

8 May 2025

Chief Executive Officer
Northern Beaches Council

Dear Sir / Madam,

**50 Condoover Street Balgowlah
Modification under Section 4.55(2) to DA2023/0541 to alter the approved
development for 2 dwelling houses**

1 Introduction

Development Application DA2023/0541 approved development of the land for two new dwelling houses. It was approved by Northern Beaches Council on 8 January 2024. It followed Development Consent DA2021/1334 for subdivision of one lot into three lots (including 1 Community Title Lot).

Modification to the development consent is sought for a range of modest physical changes to the approved development form and to several conditions so that the implementation of the consent aligns with the intended sequence of construction works and avoids unnecessary time and cost delays.

1.1 Reasons for the changes

The applicant has identified that the logical sequence of the subdivision works and dwelling house construction on approved Lot 2 does not align with the deferred commencement condition [Condition 1 of the dwelling DA], and will, if not amended, result in avoidable time delays and costs.

Demolition of the existing dwelling house means the owner/resident must relocate and start incurring various costs [alternate accommodation, construction loan, building site costs, etc.]. The owner seeks to continue with excavation, construction of the retaining walls and works associated with the dwelling house on approved Lot 2 which fronts Condoover Street immediately following the subdivision works.

The deferred commencement condition means works following demolition of the dwelling house cannot commence until the lots are registered. The advice from the applicant's surveyor is that registration alone can take in the order of four to five months. This also involves the deferred commencement condition being considered by Council, the application and approval of a construction certificate, etc. It means construction would commence progress to a point then have to stop for several months with time and cost implications.

The proposed modifications involve changes to several conditions and minor physical changes to the approved dwelling house on Lot 2 [detail below].

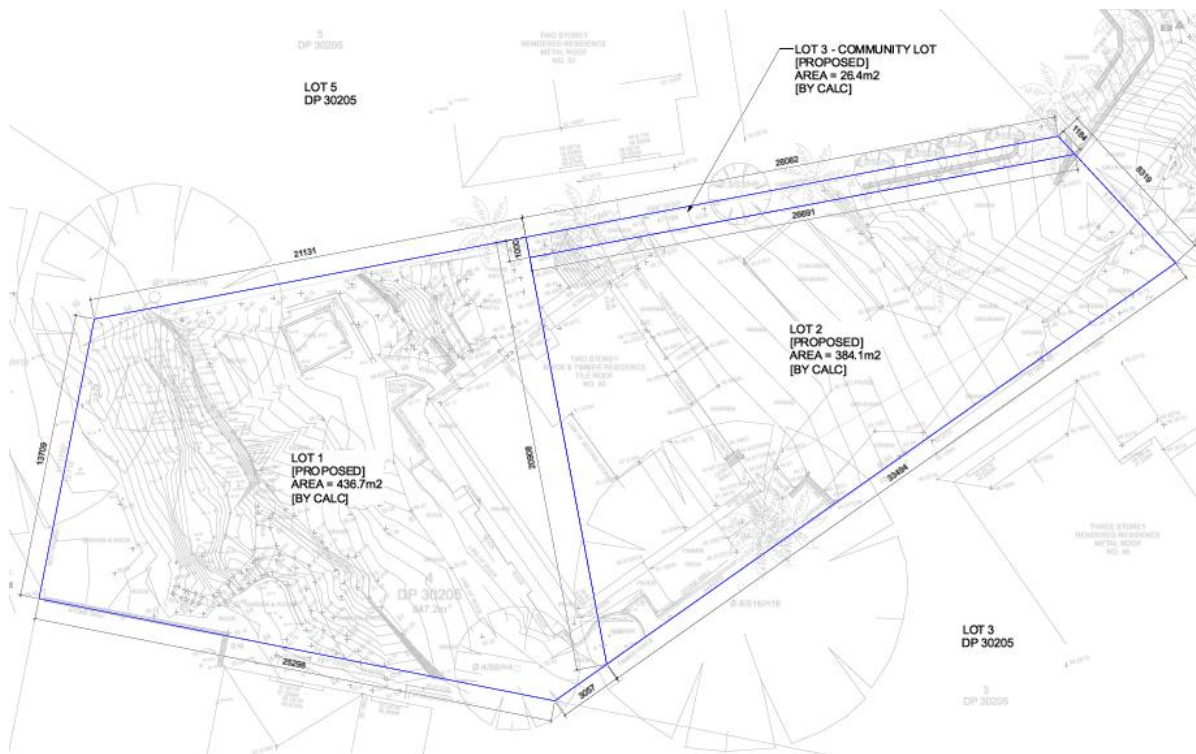


Figure 1 – approved subdivision plan

2 Details of the property

The site is located at 50 Condoover Street, North Balgowlah. The site is legally described as lot 4 in deposited plan 30205. The site has an area of 847m² (survey) and is irregular in shape with access to two streets, Condoover Street to the north east and Kimo Street to the south west.

The site is irregular in shape with frontage to Condoover Street of 8.32m (cul-de-sac and existing vehicle access point), the rear boundary to Kimo Street is 13.715m. The northern side boundary measures 47.195m and the southern side boundary 36.55m and 25.3m.

The topography slopes away from Kimo Street to Condoover Street with a cross fall and level difference of approximately 15.6m between the rear and the front boundaries (approx. RL56 at the Kimo Street frontage down to RL40.4 at the Condoover Street boundary).

The site is located near the cul-de-sac at the northern end of Condoover St where the subdivision pattern is irregular, there are angular boundaries, undulating topography and variable setbacks.

3 Recent planning approval history

Development consent DA2021/1334 approved subdivision of the land on 7 June 2022, of one lot into three lots (1 Community Title Lot) including demolition of existing dwelling house and carport, construction of two driveways with street cross-overs and connections for infrastructure services and ancillary site works. It is noted that:

- Lot 1 has frontage to, and access from, Kimo Street
- Lot 2 has frontage to, and access from, Condoover Street

- The community lot (Lot 3) is approved to accommodate inter-allotment drainage, and if necessary, utility services, from Lot 1 to Condover Street.



Figure 2 – Alignment, orientation and spatial layout of the subject site, adjoining dwellings (courtesy Northern Beaches Council)

4 Proposed Modifications

4.1 Proposed changes to approved consent Conditions in DA2023/0541

Deferred Commencement condition 1(a)

The current condition states:

1. Deferred Commencement

A) Registration of Lots:

The lots approved under Development Consent DA2021/1334 are to be registered with NSW Land Registry Services.

Modify part A) of Condition 1 to be a 'prior to Construction Certificate' condition, as follows:

Registration of Lots

The dwelling house approved by this consent within approved Lot 1 cannot be commenced until the subdivision approved per DA2021/1334 is registered with NSW Land Registry Services. Evidence of registration is to be submitted to Council and the Certifier prior to issue of a Construction Certificate for the approved dwelling house on Lot 1.

The above would retain the purpose of the conditions but remove the timing barriers outlined and mean the following could occur:

- Demolition of the existing dwelling under the subdivision DA
- Preparation of the construction certificate for the dwelling on Lot 2
- Continue with earthworks, the construction of retaining walls [under the dwelling DA], the development within approved Lot 2, and avoid delays.

Deferred Commencement condition 1(b)

The current condition states:

B) Restriction on Use of Land - Building Footprint:

The Restriction on Use of Land and accompanying Section 88B instrument for the subdivision of 50 Conover Street approved under DA2021/1334 burdening Lot 1 are to demonstrate restriction of building on Lot 1 to the area shown on the approved plans under this consent.

Modify part (b) of Condition 1 to be a 'prior to Construction Certificate' condition, as follows:

Restriction on Use of Land - Building Footprint

A Section 88B instrument is to accompany the subdivision of the land approved per DA2021/1334, demonstrating / marking the dwelling house on Lot 1 is compatible with the area shown on the approved plans under this consent. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifier prior to the issue of the Construction Certificate for the approved dwelling house on Lot 1.

Reason: To ensure the building on approved Lot 1 is in accordance with this consent.

The above would have the effect of removing both parts of the deferred commencement condition. The consent would become operational from the date the modification is approved and would be valid for 5 years from that point, removing the nearing time constraint.

The applicant is accepting of adding the following condition, as suggested by Council in recent communications:

Relationship to Other Consents

This consent is to be read in conjunction with Development Consent No. DA2021/1334 dated 7 June 2022.

Reason: To ensure consistency between consents.

Driveways and crossings to each approved lot

Two driveways [and their kerb crossings] to each approved lot are proposed to be deleted from DA2021/1334 and incorporated in DA2023/0541.

Condition 1(a) of DA2021/1334, approved engineering plans, excerpts of the approved driveway layout plan CV-100 are provided in Annexure 1.

Conditions 10 and 14 from DA2021/1334 relate to vehicle crossings and are copied below:

10. Vehicle Crossings

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Subdivision Works Certificate.

Reason: To facilitate suitable vehicular access to private property.

14. Vehicle Crossings

The Applicant is to construct 2 vehicle crossing 3.0 metres wide at both property frontages in accordance with Northern Beaches Council Standard Drawings and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

Proposed new condition 46

The construction of the driveways and kerb crossings for approved Lots 1 and 2 may be undertaken following the registration of the subdivision. However, the approved Lots cannot be sold until all subdivision works including the construction of the driveways are completed.

Reason

The consent currently requires the construction of the driveways with the subdivision works however it is the landowner's intention to undertake the subdivision works and construction of the dwelling house on approved Lot 2 as an initial, 'single' phase of work. Furthermore in relation to approved lot 2 its proposed to construct the dwelling house first and the driveway after.

There is a high likelihood that the driveway will be damaged during the construction of the dwelling house. It is therefore preferred to construct the driveway after the dwelling house is constructed to minimise potential damage, the potential need for reconstruction, and the associated time delays and costs,

The site has two street frontages, one to Condoover Street, providing access to approved Lot 2, and the other from Kimo Street, providing access to approved Lot 1.

The approved subdivision generates the need for short length crossings rather than long driveways connecting to a new battleaxe allotment [often the circumstances with subdivisions within the Warringah R2 zone].

The applicant intends to construct the approved dwelling houses before the construction of the driveways and adjacent street crossings to avoid damage during construction.

If the driveway crossings were constructed first, they would incur damage from various truck movements, truck parking [concrete pumps, deliveries, etc], during the dwelling house construction stages. This would result in increased time, unnecessary and avoidable costs.

It is therefore proposed to delete conditions 10 and 14 from DA2021/1334 and add these conditions to DA2023/0541 via this modification. The following condition is suggested to address this change:

Conditions 10 and 14 in DA2021/1334 are replaced by conditions [to be numbered and named] in this consent meaning that vehicle driveways and vehicle crossings may be constructed following the construction of each dwelling house in accordance with this consent.

Section 4.17 of the Act

The proposed modification of DA2021/1334 [for subdivision] is made pursuant to Section 4.17 of the Act and Section 67 of the Regulation [repeated below] which make provisions for the modification of consents by a subsequent development application.

Section 4.17 of the Act relates to the imposition of conditions. Section 4.17(5) allows for the modification [or surrender] of consents. It states:

4.17 Imposition of conditions

(5) Modification or surrender of consents or existing use rights If a consent authority imposes (as referred to in subsection (1)(b)) a condition requiring the modification or surrender of a consent granted under this Act or a right conferred by Division 4.11, the consent or right may be modified or surrendered subject to and in accordance with the regulations.

Section 67 of the Regulation relates to the 'Modification or surrender of consents or existing use right'. It states [emphasis added]:

- (1) A development consent ~~or existing use right~~ may be modified ~~or surrendered~~ by written notice to the consent authority.
- (2) The notice must contain the following information—
 - (a) the name and address of the person giving the notice,
 - (b) the address and folio identifier of the land to which the consent or right relates,
 - (c) a description of the consent or right to be modified or surrendered,
 - (d) whether the consent or right will be modified, including details of the modification, or surrendered,
 - (e) if the person giving the notice is not the owner of the land—a statement signed by the owner of the land that the owner consents to the modification or surrender of the consent or right.
- (3) The notice takes effect when the consent authority gives written notice to the person giving the notice that the consent authority received the notice.
- (4) The notice operates, according to its terms, to modify ~~or surrender~~ the development consent ~~or existing use right~~ to which it relates.
- (5) The consent of the owner is not required under subsection (2)(e) if the consent of the owner of the land was not required under section 23 to make the application for the development consent.

In response to s67(2) (a) to (e) of the Regulation, this development application provides:

- The name and address of the person giving the notice of the proposed changes [the application form accompanying this DA].
- The address and legal description of the land to which the consent relates [Section 2 of this report].
- A description of the consent that is sought to be modified [Sections 1 and 3 of this report].
- A description of the way it the consent is sought to be modified [Section 4.3 of this report].

In these ways, the development application satisfies Section 4.17 of the Act and Section 67 of the Regulation. The sections below describe the other ways in which the DA seeks to modify DA2022/1431 to facilitate the change of use.

4.2 Physical changes to the approved Lot 2 built form

The physical changes to the approved built form relate to approved Lot 2 fronting Condoover Street and are described by Breakspear Architects in the accompanying submission dated 20 December 2024 and copied below. Comparison images of the approved development and the proposed modifications are also provided in their submission.

4.2.1 Summary of the physical changes to approved Lot 2 dwelling house

The minor changes are summarised as follows:

- The approved building envelope is largely unchanged with no change to gutter levels, wall heights, building footprint or ridge heights.
- 4 minor adjustments have been made to the envelope
 1. Roof ridge has been shifted to be centred on the dwelling, the RL is unchanged.

2. Awning profile slightly adjusted

3. 300mm misalignment in level 1 & 2 north facade adjusted to vertically align with approved level 3 north facade.

4. Level 2 & 3 curved balcony wall edges are made straight and extended to ground level for a simpler / safer structural design than the approved cantilever.

- Various other minor changes as described below.

The proposed modifications necessitate a modification of condition 1 of the development consent to reflect the architectural plans that accompany this application.

ITEM	DESCRIPTION OF PROPOSED MODIFICATIONS
Skylights Reduced	The approved 6.8m ² skylight is proposed to be changed to two smaller skylights. The total area of the skylights is reduced.
Ridge Line shifted (RL unchanged)	The approved ridge line of the roof is proposed to be shifted from off centre to the centre of the building. The approved ridge line RL is unchanged.
Metal Trim Eave	For the purpose of weatherproofing and durability of the cladding / gutter junction, a metal trim eave with a 300mm projection is proposed to the roof perimeter.
Timber Awning (North)	Replace approved cantilevered metal awning with timber awning. The timber awning is made in the same material as the wall cladding and is structurally simpler to construct than the metal awning.
Timber Awning (South)	A new timber awning is proposed on the south facade to provide shelter over the entry door and entry stairs. The awning is made in the same material as the wall cladding.
Timber Awning (West)	Replace approved cantilevered metal awning with timber awning. The timber awning is made in the same material as the wall cladding and is structurally simpler to construct than the metal awning.
Roof Shape (simplification of step in roof)	The approved roof had a 'step' in a small area over the master bedroom (eastern end). The step was problematic for weatherproofing, structural engineering and for achieving compliant room heights. To solve these problems, it is proposed to remove the 'step' in roof by 'Joining-the-dots' from the approved ridge height and approved gutter heights.
NE Curved Wall Straightened	Level 2 & 3 curved balcony wall edges are made straight and extended to ground level for a simpler / safer structural design than the approved cantilever.
SE Curved Wall Straightened	Level 2 & 3 curved balcony wall edges are made straight and extended to ground level for a simpler / safer structural design than the approved cantilever.
Northern Wall Alignment	300mm misalignment in level 1 & 2 north facade adjusted to vertically align with approved level 3 north facade.
Vertical Facade Battens	Grey vertical battens are added to the facade to enhance the buildings expression and rhythm.
Door Location 01	The location of the approved door is proposed to be moved in a minor way.
Window Removed	Window removed from level three
Door & Window Adjustment	A sidelight window has been proposed to the approved door
General Internal Layout Level 01	Internal layouts on level one are proposed to be re-arranged, with staircase / entry reconfigured, and areas assigned to laundry, workshop and storage.
General Internal Layout Level 02	Internal layouts on level two are proposed to be re-arranged with no change to functionality (kitchen, living, dining) other than laundry moved to level 1.
General Internal Layout Level 03	Internal layouts on level three are proposed to be re-arranged with no change to functionality (i.e 3 bedrooms, 2 bathrooms, study, staircase are consistent)
Window Adjustment 01	Window extended slightly further along the facade for improved composition of windows and visibility.
Window Adjustment 02	Slight adjustment to position of approved window at level two, for improved composition of windows and downpipes.
Window Adjustment 03	Slight adjustment to position of approved window at level three, for improved composition of windows and downpipes.

ITEM	DESCRIPTION OF PROPOSED MODIFICATIONS
Window Adjustment 04	Slight adjustment to position of approved window at level three, for improved composition of windows and downpipes, as well as better ventilation to bed rooms.
Window Adjustment 05	Slight adjustment to position of approved window at level three, for improved composition of windows and downpipes, as well as better ventilation to bed rooms.
Window Adjustment 06	Slight adjustment to position of approved window at level three, for improved composition of windows and downpipes.
Window Adjustment 07	Slight adjustment to position of approved window at level three, for improved composition of windows and downpipes.
Window Adjustment 08	Small new window proposed at level three, for improved composition of windows and downpipes. As well as allowing proper daylight to internal spaces.
Window Adjustment 09	Slight adjustment to position of approved window at level three, for improved composition of windows and downpipes, as well as better ventilation to bed rooms.
Window Adjustment 10	Slight reduction in size of approved window at level two, for improved composition of windows and downpipes.
Window Adjustment 11	Slight reduction in size of approved window at level two, for improved composition of windows and downpipes.
Window Adjustment 12	Slight increase in size of approved sliding door / window at level two, for improved composition of windows and access.
Window Adjustment 13	Slight adjustment to position of approved window at level three, for improved composition of windows and downpipes.
FFL height changed to 46.790	FFL level changed to 46.790 from 46.590 for better balance of ceiling heights between living and bedroom levels.
Landscape Adjustment 01 (Stairs to Drive)	Stair relocated to eastern side of driveway to suit new house entrance - Anti-slip stone driveway surface. A proposed mailbox location has also been added.
Landscape Adjustment 02 (Stairs to House)	Access stair location amended to suit new house entrance location and entry structure added with security gate.
Landscape Adjustment 03 (Back Yard Arrangements)	The rear yard is proposed to be re arranged and to include an outdoor cooking area.
Landscape Adjustment 04 (Storage + Pond)	Entrance path revised to suit new entrance door and water pond / garden storage enclosure added.

STATEMENT OF ENVIRONMENTAL EFFECTS

4.3 Section 4.55(2) and environmental assessment considerations

The following is a Statement of Environmental Effects made under the provisions of Section 4.55(2) being modifications involving substantially the same development and having minor environmental impact. Having regard to Section 4.55(2) a consent authority may, modify the consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)

In this regard, it is noted that:

- The nature of the proposed modifications are modest and within the scope of Section 4.55 (2) being modifications involving substantially the same development for which consent was originally approved on the land.
- The application has taken into consideration such of the matters referred to in section 4.15 (2) as are of relevance to the development the subject of the application.
- The following Statement of Environmental Effects considers the nature of the proposed modifications and the potential impact of the changes on environmental planning grounds.

ENVIRONMENTAL ASSESSMENT

5 Warringah LEP

Planning considerations from the Warringah LEP 2011 that are relevant to the proposed modifications are noted and addressed as follows.

5.1 Zone

The proposal constitutes modifications to the approved dwelling house on the land that is zoned R2 Low Density Residential. The proposal is permitted with Development Consent. Clause 2.3(2) of the LEP requires the consent authority to 'have regard to the objectives for development in a zone'. The proposed modifications represent modest changes to the approved development and are assessed as being consistent with the approved development and the zone objectives.

5.2 LEP Clause 4.3 Height of buildings

Clause 4.3 of the LEP 'Height of buildings' is applicable to the assessment of the proposal. It establishes an 8.5m height limit applicable to the site. The proposed modifications maintain compliance with this development standard.

5.3 Other relevant provisions of the LEP

5.3.1 LEP Clause 6.2 – Earthworks

The proposed modifications involve minor changes to the dwelling and landscape of approved lot 2 with no change to the area, or level of the approved building footprint

The proposed modifications do not involve any change to the configuration or the extent of earthworks on the site. The proposed modifications therefore did not trigger the need for further assessment under clause 6.2 of the LEP.

5.3.2 LEP Clause 6.4 Development on sloping land

The property is within Area B on the LEP maps.

The proposed modifications involve minor changes to the dwelling and landscape of approved lot 2 with no change to the area, or level of the approved building footprint

The proposed modifications do not involve any change to the configuration or the extent of earthworks on the site. The proposed modifications therefore did not trigger the need for further assessment under clause 6.4 of the LEP.

State Environmental Planning Policies

5.4 State Environmental Planning Policy - BASIX

The proposed modifications trigger the need for an updated BASIX certificate which accompanies the application.

5.5 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 - Vegetation in Non-Rural Areas of State Environmental Planning Policy (Biodiversity and Conservation) 2021 is applicable to the land and the proposed development:

The proposed modifications involve minor changes to the dwelling and landscape of approved lot 2 with no change to the area, or level of the approved building footprint

The proposed modifications do not involve any change to the configuration of the approved dwelling house footprint or the extent of earthworks on the site. The proposed modifications therefore did not trigger the need for further assessment of vegetation impacts under SEPP.

6 Warringah DCP

6.1 DCP Principal Built Form Controls

Principal built form controls from the Warringah DCP relevant to the proposed modifications are noted and addressed as follows:

- Wall height - compliance maintained.
- Side boundary envelope – compliance maintained.
- Side Setbacks – no change.
- Rear setback - no change.
- Landscaped area – no change. Compliance maintained.
- There are no inappropriate adverse privacy, shading, or view impacts arising from the proposed modifications. The proposed structure is single storey lightweight and open. It is significantly set back from adjacent residential dwellings and areas of private open space. Outdoor spaces are appropriately located and treated to maintain adequate privacy.
- Front building setback – no change. Compliance maintained.

In terms of the potential impacts of the proposed changes:

- The modifications make no change to the extent of overshadowing.
- The modifications make no change to neighbouring privacy or amenity.
- The modifications make no change to neighbouring sight-lines or view-sharing.

7 Section 4.15 Matters for Consideration and 4.55(2) Modifications

The proposal has been assessed having regard to the matters for consideration pursuant to Section 4.15(1) and 4.55(2) of the Act, and to that extent, Council can be satisfied that:

- The nature and extent of the proposed modifications are modest and within the scope of Section 4.55(2), being modifications involving substantially the same development for which consent was originally approved on the land.
- The proposed changes provide an improved residential amenity for the future dwelling house and a more orderly an economic development of the land.
- The site is suitable and can accommodate the proposed modifications whilst satisfying the relevant assessment considerations.
- The proposed modifications provide an appropriate development outcome for the landowners without any unacceptable adverse impacts on the streetscape or the amenity of neighbouring properties.
- The likely impacts of the proposed modifications have been appropriately identified and considered. The public interest will be served by the approval of the application.

8 Conclusion

The proposed modifications to Development Consent DA2023/0541 for changes to the approved dwelling house, represent appropriate modifications.

The proposed development as modified is substantially the same development for which consent was originally granted. The proposed modifications are appropriate when considering the matters relevant to the property pursuant to Section 4.55(2).

It is assessed that the proposed development, as modified, is satisfactory and worthy of being approved by Council.

Yours sincerely,



Michael Haynes
Director - BBF Town Planners

Annexure 1 - excerpts of the approved driveway layout plan in DA2021/1334

Condition 1(a) of DA2021/1334, approved engineering plans, excerpts of the approved driveway layout plan CV-100 are provided below.

Engineering Plans		
Drawing No.	Dated	Prepared By
CV-100 Layout Plan Revision 1	23 July 2021	Stellen
CV-102 Driveway Centreline Long Sections and Kerb Detail Revision 1	23 July 2021	Stellen
DR-100 Pipe Layout for the Subdivision Plan Revision 2	23 July 2021	Stellen
DR-110 Easement Section View Revision 0	22 July 2021	Stellen
SD-100 Sediment and Erosion Control Plan Revision 1	23 July 2021	Stellen

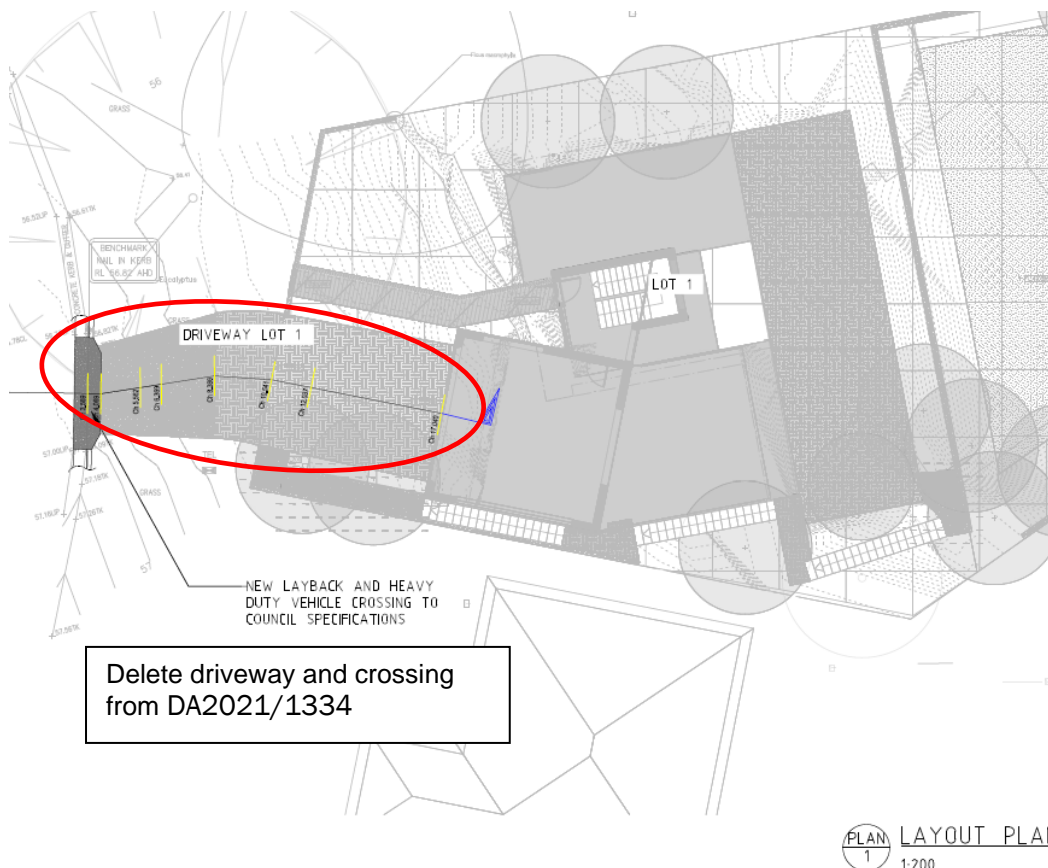


Figure 1 – excerpt of the approved driveway layout plan CV-100 showing approved Lot 1

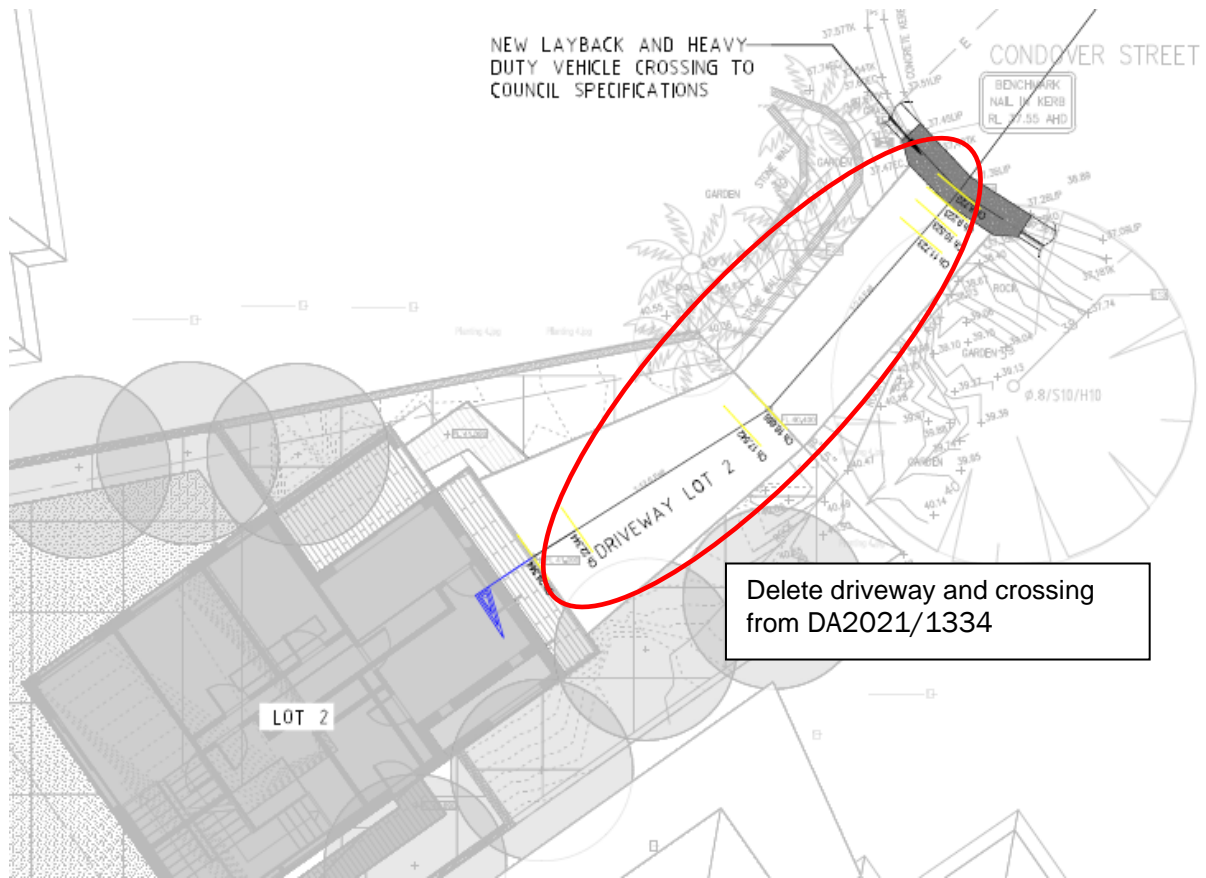


Figure 1 – excerpt of the approved driveway layout plan CV-100 showing approved Lot 2