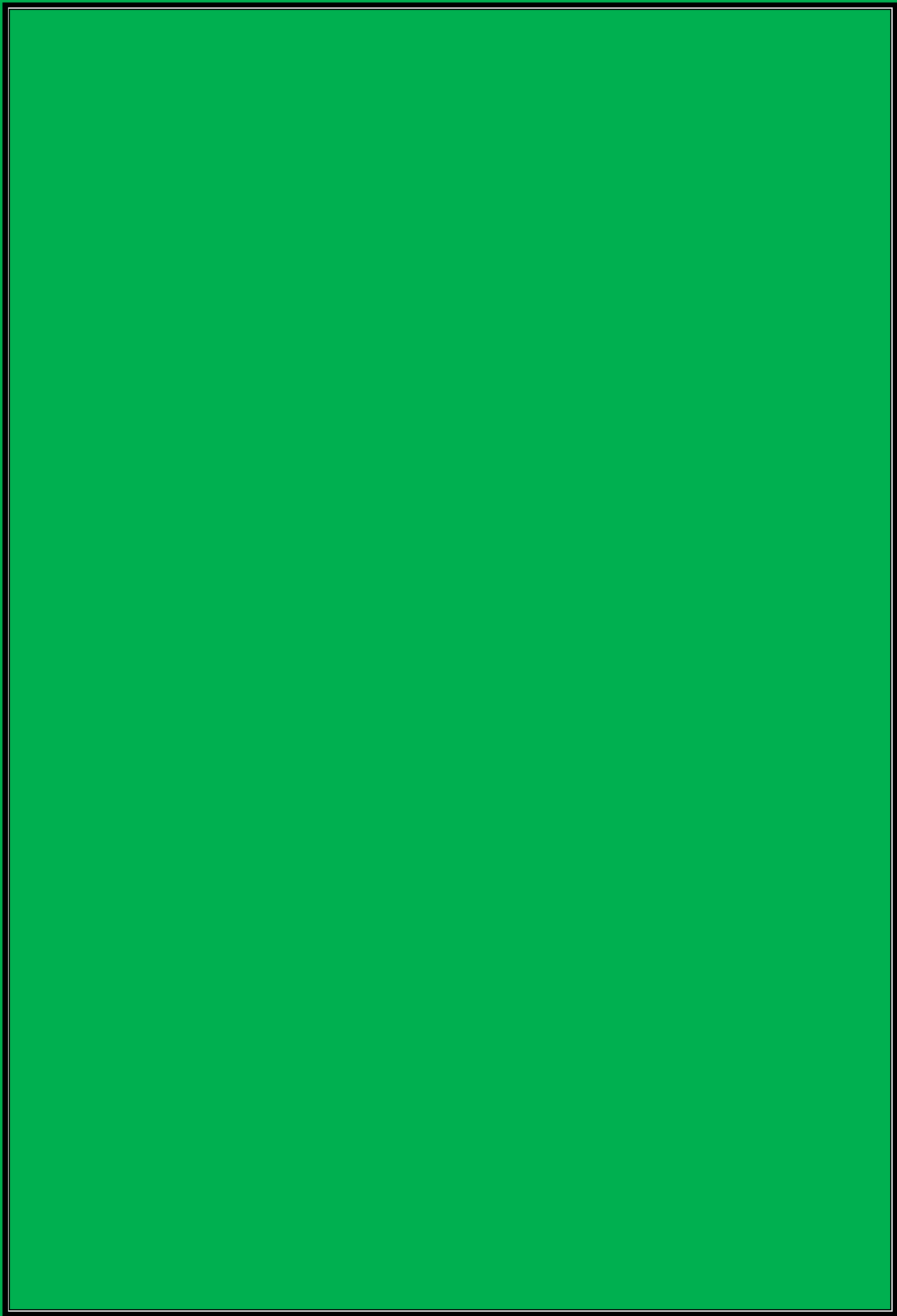


Council Assessment Report

2015SYW164 (MOD0064/15)

Residential Flat Development

S96(2) Modification



JOINT REGIONAL PLANNING PANEL Sydney West

JRPP No	2015SYW164
DA Number	MOD0064/15
Local Government Area	Ku-ring-gai
Proposed Development	S96(2) modification to consent DA0501/12, seeking to delete the deferred commencement component of the consent, delete Condition 19 and amend unit layouts
Street Address	28 – 30 Dumaresq Street, Gordon
Applicant/Owner	Gelder Architects Pty Limited
Number of Submissions	Nil
Regional Development Criteria (Schedule 4A of the Act)	S96(2) application to a JRPP approved DA – Clause 21 SEPP (State & Regional Development) 2011
List of All Relevant s79C(1)(a) Matters	• Local Centres Local Environmental Plan 2012; SEPP (BASIX) 2005 • Local Centres Development Control Plan 2013 • Voluntary planning agreement between Ku-ring-gal Council and Wenzou Australia Group.
List all documents submitted with this report for the panel's consideration	- Zoning extract map - Objectors map - Development consent issued for DA0501/12 - Applicant's legal advice - Modification plans
Recommendation	Refusal
Report by	Adam Richardson

SECTION 96 APPLICATION

EXECUTIVE SUMMARY

Primary Property	28 -30 Dumaresq Street, Gordon
Lot & DP	Lot 1 DP 961448
Additional Property(/ies)	32 Dumaresq Street, Gordon
Lot(s) & DP (s)	No related Land
Proposal	Modification of consent (DA0501/12) proposing to delete deferred commencement condition, delete Condition 19 and internal reconfiguration of a number of apartments
Development application no.	MOD0064/15
Ward	GORDON
Applicant	Gelder Architects
Owner	Qun Lun Developments Pty Ltd
Date lodged	19/05/2015
Issues	Consent to be modified has lapsed
Submissions	No
Land & Environment Court	N/A
Recommendation	Refusal
Assessment Officer	Adam Richardson

LEGISLATIVE REQUIREMENTS:

Zoning	Residential R4
Permissible under	KLCLEP 2013
Relevant legislation	SEPP 55 SEPP BASIX 2004

	SREP (Sydney Harbour Catchment) 2005
	KLCLEP 2012
	KLCDCP 2013
Integrated development	NO

PURPOSE OF REPORT:

The purpose of this report is to determine MOD0064/15 being a Section 96(2) modification application that proposes design amendments to the scheme approved under DA0501/12 as well as changes to the structure of the consent and content of its conditions. This application is reported to the Sydney West Joint Regional Planning Panel as required by Clause 21 of SEPP (State and Regional Development) 2011.

HISTORY:

On 23 May 2014, the Sydney West Joint Regional Planning Panel granted consent to DA0501/12 at 28-32 Dumaresq Street, Gordon for a residential flat development of 34 units, basement car park and associated landscaping. The proposal also included a Voluntary Planning Agreement which facilitated the construction of a new public road and subdivision of surplus Council land that was to be incorporated into the development site.

The deferred commencement consent required that two items be addressed and satisfied within 12 months of the date of the consent.

A. Subdivision of 32 Dumaresq Street

The applicant shall submit documentary evidence that the subdivision of Lot 1 DP949218 (No. 32 Dumaresq Street) to excise the future public road has been registered. This consent will not operate until the documentary evidence, in the form of a plan registered at the Department of Lands, has been submitted to and approved by Council.

Reason: *To ensure that the development site exists separate to the future road prior to the development occurring.*

B. Approval of road design

The applicant shall submit documentary evidence that the design of the new road along the western frontage of the site has been approved by Council's Director Operations. This consent will not operate until the documentary evidence, in the form of stamped endorsed plans, has been submitted to and approved by Council.

Reason: *To ensure that the works along the site boundary both within and external to the site will be consistent in relation to levels, dimensions and materials.*

On 19 May 2015, MOD0064/15 was lodged with Council seeking to amend the consent by extinguishing the deferred commencement components of the consent and incorporate those matters into the body of the consent as general conditions. The modification application also seeks to delete Condition 19 of the consent allowing for the retention of Unit 3 and a re-configuration of the majority of unit layouts which better utilises the residential floor space.

However, on 30 May 2015 the development consent associated with DA0501/12 lapsed. This occurred as not all the deferred commencement items (A and B above) were satisfied within the prescribed time frame of 12 months, stated within the consent.

It is noted that the modification application was lodged with Council prior to the lapsing date of the consent, however insufficient time was available for the modification application to be assessed and determined prior to the lapsing date (30 May 2015).

This was conveyed to the applicant on 6 July 2015 and it was suggested that the application be withdrawn as no valid consent exists. Council sought legal advice which confirmed that it has no authority to deal with a lapsed consent. The applicant provided contrary legal advice, dated 5 August 2015 and 1 September

2015 (**Annexure D**) with justification as to why the consent can be modified and why the consent has not lapsed. Council considered these positions but maintains the view that the consent has lapsed and no authority exists to modify the consent as proposed.

ASSESSMENT:

The modification application seeks the following amendments to DA0501/12:

- (i) Deletion of the deferred commencement requirements specified in Schedule A of the consent and incorporation into the general conditions of consent that would be satisfied prior to the issue of a Construction Certificate (Schedule B).
- (ii) Deletion of Condition 19 of the consent that requires design changes to the architectural plans. The deletion of this condition would facilitate retention of Unit 3.
- (iii) Internal changes to a number of units, including additional storage areas and studies.

The deferred commencement consent required two items to be satisfied prior to the consent becoming operational. The items listed as A & B in the consent (cited earlier in the report) relates to a subdivision and a road design which the development depends upon to be completed. The latter also was to be approved by Council. The consent required that these two items be finalised within 12 months of the date of the consent being 30 May 2015.

To date, only the subdivision item (Item A) of the deferred commencement consent has been satisfied. The road design has not been finalised or approved by Council.

It is Council's position that the terms of the deferred commencement consent have not been satisfied within the prescribed time frame and that the consent has lapsed. Accordingly, no power or authority exists upon which to modify the consent.

Council obtained privileged legal advice regarding the matter on two occasions which confirms that the consent has lapsed. The modification application left insufficient time in which to undertake an assessment. By failing to amend or satisfy the deferred commencement conditions within the prescribed time period, the consent lapsed on 30 May 2015.

Section 95A of the EP&A Act 1979 enables the extension of the lapsing period of a consent by 1 year, with justification why the extension is necessary. No Section 95A application was lodged as the modification application never attempted to extend the time period in which to satisfy the deferred commencement terms, it cannot be considered to be an attempt pursuant of Section 95A to extend the time period available.

The applicant's legal opinion contends that, as the objective of the modification application was in part to dispense with the deferred commencement component of the consent, it is, *best characterised it as both an application pursuant to s95A and s96(2) of the Act*. Therefore, it is argued, the consent is valid and can be modified as such.

Council's legal advice does not support this argument and is of the view that despite the representations made, the Section 96 application under consideration cannot be taken to be a Section 95A application by virtue of the outcome of *Kinder Investment Pty Ltd v Sydney City Council [2005] NSWLEC*.

On this basis, the consent has lapsed and no power exists upon which to modify or act upon it. A merit assessment of the modification application was not undertaken as the merits of the changes to be made are irrelevant considerations when the consent has lapsed.

CONCLUSION:

Despite the representations made, the consent to which the modification relates has lapsed and is taken not to exist. Therefore, for the reasons discussed in the body of this report, it is recommended that the application be refused.

RECOMMENDATION:

THAT the Sydney West Joint Regional Planning Panel, refuse MOD0064/14, seeking to modify DA0501/12 at 28-32 Dumaresq Street, Gordon for the following reason:

DA0501/12 has lapsed and there is no lawful consent that can be modified.

Particulars:

DA0501/12 lapsed on 30 May 2015 as Item B specified in Schedule A of the deferred commencement consent had not been satisfied within the specified 12 months time frame, which commenced on the date of the consent 30 May 2014.

Adam Richardson
Executive Assessment Officer
Assessment

Selwyn Segall
Team Leader Development

Corrie Swanepoel
Manager Development Assessment
Regulation

Michael Miocic
Director Development &

Attachments

A – Zoning extract

B – Objectors map

C – Development consent issued for DA0501/15

D – Applicant's legal advice

E – Modification plans

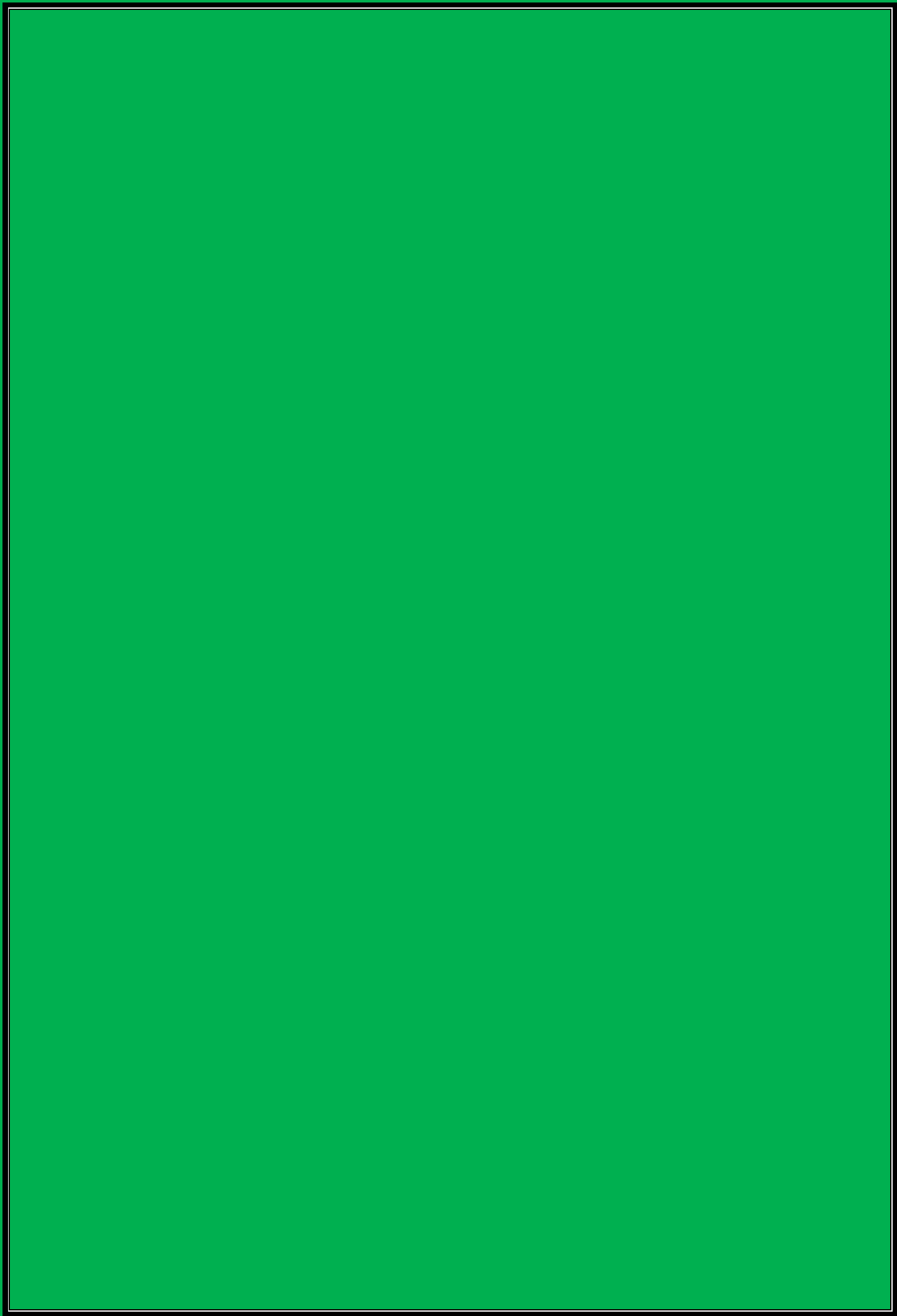
Attachment A

Zoning Extract

2015SYW164 (MOD0064/15)

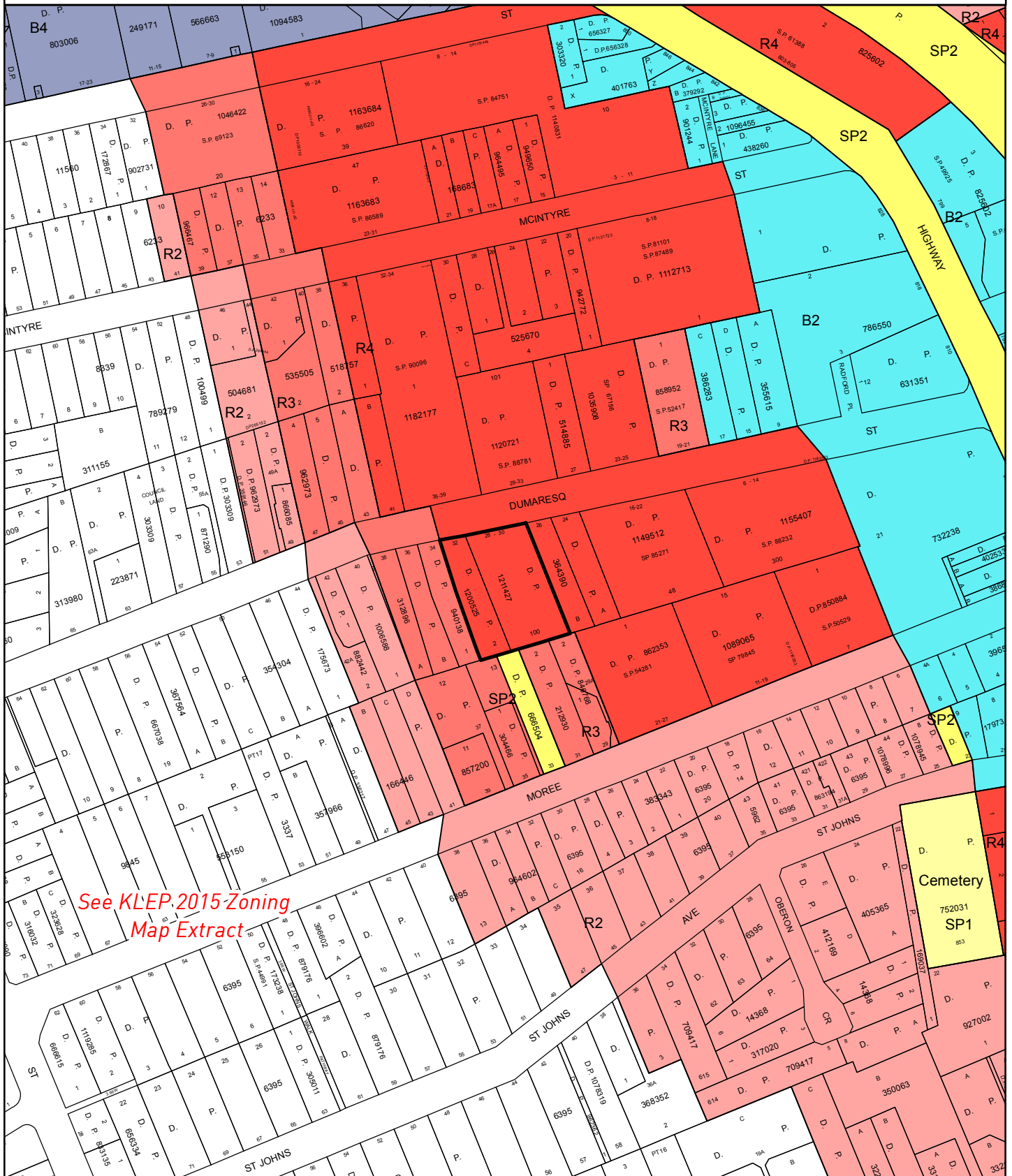
Residential Flat Development

S96(2) Modification



Ku-ring-gai LEP 2012 Local Centres Zoning Extract

28-32 Dumaresq Street, Gordon (MOD0064/15)



See KLEP.2015 Zoning
Map Extract

ZONES

B2 LOCAL CENTRE	R2 LOW DENSITY RESIDENTIAL	RE1 PUBLIC RECREATION
B4 MIXED USE	R3 MEDIUM DENSITY RESIDENTIAL	SP1 SPECIAL ACTIVITIES
B5 BUSINESS DEVELOPMENT	R4 HIGH DENSITY RESIDENTIAL	SP2 INFRASTRUCTURE
E2 ENVIRONMENTAL CONSERVATION		
E4 ENVIRONMENTAL LIVING		

NORTH

Scale :
1:3000

Date :
30/09/2015



Ku-ring-gai
Council

SERVING OUR COMMUNITY

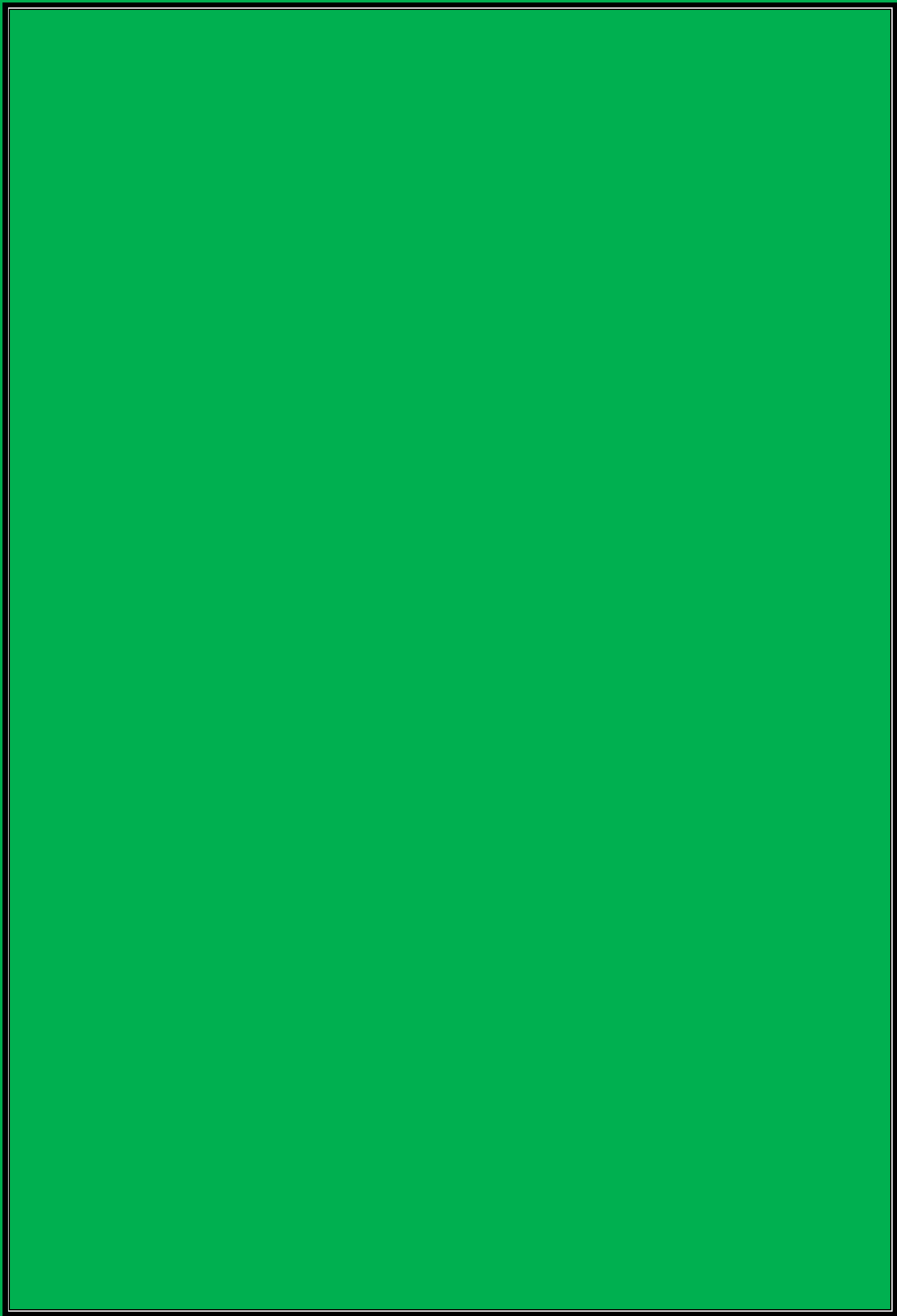
Attachment B

Location Sketch

2015SYW164 (MOD0064/15)

Residential Flat Development

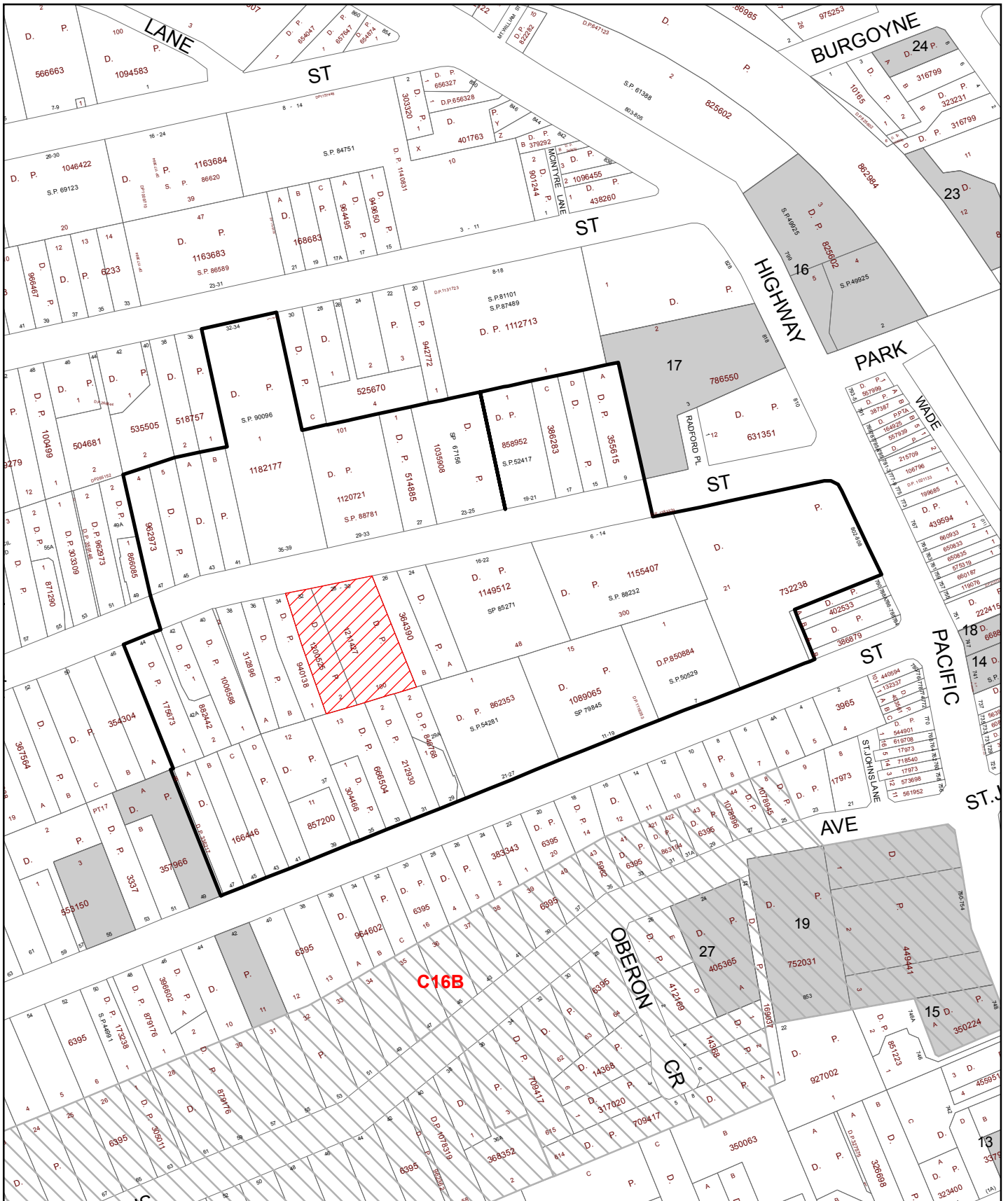
S96(2) Modification



LOCATION SKETCH

28-32 Dumaresq, Gordon

DEVELOPMENT APPLICATION No. MOD0064/15



NORTH

DATE: 30 Sep 2015

0 15 30 60
Metres

No submissions were recieved for this development application

▲ AGREEMENT

● OBJECTION

▣ PETITION

■ SUBMISSION

▨ SUBJECT LAND

■ HERITAGE ITEM

▨ CONSERVATION AREA

▨ CIRCULATED AREA

Ku-ring-gai
Council

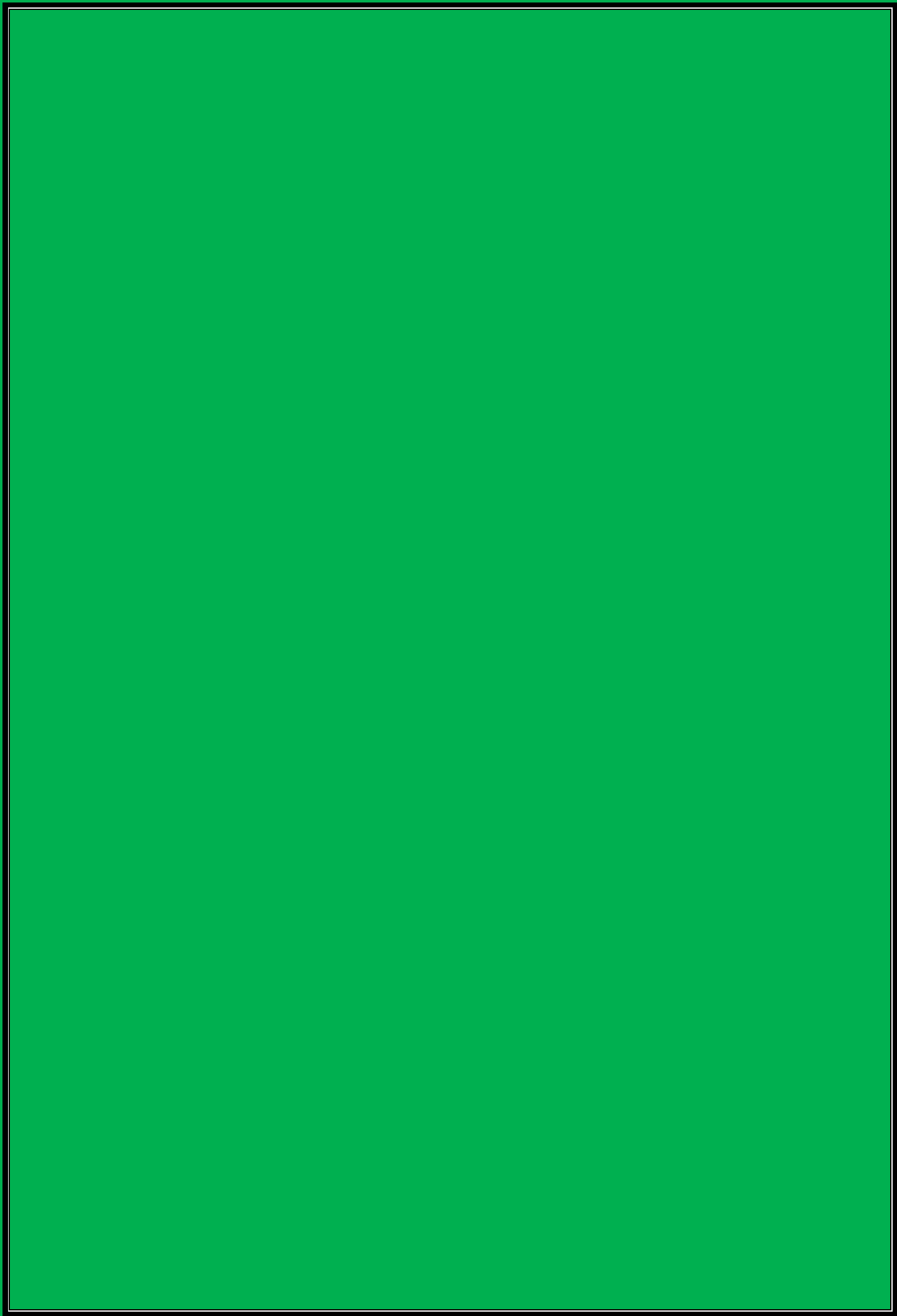


Attachment C

Notice of

Determination

2015SYW164 (MOD0064/15)
Residential Flat Development
S96(2) Modification



Contact: Adam Richardson

Ref: DA0501/12

30 May 2014

Australia Wenzhou Group Property Pty Ltd
Suite 1701, 87-89 Liverpool Street
SYDNEY NSW 2000

Dear Sir/Madam

**NOTICE OF DETERMINATION OF DEVELOPMENT
APPLICATION
BY THE SYDNEY WEST JOINT REGIONAL PLANNING PANEL**

Issued under the Environmental Planning and Assessment Act 1979

Application No.:	DA0501/12
Proposed Development:	Demolish existing improvements and construct a residential flat building containing 34 units, basement carpark and landscaping. This proposal also includes a Draft Voluntary Planning Agreement and explanatory note.
Property:	28-32 Dumaresq Street GORDON NSW 2072

Pursuant to Section 80(3) of the Act and Clause 95 of the Environment Planning Assessment Regulation 2000, notice is given that the above development application, has been determined by the granting of deferred

commencement development consent, subject to the conditions specified in this Notice.

Date of determination:	23/05/2014
Date from which consent operates:	Deferred Commencement
Date consent lapses:	2 years and 1 day from date of completion of deferred commencement conditions

SCHEDULE A - Deferred commencement conditions

The following matters shall be addressed to the satisfaction of Council within 12 months of the date of consent, prior to the issue of an operational consent:

A. Subdivision of 32 Dumaresq Street

The applicant shall submit documentary evidence that the subdivision of Lot 1 DP949218 (No. 32 Dumaresq Street) to excise the future public road has been registered. This consent will not operate until the documentary evidence,

in the form of a plan registered at the Department of Lands, has been submitted to and approved by Council.

Reason: To ensure that the development site exists separate to the future road prior to the development occurring.

B. Approval of road design

The applicant shall submit documentary evidence that the design of the new road along the western frontage of the site has been approved by Council's Director Operations. This consent will not operate until the documentary evidence, in the form of stamped endorsed plans, has been submitted to and approved by Council.

Reason: To ensure that the works along the site boundary both within and external to the site will be consistent in relation to levels, dimensions and materials.

Schedule B – Conditions of consent

CONDITIONS THAT IDENTIFY APPROVED PLANS:

1. Approved architectural plans and documentation

The development must be carried out in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

Plan no.	Drawn by	Dated
0000 Cover Sheet	Tzannes Associates	23/11/2012
0002 Site Plan Rev D	Tzannes Associates	30/9/2013
0003 Environmental Site & Management & Excavation Plan Rev C	Tzannes Associates	24/07/2013

1001 Basement Level Rev E	Tzannes Associates	30/9/2013
1002 Lower Ground Floor Plan Rev E	Tzannes Associates	30/9/2013
1003 Ground Floor Plan Rev E	Tzannes Associates	30/9/2013
1101 First Floor Plan Rev E	Tzannes Associates	30/9/2013
1102 Second Floor Plan Rev C	Tzannes Associates	24/07/2013
1103 Third Floor Plan Rev C	Tzannes Associates	24/07/2013
1104 Fourth Floor Plan Rev C	Tzannes Associates	24/07/2013
1105 Fifth Floor Plan Rev C	Tzannes Associates	24/07/2013
1106 Roof Plan Rev C	Tzannes Associates	24/07/2013
2000 Elevation North Rev C	Tzannes Associates	24/07/2013
2001 Elevation West Rev C	Tzannes Associates	24/07/2013
2002 Elevation East Rev C	Tzannes Associates	24/07/2013
2003 Elevation South Rev C	Tzannes Associates	24/07/2013
3001 Section_ 01 Rev C	Tzannes Associates	24/07/2013
3002 Section_ 02 Rev C	Tzannes Associates	24/07/2013
Landscape Plan L01	Jila	26.09.13
Levels Plan L02	Jila	26.09.13
Third Floor Garden Plan L03	Jila	25.09.13
Fourth Floor Garden Plan L04	Jila	25.09.13
Fifth Floor Garden Plan L05	Jila	25.09.13
Planting Schedule	Jila	25.11.13
CIV-010 Siteworks and Stormwater Management Plan Issue 4	Hyder Consulting Pty Ltd	01/10/13
CIV-025 Stormwater OSD Details Issue 2	Hyder Consulting Pty Ltd	01/10/13
CIV-030 Conceptual Combined Services Plan Issue 2	Hyder Consulting Pty Ltd	01/10/13
CIV – 040 Site Catchment Plan Issue 2	Hyder Consulting Pty Ltd	01/10/13
CIV -005 Erosion and Sediment Plan Issue 3	Hyder Consulting Pty Ltd	01/10/13

Document[s]	Dated
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Materials & Sample Board prepared by Tzannes Associates Drawing MSB1 Rev A	Undated
Basix Certificate 455470m_02	1 August 2013
Access report prepared by Mark Reif	26 November 2012

Reason: To ensure that the development is in accordance with the determination.

2. Inconsistency between documents

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail.

Reason: To ensure that the development is in accordance with the determination.

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION:

3. Road opening permit

The opening of any footway, roadway, road shoulder or any part of the road reserve shall not be carried out without a road opening permit being obtained from Council (upon payment of the required fee) beforehand.

Reason: Statutory requirement (Roads Act 1993 Section 138) and to maintain the integrity of Council's infrastructure.

4. Notice of commencement

At least 48 hours prior to the commencement of any development (including demolition, excavation, shoring or underpinning works), a notice of commencement of building or subdivision work form and appointment of the principal certifying authority form shall be submitted to Council.

Reason: Statutory requirement.

5. Notification of builder's details

Prior to the commencement of any development or excavation works, the Principal Certifying Authority shall be notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.

Reason: Statutory requirement.

6. Asbestos works

All work involving asbestos products and materials, including asbestos-cement-sheeting (ie. Fibro), must be carried out in accordance with the guidelines for asbestos work published by WorkCover Authority of NSW.

Reason: To ensure public safety

7. Dilapidation survey and report (public infrastructure)

Prior to the commencement of any development or excavation works on site, the Principal Certifying Authority shall be satisfied that a dilapidation report on the visible and structural condition of all structures of the following public infrastructure, has been completed and submitted to Council:

Public infrastructure

- Full road pavement width, including kerb and gutter, of Dumaresq Street over the site frontage.
- All driveway crossings and laybacks opposite the subject site.

The report must be completed by a consulting structural/civil engineer. Particular attention must be paid to accurately recording (both written and

photographic) existing damaged areas on the aforementioned infrastructure so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development.

The developer may be held liable to any recent damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded by the requirements of this condition prior to the commencement of works.

Note: A written acknowledgment from Council must be obtained (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifying Authority prior to the commencement of any excavation works.

Reason: To record the structural condition of public infrastructure before works commence.

8. Dilapidation survey and report (private property)

Prior to the commencement of any demolition or excavation works on site, the Principal Certifying Authority shall be satisfied that a dilapidation report on the visible and structural condition of all structures upon the following lands, has been completed and submitted to Council:

Address

- 26 Dumaresq Street, including the boundary retaining wall

The dilapidation report must include a photographic survey of adjoining properties detailing their physical condition, both internally and externally, including such items as walls ceilings, roof and structural members. The report must be completed by a consulting structural/geotechnical engineer as determined necessary by that professional based on the excavations for the proposal and the recommendations of the submitted geotechnical report.

In the event that access for undertaking the dilapidation survey is denied by a property owner, the applicant must demonstrate in writing to the satisfaction of the Principal Certifying Authority that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

Note: A copy of the dilapidation report is to be provided to Council prior to any excavation works been undertaken. The dilapidation report is for record keeping purposes only and may be used by an applicant or affected property owner to assist in any civil action required to resolve any dispute over damage to adjoining properties arising from works.

Reason: To record the structural condition of likely affected properties before works commence.

9. Geotechnical report

Prior to the commencement of any bulk excavation works on site, the applicant shall submit to the Principal Certifying Authority, the results of the Stage 2 geotechnical investigation comprising a minimum of four cored boreholes as recommended in the report by JK Geotechnics dated 18 September 2012, and groundwater monitoring.

The recommendations of the report are to be implemented during the course of the works.

Reason: To ensure the safety and protection of property.

10. Construction and traffic management plan

The applicant must submit to Council a Construction Traffic Management Plan (CTMP), which is to be approved prior to the commencement of any works on site.

The plan is to consist of a report with Traffic Control Plans attached.

The report is to contain commitments which must be followed by the demolition and excavation contractor, builder, owner and subcontractors. The CTMP applies to all persons associated with demolition, excavation and construction of the development.

The report is to contain construction vehicle routes for approach and departure to and from all directions.

The report is to contain a site plan showing entry and exit points. Swept paths are to be shown on the site plan showing access and egress for an 11 metre long heavy rigid vehicle.

The Traffic Control Plans are to be prepared by a qualified person (red card holder). One must be provided for each of the following stages of the works:

- Demolition
- Excavation
- Concrete pour
- Construction of vehicular crossing and reinstatement of footpath
- Traffic control for vehicles reversing into or out of the site.

Traffic controllers must be in place at the site entry and exit points to control heavy vehicle movements in order to maintain the safety of pedestrians and other road users.

When a satisfactory CTMP is received, a letter of approval will be issued with conditions attached. Traffic management at the site must comply with the approved CTMP as well as any conditions in the letter issued by Council. Council's Rangers will be patrolling the site regularly and fines may be issued for any non-compliance with this condition.

Reason: To ensure that appropriate measures have been considered during all phases of the construction process in a manner that maintains the environmental amenity and ensures the ongoing safety and protection of people.

11. Work zone

A Works Zone is to be provided subject to the approval of the Ku-ring-gai Local Traffic Committee.

No loading or unloading must be undertaken from the public road or nature strip unless within a Works Zone which has been approved and paid for.

In the event the work zone is required for a period beyond that initially approved by the Traffic Committee, the applicant shall make a payment to Council for the extended period in accordance with Council's schedule of fees and charges for work zones prior to the extended period commencing.

Reason: To ensure that appropriate measures have been made for the operation of the site during demolition, excavation and construction stages.

12. Erosion and drainage management

Earthworks and/or demolition of any existing buildings shall not commence until an erosion and sediment control plan is submitted to and approved by the Principal Certifying Authority. The plan shall comply with the guidelines set out in the NSW Department of Housing manual "Managing Urban Stormwater: Soils and Construction" certificate. Erosion and sediment control works shall be implemented in accordance with the erosion and sediment control plan.

Reason: To preserve and enhance the natural environment.

13. Tree protection fencing

To preserve the following tree/s, no work shall commence until the area beneath their canopy is fenced off at the specified radius from the trunk/s to prevent any activities, storage or the disposal of materials within the fenced area. The fence/s shall be maintained intact until the completion of all demolition/building work on site.

Schedule	
Tree/location	Radius from trunk
Tree 1/ <i>Alectryon tomentosus</i> (Rambutan) located on the Dumaresq Street nature strip.	2m
Tree 2/ <i>Alectryon tomentosus</i> (Rambutan) located on the Dumaresq Street nature strip.	2m
Tree 3/ <i>Pistacia chinensis</i> (Pistacia) located on the Dumaresq Street nature strip.	2m
Tree 31/ <i>Araucaria heterophylla</i> (Norfolk Island Pine) This 25 metre high tree is located on the southern boundary of the site.	5m
Tree 32/ <i>Araucaria heterophylla</i> (Norfolk Island Pine) This 25 metre high tree is located on the southern boundary of the site.	5m
Tree 33/ <i>Araucaria heterophylla</i> (Norfolk Island Pine) This 25 metre high tree is located on the southern boundary of the site.	5m
Tree 37/ <i>Lophostemon confertus</i> (Brushbox) located on the southern boundary of the site.	3m
Tree 38/ <i>Castanospermum australe</i> (Moreton Bay Chestnut) located on the southern boundary of the site.	4m

The tree protection fencing shall be constructed of galvanised pipe at 2.4 metres spacings and connected by securely attached chain mesh fencing to a minimum height of 1.8 metres in height prior to work commencing.

Reason: To protect existing trees during construction phase.

14. Tree protection signage

Prior to works commencing, tree protection signage is to be attached to each tree protection zone, displayed in a prominent position and the sign repeated at 10 metres intervals or closer where the fence changes direction. Each sign shall contain in a clearly legible form, the following information:

Tree protection zone.

- This fence has been installed to prevent damage to the trees and their growing environment both above and below ground and access is restricted.
- Any encroachment not previously approved within the tree protection zone shall be the subject of an arborist's report.
- The arborist's report shall provide proof that no other alternative is available.
- The Arborist's report shall be submitted to the Principal Certifying Authority for further consultation with Council.
- The name, address, and telephone number of the developer.

Reason: To protect existing trees during the construction phase.

15. Tree protection mulching

Prior to works commencing and throughout construction, the area of the tree protection zone is to be mulched to a depth of 100mm with composted organic material being 75% Eucalyptus leaf litter and 25% wood.

Reason: To protect existing trees during the construction phase.

16. Tree fencing inspection

Upon installation of the required tree protection measures, an inspection of the site by the Principal Certifying Authority is required to verify that tree protection measures comply with all relevant conditions.

Reason: To protect existing trees during the construction phase.

17. Construction waste management plan

Prior to the commencement of any works, the Principal Certifying Authority shall be satisfied that a waste management plan, prepared by a suitably qualified person, has been prepared in accordance with Council's DCP 40 – Construction and Demolition Waste Management.

The plan shall address all issues identified in DCP 40, including but not limited to: the estimated volume of waste and method for disposal for the construction and operation phases of the development.

Note: The plan shall be provided to the Certifying Authority.

Reason: To ensure appropriate management of construction waste.

18. Noise and vibration management plan

Prior to the commencement of any works, a noise and vibration management plan is to be prepared by a suitably qualified expert addressing the likely noise and vibration from demolition, excavation and construction of the proposed development and provided to the Principal Certifying Authority. The management plan is to identify amelioration measures to achieve the best practice objectives of AS 2436-2010 and NSW Department of Environment and Climate Change Interim Construction Noise Guidelines. The report shall be prepared in consultation with any geotechnical report that itemises equipment to be used for excavation works.

The management plan shall address, but not be limited to, the following matters:

- identification of the specific activities that will be carried out and associated noise sources
- identification of all potentially affected sensitive receivers, including

residences, churches, commercial premises, schools and properties containing noise sensitive equipment

- the construction noise objective specified in the conditions of this consent
- the construction vibration criteria specified in the conditions of this consent
- determination of appropriate noise and vibration objectives for each identified sensitive receiver
- noise and vibration monitoring, reporting and response procedures
- assessment of potential noise and vibration from the proposed demolition, excavation and construction activities, including noise from construction vehicles and any traffic diversions
- description of specific mitigation treatments, management methods and procedures that will be implemented to control noise and vibration during construction
- construction timetabling to minimise noise impacts including time and duration restrictions, respite periods and frequency
- procedures for notifying residents of construction activities that are likely to affect their amenity through noise and vibration
- contingency plans to be implemented in the event of non-compliances and/or noise complaints

Reason: To protect the amenity afforded to surrounding residents during the construction process.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE:

19. Amendments to architectural plans

Prior to the issue of a Construction Certificate, the Certifying Authority shall be satisfied that the approved architectural plans, listed below and endorsed with Council's stamp, have been amended in accordance with the requirements of this condition as well as other conditions of this consent:

Plan no.	Drawn by	Dated
1002 Lower Ground Floor Plan Rev E	Tzannes Associates	30/9/2013
2001Elevation West Rev C	Tzannes Associates	24/07/2013
3001 Section_ 01 Rev C	Tzannes Associates	24/07/2013

The above plans shall be amended in the following ways:

- Apartment 3 shall be deleted from the proposed building and the basement car park is to be redesigned to provide car parking in accordance with clause 25 J(1) of the Ku-ring-gai Planning Scheme Ordinance as follows:-
 - (i) resident car parking spaces – 36
 - (ii) visitor spaces – 9
 - (iii) total spaces - 45
- This redesign is to include the waste storage facilities at the lower ground floor level and be carried out also in accordance with **Conditions 30, 31, 32, 33 and 34** of this consent.

Reason: To ensure adequate car parking and services are provided on site.

20. Amendments to approved landscape plan

Prior to the issue of a Construction Certificate, the Principal Certifying Authority shall be satisfied that the approved landscape plans, listed below and endorsed with Council's stamp, have been amended in accordance with the requirements of this condition as well as other conditions of this consent:

Plan no.	Drawn by	Date
Landscape plan L01 - L07	Jila	26/09/13

The following changes are required to the Landscape Plan:

1. Changes to the deep soil landscaping to achieve compliance with the deep soil landscaping requirement of clause 25 I(2) of the KPSO and these changes are to incorporate and are to be consistent with changes referred to in items 2 – 12 following
2. To preserve the streetscape amenity, the area between the northern driveway and the north-west corner of the site shall be amended to include the proposed retaining walls as per the stormwater plan. The landscape plan is to be consistent with the stormwater plan.
3. To enhance the streetscape, the fire hydrant is to be relocated from the corner and located in a visually discreet position within the site.
4. To preserve neighbour amenity, at least three (3) additional locally occurring canopy trees that contain 13 metres in height are to be provided to the building along the eastern elevation.
5. To preserve the streetscape character and to ensure compliance with the deep soil development standard, all paving associated with the loading zone is to be replaced with soft landscaping incorporating trees, shrubs and lawn that is consistent with the soft landscape treatment proposed to the south of the southern pedestrian entry path.
6. Proposed planting plan shall indicate location of species and number in accordance with Council's DA Guide. The plant schedule shall include the pot size and quantity of all species.
7. Symbol for turf to be shown.
8. Existing street trees along Dumaresq Street shall be shown.
9. The proposed on slab areas shown as planting to both the northern and southern entries to the building is to provide sufficient depth to be viable for the proposed planting.

10. Existing levels should be retained within 2 metres of the site boundaries to preserve the natural landscape where possible.
11. To preserve the following tree, Tree 33/ *Aragcaria helerophylla* – Norfolk Pine, a note requiring the removal of the ivy infestation in the trunk is to be shown on the plan.
12. The private courtyard attached to Apartment 15 should be redesigned to incorporate a small paved area for future occupants whilst retaining ground covers given the front setback of the proposed building.

After the above changes have been incorporated into the amended landscaping plan(s) a further plan is to be prepared (and submitted to the certifier) showing all the deep soil landscaping areas and any necessary calculations to demonstrate compliance with the requirements of clause 25 I(2) of the Ku-ring-gai Planning Scheme Ordinance:

Prior to the issue of the Construction Certificate, the Principal Certifying Authority shall be satisfied that the landscape plan has been amended as required by this condition.

Note: An amended plan, prepared by a landscape architect or qualified landscape designer shall be submitted to the Certifying Authority.

Reason: To ensure adequate landscaping of the site.

21. Voluntary planning agreement

Prior to the issue of any Construction Certificate, the Voluntary Planning Agreement between Ku-ring-gai Council and Australia Wenzhou Group Property Pty Ltd titled 'Dumaresq Street Gordon Roadworks Planning Agreement' to be executed and implemented in accordance with the timetable and terms set within the document.

Reason: Statutory requirement.

22. Privacy

A fixed privacy screen shall be attached to the eastern edge of balconies of Apartments 16, 23 and 29. The privacy screen shall have a height of 1.6m from the finished level of the balcony. The privacy screen shall be of durable material, appropriately integrated and shall be designed so as to prevent overlooking into the western window of No. 26 Dumaresq Street.

Reason: To maintain neighbour amenity.

23. Long service levy

In accordance with Section 109F(i) of the Environmental Planning and Assessment Act a Construction Certificate shall not be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided to Council.

Reason: Statutory requirement.

24. Builder's indemnity insurance

The applicant, builder, developer or person who does the work on this development, must arrange builder's indemnity insurance and submit the certificate of insurance in accordance with the requirements of Part 6 of the Home Building Act 1989 to the Certifying Authority for endorsement of the plans accompanying the Construction Certificate.

It is the responsibility of the applicant, builder or developer to arrange the builder's indemnity insurance for residential building work over the value of \$20,000. The builder's indemnity insurance does not apply to commercial or industrial building work or to residential work valued at less than \$20,000, nor to work undertaken by persons holding an owner/builder's permit issued by the Department of Fair Trading (unless the owner/builder's property is sold within 7 years of the commencement of the work

Reason: Statutory requirement.

25. Outdoor lighting

Prior to the issue of a Construction Certificate, the Certifying Authority shall be satisfied that all outdoor lighting will comply with AS/NZ1158.3: 1999 Pedestrian Area (Category P) Lighting and AS4282: 1997 Control of the Obtrusive Effects of Outdoor Lighting.

Note: Details demonstrating compliance with these requirements are to be submitted prior to the issue of a Construction Certificate.

Reason: To provide high quality external lighting for security without adverse affects on public amenity from excessive illumination levels.

26. External service pipes and the like prohibited

Proposed water pipes, waste pipes, stack work, duct work, mechanical ventilation plant and the like must be located within the building. Details confirming compliance with this condition must be shown on construction certificate plans and detailed with relevant Construction Certificate specifications. Required external vents or vent pipes on the roof or above the eaves must be shown on construction certificate plans and detailed with the Construction Certificate specifications. External vents or roof vent pipes must not be visible from any place unless detailed upon development consent plans. Where there is any proposal to fit external service pipes or the like this must be detailed in an amended development (S96) application and submitted to Council for determination.

Vent pipes required by Sydney Water must not be placed on the front elevation of the building or front roof elevation. The applicant, owner and builder must protect the appearance of the building from the public place and the appearance of the streetscape by elimination of all external services excluding vent pipes required by Sydney Water and those detailed upon development consent plans.

Reason: To protect the streetscape and the integrity of the approved development.

27. Access for people with disabilities (residential)

Prior to the issue of the relevant Construction Certificate, the Certifying Authority shall be satisfied that access for people with disabilities to and from and between the public domain, residential units and all common open space areas is provided. Consideration must be given to the means of dignified and equitable access.

Compliant access provisions for people with disabilities shall be clearly shown on the plans submitted with the Construction Certificate. All details shall be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate. All details shall be prepared in consideration of the Disability Discrimination Act, and the relevant provisions of AS1428.1, AS1428.2, AS1428.4 and AS 1735.12.

Reason: To ensure the provision of equitable and dignified access for all people in accordance with disability discrimination legislation and relevant Australian Standards.

28. Adaptable units

Prior to the issue of the relevant Construction Certificate, the Certifying Authority shall be satisfied that the nominated adaptable units within the development application, 4, 7, 14 and 21 are designed as adaptable housing in accordance with the provisions of Australian Standard AS4299-1995: Adaptable Housing.

Note: Evidence from an appropriately qualified professional demonstrating compliance with this control is to be submitted to and approved by the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Disabled access & amenity.

29. Excavation for services

Prior to the issue of the Construction Certificate, the Principal Certifying Authority shall be satisfied that no proposed underground services (ie: water, sewerage, drainage, gas or other service) unless previously approved by conditions of consent, are located beneath the canopy of any tree protected under Council's Tree Preservation Order, located on the subject allotment and adjoining allotments.

Note: A plan detailing the routes of these services and trees protected under the Tree Preservation Order shall be submitted to the Principal Certifying Authority.

Reason: To ensure the protection of trees.

30. Recycling and waste management

Prior to the issue of the Construction Certificate, the Principal Certifying Authority shall be satisfied that the development provides a common garbage collection/separation area sufficient in size to store all wheelie garbage bins and recycling bins provided by Council for the number of units in the development in accordance with DCP 40. The garbage collection point is to be accessible by Council's waste Collection Services.

The responsibility for:

- the cleaning of waste rooms and waste service compartments; and
- the transfer of bins within the property, and to the collection point once the development is in use;

shall be determined when designing the system and clearly stated in the Waste Management Plan.

Note: The architectural plans are to be amended and provided to the Certifying Authority

Reason: Environmental protection.

31. Driveway grades - basement carparks

Prior to the issue of the Construction Certificate, longitudinal driveway sections are to be prepared by a qualified civil/traffic engineer and be submitted for to and approved by the Certifying Authority. These profiles are to be at 1:100 scale along both edges of the proposed driveway, starting from the centreline of the frontage street carriageway to the proposed basement floor level. The traffic engineer shall provide specific written certification on the plans that:

- vehicular access can be obtained using grades of 20% (1 in 5) maximum and
- all changes in grade (transitions) comply with Australian Standard 2890.1 -"Off-street car parking" (refer clause 2.5.3) to prevent the scraping of the underside of vehicles.

Reason: To provide suitable vehicular access without disruption to pedestrian and vehicular traffic.

32. Basement car parking details

Prior to issue of the Construction Certificate, certified parking layout plan(s) to scale showing all aspects of the vehicle access and accommodation arrangements must be submitted to and approved by the Certifying Authority. A qualified civil/traffic engineer must review the proposed vehicle access and accommodation layout and provide written certification on the plans that:

- all parking space dimensions, driveway and aisle widths, driveway grades, transitions, circulation ramps, blind aisle situations and other trafficked

areas comply with Australian Standard 2890.1 - 2004 "Off-street car parking"

- a clear height clearance of **2.6 metres** (required under DCP40 for waste collection trucks) is provided over the designated garbage collection truck manoeuvring areas within the basement
- no doors or gates are provided in the access driveways to the basement carpark which would prevent unrestricted access for internal garbage collection at any time from the basement garbage storage and collection area
- the vehicle access and accommodation arrangements are to be constructed and marked in accordance with the certified plans

Reason: To ensure that parking spaces are in accordance with the approved development.

33. Car parking allocation

Car parking within the development shall be allocated in the following way:

- Resident car spaces 36
- Visitor spaces 9
- Total spaces 45

Each adaptable dwelling must be provided with car parking complying with the dimensional and location requirements of AS2890.1 – parking spaces for people with disabilities.

At least one visitor space shall also comply with the dimensional and location requirements of AS2890.1 – parking spaces for people with disabilities. The spaces shall be painted nominating them as 'Visitor's Parking'.

Consideration must be given to the means of access from disabled car parking spaces to other areas within the building and to footpath and roads and shall be clearly shown on the plans submitted with the relevant Construction Certificate.

Reason: To ensure equity of access and appropriate facilities are available for people with disabilities in accordance with federal legislation.

34. Number of bicycle spaces

The basement car park shall be adapted to provide 10 bicycle spaces in accordance with DCP 55. The bicycle parking spaces shall be designed in accordance with AS2890.3. Details shall be submitted to the satisfaction of the Certifying Authority prior to the issue of the relevant Construction Certificate.

Reason: To provide alternative modes of transport to and from the site.

35. Utility provider requirements

Prior to issue of the relevant Construction Certificate, the applicant must make contact with all relevant utility providers whose services will be impacted upon by the development. A written copy of the requirements of each provider, as determined necessary by the Certifying Authority, must be obtained. All utility services or appropriate conduits for the same must be provided by the developer in accordance with the specifications of the utility providers.

Reason: To ensure compliance with the requirements of relevant utility providers.

36. Underground services

All electrical services (existing and proposed) shall be undergrounded from the proposed building on the site to the appropriate power pole(s) or other connection point. Undergrounding of services must not disturb the root system of existing trees and shall be undertaken in accordance with the requirements of the relevant service provided. Documentary evidence that the relevant service provider has been consulted and that their requirements have been met are to be provided to the Certifying Authority prior to the issue of the relevant Construction Certificate. All electrical and telephone services to

the subject property must be placed underground and any redundant poles are to be removed at the expense of the applicant.

Reason: To provide infrastructure that facilitates the future improvement of the streetscape by relocation of overhead lines below ground.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE OR PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION (WHICHEVER COMES FIRST):

37. Infrastructure restorations fee

To ensure that damage to Council Property as a result of construction activity is rectified in a timely matter:

- a) All work or activity taken in furtherance of the development the subject of this approval must be undertaken in a manner to avoid damage to Council Property and must not jeopardise the safety of any person using or occupying the adjacent public areas.
- b) The applicant, builder, developer or any person acting in reliance on this approval shall be responsible for making good any damage to Council Property, and for the removal from Council Property of any waste bin, building materials, sediment, silt, or any other material or article.
- c) The Infrastructure Restoration Fee must be paid to the Council by the applicant prior to both the issue of the Construction Certificate and the commencement of any earthworks or construction.
- d) In consideration of payment of the Infrastructure Restorations Fee, Council will undertake such inspections of Council Property as Council considers necessary and also undertake, on behalf of the applicant, such restoration work to Council Property, if any, that Council considers necessary as a consequence of the development. The provision of such restoration work by the Council does not absolve any person of the

responsibilities contained in (a) to (b) above. Restoration work to be undertaken by the Council referred to in this condition is limited to work that can be undertaken by Council at a cost of not more than the Infrastructure Restorations Fee payable pursuant to this condition.

e) In this condition:

"Council Property" includes any road, footway, footpath paving, kerbing, guttering, crossings, street furniture, seats, letter bins, trees, shrubs, lawns, mounds, bushland, and similar structures or features on any road or public road within the meaning of the Local Government Act 1993 (NSW) or any public place; and

"Infrastructure Restoration Fee" means the Infrastructure Restorations Fee calculated in accordance with the Schedule of Fees & Charges adopted by Council as at the date of payment and the cost of any inspections required by the Council of Council Property associated with this condition.

Reason: To maintain public infrastructure.

CONDITIONS TO BE SATISFIED DURING THE DEMOLITION, EXCAVATION AND CONSTRUCTION PHASES:

38. Prescribed conditions

The applicant shall comply with any relevant prescribed conditions of development consent under clause 98 of the Environmental Planning and Assessment Regulation. For the purposes of section 80A (11) of the Environmental Planning and Assessment Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:

- The work must be carried out in accordance with the requirements of the Building Code of Australia

- In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any works commence.

Reason: Statutory requirement.

39. Approved plans to be on site

A copy of all approved and certified plans, specifications and documents incorporating conditions of consent and certification (including the Construction Certificate if required for the work) shall be kept on site at all times during the demolition, excavation and construction phases and must be readily available to any officer of Council or the Principal Certifying Authority.

Reason: To ensure that the development is in accordance with the determination.

40. Construction noise

During excavation, demolition and construction phases, noise generated from the site shall be controlled in accordance with the recommendations of the approved noise and vibration management plan.

Reason: To ensure reasonable standards of amenity to neighbouring properties.

42. Site notice

A site notice shall be erected on the site prior to any work commencing and shall be displayed throughout the works period.

The site notice must:

- be prominently displayed at the boundaries of the site for the purposes of informing the public that unauthorised entry to the site is not permitted

- display project details including, but not limited to the details of the builder, Principal Certifying Authority and structural engineer
- be durable and weatherproof
- display the approved hours of work, the name of the site/project manager, the responsible managing company (if any), its address and 24 hour contact phone number for any inquiries, including construction/noise complaint are to be displayed on the site notice

Reason: To ensure public safety and public information.

43. Dust control

During excavation, demolition and construction, adequate measures shall be taken to prevent dust from affecting the amenity of the neighbourhood. The following measures must be adopted:

- physical barriers shall be erected at right angles to the prevailing wind direction or shall be placed around or over dust sources to prevent wind or activity from generating dust
- earthworks and scheduling activities shall be managed to coincide with the next stage of development to minimise the amount of time the site is left cut or exposed
- all materials shall be stored or stockpiled at the best locations
- the ground surface should be dampened slightly to prevent dust from becoming airborne but should not be wet to the extent that run-off occurs
- all vehicles carrying spoil or rubble to or from the site shall at all times be covered to prevent the escape of dust
- all equipment wheels shall be washed before exiting the site using manual or automated sprayers and drive-through washing bays
- gates shall be closed between vehicle movements and shall be fitted with shade cloth
- cleaning of footpaths and roadways shall be carried out daily

Reason: To protect the environment and amenity of surrounding properties.

44. Post-construction dilapidation report

The applicant shall engage a suitably qualified person to prepare a post construction dilapidation report at the completion of the construction works. This report is to ascertain whether the construction works created any structural damage to adjoining buildings, infrastructure and roads. The report is to be submitted to the Principal Certifying Authority. In ascertaining whether adverse structural damage has occurred to adjoining buildings, infrastructure and roads, the Principal Certifying Authority must:

- compare the post-construction dilapidation report with the pre-construction dilapidation report
- have written confirmation from the relevant authority that there is no adverse structural damage to their infrastructure and roads.

A copy of this report is to be forwarded to Council at the completion of the construction works.

Reason: Management of records.

45. Hours of work

Demolition, excavation, construction work and deliveries of building material and equipment must not take place outside the hours of 7.00am to 5.00pm Monday to Friday and 8.00am to 12 noon Saturday. No work and no deliveries are to take place on Sundays and public holidays.

Excavation or removal of any materials using machinery of any kind, including compressors and jack hammers, must be limited to between 7.30am and 5.00pm Monday to Friday, with a respite break of 45 minutes between 12 noon 1.00pm.

Where it is necessary for works to occur outside of these hours (ie) placement of concrete for large floor areas on large residential/commercial developments or where building processes require the use of oversized trucks and/or cranes that are restricted by the RTA from travelling during daylight hours to deliver, erect or remove machinery, tower cranes, pre-cast panels, beams, tanks or service equipment to or from the site, approval for such activities will be subject to the issue of an "outside of hours works permit" from Council as well as notification of the surrounding properties likely to be affected by the proposed works.

Note: Failure to obtain a permit to work outside of the approved hours will result in on the spot fines being issued.

Reason: To ensure reasonable standards of amenity for occupants of neighbouring properties.

46. Temporary irrigation

Temporary irrigation within the Tree Protection Fencing is to be provided. Irrigation volumes are to be determined by the Project Arborist.

Reason: To protect trees to be retained on site.

47. Further geotechnical input

The geotechnical and hydro-geological works implementation, inspection, testing and monitoring program for the excavation and construction works must be in accordance with the report by JK Geotechnics dated 18 September 2012 and the report submitted prior to commencement of bulk excavation. Over the course of the works, a qualified geotechnical/hydro-geological engineer must complete the following:

- further geotechnical investigations and testing recommended in the above report(s) and as determined necessary

- further monitoring and inspection at the hold points recommended in the above report(s) and as determined necessary
- written report(s) including certification(s) of the geotechnical inspection, testing and monitoring programs

Reason: To ensure the safety and protection of property.

48. Compliance with submitted geotechnical report

A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee excavation.

Geotechnical aspects of the development work, namely:

- appropriate excavation method and vibration control
- support and retention of excavated faces
- hydro-geological considerations

must be undertaken in accordance with the recommendations of the geotechnical report prepared by JK Geotechnics dated 18 September 2012 and the report submitted prior to commencement of bulk excavation.

Approval must be obtained from all affected property owners, including Kuring-gai Council, where rock anchors (both temporary and permanent) are proposed below adjoining property(ies).

Reason: To ensure the safety and protection of property.

49. Use of road or footpath

During excavation, demolition and construction phases, no building materials, plant or the like are to be stored on the road or footpath without written approval being obtained from Council beforehand. The pathway shall be kept in a clean, tidy and safe condition during building operations. Council reserves

the right, without notice, to rectify any such breach and to charge the cost against the applicant/owner/builder, as the case may be.

Reason: To ensure safety and amenity of the area.

50. Guarding excavations

All excavation, demolition and construction works shall be properly guarded and protected with hoardings or fencing to prevent them from being dangerous to life and property.

Reason: To ensure public safety.

51. Toilet facilities

During excavation, demolition and construction phases, toilet facilities are to be provided, on the work site, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Reason: Statutory requirement.

52. Recycling of building materials

During demolition and construction, the Principal Certifying Authority shall be satisfied that building materials suitable for recycling have been forwarded to an appropriate registered business dealing in recycling of materials. Materials to be recycled must be kept in good order.

Reason: To facilitate recycling of materials.

53. Approval for rock anchors

Approval is to be obtained from the property owner for any anchors proposed beneath adjoining private property. If such approval cannot be obtained, then the excavated faces are to be shored or propped in accordance with the recommendations of the geotechnical and structural engineers.

Reason: To ensure the ongoing safety and protection of property.

54. Maintenance period for works in public road

A maintenance period of six (6) months applies to all work in the public road reserve carried out by the applicant - after the works have been completed to the satisfaction of Ku-ring-gai Council. In that maintenance period, the applicant shall be liable for any section of the public infrastructure work which fails to perform in the designed manner, or as would reasonably be expected under the operating conditions. The maintenance period shall commence once the applicant receives a formal letter from Council stating that the works involving public infrastructure have been completed satisfactorily.

Reason: To protect public infrastructure.

55. Road reserve safety

All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works. Construction materials must not be stored in the road reserve. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site. Where public infrastructure is damaged, repair works must be carried out when and as directed by Council officers. Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads". If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.

Reason: To ensure safe public footways and roadways during construction.

56. Services

Where required, the adjustment or inclusion of any new utility service facilities must be carried out by the applicant and in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council. It is the applicants' full responsibility to make contact with the relevant utility authorities to ascertain the impacts of the proposal upon utility services (including water, phone, gas and the like). Council accepts no responsibility for any matter arising from its approval to this application involving any influence upon utility services provided by another authority.

Reason: Provision of utility services.

57. Temporary rock anchors

If the use of temporary rock anchors extending into the road reserve is proposed, then approval must be obtained from Council and/or the Roads and Traffic Authority in accordance with Section 138 of the Roads Act 1993. The Applicant is to submit details of all the work that is to be considered, and the works are not to commence until approval has been granted. The designs are to include details of the following:

- How the temporary rock anchors will be left in a way that they will not harm or interfere with any future excavation in the public road
- That the locations of the rock anchors are registered with Dial Before You Dig
- That approval of all utility authorities likely to use the public road has been obtained. All temporary rock anchors are located outside the allocations for the various utilities as adopted by the Streets Opening Conference.
- That any remaining de-stressed rock anchors are sufficiently isolated from the structure that they cannot damage the structure if pulled during future excavations or work in the public road.
- That signs will be placed and maintained on the building stating that de-stressed rock anchors remain in the public road and include a contact number for the building manager. The signs are to be at least 600mm x 450mm with lettering on the signs is to be no less than 75mm high. The signs are to be at not more than 60m spacing. At least one sign must be visible from all locations on the footpath outside the property. The wording on the signs is to be submitted to Council's Director Technical Services for approval before any signs are installed.

Permanent rock anchors are not to be used where any part of the anchor extends outside the development site into public areas or road reserves.

All works in the public road are to be carried out in accordance with the Conditions of Construction issued with any approval of works granted under Section 138 of the Roads Act 1993.

Reason: To ensure the ongoing safety and protection of property.

58. Sydney Water Section 73 Compliance Certificate

The applicant must obtain a **Section 73 Compliance Certificate** under the *Sydney Water Act 1994*. An application must be made through an authorised Water Servicing CoOrdinator. The applicant is to refer to "Your Business" section of Sydney Water's web site at www.sydneywater.com.au <<http://www.sydneywater.com.au>> then the "e-develop" icon or telephone 13 20 92. Following application a "Notice of Requirements" will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the CoOrdinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

Reason: Statutory requirement.

59. Arborist's report

The trees to be retained shall be inspected, monitored and treated by a qualified arborist during and after completion of development works to ensure their long term survival. An arborist report, prepared by Footprint Green, dated 8/11/12, has been submitted as part of the original application. Tree numbers refer to this report.

Regular inspections and documentation from the arborist to the Principal Certifying Authority are required at the following times or phases of work:

Schedule	
Tree/location	Time of inspection
Tree 31/ <i>Araucaria heterophylla</i> (Norfolk Island Pine) This 25 metre high tree is located on the southern boundary of the site.	Commencement of excavation for driveway slab
Tree 32/ <i>Araucaria heterophylla</i> (Norfolk Island Pine) This 25 metre high tree is located on the southern boundary of the site.	Commencement of excavation for driveway

Tree 33/ <i>Araucaria heterophylla</i> (Norfolk Island Pine) This 25 metre high tree is located on the southern boundary of the site.	Commencement of excavation for driveway
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Reason: To ensure protection of existing trees.

60. Canopy/root pruning

Canopy and/or root pruning of the following tree(s) which is necessary to accommodate the approved building works shall be undertaken by an experienced AQF level 3 Arborist under the supervision of the Project Arborist and in accordance with the reduction pruning clause of AS4373-2007. All other branches are to be tied back and protected during construction, under the supervision of a qualified arborist.

Schedule	
Tree/location	Tree works
Tree 31/ <i>Araucaria heterophylla</i> (Norfolk Island Pine) This 25 metre high tree is located on the southern boundary of the site.	Minor pruning for building clearance
Tree 32/ <i>Araucaria heterophylla</i> (Norfolk Island Pine) This 25 metre high tree is located on the southern boundary of the site.	Minor pruning for building clearance
Tree 33/ <i>Araucaria heterophylla</i> (Norfolk Island Pine) This 25 metre high tree is located on the southern boundary of the site.	Minor pruning for building clearance

Reason: To protect the environment.

61. Treatment of tree roots

If tree roots are required to be severed for the purposes of constructing the approved works, they shall be cut cleanly by hand, by an experienced Arborist/Horticulturist with a minimum qualification of Horticulture Certificate

or Tree Surgery Certificate. All pruning works shall be undertaken as specified in Australian Standard 4373-2007 - Pruning of Amenity Trees.

Reason: To protect existing trees.

62. Hand excavation

All excavation excluding for the driveways and basement within the specified radius of the trunk(s) of the following tree(s) shall be hand dug under the supervision of the Project Arborist.

Schedule	
Tree/location	Radius from trunk
Tree 31/ <i>Araucaria heterophylla</i> (Norfolk Island Pine) This 25 metre high tree is located on the southern boundary of the site.	7.8m
Tree 32/ <i>Araucaria heterophylla</i> (Norfolk Island Pine) This 25 metre high tree is located on the southern boundary of the site.	9m
Tree 33/ <i>Araucaria heterophylla</i> (Norfolk Island Pine) This 25 metre high tree is located on the southern boundary of the site.	4.8m

Reason: To protect existing trees.

63. No storage of materials beneath trees

No activities, storage or disposal of materials shall take place beneath the canopy of any tree protected under Council's Tree Preservation Order at any time.

Reason: To protect existing trees.

64. Removal of refuse

All builders' refuse, spoil and/or material unsuitable for use in landscape areas shall be removed from the site on completion of the building works.

Reason: To protect the environment.

65. Canopy replenishment trees to be planted

The canopy replenishment trees to be planted shall be maintained in a healthy and vigorous condition until they attain a height of 5.0 metres whereby they will be protected by Council's Tree Preservation Order. Any of the trees found faulty, damaged, dying or dead shall be replaced with the same species.

Reason: To maintain the treed character of the area.

66. Removal of noxious plants & weeds

All noxious and/or environmental weed species shall be removed from the property prior to completion of building works.

Reason: To protect the environment.

67. Survey and inspection of waste collection clearance and path of travel

At the stage when formwork for the ground floor slab is in place and prior to concrete being poured, a registered surveyor is to:

- ascertain the reduced level of the underside of the slab at the driveway entry,
- certify that the level is not lower than the level shown on the approved DA plans; and
- certify that the minimum headroom of 2.6 metres will be available for the full path of travel of the small waste collection vehicle from the street to the collection area.
- This certification is to be provided to Council's Development Engineer prior to any concrete being poured for the ground floor slab.
- No work is to proceed until Council has undertaken an inspection to determine clearance and path of travel.

At the stage when formwork for the ground floor slab is in place and prior to concrete being poured, Council's Development Engineer and Manager Waste Services are to carry out an inspection of the site to confirm the clearance available for the full path of travel of the small waste collection vehicle from the street to the collection area. This inspection may not be carried out by a private certifier because waste management is not a matter listed in Clause 161 of the Environmental Planning and Assessment Regulation 2000.

Reason: To ensure access will be available for Council's contractors to collect waste from the collection point.

68. On site retention of waste dockets

All demolition, excavation and construction waste dockets are to be retained on site, or at suitable location, in order to confirm which facility received materials generated from the site for recycling or disposal.

- Each docket is to be an official receipt from a facility authorised to accept the material type, for disposal or processing.
- This information is to be made available at the request of an Authorised Officer of Council.

Reason: To protect the environment.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE:

69. Easement for support

Prior to the issue of an Occupation Certificate, the applicant is to create an easement for support over the retaining wall footing in the north western corner. Following construction of the footing, but prior to backfilling, a registered surveyor is to prepare a plan of the extent of the footing inside the property for annexing to the easement documents. The terms of the easement for support are to require the footing, and any backfilling which forms part of the design, to be maintained for as long as the retaining wall is in place.

Reason: To protect Council's infrastructure.

70. Easement for waste collection

Prior to the issue of an Occupation Certificate, the applicant is to create an easement for waste collection. This is to permit legal access for Council, Council's contractors and their vehicles over the subject property for the purpose of collecting waste from the property. The terms of the easement are to be generally in accordance with Council's draft terms for an easement for waste collection and shall be to the satisfaction of Council's Development Engineer.

Reason: To permit legal access for Council, Council's contractors and their vehicles over the subject site for waste collection.

71. Compliance with BASIX Certificate

Prior to the issue of the relevant Occupation Certificate, the Principal
Certifying

Authority shall be satisfied that all commitments listed in BASIX Certificate No. 455470m_02 have been complied with.

Reason: Statutory requirement.

72. Clotheslines and clothes dryers

Prior to the issue of the relevant Occupation Certificate, the Principal Certifying Authority shall be satisfied that the units either have access to an external clothes line located in common open space or have a mechanical clothes dryer installed.

Reason: To provide access to clothes drying facilities.

73. Mechanical ventilation

Following completion, installation and testing of all the mechanical ventilation systems, the Principal Certifying Authority shall be satisfied of the following prior to the issue of the relevant Occupation Certificate:

1. The installation and performance of the mechanical systems complies with:
 - The Building Code of Australia
 - Australian Standard AS1668
 - Australian Standard AS3666 where applicable
2. The mechanical ventilation system in isolation and in association with other mechanical ventilation equipment, when in operation will not be audible within a habitable room in any other residential premises adjoining the development site before 7am and after 10pm Monday to Friday and before 8am and after 10pm Saturday, Sunday and public holidays. The operation of the unit(s) outside these restricted hours shall emit a noise level of not greater than 5dbA above the background when measured at the nearest adjoining residential boundary.

Note: Written confirmation from an acoustic engineer that the development achieves the above requirements is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To protect the amenity of surrounding properties.

74. Completion of landscape works

Prior to the release of the Occupation Certificate, the Principal Certifying Authority is to be satisfied that all landscape works, including the removal of all noxious and/or environmental weed species, have been undertaken in accordance with the approved plan(s) and conditions of consent.

Reason: To ensure that the landscape works are consistent with the development consent.

75. Completion of tree works

Prior to the release of the Occupation Certificate, the Principal Certifying Authority is to be satisfied that all tree works, including pruning in accordance with AS4373-2007 or remediation works in accordance with AS4370-2009 or removal of ivy from the trunk of Tree 33, have been undertaken in accordance with the approved plan(s) and conditions of consent.

Reason: To ensure that the tree works are consistent with the development consent.

76. Accessibility

Prior to the issue of the relevant Occupation Certificate, the Principal Certifying Authority shall be satisfied that:

- the lift design and associated functions are compliant with AS 1735.12 & AS 1428.2

- the level and direction of travel, both in lifts and lift lobbies, is audible and visible
- the controls for lifts are accessible to all persons and control buttons and lettering are raised
- international symbols have been used with specifications relating to signs, symbols and size of lettering complying with AS 1428.2
- the height of lettering on signage is in accordance with AS 1428.1 – 1993
- the signs and other information indicating access and services incorporate tactile communication methods in addition to the visual methods

Reason: Disabled access & services.

77. Certification of drainage works (dual occupancies and above)

Prior to issue of the Occupation Certificate, the Principal Certifying Authority is to be satisfied that:

- the stormwater drainage works have been satisfactorily completed in accordance with the approved Construction Certificate drainage plans
- the minimum retention and on-site detention storage volume requirements of BASIX and Ku-ring-gai Water Management Development Control Plan No. 47 respectively, have been achieved
- retained water is connected and available for use
- all grates potentially accessible by children are secured
- components of the new drainage system have been installed by a licensed plumbing contractor in accordance with the Plumbing and Drainage Code AS3500.3 2003 and the Building Code of Australia
- all enclosed floor areas, including habitable and garage floor levels, are safeguarded from outside stormwater runoff ingress by suitable differences in finished levels, gradings and provision of stormwater collection devices

The rainwater certification sheet contained in Appendix 13 of the Ku-ring-gai Water Management Development Control Plan No. 47, must be completed and attached to the certification. Where an on-site detention system has been constructed, the on-site detention certification sheet contained in Appendix 4 of DCP 47 must also be completed and attached to the certification.

Note: Evidence from a qualified and experienced consulting civil/hydraulic engineer documenting compliance with the above is to be provided to Council prior to the issue of an Occupation Certificate.

Reason: To protect the environment.

78. WAE plans for stormwater management and disposal (dual occupancy and above)

Prior to issue of the Occupation Certificate, a registered surveyor must provide a works as executed survey of the completed stormwater drainage and management systems. The survey must be submitted to and approved by the Principal Certifying Authority prior to issue of the Occupation Certificate. The survey must indicate:

- as built (reduced) surface and invert levels for all drainage pits
- gradients of drainage lines, materials and dimensions
- as built (reduced) level(s) at the approved point of discharge to the public drainage system
- as built location and internal dimensions of all detention and retention structures on the property (in plan view) and horizontal distances to nearest adjacent boundaries and structures on site
- the achieved storage volumes of the installed retention and detention storages and derivative calculations
- as built locations of all access pits and grates in the detention and retention system(s), including dimensions
- the size of the orifice or control fitted to any on-site detention system
- dimensions of the discharge control pit and access grates
- the maximum depth of storage possible over the outlet control

- top water levels of storage areas and indicative RL's through the overland flow path in the event of blockage of the on-site detention system

The works as executed plan(s) must show the as built details above in comparison to those shown on the drainage plans approved with the Construction Certificate prior to commencement of works. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifying Authority stamped construction certificate stormwater plans.

Reason: To protect the environment.

79. OSD positive covenant/restriction

Prior to issue of the Occupation Certificate, the applicant must create a positive covenant and restriction on the use of land under Section 88E of the Conveyancing Act 1919, burdening the owner with the requirement to maintain the on-site stormwater detention facilities on the lot.

The terms of the instruments are to be generally in accordance with the Council's "draft terms of Section 88B instrument for protection of on-site detention facilities" and to the satisfaction of Council (refer to appendices of Ku-ring-gai Council Water Management DCP 47). For existing titles, the positive covenant and the restriction on the use of land is to be created through an application to the Land Titles Office in the form of a request using forms 13PC and 13RPA. The relative location of the on-site detention facility, in relation to the building footprint, must be shown on a scale sketch, attached as an annexure to the request forms.

Registered title documents, showing the covenants and restrictions, must be submitted and approved by the Principal Certifying Authority prior to issue of an Occupation Certificate.

Reason: To protect the environment.

80. Sydney Water Section 73 Compliance Certificate

Prior to issue of an Occupation Certificate the Section 73 Sydney water Compliance Certificate must be obtained and submitted to the Principal Certifying Authority

Reason: Statutory requirement.

81. Certification of as-constructed driveway/carpark - RFB

Prior to issue of an Occupation Certificate, the Principal Certifying Authority is to be satisfied that:

- the as-constructed car park complies with the approved Construction Certificate plans
- the completed vehicle access and accommodation arrangements comply with Australian Standard 2890.1 - 2004 "Off-Street car parking" in terms of minimum parking space dimensions
- finished driveway gradients and transitions will not result in the scraping of the underside of cars
- no doors, gates, grilles or other structures have been provided in the access driveways to the basement carpark, which would prevent unrestricted access for internal garbage collection from the basement garbage storage and collection area
- the vehicular headroom requirements of:
 - Australian Standard 2890.1 - "Off-street car parking",
 - **2.6 metres** height clearance for waste collection trucks (refer DCP 40) are met from the public street into and within the applicable areas of the basement carpark.

Note: Evidence from a suitably qualified and experienced traffic/civil engineer indicating compliance with the above is to be provided to and approved by the Principal Certifying Authority prior to the issue of an Occupation Certificate.

Reason: To ensure that vehicular access and accommodation areas are compliant with the consent.

82. Reinstatement of redundant crossings and completion of infrastructure works

Prior to issue of the Occupation Certificate, the Principal Certifying Authority must be satisfied that he or she has received a signed inspection form from Council which states that the following works in the road reserve have been completed:

- new concrete driveway crossing in accordance with levels and specifications issued by Council
- removal of all redundant driveway crossings and kerb laybacks (or sections thereof) and reinstatement of these areas to footpath, turfed verge and upright kerb and gutter (reinstatement works to match surrounding adjacent infrastructure with respect to integration of levels and materials)
- full repair and resealing of any road surface damaged during construction
- full replacement of damaged sections of grass verge to match existing

This inspection may not be carried out by the Private Certifier because restoration of Council property outside the boundary of the site is not a matter listed in Clause 161 of the Environmental Planning and Assessment Regulation 2000.

All works must be completed in accordance with the General Specification for the Construction of Road and Drainage Works in Ku-ring-gai Council, dated November 2004. The Occupation Certificate must not be issued until all damaged public infrastructure caused as a result of construction works on the subject site (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub contractors, concrete vehicles) is fully repaired to the satisfaction of Council. Repair works shall be at no cost to Council.

Reason: To protect the streetscape.

83. Construction of works in public road - approved plans

Prior to issue of the Occupation Certificate, the Principal Certifying Authority must be satisfied that all approved road, footpath and/or drainage works have been completed in the road reserve in accordance with the Council Roads Act approval and accompanying drawings, conditions and specifications.

The works must be supervised by the applicant's designing engineer and completed and approved to the satisfaction of Ku-ring-gai Council.

The supervising consulting engineer is to provide certification upon completion that the works were constructed in accordance with the Council approved stamped drawings. The works must be subject to inspections by Council at the hold points noted on the Roads Act approval. All conditions attached to the approved drawings for these works must be met prior to the Occupation Certificate being issued.

Reason: To ensure that works undertaken in the road reserve are to the satisfaction of Council.

84. Infrastructure repair

Prior to issue of the final Occupation Certificate, the Principal Certifying Authority must be satisfied that any damaged public infrastructure caused as a result of construction works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub contractors, concrete vehicles) is fully repaired to the satisfaction of Council Development Engineer and at no cost to Council.

Reason: To protect public infrastructure.

85. Fire safety certificate

Prior to the issue of the relevant Occupation Certificate(s), the Principal Certifying Authority shall be satisfied that a Fire Safety Certificate for all the essential fire or other safety measures forming part of this consent has been completed and provided to Council.

Note: A copy of the Fire Safety Certificate must be submitted to Council.

Reason: To ensure suitable fire safety measures are in place.

CONDITIONS TO BE SATISFIED AT ALL TIMES:

86. Car parking

At all times, the visitor car parking spaces are to be clearly identified and are to be for the exclusive use of visitors to the site. On site permanent car parking spaces are not to be used by those other than an occupant or tenant of the subject building. Any occupant, tenant, lessee or registered proprietor of the development site or part thereof shall not enter into an agreement to lease, license or transfer ownership of any car parking spaces to those other than an occupant, tenant or lessee of the building.

The use of visitor's spaces and tenant spaces is to be protected and enforced through the following:

- restrictive covenant placed on title pursuant to Section 88B of the Conveyancing Act, 1919
- restriction on use under Section 68 of the Strata Schemes (Freehold Development) Act, 1973 to all lots comprising in part or whole car parking spaces

Reason: To ensure adequate provision of visitor parking spaces.

Reasons for conditions

To safeguard amenity of the locality

Other approvals

This consent does not include any other approvals granted under Section 78A(5) of the Environmental Planning and Assessment Act 1979.

Right of appeal

If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within 6 months of the date on which you receive this Notice.

Advisory Notes:

- a) Council is always prepared to discuss its decisions and in this regard please do not hesitate to contact Adam Richardson on telephone **9424 0000**.
- b) Section 82A of the Environmental Planning and Assessment Act 1979 provides that the applicant may request the Council to review the determination. The request must be made in writing on the S.82A Review application form (refer Council's website or customer service centre) within six (6) months of receipt of this Notice of Determination, together with payment of the appropriate fees. It is recommended that the applicant discuss any request for a review of determination with Council staff before lodging such a request. There is no right of review under S82A of the Act in respect of Designated or Integrated Development.
- c) Changes to the external configuration of the building, changes to the site layout, density and unit configuration internal changes to the proposed building or any changes to the proposed operation of a use may require the submission of a modification under Section 96 of the Environmental Planning and Assessment Act 1979. Any proposed modifications to the development consent must result in a development that is substantially the same development as that which was originally approved. It is recommended that the applicant discuss any request for a review of determination with Council staff before lodging such a request.

d) You attention is drawn to the necessity to:

Obtain a **Construction Certificate** under Section 109(1)(b) of the Environmental Planning and Assessment Act 1979 in respect of the development consent.

An application for a Construction Certificate may be lodged with Council. Alternatively you may apply to an accredited certifier.

All building work must be carried out fully in accordance with the conditions of the development consent and it is an offence to carry out unauthorised building work that is not in accordance with Council's approval.

An offence under the Environmental Planning and Assessment Act 1979 and Regulations is subject to a penalty up to \$110,000 and \$11,000, respectively.

Council may also serve a notice and an order to require the demolition/removal of unauthorised building work or to require the building to be erected fully in accordance with the development consent.

On the spot penalties will be imposed for works which are carried out in breach of this consent, or without consent.

A Section 96 application is required to be submitted to and approved by Council and a Construction Certificate is to be obtained from the Council or an Accredited Certifier, prior to commencement of any variations from the approved plans and conditions of consent.

Signature on behalf of consent authority

Team Leader

Development Assessment

Attachment D

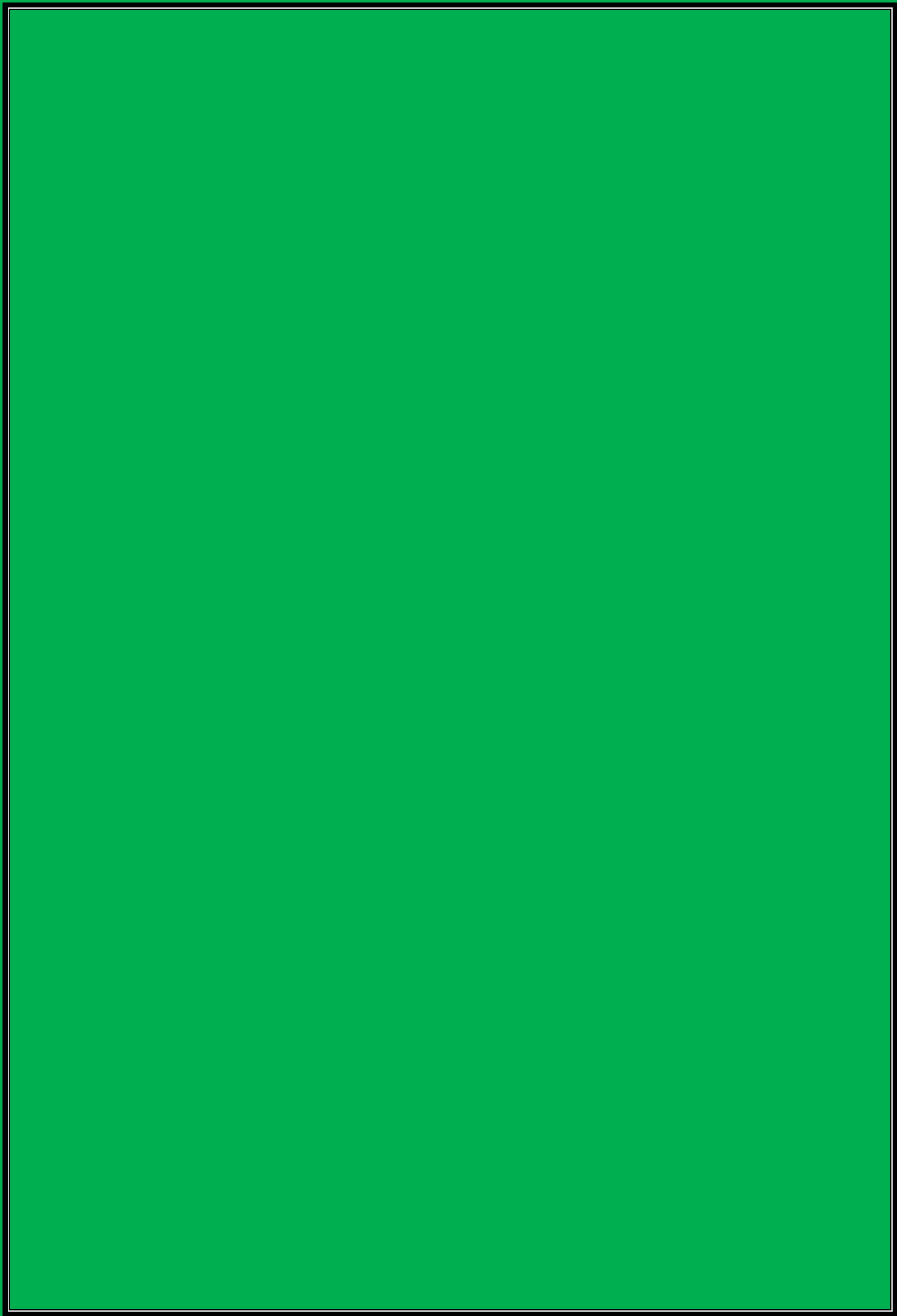
Applicants Legal

Advice

2015SYW164 (MOD0064/15)

Residential Flat Development

S96(2) Modification



Re: Development Consent DA0501/12
Proposed Residential Flat Building
28-32 Dumaresq Street, Gordon

MEMORANDUM OF ADVICE

Mr Tony Sattler
Sattler & Associates Pty Ltd
19 Raven Place
Clothiers Creek NSW 2484

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E: tony@sattler.net.au

*Liability limited by a scheme approved under Professional
Standards Legislation.*

Re: Development Consent DA0501/12 - Proposed Residential Flat Building
28-32 Dumaresq Street, Gordon

MEMORANDUM OF ADVICE

1. Our instructing solicitors act for Gelder Architects.
2. We are requested to advise on whether Council is empowered to approve application No. MOD0064/15 ("the Application").
3. We are instructed:
 - a. Development application DA0501/12 sought development consent for demolition of existing improvements and construction of a residential flat building containing 34 units, basement car park and landscaping (**the DA**) at 28-32 Dumaresq Street, Gordon (**the Land**);
 - b. The DA was approved by the Sydney West Joint Regional Planning Panel on **30 May 2014**, subject to conditions including deferred commencement conditions A and B;
 - c. The DA included a notation on page 1 that *'[T]he following matters shall be addressed to the satisfaction of Council within 12 months of the date of consent, prior to the issue of an operational consent'*;
 - d. On **19 May 2015** Gelder Architects lodged the Application. The Application comprised:
 - (i) a standard form issued by Council and styled as 'Application to modify a development consent – Section 96 Environmental Planning and Assessment Act'; and
 - (ii) a letter from Mr Greg Boston Boston Blyth Fleming dated **15 May 2015 (the BBF Letter)**;

- e. Council sent a letter to Gelder Architects dated **6 July 2015** indicating that it had received legal advice concluding that the DA has lapsed and that s96 of the *Environmental Planning and Assessment Act 1979* (**the Act**) cannot operate to extend the period in which deferred commencement conditions must be satisfied.

Form of application

4. Whilst the Application is inelegantly styled as an application pursuant to s96 of the Act, it is clear on reading the BBF Letter that, although imprecise, the Application is better described as being both an application to modify the DA pursuant to s96 of the Act, and an application to extend the lapsing period pursuant to s95A of the Act.
5. The terms of the BBF Letter, as they relate to the request to extend the lapsing date pursuant to s95A comply with the procedural requirements of such an application (cl 114 of the *Environmental Planning and Assessment Regulation 2000* (**the Regulation**) and s95A(2) of the Act). Specifically, the Application is in writing (cl 114(a)); it identifies the development consent to which it relates (cl114(b)) and shows 'good cause' (s95A(2)) as to why the Council should extend the time (cl114(c)):

"The relocation of the Deferred Commencement conditions into the body of the consent does not defeat the objective or purpose of the conditions relating to the creation and design of the future public road along the western frontage of the site as a precursor to any development works on the site with the consent lapsing with the prescribed 5 year period should these conditions not be complied with to the satisfaction of Council". (BBF Letter page 8 bullet point 2)

6. It is clear from the above extracted paragraph from the BBF Letter that what was proposed by the Application was an application to extend the lapsing date of the consent to 5 years. The good cause is reflected in the argument that the objective and purpose of satisfying the deferred commencement conditions within the 1 year lapsing date is not defeated by the extension of the lapsing period or the movement of the condition from a deferred commencement condition to an operational condition. Although an extension of only 1 year is permissible under s95A that does not invalidate the application.
7. In circumstances where the Application otherwise meets the procedural requirements of s95A of the Act, the Council may properly treat it as such an application. Treated on

that basis it is the terms of the final decision that will determine the lawfulness of any final decision (see: *Pselletes v Randwick City Council* (2009) 168 LGERA 59 at [50] and *Reid's Farms Pty Ltd v Murray Shire Council* [2010] NSWLEC 127 at [48]-[50]). Having regard to *Pselletes* and *Reid's Farms* it is clear that an inexactly worded application will not infect a properly made decision. There is nothing in the Act or Regulations that prevents the lodgement of a combined application for extension and modification of a consent.

8. The Council has the benefit of a valid, although imprecise, application to extend time which was lodged prior to the date on which the consent would lapse being **30 May 2015**. The terms of the BBF Letter make clear the intent of the application (being partly an application under s95A of the Act) and it is open to Council to read it in such a way.

Power to extend the lapsing period of the DA

9. Section 95(1) of the Act provides that a development consent lapses 5 years after the date from which it operates. Despite that provision, section 95(6) operates to provide that a deferred commencement consent issued under s80(3) of the Act lapses if the applicant fails to satisfy the deferred commencement conditions within 5 years from the grant of consent or within a shorter period, if specified.
10. The DA required that deferred commencement conditions A and B were to be satisfied within 12 months of the grant of consent (see: Schedule A to the DA).
11. Section 95A(1) of the Act provides '*If, in granting a development consent, the consent authority reduces the period after which the consent lapses to less than 5 years, the applicant or any other person entitled to act on the consent may apply to the consent authority, before the period expires, for an extension of 1 year*' (our emphasis).
12. The imposition of a time to comply with the deferred commencement conditions of 12 months had the effect of reducing the period after which the consent lapses from 5 years to 12 months with the result that the DA was due to lapse on **30 May 2015**. The application to extend the lapsing period was lodged on **19 May 2015** which was prior to the expiration of the DA.
13. We note that Council, in its letter to Gelder Architects of **6 July 2015** indicated that 'insufficient time was provided to the consent authority in which to consider the merits of modifying the consent in the manner sought'.

14. The terms of s95A, read as a whole, authorise a council to determine an application to extend a lapsing period after the consent would have otherwise have expired so long as the application is made prior to that date.
15. Section 95A(1) requires that the application be made to the consent authority prior to the period expiring. Section 95A(4) sets out the time from which the extension runs, which is expressed as **the later of**:
 - a. *'The date on which the consent would have lapsed but for the extension,*
 - b. *The date on which the consent authority granted the extension, or if the Court has allowed the extension in determining an appeal, the date on which the Court determined the appeal.'*
16. Implicit in the terms of s95(4)(b) is that the consent authority or the Court may determine the extension application **after** the consent would have otherwise lapsed. Accordingly, the Council has a clear power to determine the application, notwithstanding that the DA would have otherwise lapsed on **30 May 2015**.
17. For the foregoing reasons, the Council has the power to approve the application to extend lapsing period of the DA.
18. We so advise.

5 August 2015
Chambers



MICHAEL STAUNTON



JACINTA REID

Liability limited by a scheme approved under Professional Standards Legislation.

Re: Development Consent DA0501/12
Proposed Residential Flat Building
28-32 Dumaresq Street, Gordon

MEMORANDUM OF ADVICE

Mr Tony Sattler
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Standards Legislation.*

Re: Development Consent DA0501/12
Proposed Residential Flat Building - 28-32 Dumaresq Street, Gordon

MEMORANDUM OF ADVICE

1. We refer to our advice of **5 August 2015**.
2. We have since the benefit of considering Council's letter to Gelder Architects dated **24 August 2015** which advises that Council disagrees with our advice on the basis that it '*fails to consider the leading case considering the statutory regime for the lapsing of development consent in Kinder Investments Pty Ltd v Sydney City Council [2005] NSWLEC*'.
3. We are requested to address Council's concerns, having regard to the decision in *Kinder Investments*.
4. The facts in *Kinder Investments* are distinctly different to the present matter. In *Kinder Investments*, the Court considered whether the date of expiry of the lapsing period of development consent which had already been extended pursuant to the statutory power under s95A(2) of the *Environmental Planning and Assessment Act 1979* ('the Act') could be further extended by modifying the consent pursuant to s96 of the Act.
5. In *Kinder Investments* the Court found that the lapsing period of a development consent may only be extended by s95A of the Act and that no modification of a development consent under s96 can alter the means or timings of lapsing (at [38]-[39]).
6. In the present matter DA 0501/12 has not previously been extended and therefore the power under s95A is available. Accordingly, the decision in *Kinder Investments* is not relevant to this matter.
7. In our advice of **5 August 2015**, we noted that the application to extend the lapsing period was expressed on the relevant form as an application to modify DA 0501/12 pursuant to s96 of the Act. However, when examined carefully the application was

best characterised as both an application pursuant to s95A of the Act and an application pursuant to s96 of the Act (as it related to modifications of conditions).

8. We draw your attention to paragraphs 4-8 of our earlier advice which confirms that Council may properly treat the application to extend the lapsing period as being pursuant to s95A of the Act.
9. We so advise.

1 September 2015
Chambers



MICHAEL STAUNTON



JACINTA REID

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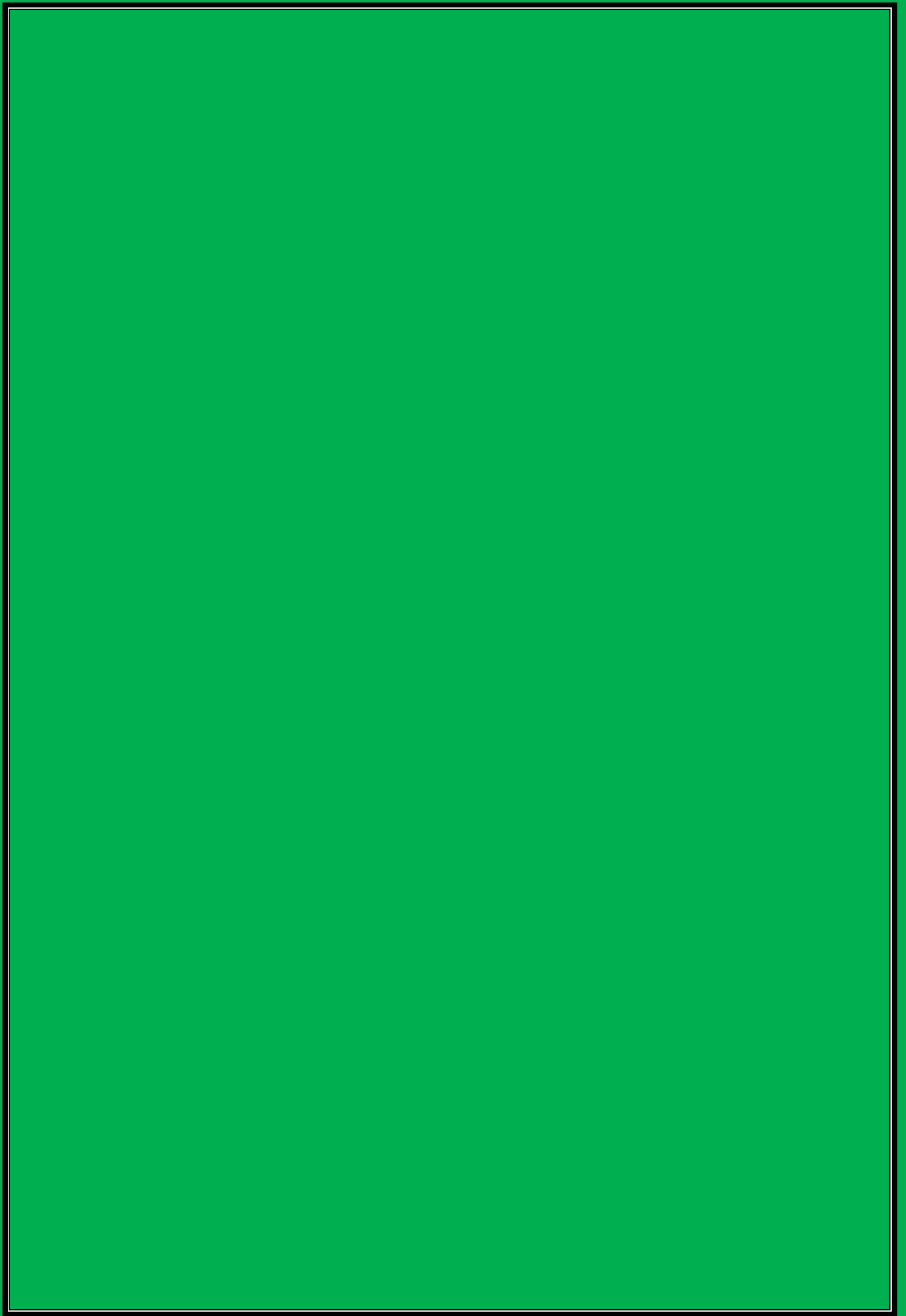
Attachment E

Architect Plans

2015SYW164 (MOD0064/15)

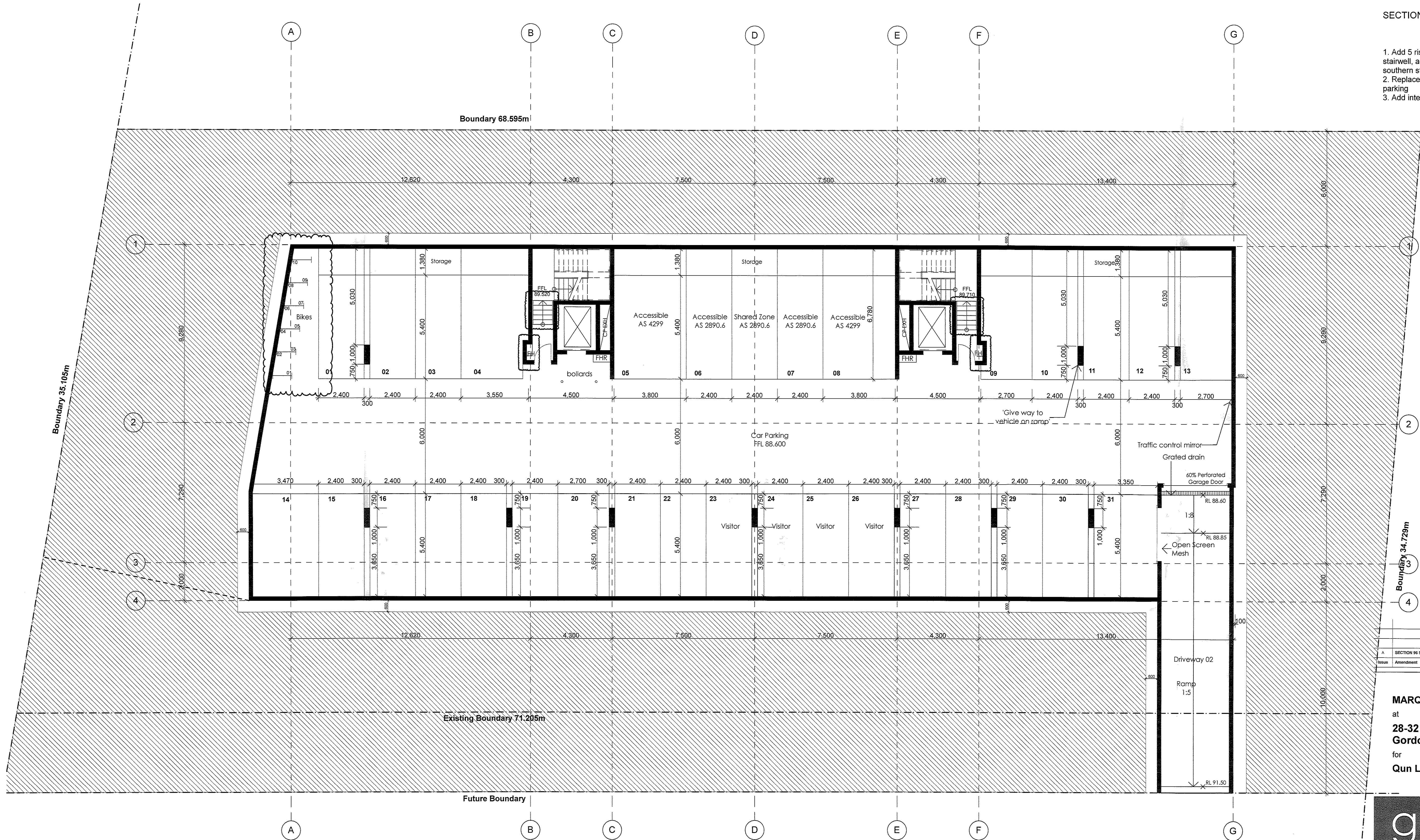
Residential Flat Development

S96(2) Modification



SECTION 96 AMENDMENT

1. Add 5 risers for the stairs in the northern stairwell, add 6 risers for the stairs in the southern stairwell
2. Replace the motorbike parking with bicycle parking
3. Add internal hydrant in each stairwell



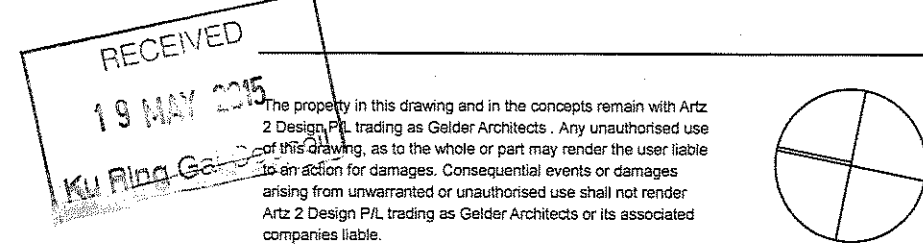
SECTION 96 SUBMISSION TO COUNCIL		19/05/2015
Issue	Amendment	Date
A		

MARQUIS
at
28-32 Dumaresq Street
Gordon
for
Qun Lun Developments P/L

gelder
ARCHITECTS

Level 2 19-23 Bridge Street PYMBLE NSW 2073 AUSTRALIA
t:(02)9440 2455 f:(02)9440 2456 e:info@gelder.com.au w:gelder.com.au

ABN 45 000 878 527

Basement Level

Project No:	1640	Date:	August 2014	Amendment:
Drawing No:	S96 01	Scale:	1:100	A
Date Printed:	19/05/2015			

012 Planets/Land 28-32 Dumaresq Street Gordon NSW 2073 Australia

SECTION 96 AMENDMENT

Unit 01

1. Remove duct behind ensuite and replace with a storage cupboard and laundry in same location
2. Change the laundry to storage

Unit 02

1. Remove the F/P and Robe, replan a laundry
2. Replace the laundry as the dining.
3. Redesign bedroom 1 and living room, add a study
4. Redesign the sliding door in the living room

Unit 03

1. Carpark and bike area redesigned to allow for unit 03 to remain.
2. Laundry redesigned to allow for store room.
3. Wall to kitchen/dining redesigned to allow for A/C plant.

General

1. Add 5 risers for the stairs in each stairwell
2. Remove the motorbike parking and make park 32 an accessible space.
3. Parking spaces 36 and 37 now visitor parking.
4. Bike spaces relocated to basement to allow for garbage truck loading area.
5. Add internal hydrant in each stairwell.
6. Replace the garbage truck loading area with landscaping.
7. Redesign E/S and C/S cabinet in each foyer.
8. Replace FHR/gas cabinet with CW/WG meter room.

A	SECTION 96 SUBMISSION TO COUNCIL	19/05/2015
Issue	Amendment	Date

MARQUIS

at

28-32 Dumaresq Street
Gordon

for

Qun Lun Developments P/L

gelder
ARCHITECTS

Level 2 19-23 Bridge Street PYMBLE NSW 2073 AUSTRALIA
t:(02)9440 2455 f:(02)9440 2466 e:info@gelder.com.au w:gelder.com.au

ABN 48 000 970 527

**Lower Ground Floor
Plan**

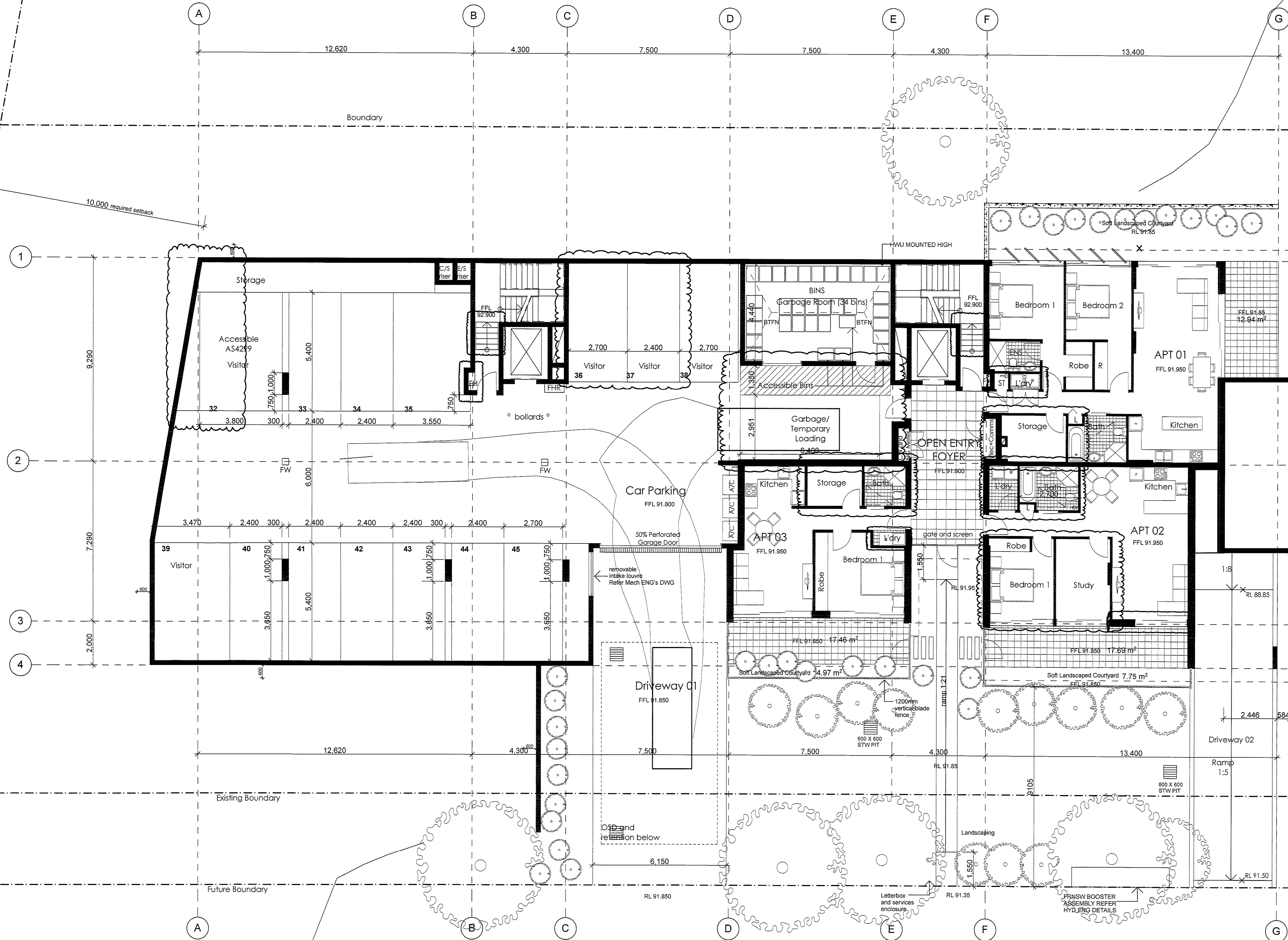
The property in this drawing and in the concepts remain with A/2 Design P/L trading as Gelder Architects. Any unauthorised use of this drawing, as to the whole or part may render the user liable to an action for damages. Consequential events or damages arising from unauthorised or unauthorised use shall not render A/2 Design P/L trading as Gelder Architects or its associated companies liable.

Project No:	1640	Date:	August 2014	Amendment:	
Drawing No:	S96 02	Scale:	1:100		
Date Plotted:	19/05/2015				

RECEIVED
19 MAY 2015
Ku Ring Gai Council

G:\3 Projects\1446 28-32 Dumaresq St 000\DWG\19 Plan\1446-ARCH-02-MFLN.PLT

DUMARESQ STREET



1. Add 5 risers for the stairs in the northern stairwell
2. Replan the switch room and comms
3. Replace the plant and HWU as box room
3. Move fire door of the southern stairwell to 6m from the entrance door of unit 07
4. Add internal hydrant in each stairwell
5. New fire hydrant and pump room
6. Redesign E/S and C/S cabinet in each foyer.
7. Replace FHR gas cabinet with CW/NG meter room.

MARQUIS
at
28-32 Dumaesq Street
Gordon
for
Qun Lun Developments P/L

Project No:	1640	Date:	August 2014	Amendment
Drawing No:	S96 03	Scale:	1:100	
		Date Plotted:	19/05/2015	

1:100
Plotted:
19/05/2015

SECTION 96 AMENDMENT

- Unit 09
1. Redesign laundry and add a storage cupboard
 2. Redesign living, kitchen, dining area to add storage room

- Unit 10
1. Redesign layout of kitchen, laundry and bath.
 2. Add new store room

- Unit 11
- Same as unit 10

- Unit 12
1. Redesign layout of laundry and bath
 2. Add new store room

- Unit 13
- Same as unit 12

- Unit 14
1. Redesign layout of ensuite, bath, laundry and kitchen
 2. Add new store room

- Unit 15
- Same as unit 09

- General
1. Move fire door of the southern stairwell to 6m from the entrance door of unit 14
 2. Add internal hydrant in the northern stairwell
 3. Redesign E/S and C/S cabinet in each foyer
 4. Replace FHR/gas cabinet with CWNG meter room.

SECTION 96 SUBMISSION TO COUNCIL		19/05/2015
Issue	Amendment	Date

MARQUIS
at
28-32 Dumaresq Street
Gordon
for
Qun Lun Developments P/L

gelder
ARCHITECTS

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ABN 48 099 878 927

First Floor Plan

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Project No:	1640	Date:	August 2014	Amendment:	
Drawing No:	S96 04	Scale:	1:100		A
Date Plotted:	19/05/2015				

RECEIVED
19 MAY 2015
Ku Ring Gai Council

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SECTION 96 AMENDMENT

Unit 16
Refer unit 09Unit 17
Refer unit 10Unit 18
Refer unit 10Unit 19
Refer unit 12Unit 20
Refer unit 12Unit 21
Refer unit 14Unit 22
Refer unit 09

General

1. Move fire door of the southern stairwell to 6m from the entrance door of unit 21
2. Add internal hydrant in the northern stairwell
3. Redesign E/S and C/S cabinet in each foyer.
4. Replace FHR/gas cabinet with CW/NG meter room.

Issue	Amendment	Date
A	SECTION 96 SUBMISSION TO COUNCIL	19/05/2015

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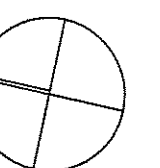
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Second Floor Plan

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Unit 23
Refer unit 09

Unit 24
Refer unit 10

Unit 25
Refer unit 10

Unit 26

1. Kitchen and laundry revised
2. Bath revised
3. New store room

Unit 27
Refer unit 14

Unit 28
Refer unit 09

1. Move down the fire door of the southern stairwell to 6m from the entrance door of unit 27
2. Redesign E/S and C/S cabinet in each foyer.
3. Replace FHR/gas cabinet with CW/NG meter room.

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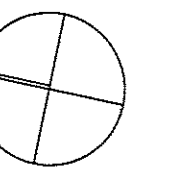
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Third Floor Plan

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doi:10.1371/journal.pone.0145811.g001

SECTION 96 AMENDMENT

Unit 29
Refer unit 09

Unit 30
1. Remove duct
2. Revise layout for bath, ensuite and laundry
3. Redesign the sliding door in bedroom 1

Unit 31
1. Remove duct
2. Revise layout for bath, ensuite and laundry

Unit 32
Refer unit 09

General
1. Extend the party wall between unit 30 and unit 31 to the edge of balcony
2. Remove louvers on the communal roof top, add a hotwater plant area in same position
3. Redesign E/S and C/S cabinet in each foyer.
4. Replace FHR/gas cabinet with CW/NG meter room.

DUMARESQ STREET



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Fourth Floor Plan

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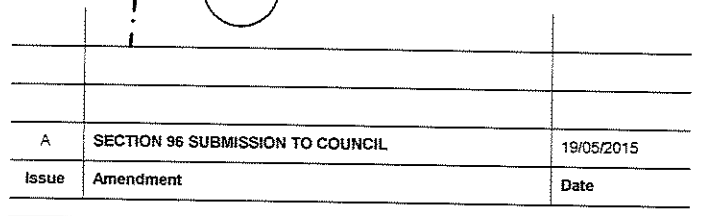
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Unit 33

1. Revise entry, ensuite and bath
2. New study added
3. Laundry revised

1. Revise location of bed 1 and bed 2
2. Revise bath and ensuite layouts
3. Laundry revised

1. Redesign E/S and C/S cabinet in each foyer.
2. Replace FHR/gas cabinet with CW/NG meter room.

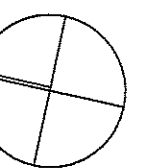


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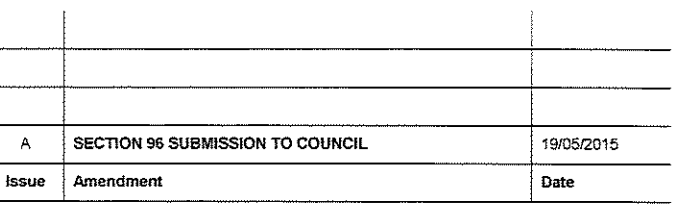
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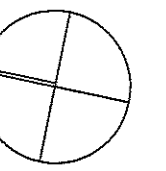
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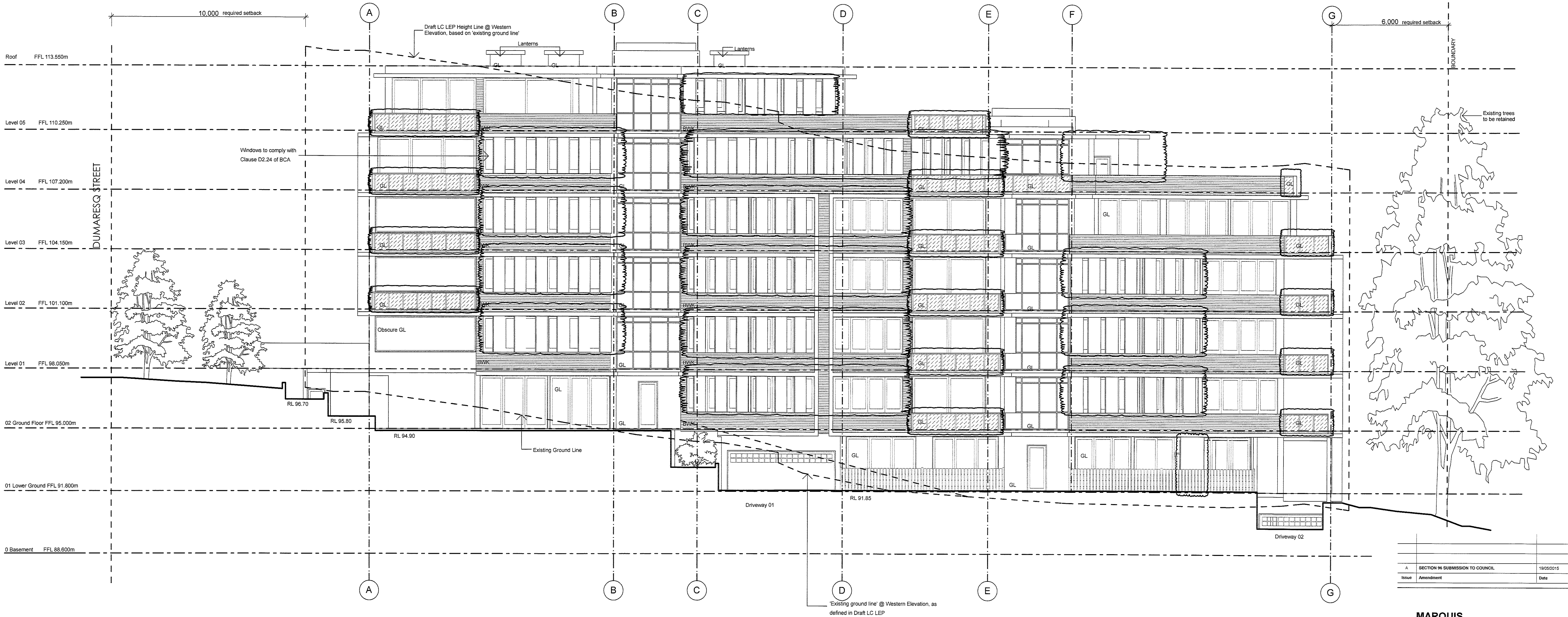


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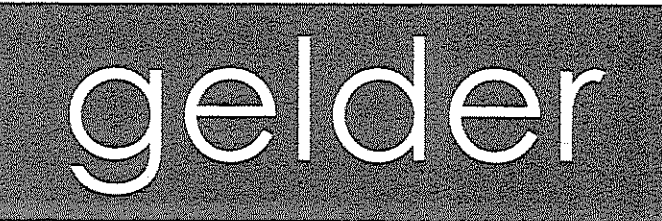
SECTION 96 AMENDMENT

1. Replace part of the brick facade with glass balustrade on the balconies (Ground Floor to Level 05)
2. Replace all timber louvres with aluminium
3. Add a hotwater plant room on the communal roof top of level 4



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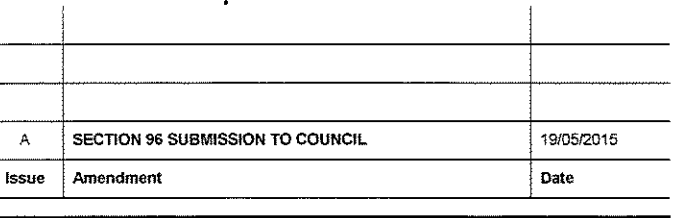
West Elevation

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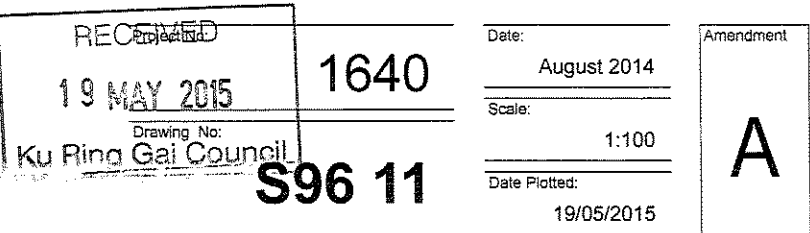
1. Replace part of the brick balcony facade with glass balustrade (Ground Floor to Level 4/5)
2. Replace open mesh in each stairwell with glass curtain wall and brick facade.
3. Replace all timber louvres with aluminium



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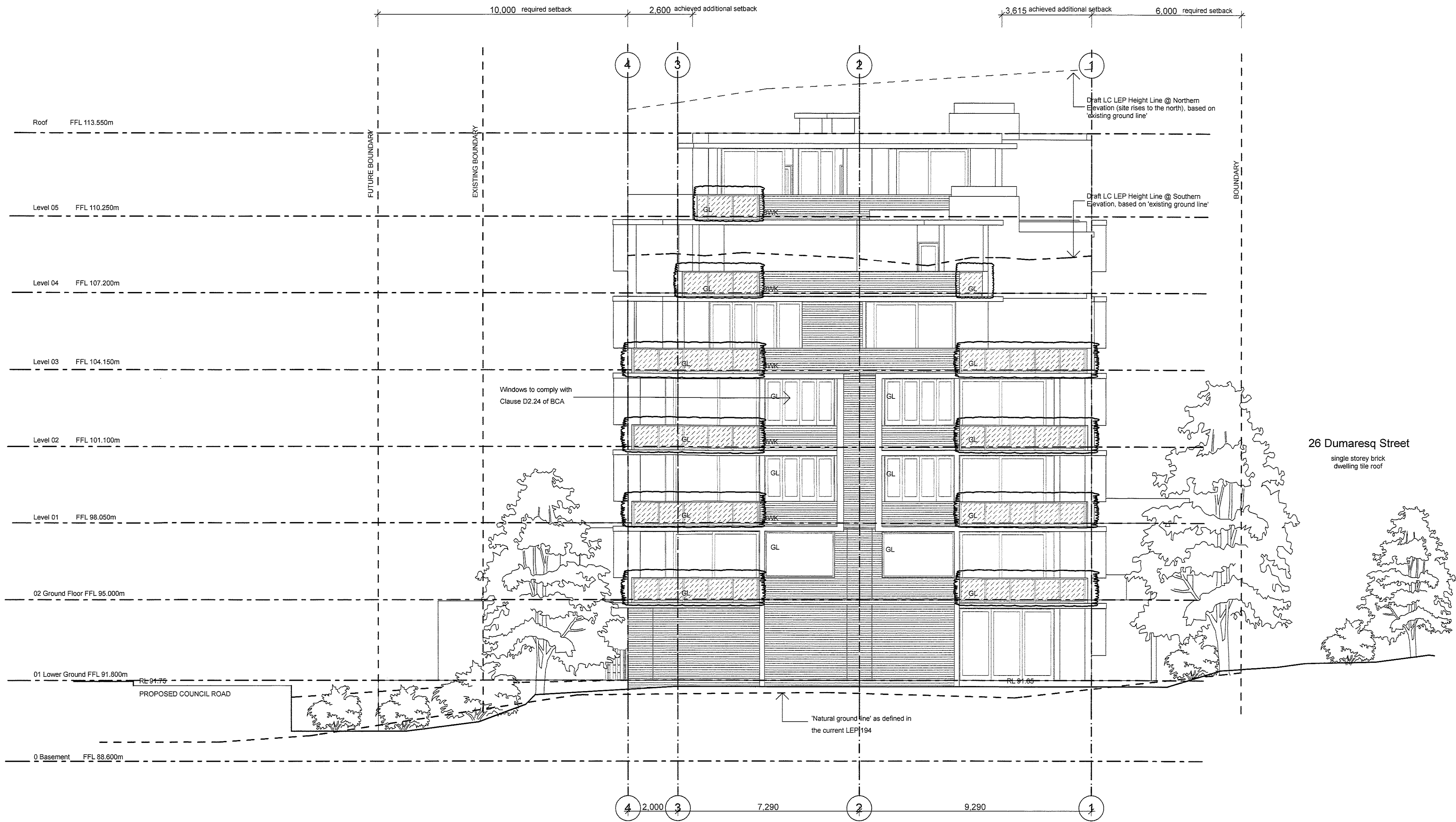
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1. Replace part of the brick facade with glass balustrade on the balconies (Ground Floor to Level 05)



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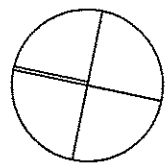


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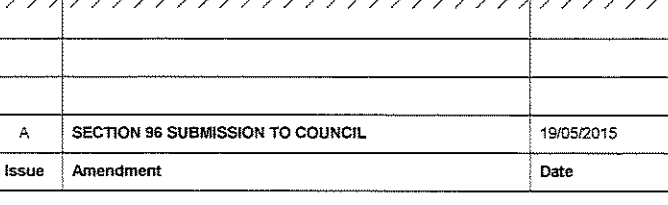
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South Elevation

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