been considered because they were raised in submissions.

Part of the affected rocky outcrop will need to be excavated to accommodate the proposed house. However, this is necessary for the location of the proposed new house to be a suitable one. There will be some softening effect of the rock face to be exposed by existing trees to be retained and proposed new canopy trees.

Building form (Parts 5.1 and 5.2)

The building steps down the slope in three distinct levels. There is minor encroachment of the building into the building height plane and the need for additional cut into the slope to accommodate the different floor levels of the building. The deeper insertion of the building into the slope, as proposed, has however reduced the height and apparent bulk of the building, resulting in less impact on 41 Illeroy Avenue.

Landscaping cut and fill (Part 5.3)

Some parts of the site will need to be re-graded to achieve level recreation areas and this may involve fill in excess of the permitted amount of 0.9m due to the steep slope of the site. A more detailed landscape plan will be required to determine the exact amounts of cut and fill required as part of the landscaping, but this is proposed to be dealt with as a condition of consent (**refer Condition No. 7**).

There is also cut proposed within 2 metres of the front property boundary. As this area adjoins a driveway (driveway to 1B Kalang Avenue), this variation is considered acceptable.

Design Elements - Privacy & Security (Part 5.4)

The existing vacant site is very steep, with a 1 in 3 slope. It is zoned for residential purposes, therefore the erection of a dwelling is permissible. As such, some impacts from the construction of a new dwelling are to be expected, although appropriate measures can be implemented to reduce such impacts.

The main impact of the dwelling will be the potential loss of privacy to the property below the subject site, ie, No. 41 Illeroy Avenue. This can be reduced by screen planting along the northern boundary, a reduction in windows and openings on the northern elevation, a requirement for the provision of a 1.1m high translucent glass balustrade to the main balcony to prevent direct views to the rear yard of No. 41 Illeroy Avenue by a person seated on this balcony, a requirement that certain windows be of opaque glass. These measures are required by conditions identified above.

Design Elements - Access & Parking (Part 5.5)

Item 11

2 car spaces are provided in a satisfactory location, notwithstanding that it is forward of the building line. As explained earlier in this report, there are significant physical constraints which limit where carparking can be provided. The wording of the Right of Carriageway also limits provision of carparking elsewhere on the site, ie access to Lot 101 from Lot 11, is only available over that part of Lot 101 which was formerly created as Lot 12 before being consolidated with the subject site. Refer site plan. To change the terms of the Restriction as to User would require the agreement of both parties associated with the legal instrument, ie the owners of both 1A and 1B Kalang Avenue. Council was not nominated as the party able to release, vary or modify the instrument and, therefore, it would be between the affected property owners to agree on a change, if a change was considered necessary.

Notwithstanding the above, the proposed location of the garage is considered suitable. The topography of the site is such that the southern part of the site is level with Kalang Avenue, and provides the best and most accessible location for a garage. To set this garage back further would mean that dwelling would need to be built closer to the northern boundary of the site, ie closer to No. 41 Illeroy Avenue, resulting in greater impact on that property. The visual impact of the proposed garage at the reduced setback is considered minor. This is because the garage is single storey with the rest of the house below it, and because the triangular area formerly created as Lot 12 which provides access to the remainder of Lot 101, effectively creates a setback from the public roadway of Kalang Avenue.

Design Elements - Water Management (Part 5.6)

Council's Engineers are satisfied that appropriate stormwater design can be implemented (**refer Conditions Nos 35-38**).

Managing construction or demolition (Part 6)

Condition Nos 22-34 and 40 & 41 will ensure that construction of the dwelling does not adversely affect the amenity afforded to surrounding residents.

Development Control Plan 40 - Waste Management

A satisfactory Waste Management Plan has been submitted.

Development Control Plan No 43 - Car Parking

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

Likely Impacts

The major likely impact resulting from the development is the loss of privacy to the adjoining dwelling at No. 41 Illeroy Avenue, Killara, from the balcony at the living area level of the proposed dwelling. This impact can be reduced by additional screen planting along the northern property boundary, the reduction of fenestration on the northern elevation of the proposed dwelling, translucent glazing to the balcony balustrade the height of which has been specified to ensure that a

Item 11

person seated on the terrace does not have a direct view of the rear private courtyard of No. 41 Illeroy Avenue (**refer Conditions Nos 4, 5 and 6**).

Given that this is the north-facing elevation of the dwelling, it is not practical or reasonable to remove all windows or relocate terraces as this would impact significantly on the solar access of the proposed dwelling.

The lower level windows are bedroom windows. Although some viewing of No. 41 Illeroy Avenue will be possible from these windows, the degree of exposure is generally significantly less than that expected from living areas given that these rooms will be used more frequently during the night time. The views will be interrupted in time by screening trees to be planted along the northern boundary. (**Refer Condition 7**).

Suitability of the Site

The site has a fall of approximately 1 in 3 from its south-eastern to its north-western corner. The steep topography constrains the location and design of any proposed dwelling on the site. However, it is considered that the proposed design has responded appropriately to the site and its constraints.

Any Submissions

All submissions received have been considered in the assessment of this application. It is concluded that they do not warrant refusal of the application.

Conditions 4, 5, 6 and 58 have been imposed so as to address the concerns of the objectors, particularly the concerns for loss of privacy to No. 41 Illeroy Avenue, as outlined in detail above.

Public Interest

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

Other Relevant Matters/Considerations Not Already Addressed

Objectors to the development have requested that Council have regard to the previous Land and Environment Court decision and expert evidence associated with these proceedings.

The following tabulated comments outline how issues raised in relation to the previous proposal refused plans by the Land and Environment Court have been resolved in the current proposal.

Concerns with previous development proposal	The current proposal
Encroachment into building height plane	There remains a minor encroachment of 750mm at the south-western corner of the garage. Refer plan DA07H. This is due to the slope of the land and not due to an inadequate setback.

Item 11

	<p>The proposed setback at this point is 2.857m which is considered sufficient, given the location of the 10m wide drainage reserve to the west.</p> <p>The extent of encroachment has been reduced from that of the earlier plans, in which the setback to the western boundary was 1.055m. The full extent of encroachment into the building height plane is not clear from the earlier plans.</p>
<p>Front setback non-compliance</p>	<p>The reduced setback to Kalang Avenue (variable between 1.2m and 2.6m) is of minor consequence.</p> <p>The dwelling completes the end of the vista at this end of Kalang Avenue and will appear as single storey dwelling when looking north from Kalang Avenue. Also, the reduced setbacks are justified because this is the best position for the house given the slope of the land, the need to reduce building height and the need to maximise distance from the house at No. 41 Illeroy Avenue so as to properly consider the privacy of this neighbour.</p> <p>The previous proposal was only marginally different in terms of the front setback and the building footprint approved in 1993 was within 1-2m of the front property boundary as this was the location of the original carport on the property.</p>
<p>Non-compliance with side boundary setbacks</p>	<p>Non compliance with the side boundary setback has been removed except for a small section of building where the floors intersect and where the building is technically three-storey. This section of the 19m long building elevation is only 2m wide, and the breach for this section is only 300mm.</p> <p>As this is adjacent to the 10m wide drainage easement, the consequence of this variation is minor.</p>
<p>Non-compliance with 8m height limit</p>	<p>Documentation has been submitted with the current proposal which confirms that no part of the proposed dwelling will exceed 8m in height. The proposal rises to a maximum height of 7.6m.</p>
<p>Non-compliance with Council's controls on cut and fill</p>	<p>As with earlier plans, the current plans indicate larger than permitted amount of cut (up to 2.5m) to accommodate Bedroom 1. There is also 2m of cut at the south-eastern corner of the building to accommodate the eastern-most living areas, and an access pathway. Council's code permits a maximum of 1.8m of cut, and does not permit cut within side setbacks.</p> <p>Whilst there is non-compliance in this regard, the non-compliance is a function of the terrain of the site and the need to set the building into the slope of the land.</p>
<p>Floor Space Ratio (FSR) has been</p>	<p>The FSR of current plans is 0.33:1. This is less than the earlier</p>

Item 11

exceeded (Council's DCP requires no greater than 0.37:1FSR).	proposal which was 0.43:1. The FSR complies with Council's DCP.
Poor site design	Current site design has improved the design which formed the earlier proposal by reducing the overall height of the building, reducing overall floor space and increasing the side setbacks.
Visual Impact is unsatisfactory	<p>The dwelling has been reduced in size from the earlier proposal, thereby reducing its visual impact. From Kalang Avenue, the dwelling will appear as a single storey dwelling which is satisfactory. However, the dwelling will have a visual impact on No. 41 Illeroy Avenue.</p> <p>It is proposed to reduce this impact by providing additional screen planting on the northern boundary.</p>
Loss of significant vegetation	As part of the current DA, the applicant submitted an updated survey plan which indicated 14 existing trees on the subject land, all of which are to be retained. Some additional planting of screen trees will be required. (Refer Condition 7).
Loss of privacy to 41 Illeroy Avenue	As well as additional screen planting, it is proposed to reduce privacy impacts on No. 41 Illeroy Avenue by reducing the number of windows on the northern face of the proposed building, requiring certain windows to be of translucent glass, and requiring a 1.1m high translucent balcony balustrade. The windows to be deleted are marked with an asterisk on the Plan No DA - 06H (refer Condition Nos 4, 5).
Detail of documentation	Amended plans submitted during August 2004 corrected setback inaccuracies and provided extra detail in relation to the retaining walls.
Construction methodology	Standard conditions of development consent are recommended requiring engineering certificates to ensure satisfactory construction techniques (refer Condition Nos 39-41) in accordance with the recommendations of a submitted Geotechnical Report.

CONCLUSION

Having regard to the provisions of section 79C of the Environmental Planning and Assessment Act 1979, the proposed development is considered to be satisfactory, subject to conditions. 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 319/04 for the construction of a single dwelling on land at Lot 101, DP 875236, No. 1A Kalang Avenue, Killara,

Item 11

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 plans numbered DA 01H – 011H, dated March 2004 and submitted to Council in September 2004 (setbacks corrected), and endorsed with Council’s approval stamp, except where amended by the following conditions:
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. Windows marked with asterisk on the plan of the northern elevation of the proposed dwelling Plan No. 06H are to be deleted from the plans. Windows to the top level bathroom and stairwell, and middle level bathroom, shall be of translucent glazing.
5. The balcony balustrades shall be 1.1m high, as measured from the finished balcony floor level, and of translucent glazing.
6. Construction of a 1.8m solid high boundary fence on the northern property boundary with No. 41 Illeroy Avenue, prior to commencement of the construction of the dwelling.
7. Additional screen planting is to provided on the northern property boundary adjoining No. 41 Illeroy Avenue, subject to a revised Landscape Plan to be approved by Council prior to release of Construction Certificate. The landscape plan shall provide details of all cut and fill to be undertaken on the site, as well as details of any retaining walls to be constructed. All retaining walls will need to be certified by a Geotechnical Engineer.
8. 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.
9. 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.
10. 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.
11. 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

Item 11

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.

12. **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.
13. 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.
14. 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.
15. A sign shall be erected in a prominent position on the site which states the name and contact details of the Principal Certifying Authority.
16. All excavations shall be properly guarded and protected with hoardings or fencing to prevent them from being dangerous to life and property.
17. Any excavation of rock involving hydraulic or compressed air rock hammers or other excavation equipment shall comply with the requirements of Council's Code for the Control and Regulation of Noise on Building Sites.
18. The applicant is advised that the Construction Certificate plans and specifications must comply with the provisions of the Building Code of Australia.
19. 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.
20. Compliance with the general terms of approval issued by Department of Infrastructure, Planning and Natural Resources:
 - i. All works proposed must be designed, constructed and operated to minimise sedimentation, erosion and scour of the banks or bed of the watercourse/foreshore and to minimise adverse impacts on aquatic and riparian environments.

Item 11

- ii. Erosion and sediment control measures are to be implemented prior to any works commencing at the site and must be maintained, for as long as necessary after the completion of works, to prevent sediment and dirty water entering the watercourse/foreshore environment. These control measures are to be in accordance with the requirements of Council or the consent authority and best management practices as outlined in the NSW Department of Housing's "Managing Urban Stormwater: Soils and Construction" Manual (1998) - the 'Blue Book'.
 - iii. The Part 3A Permit from the Department is issued for works on FREEHOLD land only. This Permit is null and void for any works on Crown Land.
 - iv. Rehabilitation of the area in accordance with the 3A Permit Conditions or any direction from the Department is the responsibility of the Permit holder and owner or occupier of the land.
 - v. Work as executed survey plans of a professional standard and including information required by the Department shall be provided to the Department on request.
 - vi. If in the opinion of a Departmental Officer, works are carried out in such a manner that they may damage or adversely affect the watercourse or foreshore environment, the Departmental Officer may issue an oral or written direction to immediately stop all work/s.
 - vii. If any of the Department's Part 3A Permit Conditions are breached, the Permit holder shall restore the site in accordance with these Conditions and any other necessary remedial actions as directed by the Department. If any breach of the Part 3A Permit Conditions requires a site inspection by the Department, then the permit holder shall pay a fee prescribed by the Department for this inspection and all subsequent breach inspections.
21. The fence and footings shall be constructed entirely within the boundaries of the property.
 22. The demolition is to be carried out in accordance with the guidelines contained in Australian Standard 2601-1991: The Demolition of Structures.
 23. 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.
 24. Trees and vegetation on a site shall not be disturbed except with the approval of the Council.
 25. The burning of undergrowth, foliage, building refuse and like matter on the site is prohibited.

Item 11

26. Under no circumstances shall building materials, demolition waste, fill, soil or any other material from any source be placed or stored within any public reserve.
27. To preserve and enhance the natural environment, all soil erosion and sediment control structures shall be inspected following each storm event and any necessary maintenance work shall be undertaken to ensure their continued proper operation. Sediment shall be removed from the soil erosion and sediment control structures when no more than forty percent (40%) capacity has been reached. These structures shall continue in proper operation until all development activities have been completed and the site fully stabilised.
28. Sites shall not be re-shaped, re-contoured, excavated nor the levels on any part of the site altered without the Consent of the Council being obtained beforehand.
29. To preserve and enhance the natural environment, sediment removed from erosion and sediment control structures shall be disposed of to an approved sediment dump.
30. For stormwater control and to preserve and enhance the natural and built environment, a Sediment and Erosion Control Plan relating to all areas of the site to be disturbed or affected by earthworks or construction works shall be submitted and approved with the application for a Construction Certificate. The Control Plan shall include all details of measures and methods of sediment and erosion control to be adopted, implemented and maintained during the course of development of the site. The Control Plan shall incorporate and disclose:
 - a. All details of drainage to protect and drain the site during the construction processes;
 - b. All sediment control devices, barriers and the like;
 - c. Sedimentation tanks, ponds or the like;
 - d. Covering materials and methods;
 - e. A schedule and program of the sequence of the sediment and erosion control works or devices to be installed and maintained.
31. For the purpose of health and amenity, effective measures are to be taken at all times to prevent any nuisance being caused by noise, vibrations smells, fumes, dust, smoke, waste water products and the like.
32. To prevent pollution, all vehicles making a delivery to or from the site are to be covered to prevent loose materials, dust etc falling from the vehicles.
33. To prevent pollution, any areas cleared of vegetation where there is a flowpath greater than 12.0 metres in length shall have a properly constructed silt fence erected to intercept runoff.

Item 11

34. To prevent pollution, all disturbed areas which are not to be built upon or otherwise developed within 14 days shall be stabilised with mulch, woodchip or other rehabilitation methods to provide permanent protection from soil erosion.
35. Stormwater runoff from new hard surfaces generating runoff or landscaped areas that are not at natural ground level shall be piped to the watercourse in the adjacent drainage reserve. New drainage line connections to the watercourse shall conform and comply with the requirements described in sections 5.5 of Councils Water Management Development Control Plan 47, available in hard copy at Council and on the Council website.
36. To maintain capacity of the Public drainage system, an On-site Stormwater Detention System must be provided in accordance with Council's Stormwater Management Manual. Alternatively, the on site detention system may be replaced with a stormwater detention/ retention and re-use system(s) designed in accordance with Councils Water Management Development Control Plan 47, available in hard copy at Council and on the Council website.

An overflow is to be incorporated that will direct any excess flow to the downstream drainage system.

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

NOTE 1: The on-site stormwater detention system and property drainage 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).

NOTE 2: 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.

NOTE 3: 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.

NOTE 4: If a landscaped surface type detention system is used the storage volume required is to be increased by 20%.

NOTE 5: The standard Council On-site Stormwater Detention Calculation Sheet is to be completed and included on design drawings. This is available from Council upon request.

Item 11

37. The applicant is to demonstrate that the existing driveway servicing Lot 52 (1B Kalang Avenue) is not to be reconstructed. The proposed driveway is to commence from the northern edge of the existing driveway access to Lot 52.
38. The stormwater drainage design submitted, dated March 2004, is not approved for reasons which include the following:
 - The on site detention design is for a 750mm depth of ponded water over the discharge control pit. In accordance with Council's Stormwater Management Manual, childproof fencing will be required around the storage. Details of this should be shown on the design;
 - Pipelaying is shown within the canopy of a tree in Council's reserve. The applicant shall consult with Council's Engineer in relation to an alternative drainage design which shall be approved by Council prior to release of the Construction Certificate.
39. Compliance with recommendations made in Jeffery and Katauskas Stability Assessment Ref 16333J Let, dated 30 October 2001.
40. 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.**
41. 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.
42. Landscape works shall be carried out in accordance with Landscape Drawing No 0145/CC1 Amended prepared by Trish Dobson and dated 1 September 2004 or 16 September 2004 (Council stamp) submitted with the Development Application, except as amended by the following:
 - the extent of excavation at the eastern end of the building shall be 600mm outside the line of the building and minor battering to stabilize soil;
 - *Lomandra longifolia* shall be planted on the battered area at the top of the excavation to help stabilize the soil;
 - additional screen planting shall be provided along the northern boundary;

Item 11

- existing plants in the terraced gardens which are removed or damaged by building works shall be replaced.
43. All 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:
44. On completion of the landscape works, 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.
45. 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.
46. The following conditions imposed by the Rural Fire Service:
- i. Construction shall comply with AS3959 - 1999 level 3 'Construction of Buildings in bushfire prone areas'.
 - ii. Roller doors, tilt-a-doors and the like shall be sealed to prevent the entry of embers into the structure.
 - iii. The entire property shall be managed as an 'Inner Protection Area' as outlined within section 4.2.2 in Planning for Bushfire Protection 2001.
 - iv. All fencing shall be constructed from non-combustible materials.

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

47. 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.

48. 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

Item 11

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).

49. 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.
50. 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.
51. The bathroom, toilet and stairwell are to be of translucent glazing to minimise overlooking to the adjoining property/s. Details are to be shown on the Construction Certificate plans.
52. An uphill runoff cutoff system is to be provided as recommended in Jeffery and Katauskas Stability Assessment Ref 16333J Let, dated 30 October 2001. Details are to be included in the property drainage design and approved by the Principal Certifying Authority prior to issue of the Construction Certificate.

Item 11

53. 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 and/or retention system. 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 100m² roof area for each 5000 litres of storage. 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.
54. 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.
55. The on-site detention and/or retention and property drainage system design is to be endorsed by a geotechnical engineer as to the provision of a cutoff drainage system as well as the suitability of the proposed detention/ retention storage locations, particularly if an above ground detention storage is proposed.
56. A CASH BOND/BANK GUARANTEE of \$2000 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.

CONDITIONS TO BE COMPLIED WITH PRIOR TO WORK COMMENCING

Item 11

57. 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.
58. External finishes and colours are to be sympathetic to the surrounding environment. Samples of materials and finishes are to be submitted to and approved by Council prior to the commencement of work.
59. To preserve Tree 18 - *Castanospermum australe* (Moreton Bay Chestnut) and Tree 19 - *Syncarpia glomulifera* (Turpentine) located in the adjoining drainage reserve to the west, no work shall commence until a fence is erected 1.5 metres inside the western boundary, commencing at the dog leg in that boundary to the northern boundary, to prevent any activities, storage or the disposal of materials within the fenced area. The fence/shall be maintained intact until the completion of all demolition/building work on site.
60. To preserve Tree 5 - *Alectryon tomentosus* (Rambutan), Tree 7 - *Jacaranda mimosifolia* (Jacaranda), Tree 6 & 8 - *Pittosporum undulatum* (Sweet Pittosporum), Tree 11 *Fraxinus Sp* (Ash) and Tree 12 *Brachychiton acerifolius* (Flame Tree) no work shall commence until the area beneath their canopies is fenced off as specified below 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.

One fence shall be erected around the trees which is located mostly at the existing 'bottom of bank' and 'top of bank' near the eastern boundary (refer to survey plan dated 15-7-04). The fence shall be located at a 2.5 metres radius around Tree 5, 6 & 7 until it meets the 'bottom of the bank' RL115.85 then continue along until it crosses the 'top of the bank'(RL115.88). It shall continue along the 'top of bank' to RL 115.76 and continue west to meet a 3.5m radius of Tree 11 & 12 and run back to the 'bottom of bank' at RL112.65

61. 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.
62. To preserve the existing hedge along the concrete driveway to the south of the building, no work shall commence until a protection fence, constructed of star pickets at 2.4 metre spacings and connected by four strands of 2mm wire at 300mm spacings to a minimum height of 1.5 metres is erected along the southern boundary for the length of the hedge. No access or storage of materials is permitted within the fenced area.
63. 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

64. 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.
65. 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.
66. 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 and/or 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 instrument for protection of on-site detention/ retention 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 in the form of a request using forms 13PC and 13RPA. The relative location of the On-Site Detention/retention facility, in relation to the building footprint, must be shown on a scale sketch, attached as an annexure to the request forms.

67. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance 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/ retention systems, and also applies if the Principal Certifying Authority (PCA) is not the Council.

Item 11

68. Prior to issue of an Occupation Certificate, 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 at no cost to Council.
69. Prior to issue of an Occupation Certificate, Certification and a Works-as-Executed (WAE) plan, in relation to the as-built on-site detention/retention 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/retention 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, and shall specifically include:

- As constructed levels in comparison to design levels
 - As built location of all detention/retention 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 system, including dimensions.
 - Overflow directed to an approved disposal point.
70. 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
 - 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.

BUILDING CONDITIONS

71. 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.

Item 11

- 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.
72. The building works are to be inspected during construction by the Council, an accredited certifier or other suitably qualified person/s (as applicable) and a Compliance Certificate shall be issued prior to proceeding to the subsequent stages of construction, encompassing not less than the following stages:
- a. All sediment and erosion control and tree protection measures and installations in place on the site prior to the commencement of any earthworks, excavations or other work.
 - b. Any pier holes and/or foundation material.
 - c. Any steel reinforcement prior to placement of concrete. This includes all reinforcement of floors, slabs, trenches, columns, beams and stairs (if components of this structure).
 - d. Any structural components (i.e. timber framework, structural steelwork or the like) before fixing any lining or covering.
 - e. Any stormwater drainage works prior to covering.
 - f. The completed landscape works in accordance with the approved plans.
 - g. The completed structure prior to occupation.

The required inspection fees (which also covers the issue of the Compliance Certificate) are to be paid to the Council before the issue of a Construction Certificate for this development.

If inspections are to be carried out by Council, 24 hours notice is required by Council's Department of Environmental and Regulatory Services, by telephoning Customer Service on 9424 0888 during business hours (8.30am to 4.30pm) or by facsimile on 9418 1117.

Note: Inspections of work which is found to be defective or not ready will attract a reinspection fee. Please cancel bookings which will not be ready for inspection.

Item 11

73. To ensure compliance with this determination a Registered Surveyor's Report confirming reduced levels as shown on the approved plans with particular regard to the future finished level of the each floor shall be submitted to the Principal Certifying Authority on completion of that floor.
74. 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).
75. 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.
76. 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.

77. For fire safety an automatic fire detection and alarm system shall be installed throughout the dwelling in accordance with the following requirements:
- a. A smoke alarm system complying with Part 3.7.2 of the Building Code of Australia Housing Provisions; or
 - b. Smoke alarms which:
 - i. 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
 - ii. are connected to the mains and have a standby power supply; and
 - iii. 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.

78. 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.

Item 11

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.

79. The following are required details and must be submitted to the Council on completion of the works. 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. Wet area waterproofing details complying with the Building Code of Australia.
 - b. Mechanical ventilation details complying with Australian Standard 1684 Mechanical Ventilation & Airconditioning.
 - c. Glazing details complying with AS 1288-1989 Glass in Buildings and Installation Code.
 - d. Stormwater disposal details complying with Council's Stormwater Management Manual and/or other conditions of this consent.
 - e. A Compliance Certificate from a suitably qualified person that the PROPOSED complies with the relevant deemed to satisfy provisions of the Building Code of Australia.
 - f. Waterproofing of walls/floors below ground level to prevent the entry of water into the building.

Ursula Lang
Executive Planner

Scott Cox
**Team Leader, Development
Assessment Central Team**

M Prendergast
**Manager
Development Assessment Services**

M Miocic
**Director
Development & Regulation**

Attachments:

- A. Plans of proposed development 01H-011H**
- B. Landscape plan**
- C. Surveyors report**
- D. Sightline diagram**

NOTICE OF RESCISSION

657 TO 661 PACIFIC HIGHWAY, KILLARA - DRAFT LEP 202

**Notice of Rescission from Councillors T Hall, A Andrew & N Ebbeck dated
23 November 2004.**

We, the undersigned, move that the decision not to proceed with the rezoning of 657 to 661 Pacific Highway, Killara is hereby rescinded and the Officer's recommendation to adopt Draft LEP 202 be approved.

RECOMMENDATION

That the above Notice of Rescission as printed be adopted.

Tony Hall
Councillor for St Ives Ward

Anita Andrew
Councillor for Comenarra Ward

Nick Ebbeck
Councillor for Wahroonga Ward