



## Report to the Sydney Eastern City Planning Panel

### COUNCIL ASSESSMENT REPORT

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| <b>Panel Reference</b>  | <b>PPSSEC-36</b>   |
| <b>DA Number</b>  | DA-125/2012/C  |
| <b>LGA</b>  | Waverley Council   |
| <b>Proposed Development</b>   | Section 4.55(2) modification to roof design, ground floor entry, façade stairwell, and increase in height, extension of basement parking and penthouse reconfiguration.  |
| <b>Street Address</b>   | 20 Illawong Avenue, Tamarama   |
| <b>Applicant/Owner</b>  | Proprietors of Strata Plan 1731  |
| <b>Date of DA lodgement</b>   | 11 December 2019   |
| <b>Number of Submissions</b>  | 5 submissions  |
| <b>Recommendation</b>   | Refusal  |
| <b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b> | <p>The original application was referred in 2012 as it had a capital investment value of more than \$20 million. The Capital Investment value of the original proposal is \$25,627,212. Changes to the Act have increased the capital investment value of applications to be referred to the Regional Planning Panel to \$30 million.</p> <p>Under Division 12A of the Environmental Planning and Assessment Regulations, an application under section 4.55(2) of the Act for regionally significant development must be determined by the Regional Planning Panel.</p>      |
| <b>List of all relevant s4.15(1)(a) matters</b>   | <ul style="list-style-type: none"> <li>• State Environmental Planning Policy 55 - Remediation of Land</li> <li>• State Environmental Planning Policy 65 - Design Quality of Residential Flat Development</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• Waverley Local Environmental Plan 2012</li> <li>• Waverley Development Control Plan 2012</li> </ul> |
| <b>List all documents submitted with this report for the Panel's consideration</b>                  | <ul style="list-style-type: none"> <li>• Architectural Plans</li> <li>• Statement of Environmental Effects</li> <li>• Geotechnical Report</li> <li>• Structural Engineer letter</li> <li>• Copy of submissions</li> </ul>  |
| <b>Clause 4.6 requests</b>  | N/A  |
| <b>Summary of key submissions</b>   | <ul style="list-style-type: none"> <li>• Height</li> <li>• FSR</li> <li>• Overshadowing</li> </ul>   |
| <b>Report prepared by</b>   | <b>Kylie Lucas, Senior Development Assessment Planner, Waverley Council</b>  |
| <b>Report date</b>  | <b>7 May 2020</b>  |

#### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

**Yes**

**Legislative clauses requiring consent authority satisfaction**

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?

**Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

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**Clause 4.6 Exceptions to development standards**

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**Not Applicable**

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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

**Not Applicable**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

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**Conditions**

Have draft conditions been provided to the applicant for comment?

**No (as  
recommendation  
is refusal)**

## 1. EXECUTIVE SUMMARY

The application seeks consent for modifications to the approved redevelopment of 20 Illawong Avenue, Tamarama including enlargement of the penthouse level to increase height and floor space, provision of an additional ten car spaces within the basement car parking by way of car stackers, new pedestrian lobby and separate ramped entry from Illawong Avenue and other minor changes. This is the third modification application for the proposal.

The site is zoned R3 Medium Density Residential and residential flat buildings are a permitted use in the zone.

Each subsequent modification to this application has sought either minor increases in height or additional parking. The current modification seeks increases in height, floor space ratio (FSR) and parking.

The existing building already exceeds the height development standard of 9.5m by 14.9m or 156%. The current proposal seeks to increase the variation to 19.15m or 202%. The proposed modifications will result in an increase in gross floor area (GFA) of 209.5m<sup>2</sup> resulting in an FSR of 1.66:1 (GFA of 6614.5m<sup>2</sup>) increasing the variation to the FSR development standard to 4061.5m<sup>2</sup> or 170%.

The proposal seeks consent for an additional 10 resident parking spaces to be provided through the provision of car stackers to 12 spaces with two spaces removed elsewhere in the basement. This will result in a total of 114 spaces equating to 31 spaces more than the DCP allows.

Each new modification seeks to incrementally increase non-compliances with either the LEP development standards or DCP controls. There is no justifiable reason that the development standards of LEP 2012 and the parking controls of the DCP 2012 should be ignored on this site. Each further variation results in a cumulative impact upon surrounding properties, the public domain and further erodes the applicable controls and standards.

The penthouse apartments are already excessively large with more than double the required floor space and provide sufficient height to satisfy the Apartment Design Guide of SEPP 65. It is not necessary to further increase this level and unreasonable to impose further impacts upon the surrounding locality.

There are a number of minor amendments that could be supported, if applied for separately, as outlined within this report. Notwithstanding, the majority of the application, and the major modifications sought, are not supported by Council and as such, the entire application is recommended for refusal.

Submissions from five properties were received to the application when notified during the assessment process. The matters raised are discussed in this report and can be summarised as relating to parking, traffic, excavation and nuisances during construction. Some of these matters are considered to have sufficient merit to warrant refusal of the application.

The proposal has been considered against Section 4.15 of the Environmental Planning and Assessment Act 1979 and based on the assessment below is recommended for refusal.

## 2. PREAMBLE

### 2.1 Site and Surrounding Locality

The site, No. 20 Illawong Avenue, Tamarama (known as Glenview Court) is occupied by a residential flat building of 8 storeys including 80 units comprising a mix of 1, 2 and 3 bedrooms. Each apartment has dual aspects, to the east (towards Tamarama beach) and west (towards Bondi Junction/Queens Park).

The building is located close to the eastern boundary of the site, which borders Tamarama Park (also referred to as Tamarama Gully). The building has uninterrupted views on the eastern elevation directly to Tamarama beach and surrounds.

The parcel of land is an irregular shape with an area of 4353m<sup>2</sup> and shares a boundary with 17 properties. The site has a single vehicle entry point from Illawong Avenue and has an open bitumen car park which accommodates 58 car parking spaces. A laundry building with garbage storage facilities and a meeting room lies in the north western corner of the site.



**Figure 1:** Aerial view of the site (Source: Exponare mapping).





**Figure 2:** Subject site frontage (before works commenced on site)



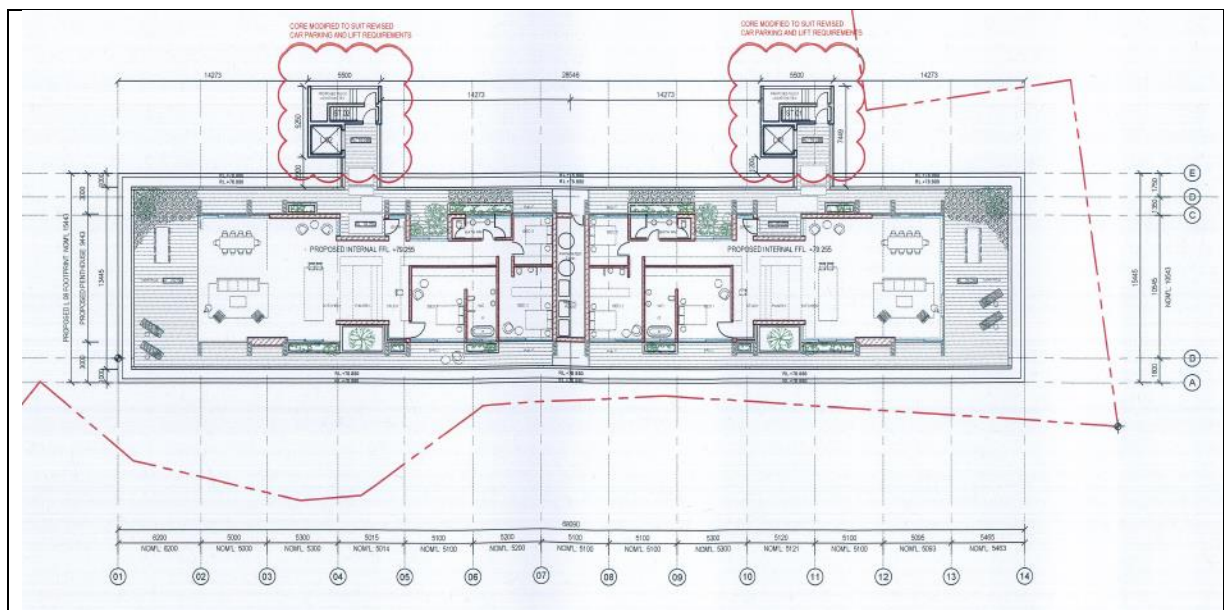
**Figure 3:** View of the existing car parking area (before works commenced on site)

## 2.2 Details of Approved Development

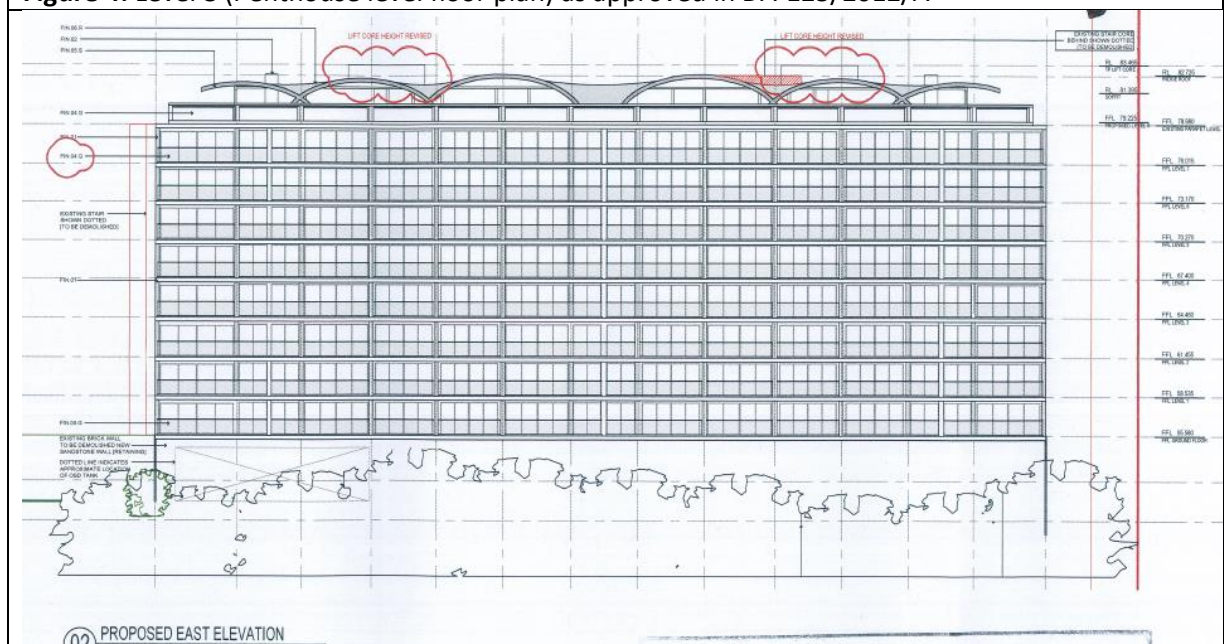
**DA-125/2012** for alterations and additions to a multi-storey residential flat building including construction of an additional level, underground car parking and land subdivision was recommended for refusal by Council and approved by the then Joint Regional Planning Panel on the 12 October 2012. This approval provided 71 resident car spaces and 8 visitor spaces with two levels of basement parking.

**DA-125/2012/A** for modifications under Section 96(1A) including to basement levels and parking configuration, modifications to the existing building including modified blade walls and increase in height of lift overrun was approved by the Waverley Development Assessment Panel (WDAP) on 28 June 2017. This approval increased the parking to 88 resident spaces and 10 visitor spaces.

Extracts of approved plans are shown below (being the most recent application/consent that made changes to the penthouse level):



**Figure 4: Level 8 (Penthouse level floor plan) as approved in DA-125/2012/A**



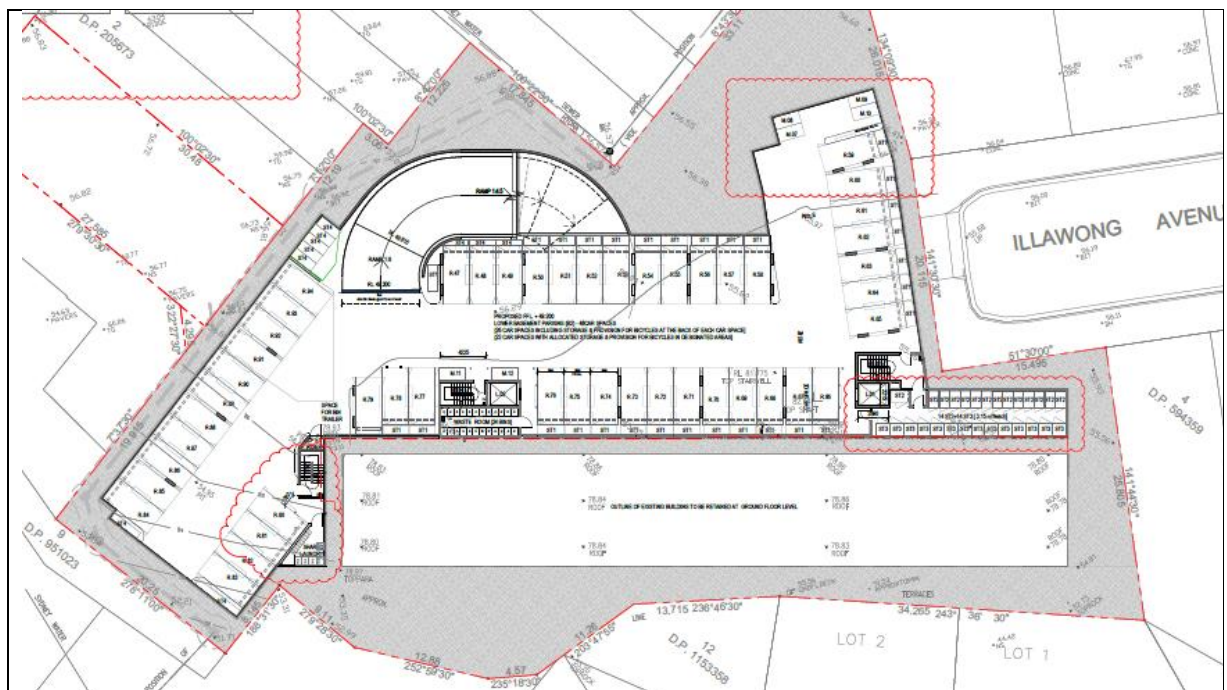
**Figure 5: East elevation as approved in DA-125/2012/A**



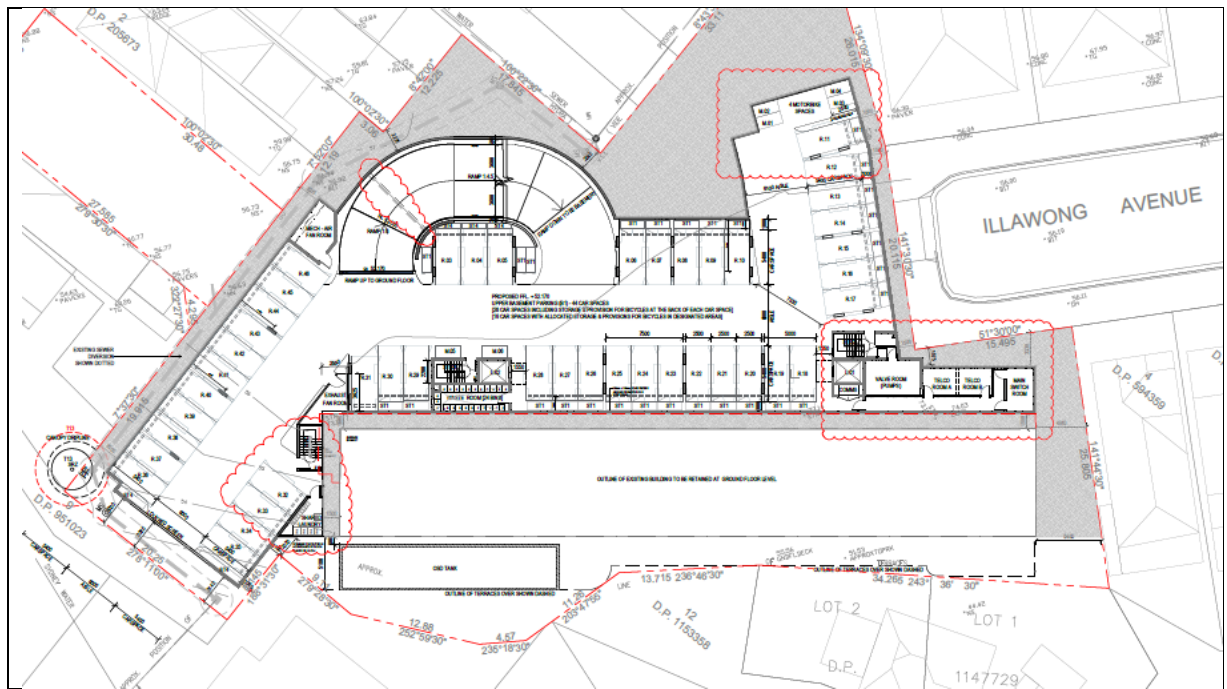
**DA-125/2012/B** for modifications under Section 4.55(2) to basement parking including the provision of six additional car spaces and reconfiguration of the approved basement levels was approved by the Sydney Eastern City Planning Panel (SECPP) on 17 October 2019.

Initially, this modification application proposed an additional 3<sup>rd</sup> level of basement parking with 32 additional parking spaces substantially exceeding the controls for parking of the DCP. The original modification proposal was recommended to the SECPP for refusal at the meeting of 1 August 2019 however at the request of the applicant to provide amended plans, was subsequently deferred at this meeting. The amended modifications removed the additional basement parking level (3<sup>rd</sup> level) and substantially reduced the amount of additional parking sought.

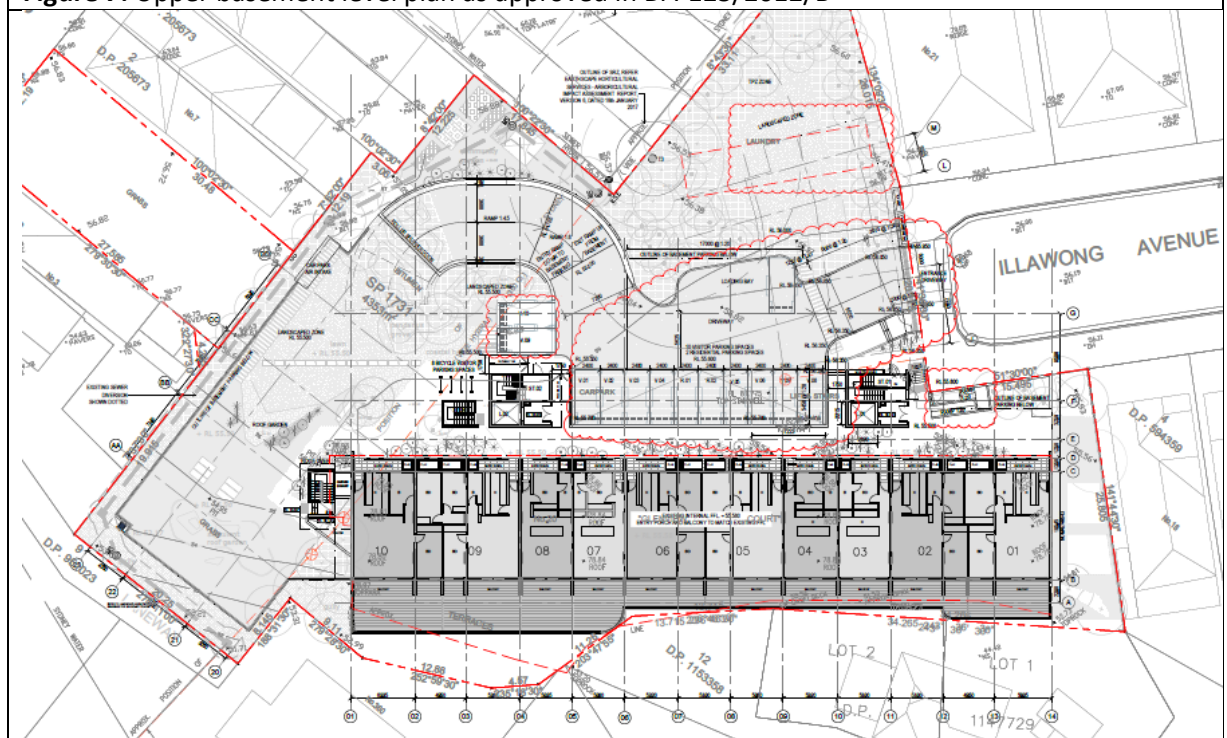
Extracts of approved plans are shown below (being the most recent application/consent that made changes to the carparking and basement levels):



**Figure 6: Lower basement level plan as approved in DA-125/2012/B**



**Figure 7:** Upper basement level plan as approved in DA-125/2012/B



**Figure 8:** Ground floor level (street level) as approved in DA-125/2012/B

The following conditions of consent relate to the subject modification as detailed in Section 2.1 of this report:

## 2. GENERAL MODIFICATIONS

*The proposal shall be amended as follows:*

- (a) *The side blade walls to the east-facing balconies on the northern end of the building are to be reinstated as per the original scheme to retain the neighbour's privacy,*



*The amendments shall be shown on the plans submitted to the Principal Certifying Authority with the required Construction Certificate.*

**62. FINAL OCCUPATION CERTIFICATE**

*The Principal Certifying Authority prior to occupation or use of the development must issue a final Occupation Certificate. In issuing an Occupation Certificate, the Principal Certifying Authority must be satisfied that the requirements of Section 109H of the Environmental Planning & Assessment Act, 1979 have been satisfied.*

**64. FIRE SAFETY UPGRADE WORKS**

*Prior to the issue of an Occupation Certificate by the accredited certifier, all fire safety upgrading works are to be completed and a Final Fire Safety Certificate is to be submitted to Council, certifying that each required essential fire safety measure;*

*(a) has been assessed by a properly qualified person; and*

*(b) has been found, when it was assessed, to be capable of performing to at least the standard required by the current Fire Safety Schedule for the building for which the Certificate is issued.*

**2.3 Proposal**

The application has been lodged as a section 4.55 (2) application and provides for the following modifications to the approved development:

- Modification of the roof line of the penthouse apartments to provide more of the roof area as flat however still with a curved appearance. The approved roof is curved with the appearance of having individual domes on the roof. The proposal will modify this to a curved roof line on the eastern elevation only with the remaining roof flat for improved internal amenity and the provision of solar panels (not part of this application). This will result in an increase in height of 695mm to the main roof from approved RL 82.725 to proposed RL 83.42.
- Extensions and alteration to the layout of the approved penthouses including the relocation of roof services to provide greater internal area.
- Increase in height of the lift and plant by 615mm from approved RL 83.465 to proposed RL 84.08 with a decorative screen adjacent to conceal telecommunications equipment.
- New ground floor entry lobby fronting Illawong Avenue providing letterboxes, parcel delivery boxes and access ramp.
- Provision of vertical car stackers to 12 parking spaces.
- Removal of two car spaces at the lower basement level.
- Extension of side blade walls to satisfy condition 2 (refer to above section).
- Minor reconfiguration of the south-west stairwell and provision of a single storey roof above.
- Alterations to the distribution of façade finishes.
- Minor alterations to 'Lift Lobby 02' and basement car park, including the provision of a toilet for maintenance staff.
- Modification of conditions 62 and 64 to enable staged occupation of the development, floor by floor.

The proposal has been modified since it was first submitted to reduce the height of the telecommunications shroud to match the height of the lift shaft, make changes to the roof, parking and lift lobbies.

### 3. ASSESSMENT

The following matters are to be considered in the assessment of this modification application under sections 4.15 and 4.55 of the *Environmental Planning and Assessment Act 1979* (the Act).

#### 3.1 Section 4.55 Considerations

**Section 4.55 (2) applications** - the modifications, if approved, are substantially the same development as the original consent. Council has consulted any relevant Minister or Authority and notified the application and considered submissions as discussed further in the report.

#### 3.2 Planning Instruments and Development Control Plans

The following is an assessment against relevant legislation, environmental planning instruments, including State environmental planning policies (SEPPs), and development control plans.

##### 3.2.1 SEPP (Building Sustainability Index – BASIX) 2004

An amended BASIX Certificate has not been submitted with this application.

##### 3.2.2 SEPP 55 Remediation of Land

Site contamination was considered in the original application.

##### 3.2.3 SEPP 65 Design Quality of Residential Flat Development

The proposed modifications are predominantly contained below ground or are of a minor nature and do not require further consideration by the Design Excellence Panel with regard to SEPP 65.

An assessment against only the relevant provisions of the Apartment Design Guide (ADG) as they relate to the proposed modifications is provided below.

**Table 1: Apartment Design Guide**

| Design Criteria   | Compliance | Comment  |
|---|------------|--|
| <b>3B Orientation</b>   |            |  |
| <ul style="list-style-type: none"> <li>Buildings respond to streetscape</li> <li>Overshadowing</li> </ul> | Yes        | <p>Shadow diagrams were provided which indicate that the additional overshadowing from the increased height of the building will likely fall within existing shadows cast by other buildings. The additional overshadowing is considered minor and unlikely to result in unreasonable loss of solar access to surrounding properties.</p> <p>The building continues to respond to the streetscape.</p> |

| Design Criteria  | Compliance | Comment  |
|--|------------|--|
| <b>3C Public domain interface</b>  |            |  |
| <ul style="list-style-type: none"> <li>Transition between private and public domain is achieved without compromising safety and security.</li> </ul>   | Yes        | The modified proposal introduces a main entry/foyer to the site accessed from Illawong Avenue. This provides a clear, definable entry to the site for safety and security.   |
| <b>3G Pedestrian access and entry</b>  |            |  |
| <ul style="list-style-type: none"> <li>Building entries and pedestrian access connects to and addresses the public domain</li> <li>Access, entries and pathways are accessible and easy to identify</li> </ul> | Yes        | <p>The proposal includes a new pedestrian entry lobby addressing the boundary to Illawong Avenue. Further detail in regard to this lobby was provided to Council on 23 April 2020 indicating that this structure will be of partial open design on the western and southern boundaries.</p> <p>The proposed new entry lobby would provide a pedestrian access that connects to, and addresses, the public domain and would be easily identifiable from the street, being consistent with this part of the ADG.</p>   |
| <b>3J Bicycle and car parking</b>  |            |  |
|  |            | The parking and bicycle rates of DCP 2012 are applicable to this site and are discussed in detail in subsequent sections of this report.   |
| <b>4C Ceiling heights</b>  |            |  |
| <ul style="list-style-type: none"> <li>Habitable: 2.7m</li> <li>Non-habitable: 2.4m</li> <li>Attic spaces: 1.8m edge of room with a 30° min ceiling slope</li> </ul>   | Yes        | <p>The approved penthouse level has a domed roof profile with floor-to-ceiling heights of 3.47m at the highest point reducing to 2.41m at the lowest.</p> <p>The proposal seeks to increase the height of the building to provide a consistent floor-to-ceiling height of 2.8m to the false ceiling or 3.4m to the underside of the roof.</p> <p>Notwithstanding, the proposed increase in the ceiling height will increase the height of the building overall which is not considered to be satisfactory (refer to Section 3.2.4 for detailed discussion). Given that the apartments already provide ceiling heights which comply with the BCA and predominantly comply with the ADG, the additional height is not considered reasonable or necessary in the circumstances of this application.</p> |



| Design Criteria  | Compliance | Comment  |
|--|------------|--|
| <b>4D Apartment size and layout</b>  |            |  |
| <ul style="list-style-type: none"> <li>3-bedroom = 90m<sup>2</sup></li> <li>Each additional bathroom adds 5m<sup>2</sup></li> </ul>  | Yes        | <p>The modification includes increasing the size of each penthouse apartment. Each penthouse apartment has a proposed internal gross floor area of approximately 246m<sup>2</sup>. Given that the ADG would require a minimum of 105m<sup>2</sup> per apartment, the proposal is well in excess of the minimum requirements.</p> <p>Notwithstanding, the proposed increase in the size of the penthouses increases the FSR of the development which is not considered to be satisfactory (refer to Section 3.2.4 for detailed discussion). Given that the apartments significantly exceed the minimum requirements, the additional floor space is not considered reasonable or necessary in the circumstances of this application.</p> |
| <b>4M Facades</b>  |            |  |
| <ul style="list-style-type: none"> <li>Building facades provide visual interest along the street while respecting the character of the local area.</li> <li>Building functions are expressed by the façade.</li> </ul> | Yes        | The modifications to the façade are considered acceptable and will not harm the character of the building or local area.   |
| <b>4N Roof design</b>  |            |  |
|  | No         | <p>The alterations to the roof design continue to provide visual interest and articulation to the penthouse level.</p> <p>The applicant states that the modifications to the roof will enable the placement of solar panels flush with the roof (not included in this application), consistent with the objectives of the ADG that roof design incorporates sustainability features. Regardless, the increased height to accommodate this is not considered warranted (refer to Section 3.2.4 for detailed discussion).</p> <p>The increased height increases the bulk of this level and the building overall and is not considered necessary or warranted.</p>  |

### 3.2.4 Waverley Local Environmental Plan 2012 (Waverley LEP 2012)

The relevant matters to be considered under the Waverley LEP 2012 for the proposal are outlined below:

**Table 2: Waverley LEP 2012 Compliance Table**

| Provision  | Compliance | Comment   |
|--|------------|---|
| <b>Part 1 Preliminary</b>  |            |   |
| 1.2 Aims of plan   | Yes        | The proposal is not inconsistent with the aims of the LEP.  |
| <b>Part 2 Permitted or prohibited development</b>  |            |   |
| Land Use Table<br>R3 Medium Density Zone   | Yes        | The proposal is defined as a residential flat building, which is permitted with consent in the zone.  |
| <b>Part 4 Principal development standards</b>  |            |   |
| 4.3 Height of buildings <ul style="list-style-type: none"> <li>9.5m</li> </ul>   | No         | <p>The existing building does not comply with the maximum 9.5m building height, however an additional penthouse level was approved in 2012. This modification seeks to increase the height of the additional level, the lift core and provide additional shrouds around the lift core all further exceeding the approved height and the development standard.</p> <p>This matter is discussed in the issues section below.</p>  |
| 4.4 Floor space ratio and<br>4.4A Exceptions to floor space ratio <ul style="list-style-type: none"> <li>0.6:1</li> </ul><br>Site Area - 3980 m <sup>2</sup><br>Existing GFA: 5680m <sup>2</sup><br>Existing FSR: 1.42:1 | No         | <p>The FSR of the existing (original) building was 1.42:1 with the approved redevelopment increasing the FSR to 1.6:1 (GFA of 6350m<sup>2</sup>). Subsequent modification increased the FSR as follows:</p> <ul style="list-style-type: none"> <li>DA-125/2012: FSR 1.6:1 (GFA of 6350m<sup>2</sup>)</li> <li>DA-125/2012/A: No additional FSR</li> <li>DA-125/2012/B: Additional 55m<sup>2</sup> (comprised of 4 additional car spaces over the control) – FSR 1.61:1 (GFA of 6405m<sup>2</sup>)</li> </ul> <p>The proposed modifications will increase the FSR by:</p> <ul style="list-style-type: none"> <li>44.5m<sup>2</sup> at the penthouse level;</li> <li>165m<sup>2</sup> in 12 additional car spaces in the basement above the DCP control;</li> <li>Nil at the lobby as it is an open structure.</li> </ul> |

| Provision                                 | Compliance     | Comment   |
|---|----------------|---|
|   |                | The proposed modifications result in an increase in GFA of 209.5m <sup>2</sup> resulting in an FSR of 1.66:1 (GFA of 6614.5m <sup>2</sup> ).  |
| 4.6 Exceptions to development standards   | See discussion | Clause 4.6 does not apply to Section 4.55 applications. Notwithstanding, a detailed discussion of the variation to the development standard is presented below this table.  |
| <b>Part 5 Miscellaneous provisions</b>    |                |   |
| 5.10 Heritage conservation                | Yes            | <p>The site is not heritage listed or located within a conservation area. However, the site is located adjoining Tamarama Park which is a heritage conservation area (C62 – Tamarama Park Conservation Area) and categorised as an Aboriginal site with high sensitivity.</p> <p>The proposed modifications will not harm the character of the conservation area being only extensions and additions to the approved redevelopment of a non-contributory building.</p>        |
| <b>Part 6 Additional local provisions</b> |                |   |
| 6.1 Acid sulfate soils                    | Yes            | The site is contained on land designated as Class 5 on the Acid Sulfate Soils Map however the site is not within 500 metres of adjacent Class 1, 2, 3 or 4 land.  |
| 6.2 Earthworks                            | Yes            | <p>The proposal includes excavation for additional car parking in the form of car stackers below 12 approved spaces in the basement garage.</p> <p>A Geotechnical Report was provided which outlines the conditions on site however does not include recommendations in relation to the excavation. Appropriate conditions are already included on the consent in relation to the excavation which would continue to apply in the event of approval of this modification.</p> |



The following is a detailed discussion of the issues identified in the compliance table above in relation to the Waverley LEP 2012.

An assessment under clause 4.6 is not required for section 4.55 applications. The development must be considered against the 'substantially the same development' test for section 4.55 applications. The development standards continue to be applicable however a clause 4.6 objection to a development standard does not need to be provided. In this regard, the proposal is to be assessed against the objectives of the development standard.

The proposal is for alterations and additions to the approved redevelopment of the building. The proposal is considered to be 'substantially the same development' as that which was approved.

## **Height**

The existing building already exceeds the height development standard of 9.5m by 14.9m or 156%. The current proposal increases the variation to 19.15m or 202%. The following summarises the approval and subsequent amendments in terms of height:

- The height of the existing building - 79.98RL or 24.4m.
- DA-125/2012: Approved height of main building and lift core - 82.72RL or 27.2m.
- DA-125/2012/A: Increase in height of lift core by 745mm to RL 83.465 or 27.95m.

The current modification application seeks to again increase the height of the main building, by a further 695mm to RL 83.42 and increase the height of the lift core by a further 615mm to RL 84.08. Overall the existing building will be increased in height by 4.1m (to lift core) from the existing building on the site to a maximum of 28.65m. That part of the building containing the additional storey is 3.44m above the height of the existing building.

The objectives of the height development standard are as follows:

*(1) The objectives of this clause are as follows—*

- (a) to establish limits on the overall height of development to preserve the environmental amenity of neighbouring properties and public spaces and, if appropriate, the sharing of views,*
- (b) to increase development capacity within the Bondi Junction Centre to accommodate future retail and commercial floor space growth,*
- (c) to accommodate taller buildings on land in Zone B3 Commercial Core of the Bondi Junction Centre and provide an appropriate transition in building heights surrounding that land,*
- (d) to ensure that buildings are compatible with the height, bulk and scale of the desired future character of the locality and positively complement and contribute to the physical definition of the street network and public space.*

Objectives (b) and (c) are not relevant to the subject site, not being located within Bondi Junction Centre.

The additional height to both the main penthouse roof and the lift core will result in additional overshadowing of the public domain, and neighbouring properties. Although only anticipated to be minor due to the proposed modification, the cumulative effect from the upper floor addition and the incremental height increases, exacerbates this existing impact and does not 'preserve' the environmental amenity of neighbouring properties and public spaces. The proposed modification is not consistent with objective (a).

The existing and approved buildings are so out of scale with surrounding development and the desired future character as to be incapable of being consistent with objective (d). The excessive height, bulk and scale of the approved building, further exacerbated by each subsequent incremental increase in height and floor space, does not contribute positively to the character of the locality.

### **Floor Space Ratio**

The additional floor space associated with the modification is broken down into two parts as follows:

- 44.5m<sup>2</sup> at the penthouse level;
- 165m<sup>2</sup> in 12 additional car spaces in the basement above the DCP control.

The proposed modifications will result in an increase in gross floor area (GFA) of 209.5m<sup>2</sup> resulting in an FSR of 1.66:1 (GFA of 6614.5m<sup>2</sup>) increasing the variation to the FSR development standard to 4061.5m<sup>2</sup> or 170%.

The objectives of the FSR development standard are as follows:

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

- (a) to ensure sufficient floor space can be accommodated within the Bondi Junction Centre to meet foreseeable future needs,*
- (b) to provide an appropriate correlation between maximum building heights and density controls,*
- (c) to ensure that buildings are compatible with the bulk, scale, streetscape and desired future character of the locality,*
- (d) to establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and minimise the adverse impacts on the amenity of the locality.*

Objective (a) is not applicable to the subject site as it is not located within the Bondi Junction Centre.

The additional floor space contained at the penthouse level involves infilling recessed areas of the floor plate to provide a consistent alignment along the eastern and western elevations. Although the penthouse level is set back from the level below on all sides, the previously approved design with recessed areas and varied setbacks along these prominent facades provides articulation to the built form of the additional level. The reduction in the variation to the setbacks increases the bulk and scale of this level when viewed from surrounding properties and the public domain. The existing building itself already grossly exceeds the bulk and scale of surrounding properties. Incrementally increasing the floor space is considered to further exacerbate amenity impacts upon neighbouring properties, and the incompatibility of the building with the surrounding area and the desired future character. Whilst the applicant has described the additional overshadowing as minor having negligible impact, any additional over shadowing is considered unacceptable given that the building is already well over the maximum building height and density controls. However minor the additional overshadowing is argued to be, the additional impact exists and does not preserve the amenity of the locality. The proposal is therefore inconsistent with objectives (b), (c) and (d).

Objective (d) relates to limiting the scale of development to preserve the environmental amenity of neighbouring properties. The modified proposal is inconsistent with the parking rates stipulated within the DCP, providing an additional 12 car spaces to a development which already exceeds the applicable controls for car parking. The intent of the parking rates is to reduce reliance on motor vehicles by

utilising public transport in areas within proximity to public transport and services. The promotion of sustainable transport, in turn, reduces traffic and congestion within local streets resulting in improved environmental amenity to surrounding properties and the locality. The proposal provides an excessive amount of additional parking spaces, encouraging car ownership, less uptake of public transport and increased traffic and congestion, resulting in unacceptable environmental amenity impacts within the locality. The proposal is inconsistent with objective (d).

For the reasons provided above, the variation to the FSR is not supported as the proposed development is not in the public interest as it is inconsistent with the objectives of FSR development standards.

### **Relevant case history**

It is also worthy to note a previous modification application for the Swiss Grand Building, now known as Bondi Pacific located opposite Bondi Beach that sought a similar proposal to that currently sought at the subject site in this current modification application. DA-619/2007/J proposed to expand the penthouse level of the development and convert the previously approved vaulted roof to one which accommodated additional floor area to these upper level apartments. The existing building and indeed the approved redevelopment (based on an adaptive reuse of existing building) were over and above the development standards contained in the LEP, whereby the modification sought another incremental addition in an attempt for 'just a little bit more'. The application was refused by Council and appealed in the Land and Environment Court (File 10574 of 2014). The appeal was dismissed before Commissioner Brown on 6 November 2014,

The judgement makes reference to commentary provided to the Court by an expert Urban Designer (engaged by Council, Ms Gabrielle Morrish) who is reported to have commented:

*"unlike previous approvals, it joins together the distinctive vault forms on the roof. The purpose of the vaults in the original approval was to add visual interest to the top of the building (it is assumed) for any views gained down on the building from the surrounding area... the current application joins these vaults.. losing the distinctive forms and creating, in effect, a continuous floor plate... the extent of floor space already granted is more than generous and there is no need for anything further. The need for extra floor spaces and vaults to enhance the amenity of the units is not required. Under the previous approval there were already generous 3 bedroom apartments with exceptional views from the living areas and private open space... to continue expansion of this level of the building is putting private interests ahead of the intent of the controls..."*

The findings by Commissioner Brown contained in his judgement, of particular interest to this current application are extracted below:

*"In balancing the competing evidence, I agree with the conclusions of Ms Morrish for a number of reasons. First, it is important to understand the history of the development on the site, and particularly the sixth floor [penthouse level] of the development. There was no dispute that the proposed development, even in its original approval in 2008, exceeded the height and floor space controls. Given the proposed development sought the adaptive reuse of an existing building, the council, not unreasonably in my view allowed variations to these controls. There must however be a point where any further variations become unacceptable. I am satisfied that this point has been reached, based on the evidence of Ms Morrish..."*

*Second, and while the sixth floor units [penthouse level] would have increased amenity, it is difficult, if not possible, to argue that the units need the additional amenity given the panoramic and even iconic views over Bondi Beach that will still be available without the additional floor area.*



*Third, and even though the additional floor area will not be viewed from all locations around the site, the vault structures on the roof can be viewed from certain locations near the beach and from other apartments to the west of the site. The irregular but separate and distinct nature of the vaults allows them to be read as distinct elements from many, but not all locations however the current proposal will see some of the vaults linked and seen as roof elements of greater mass and bulk. This is inconsistent with the approach of the development of the sixth floor [penthouse level] where it was envisaged that there would not be a full or partial floor at this level.*

*Fourth, and even though the council approached the redevelopment of the site through the adaptive reuse of the building, it does not follow, in my view that simply because the non-complying height of a building may not be able to be seen from a number of locations that this, in itself, justifies a further breach of the height standard. The height standard must have some work to do in considering the appropriate height of a building on the site, particularly given the prominence of the Bondi Beach area”.*

This decision of Commissioner Brown was appealed and Justice Pepper who heard the matter also dismissed the appeal challenge on 24 April 2015 (File No 10990 of 2014).

Therefore, based on the findings of this case, which are comparable to the current proposal for a further expansion of an already generous penthouse level that is already well above the controls that apply to the site, it is clear there is limited planning justification to support such proposal. Accordingly, the application is recommended for refusal.

### **3.2.5 Waverley Development Control Plan 2012 - Amendment No 6 (Waverley DCP 2012)**

The relevant matters to be considered under the Waverley DCP 2012 for the proposal are outlined below:

**Table 3: Waverley DCP 2012 – Part B General Provisions Compliance Table**

| Development Control             | Compliance | Comment  |
|---------------------------------|------------|--|
| 3. Landscaping and Biodiversity | N/A        | The site is located in Habitat Corridor however the modifications retain the previously approved vegetation with no changes to this area proposed. |
| 8. Transport                    | No         | This is discussed in detail below the tables in this report.   |

| Development Control | Compliance | Comment  |
|---------------------|------------|--|
| 14. Excavation      | No         | <p>The proposed excavation does not add to the scale of the building however it will result in the loss/removal of sandstone beneath the previously approved basement levels. No sandstone outcropping will be removed as part of the modifications that were not already approved for removal previously.</p> <p>Objective (f) is to prevent development exceeding the maximum car parking controls with control (d) requiring excavation to be avoided and minimised where possible. The proposed additional parking is considered unnecessary given the two levels already approved and the non-compliance with the parking rate controls (discussed later). In this regard, the proposal results in unnecessary excavation and is not supported.</p> |

**Table 4: Waverley DCP 2012 – Part C4 High Density Residential Development Compliance Table**

This part applies to development that is subject to State Environmental Planning Policy (SEPP) 65 – Design Quality of Residential Apartment Development, including the residential flat buildings, shop top house or mixed-use developments that are 3 or more storeys and contain 4 or more dwellings.

| Development Control  | Compliance | Comment   |
|--|------------|---|
| <b>4.2 Height</b>  |            |   |
| <ul style="list-style-type: none"> <li>Refer to the LEP</li> </ul>   | No         | This matter is discussed above and does not meet the objectives of the DCP control.   |
| <b>4.3 – Excavation</b>  |            |   |
|  | Yes        | The modification is consistent with the objectives and controls of this part of the DCP.  |
| <b>4.4 Streetscape</b>   |            |   |
| <ul style="list-style-type: none"> <li>Front setback to provide deep soil landscaping</li> </ul>             | Yes        | The front setback of the new lobby is considered appropriate.   |
| <ul style="list-style-type: none"> <li>Buildings to be articulated to respond to the streetscape.</li> </ul> | No         | As outlined under Section 3.2.4 of this report, the modifications to the penthouse level through the loss of articulation and increased bulk and scale will not provide a positive contribution to the streetscape. |
| <b>4.5 Building design and streetscape</b>   |            |   |
| <ul style="list-style-type: none"> <li>Sympathetic external finishes</li> </ul>                              | Yes        | The proposed modifications to the external finishes are appropriate and consistent with the design of the building.   |

| Development Control  | Compliance | Comment  |
|--|------------|--|
|  | No         | Notwithstanding compliance with the above control, the proposal is inconsistent with the objectives of this part of the DCP in that the scale of the development is not in keeping with the street, further exacerbated by the increased height and size of the penthouse apartments.  |
| <b>4.7 Vehicular access and parking</b>  |            |  |
| <ul style="list-style-type: none"> <li>Car parking to be integrated into the design of the development</li> </ul>  | Yes        | The proposal is for additional parking spaces by way of car stackers within the approved basement car park.  |
|  | No         | Notwithstanding, the proposed modifications are not consistent with the objective (d) of this part of the DCP in that the additional parking, over the controls of the DCP, does not encourage increased use of public transport and bicycles.   |
| <b>4.8 Pedestrian access and entry</b>   |            |  |
| <ul style="list-style-type: none"> <li>Entry at street level and respond to pattern within the street</li> <li>Accessible entry</li> <li>Separate to vehicular entry</li> <li>Legible, safe, well-lit</li> </ul> | Yes        | <p>New steps and ramp are proposed adjacent to the south-eastern end of the Illawong Avenue frontage and a new entrance lobby. The new lobby is not accessible, providing stairs up however, a separate accessible entry is provided adjacent, also accessed from the road frontage.</p> <p>The new lobby is separate from the vehicular entry and provides a clear, safe and legible entry point to the building for visitors. The adjoining ramped entry is likely to be utilised as the main entry by residents as it provides access to the building by passing the letterboxes.</p> |

The following is a detailed discussion of the issues identified in the compliance tables above in relation to the Waverley DCP 2012.

### Parking

DA-125/2012 provided 82 units, 71 resident spaces and 8 visitor spaces. Waverley Development Control Plan 2010 was applicable at the time of the assessment and the parking required for the development was a minimum of 52 and a maximum of 78 resident spaces and 10 visitor spaces. The proposal complied with the applicable DCP controls for parking relevant at the time.

DA-125/2012/A increased the parking provision to 88 resident spaces and 10 visitor car spaces. The DCP in effect at the time of the assessment was Waverley Development Control Plan 2012 (Amendment 5) and under the provisions of this DCP, the parking requirement was 108 car spaces for residents and 16 for visitors. The assessment report for this application justifies the parking non-compliance as follows:



*Given that this S96 application does not seek to increase the density of the approved building, it is unreasonable to enforce full compliance with the current DCP which requires 108 car parking spaces.*

*It is rational however to allow an increase in car parking spaces for residents to 88 (providing at least 1 space for each unit), as it is more in keeping with the current controls for car parking in the current DCP 2012, rather the previous DCP which restricted parking to 69.*

DA-125/2012/B initially sought an additional 3<sup>rd</sup> level of basement parking with 32 additional parking spaces substantially exceeding the controls for parking within the Amendment 6 of the DCP. This was recommended to the SECPP for refusal at the meeting of 1 August 2019 however at the request of the applicant to provide amended plans, the application was subsequently deferred at this meeting of the Panel. The amended modifications removed the additional basement parking level (3<sup>rd</sup> level) and substantially reduced the amount of additional parking sought to six additional spaces. This modification application was approved by the SECPP increasing the parking provision on site to 94 resident spaces and 10 visitor spaces (104 spaces total).

The approved development provides 82 units comprised of 39 x 1-bedroom, 34 x 2-bedroom and 9 x 3-bedroom units. The applicable DCP, Amendment 6, allows a minimum of nil and a maximum of 67 residential spaces for the approved development. Additionally, 16 visitor spaces are required making a maximum total of 83 spaces. At present, the proposal exceeds the DCP maximum of 83 spaces by 21 spaces.

The proposal seeks consent for an additional 10 resident spaces to be provided through the provision of car stackers to 12 spaces with two spaces removed elsewhere in the basement. This will result in a total of 114 spaces comprised of 94 resident spaces and 10 visitor spaces. This equates to 31 spaces more than the applicable DCP allows.

DCP 2012 – Amendment 6 came into force on 1 November 2018 and has been consistently applied since. Amendment 6 is based upon the evidence found in the Waverley Transport Plan 2017 ‘Waverley’s People, Movement and Places’. The aim of Waverley’s People, Movement and Places is to:

- *Create a transit hierarchy for movement in the LGA that prioritises pedestrians and active transport, followed by public transport, service vehicles, shared mobility and private motor vehicles;*
- *Identify signature projects to invest in; and*
- *Identify short, medium, long term actions that Council can undertake.*

If Waverley is to reduce congestion along major transport routes, then car parking rates need to be reduced and public transport usage needs to be encouraged. The Statement of Environmental Effects (SEE) argues that this is ideological, which is correct, as ideally the residents would choose public transport or car share as an alternative over multiple vehicle ownership.

The SEE also argues that the RMS guidelines provide a minimum rate, however it actually provides a rate based on (outdated) research that showed that those car parking rates were appropriate. Accordingly, that is the rate Council have chosen to apply as a maximum in Amendment 6. The DCP does not require a rate that is lower than the standard NSW Government rate. Although, parking above that is considered to be unnecessary and will adversely impact upon traffic generation, and therefore is not in accordance with the DCP, the *Waverley’s People, Movement and Places*, or the *Draft Waverley Local Strategic Planning Statement* Planning Priority 1, Actions 6 and 9.

The arguments within the SEE relate to lack of clarity relating to the use of the RMS guide to inform the latest revision of the DCP. This is a matter for Strategic Planners when formulating revisions to the DCP and is not a matter for assessment of development applications. The controls exist within the DCP and are applicable to the current development application. The DA process is not the correct forum to ascertain if the controls should have been included in the DCP in the first place.

Given the above analysis, there is no justifiable reason that the parking controls of Amendment 6 should be ignored on this site. The parking rates are based on solid research and are considered appropriate. The approved parking on site already provides more spaces than the current amendment of the DCP would allow. There is no planning reason for this to be increased any further. In this regard, the proposed modification is not supported and is recommended for refusal.

### **Changes to conditions**

The proposal includes alterations to satisfy Condition 2 and as such have the condition deleted. Condition 2 requires the submission of modified plans to address the following:

*The side blade walls to the east-facing balconies on the northern end of the building are to be reinstated as per the original scheme to retain the neighbour's privacy,*

The plans indicate that these walls have been provided and in the event of approval, this condition could be deleted. Notwithstanding, due to the fundamental issues with the modification application, as detailed elsewhere in this report, the application recommended to be refused. Separate plans to satisfy this condition can be submitted separately.

The proposal seeks consent for changes to Conditions 62 and 64 to enable staged occupation of the development, on a floor-by-floor basis.

The subject modification seeks to delete Condition 62 (below) as the applicant is of the view that the condition is no longer valid due to recent changes to the Occupation Certificate provisions under Part 6 of the Environmental Planning and Assessment Act 1979. These changes commenced on 1 December 2019 and only apply to development consents issued after this date. This means that development consents and occupation certificates issued before this date remain subject to the former arrangements. Given the original development consent was issued prior to 1 December 2019, the subject condition still remains valid and therefore should not be deleted.

#### **62. FINAL OCCUPATION CERTIFICATE**

*The Principal Certifying Authority prior to occupation or use of the development must issue a final Occupation Certificate. In issuing an Occupation Certificate, the Principal Certifying Authority must be satisfied that the requirements of Section 109H of the Environmental Planning & Assessment Act, 1979 have been satisfied.*

The following changes, indicated in bold with strikethrough, are sought to condition 64:

#### **64. FIRE SAFETY UPGRADE WORKS**

*Prior to the issue of an Occupation Certificate ~~by the accredited certifier~~, for each level of the building, all **relevant** fire safety upgrading works are to be completed and a Final Fire Safety Certificate is to be submitted to Council, certifying that each required essential fire safety measure;*

*(a) has been assessed by a properly qualified person; and*

*(b) has been found, when it was assessed, to be capable of performing to at least the standard required by the current Fire Safety Schedule for the building for which the Certificate is issued.*

The condition proposed above is considered to be too specific by Council's Senior Building Surveyor and has recommended that, in the event of approval of the modification application, the condition be modified as follows to provide the PCA with greater flexibility when issuing an Occupation Certificate in accordance with the provisions of the Environmental Planning and Assessment Act 1979:

#### **64. FIRE SAFETY UPGRADE WORKS**

*Prior to the issue of an Occupation Certificate by the accredited certifier, all fire safety upgrading works **relevant to the area being occupied** are to be completed and a Fire Safety Certificate is to be submitted to Council, certifying that each required essential fire safety measure;*

*(a) has been assessed by a properly qualified person; and*

*(b) has been found, when it was assessed, to be capable of performing to at least the standard required by the current Fire Safety Schedule for the building for which the Certificate is issued.*

### **3.3 Other Impacts of the Development**

The proposed development is capable of complying with the BCA.

It is considered that the proposal will have a detrimental environmental effect upon the locality and is not supported.

### **3.4 Suitability of the Site for the Development**

The site not considered to be suitable for the proposed development.

### **3.5 Any Submissions**

The modification application was notified for 14 days in accordance with *Waverley Development Control Plan 2012, Part A – Advertised and Notified Development*.

Submissions from five properties were received. The issues raised in the submissions are summarised and discussed below.

**Table 5: Summary of property addresses that lodged a submission**

| Property                       |
|--------------------------------|
| 14 Illawong Avenue, Tamarama   |
| 3/21 Illawong Avenue, Tamarama |
| 6/21 Illawong Avenue, Tamarama |
| 1/362 Birrell Street, Tamarama |
| 2/360 Birrell Street, Tamarama |

**Issues:**

- ***Overshadowing***
- ***Excavation***
- ***Excessive parking and increased traffic.***
- ***Excessive height.***

**Response:** These issues have been discussed in detail previously in this report.

**Issue:** *Construction issues; safety during construction; impacts of construction; noise and disturbance etc.*

**Response:** All conditions in relation to construction remain as part of the modification (and original consent). This issue predominantly relates to the original approval.

### **3.6 Public Interest**

It is considered that the proposal will have a detrimental effect on the public interest and is not supported.

## **4. REFERRALS**

### **4.1 Traffic and Development**

Advice regarding the required number of parking spaces permitted by the DCP was provided by Council's Traffic Engineer (discussed in detail previously in this report). No objection was raised to the remaining modifications to the parking (ie, aisle widths, driveways etc). No additional conditions were recommended.

### **4.2 Building (Fire Safety)**

The comments of Council's Senior Building Surveyor in relation to amendments to conditions 62 and 64 have been provided previously in this report.

## **5. RECOMMENDATION TO SYDNEY EASTERN CITY PLANNING PANEL**

That the Section 4.55 Modification Application be **REFUSED** by the Sydney Eastern City Planning Panel for the reasons provided in Appendix A.

Should the Sydney Eastern City Planning Panel resolve to approve the application, then recommended conditions are provided in Appendix B.

**Report prepared by:**



Kylie Lucas  
**Senior Development Assessment Planner**

**Date: 23/04/2020**

**Application reviewed and agreed on behalf of  
the Development and Building Unit (MR, BMcN,  
EF) by:**



Angela Rossi  
**Manager, Development Assessment (Central)**

**Date: 7/5/2020**

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## **APPENDIX A – REASONS FOR REFUSAL**

Having regard to section 4.15(1) of the Environmental Planning and Assessment Act 1979, the development application is refused for the following reasons:

1. The proposal does not satisfy the objectives of the Environmental Planning and Assessment Act 1979, as stipulated in section 1.3 (g) as the proposal does not promote good design and amenity of the built environment.
2. The proposal does not satisfy section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, as the proposal does not satisfy the Waverley Local Environmental Plan (WLEP) 2012, in particular, the following provisions:
  - a. Clause 4.3(1)(a) and (d) and (2) as the proposal will further exceed the maximum building height which will result in unreasonable amenity impacts and be incompatible with the character of the locality.
  - b. Clause 4.4(1)(b) to (d) and (2) as the proposal will further exceed the maximum FSR permitted for the site and have unacceptable impacts.
  - c. Clause 4.6(4)(a)(i) and (ii) as the proposal would be inconsistent with the objectives of the FSR and height development standards.
3. The proposal does not satisfy section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as the proposed development is contrary to Waverley Development Control Plan 2012, in respect to the following provisions:
  - a. Part B8 - Transport
    - i. Objective (c) of Part B8 which seeks to encourage reduced rates of car parking where adequate modes of public or active transport are available. The site is located within an area that is well serviced by public transport and exceeds the maximum rate of parking spaces allowable thereby being inconsistent with this objective.
    - ii. Clause 8.2.2 *Car Parking Provision Rates*, specifically objective (a), (b) and (c) and control (h), as the application proposes to a further 10 additional parking spaces further exacerbating non-compliance with the maximum parking rate. The additional spaces are inconsistent with the objectives in that the number of spaces is not reflective of the proximity of the development to existing public transport and services, does not balance the need to meet parking demand with the need to contain parking to promote sustainable transport and does not reflect the characteristics of the area.
  - b. Part B14 – Excavation
    - i. Objective (f) and control (d) as the proposal includes excessive additional excavation in order to exceed the maximum car parking controls.
    - ii. Control (d) which seeks to avoid and minimise excavation where possible, as the additional excavation for parking is considered unnecessary given the two levels of basement parking already approved and the non-compliance with the parking rate controls.
  - c. Part C4 – High Density Residential Development

- i. Clause 4.2 *Height*, specifically objective (a) and control (a) as the proposal does not respond to the desired scale and character of the street and local area and further increases the non-compliant height of the development.
  - ii. Clause 4.4 *Streetscape*, specifically objective (e) and control (h) in that the proposed modifications the development does not respond appropriately to the scale of surrounding properties.
  - iii. Clause 4.5 *Building Design and Streetscape*, specifically objectives (a) and control (a) in that the scale of the development is not in keeping with the street, further exacerbated by the increased height and size of the penthouse apartments.
  - iv. Clause 4.7 *Vehicular Access and Parking*, specifically objective (d) in that the additional parking, over the controls of the DCP, does not encourage increased use of public transport and bicycles.
- 4. The proposed development does not satisfy section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, as the proposal will have an adverse environmental impact in the locality as it represents an overdevelopment of the subject site, is excessive in terms of parking provision, will have an undesirable and unacceptable impact on the surrounding road network, and would adversely impact upon the amenity of the locality and surrounding built environment.
- 5. The proposal is contrary to 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979, as the development is excessive in terms of the parking provision and is therefore considered unsuitable for the site.
- 6. The proposal is not considered to be in the public interest for the reasons outlined above contrary to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act, 1979.

## **APPENDIX B – CONDITIONS OF CONSENT TO BE MODIFIED**

*Should the Sydney Eastern City Planning Panel resolve to support (approve) the application, the following conditions of consent are recommended for imposition:*

### **A. Amended/Deleted Conditions**

#### **1. APPROVED DEVELOPMENT**

The development must be in accordance with:

(a) Architectural Plans prepared by Group GSA, including the following;

DA003, *Demolition and excavation plan*, revision A dated 05/09/16, stamped received on 24/01/17  
DA004, *Project summary* revision A dated 05/09/16, received on 24/01/17

**A1100-DA005, *Site analysis* revision A F dated 05/09/16 17/04/2020, received on 24/01/17 21/04/2020**

**A1101 (DA004) *Project Summary*, revision C H dated 29/08/19 17/04/2020, stamped received on 30/08/2019 21/04/2020**

**A2001 (DA101), *Upper basement parking*, revision C F, dated 29/08/19 17/04/2020, stamped received on 30/08/2019 21/04/2020**

**A2000 (DA102), *Lower Basement Parking*, revision D G, dated 29/08/19 17/04/2020 stamped received on 30/08/2019 21/04/2020**

**A2002 (DA100), *Ground Floor*, revision C J dated 29/08/19 22/04/2020, stamped received on 30/08/2019 21/04/2020**

**A2003 (DA103), *LVL.01*, revision A F dated 05/09/16 17/04/2020, stamped received on 24/01/17 21/04/2020**

**A2004 (DA104), *LVL.02*, revision A E dated 05/09/16 17/04/2020, stamped received on 24/01/17 21/04/2020**

**A2005 (DA105), *LVL.03*, revision A E dated 05/09/16 17/04/2020, stamped received on 24/01/17 21/04/2020**

**A2006 (DA106), *LVL.04 + 05*, revision A E dated 05/09/16 17/04/2020, stamped received on 24/01/17 21/04/2020**

**A2007 (DA107), *LVL.06 + 07*, revision A E dated 05/09/16 17/04/2020, stamped received on 24/01/17 21/04/2020**

**A2008 (DA108), *LVL.08 Penthouse level*, revision A E dated 05/09/16 17/04/2020, stamped received on 24/01/17 21/04/2020**

**A2009 (DA109), *LVL.08 Roof plan*, revision A G dated 05/09/16 17/04/2020, stamped received on 24/01/17 21/04/2020**

DA110, *Typical Plan*, revision A dated 05/09/16, stamped received on 06/06/17

**A3002 (DA202), *Proposed elevations (Building A)*, revision A H dated 05/09/16 17/04/2020, stamped received on 24/01/17 21/04/2020**

**A3003 (DA203) *Proposed elevations (Building A)* revision A H dated 05/09/16 22/04/2020, stamped received on 24/01/17 21/04/2020**

A3100 (DA300), *Proposed section*, revision C, dated 29/08/2019, stamped received on 30/08/2019

DA301, *Proposed section*, revision A dated 05/09/16, stamped received on 24/01/17

DA302, *BLDG A- Proposed sections*, revision A dated 05/09/16, stamped received 06/06/17

**A3105(DA305) *Proposed section, revision E, dated 17/04/2020, stamped received 21/04/2020***

**A3106(DA306) *Proposed car stacker section, revision C, dated 17/04/2020, stamped received 21/04/2020***

~~(AMENDED DA-125/2012/B)~~  
**(AMENDED DA-125/2012/C)**

- (b) Subdivision Plan reference, 42075DT, Sheet 1 of 1, revision 1, dated 29/02/12 prepared by Harrison Friedmann and Associates Pty Ltd and received by Council on 2 April 2012.
- (c) BASIX Certificate;
- (d) Acoustic Report prepared by Renzo Tonin and Associates, report No. TF906-01F02 (rev 1), dated 23 August 2012 and received by Council on 24 August 2012.
- (e) Schedule of external finishes and colours prepared by Group GSA dated 5 December 2016 and received by Council on 24 January 2017; and;
- (f) The Site Waste and Recycling Management Plan (SWRMP) and Checklist, in accordance with the SWRMP Checklist of Part G1, Waverley DCP 2010;
- (g) Report on Geotechnical Investigation prepared by Douglas Partners Project 72261.06 dated November 2019 and received by Council on 11 March 2019. (ADDED DA-125/2012/B)

Except where amended by the following conditions of consent.

## **2. GENERAL MODIFICATIONS**

~~The proposal shall be amended as follows:~~

- ~~(a) The side blade walls to the east-facing balconies on the northern end of the building are to be reinstated as per the original scheme to retain the neighbour's privacy,~~

~~The amendments shall be shown on the plans submitted to the Principal Certifying Authority with the required Construction Certificate.~~

**SATISFIED BY DA-125/2012/C**

## **64. FIRE SAFETY UPGRADE WORKS**

Prior to the issue of an Occupation Certificate by the accredited certifier, all fire safety upgrading works **relevant to the area being occupied** are to be completed and a Fire Safety Certificate is to be submitted to Council, certifying that each required essential fire safety measure;

- (a) has been assessed by a properly qualified person; and
- (b) has been found, when it was assessed, to be capable of performing to at least the standard required by the current Fire Safety Schedule for the building for which the Certificate is issued.

**AMENDED DA-125/2012/C**

## **APPENDIX C – FULL SET OF CONDITIONS**

***Should the Sydney Eastern City Planning Panel resolve to support (approve) the application, the following full set of conditions are recommended for imposition:***

### **A. APPROVED DEVELOPMENT**

#### **1. APPROVED DEVELOPMENT**

The development must be in accordance with:

(a) Architectural Plans prepared by Group GSA, including the following;

DA003, *Demolition and excavation plan*, revision A dated 05/09/16, stamped received on 24/01/17  
DA004, *Project summary* revision A dated 05/09/16, received on 24/01/17  
A1100-DA005, *Site analysis* revision F dated 17/04/2020, received on 21/04/2020  
A1101 (DA004) *Project Summary*, revision H dated 17/04/2020, stamped received on 21/04/2020  
A2001 (DA101), *Upper basement parking*, revision F, dated 17/04/2020, stamped received on 21/04/2020  
A2000 (DA102), *Lower Basement Parking*, revision G, dated 17/04/2020 stamped received on 21/04/2020  
A2002 (DA100), *Ground Floor*, revision J dated 22/04/2020, stamped received on 21/04/2020  
A2003 (DA103), *LVL.01*, revision F dated 17/04/2020, stamped received on 21/04/2020  
A2004 (DA104), *LVL.02*, revision E dated 17/04/2020, stamped received on 21/04/2020  
A2005 (DA105), *LVL.03*, revision E dated 17/04/2020, stamped received on 21/04/2020  
A2006 (DA106), *LVL.04 + 05*, revision E dated 17/04/2020, stamped received on 21/04/2020  
A2007 (DA107), *LVL.06 + 07*, revision E dated 17/04/2020, stamped received on 21/04/2020  
A2008 (DA108), *LVL.08 Penthouse level*, revision E dated 17/04/2020, stamped received on 21/04/2020  
A2009 (DA109), *LVL.08 Roof plan*, revision G dated 17/04/2020, stamped received on 21/04/2020  
DA110, *Typical Plan*, revision A dated 05/09/16, stamped received on 06/06/17  
A3002 (DA202), *Proposed elevations*, revision H dated 17/04/2020, stamped received on 21/04/2020  
A3003 (DA203) *Proposed elevations* revision H dated 22/04/2020, stamped received on 21/04/2020  
A3100 (DA300), *Proposed section*, revision C, dated 29/08/2019, stamped received on 30/08/2019  
DA301, *Proposed section*, revision A dated 05/09/16, stamped received on 24/01/17  
DA302, *BLDG A- Proposed sections*, revision A dated 05/09/16, stamped received 06/06/17  
A3105(DA305) *Proposed section*, revision E, dated 17/04/2020, stamped received 21/04/2020  
A3106(DA306) *Proposed car stacker section*, revision C, dated 17/04/2020, stamped received 21/04/2020

***(AMENDED DA-125/2012/C)***

(b) Subdivision Plan reference, 42075DT, Sheet 1 of 1, revision 1, dated 29/02/12 prepared by Harrison Friedmann and Associates Pty Ltd and receive by Council on 2 April 2012.



- (c) BASIX Certificate;
- (d) Acoustic Report prepared by Renzo Tonin and Associates, report No. TF906-01F02 (rev 1), dated 23 August 2012 and received by Council on 24 August 2012.
- (e) Schedule of external finishes and colours prepared by Group GSA dated 5 December 2016 and received by Council on 24 January 2017; and;
- (f) The Site Waste and Recycling Management Plan (SWRMP) and Checklist, in accordance with the SWRMP Checklist of Part G1, Waverley DCP 2010;
- (g) Report on Geotechnical Investigation prepared by Douglas Partners Project 72261.06 dated November 2019 and received by Council on 11 March 2019. (ADDED DA-125/2012/B)

Except where amended by the following conditions of consent.

## **2. GENERAL MODIFICATIONS**

***SATISFIED BY DA-125/2012/C***

## **3. APPROVED DESIGN - RESIDENTIAL FLAT DEVELOPMENT**

The approved design (including an element or detail of that design) or materials, finish or colours of the building must not be changed so as to affect the internal layout or external appearance of the building, without the approval of Council.

## **4. STAGING OF WORKS**

The basement car park and all fire safety upgrading works must be fully completed prior to the issuing of any Occupation Certificate for the additional penthouse units.

## **5. EXCAVATION TO BE LIMITED**

Excavation shall be limited to that shown in the approved plans.

## B. COMPLIANCE PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

### 6. SECTION 94A CONTRIBUTION

A cash contribution is payable to Waverley Council pursuant to section 94A of the *Environmental Planning and Assessment Act 1979* and Waverley Council Development Contributions Plan 2006 in accordance with the following:

- a) A cost report indicating the itemised cost of the development shall be completed and submitted to council:

- (1) Where the total development cost is less than \$500,000:

**"Waverley Council Cost Summary Report"; or,**

- (2) Where the total development cost is \$500,000 or more:

**"Waverley Council Registered Quantity Surveyor's Detailed Cost Report".**

A copy of the required format for the cost reports may be obtained from Waverley Council Customer Service Centre or downloaded from: [www.waverley.nsw.gov.au/publications/](http://www.waverley.nsw.gov.au/publications/)

- b) Prior to the issue of the Construction Certificate, evidence must be provided that the levy has been paid to Council in accordance with this condition or that the cost of works is less than \$100,000.
- c) Should a section 96 modification result in any change to the total cost of the work, the Section 94A contribution is to be revised and amended. Prior to the issue of the Construction Certificate, evidence must be provided that the revised levy has been paid to Council in accordance with this condition.

Waverley Council Development Contributions Plans 2006 may be inspected at Waverley Council Customer Service Centre.

#### Advisory Note

- A development valued at \$100,000 or less will be exempt from the levy.
- A development valued at \$100,001 - \$200,000 will attract a levy of 0.5%.
- A development valued at \$200,001 or more will attract a levy of 1% based on the full cost of the development.

### 7. SECURITY DEPOSIT (AMENDED DA-125/2012/A)

A deposit or guarantee satisfactory to Council for the amount of \$ 50,000 must be provided as security for the payment of the cost of making good any damage caused or unauthorised works that may be caused to any Council property as a consequence of this building work.

This deposit (cash or cheque) or guarantee must be established prior to the issue of the Construction Certificate. The full amount of the difference after recovery of Council's cost for any repair of damage to Council property or rectification of unauthorised works on Council property will be refunded after satisfactory completion of the building work to the person who paid the deposit.

## **8. LONG SERVICE LEVY**

A long service levy, as required under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986, is to be paid in respect to this building work. In this regard, proof that the levy has been paid is to be submitted to Council prior to the issue of a Construction Certificate.

Note: Council acts as an agent for the Long Service Payment Corporation and the levy may be paid at Council's office. The levy rate is 0.35% of building work costing \$25,000 or more.

## **9. TAMARAMA RESERVE PRESERVATION BOND**

A bond amount of \$25,000 shall be lodged with Council either as cash or by way of an unconditional bank guarantee to ensure the protection of the reserve and to ensure that no building or demolition materials are dumped or disposed of in the adjacent reserve, including all 'making good to match existing conditions' and guarantee that the reserve (including all trees) will be free from damage, sediment and rubbish during and after construction.

The bond is to be lodged prior to the issue of a Construction Certificate.

## **10. NO BUILDING WORKS PRIOR TO RELEASE OF CONSTRUCTION CERTIFICATE**

The building work, including demolition, must not be commenced until:

- a) a Construction Certificate has been obtained from Council or an Accredited Certifier in accordance with Section 81A(2) of the Environmental Planning & Assessment Act, 1979; and
- b) a Principal Certifying Authority has been appointed and Council has been notified of appointment in accordance with Section 81A(2)(b) of the Environmental Planning & Assessment Act, 1979 and Form 7 of Schedule 1 of the Regulations; and
- c) Council is given at least two days' notice in writing of the intention to commence the building works.

The owner/applicant may make application to Council or an Accredited Certifier for the issue of a Construction Certificate and to be the Principal Certifying Authority.

## **11. SERVICE AUTHORITIES**

The applicant is to seek approval from Sydney Water regarding any possible modification to the service authorities infrastructure prior to the issue of a Construction Certificate.

## **12. ARCHITECT TO SUPERVISE DESIGN - CONSTRUCTION CERTIFICATE DOCUMENTATION**

The preparation of the Construction Certificate plans shall be supervised and be to the satisfaction of a qualified designer in accordance with the requirements of State Environmental Planning Policy No. 65 - Design Quality of Residential Flats.

In accordance with clause 143a of the Environmental Planning and Assessment Regulations 2000, the Principal Certifying Authority must not issue a construction certificate unless it has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that

the plans and specifications achieve or improve the design quality of the development for which development consent was granted.

### **13. HOARDING REQUIRED**

An appropriate hoarding designed and constructed in accordance with the requirements of the Work Cover Authority being erected on the property alignments of the property, prior to the commencement of building operations, and such hoardings to be maintained during the course of building operations. Details of the hoarding are to be provided to Council prior to issue of the Construction Certificate.

Where the hoarding is to be erected over the footpath or any public place, the approval of Council must be obtained prior to the erection of the hoarding.

### **14. GEOTECHNICAL ENGINEER'S REPORT**

A geotechnical report, regarding the stability of the subject site and stating that damage should not occur to any adjoining premises as a result of the proposed bulk excavation, driven type piles and shoring works, is to be submitted to the Principal Certifying Authority and Council. The report is to be submitted prior to the issue of a Construction Certificate and commencement of any such works on the site.

### **15. DETAILS OF BULK EXCAVATION, SHORING OR PILE CONSTRUCTION**

A report shall be prepared by a suitably qualified and practising Structural Engineer detailing the proposed methods of bulk excavation, shoring or pile construction, including details of vibration emissions and any possible damage which may occur to adjoining or nearby properties as a result of the proposed building and excavation works. The Report shall be submitted to the Principal Certifying Authority and Council prior to the issue of a Construction Certificate.

Any practices or procedures specified in the Structural Engineer's report in relation to the avoidance or minimisation of structural damage to adjoining properties are to be fully complied with and incorporated into the plans and specifications together with the Construction Certificate.

### **16. SITE WASTE AND RECYCLING MANAGEMENT PLAN**

A Site Waste and Recycling Management Plan (SWRMP) Checklist 2 shall be submitted to the Principal Certifying Authority for approval in accordance with Part G1, Waverley DCP 2010 prior to the issue of the Construction Certificate. In this regard, Council expects demolition and excavated material to be reused and/or recycled wherever possible.

The builder and all subcontractors shall comply with the approved SWRMP Part 1 and 2 at all times during construction. At least one copy of the SWRMP is to be available on site at all times during construction. Copies of demolition and construction waste dockets that verify the facility that received the material for recycling or disposal and the quantity of waste received, must be retained on site at all times during construction.

### **17. WASTE STORAGE AREA**

Based on the proposed floor space, the applicant would be required to have a bin allocation of 30x240L MGB for waste to be collected weekly, 10x 240L MGB for paper/cardboard and 6x240L MGB for co-mingled recycling to be collected weekly.

An amended plan is to be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate. The applicant is encouraged to discuss waste collection with the council.

#### **18. EROSION, SEDIMENT AND POLLUTION CONTROL**

Erosion, sediment and pollution control measures are to be implemented on this site. These measures are to be in accordance with Council's Stormwater Policy and are to be implemented prior to commencement of any work or activities on or around the site. Details of these measures are to be submitted to the Principal Certifying Authority prior to the issuing of a Construction Certificate.

#### **19. ESSENTIAL SERVICES - EXISTING BUILDING**

Details of the currently implemented and proposed essential fire safety measures shall be submitted to Council, with the Construction Certificate, in the form of a Fire Safety Schedule. This Schedule shall be prepared by a person competent to do so and shall specify the minimum standard of performance for each essential fire safety measure included in the Schedule.

At the completion of the installation, a Final Fire Safety Certificate shall be attached to the Occupation Certificate, certifying that each essential fire safety measure specified within the current Fire Safety Schedule:

- (a) has been assessed by a properly qualified person; and
- (b) found to be capable of performing to at least the standard required by the current Fire Safety Schedule for the building for which the Certificate is issued.

#### **20. CONSTRUCTION VEHICLE AND PEDESTRIAN PLAN OF MANAGEMENT (AMENDED DA-125/2012/A)**

Prior to the issue of a Construction Certificate, the applicant shall submit a relevant "Construction Vehicle and Pedestrian Plan of Management" (CVPPM) for the approval of the Executive Manager, Creating Waverley

The CVPPM shall provide, but not be limited to, details of the following:

- (a) The proposed route to be taken by demolition/construction vehicles in the Council area when accessing and exiting the site. **Note:** Vehicular access to the site via the vacant land between No.3 and No.7 Tamarama Street is not permitted at any time.
- (b) Vehicular access to and from the site for all vehicles during all phases of the development shall be via Bondi Road, Denham Street and Illawong Avenue.
- (c) The type, size and number of demolition/construction vehicles for each of the separate phases of the development. Trucks with dog trailers and semi-trailers may not be approved for use if it is considered with the information provided that:
  - such vehicles cannot adequately and safely gain access to and from the site or
  - access into or out of the site may not be possible without the need to remove an unsatisfactory number of vehicles parked on the roadway adjacent to or opposite the site.
- (d) The location of truck holding areas remote from the site should Council not give approval for demolition/construction vehicles to stand on the roadway in the vicinity of the site.
- (e) Traffic control measures to be put in place when trucks, manoeuvring in the vicinity of the site, will interfere with the free flow of traffic.



- (f) The location and materials of construction of temporary driveways providing access into and out of the site.
- (g) The location and length of any proposed Works/Construction Zones. Note:
  - Works/Construction zones require the approval of the Waverley Traffic Committee and Council prior to installation.
  - It is illegal to:
    - i. Park a vehicle exceeding 4.5 tonnes on a roadway for more than one (1) hour unless signs are installed to the contrary
    - ii. Barricade/reserve a section of roadway without the prior approval of Council
- (h) The hours of operation of demolition/construction vehicles.
- (i) The number of and where it is proposed to park light vehicles associated with staff/employees/contractors working on the site.
- (j) How it is proposed to cater for the safe passage of pedestrians past the site. The details shall include:
  - The route required to be taken by pedestrians including signage and any other control measures that will need to be put in place to direct and keep pedestrians on the required route
  - Any obstructions such as street furniture, trees and bollards etc., that may interfere with the safe passage of pedestrians
  - The type(s) of material on which pedestrians will be required to walk
  - The width of the pathway on the route
  - The location and type of proposed hoardings
  - The location of existing street lighting

## **21. MODIFICATIONS TO BASEMENT CAR PARK (DELETED DA-125/2012/A)**

~~The following modifications are to be made to the basement car park area;~~

- ~~(a) — The headroom above each proposed dedicated disabled parking space and adjacent shared area within the underground car park shall be a minimum of 2500 mm and is to comply with Section 2.4 of AS 2890.6:2009 Parking facilities Part 6: Off street parking for people with disabilities.~~
- ~~(b) — The shared area adjacent to the proposed disabled parking spaces is to comply with Section 2.2.1 of AS 2890.6:2009 Parking facilities Part 6: Off street parking for people with disabilities.~~
- ~~(c) — The ratio of resident to visitor car parking in the basement area is to be adjusted to be in accordance with Part 11 of the Waverley Development Control Plan (“the DCP”) 2010, that being, 69 resident car parking spaces and 10 visitor car parking spaces. In addition, bicycle parking areas are to be provided at the rate of one space per dwelling. Note: The car parking spaces are to be for the use of residents only and not separately leased~~

~~The above amendments shall be included on the plans submitted to the Principal Certifying Authority with the required Construction Certificate.~~

## **22. AMENDED STRATA SUBDIVISION PLAN (AMENDED DA-125/2012/A)**

An amended strata plan is to be submitted to Council reflecting the architectural plans approved under DA-125/2012 (and any subsequent Section 96 modification approval/s), showing the additional 2 sole occupancy strata titled units approved at the top of the building and common property comprising the visitor parking spaces, other common spaces at ground level; the basement levels including parking, storage areas, bike parking, laundry and waste rooms.

To allocate the car parking spaces to units within the building, a restrictive covenant to the satisfaction and approval of Council is to be registered on the Certificate of Title for ***the common property***.

The restriction is to be prepared for Council's approval and shall include the following;

- (a) Stipulate that 1 bedroom units are not allocated more than 1 car parking space
- (b) Stipulate that 2 and 3 bedroom units are not allocated more than 2 car parking spaces
- (c) No unit shall have more than 2 car parking spaces
- (d) Car parking spaces are not to be transferred, leased or granted exclusive use to any person who is not the owner or occupier of a unit within Strata Plan 1731.
- (e) This covenant does not affect those spaces identified as visitor car parking spaces on the approved plans.
- (f) The covenant may only be released or varied with the written consent of Waverley Council.
- (g) Council's legal costs relating to the review, preparation, registration and associated expenses of the restriction is to be paid by the owners and/or applicant.

These requirements are to be submitted for the approval of Council prior to the issue of any Occupation Certificate under the Environmental Planning and Assessment Act 1979. The restriction shall be registered on title prior to the release of a Subdivision Certificate.

## **23. STORMWATER MANAGEMENT**

Certification is to be provided from a suitably qualified professional, that the stormwater system has been designed in accordance with the Water Management Technical Guidelines. Stormwater system details are to be submitted in accordance with the Waverley Development Control Plan 2010 - Part G4 prior to the issue of a Construction Certificate. Under the current design/conditions, orifice diameter must not be more than 235mm.

## **24. ENGINEERING DETAILS**

Structural details prepared and certified by a practicing Structural Engineer being furnished to Council or Accredited Certifier in connection with all structural components prior to the issue of a Construction Certificate.

## **25. ENGINEERING DETAILS - CERTIFICATE OF ADEQUACY**

A Certificate of Adequacy prepared by a practicing Structural Engineer, certifying the adequacy of the existing building structure to carry the extra load of the proposed additions is to be provided to Council or the Accredited Certifier prior to the issue of a Construction Certificate.

## **26. VEHICULAR ACCESS**

Vehicular access and gradients of vehicle access driveway(s) within the site are to be in accordance with Australian Standard 2890.1 Parking Facilities - Off Street Car Parking with details provided on the plans prior to the issue of the Construction Certificate.

## **27. ROOFWATER GUTTERING**

All new or replacement roof guttering is to comply with the requirements of the Building Code of Australia and Australian Standard AS 3500 *Plumbing & Drainage Standards* to ensure that collected roof water does not flow back into the building.

## **28. BASIX**

The undertakings provided in the BASIX Certificate shall be provided for in the Construction Certificate plans and documentation prior to the issue of the Construction Certificate. If required, a modified BASIX Certificate shall be provided that reflects the development as approved (eg addressing any modification required via conditions of consent). Any significant works (ie any works not able to be considered as Exempt and Complying Development) that result from changes to the BASIX Certificate or conflict with conditions of consent require Council's consent.

The Principal Certifying Authority shall be responsible for ensuring that all the undertakings are satisfied prior to the issue of an Occupation Certificate.

The above condition is a prescribed condition under the Environmental Planning and Assessment Act Regulations clause 97A and the above BASIX commitments are mandatory and cannot be modified under Section 96 of the *Environmental Planning and Assessment Act 1979*.

## **29. USE OF RENEWABLE TIMBERS**

Council requires, wherever possible, the use of renewable timbers and/or plantation timbers such as Radiata Pine or Oregon as an alternative to the use of non-renewable rainforest timber products in buildings so as to help protect the existing areas of rainforest. In this regard, a schedule of proposed timber products to be used in the building is to be submitted for approval by the Principle Certifying Authority prior to the issue of the Construction Certificate. Where the applicant is to use timbers not recommended in Council's Policy, reasons are to be given why the alternative timbers recommended cannot be used.

## **30. TREES TO BE RETAINED AND PROTECTED.**

All trees to be retained on the site are to be protected by AS 4970 – 2009 Protection of trees on development sites and by the following;

- (a) All trees, shrubs or vegetation on the subject or neighbouring sites identified for retention and within 7.5m of the building work are to be provided with tree protection measures as described below.
- (b) All trees, shrubs or vegetation on the subject site are to be provided with a tree guard and a notice on each guard indicating "This tree is the subject of a Tree Preservation Order by Waverley Council or "Tree Protection Zone (TPZ), Do not remove/enter". This notice is to be in place prior to commencement of any building or demolition work and shall remain in place until all works are completed. Only trees with the approval of Council for removal may be removed from the site.
- (c) The trees to be retained and protected are below;

| Tree No | Species                    | Location  | Action  |
|---------|----------------------------|---|---|
| 1       | <i>Phoenix canariensis</i> | As per the Arboricultural Impact Assessment report or | Retain and protect as per the conditions below and as |

|                       |                         |   |                                   |
|-----------------------|-------------------------|---|-----------------------------------|
|                       |                         | the approved Landscape Plan, prepared by Earthscape Horticultural Services, author Andrew Morton, dated March 2012. | per the approved landscaped plan. |
| 2                     | <i>Ficus rubiginosa</i> | As above  | As above                          |
| 3                     | <i>Ficus rubiginosa</i> | As above  | As above                          |
| 5,8,9,10,11,12,13, 18 | Various sp              | As above  | As above                          |

- (d) The maintenance of any designated tree protection zones shall be as per AS4970 – 2009, Section 4.6.
- (e) Established boundary fences or site boundary fences are to remain in place at all times to physically protect any existing trees or vegetation on neighbouring sites. If fences are to be removed and replaced this process shall be undertaken in the most minimal time possible.
- (f) If tree roots are exposed during this process and they are to be exposed for any more than 24 hours then a protective absorbent covering is to run the length of the exposed boundary. This covering is to be kept moist to prevent the drying out of roots.
- (g) Any backfilling material required due to excavation shall meet the requirements of AS 4419-2003 Soils for landscaping and garden use.
- (h) Soil levels are not to be changed around any trees on the subject or neighbouring properties.
- (i) No mechanical excavation shall be undertaken within the tree canopy spread (within the dripline) or within 2.0m from the middle of the trunk (whichever is greater) of any tree, shrub or vegetation that is protected under Waverley Council's Tree Preservation Order.
- (j) If any tree roots are exposed during any approved works then roots smaller than 30mm are to be pruned as per the specifications below. Any roots greater than 30mm are to be assessed by a qualified arborist before any pruning is undertaken.
- (k) If tree roots are required to be removed for the purposes of constructing the approved works, they shall be cut cleanly by hand, by an experienced Arborist/Horticulturist (with a minimum of the Horticulture Certificate or Tree Surgery Certificate).
- (l) It is the arborist's responsibility to determine if such root pruning is suitable. If there are any concerns regarding this process then Waverley Council's Tree Management Officer is to be contacted to make final determination.
- (m) If any trees or vegetation on the subject property require pruning and are covered by Waverley Council's Tree Preservation Order an Application to Prune or Remove Trees on Private Property is must be presented to Council for processing.
- (n) If any trees on neighbouring properties require pruning and are covered by Waverley Council's Tree Preservation Order, then permission must be gained from the owner of the tree(s) and an

Application to Prune or Remove Trees on Private Property is then to be presented to Council for processing.

### **31. TREE PROTECTION PLAN**

Trees to be retained and protected (including the size of the structural root zone and the Tree Protection zone) shall be clearly shown on any construction plans, or a copy of a Tree Protection Plan for the site shall be included with the construction plans.

Tree protection measures are to be installed prior to any work (including demolition). This shall be a key stage of the development and as described above Council's Tree Management Officer shall be notified that this has occurred

### **32. AMENDED LANDSCAPE PLAN (AMENDED DA-125/2012/A)**

An amended Landscape Plan is to be provided addressing the following;

- (a) Be prepared at a scale of 1:100
- (b) Show depth and size of planting areas
- (c) Have a representation of a minimum of 75 % local native species in reference to both number of species presented and number of plants planted
- (d) Provide details of species, planting location, pot size, height at maturity
- (e) Provide planting locations for replacement trees
- (f) Species selection for the section of the landscaping nominated in the original landscape plan No.LDA 07, Revision B, prepared by Aspect Studios, as 'the Tamarama Gully extension', being the area adjacent to 1 and 3 Tamarama Street, is to be amended to provide only plants that have a potential mature height of 3 metres or less, to maintain views and solar access to these properties.

*(subsection [f] inserted as per DA-125/2012/A)*

The amended landscape plan is to be submitted to and approved by the PCA prior to the issue of the Construction Certificate.

### **33. ADJACENT RESERVE (CONDITION SATISFIED 24 MARCH 2017)**

The following information is to be provided to Council's Parks Planning Manager prior to the issue of a Construction Certificate;

- (a) An Arborist's report and tree survey plan of trees within a 10m offset from the development boundary, identifying species and assessment of the health of the trees on the adjacent Tamarama Reserve. The report should also include the dimensions and height of the canopy, trunk diameter at breast height (DBH), and extent of the drip line.

The Arborist's report is to inform a tree protection plan detailing how the trees shall be protected during the demolition and construction phase. This is to include a continuous 1.8m high chain wire fence (or alternate method approved by Council Open Space Manager) installed for the duration of works.

- (b) The proposals shall be undertaken in accordance with and not in any way reduce the opportunity for the Actions to be implemented as set out in the Tamarama Ecological



Restoration Framework and Action Plan (ERFAP). The document is to be reviewed by the applicant prior to any hoardings being erected or construction works commencing.

[http://www.waverley.nsw.gov.au/your\\_council/council\\_news/past\\_news/ocean\\_care\\_day\\_photos\\_list/2010\\_2009/rehabilitating\\_tamarama\\_gully?SQ\\_DESIGN\\_NAME=print](http://www.waverley.nsw.gov.au/your_council/council_news/past_news/ocean_care_day_photos_list/2010_2009/rehabilitating_tamarama_gully?SQ_DESIGN_NAME=print)

#### **34. DILAPIDATION REPORT**

A dilapidation report prepared by a practising Structural Engineer shall be submitted to the Principal Certifying Authority, Council and the owners of the adjoining properties prior to the commencement of demolition, bulk excavation or building works, detailing the current condition and the status of all buildings (both internal and external), including ancillary structures located upon the adjoining properties and buildings attached to adjoining properties (ie. In the case of a semi detached or residential flat building all dwellings within the building are to be included).

## **C. COMPLIANCE PRIOR TO AND DURING CONSTRUCTION**

### **35. PRIOR TO SITE WORKS**

The Principal Certifying Authority must be informed in writing before any site works, building or demolition commences of:

- (a) the name and contractor licence number of the licensee who has contracted to do, or intends to do, work ; or
- (b) the name and permit number of the owner/builder who intends to do the work; and
- (c) any change to these arrangements for doing of the work.

### **36. HOME BUILDING ACT**

The builder or person who does the residential building work shall comply with the applicable requirements of Part 6 of the Home and Building Act, 1989. In this regard a person must not contract to do any residential building work unless a contract of insurance that complies with this Act is in force in relation to the proposed work. It is the responsibility of the builder or person who is to do the work to satisfy the Principal Certifying Authority that they have complied with the applicant requirements of Part 6, before any work commences.

### **37. CONSTRUCTION SIGNS**

Prior to commencement of any works on the site and during construction a sign shall be erected on the main frontage of the site detailing the name, address and contact details (including a telephone number) of the Principal Certifying Authority and principal contractor (the coordinator of the building works). The sign shall be clearly legible from the adjoining street/public areas and maintained throughout the building works.

### **38. EXCAVATION AND BACKFILLING**

All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards and must be properly guarded and protected to prevent them from being dangerous to life or property.

### **39. EXCAVATION BELOW FOOTINGS**

If an excavation associated with the erection or demolition of a building extends below the level of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made, at their own expense, must:

- a) preserve and protect the building from damage; and
- b) if necessary, must underpin and support the building in an approved manner; and
- c) must, at least seven days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

#### **40. OBSTRUCTION TO PUBLIC AREAS**

If a public place or pedestrian vehicular traffic may be obstructed because of the carrying out of work involved in the erection or demolition of a building; or a public place is required to be enclosed in connection with the erection or demolition of a building; then:

- (a) a hoarding fence must be erected between the building site and the public place of the proposed building and the public place. If necessary, an awning sufficient to prevent any substance from, or in connection with, the work falling into the public place, is also to be erected;
- (b) the work is to be kept lit during the time between sunset and sunrise if the work may be of a sort of danger to persons using the public place; and
- (c) a hoarding, fence or awning is to be removed when it is no longer required for the purpose it was provided.

#### **41. TOILET FACILITIES**

Toilet facilities shall be provided on the work site in accordance with the requirements of Sydney Water.

#### **42. NO USE OF ORGANOCHLORIN PESTICIDES**

The use of organochlorin pesticides as termite barriers in new development is prohibited pursuant to Council Policy. Only physical barriers are to be used for termite control. The building shall comply with Australian Standard 3660: Protection of building from subterranean termites - prevention, detection and treatment of infestation.

#### **43. DEMOLITION OR ALTERATION OF PRE 1987 BUILDINGS**

At least five (5) days prior to the demolition, renovation work or alterations and additions to any building constructed before 1987, the person acting on the consent shall submit a Work Plan prepared in accordance with Australian Standard AS260-2001, Demolition of Structure and a Hazardous Materials Assessment by a person with suitable expertise and experience. The Work Plan and Hazardous Materials Assessment shall:

- (a) outline the identification of any hazardous materials, including surfaces coated with lead paint;
- (b) confirm that no asbestos products are present on the subject land; or
- (c) particularise a method of safely disposing of the asbestos in accordance with the Code of Practice for the Safe Removal of Asbestos NOHSC 2002 (1998);
- (d) describe the method of demolition;
- (e) describe the precautions to be employed to minimise any dust nuisance; and
- (f) describe the disposal methods for hazardous materials.

#### **44. DEMOLITION & SITE PREPARATION**

Hazardous or intractable wastes arising from the demolition process being removed and disposed of in accordance with the requirements NSW WorkCover Authority and the NSW Environment Protection Authority (EPA), and with the provisions of:

- (a) Work Health & Safety Act 2011;
- (b) Work Health & Safety Regulation 2011;
- (c) Protection of the Environment Operations Act 1997 (NSW) and
- (d) NSW EPA Waste Classification Guidelines 2009.

#### **45. COMPLIANCE WITH WORKCOVER NSW REQUIREMENTS**

All site works complying with the occupational health and safety requirements of WorkCover NSW.

#### **46. SOIL AND WATER MANAGEMENT PLAN**

A Soil and Water Management Plan (also known as an Erosion and Sediment Control Plan) shall be prepared according to SSROC's Soil and Water Management Brochure and the NSW Environment Protection Authority (EPA) Managing Urban Stormwater: Soils and Construction. The plan should include methodology to prevent any building materials to be dumped into/or be washed into the adjoining reserve. This Plan shall be implemented prior to commencement of any works or activities. All controls in the Plan shall be maintained at all time. A copy of the Soil and Water Management Plan must be kept on site at all times and made available to Council officers on request.

#### **47. STOCKPILES**

Stockpiles of topsoil, sand, aggregate, soil or other material shall not be located on any drainage line or easement, natural watercourse, footpath or roadway and shall be protected with adequate sediment controls.

#### **48. LOCATION OF BUILDING OPERATIONS**

Building operations such as brick cutting, washing tools or brushes and mixing mortar are not permitted on public roadways or footpaths or in any locations which could lead to the discharge of materials into the stormwater drainage system.

#### **49. TEMPORARY DIVERSION OF ROOF WATERS**

Stormwater from roof areas shall be linked via a temporary downpipe to Council's stormwater system immediately after completion of the roof area. Inspection of the building frame will not occur until this is completed.

#### **50. ALL BUILDING MATERIALS STORED ON SITE**

All building materials and any other items associated with the development are to be stored within the confines of the property. No materials are to be stored on Council's footpath, nature strip, or road reserve without prior Council approval.

## **51. CONSTRUCTION HOURS**

Demolition and building work must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays and 8am to 3pm on Saturdays with no work to be carried out on:

- (a) The Saturday (except minor renovation or refurbishment to a single dwelling construction) and
- (b) Sunday which form part of public holiday weekends;
- (c) Sundays and public holidays; and
- (d) On the Saturday (except minor renovation or refurbishment to a single dwelling construction) and Sunday which immediately precede or follow industry Rostered Days Off, as agreed by the CFMEU and the Master Builders Association of NSW.

Noise from construction activities shall comply with the Protection of the Environment Operations (Noise Control) Regulation 2000.

## **52. USE OF HEAVY EARTH MOVEMENT EQUIPMENT**

Excavation works involving the use of heavy earth movement equipment including rock breakers and the like must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays with no such work to be carried out on Saturday, Sunday or a public holiday.

## **53. CONSTRUCTION NOISE - PERIODS GREATER THAN 4 WEEKS**

The LA10 level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background (LA90) noise level by more than 10dB(A) when assessed at any sensitive noise receiver.

## **54. BUILDING CODE OF AUSTRALIA**

All building work must be carried out in accordance with the requirements of the Building Code of Australia.

## **55. QUALITY OF CONSTRUCTION ACT - INSPECTIONS (RESIDENTIAL FLAT DEVELOPMENT AND OTHER RESIDENTIAL CLASS 2, 3 AND 4)**

The building works are to be inspected during construction by the Principal Certifying Authority (PCA) and in accordance with the Building Legislation (Quality of Construction) Act 2002 and the Environmental Planning and Assessment Regulations. Also, documentary evidence of compliance with the relevant terms of conditions of development consent and standards of construction detailed in the Building Code of Australia is to be obtained prior to proceeding to the subsequent stages of construction and/or issue of an Occupation Certification.

**MANDATORY** Critical Stage Inspections **MUST** be carried out by the PCA for work undertaken during specified stages of construction and prior to issuing an Occupation Certificate.

The specified **MANDATORY** inspections are:

In the case of a Class 2, 3 and 4 building:

- (a) at the commencement of the building work;
- (b) prior to covering of waterproofing in any wet area for a minimum of 10% of rooms with wet area within a building;
- (c) prior to covering any stormwater drainage connections; and
- (d) after the building work has been completed and prior to any Occupation Certificate being issued in relation to the building.

The following additional inspections are required to be undertaken by the PCA:

- (a) sediment control measures prior to the commencement of building work;
- (b) foundation material prior to undertaking building work;
- (c) shoring of excavation works, retaining walls, piers, piling or underpinning works;
- (d) steel reinforcement, prior to pouring concrete;
- (e) prior to covering timber or steel framework for floors, walls and roofing, including beams and columns;
- (f) prior to installation of fire resisting construction systems (ie fire rated ceilings and walls).

Note: Certification may be required from a suitably qualified person, in relation to specialist matters, verifying that particular works satisfy the relevant requirements of the Building Code of Australia and standards of construction.

## **56. CERTIFICATE OF SURVEY - BOUNDARIES AND LOCATION OF BUILDING**

A Certificate of Survey prepared by a Registered Surveyor setting out the boundaries of the site and the actual situation of the building on the site is to be submitted to the Principal Certifying Authority to certify the building is located in accordance with the development consent plans. The Certificate is to be submitted prior to the construction of the external walls above the ground floor level of the building.

## **57. CERTIFICATE OF SURVEY - LEVELS**

All construction works shall be strictly in accordance with the Reduced Levels (RLs) as shown on the approved plans. Certification from a Registered Surveyor certifying ground, upper floor/s and finished ridge levels is to be submitted to the Principal Certifying Authority during construction and prior to continuing to a higher level of the building.

## **58. EXCAVATION TO BE MANAGED BY STRUCTURAL ENGINEER**

Bulk excavation is to be managed by a practising structural engineer, in accordance with the specification for shoring and support, as detailed in the approved Construction Certificate.

## **59. ARBORICULTURAL CONSULTANT**

A qualified Arboricultural Consultant with a minimum Level 5 qualification (AQF) or the equivalent shall be retained for the duration of the demolition and construction of the development.

The consultant shall be engaged to provide a Tree protection Plan and drawing for the trees to be retained on the subject and neighbouring sites. This plan shall be written in reference to AS4970 – 209, Protection of Trees on development sites and the minimum standards provided below.



In addition, the Consulting arborist is to identify key stages where monitoring and certification will be required as outlined in AS 4970 – 2009, Section 5. A schedule outlining these stages is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate. A written account of the satisfactory completion of each of these stages as assessed by the consulting arborist is to be reported to Council.

The Tree Protection Plan and drawing is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

## 60. TREE REMOVAL AND REPLACEMENT

The following trees are permitted to be removed and replaced;

| Tree No                     | Species    | Location   | Action             |
|-----------------------------|------------|--|--------------------|
| 6, 7, 14, 15,<br>16, 17, 19 | Various sp | As per the Arboricultural Impact Assessment report, prepared by Earthscape Horticultural Services, author Andrew Morton, dated March 2012. | Remove and replace |

- (a) In line with Council's policy to maintain and increase tree cover in the Council area, all trees where consent has been given to remove are to be replaced with a local native tree of minimum container size of 75 litres and shall be maintained until they attain a mature height of at least four (4) metres, or whereby they will be protected by Council's Tree Preservation Order.
- (b) Any replacement tree is to be planted a minimum of 1.0 metres from any boundary, structure or underground services.
- (c) Trees shall not be tied to stakes unless support is essential. All advanced trees are to be planted in holes at least 450mm square and 450mm deep, containing good quality soil and humus. In lawn areas, grass is to be kept back for a radius of at least 450mm from stems and trunks, a depression should be formed for the collection of water and the area mulched.
- (d) Woodchip mulch is to be installed to a depth of 75-90mm to all mass planted garden areas and around the base of trees in lawn areas. The mulch should be kept at least 50mm away from plant stems to reduce the risk of collar rot.
- (e) The replacement local native trees to be planted shall be maintained in a healthy and vigorous condition until they attain a height of 4.0 metres whereby they will be protected by Council's Tree Preservation Order.
- (f) If the replacement trees are found to be faulty, damaged, dying or dead before being protected by Council's Tree Preservation Order the tree/s shall be replaced with the same species at no cost to Council.

## 61. VEHICULAR ACCESS - FINISHED LEVEL

The finished level at the property boundary on **both** sides of the vehicle crossing is to match the level of the existing concrete footpath.

#### **61A. ABORIGINAL CULTURAL HERITAGE STUDY**

This site is located adjoining land identified as 'High Sensitivity' as defined in Council's Aboriginal Cultural Heritage Study 2009 and the Waverley Development Control Plan 2012. Should an object of potential Aboriginal or archaeological significance be discovered during the demolition, excavation or construction period associated with this development, works are to immediately cease and the NSW National Parks and Wildlife Service must be contacted. Works may resume on the site pending receipt of express written permission from the NSW National Parks and Wildlife Service. Waverley Council must be notified of any referral to the NSW National Parks and Wildlife Service and be provided with a copy of any subsequent response.

## **D. COMPLIANCE PRIOR TO OCCUPATION OR DURING OCCUPATION**

### **62. FINAL OCCUPATION CERTIFICATE**

The Principal Certifying Authority prior to occupation or use of the development must issue a final Occupation Certificate. In issuing an Occupation Certificate, the Principal Certifying Authority must be satisfied that the requirements of Section 109H of the Environmental Planning & Assessment Act, 1979 have been satisfied.

### **63. SYDNEY WATER**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. **Application must be made through an authorised Water Servicing Coordinator, for details see the Sydney Water website [www.sydneywater.com.au/customer/urban/index](http://www.sydneywater.com.au/customer/urban/index) or telephone 13 20 92.**

Following application a "Notice of Requirements" will be forwarded detailing 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.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to release of the subdivision plan/occupation of the development.

### **64. FIRE SAFETY UPGRADE WORKS**

Prior to the issue of an Occupation Certificate by the accredited certifier, all fire safety upgrading works relevant to the area being occupied are to be completed and a Fire Safety Certificate is to be submitted to Council, certifying that each required essential fire safety measure;

- (a) has been assessed by a properly qualified person; and
- (b) has been found, when it was assessed, to be capable of performing to at least the standard required by the current Fire Safety Schedule for the building for which the Certificate is issued.

***AMENDED DA-(125/2012/C)***

### **65. SUBDIVISION**

A Subdivision Certificate must be obtained from Council in accordance with Section 109C(d) of the Environmental Planning and Assessment Act, 1979 prior to the registration of the subdivision plans.

### **66. LANDSCAPE PLAN**

The site is to be landscaped and turfed in accordance with the approved landscaped plan with the landscape works completed prior to the issue of the Occupation Certificate.

### **67. LIGHTING**

Any lighting on the site shall be designed so as not to cause nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area

by light overspill. All lighting shall comply with the *Australian Standard AS 4282:1997 Control of the Obtrusive Effects of Outdoor Lighting*.

**68. TACTILE NUMBER IN LIFT**

The applicant is advised that with regard to the provision of the lift in the building, it will be necessary for tactile numbers to be placed on each level of the building and within the lift to assist visually impaired people.

**69. RESIDENT AND VISITOR PARKING SPACES (ADDED DA-125/2012/A)**

All resident and visitor car parking spaces shall be clearly delineated and numbered.