

Statement of Environmental Effects
S96 Amendment to Construction Hours
80 Evans Street,
Freshwater

January 2017

Mersonn Pty Ltd
6/20 Wylde Street
Potts Point NSW 2011

Contents

1.0	Introduction	3
2.0	Site and Context	10
3.0	Approved Development	14
4.0	Proposed Amendment	15
5.0	Planning Controls	19
6.0	Environmental Planning Assessment	60
7.0	Matters For Consideration Under Section 96	62
8.0	Conclusion	70

1.0 Introduction

This report has been prepared on behalf of Ganellen Pty Ltd by Mersonn Pty Ltd and is submitted to Northern Beaches Council in support of a S96 amendment application for extended construction hours at 80 Evans Street, Freshwater to include:

- Monday – Friday extend working time from 5.00pm to 8.00pm for internal finishing works once facade is installed.
- Saturday extend working hours from 1.00pm to 4.00pm internal finishing once façade works complete.

It is noted that there is no change to the currently approved hours for excavation activities being conducted on the site

A development application DA2014/875 was granted consent by the Joint Regional Planning Panel on 1 December 2014. The application related to 80 Evans Street, Freshwater and that approval consented to The approval comprised demolition and excavation works and construction of seniors housing, a registered club, a childcare centre and associated car parking and landscaping.

The existing consent has been commenced and the building demolition and site works are currently underway.

The approval required inter alia:

6. General Requirements

a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- a. 7.00 am to 5.00 pm inclusive Monday to Friday,*
- b. 8.00 am to 1.00 pm inclusive on Saturday,*
- c. No work on Sundays and Public Holidays.*

b) Demolition and excavation works are restricted to:

a. 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

c) *At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.*

d) *Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.*

e) *On site toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.*

f) *Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.*

g) *Smoke alarms are to be installed throughout all new and existing portions of any Class 1 a building in accordance with the Building Code of Australia prior to the occupation of the new works.*

h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

i) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

j) All sound producing plant, equipment, machinery or fittings will not exceed more than 5d8 (A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

l) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

Reason: To ensure that works do not interfere with reasonable amenity

expectations of residents and the community. (DACPLB1 0)

It is proposed to amend Condition 6 in order to complete the construction in a timely and efficient manner.

Consequently, it is proposed that Condition 6 be amended to read:

6. General Requirements

a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- a. 7.00 am to 5.00 pm inclusive Monday to Friday,*
- b. 8.00 am to 1.00 pm inclusive on Saturday,*
- c. No work on Sundays and Public Holidays.*

With the exception of the following;

- Monday – Friday extend working time from 5.00pm to 8.00pm for internal finishing works once facade is installed.*
- Saturday extend working hours from 1.00pm to 4.00pm internal finishing once façade works complete.*

b) Demolition and excavation works are restricted to:

- a. 8.00 am to 5.00 pm Monday to Friday only.*

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

c) At all times after the submission the Notice of Commencement to

Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

e) On site toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

f) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

g) Smoke alarms are to be installed throughout all new and existing portions of any Class 1 a building in accordance with the Building Code of Australia prior to the occupation of the new works.

h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

i) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

j) All sound producing plant, equipment, machinery or fittings will not exceed more than 5d8 (A) above the background level when measured

from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

l) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB1 0)

This application should be read in conjunction with the "Extended Hours Acoustic Report" prepared by Acoustic Logic and submitted with the application. The report concludes that:

Based on the assessment noise emissions from the worst case operation of the construction works will comply with the EPA's Interim

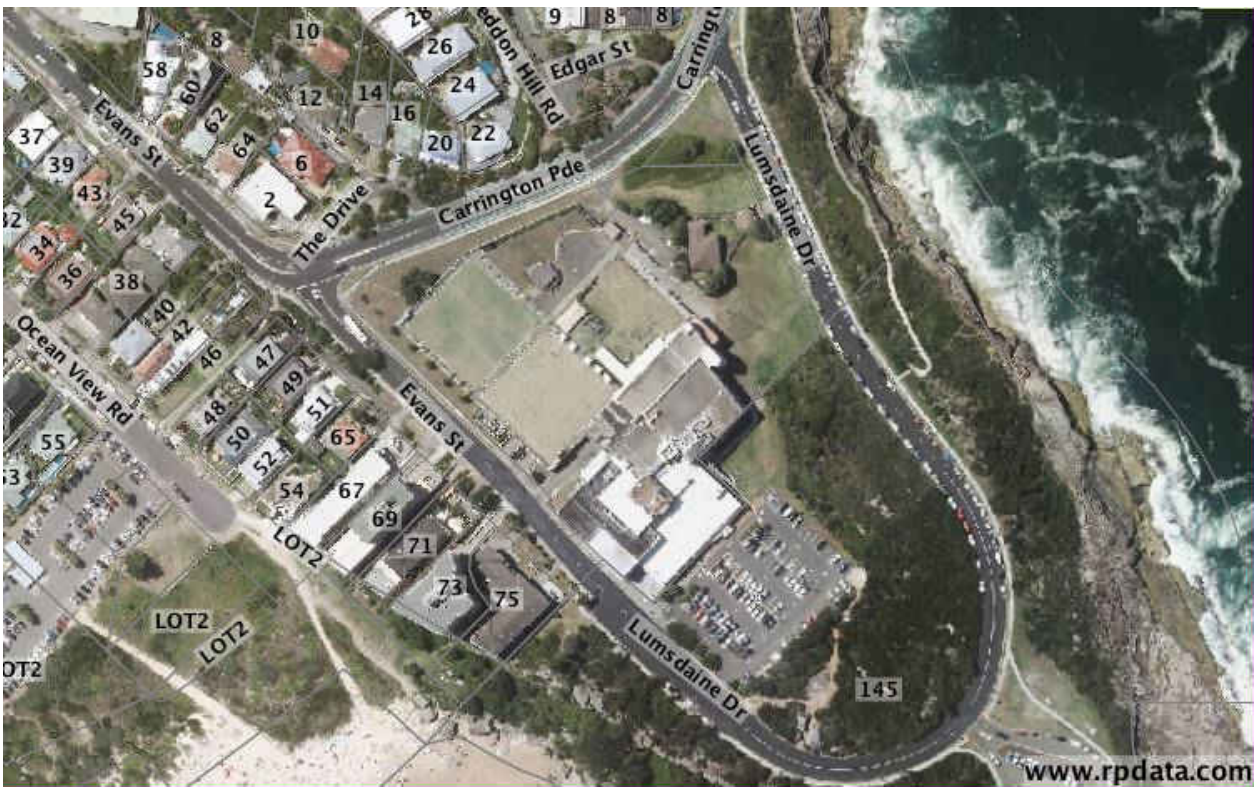
Construction Noise Guideline during the proposed extended hours period including

- *Monday – Friday extend working time from 5.00pm to 8.00pm for internal finishing works once facade is installed.*
- *Saturday extend working hours from 1.00pm to 4.00pm internal finishing once façade works complete.*

Providing the detailed site management controls included in this report are included in the operation of the site compliance with the relevant EPA construction noise requirements for extended hours periods will be achieved and the proposed extended hours are acoustically acceptable.

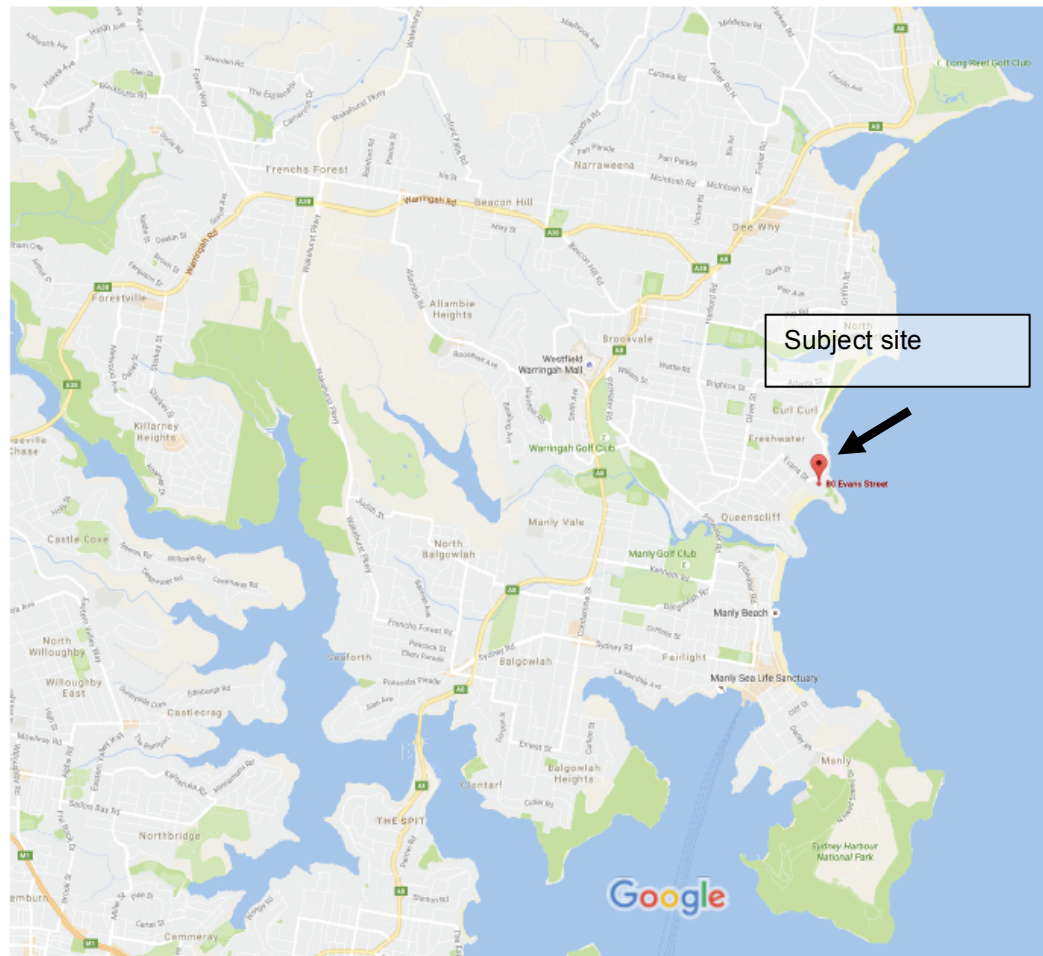
This report addresses the nature of the proposed development and the characteristics of the site and surrounding area. It also provides an assessment of the proposed development under Section 96(1) and the provisions of Section 79C of the Environmental Planning and Assessment Amendment Act 1997.

This Statement has been prepared pursuant to Section 78A of the Environmental Planning and Assessment Act, 1979 and Clause 50 of the Environmental Planning and Assessment Regulation, 2000. The purpose of this document is to describe the existing improvements on the site, detail the proposed development, review the applicable planning regime relating to the proposal, assess the degree of compliance and examine the environmental effects of the development when measured against the Evaluation Criteria prescribed under Section 79C(1) of the Environmental Planning and Assessment Act, 1979. In respect of the assessment of the proposal, where impacts are identified, measures proposed to mitigate any harm to environmental amenity have been addressed in this report.



Source: RPData 2016

2.0 The Site And Context



Location Plan

Source: GoogleMaps 2016

The site is located approximately 17km north-east of the Sydney CBD and 600m from Freshwater local centre. The site is located on the headland to the north of Freshwater Beach with residential neighbours to the north and west.

The site falls within an area that is characterised by a mix of dwellings and apartment buildings representing a variety of ages and styles. The development in the immediate vicinity varies greatly between single storey dwellings and larger scale high rise apartment buildings.



Site with 5m contour overlay Source: RPData 2016

The subject site is located within the Harbord Diggers Club site on the southern side of Carrington Parade and the northern side of Evans Street and bounded by Lumsdaine Drive.

The subject site is legally described as Lot 12 DP1197725 and is known as 80 Evans Street, Freshwater.

3.0 Approved Development

A development application DA2014/875 was granted consent by the Joint Regional Planning Panel on 1 December 2014. The application related to 80 Evans Street, Freshwater and that approval consented to The approval comprised demolition and excavation works and construction of seniors housing, a registered club, a childcare centre and associated car parking and landscaping.

The existing consent has been commenced and the building demolition and site works are currently underway.

4.0 Proposed Development

The amended proposal retains the envelope, layout and orientation of the approved development application DA2014/875 and the proposal retains the height and roof form unchanged from the approval.

In summary the development proposes extended construction hours at 80 Evans Street, Freshwater to include:

- Monday – Friday extend working time from 5.00pm to 8.00pm for internal finishing works once facade is installed.
- Saturday extend working hours from 1.00pm to 4.00pm internal finishing once façade works complete.

It is noted that there is no change to the currently approved hours for excavation activities being conducted on the site

Consequently, it is proposed that Condition 6 be amended to read:

6. General Requirements

a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- a. 7.00 am to 5.00 pm inclusive Monday to Friday,*
- b. 8.00 am to 1.00 pm inclusive on Saturday,*
- c. No work on Sundays and Public Holidays.*

With the exception of the following;

- *Monday – Friday extend working time from 5.00pm to 8.00pm for internal finishing works once facade is installed.*
- *Saturday extend working hours from 1.00pm to 4.00pm internal finishing once façade works complete.*

b) Demolition and excavation works are restricted to:

a. 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

e) On site toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

f) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

g) Smoke alarms are to be installed throughout all new and existing portions of any Class 1 a building in accordance with the Building Code of Australia prior to the occupation of the new works.

h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

i) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

j) All sound producing plant, equipment, machinery or fittings will not exceed more than 5d8 (A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

l) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary

structures or appliances are to be removed within 7 days.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB1 0)

4.0 Planning Controls

The proposed development has been assessed against the relevant requirements and guidelines set by Warringah Council. These are contained within the:

- SEPP 55 - Remediation Of Land
- SEPP (BASIX) 2004
- SEPP 65 – Design Quality of Residential Flat Development
- SEPP Infrastructure 2007
- Warringah Local Environmental Plan (LEP) 2011
- Warringah Development Control Plan 2011

4.1 SEPP 55 - Remediation Of Land

Clause 7 (1) (A) of SEPP 55 requires Council to consider whether the land is contaminated. A Stage 2 assessment has been completed and recommendations are being implemented.

4.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The proposal does not require an amended BASIX certification.

4.3 SEPP 65 – Design Quality of Residential Flat Development

The proposal does not require amendment to the Design Verification Statement.

4.4 Warringah Local Environmental Plan 2011

The subject site is Zoned R2 – Low Density Residential Zone. The specific objectives of the *zone* are:

Zone R2 Low Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Child care centres; Community facilities; Dwelling houses; Educational establishments; Emergency services facilities; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home businesses; Hospitals; Places of public worship; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Veterinary hospitals

4 Prohibited

Any development not specified in item 2 or 3

The proposed development complies with the objectives of the zone by providing for the housing needs of the community within a low density residential environment and enabling other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal is assessed under the relevant clauses of this LEP in the table below.

TABLE 1: Compliance with Warringah LEP 2011

4.3 Height of buildings

(1) The objectives of this clause are as follows:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

(2A) If the Height of Buildings Map specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.

The proposed amendment does not change the approved height of the development.

4.4 Floor space ratio

(Not adopted)

The proposed amendment does not change the approved FSR.

5.9 Preservation of trees or vegetation

(1) The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.

(2) This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.

Note. A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.

(3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:

- (a) development consent, or
- (b) a permit granted by the Council.

(4) The refusal by the Council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal by the Council to grant consent for the carrying out of the activity for which a permit was sought.

(5) This clause does not apply to a tree or other vegetation that the Council is satisfied is dying or dead and is not required as the habitat of native fauna.

(6) This clause does not apply to a tree or other vegetation that the Council is satisfied is a risk to human life or property.

(7) A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:

- (a) that is or forms part of a heritage item or that is within a heritage conservation area, or
- (b) that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,
 - unless the Council is satisfied that the proposed activity:
- (c) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and
- (d) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.

Note. As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 5.10 will be applicable to any such consent.

(8) This clause does not apply to or in respect of:

- (a) the clearing of native vegetation:
 - (i) that is authorised by a development consent or property vegetation plan under the *Native Vegetation Act 2003*, or

<p>(ii) that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or</p> <p>(b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the <i>Native Vegetation Act 2003</i>) that is authorised by a development consent under the provisions of the <i>Native Vegetation Conservation Act 1997</i> as continued in force by that clause, or</p> <p>(c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the <i>Forestry Act 1916</i>, or</p> <p>(d) action required or authorised to be done by or under the <i>Electricity Supply Act 1995</i>, the <i>Roads Act 1993</i> or the <i>Surveying and Spatial Information Act 2002</i>, or</p> <p>(e) plants declared to be noxious weeds under the <i>Noxious Weeds Act 1993</i>.</p> <p>Note. Permissibility may be a matter that is determined by or under any of these Acts.</p> <p>(9) [Not adopted]</p>
<p>Unchanged by the amendment</p>
<p>5.10 Heritage conservation</p> <p>Note. Heritage items (if any) are listed and described in Schedule 5. Heritage conservation areas (if any) are shown on the <u>Heritage Map</u> as well as being described in Schedule 5.</p> <p>(1) Objectives</p> <p>The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> (a) to conserve the environmental heritage of Waverley, (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, (c) to conserve archaeological sites, (d) to conserve Aboriginal objects and Aboriginal places of heritage significance. <p>(2) Requirement for consent</p> <p>Development consent is required for any of the following:</p>

(a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):

- (i) a heritage item,
- (ii) an Aboriginal object,
- (iii) a building, work, relic or tree within a heritage conservation area,

(b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,

(c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,

(d) disturbing or excavating an Aboriginal place of heritage significance,

(e) erecting a building on land:

- (i) on which a heritage item is located or that is within a heritage conservation area, or
- (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,

(f) subdividing land:

- (i) on which a heritage item is located or that is within a heritage conservation area, or
- (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.

(3) When consent not required

However, development consent under this clause is not required if:

(a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development:

- (i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of

heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and

(ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or

(b) the development is in a cemetery or burial ground and the proposed development:

(i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and

(ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or

(c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or

(d) the development is exempt development.

(4) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

(5) Heritage assessment

The consent authority may, before granting consent to any development:

(a) on land on which a heritage item is located, or

(b) on land that is within a heritage conservation area, or

(c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

(6) Heritage conservation management plans

The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

(7) Archaeological sites

The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the *Heritage Act 1977* applies):

- (a) notify the Heritage Council of its intention to grant consent, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(8) Aboriginal places of heritage significance

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and
- (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.

(9) Demolition of nominated State heritage items

The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item:

- (a) notify the Heritage Council about the application, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(10) Conservation incentives

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which

such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

The subject site is not identified as a heritage item or as being located within a heritage conservation area. Unchanged by the amendment.

6.1 Acid sulfate soils

(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

(3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

(4) Despite subclause (2), development consent is not required under this clause for the carrying out of works if:

- (a) a preliminary assessment of the proposed works prepared in

<p>accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and</p> <p>(b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.</p> <p>(5) Despite subclause (2), development consent is not required under this clause for the carrying out of any of the following works by a public authority (including ancillary work such as excavation, construction of access ways or the supply of power):</p> <p>(a) emergency work, being the repair or replacement of the works of the public authority, required to be carried out urgently because the works have been damaged, have ceased to function or pose a risk to the environment or to public health and safety,</p> <p>(b) routine maintenance work, being the periodic inspection, cleaning, repair or replacement of the works of the public authority (other than work that involves the disturbance of more than 1 tonne of soil),</p> <p>(c) minor work, being work that costs less than \$20,000 (other than drainage work).</p> <p>(6) Despite subclause (2), development consent is not required under this clause to carry out any works if:</p> <p>(a) the works involve the disturbance of less than 1 tonne of soil, and</p> <p>(b) the works are not likely to lower the watertable.</p>	<p>The subject site is as Class 5 Land on the ASS map. An Acid Sulfate Soils Management Plan is not required for the application.</p>
<p>6.2 Earthworks</p> <p>(1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.</p>	

-
- (2) Development consent is required for earthworks unless:
- (a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or
 - (b) the earthworks are ancillary to other development for which development consent has been given.
- (3) Before granting development consent for earthworks, the consent authority must consider the following matters:
- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality,
 - (b) the effect of the proposed development on the likely future use or redevelopment of the land,
 - (c) the quality of the fill or the soil to be excavated, or both,
 - (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,
 - (e) the source of any fill material and the destination of any excavated material,
 - (f) the likelihood of disturbing relics,
 - (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area,
 - (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Note. The *National Parks and Wildlife Act 1974*, particularly section 86, deals with harming Aboriginal objects.

Unchanged by the amendment

6.3 Flood planning

- (1) The objectives of this clause are as follows:
- (a) to minimise the flood risk to life and property associated with the use of land,
 - (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,
 - (c) to avoid significant adverse impacts on flood behaviour and the environment.
- (2) This clause applies to land at or below the flood planning level.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is compatible with the flood hazard of the land, and
- (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- (c) incorporates appropriate measures to manage risk to life from flood, and
- (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

(4) A word or expression used in this clause has the same meaning as it has in the *Floodplain Development Manual* (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.

(5) In this clause:

land at or below the flood planning level means land at or below the level of a 1:100 ARI (average recurrent interval) flood event plus 0.3 metre freeboard.

The subject site is not identified as containing Flood Affected Land.

It can be seen from the table that the proposal either complies with the relevant provisions of the LEP or the objectives of those provisions, where relevant.

4.6 Warringah Development Control Plan

The proposed development is assessed under the relevant controls of DCP 2011 as follows:

Part B – Built Form Controls
B2 Number of Storeys Applies to Land This control applies to land shown coloured on the DCP Map Number of Storeys. Objectives <ul style="list-style-type: none">• To ensure development does not visually dominate its surrounds.• To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.• To provide equitable sharing of views to and from public and private properties.• To ensure a reasonable level of amenity is provided and maintained to adjoining and nearby properties.• To provide sufficient scope for innovative roof pitch and variation in roof design.• To complement the height of buildings control in the LEP with a number of storeys control. Requirements 1. Buildings on land shown coloured on the DCP Map Number of Storeys must comply with the maximum number of storeys identified on the DCP Map Number of Storeys
This is unchanged by the proposal.
B3 Side Boundary Envelope Applies to Land This control applies to land shown coloured on the DCP Map Side Boundary Envelopes. Objectives

- To ensure that development does not become visually dominant by virtue of its height and bulk.
- To ensure adequate light, solar access and privacy by providing spatial separation between buildings.
- To ensure that development responds to the topography of the site.

1. Buildings on land shown coloured on the DCP Map Side Boundary Envelopes must be sited within a building envelope determined by projecting planes at 45 degrees from a height above ground level (existing) at the side boundaries of:

- 4 metres, or
- 5 metres

as identified on the map.

2. On land within the R3 Medium Density Residential zone, above and below ground structures and private open space, carparking, vehicle access ramps, balconies, terraces, and the like shall not encroach the side boundary envelope.

This is unchanged by the proposal.

B5 Side Boundary Setbacks

Applies to Land

This control applies to land shown coloured on the DCP Map Side Boundary Setbacks, with the exception of land identified as 'Merit Assessment'.

Objectives

- To provide opportunities for deep soil landscape areas.
- To ensure that development does not become visually dominant.
- To ensure that the scale and bulk of buildings is minimised.
- To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.
- To provide reasonable sharing of views to and from public and private properties.

Requirements

<p>1. .Development on land shown coloured on the DCP Map Side Boundary Setbacks is to maintain a minimum setback from side boundaries as shown on the map.</p> <p>2. Side boundary setback areas are to be landscaped and free of any above or below ground structures, car parking or site facilities other than driveways and fences.</p>
This is unchanged by the proposal.
<p>B7 Front Boundary Setbacks</p> <p>Applies to Land</p> <p>This control applies to land shown coloured on the DCP Map Front Boundary Setback, with the exception of land identified as ‘Merit Assessment’.</p> <p>Objectives</p> <ul style="list-style-type: none"> • To create a sense of openness. • To maintain the visual continuity and pattern of buildings and landscape elements. • To protect and enhance the visual quality of streetscapes and public spaces. • To achieve reasonable view sharing. <p>Requirements</p> <p>1. Development is to maintain a minimum setback to road frontages.</p> <p>2. The front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences.</p> <p>3. Where primary and secondary setbacks are specified, buildings and structures (such as carparks) are not to occupy more than 50% of the area between the primary and secondary setbacks. The area between the primary setback and the road boundary is only to be used for landscaping and driveways.</p>
This is unchanged by the proposal.
<p>B9 Rear Boundary Setbacks</p> <p>Applies to Land</p>

This control applies to land shown coloured on the DCP Map Rear Boundary Setbacks, with the exception of land identified as 'Merit Assessment'.

Objectives

- To ensure opportunities for deep soil landscape areas are maintained.
- To create a sense of openness in rear yards.
- To preserve the amenity of adjacent land, particularly relating to privacy between buildings.
- To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.
- To provide opportunities to maintain privacy between dwellings.

Requirements

1. Development is to maintain a minimum setback to rear boundaries.
- 2. The rear setback area is to be landscaped and free of any above or below ground structures.

This is unchanged by the proposal.

Part C Siting Factors

C2 Traffic, Access and Safety

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as 'Deferred matter'.

Objectives

To minimise: a) traffic hazards; b) vehicles queuing on public roads c) the number of vehicle crossings in a street; d) traffic, pedestrian and cyclist conflict; e) interference with public transport facilities; and f) the loss of "on street" kerbside parking.

Requirements

Vehicular Access

1. Applicants shall demonstrate that the location of vehicular and

pedestrian access meets the objectives.

2. Vehicle access is to be obtained from minor streets and lanes where available and practical.

3. There will be no direct vehicle access to properties in the B7 zone from Mona Vale Road or Forest Way.

4. Vehicle crossing approvals on public roads are to be in accordance with Council's Vehicle Crossing Policy (Special Crossings) LAP-PL413 and Vehicle Access to Roadside Development LAP-PL 315.

5. Vehicle crossing construction and design is to be in accordance with Council's Minor works specification.

On-site loading and unloading

6. Facilities for the loading and unloading of service, delivery and emergency vehicles are to be:

appropriate to the size and nature of the development;

screened from public view; and

designed so that vehicles may enter and leave in a forward direction.

On-site loading and unloading

Exceptions

Reference should be made to Part G for additional, site specific requirements

This is unchanged by the proposal.

C3 Parking Facilities

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as 'Deferred matter'.

Objectives

- To provide adequate off street carparking.
- To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.
- To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.

Note

The following Australian Standards applied at the time this DCP was adopted:

AS 2890.1:2004: Parking facilities - Off-street car parking

AS 2890.2-2002: Parking Facilities - Off-street commercial vehicle facilities

AS 2890.5-1993: Parking facilities - On-street parking

Requirements

1. The following design principles shall be met:

- Garage doors and carports are to be integrated into the house design and to not dominate the façade. Parking is to be located within buildings or on site.;
- Laneways are to be used to provide rear access to carparking areas where possible;
- Carparking is to be provided partly or fully underground for apartment buildings and other large scale developments;
- Parking is to be located so that views of the street from front windows are not obscured; and
- Where garages and carports face the street, ensure that the garage or carport opening does not exceed 6 metres or 50% of the building width, whichever is the lesser.

2. Off street parking is to be provided within the property demonstrating that the following matters have been taken into account:

- the land use;
- the hours of operation;
- the availability of public transport;
- the availability of alternative car parking; and

- the need for parking facilities for courier vehicles, delivery / service vehicles and bicycles.

3. Carparking, other than for individual dwellings, shall :

- Avoid the use of mechanical car stacking spaces;
- Not be readily apparent from public spaces;
- Provide safe and convenient pedestrian and traffic movement;
- Include adequate provision for manoeuvring and convenient access to individual spaces;
- Enable vehicles to enter and leave the site in a forward direction;
- Incorporate unobstructed access to visitor parking spaces;
- Be landscaped to shade parked vehicles, screen them from public view, assist in micro-climate management and create attractive and pleasant places;
- Provide on site detention of stormwater, where appropriate; and
- Minimum car parking dimensions are to be in accordance with AS/NZS 2890.1.

4. Carparking is to be provided in accordance with Appendix 1 which details the rate of car parking for various land uses. Where the carparking rate is not specified in Appendix 1 or the WLEP, carparking must be adequate for the development having regard to the objectives and requirements of this clause. The rates specified in the Roads and Traffic Authority's Guide to Traffic Generating Development should be used as a guide where relevant.

5. Adequate provision for staff, customer and courier parking, and parking and turning of vehicles with trailers must be provided if appropriate to the land use.

6. For bulky goods premises adequate on-site parking spaces for service/delivery vehicles at a convenient location, separated from customer parking must be provided.

7. Where appropriate, car parking which meets the needs of people with physical disabilities must be provided in accordance with the relevant Australian Standard.

8. For Forest Way Village car parking at ground level is to be provided for individual units.

This is unchanged by the proposal.

C4 Stormwater

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as ‘Deferred matter’.

Objectives

- To ensure the appropriate management of stormwater.
- To minimise the quantity of stormwater run-off.
- To incorporate *Water Sensitive Urban Design* techniques and *On-Site Stormwater Detention* (OSD) Technical Specification into all new developments.
- To ensure the peak discharge rate of stormwater flow from new development is no greater than the *Permitted Site Discharge (PSD)*.

Requirements

2. Stormwater runoff must not cause downstream flooding and must have minimal environmental impact on any receiving stormwater infrastructure, watercourse, stream, lagoon, lake and waterway or the like.
3. Stormwater runoff is to discharge to a drainage system approved by Council.
4. Water quality control measures are to be provided in accordance with the adopted *Northern Beaches Stormwater Management Plan* and Councils *Water Sensitive Urban Design Policy*.
5. Generally, stormwater runoff quantity is not to exceed pre-developed flow rates and is to be controlled using on-site stormwater detention in accordance with the Council’s *On Site Stormwater Detention Technical Specification*.
6. Temporarily storing stormwater on site and releasing it at a rate that can be accommodated by Council’s existing stormwater drainage system can ensure that the peak discharge rate of stormwater flow from new development is no greater than the *Permitted Site Discharge (PSD)*.
7. Stormwater detention systems are to be visually unobtrusive and

integrated with site landscaping.

8. Stormwater drainage from low level properties is to be designed in accordance with Council's *Stormwater Drainage of Low Level Properties Policy*.
9. Development must drain via gravity to a Council constructed or natural drainage system.
10. Design for minor development (including single residential dwellings, small lot subdivisions and residential flat buildings) is to be in accordance with Council's *Stormwater Drainage Design Guidelines For Minor Developments* and *Minor Works Specification*.
11. Design for major developments (including large lot subdivisions, commercial and industrial developments) is to be in accordance with Council's *Standard Specification for Engineering Works (Auspec 1 Policy Volume)*.
12. Rainwater re-use may be allowed to offset the volume of storage required for single dwelling houses and alterations and additions when the rainwater is used for irrigation, watering of gardens and toilet flushing. The design of such a system is to be in accordance with Council's *On-site Stormwater Detention Technical Specification* . See also *Onsite stormwater detention rainwater reuse policy for single residential dwellings: PAS-PL 100* .

Exceptions

The requirements for stormwater runoff quantity and control may be varied where the following can be demonstrated:

- . The discharge from the development will not pass through a drainage control structure such as a pipe, culvert, bridge, kerb and gutter or natural drainage system before reaching receiving waters such as the ocean; or
- . For new dwellings and alterations/additions the additional impervious surface resulting from the development will not exceed 50m² in the area; or
- . The soil conditions are such that stormwater can be retained and disposed of on-site, but only if the case is established by a geotechnical report, see Council's *On-site Absorption Design*

Guidelines (Attachment 2 of the Stormwater Drainage from Low Level Properties Policy); or

- . The site is within flood planning land or subject to the discharge of a 1:100 ARI (average recurrent interval) flood event and the local drainage system is not adversely affected by lesser storm events.

If drainage to a Council constructed or natural drainage system is not possible, where it can be demonstrated soil conditions so allow, stormwater may be disposed of on-site in accordance with Council's On-site Absorption Design Guidelines (see Attachment 2 of the *Stormwater Drainage from Low Level Properties Policy*);.

This is unchanged by the proposal.

C5 Erosion and Sedimentation

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as 'Deferred matter'.

Objectives

- To reduce the potential for soil erosion and adverse sedimentation impacts upon the environment.
- To prevent the migration of sediment off the site onto any waterway, drainage systems, public reserves, road reserve, bushland or adjoining private lands.
- To prevent any reduction in water quality downstream of the development site.

Requirements

1. Erosion and sedimentation prevention measures must be installed on all sites where some degree of soil erosion and sedimentation is likely to occur.
2. Any erosion and sedimentation is to be managed at the source. Development that is likely to result in erosion and sedimentation is to be accompanied by a Soil and Water Management Plan which ensures minimum soil erosion and maintenance of the downstream water quality.

The Plan is to be prepared in accordance with the *Managing Urban Stormwater : Soils and Construction Handbook* and is to provide details of the proposed method of on-site erosion and sediment control.

This is unchanged by the proposal.

C8 Demolition and Construction

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as ‘Deferred matter’.

Objectives

- To manage demolition and construction sites so that there is no unreasonable impact on the surrounding amenity, pedestrian or road safety, or the natural environment.
- To promote improved project management by minimising demolition and construction waste and encouraging source separation, reuse and recycling of materials.
- To assist industry, commercial operators and site managers in planning their necessary waste management procedures through the preparation and lodgement of a Waste Management Plan
- To discourage illegal dumping.

Requirements

2. Section 1 of the Waste Management Plan must be satisfactorily completed and submitted.
3. An area must be allocated for the sorting and storage of materials for use, recycling and disposal. This area should be located in a disturbed area of the site, giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation, pedestrian and traffic movement and access and handling requirements.
4. The timing and frequency, and routes of vehicle movements are to be safe and minimise impact on roads, pedestrian and traffic movement and surrounding residents.
5. Demolition and construction waste must be legally handled, transported and disposed of.

Note

Removal of asbestos must be undertaken in accordance with the following:

The relevant Australian Standard. Australian Standard AS 2601-2001 'Demolition of Structures' applied at the time this DCP was adopted. Code of Practice for the Safe Removal of Asbestos, 2nd Edition [NOHSC:2002(2005)], Australian Government, National Occupational Health and Safety Commission.

Requirements

6. Dedicated safe pedestrian access is, at all times, to be provided around the site.
7. Demolition and construction waste must be minimised and source separation, reuse and recycling of materials must be maximised.
8. Demolition and construction sites will be managed to ensure air and water borne pollutants such as noise, dust, odour and liquids and the like are minimised.
9. Demolition and construction sites will be managed to minimise site disturbance, limiting unnecessary excavation.

Note

Initiatives to ensure that site impact is minimised include:

Restricting vehicles to one entry/ exit which is appropriately stabilised with aggregate or the like;

- *Provision of a sediment control device at the access point to prevent sediment depositing on roads;*
- *Managing the number and frequency of vehicular movements to minimise impact on the neighbourhood;*
- *Minimising air pollution by watering, limiting site disturbance and landscaping at the end of the project;*
- *Locating drainage in close proximity to the built area to avoid excavation;*
- *Implementing methods to control stormwater and erosion during construction;*
- *Implement rehabilitation techniques to restore the site for future use;*

<p><i>and</i></p> <ul style="list-style-type: none"> • <i>Regularly check and maintain devices.</i> <p>Exceptions</p> <ul style="list-style-type: none"> • Reference should be made to Part G for additional, site specific requirements.
This is unchanged by the proposal.
<p>C9 Waste Management</p> <p>Applies to Land</p> <p>This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as ‘Deferred matter’.</p> <p>Objectives</p> <ul style="list-style-type: none"> • To facilitate sustainable waste management in a manner consistent with the principles of Ecologically Sustainable Development (ESD). • To achieve waste avoidance, source separation and recycling of household and industrial/commercial waste. • To design and locate waste storage and collection facilities which are convenient and easily accessible; safe; hygienic; of an adequate size, and with minimal adverse impacts on residents, surrounding neighbours, and pedestrian and vehicle movements. • To ensure waste storage and collection facilities complement waste collection and management services, offered by Council and the private service providers and support on-going control for such standards and services. • To minimise risks to health and safety associated with handling and disposal of waste and recycled material, and ensure optimum hygiene. • To minimise any adverse environmental impacts associated with the storage and collection of waste. • To discourage illegal dumping.
This is unchanged by the proposal.
Part D Design
D2 Private Open Space

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as 'Deferred matter'.

Requirements

- To ensure that all residential development is provided with functional, well located areas of private open space.
 - To ensure that private open space is integrated with, and directly accessible from, the living area of dwellings.
 - To minimise any adverse impact of private open space on adjoining buildings and their associated private open spaces.
 - To ensure that private open space receives sufficient solar access and privacy.
2. Residential development is to include private open space for each dwelling.
3. The minimum area and dimensions of private open space are as follows:

DWELLING Type	Area and Minimum Dimensions per dwelling
Dwelling houses (including dual occupancy) and attached dwellings with 1 or 2 bedrooms	A total of 35m ² with minimum dimensions of 3 metres
Dwelling houses (including dual occupancy) and attached dwellings with 3 or more bedrooms	A total of 60m ² with minimum dimensions of 5 metres
Multi dwelling housing (not located at ground level); residential flat buildings and shop top housing	A total of 10m ² with minimum dimensions of 2.5 metres

4. Private open space is to be directly accessible from a living area of a dwelling and be capable of serving as an extension of the dwelling for relaxation, dining, entertainment, recreation and children's play.

5. Private open space is to be located and designed to ensure privacy of the occupants of adjacent buildings and occupants of the proposed development.

6. Private open space shall not be located in the primary front building setback.

7. Private open space is to be located to maximise solar access.

This is unchanged by the proposal.

D3 Noise

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as 'Deferred matter'.

Objectives

- To encourage innovative design solutions to improve the urban environment.
- To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.

Requirements

1. Noise from combined operation of all mechanical plant and equipment must not generate noise levels that exceed the ambient background noise by more than 5dB(A) when measured in accordance with the *NSW Industrial Noise Policy* at the receiving boundary of residential and other noise sensitive land uses.

See also NSW Industrial Noise Policy Appendices

2. Development near existing noise generating activities, such as industry and roads, is to be designed to mitigate the effect of that noise.

3. Waste collection and delivery vehicles are not to operate in the vicinity of residential uses between 10pm and 6am.

4. Where possible, locate noise sensitive rooms such as bedrooms and private open space away from noise sources. For example, locate

kitchens or service areas closer to busy road frontages and bedrooms away from road frontages.

5. Where possible, locate noise sources away from the bedroom areas of adjoining dwellings/properties to minimise impact.

The Acoustic report prepared by Acoustic Logic addresses compliance with these requirements for the proposed extended hours and work.

D5 Orientation and Energy Efficiency

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as 'Deferred matter'.

Objectives

- To consider the placement of buildings within sites to maximise solar access and natural ventilation.
- To encourage innovative design solutions to improve the urban environment.
- To design buildings in settings that minimise the need for artificial temperature control and, as a result, provide a high level of amenity for occupants.

Requirements

1. Due to the movement of the sun across the northern sky, buildings should be designed to have their longer axis running east west to maximise northern exposure to solar access.
2. Buildings should minimise reliance on artificial heating, lighting and cooling by designing high use areas in association with 'Energy Smart' principles identified by the Department of Energy, Utilities and Sustainability. Openings on the west elevations should be minimised to avoid the extremes of solar access. These openings should be higher on the wall (therefore more protected by the eaves) and shaded by devices or trees.
3. Concrete floors and masonry walls are encouraged to maximise thermal mass within the building. Heat should be absorbed by the floor during the day and released at night. In summer, the interior of the building should be shaded.
4. Natural ventilation is encouraged to provide cooling breezes and fresh air into buildings by designing openings for predominant wind

sources i.e. north east and south west. This can be increased by allowing for cross flow ventilation e.g. having openings on opposite walls. Angled window openings and louvre systems are effective for directing air movement up to ventilated ceilings to assist in natural cooling. All drafts should be sealed to maximise the effects of insulation.

5. Landscaping should be designed to assist with the control of internal building climate and energy efficiency. The planting of locally indigenous natural ground cover is also encouraged to reduce reflective heat and glare from paved surfaces.

This is unchanged by the proposal.

D6 Access to Sunlight

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as ‘Deferred matter’.

Objectives

- To ensure that reasonable access to sunlight is maintained.
 - To encourage innovative design solutions to improve the urban environment.
 - To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.
 - To promote passive solar design and the use of solar energy.
- To minimise the need for artificial lighting.

Requirements

1. Development should avoid overshadowing any existing solar collectors for hot water or electricity.
2. Development should avoid overshadowing any public open space.
3. The shadow cast by fences, roof overhangs and changes in level are to be considered and should be shown on the shadow diagrams submitted with the application.
4. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of

adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

5. Windows to the principal living area of each dwelling and the principal living area of each adjoining dwelling (i.e. at least 50% of the glazed area of those windows) are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

6. For multi dwelling housing and residential flat buildings, at least 70% of dwellings should receive a minimum of 3 hours direct sunlight between 9am and 3pm on June 21 to the windows of the principal living area of each dwelling and at least 50% of the required private open space for in a development (i.e. to at least 50% of the glazed area of those windows).

7. Where overshadowing by existing topography, development and fences is greater than the controls permit, reasonable solar access to the main private open space and principal living area will be assessed on a merit basis with regard to achieving the objectives of this section.

This is unchanged by the proposal.

D7 Views

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as ‘Deferred matter’.

Objectives

- To allow for the reasonable sharing of views.
- To encourage innovative design solutions to improve the urban environment.
- To ensure existing canopy trees have priority over views.

Requirements

1. Development shall provide for the reasonable sharing of views.

This is unchanged by the proposal.

D8 Privacy

Applies to Land

This control applies to all land shown on the Warringah Local

Environmental Plan 2011 – Land Application Map other than land that is shown as ‘Deferred matter’.

Objectives

- To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.
- To encourage innovative design solutions to improve the urban environment.
- To provide personal and property security for occupants and visitors.

Requirements

1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.
2. Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.
3. The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.
4. The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.
- 5.8.4 5. Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.

This is unchanged by the proposal.

D9 Building Bulk

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as ‘Deferred matter’.

Objectives

- To encourage good design and innovative architecture to improve the urban environment.
- To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public

recreation purposes.

Requirements

1. Side and rear setbacks are to be progressively increased as wall height increases.
2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.
3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:
 - The amount of fill is not to exceed one metre in depth.
 - Fill is not to spread beyond the footprint of the building.
 - Excavation of the landform is to be minimised.
4. Building height and scale needs to relate to topography and site conditions.
5. Orientate development to address the street.
6. Use colour, materials and surface treatment to reduce building bulk.
7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.
8. Articulate walls to reduce building mass.

This is unchanged by the proposal.

D10 Building Colours and Materials

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as ‘Deferred matter’.

Objectives

- To ensure the colours and materials of new or altered buildings and structures are sympathetic to the surrounding natural and built environment.

Requirements

-
1. In highly visible areas, the visual impact of new development is to be minimized through the use of appropriate colours and materials.
 2. The colours and materials of development on sites adjoining, or in close proximity to, bushland areas, waterways or the beach must blend in to the natural landscape.
 3. The colours and materials used for alterations and additions to an existing structure shall complement the existing external building façade.
 4. The holiday/fisherman shack character of the waterfront of Cottage Point is to be enhanced by the use of building materials which are sympathetic to the small timber and fibro cottages currently in existence on the waterfront. All buildings visible from the water are to utilise materials such as weatherboard, fibre cement, corrugated steel and timber. The use of masonry is discouraged.

This is unchanged by the proposal.

D11 Roofs

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as ‘Deferred matter’.

Objectives

- To encourage innovative design solutions to improve the urban environment.
- Roofs are to be designed to complement the local skyline.
- Roofs are to be designed to conceal plant and equipment.

Requirements

1. Lift overruns, plant and other mechanical equipment are not to detract from the appearance of roofs.
2. Roofs should complement the roof pitch and forms of the existing buildings in the streetscape.
3. Articulate the roof with elements such as dormers, gables, balconies, verandahs and pergolas.
4. Roofs shall incorporate eaves for shading.

-
5. Roofing materials should not cause excessive glare and reflection.
 6. Service equipment, lift overruns, plant and other mechanical equipment on the roof shall be minimised by integrating as many services, etc as possible into the building.

This is unchanged by the proposal.

D12 Glare and Reflection

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as ‘Deferred matter’.

Objectives

- To ensure that development will not result in overspill or glare from artificial illumination or sun reflection.
- To maintain and improve the amenity of public and private land.
- To encourage innovative design solutions to improve the urban environment.

Requirements

1. The overspill from artificial illumination or sun reflection is to be minimised by utilising one or more of the following: Selecting an appropriate lighting height that is practical and responds to the building and its neighbours;
 - Minimising the lit area of signage;
 - Locating the light source away from adjoining properties or boundaries; and
 - Directing light spill within the site.
2. Any glare from artificial illumination is to be minimised by utilising one or more of the following:
 - Indirect lighting;
 - Controlling the level of illumination; and
 - Directing the light source away from view lines.
3. Sunlight reflectivity that may impact on surrounding properties is to be minimised by utilising one or more of the following:
 - Selecting materials for roofing, wall claddings and glazing that have less reflection eg medium to dark roof tones;
 - Orienting reflective materials away from properties that may be impacted;

<ul style="list-style-type: none"> • Recessing glass into the façade; • Utilising shading devices; • Limiting the use of glazing on walls and glazed balustrades and avoiding the use of highly reflective glass; and • Selecting windows and openings that have a vertical emphasis and are significantly less in proportion to solid massing in walls.
This is unchanged by the proposal.
<p>D13 Front Fences and Front Walls</p> <p>Applies to Land</p> <p>This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as 'Deferred matter'.</p> <p>Objectives</p> <ul style="list-style-type: none"> • To ensure that fencing, terracing and retaining walls are compatible with the existing streetscape character while creating visual interest in the public domain. • To encourage innovative design solutions to improve the urban environment. • To avoid a 'walled in' streetscape. <p>Requirements</p> <ol style="list-style-type: none"> 1. Front fences and walls are to be no higher than 1.2 metres. 2. Where a solid fence is required it is to be articulated to provide visual interest and set back to allow for landscaping to soften and screen the appearance of the fence. 3. Fences located within the front building setback area are to complement the existing streetscape character. 4. Fences are to be constructed to allow casual surveillance, except where there is excessive noise. 5. Gates are not to encroach over the property boundary when opening or closing. 6. Fences should complement the architectural period of the building. <p>Exceptions</p> <p>Where it can be demonstrated that a solid fence is consistent with the</p>

existing streetscape and is required to mitigate traffic noise, a solid fence up to 1.8m in height may be permitted.

No solid front fences or front walls will be permitted on flood prone land.

Reference should be made to Part G Belrose Corridor for site specific requirements.

This is unchanged by the proposal.

D14 Site Facilities

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as 'Deferred matter'.

Objectives

- To provide for the logical placement of facilities on site that will result in minimal impacts for all users, particularly residents, and surrounding neighbours.
- To encourage innovative design solutions to improve the urban environment.
- To make servicing the site as efficient and easy as possible.
- To allow for discreet and easily serviceable placement of site facilities in new development.

Requirements

1. Site facilities including garbage and recycling enclosures, mail boxes and clothes drying facilities are to be adequate and convenient for users and services and are to have minimal visual impact from public places. In particular:

- Waste and recycling bin enclosures are to be durable, integrated with the building design and site landscaping, suitably screened from public places or streets and located for convenient access for collection;
- All dwellings which are required to have landscaped open space are to be provided with adequate open air clothes drying facilities which are suitably screened from public places or streets;

- Garbage areas are to be designed to avoid common problems such as smell, noise from collection vehicles and the visibility of containers;
- Landscaping is to be provided to reduce the impact of all garbage and recycling enclosures. They are to be located away from habitable rooms, bedrooms or living areas that may detract from the amenity of occupants; and
- Mail boxes are to be incorporated into the front fence or landscaping design. They are to be easily accessible and clearly identifiable.

This is unchanged by the proposal.

D15 Side and Rear Fences

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as 'Deferred matter'.

Objectives

- To encourage innovative design solutions to improve the urban environment.

Requirements

1. Generally, side and rear boundary fences are to be no higher than 1.8 metres on level sites, or 1.8 metres measured from the low side where there is a difference in either side of the boundary.
2. For sloping sites, the height of fences may be averaged and fences and walls may be regularly stepped.
3. All fencing materials are to complement the existing neighbourhood. The use of corrugated metal, barbed wire or broken glass is not permitted.

This is unchanged by the proposal.

D16 Swimming Pools and Spa Pools

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is

shown as 'Deferred matter'.

Objectives

- To ensure swimming pools and spas are located to preserve the natural environment, streetscape and residential amenity.
- To encourage innovative design solutions to improve the urban environment.

Requirements

1. Pools are not to be located in the front building setback.
2. Where there are 2 frontages, swimming pools and spas are not to be situated in the primary street frontage.
3. Swimming pools and spas are to be setback from any trees.

Australian Standard AS4970-2009 Protection of trees on development sites is to be used to determine an appropriate setback.

This is unchanged by the proposal.

D20 Safety and Security

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as 'Deferred matter'.

Objectives

- To ensure that development maintains and enhances the security and safety of the community.

Requirements

1. Buildings are to overlook streets as well as public and communal places to allow casual surveillance.
2. Service areas and access ways are to be either secured or designed to allow casual surveillance.
3. There is to be adequate lighting of entrances and pedestrian areas.
4. After hours land use activities are to be given priority along primary pedestrian routes to increase safety.
5. Entrances to buildings are to be from public streets wherever

possible.

6. For larger developments, a site management plan and formal risk assessment, including the consideration of the 'Crime Prevention through Environmental Design' principles may be required. This is relevant where, in Council's opinion, the proposed development would present a crime, safety or security risk. See *Crime Prevention and Assessment of Development Applications – Guidelines under Section 79C of the Environmental Planning and Assessment Act 1979* prepared by the Department of Urban Affairs and Planning (now Department of Planning).

7. Buildings are to be designed to allow casual surveillance of the street, for example by:

- a) Maximising the glazed shop front on the ground level so that views in and out of the shop can be achieved;
- b) Providing openings of an adequate size in the upper levels to maximise opportunities for surveillance;
- c) Locating high use rooms to maximise casual surveillance;
- d) Clearly displaying the street number on the front of the building in pedestrian view; and
- e) Ensuring shop fronts are not obscured by planting, signage, awnings and roller shutters.

8. Casual surveillance of loading areas is to be improved by:

- a) Providing side and rear openings from adjacent buildings that overlook service areas and clear sight lines; and
- b) Providing adequate day and night lighting which will reduce the risk of undesirable activity.

9. Design entrances to buildings from public streets so that:

- a) Building entrances are clearly identifiable, defined, lit and visible;
- b) The residential component of a shop top housing development has a separate secure pedestrian entrance from the commercial component of the development;
- c) Main entrances are clearly identifiable;
- d) Pavement surfaces and signage direct pedestrian movements; and
- e) Potential conflict between pedestrians and vehicles is avoided.

This is unchanged by the proposal.

D22 Conservation of Energy and Water

Applies to Land

This control applies to all land shown on the Warringah Local Environmental Plan 2011 – Land Application Map other than land that is shown as ‘Deferred matter’.

Objectives

- To encourage innovative design solutions to improve the urban environment.
- To ensure energy and water use is minimised.

Requirements

1. The orientation, layout and landscaping of sites is to make the best use of natural ventilation, daylight and solar energy.
2. Site layout and structures are to allow for reasonable solar access for the purposes of water heating and electricity generation and maintain reasonable solar access to adjoining properties.
3. Buildings are to be designed to minimize energy and water consumption.
4. Landscape design is to assist in the conservation of energy and water.
5. Reuse of stormwater for on-site irrigation and domestic use is to be encouraged, subject to consideration of public health risks.

This is unchanged by the proposal.

E7 Development on land adjoining public open space

Applies to Land

This control applies to all land shown on DCP Map Land Adjoining Public Open Space.

Objectives

- To protect and preserve bushland adjoining parks, bushland reserves and other public open spaces.
- To ensure that development responds to its adjacent surroundings to

preserve and enhance the natural qualities of the environment.

- Development on land adjoining open space is to complement the landscape character and public use and enjoyment of the adjoining parks, bushland reserves and other public open spaces.

Requirements

1. Development on land adjoining public open space is to complement the landscape character and public use and enjoyment of the adjoining parks, bushland reserves and other public open spaces.

2. Public access to public open space is to be maximised.

3. Buildings are to be located to provide an outlook to public open space, without appearing to privatise that space.

4. Development is to provide a visual transition between open space, bushland reserves or other public spaces and buildings, including avoiding abutting public open space with back fences.

5. Development is to protect views to and from public open space.

6. Development is to provide buffers for bushfire protection on private land, not on public land.

7. If the adjoining parks, bushland reserves or public open space contain bushland, development is not to threaten the protection or preservation of the bushland.

8. Development should be designed to maximise opportunities for casual surveillance of the public open space.

9. Development is to utilise landscaping or existing landscape elements to screen development.

Exceptions

Reference should be made to Part G for site specific requirements.

This is unchanged by the proposal.

5.0 Environmental Planning Assessment

Section 79C(1) of the Environmental Planning and Assessment Act 1979 as amended specifies the matters which a consent authority must consider when determining a development application.

5.1 s.79C(1)(a)(i) the provision of any Environmental Planning Instrument (EPI)

Consideration of SEPP 55, SEPP (BASIX) 2004, SEPP 65, and Local Environmental Plan 2011 are discussed under Section 4.

5.2 s.79C(1)(a)(ii) the provision of any draft Environmental Planning Instruments

Not applicable to this application.

5.3 s.79C(1)(a)(iii) any development control plan

Consideration of DCP 2011 is discussed under Section 4.

5.4 s.79C(1)(a)(iv) any matters prescribed by the regulations

Not applicable to this application.

5.5 s.79C(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

- Context and Setting

The proposal responds to its context in proposing noise and work restrictions to meet amenity criteria.

- Access, Transport and Traffic

No change.

- Public Domain

No change

- Utilities

The existing utilities are considered appropriate for the proposed development.

- Heritage

The subject site is not located within a heritage conservation area and does not contain a heritage item.

- Other Land Resources

Not applicable to this application.

- Water

- Not affected by the amendment.

- Soils

Not affected by the amendment.

- Air and Microclimate

It is considered that the proposal will not give rise to any significant air or microclimate impacts.

- Flora and Fauna

There is no significant flora or fauna on the site which will be affected by the proposal.

- Waste

The garbage/recycling storage area is proposed to be located in the building and will enable easy access to the collection point. This is unchanged.

- Energy

The proposal includes a number of energy saving design features. The design enables cross ventilation and natural daylight to penetrate all levels. (see Amended BASIX Assessment). This is unchanged.

- Noise and Vibration

Construction noise emissions associated with internal activities have been predicted based on the proposed extended hours period, which will be conducted once the building external façade is installed and can be closed.

Prediction was conducted to investigate the potential for noise impact from the proposed construction works during the extended hours' period to the surrounding receivers. The predictions are based on the following assumptions:

- The prediction is based on the worst case scenario that the loudest typical activity was being conducted within the area nearest to the receiver. This assumes that one angle grinder or power tools being used within the building which is closest to the potentially worst affected receiver to the northern or southern side of the site with the façade open.
- The sound power levels have been used to calculate internal sound pressure levels impacting on the façade based on:
 - The size and room characteristic.
 - The calculated sound pressure level was assumed to occur consistently across the entire façade of the work area.

Based on the assessment noise emissions from the worst case operation of the construction works will comply with the EPA's Interim Construction Noise Guideline during the proposed extended hours.

- Natural Hazards

Not applicable to this application.

- Technological Hazards

Not applicable to this application.

- Safety, Security and Crime Prevention

This is unchanged.

- Social Impact in the Locality

The proposal is not expected to have an adverse social impact on the locality, as the proposal will upgrade the infrastructure.

- Economic Impact in the Locality

Employment opportunities will be provided during the construction phase to the benefit of the local building sector, and the proposal will increase the value of the subject site.

- Site Design and Internal Design

The proposal draws on guidelines set out in the planning instruments to reinforce positive elements of urban form. This is unchanged by the amendment.

- Construction

The building process will be managed to minimise disruption to the local community and the environment. However some noise is inevitable during the construction phase and this will be managed in accordance with Council's standards. The design of the development proposal has focused on durable renewable materials with low maintenance requirements.

- Cumulative Impacts

The subject allotment is generously sized, shaped and orientated to accommodate the proposed development. It is anticipated that the proposal will have a negligible cumulative effects.

5.6 s.79C(1)(c) suitability of the site for development

Having regard to the location of the proposal, the site will adequately accommodate the development.

5.7 s.79C(1)(d) submissions made in accordance with the Act or the Regulations

The Consent authority will need to consider the submissions received in response to the public exhibition of the proposed development.

5.8 s.79C(1)(e) the public interest

There are no known Federal and/or state Government policy statements and/or strategies other than those discussed in this report that are of relevance to this particular case. We are not aware of any other circumstances that are relevant to the consideration of this development application.

6.0 Matters For Consideration Under Section 96 Of The Environmental Planning And Assessment Act, 1979.

Section 96 of the Environmental Planning and Assessment Act, 1979 (the Act) confers on a consent authority the power and discretion to modify a consent granted under the Act.

The relevant provisions of the Act state:

“Modification of consents

96(2) Other modifications. A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development, and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a Development Control Plan, if the consent authority is a council that has made a Development Control Plan under Section 72*

that requires the notification or advertising of applications for modification of a development consent, and

- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the Development Control Plan, as the case may be.*
- (2) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in Section 79C(1) as are of relevance to the development the subject of the application.*
- (3) Modification of a development consent in accordance with this section is not to be construed as the granting of development consent under this Part but a reference in this or any other Act to a development consent is a reference to the development consent so modified."*

The relevant provisions of Section 96 to the current proposal are Sub-clauses (2)(a), (c) and (d), and, Sub-clause (3).

It is acknowledged that Section 96(2)(a) prescribes a distinct test to be applied and if a development as modified fails the test, which the development, as modified is not substantially the same as the original development (as subsequently amended), then the modification application must fail.

The matters prescribed under Section 96 are addressed below.

Section 96(2)(a)- Substantially the Same Development

The nature of Section 96 of the Act anticipates that there is likely to be some change between an originally proposed (and approved) development and a modified one.

The decision of *North Sydney Council – v – Michael Standley & Associates Pty Ltd*, (97 LGERA 433, 12 May 1998, Mason P), added to the understanding of the appropriateness of permitting modification as follows:

“Parliament has therefore made it plain that a consent is not set in concrete – it has chosen to facilitate the modifications of consents, conscious that such modifications may involve beneficial cost savings and / or improvements to amenity.”

In contemplating a consent for modification, it is the degree of change, which determines whether the consent authority has the power to approve a modification or whether there is no such power where the application fails to pass the threshold test under Section 96(2)(a) of the Act.

The main consideration under Section 96(2)(a) is what constitutes “*the same development*” and what are the parameters defining “*substantially*”.

In the case of *Vacik Pty Limited and Penrith Council* (unreported 24 February 1992, Stein J), the Court held that substantially means “*essentially or materially or having the same essence*” and that the substance of determining these matters rests with a comparative analysis between the consent being varied and the modification and this approach is supported by the decision of Bignold J in *Moto Projects (No 2) Pty Ltd and North Sydney Council* (NSWLEC 280, Appeal 10741A of 1997, 17/12/99).

The proposed modifications relate only to construction hours.

The proposal clearly indicate the retention of the “*essential*” form, character, design, height, footprint, and use of the development.

Further, it is evident that the implications of the modified proposal are such that the development is unlikely to result in any adverse impact upon any adjoining property or the locality generally. There will be no increase in overshadowing, loss of views or privacy.

In summary, it is concluded that there is no basis for not characterising the modified development as one, which is substantially the same as that approved.

Section 96(2)(c) and (d)-Notification

The provisions of Section 96(2)(c) and (d) require that the application for modification should be notified (in accordance with the regulations) and that any submission made should be considered.

Accordingly, it is requested that the Council, as the consent authority, notify the modified application if required and address any submissions received during the notification period.

Section 96(3)-Section 79C(1) Consideration

The matters that are of relevance to the development, the subject of the application for modification, are generally addressed below under Section 79C(1)(a), (b), (c), (d) and (e).

- Section 79C(1)(a)

The requirement to consider the provisions of environmental planning instruments and development control plans are referred to in Section 79C(1) Evaluation as follows:

“(a) the provision of:

- (i) any Environmental Planning Instrument;*
- (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,

(iv) the regulations (to the extent that the prescribe matters for the purposes of this paragraph)

that apply to the land to which the development application relates”.

The planning regime has been addressed in the preceding section 5.

- Section 79C(1)(d)

Section 79C(d) requires “*consideration of any submission made in accordance with Act or the regulation.*”

The proposed modification is in the spirit of the original approval and there will be no change to the degree of impact upon amenity of the surrounding buildings as a result of the modification.

- Section 79C(1)(e)

Section 79C(e) requires “*consideration of the public interest*”.

The amendments to the approved proposal have been designed to ensure no adverse impacts on surrounding properties and furthermore given its general compliance with the relevant controls it is considered that no detrimental effects will result in terms of the public interest.

7.0 Conclusion

The proposed development comprises a S96 amendment application for extended construction hours at 80 Evans Street, Freshwater to include:

- Monday – Friday extend working time from 5.00pm to 8.00pm for internal finishing works once facade is installed.
- Saturday extend working hours from 1.00pm to 4.00pm internal finishing once façade works complete.

It is noted that there is no change to the currently approved hours for excavation activities being conducted on the site

A development application DA2014/875 was granted consent by the Joint Regional Planning Panel on 1 December 2014. The application related to 80 Evans Street, Freshwater and that approval consented to The approval comprised demolition and excavation works and construction of seniors housing, a registered club, a childcare centre and associated car parking and landscaping.

The existing consent has been commenced and the building demolition and site works are currently underway.

The approval required inter alia:

6. General Requirements

a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- a. 7.00 am to 5.00 pm inclusive Monday to Friday,*
- b. 8.00 am to 1.00 pm inclusive on Saturday,*
- c. No work on Sundays and Public Holidays.*

b) Demolition and excavation works are restricted to:

a. 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

c) *At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.*

d) *Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.*

e) *On site toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.*

f) *Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.*

g) *Smoke alarms are to be installed throughout all new and existing portions of any Class 1 a building in accordance with the Building Code of Australia prior to the occupation of the new works.*

h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

i) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

j) All sound producing plant, equipment, machinery or fittings will not exceed more than 5d8 (A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

l) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB1 0)

It is proposed to amend Condition 6 in order to complete the construction in a timely and efficient manner.

Consequently, it is proposed that Condition 6 be amended to read:

6. General Requirements

a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- a. 7.00 am to 5.00 pm inclusive Monday to Friday,*
- b. 8.00 am to 1.00 pm inclusive on Saturday,*
- c. No work on Sundays and Public Holidays.*

With the exception of the following;

- Monday – Friday extend working time from 5.00pm to 8.00pm for internal finishing works once facade is installed.*
- Saturday extend working hours from 1.00pm to 4.00pm internal finishing once façade works complete.*

b) Demolition and excavation works are restricted to:

- a. 8.00 am to 5.00 pm Monday to Friday only.*

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction

Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

e) On site toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

f) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

g) Smoke alarms are to be installed throughout all new and existing portions of any Class 1 a building in accordance with the Building Code of Australia prior to the occupation of the new works.

h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

i) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

j) All sound producing plant, equipment, machinery or fittings will not exceed more than 5d8 (A) above the background level when measured from any property boundary and will comply with the Environment

k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

l) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB1 0)

This application should be read in conjunction with the "Extended Hours Acoustic Report" prepared by Acoustic Logic and submitted with the application. The report concludes that:

Based on the assessment noise emissions from the worst case operation of the construction works will comply with the EPA's Interim Construction Noise Guideline during the proposed extended hours

period including

- *Monday – Friday extend working time from 5.00pm to 8.00pm for internal finishing works once facade is installed.*
- *Saturday extend working hours from 1.00pm to 4.00pm internal finishing once façade works complete.*

Providing the detailed site management controls included in this report are included in the operation of the site compliance with the relevant EPA construction noise requirements for extended hours periods will be achieved and the proposed extended hours are acoustically acceptable.

The proposal has been demonstrated to comprise substantially the same development and has been designed in accordance with the Council's policies and planning instruments and will make a positive contribution to the neighbourhood and broader locality.

The proposal also addresses the matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979. It will deliver a suitable and appropriate development and is worthy of approval.

Statement of Environmental Effects prepared by:

Name: Andrew Darroch of Mersonn Pty Ltd
Qualification: BA (Enviro. Sc.) Master City and Regional
Planning Grad. Dip Urban Estate
Management MPIA, MEPLA, MPCA
Address: 6/20 Wylde Street, Potts Point

In respect of the following Development Application:

Land to be developed: 80 Evans Street, Freshwater
Proposed development: S96 Application to DA2014/875 to amend
Condition 6 to extend construction hours.

Declaration:

I declare that I have prepared this
Statement and to the best of my
knowledge:

1. The Statement has been prepared in accordance with clause 78A of the EP & A Act and Clause 50 of the EP & A Regulations.
2. The Statement contains all available information that is relevant to the environmental assessment of the development to which this Statement relates, and
3. That the information contained in the Statement is neither false nor misleading.



Signature:

Name: Andrew Darroch
Date: January 2017