



planning consultants

Building Certificate Application

For Warriewood Brook Seniors Housing Development



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Abbreviations

AADT	annual average daily vehicle trips
AHD	Australian Height Datum
AHIP	Aboriginal Heritage Impact Permit
ARV	Anglican Retirement Villages
AS	Australian Standard
ASS	acid sulfate soils
BCA	Building Code of Australia
BC Application	Building Certificate Application
BTA	bushfire threat assessment
CC	construction certificate
CIV	capital investment value
Council	Pittwater Council
DA	development application
DCP	development control plan
DECC	former NSW Department of Environment and Climate Change
DET	NSW Department of Education and Training
DFP	DFP Planning Pty Limited
DFCS	NSW Department of Family and Community Services
DGRs	Director General's Requirements
DoCS	former NSW Department of Community Services
DoPE	NSW Department of Planning and Environment
DoPI	former NSW Department of Planning and Infrastructure
DVT	daily vehicle trip
DWE	NSW Department of Water and Energy
EPA	NSW Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	environmental planning instrument
ESCP	erosion and sedimentation control plan
ESD	ecologically sustainable development
FPL	flood planning level
FSR	floor space ratio
GFA	gross floor area
HIS	heritage impact statement
JRPP	Joint Regional Planning Panel
kph	kilometres per hour
LEP	local environmental plan
LGA	local government area
NGL	natural ground level
NorBE	neutral or beneficial effect
NOW	NSW Office of Water
NPW Act	<i>National Parks and Wildlife Act 1974</i>
NPWS	NSW National Parks and Wildlife Service
NRF Lawyers	Norton Rose Fulbright Lawyers
PA	planning agreement
OEH	NSW Office of Environment and Heritage
PAD	potential archaeological deposit
PVT	peak hour vehicle trip
REP	regional environmental plan
RFI Act	<i>Rivers and Foreshore Improvement Act 1948</i>
RFS	NSW Rural Fire Service

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Abbreviations

RF Act	<i>Rural Fires Act 1997</i>
RL	reduced level
RMS	NSW Roads and Maritime Services
RTA	former Roads and Traffic Authority of NSW
SCA	Sydney Catchment Authority
SC	Subdivision Certificate
SCI	site contamination investigation
SEE	Statement of Environmental Effects
SEPP	state environmental planning policy
SIS	species impact statement
SULE	safe useful life expectancy
TSC Act	<i>Threatened Species Conservation Act 1995</i>
VPA	voluntary planning agreement
vph	vehicle trips per hour
WM Act	<i>Water Management Act 2000</i>
WSUD	water sensitive urban design

1 Introduction

1.1 Commission

DFP Planning Pty Ltd (DFP) has been commissioned by Anglican Retirement Villages (ARV) to prepare a report to accompany a Building Certificate Application (BC Application) in respect of certain aspects of Stage 4 and 5 of the approved seniors housing development being Stages 4 and 5 of Warriewood Brook at Nos. 6-14 Macpherson Street, Warriewood (the Site).

The Site is located on the northern side of Macpherson Street approximately 400 metres west of Warriewood Road and 330 metres east of Garden Street. The Site is located within the Warriewood Urban Land Release Area and is zoned R3 Medium Density Residential (R3 zone) under Pittwater Local Environmental Plan 2014 (Pittwater LEP 2014).

The BC Application is made pursuant to Section 149B of the Environmental Planning & Assessment Act 1979 (EP&A Act) in respect to certain building works already constructed within the Warriewood Brook seniors housing development at the Site in respect of which there are discrepancies between those “as built” works and the approved architectural and landscaping plans associated with Development Consent NO267/13 (as modified) (see **Appendix 1**) and Construction Certificate No.s 142440/1 and 142440/2 issued by the Principal Certifying Authority, City Plan Services Pty Ltd, on 25 March 2015 and 21 May 2015 respectively (see **Appendix 2**).

As Council will be aware, the law does not require work to be “identical” to the approved plans, rather it requires that it be “not inconsistent” with the Development Consent and incorporated Construction Certificate plans and specifications.

Whether any of all of the discrepancies in the “as built” works which have been identified by ARV are, or are not, inconsistent with the Development Consent is a question of fact and degree having regard to the overall context of this large and complex development. ARV has sought to address any concerns which Council may have in relation to these instances through this BC Application which, if granted, will wholly resolve matters. However, the BC Application is made without admission as to any non-compliance with the Development Consent.

A Section 96(2) Application has been separately lodged with Pittwater Council (Council) on 14 April 2016 seeking Council’s approval to modify certain design elements of the Warriewood Brook seniors housing development as shown on the amended architectural plans (including solar access study) prepared by Environa Studio Architects (see **Appendices 3** and **4**) and amended landscaping plans prepared by John Lock and Associates, Landscape Architects (see **Appendix 5**). The Section 96(2) Application also proposes the modification of certain related conditions of Development Consent NO267/13 (as modified).

1.2 Scope of this BC Application

Additionally, and for completeness, this BC Application seeks that a building certificate be issued in relation to a number of very minor design alterations to the “as built” Warriewood Brook development, which in the ordinary course would not require any form of approval.

Indeed, some of the design modifications to the “as built” Warriewood Brook development as shown on the amended architectural plans (see **Appendix 3**) and the amended landscaping plans (see **Appendix 5**) are very minor alterations and typically would not trigger the need for lodging either a Section 96 Application or this BC Application with Council.

Nevertheless, ARV has instructed us to take a conservative approach to ensure that all the “as built” design changes to the Warriewood Brook development, even those which are considered to be de minimis, are included in the BC Application in the interest of enabling all identified inconsistencies in the “as built” development to be wholly resolved.

1 Introduction

1.3 Purpose of this Report

The purpose of this report in respect to the BC Application is to provide Council with all relevant information necessary to assess the “as built” Warriewood Brook development pursuant to Sections 149A to E of the EP&A Act.

1.4 Project Team

The preparation of this BC Application has been a collaborative effort by a team of specialist consultants as specified in Table 1 below:

Town Planning	DFP Planning Pty Limited
Architectural	Environa Studio Environmental Architecture
Landscape Architectural	John Lock & Associates Landscape Architects
Water Management and Flooding	GHD
Civil and Structural Engineering and Water Management	Henry & Hymas Consulting Engineers
Bushfire and Fire Safety	Building Code & Bushfire Hazard Solutions
Project Managers	Morgan Moore & Associates
Accessibility	Accessible Building Solutions
Legal	Norton Rose Fulbright Lawyers
Building (BCA) and BASIX	Benchmark
Builders	PBS Building
Registered Surveyors	Lockley Land Title Solutions and Land Surveys
Geotechnical Engineering	JK Geotechnics

1.5 Material Relied Upon

This report has been prepared by DFP based on information referred to herein and/or appended to this report and site inspections undertaken on 21 January 2016, 23 February 2016 and 12 April 2016.

2 Site Context

2.1 Site Description

The Site is located on the northern side of Macpherson Street about 400 metres west of Warriewood Road and 330 metres east of Garden Street. The Site is situated within the Warriewood Valley Urban Land Release Area in the Local Government Area (LGA) of Pittwater as shown on **Figure 1** below. The seniors housing development at the Site is known as Warriewood Brook. The Warriewood Brook development is operated by ARV who are a Christian not-for-profit organisation and a social housing provider of housing and healthcare services for senior members of the community.

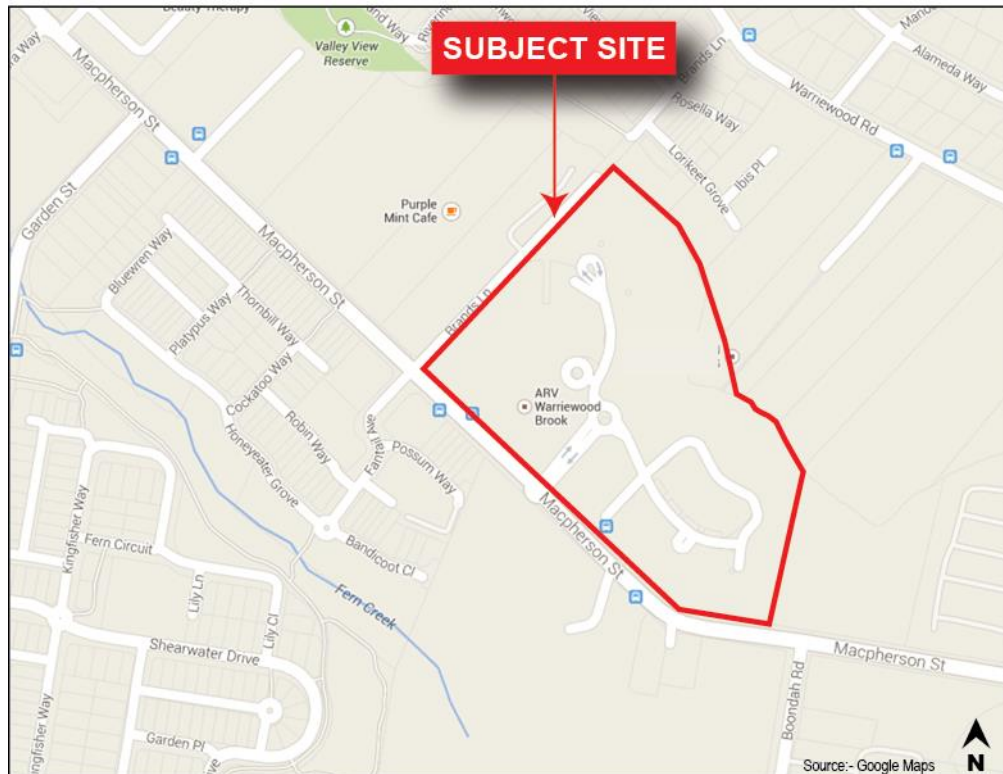


Figure 1 The site location

The Site is known as 6-14 Macpherson Street, Warriewood and is legally described as Lots 1, 2, 3, 4 and 5 in Deposited Plan 1161389. **Appendix 6** to this report contains site survey plans and certification by Lockley Land Title Solutions and Land Surveys, Registered Surveyors, as well as a copy of Deposited Plan 1161389.

The rear of the original Warriewood Brook development site was dedicated by ARV to Council about 10 years ago as a multi-purpose public open space and drainage creekline corridor. Parts of the site frontages to Macpherson Street and Brands Lane have also been dedicated by ARV to Council for road upgrading works. These land dedications were required under the Conditions of Development Consent DA O102/05 for the original Masterplan staged construction of a seniors housing development at the total Site.

The total Site is irregular in shape with a site area (post-dedication of land to Council) of 6.1491 hectares (61,491m²). The Site has a frontage to Macpherson Street of approximately 357 metres, and to Brands Lane to the west of about 213 metres. The eastern site boundary is about 120 metres.

To the north of the Site is Narrabeen Creek and the public open space and drainage corridor area (6,662m²) which has been dedicated by ARV to Council. The site area prior to the land dedication of varying parts of the original Site to Council for the public open space and drainage corridor area and for road widening and upgrading works is noted in Council's assessment report on DA NO102/05 and DA NO634/10 as being 6.6519 hectares (66,519m²) but is shown on the title plans as being 6.8153 hectares (68,153m²).

2 Site Context

The topography of the Site is relatively flat to gently undulating with a fall across the site from Macpherson Street towards Narrabeen Creek in a north-easterly direction.

Stages 1 to 3 of Warriewood Brook are constructed on the western portion of the Site and consist of four buildings comprising a 119 bed residential care facility, 89 self-contained dwellings in apartment style buildings, community facilities, car parking, internal roads and site landscaping including a large native landscaped water quality detention pond with a boardwalk and a village green. Stages 1 to 3 of the Warriewood Brook seniors housing development are completed and occupied by senior residents with ARV staff providing a range of housing and healthcare services to those residents.

Currently under construction at the Site are Stage 4 (completed other than proposed fencing and balustrade) and Stage 5 of the Warriewood Brook seniors housing development which are located in the eastern portion of the Site. Stages 4 and 5 of the Warriewood Brook development are the subject of this BC Application (and also the separate s96 Application for proposed building alterations and other works which was lodged with Council on 14 April 2016). Stages 4 and 5 were the subject of Development Consent No. N0267/13 which authorised demolition, earthworks and the construction of 59 self-contained dwellings with a community building, bowling green, landscaping, car parking and internal roads at the Site.

Stage 4 of the Warriewood Brook development consists of 33 self-contained dwellings (Dwelling No.s 1 to 33), community building, bowling green, landscaping, car parking and internal roads and has been completed, except for fencing works to areas of private and communal open space areas, service courts and retaining walls and a balustrade to a common path. City Plan Services Pty Ltd issued an Interim Occupation Certificate on 20 January 2016 for Stage 4 of the Warriewood Brook development (see **Appendix 9**).

Stage 5 of the Warriewood Brook development comprises the remaining 26 self-contained dwellings (Dwelling No.s 34 to 59) and ancillary development. The 26 dwellings in Stage 5 of the Warriewood Brook development are at various phases of construction as shown in the PBS Building Construction Report dated 8 April 2016 attached as **Appendix 7** to this report.

On 5 February 2016, Council issued a Stop Work Order in respect to Stage 5 only of the Warriewood Brook development. On 3 March 2016, Council modified the Stop Work Order, requiring all building works associated with Dwelling No.s 38, 39, 41, 42, 44, 45, 47, 48, 50, 51, 53 and 54 to cease (see **Appendix 8**). Accordingly, we are informed that building works within Stage 5 are occurring only on those dwellings not referenced in the modified Stop Work Order. Civil works which have been separately agreed with Council to be outside the scope of the modified Stop Work Order are also occurring in Stage 5.

Figure 2 is an aerial photograph which shows the Warriewood Brook seniors housing development Site and surrounding development in this part of the Warriewood Valley.

2 Site Context



Figure 2 Aerial photograph

Figures 3 to 8 are photographs of the Warriewood Brook seniors housing development at the Site.



Figure 3 Warriewood Brook seniors housing development (Stages 1 to 3)

2 Site Context



Figure 4 Warriewood Brook seniors housing development (Stages 1 to 3)



Figure 5 Warriewood Brook seniors housing development (Stages 1 to 3)

2 Site Context



Figure 6 Warriewood Brook seniors housing development (Stages 1 to 3)



Figure 7 Warriewood Brook seniors housing development (Stage 5)

2 Site Context



Figure 8 Warriewood Brook seniors housing development – bowling green (Stage 4)

2.2 Surrounding Development

The Site is located within the Warriewood Valley Urban Land Release Area. This area has been undergoing significant redevelopment over the past 30 or so years with rural/residential properties and market gardens being redeveloped for a range of urban land uses including industrial, warehouse and commercial developments, traditional single lot residential subdivisions and dwelling houses, 2 to 5 storey medium density housing developments (**Figure 9**), as well as infrastructure works to upgrade the local road network, public drainage and open space areas.

Adjoining the Site to the west is Brands Lane which is a public road. Further to the west are existing rural/residential properties, Flower Power Plant Nursery (**Figure 10**) and recently constructed medium density housing developments are situated along both sides of Macpherson Street.

To the south of the Site is a 3 to 5 storey Meriton medium density apartment style development (**Figure 1**) and a child minding facility (**Figure 12**). Further along Macpherson Street to the southwest are mostly 2 storey medium density housing developments and traditional residential subdivisions with 1 and 2 storey dwellings.

To the southeast of the Site along Macpherson Street and Boondah Road is the Sydney Water Warriewood Sewerage Treatment Facility, Pittwater Council's Administration and Works Depot, public reserves and the Warriewood Wetlands public open space area. Adjoining the Site to the east is an existing rural/residential property which is vegetated with mature trees.

2 Site Context

To the north of the Site is the Narrabeen Creek public open space and drainage corridor area which has been dedicated by ARV to Council as required under the Conditions of Development Consent DA NO102/05 for the original Masterplan for the Warriewood Brook seniors housing development. Further to the north of the Site and Narrabeen Creek there is a mixture of rural/residential properties and recent residential small lot subdivisions with dwelling houses.



Figure 9 Surrounding Medium Density Residential Development (Macpherson Street)



Figure 10 Flower Power Plant Nursery (Macpherson Street)

2 Site Context



Figure 11 Meriton medium density apartment development (Macpherson Street)



Figure 12 Child minding facility (Macpherson Street)

3 Background

On 20 February 2014, the Sydney East JRPP granted the original Development Consent NO267/13 for a seniors housing development (being Stages 4 and 5 of the Warriewood Brook development) at the Site for the following purposes:

“Demolition, earthworks and construction of a Seniors Housing Development pursuant to SEPP (HSPD) 2004 consisting of 59 self-contained dwellings with a community building, bowling green, landscaping and carparking”.

On 25 March 2015, City Plan Services Pty Ltd, being the Principal Certifying Authority, issued Construction Certificate No. 142440/1 (see **Appendix 2**) for the following:

“Stage 2 – Construction of a Seniors Housing Development pursuant to SEPP (HSPD) 2004 consisting of 59 self-contained dwellings with a community building, bowling green, landscaping and car parking.”

Construction of the seniors housing development at the Site by PBS Building (NSW) Pty Ltd subsequently commenced in late March 2015.

On 15 April 2015, Council granted approval to a s96(2) Application to modify Development Consent NO267/13 for the following:

“Modification to the roof design of 35 of 59 ILUs to incorporate single carports forward of the approved garages.”

On 21 May 2015, City Plan Services Pty Ltd being the Principal Certifying Authority issued Construction Certificate No. 142440/2 (see **Appendix 2**) for the addition of carports forward of the approved garages in 35 of the 59 self-contained dwellings at the Site, as follows:

“Stage 3 – Addition of carports to types C, D & D1 ILUs; changes to Type S2 buildings & material changes.”

On 20 January 2016, City Plan Services Pty Ltd being the Principal Certifying Authority, issued an Interim Occupation Certificate No. IOC 142440 (see **Appendix 9**) for the following:

“Stage 4 works comprising of 33 self-contained dwellings, additional carports, community building, landscaping and car parking.”

The Stage 5 works consisting of 26 self-contained dwellings were excluded from Interim Occupation Certificate No. IOC142440.

On 5 February 2016, Council issued a Stop Work Order No. 19 under s121B of the EP&A Act to PBS Building (NSW) Pty Ltd (being the Principal Contractor of the building works at the Site) as well as to ARV (see **Appendix 8**) which specified the following:

Schedule 1

1. *Forthwith, cease all building works associated with the dwellings currently under construction being dwelling numbers: 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58 and 59 as shown on Drawing No. 003, Issue G dated 19 December 2014 (copy attached).”*

A verbal direction was issued to ARV’s Principal Building Contractors, PBS Building (NSW) Pty Ltd on 5 February 2016, followed by a written direction on 6 February 2016, requiring the cessation of those building works specified in Schedule 1 of the Council’s Stop Work Order. This was confirmed by ARV to Council officers by email on 8 February 2016.

Although the original Stop Work Order only required the cessation of specified building works within Stage 5 of the Warriewood Brook development, the Order also included comments concerning the completed bowling green located within Stage 4 of the development.

On 9 February 2016, Council granted approval to a second Section 96(2) Application to modify Development Consent NO267/13 (as modified) included as **Appendix 1** to this report for the following purposes:

“NO267/13/S96/2 Modification of Development Consent NO267/13 for demolition, earthworks and construction of a Seniors Housing Development pursuant to SEPP (HSPD) 2004 consisting of 59 self-contained dwellings with a community building, bowling green,

3 Background

landscaping and car parking. Modification to provide for the incorporation of fencing around decks and service courts of certain dwellings.”

By letters dated 21 and 26 February 2016, Norton Rose Fulbright Lawyers (NRF Lawyers) (see **Appendix 10**) provided a response to Council on behalf of ARV to the issues raised by Council in its Stop Work Order dated 5 February 2016. These matters are discussed in more detail in Section 4 of this Planning Report.

On the basis of undertakings contained within the letters from NRF Lawyers dated 21 and 26 February 2016, on 3 March 2016 Council issued a modified Stop Work Order No. 19 under Section 121B and Section 121ZF of the EP&A Act to PBS Building (NSW) Pty Ltd as well as to ARV which specified the following:

Schedule 1

1. *Forthwith, cease all building works associated with the following dwellings currently under construction; 38, 39, 41, 42, 44, 45, 47, 48, 50, 51, 53 and 54.”*

Accordingly, building works within Stage 5 are only continuing on those dwellings not referenced in the modified Stop Work Order. Civil works which have been separately agreed with Council to be outside the scope of the modified Stop Work Order are also occurring in Stage 5.

The Council's original and modified Stop Work Orders are included as **Appendix 8** to this report.

4 Council's Stop Work Order

This section of the report responds to matters raised in Council's original Stop Work Order dated 5 February 2016 and the Council's modified Stop Work Order dated 3 March 2016 (see **Appendix 8**).

Council's modified Stop Work Order of 3 March 2016 (see **Appendix 8**) states that as part of the assessment of the recently issued s96 Modification Application NO267/13/S96/2 (see **Appendix 1**), Council's Executive Planning Officer inspected the Site and considered that there were a number of changes identified in the plans accompanying the application that were not nominated as changes in the s96 Application by ARV, being the applicant.

As a result, on 2 February 2016, Council's Building Surveyor, Executive Planner and Brendan Bennett of City Plan Services Pty Ltd (who is the principal certifying authority for the development) carried out an inspection of the Site. The Council's modified Stop Work Order of 3 March 2016 alleges that:

"The inspection confirmed non-compliances with the as built structures and the conditions of development consent NO267/13/S96/1, the plans associated with development consent NO267/13/S96/1 and the plans associated with Construction Certificate No.s 142440/1 and 142/440/2 issued by City Plan Services Pty Ltd."

The non-compliances alleged by Council in the original and modified Stop Work Orders (see **Appendix 8**) and comments on behalf of the applicant to these matters are discussed below. The comments provided below, and the making of this BC Application and the s96 Application lodged with Council on 14 April 2016, are without admission as to any of the alleged non-compliances raised by Council in the original and modified Stop Work Order.

4.1 Polycarbonate Panels in Roofs

The Council's modified Stop Work Order states that polycarbonate roof sheeting has not been provided to the roof areas of the private open space courtyards of 45 of 59 dwellings as shown on the approved plans of Development Consent NO267/13/S96/1 and the approved plans of Construction Certificate No.s 142440/1 and 142440/2 issued by City Plan Services Pty Ltd.

Furthermore, Condition C24 of Development Consent NO267/13/S96/1 requires Dwellings 25, 26, 27, 28, 29, 30 and 32 to have polycarbonate roof sheeting to an increased depth of 2 metres, which Council alleges has not been provided.

We are instructed that it was not possible for ARV to install polycarbonate roof sheeting above the private open space courtyards of certain dwellings in the Warriewood Brook development and at the same time comply with the requirements of Condition B25 of Development Consent NO267/13 (as modified). Despite substantial efforts, ARV was unable to obtain confirmation from any polycarbonate sheeting manufacturer that the product complies with the requirements of Australian Standard AS3959-2009 and has a Flammability Index of no greater than 5 when tested in accordance with the Australian Standard AS1530.2-1993, as required by Condition B25 of Development Consent NO267/13.

Accordingly, we are advised by ARV that, with the approval from City Plan Services Pty Ltd, an alternative design solution was installed in a number of the dwellings constructed in Stages 4 and 5 in the form of framed glass skylights (Alternative Design) at significant additional cost. **Appendix 11** is a table which identifies the 31 of 59 dwellings in the Warriewood Brook development which have been constructed or are proposed to be constructed with glass skylights (Alternative Solution) and the dwellings with glass skylights are also shown on the amended architectural plans (see **Appendix 3**).

The 31 dwellings with skylights in the Warriewood Brook development were determined so as to achieve improved sunlight access to private open space courtyards and/or principal living room areas to satisfy Clause 50(e) of the SEPP Seniors. **Appendix 12** are copies of correspondence received from the CSIRO and Building Code & Bushfire Hazard Solutions Pty Ltd (FPA Australia) confirming that the Alternative Design satisfies the requirements of Condition B25 of Development Consent NO267/13 (as modified).

4 Council's Stop Work Order

Without ARV conceding any contravention of the EP&A Act, this BC Application seeks that Council issue a building certificate in relation to the completed dwellings in Stage 4 where polycarbonate roof sheeting has not been provided to 23 dwellings as was required, as well as in relation to "as built" Dwellings 4, 5, 8, 13, 14, 24, 25, 26, 27, 28, 29, 30, 31 and 32 in Stage 4 and Dwellings 34, 35, 38, 39, 41, 42, 44 and 45 in Stage 5 which have all been constructed with the Alternative Design. Note that Dwellings 36, 47, 48, 51, 53, 56, 57, 58 and 59 are also proposed to be constructed with the Alternative Design subject to Council's approval of the Section 96(2) Application submission lodged with Council on 14 April 2016. Hence, in total there will be 31 of the 59 dwellings which are either constructed or proposed to be constructed with the Alternative Design in the roof areas of the courtyards (see **Appendix 3** and **11**).

Appendix 4 are copies of the solar access diagrams prepared by Environa Studio Architects for the amended Warriewood Brook development which demonstrates that 50 of the 59 dwellings (ie. 84.74%) will receive a minimum of 3 hours direct sunlight to the living rooms and private open space areas of the dwellings between 9:00am and 3:00pm in mid-winter. Hence, the amended Warriewood Brook development complies with Clause 50(e) of the SEPP Seniors and, accordingly, this BC Application and the Section 96(2) Application cannot be refused by Council on the grounds of inadequate solar access to the dwellings.

4.2 Internal Openings between Garages and Entry Hall of Dwellings

In relation to Council's assertions in the original Stop Work Order concerning the provision of internal openings between the garage and the entry halls of certain dwellings in the Warriewood Brook development, we are instructed that Construction Certificate No. 142440/1 approved plans require only the provision of a "lintel for future alteration to sliding doors. 3080mm stud opening" (see Construction Certificate No. 142440/1 dated 25 March 2015 and the approved Construction Certificate Drawings No. A101 Revision K, B101 Revision K, C101 Revision K, D101 Revision K and S2101 Revision K).

The letter dated 21 February 2016 from NRF Lawyers to Council (see **Appendix 10**) directs Council's attention to the provisions of Section 80(12) of the EP&A Act and recent Court of Appeal authority (see *Burwood Council v Ralan Burwood Pty Ltd* (No.3) [2014] 206 LGERA40) which establishes that:

- (1) *The approved plans and specifications issued with respect to a Construction Certificate form part of the approved development, such that it cannot be a contravention of the EP&A Act to carry out development in accordance with the Construction Certificate Plans and specifications; and*
- (2) *To the extent that there is an inconsistency between plans and specifications in the Construction Certificate, and the plans and specifications approved in the development consent, the former prevail. That is, **the Construction Certificate is paramount over the development consent drawings and specifications.**" (emphasis added).*

We are instructed that the lintel in the garage wall has been constructed in all of the relevant dwellings completed in Stage 4 of the Warriewood Brook development which required the provision of the lintel, in accordance with the approved Construction Certificate drawings. In relation to those dwellings in Stage 5 which have not yet been constructed, we are instructed that ARV will ensure that all of the relevant dwellings in Stage 5 that are required to be provided with a "lintel for future alteration to sliding doors. 3080mm stud opening" will be built (or retro-fitted) so that the work actually carried out in relation to the openings between the garage and entry hall of the dwellings in Stage 5 will not be inconsistent with the plans and specifications forming part of Construction Certificates No.s 142440/1 and 142440/2 issued by City Plan Services Pty Ltd. Accordingly, the relevant building work, once completed, will not be non-compliant with Development Consent NO267/13 as was alleged in Council's original Stop Work Order.

Appendix 14 includes a letter from PS Building dated 31 March 2016 which confirms that lintels have been constructed in the garage walls of the relevant dwellings in Stage 4 of the Warriewood Brook development.

4 Council's Stop Work Order

Furthermore, in every instance where the stud wall has been installed, we are instructed that the relevant wall is non-load bearing and can be adapted whether or not a lintel is in place.

Appendix 14 includes letters from Henry & Hymas, Structural Engineers that confirms the garage walls in the relevant dwellings in Stage 4 and some of the dwellings already constructed in Stage 5 are non-load bearing and can be adapted whether or not a lintel is in place.

Given the explanation above, this BC Application does not seek a building certificate in relation to any "as built" changes to the internal openings between garages and certain dwellings presently shown and authorised by the approved Construction Certificate No. 142440/1 and 142440/2 plans issued by City Plan Services Pty Ltd.

4.3 Design and Layout of Certain Dwellings in Stage 5

Council contends in the modified Stop Work Order that certain dwellings located in Stage 5 have been constructed, or are in the process of being constructed, with layouts differing from the approved plans forming part of Development Consent NO267/13 (as modified) as well as the Construction Certificate No. 142440/1 and 142440/2 approved plans (being Dwelling No.s 38, 39, 41, 42, 44, 45, 47, 48, 50, 51, 53 and 54).

To the extent that layout and design changes have already occurred to certain dwellings in Stage 5, this BC Application is seeking that Council issue a building certificate in respect of the "as built" sections of the relevant dwellings under Sections 149A to 149E of the EP&A Act 1979.

The s96 Application lodged with Council on 14 April 2016 seeks Council's approval for layout and design changes to certain dwellings in Stage 5 which are proposed but not yet fully constructed, being Dwellings 38, 39, 41, 42, 44, 45, 47, 48, 50, 51, 53 and 54. Pursuant to the modified Stop Work Order, no work is presently occurring on those partly constructed dwellings.

4.4 Bowling Green

ARV has undertaken an audit of the completed bowling green works in Stage 4 of the Warriewood Brook development against the approved plans in Development Consent NO267/13 (as modified) and the approved plans in Construction Certificate No.s 142440/1 and 142440/2 issued by City Plan Services Pty Ltd. The bowling green audit identified several matters which have been summarised in the letter dated 26 February 2016 prepared by NRF Lawyers (on behalf of ARV) to Council (see **Appendix 10**) as follows:

"2.1 As stated in our letter dated 21 February 2016, ARV has undertaken an audit of the completed Bowling Green works against the approved plans. This audit has identified the following matters.

Fence

2.2 A fence has been constructed along the full north-eastern length of the Bowling Green, and to a small extent along the northern and eastern boundaries of the Bowling Green, rather than for part only of the length of the Bowling Green as shown on approved construction certificate (CC) drawings. The fence has been finished in white.

2.3 Proposal: ARV wishes to retain the fence for its full length along the north-eastern side and considers that the fence is necessary for safety reasons given the change of level at the relevant location. Our client is prepared to repaint the fence in dark tones. Without conceding any contravention of the EP&A Act, our client proposes to make an application for a building certificate under s149E of the EP&A Act for this aspect of the Bowling Green.

Shade Structures

2.4 The shade structures as constructed are shown on, and authorised by, the CC drawings.

2.5 Proposal: Our client would prefer to retain the shade structures and is entitled to do so, however ARV is willing to engage with Council to explore alternative ways of

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providing shelter for users of the Bowling Green if Council wants the structures to be removed.

Batter/retaining wall

- 2.6 *The Bowling Green has been constructed with finished floor level (FFL) at RL 5.1, which was the level used in the flood modelling carried out by GHD and is included in GHD's letter titled 'ARV Warriewood Stages 4-6 Flooding' dated 27 August 2013 which forms part of the Development Consent. This necessitated the construction of a retaining wall along the long north-eastern edge of the Bowling Green. The approved CC drawings show a retaining wall for some but not all of that location.*
- 2.7 *Proposal: Without conceding any contravention of the EP&A Act, our client proposes to make an application for a building certificate in relation to this aspect of the Bowling Green. That application will be supported by reports from appropriately qualified experts.*

Ramp/path to fire trail

- 2.8 *The approved CC drawings show a 1.8 metre concrete path to the fire trail along the edge of the Bowling Green, which has not yet been constructed. Due to the constructed FFL of the Bowling Green, it is not possible to construct the path in this location.*
- 2.9 *Proposal: ARV does not wish to construct the path in this location and proposes to apply to modify the Development Consent to delete reference to the path. Alternatively, ARV is prepared to discuss Council's views on whether a path should now be constructed in an alternative location."*

Accordingly, this BC Application is seeking that Council issue a building certificate in respect of the "as built" construction of the bowling green at RL 5.1 with a retaining wall below along the full north-eastern length of the bowling green and also part of the two (2) ends of the bowling green. Furthermore, as the bowling green is elevated above a retaining wall, it is essential to retain the constructed safety fence located along the full north-eastern length of the bowling green and, accordingly, this BC Application is requesting a building certificate for this "as built" fence under Sections 149A to 149E of the EP&A Act 1979. The amended architectural and landscaping plans (see **Appendices 3 and 5**) show the "as built" bowling green at RL 5.1 with a retaining wall and safety fence. It is noted that ARV has undertaken to repaint the safety fence to the bowling green in a natural dark tone (ie. "gully" Colorbond as shown on Drawing No. 006, Issue A - Material Board – see **Appendix 3**).

As a part of the s96 Application lodged with Council on 14 April 2016, ARV have recently decided to remove the four (4) existing shade structures and request Council's approval to alternative shade structures to both sides of the bowling green as shown on the amended architectural and landscaping plans (see **Appendix 3 and 5**). The proposed alternative shade structures to the bowling green are described as "Proprietary Light Weight Retractable Shade Canopy and Seating".

Furthermore, by way of clarification, the section of path which ARV propose not to construct is a set of steps that was proposed on the eastern side of the bowling green and is now a ramp with the raising of the level of the bowling green to RL 5.1.

4.5 Miscellaneous Items

The NRF Lawyers letter dated 26 February 2016 (see **Appendix 10**) also commented on other items which were proposed to be the subject of this BC Application as follows:

"Balustrade along path behind dwellings 15-17

- 3.13 *A retaining wall has been constructed behind dwellings 15-17 in the location of the constructed and approved concrete path.*
- 3.14 *ARV wishes to construct a balustrade along the retaining wall and the path behind dwellings 15-17. Our client is currently installing temporary fencing in this location, which will be completed prior to occupation of Stage 4.*
- 3.15 *Proposal: ARV is in the course of preparing an application to modify the Development Consent to seek approval for this balustrade. Without conceding any contravention of the EP&A Act, to the extent that the retaining wall was not identified*

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on the approved plans ARV will include the retaining wall within its application for a building certificate.

Other changes

- 3.16 *ARV has identified a number of instances where work carried out in Stage 4 is not identical to the plans and specifications forming part of the construction certificates (which form part of the Development Consent). As Council will be aware, the law does not require work to be 'identical' – rather it requires that it be 'not inconsistent with' the Development Consent and incorporated construction certificate plans and specifications.*
- 3.17 *The question whether any or all of these instances are, or are not, inconsistent with the Development Consent is a question of fact and degree having regard to the overall context of this large and complex development. Without conceding any contravention of the EP&A Act, ARV does not consider that it would be productive to engage in debate with Council on this issue, and would prefer to address any concerns which Council may have in relation to these instances through applying for a Building Certificate which would wholly resolve matters.*
- 3.18 *Accordingly, ARV intends to prepare a Building Certificate application in respect of a number of miscellaneous items within Stage 4. A high level description of those items appears in the Schedule to this letter.*
- 3.19 *ARV has instructed its design team to generate a detailed set of drawings depicting any variances between the Development Consent (incorporating the approved CC plans and specifications) and the as-built forms. These plans are still in the course of preparation, and will form the basis of the proposed Building Certificate application foreshadowed in this letter. That application will be supported by the technical assessments from appropriately qualified experts."*

The miscellaneous items referred to in the schedule to that letter include:

- adjusted window configuration in some dwellings (two narrow windows converted to one window);
- minor adjustments to landscaped areas and some paths;
- adjusted location of approved water tanks for certain dwellings; and
- low retaining wall to resolve level change between dwellings 24 – 33 and pathway.

Accordingly, this BC Application seeks that Council issue a building certificate in relation to certain elements of the "as built" dwellings and other structures which have been constructed in Stages 4 and 5 of the Warriewood Brook development and which are not identical to the approved plans and specifications forming part of Construction Certificate Nos. 1424440/1 and 1424440/2 as shown on the amended architectural and landscaping plans (see **Appendices 3 and 5**) and as detailed and assessed in Section 6 of this report.

5 Statutory Provisions

This BC Application in respect to certain “as built” dwellings and other structures at the Warriewood Brook development is made pursuant to Section 149A to 149E of the EP&A Act 1979. For consistency and completeness, the amended architectural and landscaping plans for the Warriewood Brook development (see **Appendices 3 and 5**) show both the “as built” dwelling alterations and other structures and the proposed dwelling alterations and other structures yet to be constructed for the Warriewood Brook development and are the subject of this BC Application and the Section 96(2) Application recently lodged with Council.

Section 149A of the EP&A Act provides that a Council may issue a Building Certificate in accordance with this Section and Sections 149B - 149E. A Building Certificate may apply to the whole or to part only of a building. This BC Application relates to the whole of the “as built” Warriewood Brook development to the extent that there are discrepancies between certain dwellings and other structures (such as the bowling green, retaining walls, fences, paths and site landscaping) and the approved Construction Certificate plans forming part of the Development Consent as detailed in Sections 4 and 6 of this report.

Section 149B of the EP&A Act provides that an Application for a Building Certificate may be made by the owner of the land on which the building is erected. This BC Application has been made by ARV who are the owners of the Site.

Section 149C of the EP&A Act 1979 provides that:

- (1) *On receipt of an application, the Council may, by noticing in writing served on the applicant, require the applicant to supply it with such information (including building plans, specifications, survey reports and certificates) as may reasonably be necessary to enable the proper determination of the application.*
- (2) *If the Applicant is able to provide evidence that no material change has occurred in relation to the building since the date of a Survey Certificate which, or a copy of which, is supplied to the Council by the applicant, the Council is not entitled to require the Applicant to supply a more recent survey certificate.”*

This BC Application report includes all the necessary information that Council should require to determine the application for certain “as built” components of the Warriewood Brook development. Notwithstanding, ARV and its specialist consultants would be pleased to provide any additional information that Council may reasonably deem as necessary to enable a property determination of this BC Application.

Appendix 6 are copies of the original site survey plan prepared by Lockley Land Title Solutions, Registered Surveyors and Deposited Plan 1161389. **Appendix 6** also includes set out and formwork survey plans for all of the dwellings in Stages 4 and 5 of the Warriewood Brook development as well as a letter prepared by Land Surveys, Registered Surveyors, dated 21 April 2016 which states as follows:

“All buildings were set out using the data from the Architectural Set-out Plan which was current at the time of survey”.

Section 149D of the EP&A Act 1979 outlines the obligations of Council to issue a Building Certificate and states as follows:

“149D Obligations of council to issue building certificate

- (1) *The council must issue a building certificate if it appears that:*
 - (a) *There is no matter discernible by the exercise of reasonable care and skill that would entitle the council, under this Act or the Local Government Act 1993:*
 - (i) *To order the building to be demolished, altered, added to or rebuilt, or*
 - (ii) *To take proceedings for an order or injunction requiring the building to be demolished, altered, added to or rebuilt, or*
 - (iii) *To take proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, or*
 - (b) *There is such a matter but, in the circumstances, the council does not propose to make any such order or take any such proceedings.*

5 Statutory Provisions

- (2) *If the council refuses to issue a building certificate, it must inform the applicant, by notice, of its decision and of the reasons for it.*
- (3) *The reasons must be sufficiently detailed to inform the applicant of the work that needs to be done to enable the council to issue a building certificate.*
- (4) *The council must not refuse to issue or delay the issue of a building certificate by virtue of the existence of a matter that would not entitle the council to make any order or take any proceedings of the kind referred to in subsection (1)(a).*
- (5) *Nothing in this section prevents the council from informing the applicant of the work that would need to be done before the council could issue a building certificate or from deferring its determination of the application until the applicant has had an opportunity to do that work."*

Section 149E of the EP&A Act 1979 outlines the effect of a Building Certificate and states as follows:

- "(1) A Building Certificate operates to prevent the Council:*
 - (a) From making an order (or taking proceedings for the making of an order or injunction) under this Act or the Local Government Act 1993 requiring the building to be repaired, demolished, altered, added to or rebuilt, and*
 - (b) From taking proceedings in relation to any encroachment by the building onto land vested in or under the control of the Council.*

In relation to matters existing or occurring before the date of issue of the Certificate.
- (2) A Building Certificate operates to prevent the Council, for a period of 7 years from the date of issue of the Certificate;*
 - (a) From making an order (or taking proceedings for the making of an order or injunction) under this Act or the Local Government Act 1993 requiring the building to be repaired, demolished, altered, added to or rebuilt, and*
 - (b) From taking proceedings in relation to any encroachment by the building onto land vested in or under the control of the Council,*

In relation to matters arising only from the deterioration of the building as a result solely of fair wear and tear."

6 Assessment of “As Built” Warriewood Brook Development

This BC Application seeks that Council issue a building certificate in relation to certain “as built” building components in Stages 4 and 5 of the Warriewood Brook development that are considered to reflect discrepancies from the approved architectural and landscaping plans as referred to in the Notice of Determination of Development Consent NO267/13 (as modified) (see **Appendix 1**) and Construction Certificate Nos. 142440/1 and 142440/2 issued by the Principal Certifying Authority, City Plan Services Pty Ltd (and all plans and specifications contained therein which form part of the subject development consent) (see **Appendix 2**).

The amended architectural and landscaping plans for the Warriewood Brook development (see **Appendices 3 and 5**) show all of the “as built” dwellings and other structures in Stages 4 and 5 of the development. The amended architectural and landscaping plans also show proposed design changes to the Warriewood Brook development which have not yet been constructed and which are the subject of a Section 96(2) Application lodged with Council on 14 April 2016.

The “as built” discrepancies to the Warriewood Brook development which are the subject of this BC Application relate to the following:

Stage 4

- The construction of the bowling green at RL 5.1 (being the level used in the flood modelling specified in GHD letter dated 27 August 2013) with a retaining wall below along the full north-eastern length of the bowling green and part of the eastern and western sides of the bowling green;
- The construction of a metal safety fence along the full north-eastern length of the bowling green and for part of the eastern and western sides of the bowling green where the bowling green is elevated by the retaining wall above the existing ground levels;
- The construction of a low retaining wall to resolve changes in the levels between Dwelling Nos. 24 to 33 and the common pathway which adjoins those dwellings; and

Stage 5

- Changes to the layout and design of Dwellings 38, 39, 41, 42, 44, 45, 47, 48, 50, 51, 53 and 54. These dwellings are at various stages of construction (see **Appendix 7**) and are the subject of Council’s Modified Stop Work Order.

Stages 4 and 5

- The installation of glass skylights rather than polycarbonate sheet roofing above the private open space courtyards of certain dwellings which have been constructed in both Stage 4 and Stage 5 of the Warriewood Brook development;
- Changes to the location of the water tanks for certain dwellings;
- Changes to some window sizes and configurations in certain “as built” dwellings constructed in Stages 4 and 5 of the Warriewood Brook development;
- Minor changes to the “as built” site landscaped areas, retaining walls and pathways constructed in Stage 4 and Stage 5 of the Warriewood Brook development as shown on the amended landscaping plans (see **Appendix 5**); and
- Other minor design changes to the “as built” dwellings in both Stages 4 and 5 of the Warriewood Brook development such as increased internal storage areas, the addition of lightweight cladding above window and door openings, 600mm high wall to replace privacy screens, roof eaves reduced, additional solar tubes, minor widening of some dwelling decks and other minor alterations as shown on the amended architectural plans for the Warriewood Brook development (see **Appendix 3**).

6 Assessment of “As Built” Warriewood Brook Development

As previously noted in Section 4.1 of this report, **Appendix 4** is a Solar Access study for the Warriewood Brook development which demonstrates that 50 of the 51 dwellings (ie. 84.74%) will receive a minimum of 3 hours direct sunlight to the living rooms and private open space deck areas of the dwellings between 9:00am and 3:00pm on June 21. Hence, the Warriewood Brook development easily complies with Clause 50(e) of the SEPP Seniors.

Appendix 12 is a letter from Building Code and Bushfire Hazard Solutions dated 9 December 2015 which certifies that the 33 dwellings with a community building, landscaping and car parking, being Stage 4 of the Warriewood Brook development, satisfy the applicable bushfire requirements including Condition 25 of Development Consent NO267/13 (as modified).

Appendix 12 also includes a letter prepared by Building Code and Bushfire Hazard Solutions dated 23 February 2016 which advises that the amended architectural plans (see **Appendix 3**) for the Stage 5 dwellings including the installation of glass skylights rather than polycarbonate sheet roofing in some of the dwellings, are consistent with the requirements of the NSW Rural Fire Service and comments that

“replacement of the polycarbonate with translucent glazing in the skylights is necessary to achieve compliance with the above.”

Appendix 13 are amended BASIX Certificates for Stages 4 and 5 of the amended Warriewood Brook development prepared by Benchmark Building Certifiers.

Appendix 14 contains a letter prepared by Henry & Hymas, Consulting Engineers, dated 15 December 2015 which certifies that the 33 dwellings and the community room, being Stage 4 of the Warriewood Brook development, have all been constructed in accordance with the structural building design elements required for the development and generally achieve the applicable FRLs outlined in Specification C1.1 of the BCA.

Appendix 14 also contains a letter prepared by Henry & Hymas Consulting Engineers dated 15 February 2016, which confirms that the timber lintel beam for the possible future opening in the internal timber stud wall separating the garage and entry hallway of Dwellings 44, 47, 48, 50, 51, 53, 54, 55, 56, 57, 58 and 59 has not currently been installed but this wall is non-load bearing to the roof framing over and as such the timber lintel may be installed in the future without compromising the integrity of the dwelling if required.

Notwithstanding, ARV have undertaken to install or retro-fit a lintel in the wall separating the garage and the entry hall way of the relevant dwellings in Stage 5 of the Warriewood Brook development so as to be strictly in conformity with the approved Construction Certificate plans and which prevails and forms part of Development Consent NO267/13 (as modified).

Appendix 14 also includes a letter from PBS Building, dated 31 March 2016 which confirms that lintels have been installed between the garage and entry hall of all the relevant dwellings in Stage 4 as documented on the approved Construction Certificate plans.

Appendix 15 is a letter prepared by Henry & Hymas Consulting Engineers dated 13 November 2015 that provides certification of the constructed civil engineering works for Stage 4 of the Warriewood Brook development and states that:

“we verify that the constructed stormwater waterworks and water quality management works are generally in accordance with the approved Construction Certificate documentation.”

Appendix 15 also includes a letter prepared by Henry & Hymas, Consulting Engineers dated 1 April 2016 which states:

“I refer to the amended plans incorporating minor changes to Stages 4 and 5 of the aforementioned development. I note that the total landscaping area has been reduced to 9,030m² (33.7% of the site area). I wish to advise that we have undertaken a review of the water quality systems for the development and this minor reduction in landscaping area

6 Assessment of “As Built” Warriewood Brook Development

does not adversely affect the water quality design as the model itself was based on a landscaping area of 5,420m² which is conservative.”

Appendix 16 is a letter prepared by GHD Pty Ltd Consulting Engineers, dated 9 March 2016, which states as follows:

“We have reviewed the “as built” bowling green, including the retaining wall, fence and pergola shade structures.

On the attached plans we have overlain the PMF flood event, being the upper envelope of flooding expected on the site, in the location of the bowling green. Given that the bowling green, including the fence and pergola shade structures are above the PMF flood level, it is considered that they will have negligible impact on flooding at the site. The retaining wall is directly beneath the north-eastern bowling green edge returning on part of both ends and it is considered that this structure will also have negligible impact on flooding at the site.

The bowling green, including the retaining wall, fence and pergola shade structures are thus expected to have negligible impact on our general findings documented Our Anglican Retirement Villages, report for Warriewood Retirement Village, Water Management Report, Capitals update (ARV-WMRU, November 2013).”

Appendix 16 contains a letter prepared by GHD Pty Ltd, Consulting Engineers, dated 14 March 2016 which states as follows:

“We have reviewed the amendments made to the approved layouts of the ILUs as follows:

- *In Stage 4, generally comprising changes to window configurations, cladding over doors, deletion of polycarbonate roofing and installation of skylights in lieu, deletion of privacy screens at the entry and substitution with a low height wall, minor internal changes to storerooms of some ILU types and extension of the Type A decks*
- *Similar amendments as noted above, to ILU types originally approved for Stage 5 (14 ILUs) plus new ILU types for Stage 5.*

On the plan we have also overlain the PMF flood event, being the upper envelope of flooding expected on the site. Given that the locations of the ILUs are all above the PMF flood level, we consider that these amendments will have no impact on flooding at the site with our general findings documented in the abovementioned report.”

Appendix 16 contains a letter prepared by GHD Pty Ltd dated 6 April 2016 which concludes as follows:

“Through further stormwater calculations in accordance with the WMS, it has been shown that:

- *The already constructed lake on the site adequately meets the revised SSR calculated for the ARV site, which has a 62% impervious area.*
- *The maximum storage uptake in the lake is 2,700m³, which is still well within the SSR requirements.”*

Appendix 17 is a letter prepared by Abel Ecology dated 90 March 2016 which confirms that the constructed bowling green at RL 5.1 above a retaining wall along the north eastern length and part of the two sides of the bowling green and with the constructed safety fence “does not represent a barrier to migration for any locally present indigenous fauna species.”

Appendix 18 contains two (2) Building Code of Australia (BCA) reports – Part 3.7 Fire Safety in respect to the “as built” Stage 4 and partly “as built” and proposed to be constructed, Stage 5 dwellings and other structures in the Warriewood Brook development and both BCA reports conclude as follows:

“This assessment identified the amendments to the plans and compliance with Part 3.7 (Final Safety) of the Building Code of Australia 2015 – Volume 2 (Class 1 and Class 10 Buildings).

It is the opinion of the author the development has been built to comply with the provisions of the Part 3.7 of BCA 2015 for use as a multiple dwelling house Class 1A and Class 10A residential development.”

6 Assessment of “As Built” Warriewood Brook Development

Appendix 19 contains Accessibility Compliance Statements prepared by Accessible Building Solutions for Stages 4 and 5 of the Warriewood Brook development which confirms that the development complies with all accessibility requirements and legislation.

Appendix 20 is a Geotechnical Slope Stability Risk Assessment report for the original Development Application NO0267/13 in respect of the Warriewood Brook development prepared by JK Geotechnics, Geotechnical and Environmental Engineers which concluded as follows:

“We consider that our risk analysis has shown that the Site and existing and proposed development can achieve the “Acceptable Risk Management” criteria in the Pittwater Risk Management Policy provided that the recommendations given in Section 7 below are adopted. These recommendations form an integral part of the landslide risk management process.”

It is considered that the “as built” and proposed building works as shown on the amended architectural and landscaping plans (see **Appendices 3 and 5**) for the Warriewood Brook development are unlikely to present a risk of geotechnical instability of the site subject to compliance with the recommendations contained in the Geotechnical Slope Stability Risk Assessment report prepared by JK Geotechnics (see **Appendix 20**).

7 Conclusion

This BC Application report submission, together with the recently lodged s96 Application, addresses all of the issues raised in Council's original and modified Stop Work Order for the Warriewood Brook development, dated 5 February 2016 and 3 March 2016 respectively.

The BC Application relates to certain "as built" dwellings and other structures within Stages 4 and 5 of the Warriewood Brook development which are not as shown on the approved Construction Certificate No. 142440/1 and 142440/2 issued by City Plan Services Pty Ltd and are described as follows:

Stage 4

- The construction of the bowling green at RL 5.1 (being the level used in the flood modelling specified in GHD letter dated 27 August 2013) with a retaining wall below along the full north-eastern length of the bowling green and part of the eastern and western sides of the bowling green;
- The construction of a metal safety fence along the full north-eastern length of the bowling green and for part of the eastern and western sides of the bowling green where the bowling green is raised above the retaining wall;
- The construction of a low retaining wall to resolve changes in the levels between Dwelling Nos. 24 to 33 and the common pathway which adjoins those dwellings; and

Stage 5

- Changes to the layout and the design of Dwellings 38, 39, 41, 42, 44, 45, 47, 48, 50, 51, 53 and 54. These dwellings are at various stages of construction (see **Appendix 7**) and are the subject of Council's Stop Work Order.

Stages 4 and 5

- The installation of glass skylights rather than polycarbonate sheeting in the roof areas above the courtyards of certain dwellings which have been constructed in both Stage 4 and Stage 5 of the Warriewood Brook development;
- Changes to the location of the water tanks for certain dwellings constructed in Stages 4 and 5 of the Warriewood Brook development;
- Changes to some window sizes and configurations in certain "as built" dwellings constructed in Stages 4 and 5 of the Warriewood Brook development;
- Minor changes to the "as built" site landscaped areas retaining walls and pathways constructed in Stages 4 and 5 of the Warriewood Brook development as shown on the amended landscaping plans (see **Appendix 5**); and
- Other minor design changes to the "as built" dwellings in both Stages 4 and 5 of the Warriewood Brook development such as increased internal storage areas, the addition of lightweight cladding above window and door openings, 600mm high wall to replace privacy screens, roof eaves reduced, additional solar tubes, minor widening of decks and other minor alterations as shown on the amended architectural plans for the Warriewood Brook development (see **Appendix 3**).

This report addresses all relevant matters for consideration under Sections 149A to E of the EP&A Act and, accordingly, it is appropriate for Pittwater Council to approve the BC Application and issue a building certificate for the "as built" Warriewood Brook development at the site.