

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

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| Application Number: | Mod2016/0323 |
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| | |
|---|---|
| Responsible Officer: | Adam Mitchell |
| Land to be developed (Address): | Lot 19 DP 8139, 172 Headland Road NORTH CURL CURL NSW 2099 |
| Proposed Development: | Modification of consent DA2013/1532 granted for demolition works and construction of a dwelling house |
| Zoning: | LEP - Land zoned R2 Low Density Residential |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Land and Environment Court Action: | No |
| Owner: | Matthew Stephen Rice Louise Rice Stephen Heinz Mallinger |
| Applicant: | Stephen Heinz Mallinger |

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| Application lodged: | 09/12/2016 |
| Application Type: | Local |
| State Reporting Category: | Residential - Single new detached dwelling |
| Notified: | 13/12/2016 to 17/01/2017 |
| Advertised: | Not Advertised, in accordance with A.7 of WDCP |
| Submissions: | 0 |
| Recommendation: | Approval |

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

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SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

Warringah Development Control Plan - D7 Views

Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| Property Description: | Lot 19 DP 8139 , 172 Headland Road NORTH CURL CURL NSW 2099 |
| Detailed Site Description: | <p>The subject site is located on the northern side of Headland Road and is on land zoned for R2 Low Density Residential development.</p> <p>The allotment is regular in shape with a surveyed area of 657.6m² consisting of a frontage to Headland Road of 12.39m and a depth between 53.135m to 54.845m.</p> <p>Presently the site accommodates a large multi-storey dwelling that is under construction. This development is as per the approved plans of DA2013/1532.</p> <p>Given the current state of construction, there is little significant vegetation on the site. Significant rock outcrops have been preserved during construction and have been utilised as a design feature throughout the dwelling.</p> <p>Topographically the site inclines from front to rear (north to south) by approximately 16.75m.</p> |

Map:



SITE HISTORY

Development Application No. 2013/1532

Application for the demolition of the existing dwelling and for the construction of a new dwelling house.

The development application was approved on 16 April 2014.

Council inspected the subject site on 17 January 2017 and notes that the construction of the approved development has progressed substantially.

PROPOSED DEVELOPMENT IN DETAIL

This Section 96 application seeks to amend the approved design by the following:

- Internal alteration and addition including the reconfiguration of the approved floor plan;
- Amendment to the approved window schedule by virtue of scale and quantum;
- Conversion of approved dumbwaiter to a lift;
- Minor extension to the length of the approved swimming pool;
- 1.2m extension to the rear deck located off of the family room and outdoor living space; and
- Changes to the schedule of finishes.

The development as proposed results in negligible change to the exterior view of the dwelling, and it is considered that the new schedule of finishes will allow for a more architecturally interesting development.

Internal amendment to the proposal will be significantly improved subject to the changes of this application.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2013/1532, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(2) of the Environmental Planning and Assessment Act, 1979, are:

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| Section 96(2) - Other Modifications | Comments |
|---|---|
| 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 as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and | The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2016/1532. |
| (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 | Development Application DA2016/1532 did not require concurrence from the relevant Minister, public authority or approval body. |
| (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 | The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan. |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. | See discussion on "Public Exhibition" in this report. |

Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 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.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

| Section 79C 'Matters for Consideration' | Comments |
|---|--|
| Section 79C (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on "Environmental Planning Instruments" in this report. |
| Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument | None applicable. |
| Section 79C (1) (a)(iii) – Provisions | Warringah Development Control Plan applies to this proposal. |

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| Section 79C 'Matters for Consideration' | Comments |
|---|--|
| of any development control plan | |
| Section 79C (1) (a)(iia) – Provisions of any planning agreement | None applicable. |
| Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> |
| Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | (i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) The proposed development will / will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will / will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use. |
| Section 79C (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Public Exhibition” in this report. |
| Section 79C (1) (e) – the public interest | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

| Internal Referral Body | Comments |
|------------------------|---|
| Development Engineers | <p>No significant modifications are required to the stormwater drainage proposal to accommodate the proposed modification.</p> <p>In this regard Development Engineers have reviewed the proposed modification and raise no objections to the proposal.</p> |

| External Referral Body | Comments |
|------------------------|---|
| Ausgrid: (SEPP Infra.) | <p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p> |

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 527394S_02 dated 2 December 2016).

The BASIX Certificate indicates that the development will achieve the following:

| Commitment | Required Target | Proposed |
|-----------------|-----------------|----------|
| Water | 40 | 40 |
| Thermal Comfort | Pass | Pass |
| Energy | 40 | 41 |

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Warringah Local Environment Plan 2011

| | |
|--|-----|
| Is the development permissible? | Yes |
| After consideration of the merits of the proposal, is the development consistent with: | |
| aims of the LEP? | Yes |
| zone objectives of the LEP? | Yes |

Principal Development Standards

| Development Standard | Requirement | Approved | Proposed | Complies |
|----------------------|-------------|----------|--------------------------------|----------|
| Height of Buildings: | 8.5m | 8.49m | No increase to building height | Yes |

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Compliance Assessment

| Clause | Compliance with Requirements |
|--|------------------------------|
| 2.7 Demolition requires consent | Yes |
| 4.3 Height of buildings | Yes |
| 5.3 Development near zone boundaries | Yes |
| 5.9AA Trees or vegetation not prescribed by development control plan | Yes |
| 6.2 Earthworks | Yes |
| 6.4 Development on sloping land | Yes |

Warringah Development Control Plan

Built Form Controls

| Standard | Requirement | Approved | Proposed | Complies |
|---|-------------|--|--|---------------------|
| B1 Wall height | 7.2m | 4.1m | 6.8m | Yes |
| B3 Side Boundary Envelope | East - 5.0m | Encroachment at a height of 3.1m for a length of 4.68m | No change | Yes |
| | West - 5.0m | Encroachment at a height of 2.3m for a length of 6.2m | No change | Yes |
| B5 Side Boundary Setbacks | East - 0.9m | GF - 0.9m FF - 0.9m SF - 0.9m - 5.44m TF - 0.9m - 2.5m | GF - No change FF - No change SF - No change TF - No change | Yes |
| | West - 0.9m | GF - 4.6m FF - 0.9m SF - 0.9m - 5.12m TF - 0.9m - 5.13m | GF - No change FF - No change SF - No change TF - No change | Yes |
| B7 Front Boundary Setbacks | 6.5m | 11.7m | No change | Yes |
| B9 Rear Boundary Setbacks | 6.0m | 9.945m | 8.75m | Yes |
| D1 Landscaped Open Space and Bushland Setting | 40% | 41.15% (270.89m ²) | Less 12m ² (258.89m ²) | No - 1.7% variation |

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--------------------------------|------------------------------|-----------------------------|
| A.5 Objectives | Yes | Yes |
| B1 Wall Heights | Yes | Yes |
| B3 Side Boundary Envelope | Yes | Yes |
| B5 Side Boundary Setbacks | Yes | Yes |
| Side Setbacks - R2 | Yes | Yes |
| B7 Front Boundary Setbacks | Yes | Yes |
| R2 - All other land in R2 Zone | Yes | Yes |

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| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| B9 Rear Boundary Setbacks | Yes | Yes |
| All other land under R2 | Yes | Yes |
| C2 Traffic, Access and Safety | Yes | Yes |
| C3 Parking Facilities | Yes | Yes |
| C4 Stormwater | Yes | Yes |
| C5 Erosion and Sedimentation | Yes | Yes |
| C6 Building over or adjacent to Constructed Council Drainage Easements | Yes | Yes |
| C7 Excavation and Landfill | Yes | Yes |
| C8 Demolition and Construction | Yes | Yes |
| C9 Waste Management | Yes | Yes |
| D1 Landscaped Open Space and Bushland Setting | No | Yes |
| D2 Private Open Space | Yes | Yes |
| D3 Noise | Yes | Yes |
| D6 Access to Sunlight | Yes | Yes |
| D7 Views | Yes | Yes |
| D8 Privacy | Yes | Yes |
| D9 Building Bulk | Yes | Yes |
| D10 Building Colours and Materials | Yes | Yes |
| D11 Roofs | Yes | Yes |
| D12 Glare and Reflection | Yes | Yes |
| D14 Site Facilities | Yes | Yes |
| D16 Swimming Pools and Spa Pools | Yes | Yes |
| D20 Safety and Security | Yes | Yes |
| D21 Provision and Location of Utility Services | Yes | Yes |
| D22 Conservation of Energy and Water | Yes | Yes |
| E1 Private Property Tree Management | Yes | Yes |
| E2 Prescribed Vegetation | Yes | Yes |
| E6 Retaining unique environmental features | Yes | Yes |
| E10 Landslip Risk | Yes | Yes |

Detailed Assessment

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposed extension of the rear deck results in a 12m² reduction to the approved provision of landscaped open space, and the quantum proposed presents a 1.7% variation to the requirements of this control.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To enable planting to maintain and enhance the streetscape.*

Comment:

No changes are proposed under this application to the existing front yard.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

This application does not result in the removal of any vegetation.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

The site retains sufficient landscaped open spaces throughout to allow for the growth and establishment of vegetation that will contribute to mitigating the height, bulk and scale of the development.

- *To enhance privacy between buildings.*

Comment:

The extension to the rear covered balcony results in the non-compliance with this control. Given that the balcony has walls on either side, this development enhances the existing privacy enjoyed by surrounding sites.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

This site has adequate space to accommodate for outdoor recreational opportunities.

- *To provide space for service functions, including clothes drying.*

Comment:

The site has adequate space to accommodate for service functions.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

The site has adequate green space and stormwater facilities to allow for the natural infiltration and dispersion of stormwater.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D7 Views

This proposal does not alter the existing and approved building height and as such, will not have any further impact on view loss from adjoining properties.

D8 Privacy

Upon Council's inspection of the site on 17 January 2017 it was found that construction of the enclosed rear balcony extension had commenced.

Given that the structure was already framed, it is evident that the proposed development will enhance the existing provision of privacy enjoyed by surrounding properties.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

Section 94 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP

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- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval Modification Application No. Mod2016/0323 for Modification of consent DA2013/1532 granted for demolition works and construction of a dwelling house on land at Lot 19 DP 8139,172 Headland Road, NORTH CURL CURL, subject to the conditions printed below:

Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|--|------------------|--------------------|
| Drawing No. | Dated | Prepared By |
| 03 Rev. F | 28 November 2016 | Andrew Donaldson |
| 04 Rev. F | 28 November 2016 | Andrew Donaldson |
| 05 Rev. F | 28 November 2016 | Andrew Donaldson |
| 06 Rev. F | 28 November 2016 | Andrew Donaldson |
| 07 Rev. F | 28 November 2016 | Andrew Donaldson |
| 08 Rev. F | 28 November 2016 | Andrew Donaldson |
| 09 Rev. F | 28 November 2016 | Andrew Donaldson |

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

I am aware of Warringah's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest.

Signed

NORTHERN BEACHES COUNCIL


Adam Mitchell, Planner

The application is determined under the delegated authority of:

Anna Williams, Development Assessment Manager

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ATTACHMENT A






















| Notification Plan | Title | Date |
|---|---------------------|------------|
|  2016/404421 | Plan - Notification | 02/12/2016 |

ATTACHMENT B

| Notification Document | Title | Date |
|---|------------------|------------|
|  2016/405217 | Notification Map | 13/12/2016 |

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ATTACHMENT C

| Reference Number | Document | Date |
|---|---|------------|
|  2016/404429 | Report - Geotechnical | 06/09/2016 |
|  2016/404419 | Plans - Survey | 02/12/2016 |
|  2016/404435 | Plans - Waste Management | 02/12/2016 |
|  2016/404421 | Plan - Notification | 02/12/2016 |
|  2016/404426 | Report - BASIX Certificate | 07/12/2016 |
|  2016/404427 | Report - Assessor Certificate | 07/12/2016 |
|  2016/404428 | Letter - Geotechnical | 07/12/2016 |
|  2016/404423 | Report - Statement of Environmental Effects | 07/12/2016 |
|  2016/404425 | Letter - Cover | 07/12/2016 |
|  MOD2016/0323 | 172 Headland Road NORTH CURL CURL NSW 2099 - Section 96 Modifications - Section 96 (2) Environmental Impact | 09/12/2016 |
|  2016/402074 | DA Acknowledgement Letter - Stephen Heinz Mallinger | 09/12/2016 |
|  2016/404437 | Certification of Shadow Diagrams with Plans | 12/12/2016 |
|  2016/404432 | Plans - Stormwater with Report | 12/12/2016 |
|  2016/404311 | Modification Application Form | 12/12/2016 |
|  2016/404313 | Applicant Details | 12/12/2016 |
|  2016/404444 | Plans - Master Set | 12/12/2016 |
|  2016/404443 | Plans - Internal | 12/12/2016 |
|  2016/404439 | Plans - External | 12/12/2016 |
|  2016/405217 | Notification Map | 13/12/2016 |
|  2016/405222 | Notification Letter - 10 | 13/12/2016 |
|  2017/001142 | Development Engineering Referral Response | 23/12/2016 |