

IDAP REPORT – SECTION 4.55(2) MODIFICATION

Property:	42 Barker Road, Strathfield Lot: A DP: 313710 DA2021.172.3
Proposal:	Section 4.55(2) Modification Application – modifications to the approved dwelling house through amendment of Conditions 1, 6 and 10.
Applicant:	C Baini
Owner:	M Amcha
Date of lodgement:	13 May 2022
Notification period:	20 May 2022 to 3 June 2022
Submissions received:	One (1)
Assessment officer:	W van Wyk
Estimated cost of works:	\$2,076,140.00
Zoning:	R2-Low Density Residential - SLEP 2012
Heritage:	No
Flood affected:	Yes
RECOMMENDATION OF OFFICER:	APPROVAL



Figure 1: Aerial view of the subject site (outlined in yellow). Source: NearMaps

EXECUTIVE SUMMARY

Proposal

Approval is being sought for the modification of development consent DA 2021/172 for the Section 4.55(2) Modification Application – modifications to the approved dwelling house through amendment of Conditions 1, 6 and 10.

Site and Locality

The site is identified as 42 Barker Road, Strathfield and has a legal description of Lot A in DP 313710. The site is a regular shaped parcel of land and is located on the southern side of Barker Road. The site has a width of 15.55m, a depth of 51.02m and an overall site area of 854.7m².

The locality surrounding the subject site contains a mixture of low density residential dwellings. Architectural styles vary, predominantly double storey with pitched roofing and brick or rendered façades. There are examples of contemporary style dwellings with flat roofs and basements along the street.

Strathfield Local Environmental Plan (SLEP) 2012

The site is zoned R2-Low Density Residential under the provisions of SLEP 2012 and the proposal is a permissible form of development with Council's consent. The proposal as amended satisfies all relevant objectives contained within the SLEP 2012.

Strathfield Consolidated Development Control Plan (SCDCP) 2005

The proposed development as amended generally satisfies the provisions of SCDCP 2005. This is discussed in more detail in the body of the report.

Notification

The application was notified in accordance with Council's Community Participation Plan (CPP) 2020 from 20 May 2022 to 3 June 2022, where one submission was received raising a concern over the materiality of the western elevation.

Issues

- Substantially the same;
- Building bulk;
- Visual privacy; and
- Ceiling heights.

Conclusion

Having regards to the heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act (EP&A Act) 1979, Development Application 2021/172/3 is recommended for approval subject to suitable conditions of consent as modified.

REPORT IN FULL

Proposal

Council has received an application to modify development consent DA 2021/172 for the Section 4.55(2) Modification Application – alterations and additions to the approved dwelling house and amendment of Conditions 6(a), (b) and (c). This description is slightly misleading as the driveway sight splays are also being amended and fall within Condition 6 however are not allocated a reference letter.

The original consent was for a two storey dwelling house above a basement garage. The cantilevered Bedroom 1 at the rear was explicitly removed from the approval by Condition 6 of the consent. The approved Condition 6 is as follows:

6. Required Design Changes

The following changes are required to be made and shown on the Construction Certificate plans:

<i>Driveway sight splays</i>	<i>A minimum 1m x 1m splay to be provided on both side of the vehicular access, within the property boundary. The areas should be kept clear from obstructions and only allow ground cover landscaping, to maintain sight distances for pedestrians and motorists. Any front fence or gate opening adjustments required as a result of this splay must be illustrated on the plans lodged with the application for the Construction Certificate.</i>
<i>Amendments made in red on approved plans</i>	<i>Prior to the issue of a Construction Certificate, amended plans are to be submitted to and approved by Council which details the following:</i> <ul style="list-style-type: none"> <i>a) The ceiling height above the front entry/stairwell is to be reduced so as to not unnecessarily add bulk to the dwelling;</i> <i>b) The cantilevered component of bed 1 be relocated to the void area over the ground floor living room;</i> <i>c) The rear of the first floor not extend beyond the external walls of the ground floor below.</i>

As per the Statement of Environmental Effects (SEE) submitted with the modification application, it is proposed to delete this entire condition. However, as will be address throughout this report, removing the condition relating to Bedroom 1 is not supported and should be retained. Amendments are also proposed to other aspects of the approved drawings in Condition 1 and the approved BASIX Certificate referenced in Condition 10.

In light of all the above, the proposal is best described as Section 4.55(2) Modification Application – modifications to the approved dwelling house through amendment of Conditions 1, 6 and 10.

More specifically, the proposal includes the following modifications:

Basement level:

- Minor relocation of lift.

Ground floor level:

- Office added in previously unused void space;
- Lift and stairs relocated;
- Void around lift and stairs removed; and
- North western corner tapered.

First floor level:

- Bedroom 1 relocated to rear (approved condition relocated Bedroom 1 above rear living area void);
- Void around stairs removed and height above stairs reduced; and
- North western corner tapered.

Roof level:

- Changes in roof extent to reflect modifications to levels below;
- Change in material from metal to concrete finish;
- Reduction in height by 200mm to RL 37.565; and
- Bedroom 1 roof converted from skillion to flat.

External works:

- Alfresco area extended; and
- Retaining walls with clear glass provided for driveway entry in place of driveway splays which were required as a condition of consent.

See **Figures 2 – 15**. Further details are contained in the amended architectural drawings provided by the applicant. It is noted that not all the changes are clouded, including changes to the eastern elevation, the rear of the first floor and the basement lift.

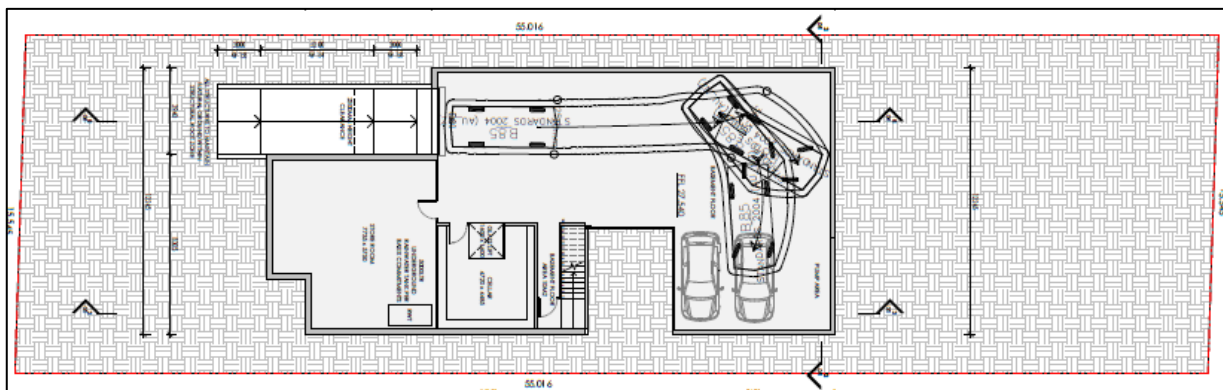


Figure 2: Approved Basement Level

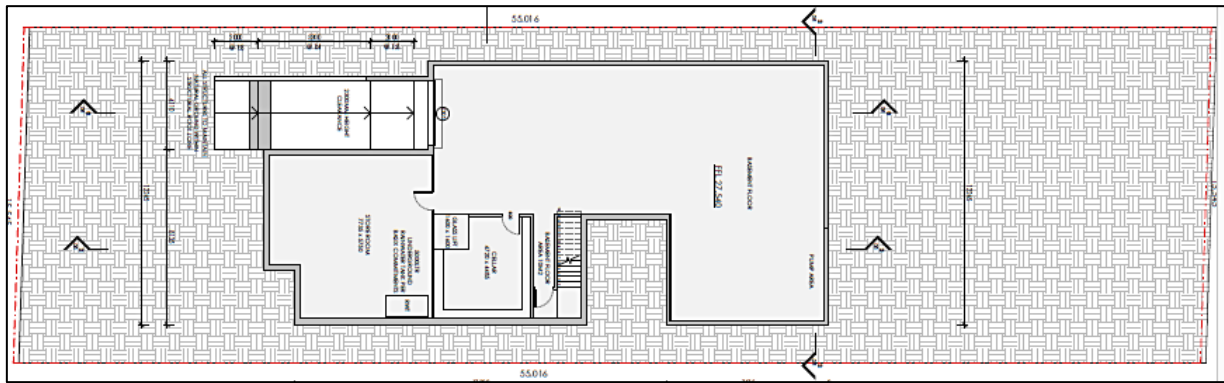


Figure 3: Proposed Basement Level

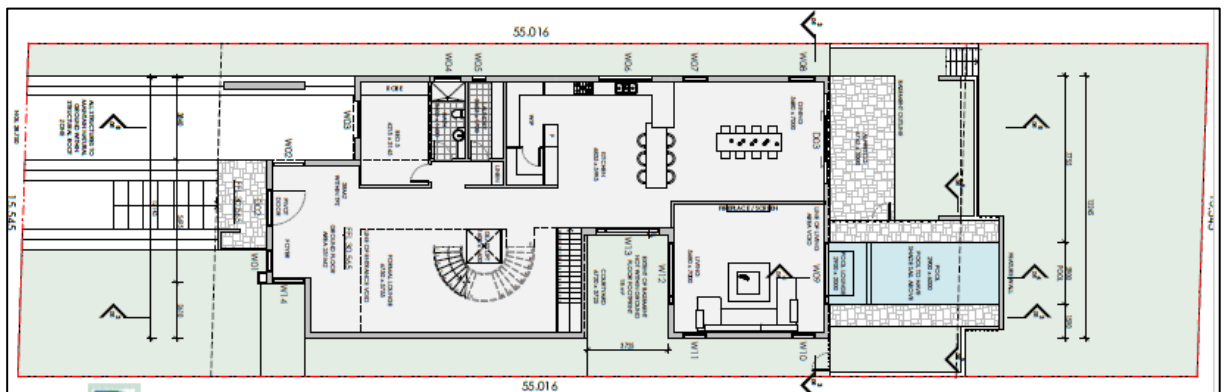


Figure 4: Approved Ground Floor Level

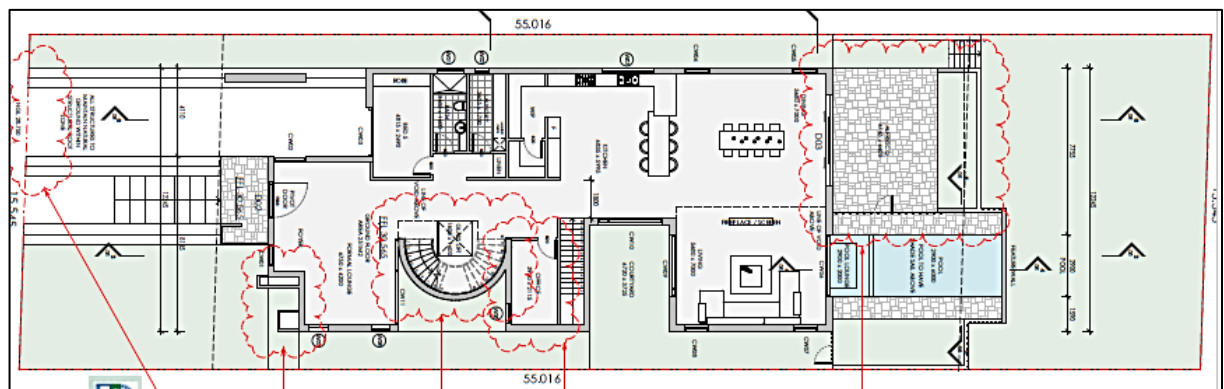


Figure 5: Proposed Ground Floor Level

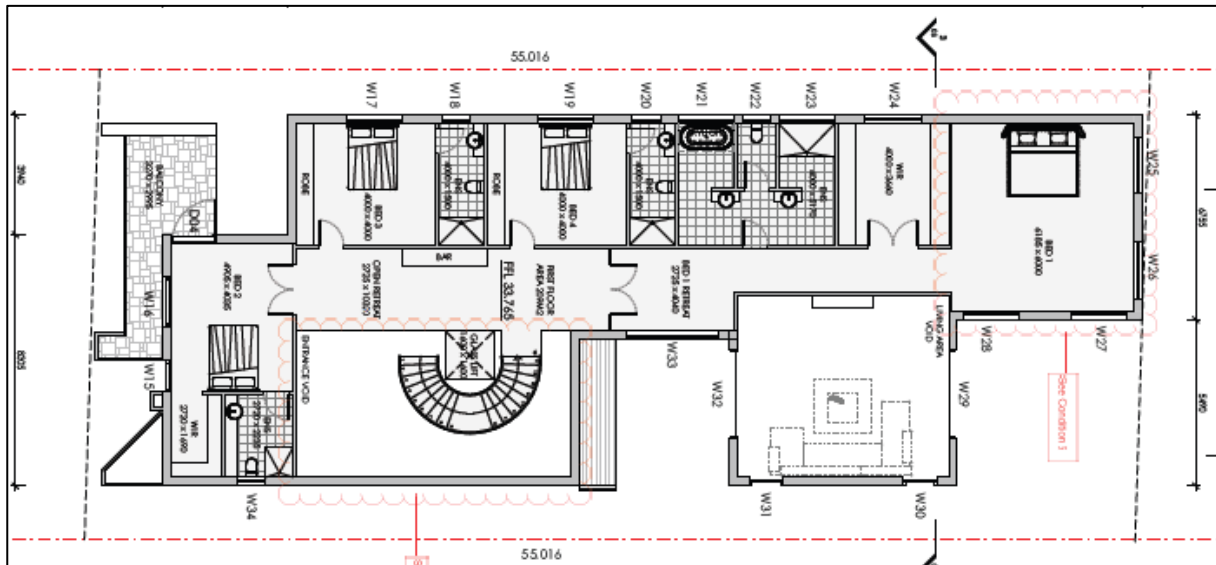


Figure 6: Approved First Floor Level (note: Condition 6 imposed to relocate Bedroom 1 to the void area and reduce the void around the stairs)

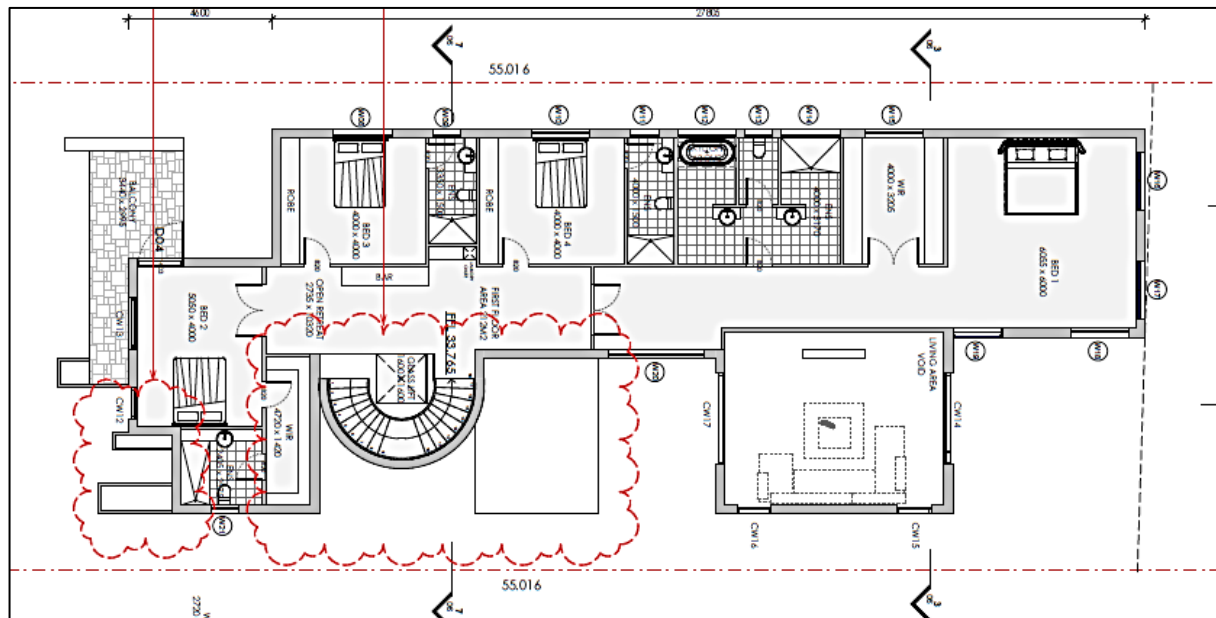


Figure 7: Proposed First Floor Level

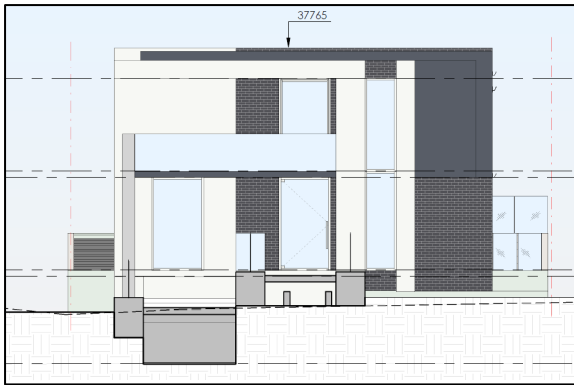


Figure 8: Approved North Elevation (note: Condition 6 imposed to reduce the void around the stairs)

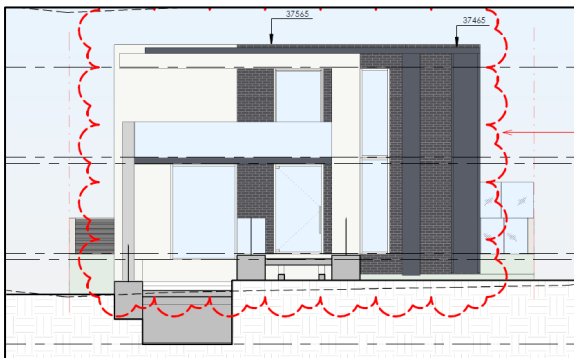


Figure 9: Proposed North Elevation

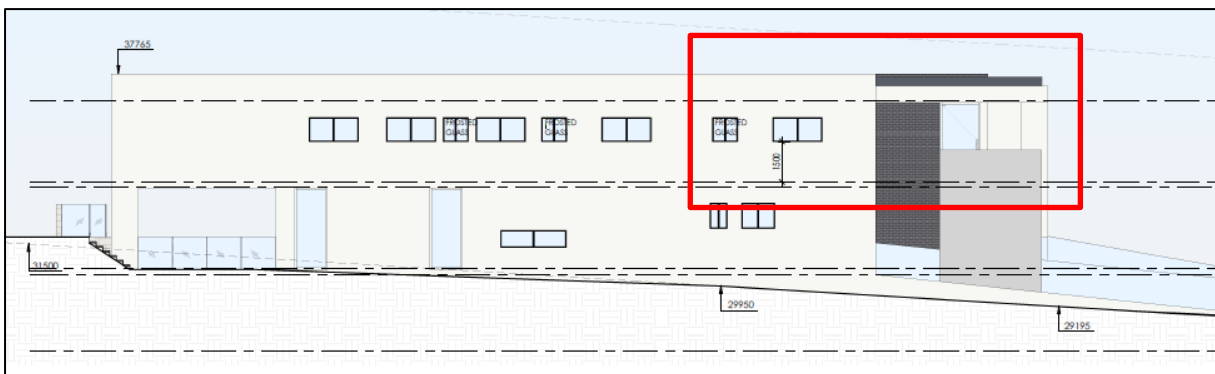


Figure 10: Approved Eastern Elevation (note: Condition 6 imposed to relocate Bedroom 1 to the void area and reduce the void around the stairs, outlined in red)

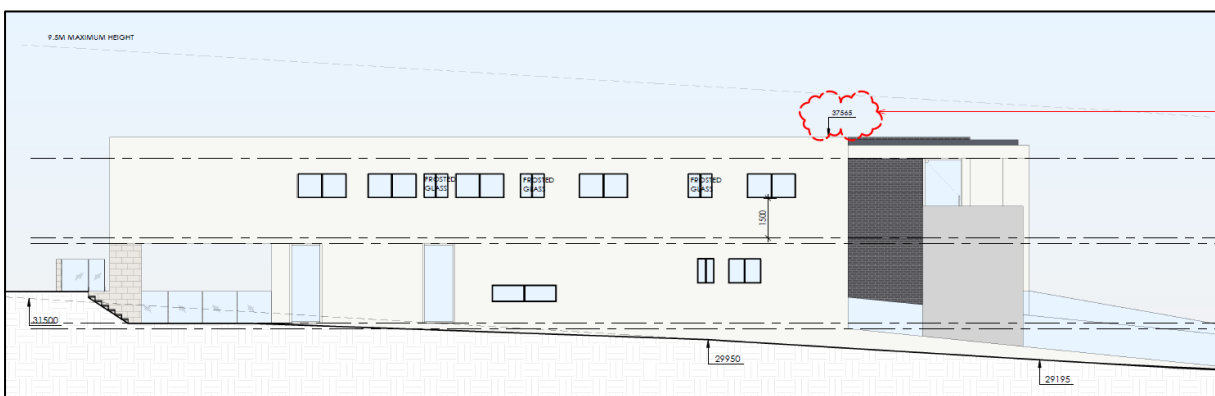


Figure 11: Proposed Eastern Elevation

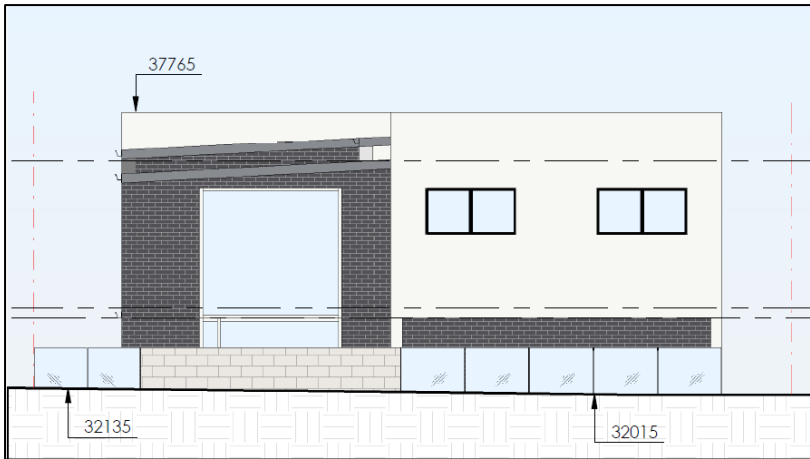


Figure 12: Approved Southern Elevation (note: Condition 6 imposed to relocate Bedroom 1 to the void area)

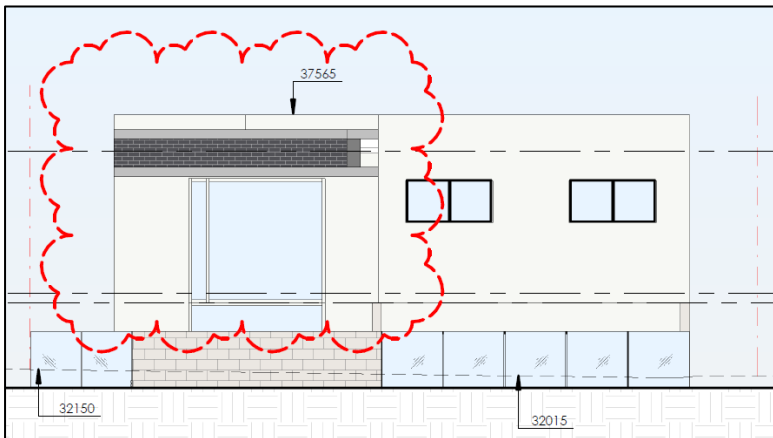


Figure 13: Proposed Southern Elevation

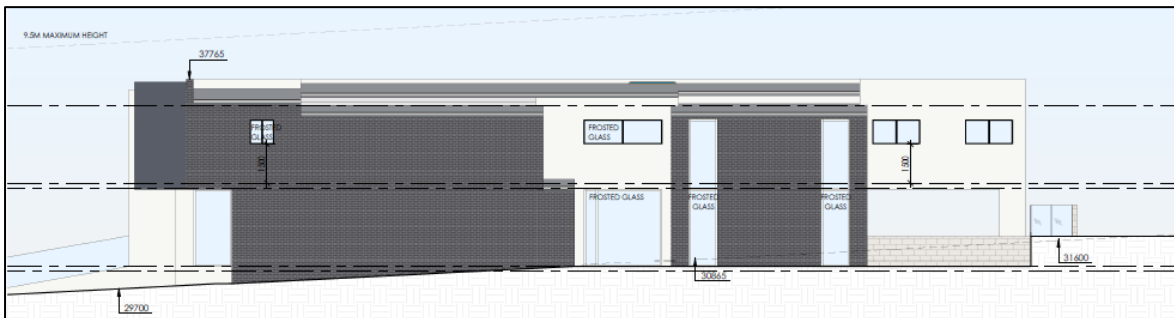


Figure 14: Approved Western Elevation (note: Condition 6 imposed to relocate Bedroom 1 to the void area and reduce the void around the stairs)

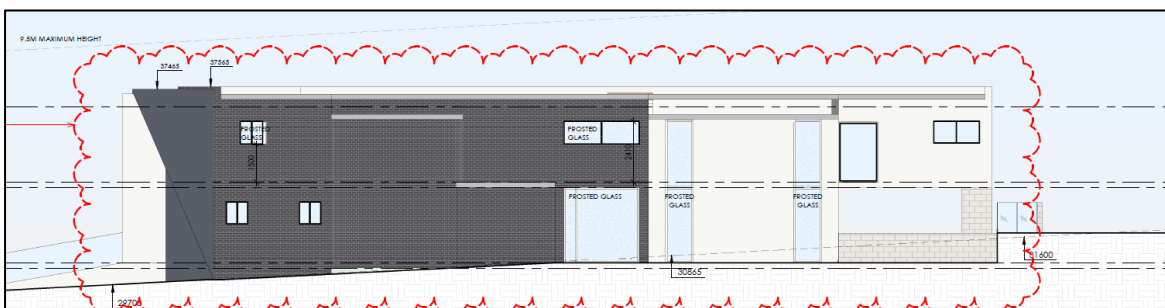


Figure 15: Proposed Western Elevation

The Site and Locality

The subject site is legally described as Lot A in DP 313710 and commonly known as 42 Barker Road, Strathfield. It is located off the southern side of Barker Road between South Street and Wallis Avenue.

The site is rectangular in shape and has a frontage of 15.55m to the north, rear boundary of 15.55m to the south and side boundaries 55.02m in length to the east and west, providing a total site area of 854.7m². The site is generally sloping with a cross-fall of 3.37m from the south west corner to the north-east corner.

The site is occupied by a dwelling house, awning/carport and metal shed. Vehicular access is provided to the site via an existing driveway from Barker Road (see **Figures 16-17**).



Figure 16: The subject site at 42 Barker Road, as viewed from the street



Figure 17: The rear elevation of the existing dwelling on the subject site

Adjoining the eastern side boundary is 40 Barker Road comprising of a two storey brick dwelling with a pitched tile roof. This property includes a garage behind a carport within the rear yard along the shared boundary (see **Figures 18-19**). This is partially obscured by screen planting on the subject site.



Figure 18: The western side elevation of 40 Barker Road, as viewed from the rear yard of the subject site



Figure 19: The garage of 40 Barker Road, as viewed from the rear yard of the subject site

Adjoining the western side boundary is 44 Barker Road comprising of a two storey brick dwelling. This property is built close to the shared boundary and includes windows overlooking the subject site (see **Figure 20**). The garage of this property is located within the rear yard against the western boundary.



Figure 20: The shared interface between 44 Barker Road (left) and the subject site (right)

Adjoining the rear (southern) boundary is 2 South Street comprising a single storey dwelling. Adjoining the rear corner of the site is the locally heritage listed 23 Newton Road (I183) which is identified as an inter-war Old English style house. The rear of this property contains an elevated tennis court. Towards the north, on the other side of the street from the subject site, is 25 Barker Road with frontages to Barker Road and South Street.

The locality surrounding the subject site is characterised by low density residential dwelling houses. Various architectural styles are present, however the typology is predominantly double story dwellings with pitched roofing and brick or rendered facades. Flat, contemporary style examples exist along the street, some with basements. Towards the north west is a university campus and adjoining park which is also heritage listed (I92).

Background

- | | |
|------------------------|--|
| 4 February 2022 | Development Application (DA 2021/172) was approved on the subject site for demolition of existing structures, construction of a two-storey dwelling house with a basement and in-ground swimming pool. |
| 13 May 2022 | The subject modification application was lodged with Council. |
| 20 May 2022 | Notification period commenced and concluded on 3 June 2022 . |
| 21 May 2022 | Council's Assessing Officer inspected the subject site. |
| 26 May 2022 | <p>A Stop the Clock Request for Further Information letter was sent to the applicant raising the following issues:</p> <ul style="list-style-type: none">• All changes to be clouded;• SEE to be resubmitted as a Section 4.55(2) modification;• Revert Bedroom 1 back to the void area as conditioned in the original consent; and• Remove balcony facing side boundary. |
| 21 June 2022 | The applicant provided additional information in response to the request. The only change that was not incorporated was relocating Bedroom 1. It is noted that not all the changes were clouded including the relocation of the basement lift, relocation of Bedroom 1 and the reduction in roof height along the eastern elevation. |

Referrals – Internal and External

Traffic Engineering Manager

The application was referred to Council's Traffic Engineering Manager provided the following advice:

All aspects of the off-street parking has been assessed against the AS2890 series and Council DCP.

The previous traffic assessment referral dated the 12/08/2022 by Qian Liu, required the following changes to be made and shown on the Construction Certificate plans:

Driveway sight splays

A minimum 1m x 1m splay to be provided on both side of the vehicular access, within the property boundary. The areas should be kept clear from obstructions and only allow ground cover landscaping, to maintain sight distances for pedestrians and motorists. Any front fence or gate opening adjustments required as a result of this splay must be illustrated on the plans lodged with the application for the Construction Certificate.

A review of the plans provided ... has proved that the proposed design changes previously recommended for the driveway will no longer be required.

I.e. RETAINING WALLS ALONG FRONT PART OF DRIVEWAY ARE LESS THAN 300mm IN HEIGHT WITH CLEAR GLASS FOR SIGHT TO EXIT.

Comment;

The S4.55 Modification Plans show a 3.0m wide driveway at the boundary, and the 300mm height of the retaining wall at the boundary with glass paneling, this arrangement is considered satisfactory for sight distance purposes...

REFERRAL OFFICER'S DECISION

I support the changes to the driveway shown in this Sect 4.55 Modification Application dated 15 March 2022, REV D.

Accordingly, Council's Traffic Engineering Manager offered no objections to the proposed modifications subject to retaining the existing conditions.

Section 4.55 of the EP&A Act 1979

Pathway

The application has been lodged under the provisions of Section 4.55(2) of the EP&A Act 1979. The application is not considered to be of minimal environmental impact and therefore this is the correct pathway.

Substantially the Same

Notwithstanding the above, the EP&A Act 1979 still requires the consent authority (Council) to be satisfied that the Section 4.55(2) application is substantially the same development as the development for which the consent was originally granted (DA 2021/172). Justice Pepper developed a set of applicable legal principles governing the exercise of the power contained in Section 96 (now 4.55) in *Agricultural Equity Investments Pty Ltd v Westlime Pty Ltd (No 3)* [2015] NSWLEC 75 at [173]. An assessment against these principles is provided as follows:

1. *first, the power contained in the provision is to "modify the consent". Originally the power was restricted to modifying the details of the consent but the power was enlarged in 1985 (North Sydney Council v Michael Standley & Associates Pty Ltd (1998) 43 NSWLR 468 at 475 and Scrap Realty Pty Ltd v Botany Bay City Council [2008] NSWLEC 333; (2008) 166 LGERA 342 at [13]). Parliament has therefore "chosen to facilitate the modification of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity" (Michael Standley at 440);*
[Note: The Chief Justice has since limited the power to modify to prospective work which must modify the development itself (*Ku-ring-gai Council v Buyozo Pty Ltd* [2021] NSWCA 177)].

The Council as the consent authority has the power to modify the consent. The works are prospective and relate to the development itself.

2. *the modification power is beneficial and facultative (Michael Standley at 440);*

The proposed changes generally refine the approved design and can therefore be considered beneficial and facultative. The exception is retaining the void at the rear rather than repurposing this for Bedroom 1. The void is south and west facing and therefore does not provide a material amenity benefit for residents. The cantilevered location of Bedroom 1 is also not considered beneficial for surrounding properties. This aspect of the proposal is not supported.

3. *the condition precedent to the exercise of the power to modify consents is directed to "the development", making the comparison between the development as modified and the development as originally consented to (Scrap Reality at [16]);*

This assessment of substantially the same relates to the development itself and compares to the consent as originally granted. An assessment of environmental impacts is provided under Section 4.15 later in this report.

4. *the applicant for the modification bears the onus of showing that the modified development is substantially the same as the original development (Vacik Pty Ltd v Penrith City Council [1992] NSWLEC 8);*

The SEE initially assessed the application as a Section 4.55(1a) notwithstanding that it was lodged as a Section 4.55(2). This was amended at the request of Council. While the SEE provides a brief written justification of the application being substantially the same, this appears to be based on a misunderstanding of the approved built form. The SEE states:

The application is substantially the same as the approved development, with the development concept remaining predominantly physically the same in terms of building form and overall footprint other than for the reduction to the bulk and scale at the front of the dwelling and other minor changes to the proposal.

With the proposed changes being of a minor nature and predominantly contained within the building itself, the modification will have no significant impact on the approved building envelope in terms of its overall building height, building footprint nor on the setback arrangements approved under the parent DA.

As such the application is appropriate to define the proposal as substantially the same development as the original consent.

The approved development was subject to Condition 6 which removed the cantilevered rear extension. Accordingly, the modification application will increase the footprint and building envelope significantly. This is not considered a minor modification.

Accordingly, the applicant has not conclusively demonstrated that the rear extension is substantially the same and this element is not supported. For the remainder of the changes proposed, while the applicant has not provided extensive a written justification, the documentation provided with the application remains sufficient, *in toto*, to reach a conclusion of substantially the same and can be supported.

5. *the term “substantially” means “essentially or materially having the same essence” (Vacik endorsed in Michael Standley at 440 and Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280; (1999) 106 LGERA 298 at [30]);*

The proposal remains substantially the same essentially and materially in that it remains a two storey dwelling above a basement level. However, modifications pertain to an essential characteristic of the approval and this is further assessed under Point 9.

6. *the formation of the requisite mental state by the consent authority will involve questions of fact and degree which will reasonably admit of different conclusions (Scrap Realty at [19]);*

Noted. This written assessment demonstrates how the conclusions were reached.

7. *the term “modify” means “to alter without radical transformation” (Sydney City Council v Ilenace Pty Ltd [1984] 3 NSWLR 414 at 42, Michael Standley at 474, Scrap Realty at [13] and Moto Projects at [27]);*

The modification application will not ‘radically transform’ the approval, with no change to the use and number of bedrooms or storeys.

8. *in approaching the comparison exercise “one should not fall into the trap” of stating that because the development was for a certain use and that as amended it will be for precisely the same use, it is substantially the same development. But the use of land will be relevant to the assessment made under s 96(2)(a) [now 4.55] (Vacik);*

While the proposal remains for the same dwelling use as approved, it is not on this fact alone that the modification application is considered substantially the same. The conclusion is also on the basis of the application being substantially the same ‘essentially or materially’ (as demonstrated above) and ‘quantitatively and qualitatively’ (as demonstrated below).

9. *the comparative task involves more than a comparison of the physical features or components of the development as currently approved and modified. The comparison should involve a qualitative and quantitative appreciation of the developments in their “proper contexts (including the circumstances in which the development consent was granted)” (Moto Projects at [56]); and*
10. *a numeric or quantitative evaluation of the modification when compared to the original consent absent any qualitative assessment will be “legally flawed” (Moto Projects at [52]).*

The proposal remains substantially the same in that it remains a two storey dwelling above a basement level. The height and building footprint will not change and the appearance in the street will not be significantly different from what was originally approved. In addition, the Floor Space Ratio (FSR) will be reduced.

However, as per *Moto Projects* at [56], the circumstances in which the original consent was granted should also be considered. This involves assessing whether the proposed modifications relate to an essential element of the original consent in accordance with the assessment requirements under Section 4.55(3) of the EP&A Act 1979 which states:

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons*

given by the consent authority for the grant of the consent that is sought to be modified.

In this case, both the relocation of the rear bedroom and the void around the stairs were essential considerations in the original approval.

Condition 6(a) required the void above the front entry/stairwell be reduced. It is now proposed to taper the front façade and remove the void around the stairs entirely. This is consistent with the intent of the condition and will be assessed on merit later in this report. For the time being, it is enough to state that this modification remains substantially the same.

Conditions 6(b) and (c) pertained to relocating the rear bedroom into a void area. This was imposed because the void did not provide a material amenity benefit for residents given it was west and south facing. Repurposing the void for Bedroom 1 also provides a deep soil and building bulk benefit compared to a rear extension. It is now proposed to revert back to the original design. As this would change a fundamental aspect of the approval, this change is not considered substantially the same and is not supported. As will be discussed throughout this report, these changes are also not supported on merit grounds. Accordingly, changing these conditions will not form part of the consent.

Condition 6 also required a minimum 1m x 1m splay on both sides of the vehicular access for sightlines. While this aspect is proposed to be amended, the modified design reflects the intent of the provision by providing transparent glass panelling. This has been assessed as acceptable by Council's Traffic Engineering Manager. Although there was an explicit condition of consent relating the splay, it nevertheless remained a minor rather than essential component of the original approval. Accordingly, notwithstanding the design change, the proposed driveway access arrangement remains substantially the same.

In summary, the proposed modifications are considered substantially the same, with the exception of the modifications to Conditions 6(b) and (c). This element of the proposal contravenes why the original proposal was accepted and is not supported.

Section 4.15 Assessment – EP&A Act 1979

The following is an assessment of the application with regard to Section 4.15(1) of the EP&A Act 1979.

(1) *Matters for consideration – general*

In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provision of:***
- (i) *any environmental planning instrument,***

STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

Chapter 2 – Vegetation in Non-Rural Areas

The intent of this Chapter within the SEPP is related to the protection of the biodiversity values of trees and other vegetation on the site. The modified development does not result in the removal or loss of any additional trees or vegetation subject to the provision of this SEPP. The

aims and objectives outlined within the SEPP are considered to remain satisfied as per the original DA.

Chapter 10 – Sydney Harbour Catchment

While the site is identified in the Sydney Harbour Catchment area, it will not be visible from any waterways. Stormwater will remain managed in accordance with the relevant conditions of consent and would satisfy the relevant planning principles of Chapter 10 - Sydney Harbour Catchment.

STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

A revised BASIX Certificate (No. 12186365_02) has been issued for the proposed development as modified and the commitments required by the BASIX Certificate have been satisfied.

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 4 – Remediation of Land

Chapter 4 applies to the land and pursuant to Section 4.15 of the EP&A Act is a relevant consideration. A review of the available history for the site gives no indication that the land associated with this development is contaminated. There were no historic uses that would trigger further site investigations. The objectives outlined within Chapter 4 of the SEPP are considered to be satisfied.

STRATHFIELD LOCAL ENVIRONMENTAL PLAN (SLEP) 2012

The proposed modified development is subject to the Strathfield Local Environmental Plan (SLEP) 2012.

Part 2 – Permitted or Prohibited Development

Clause 2.1 – Land Use Zones

The subject site is zoned R2-Low Density Residential and the proposal as modified is a permissible form of development (dwelling) with Council's consent.

Part 4 – Principal Development Standards

Applicable SLEP 2012 Clause	Development Standards	Development Proposal	Compliance/ Comment
4.3 Height of Buildings	Max 9.5m	7.8m	YES
4.4 Floor Space Ratio (Cl 4.4C)	Max 0.55:1 (470.1m ²)	0.54:1 (459m ²)	YES

The proposal as modified continues to comply with the relevant development standards. The GFA has been reduced by 11m² (although noted as only 5m² in the SEE) from the approved drawings, primarily as a function of providing the tapered frontage and reducing the area around the ground floor stairs.

As per *Barrak v Parramatta City Council* [2018] NSWLEC 67 at [49]–[58], numerical compliance does not necessarily demonstrate consistency with the objectives.

Notwithstanding numerical compliance, the novel rear cantilevered element is incompatible with Objective (a) of the FSR development standard which states:

- (a) *to ensure that dwellings are in keeping with the built form character of the local area,*

Bedroom 1 results in a solid side elevation and a rear building line exceeding surrounding sites. Accordingly, this element is not supported. There may be a slight variation in the GFA with the relocation of Bedroom 1 into the void area, however this should not result in a breach of the FSR development standard.

Part 5 – Miscellaneous Provisions

Heritage Conservation

The subject site is not listed as a heritage item nor located within a heritage conservation area however, is located diagonally across local heritage items at 23 Newton Road (I183 - inter-war Old English style house) and 25A Barker Road (I92 - the Australian Catholic University campus grounds including the former “Mount Royal” park).

The modified design will not be within the same visual catchment as the heritage items when viewed from the public domain. The proposed cantilevered rear structure may be visible from the elevated rear yard (tennis court) of 23 Newton Road, however this is likely to be heavily filtered by existing vegetation (see **Figure 21**). It will therefore not be within the same setting and is therefore acceptable in regards to Clause 5.10 of the SLEP 2012.



Figure 21: Screening landscaping at the rear of 23 Newton Road, obscuring the subject site

Flood Planning

The subject site has been identified as being at or below the flood planning level. The original Development Application (DA 2021/172) was reviewed by Council's Engineer who has advised that subject to suitable conditions, the development is considered compatible with the flood hazard of the land, will not result in significant adverse effects on flood behaviour or environment and is not likely to result in unsustainable social and economic loss. The proposed modifications do not include any changes to the Basement Level (other than a minor relocation of the lift) and therefore the proposal is considered to remain suitable with regards to flooding.

Part 6 – Additional Local Provisions

Acid Sulfate Soils

The subject site is identified as having Class 5 Acid Sulfate Soils but is not located within 500m of a Class 1, 2 3 or 4 soils. Therefore, Development Consent under the provisions of this section is not required nor an Acid Sulfate Soils Management Plan.

Earthworks

The proposal modifications do not result in any additional excavation works and will not have any further impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. All earthworks will need to be carried out in accordance with the approved conditions of consent.

Essential Services

The subject site is considered to be adequately serviced for the purposes of the proposed development as modified.

It is considered that the proposed modifications satisfy the aims, objectives and development standards, where relevant, of the SLEP 2012, with the exception of the cantilevered element.

(ii) *any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and*

There are no draft planning instruments that are directly relevant to an assessment of the proposed modification application on the subject site.

(iii) *any development control plan,*

The proposed development, as modified, is subject to the provisions of the Strathfield Consolidated Development Control Plan (SCDCP) 2005. As the proposal is only for modifications to the approved development, not all of the provisions of the SCDCP 2005 are relevant in this instance. The proposed front and side setbacks and swimming pool compliance will not change. An assessment against the relevant provisions are as follows:

Applicable SCDCP Provisions	SCDCP Controls	Approved Development (DA 2022/172)	Development Proposal	Compliance/ Comment
Building Envelope				
Heights:				
Floor to ceiling heights:	3.0m	3.2m + void area	3.2m + void area (5.6m)	NO (87% variation)
Height to underside of eaves:	7.2m	7.08m	7.08m	See Below
Parapet height:	0.8m	1m	0.8m	YES
Overall height for flat roof dwelling:	7.8m	7.8m	7.6m	YES
Landscaping				
Overall landscaping:	Min 45% of site (384.6m ²)	390m ² (incl. area below Bedroom 1)	384m ² (incl. area below Bedroom 1)	NO (0.2% variation)
Front setback landscaping:	Min 50% of yard (85m ²)	85m ²	85m ²	YES
Rear yard landscaping:	Min 50% of total landscaped area (192.3m ²)	305m ²	299m ²	YES
Setbacks				
Rear setback:	6m	17m (incl. condition relocating Bedroom 1)	17m (incl. condition relocating Bedroom 1)	YES
Solar Access				
Adjoining POS:	3hrs to 50%	>3hrs	>3hrs	YES
Ancillary Development				
Retaining walls:	Max height 1.2m	1.2m	1.2m	YES See Below

The following comments are made with respect to the proposal satisfying the objectives and controls contained within the SCDCP 2005, where applicable to the proposed changes.

Architectural Design and Streetscape Presentation

Part A2.1 of the SCDCP 2005 contains the overarching architectural presentation objectives pertaining to dwelling houses. The key objectives relating to the proposed modifications are as follows:

- A. *To ensure that development respects the predominant height, scale, character, type, form, colour, materials and architectural qualities of the existing dwelling house (in the case of alterations and additions) and surrounding neighbourhood especially any adjoining or nearby heritage item or heritage conservation area.*
- B. *To achieve quality architecture in new development through the appropriate composition and articulation of building elements.*
- C. *To ensure that the dominant building rhythm of the streetscape is reflected in the building design in terms of the spacing and proportion of the built elements.*
- E. *To encourage contemporary architecture that is innovative, uses high quality detailing, and incorporates elements characteristic of Strathfield.*
- G. *To retain a feeling of openness and space between built elements by maintaining landscaped setbacks and preserve the appearance of dwellings set in the tree-lined streets and park-like environment.*

J. To protect and retain the amenity of adjoining properties.

The proposed cantilevered Bedroom 1 is considered a foreign architectural element which is inconsistent with the objectives. A cantilevered Bedroom 1 would result in a long eastern elevation which is not well articulated. This is not considered a good design outcome. The cantilevered element will reduce deep soil landscaping on the subject site. There will also be additional impacts to 40 Barker Road through additional bulk and overshadowing. Accordingly, reverting Bedroom 1 back towards the rear of the first floor is not supported.

The tapering of the front façade will increase articulation and visual interest which will provide an improved architectural presentation. This is supported. A similar assessment can be made of removing the void around the stairs and this is assessed in more detail against the design planning principle later in this report.

The other changes are predominantly internal and are less significant from a design perspective. These are all assessed as consistent with the architectural design provisions.

Roof Form

The roof form controls are contained in Part A2.2.4 of the SCDCP 2005 and state:

1. *The proposed roof design must be similar in pitch, materials and colour to roofs in the immediate streetscape. Roof forms should complement, but not necessarily replicate the predominant form in the locality.*
2. *The proposed roof form shall minimise the appearance of bulk and scale of the building and be treated as an important architectural element in the street. First floor additions must complement the architectural style of the ground floor and where possible permit the existing roof form, slope and ridge to be easily discerned.*
3. *For flat roofed dwellings, the height of the parapet is to be kept to the minimum height required to ensure adequate screening of the proposed flat or low pitch skillion roof.*
4. *Roof structures must be designed so that roof installations including solar energy panels, telecommunication facilities, hot water tanks or skylights are not visible from the public domain and are integrated into the design of the development.*

The proposal will reduce the roof height by 200mm and retain a similar flat roofed appearance. This will bring the roof into compliance with the 0.8m building envelope control. The material will change from a metal to a concrete roof finish. This additional variation in materiality increases the visual interest and is consistent with the relevant provisions in the SCDCP 2005. The proposed Bedroom 1 roof form is generally consistent with the provisions, however is not supported for the other reasons posited in this report.

Building Envelope

The SCDCP 2005 contains objectives and controls relevant to the proposed modification relating to:

- Building scale, height and floor space ratio
- Rhythm of built elements in the streetscape,
- Fenestration and external materials, and
- Street edge

With the exception of Bedroom 1, the proposed changes maintain or reduce the approved building bulk and are acceptable. The bulk and visual issues related to Bedroom 1 cannot be

readily separated from other SCDCP 2005 provisions such as landscaping, ceiling heights and solar access. These will each be considered in turn however it is worth first considering building envelope more broadly.

Applicant's Points

The applicant, in the SEE and Response Letter, has stated that a cantilevered Bedroom 1 at the rear and reinstating the longue void is acceptable for the following (paraphrased) reasons:

1. Amenity benefits for residents from a sense of grandeur, additional natural light and shading and weather protection for the pool;

Conditions 6(2)(b, c) were imposed because the void did not provide a material amenity benefit for residents given it was west and south facing. Any amenity benefits from a sense of grandeur and the like is outweighed by the loss of amenity from reduced landscaping and additional bulk and overshadowing. Any additional amenity impact arising from a poor design is considered inconsistent with Objective 4.1(B) of Part A of the SCDCP 2005 which requires developments to "minimise impact on the amenity of adjoining properties". It also contravenes Object (g) of the EP&A Act 1979 which seeks "to promote good design and amenity of the built environment".

2. The extent of setback is comparable with 40 Barker Road; and

The applicant suggests the detached rear garage of 40 Barker Road creates a precedent for building bulk at the rear of the subject site. This is not accepted for the following reasons.

Firstly, the cantilevered Bedroom 1 will be on the first floor level rather than at the ground as with the adjoining garage. The bulk, overshadowing and privacy impacts of a cantilevered first floor built form containing habitable floor space is significantly greater compared to a garage.

Secondly, the rear building line of 40 and 44 Barker Road remain set back much further than the approved development on the subject site. An additional cantilevered element beyond the approved rear building line would be entirely inconsistent.

Thirdly, the garage is a detached building form which provides greater visual relief than is proposed along the 27.81m eastern elevation if the cantilevered element were approved.

3. Compliance with height, FSR and rear setback provisions.

The applicant makes much of the building's numerical compliance necessarily demonstrating compatibility with the desired future character and the objectives of the controls. However this is not necessarily the case as per Acting Commissioner Clay in *Abdullah v Strathfield Municipal Council* [2020] NSWLEC 1467 [53]:

Applicants are often reminded that numerical controls are usually maximum controls. There is no right to develop to the maximum permitted of a development standard. Similarly controls and objectives, where relevant, are to be considered as a whole; a suite of controls designed to define and control development. By way of example, a control such as FSR only deals with the gross floor area of a development and its comparison to the area of the site. It does not deal with the location of that gross floor area. Other controls and objectives play a role in determining where that gross floor area should be.

As demonstrated above and below, there are a number of SCDP 2005 objectives which are not met by the cantilevered component, notwithstanding numerical compliance. This includes Objective 4.1(D) of Part A which states:

D. To create a perception or reinforce a sense of openness in the locality.

Requiring a cantilevered component when another part of the first floor is underutilised presents an inefficient design that unnecessarily reduces the sense of openness in the locality. This includes the openness as viewed from adjoining properties.

For these reasons, the cantilevered Bedroom 1 fails to meet the expectation for urban design created by the controls and objectives in SCDP 2005. In any event, the cantilevered element does not fully comply with all the numerical building envelope provisions. This includes a floor to ceiling height exceedance which will now be discussed.

Ceiling Heights

Part A4.2.2(5) contains an internal ceiling height control of 3m for any residential level. The proposed modifications retain a 3m ceiling height as approved, except for the following:

- A minor reduction above the lift and stairs area; and
- A significant increase by reinstating the void at the rear.

As approved, the rear living area void was to be repurposed for Bedroom 1. The relocation of Bedroom 1 to a cantilevered element would result in the rear lounge area having a floor to ceiling height of 5.6m, which represents a 87% breach (see **Figure 22**). It is noted that, although the Section shows 'Bed 1' above the lounge, this appears to be a misprint given no floor is shown. The floor plans clearly demonstrate the area above the rear lounge being a void and the assessment is carried out on this basis.

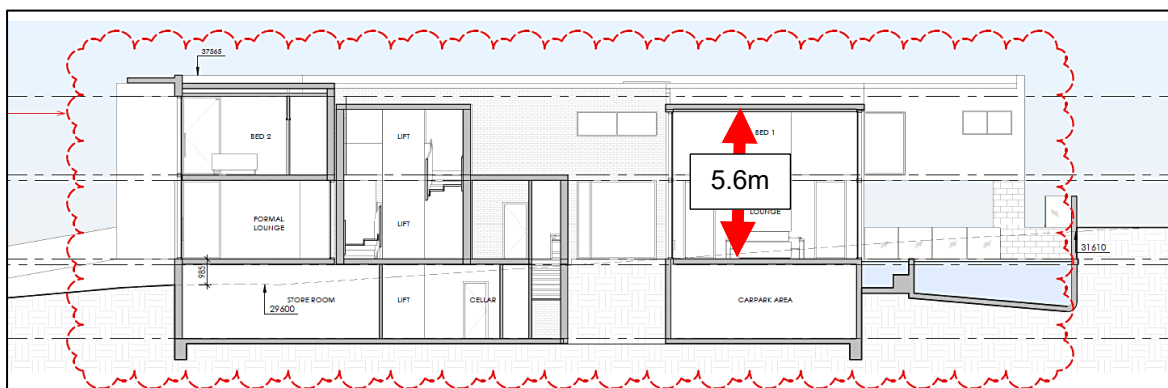


Figure 22: Section showing ground floor, first floor and void space ceiling heights

The ceiling height breach is not supported as compliance can readily be achieved by relocating the cantilevered Bedroom 1 into the void. The large void area unnecessarily contributes to the bulk of the development and is inconsistent with the objectives of the building envelope controls, as assessed above.

Landscaping and Open Space

Although the SEE states there will be no change to the approved landscaped area across the site, the architectural drawings indicate there will be a reduction of 6m² from 390m² to 384m². The reduction is a function of extending the alfresco area. As the SCDP 2005 control is for 384.6m², this results in a minor non-compliance. This is negligible and is reasonable in the circumstances. The landscaped area appears to have been calculated conservatively given

new landscaped areas are created by removing the void areas around the stairs. The proposal also complies with the front and rear landscaped areas.

However, the applicant has included the area underneath Bedroom 1 as landscaped area when it should not be counted. If Bedroom 1 were retained as a cantilevered element, there would be a significant shortfall which would not be supported.

The proposed development as modified (and with Bedroom 1 conditioned to be relocated) satisfies the relevant landscaping objectives and controls of the SCDCP 2005.

Solar Access

Given the orientation of the site, solar access to windows of habitable rooms and to at least 50% of the private open space is achieved or maintained for a minimum period of 3 hours between 9.00am-3:00pm at the winter solstice (June 22). The proposal therefore complies with the 3 hour numeric provision in the SCDCP 2005.

However, the cantilevered Bedroom 1 at the rear still results in additional overshadowing over the rear yard of 2 Short Street at 9am and over 40 Barker Road at midday and 3pm. The objectives of the solar access provisions in Part A of the SCDCP 2005 are as follows:

- A. *To ensure the design of new dwelling houses and alterations and additions maximises solar access to living areas and open space areas.*
- B. *To minimise overshadowing of adjoining properties.*

Although the proposal meets the numeric standards of the control, it is considered that the proposed cantilevered design does not sufficiently minimise overshadowing and therefore fails to satisfy the Objective 6.1(B) of Part A of the SCDCP 2005.

Planning Principle – Sunlight

Council and the Land and Environment Court give consideration to the Planning Principle on the impact on solar access of neighbours (*The Benevolent Society v Waverley Council* [2010] NSWLEC 1082) which states at [137], inter alia:

Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.

The rear extension beyond the building line below does not readily contribute to amenity as it is south and west facing. Bedroom 1 can also easily be relocated to the void area above the living room. The cantilevered form is considered a poor design outcome which would result in noticeable additional overshadowing. Accordingly, the deletion of Conditions 6(b) and (c) is not supported.

The other design modifications are reasonable and do not readily contribute to additional overshadowing. These are considered acceptable in terms of solar access.

Privacy

The proposal generally retains a similar level of aural and visual privacy from what was approved. The amended plans requested by Council removed a side facing balcony from Bedroom 1 which would have resulted in an unacceptable privacy outcome. There remains the potential for additional diagonal sightlines from Bedroom 1 into the rear yard of 40 Barker

Road and across the side boundary to 44 Barker Road. As indicated throughout this report, reinstating Bedroom 1 at the rear of the site is not supported and will be conditioned to remain over what is shown as a void area. This will remove this potential privacy impact and the remainder of the changes are considered acceptable.

Vehicular Access, Parking and Basements

The proposed development, as modified, satisfies the relevant traffic objectives and controls of the SCDCP 2005 in that it provides the minimum number of required parking spaces and adequate vehicular access provisions. The number of car spaces are retained from the original approval. While the requirement for sightline splays have been replaced with transparent glass, this has been confirmed as acceptable by Council's Traffic Engineer.

While the extent of the approved basement is not proposed to change, the reduction in ground floor footprint around the stairs will result in a technical non-compliance as an area will extend beyond the footprint. There will be no additional impacts as the excavation volume and extent will remain as approved and therefore this technical breach is supported in the circumstances.

Retaining Walls

There will be no change to the approved and compliant retaining walls, other than the incorporation of 300mm glass walls for the driveway, which the applicant has described as retaining walls. These do not appear to be load bearing and are therefore not considered retaining walls in a strict sense. In any event, these remain well under the maximum height of 1.2m. As approved, all retaining walls greater than 600mm are required to be designed by a suitably qualified engineer.

PART H – Waste Management

A Waste Management Plan was submitted with the original application. The plan adequately accommodates the modified development.

(iv) *Any matters prescribed by the regulations, that apply to the land to which the development application relates,*

The provisions of this clause are not relevant to the modification and have been considered or addressed as part of the original development consent.

(b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

The proposed development, as modified, and with the exception of the cantilevered component, is of a scale and character that is in keeping with other developments being constructed in the locality. Accordingly, the proposal is not considered to have a significant impact on the natural and built environment or any negative social or economic impacts on the locality.

Solar access and privacy were assessed under the SCDCP 2005 above and visual amenity is assessed below.

Visual Amenity

As indicated, the proposal is for the removal of Condition 6(a) which required the reduction of the ceiling height around the front entry and stairwell. It is proposed to taper the front façade as per the condition and remove the void entirely, going beyond what was required in the condition. While the tapered front façade will reduce streetscape bulk and provide additional articulation, the removal of built form around the stairs creates an inconsistent and unusual western elevation.

Planning Principle - Design

Council and the NSW Land and Environment Court rely on the design planning principle in *Totem Queens Park Pty Ltd v Waverley Council* [2004] NSWLEC 712 which states at [42]:

Its [sic] is unreasonable to reject a building design simply because it is different. However a consent authority when dealing with a development application, irrespective of the credentials of the designer, cannot disregard important public interest matters such as the character of the area and streetscape just because the particular design under consideration is said to comprise quality contemporary architecture. Similarly, unreasonable impacts on neighbours cannot be disregarded. This is especially so when these matters are provided for in a development control plan. Also, in dealing with a development application it is not for the Court (or indeed the council) to question a properly prepared and adopted development control plan.

The unusual western elevation will be obscured from the street by the leading edge of the formal lounge and will therefore not adversely impact the character of the area. There will also not be any amenity impacts on the adjoining property at 44 Barker Road. There is some precedent in the streetscape for unusual contemporary designs at 21 and 38 Barker Road. Accordingly, the unusual contemporary design of the western elevation is considered acceptable.

As indicated throughout this report, retaining Bedroom 1 as a cantilevered built form at the rear unnecessarily contributes to the bulk of the building and adversely impacts on the visual amenity of neighbours. This aspect of the modification application is not supported.

Overall, the proposal will maintain or improve visual amenity, with the exception of the rear extension which is not supported. While the modifications to the western façade create an unusual design, this remains consistent with the considerations in the design planning principle.

(c) the suitability of the site for the development,

The site remains suitable for residential development as existing and approved.

(d) any submissions made in accordance with this Act or the regulations,

In accordance with the provisions of Councils Community Participation Plan (CPP) 2020, the application was placed on neighbour notification for a period of fourteen (14) days where adjoining property owners were notified in writing of the proposal and invited to comment. One submission was received from the resident of 44 Barker Road adjoining the subject site immediately to the west. The submission raised the following concern:

1. The dark materiality of the western elevation will reduce natural light penetration and solar access

The proposed modifications will not change the previously approved materials along the western elevation, other than the roof form. The materials also do not contribute to overshadowing. Accordingly, this objection is not relevant. Reducing the built form around the stair may even increase natural light for 44 Barker Road.

(e) *the public interest.*

The proposed development, as modified, is of a scale and character that does not conflict with the public interest, with the exception of the cantilevered Bedroom 1.

Local Infrastructure Contributions

Section 7.13 of the EP&A Act 1979 relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. A consent authority may impose a condition under section 7.11 or 7.12 only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

The proposed modifications do not result in an increase or change to the Section 7.12 contributions imposed on the original consent.

Conclusion/Recommendation

The application for modification has been assessed having regard to the Heads of Consideration under Section 4.15(1) of the EP&A Act 1979, the provisions of the SLEP 2012 and SCDCP 2005.

Pursuant to Section 4.55(2) of the EP&A Act 1979 and following detailed assessment of the proposed modifications to Development Consent DA 172/2021 for demolition of existing structures, construction of a two-storey dwelling house with a basement and in-ground swimming pool, the application is recommended to be amended as follows:

1. The proposed modifications does not result in the change to the description of the approved development and is to be maintained.
2. The original conditions of consent of Development Consent DA 2021/172 as approved are retained except where amended as below.
3. As part of this Section 4.55(2) application, the following conditions are to be modified, added or deleted;
 - Condition 1 amended to reflect revised drawings;
 - Condition 6 amended to reflect revised drawings (Condition 6(b) and (c) retained); and
 - Condition 10 amended to reflect revised BASIX Certificate Number.

It is noted that the stamped approved plans also include additional clouding to reflect the extent of the changes. Accordingly, Development Consent 172/2021/3 is recommended for approval.

Signed:



Date: 4 July 2022

W van Wyk
Planning Officer

- ☒ I confirm that I have determined the abovementioned development application with the delegations assigned to my position;
- ☒ I have reviewed the details of this modified development application and I also certify that additional Section 7.12 Contributions are not applicable to this modification proposal;

Report and recommendations have been peer reviewed and concurred with.



Signed:

Patrick Santos
Senior Planner

Date: 28 June 2022

DEVELOPMENT DETAILS

1. Approved Plans & Documentation

The development must be implemented in accordance with the approved plans and supporting documentation listed below which have been endorsed by Council's approved stamp, except where marked up on the plans and/or amended by conditions of this consent:

Description	Reference No.	Date	Revision	Prepared by
Site Plan and Demolition Plan	21082 Drawing Number 02	02/12/2021	G	Baini Design
Basement and Ground Floor Plan	21082 Drawing Number 03	02/12/2021	G	Baini Design
First Floor and Roof Plan	21082 Drawing Number 04	02/12/2021	G	Baini Design
Elevations and Section	21082 Drawing Number 05	02/12/2021	G	Baini Design
Elevations, Sections and Pool details	21082 Drawing Number 06	02/12/2021	G	Baini Design
Schedule of Finishes	21082 Drawing Number 08	02/12/2021	G	Baini Design
Site Plan and Demolition Plan	21082 Drawing Number 02	06/06/2022	E	Baini Design
Basement and Ground Floor Plan	21082 Drawing Number 03	06/06/2022	E	Baini Design
First Floor and Roof Plan	21082 Drawing Number 04	06/06/2022	E	Baini Design
Elevations and Section	21082 Drawing Number 05	06/06/2022	E	Baini Design
Elevations, Sections and Pool details	21082 Drawing Number 06	06/06/2022	E	Baini Design

Schedule of Finishes	21082 Drawing Number 08	06/06/2022	E	Baini Design
Tree Protection Plan	21082 Drawing Number 09	02/12/2021	C	Baini Design
Fencing Details	21082 Drawing Number 12	02/12/2021	C	Baini Design
Stormwater Plans	SW21145 Pages 101; 200-203; 300; and 400	07/07/2021	B	De Boke Engineering Consultants
Landscape Plans	21019 page 1 of 1	07/06/2021	A	Greenscene
Arborist Report	-	17 June 2021	-	Horticultural Management Services
Arborist Adendum	-	14 February 2022	-	Horticultural Management Services
Flood Impact Report	SW21145-FR1- Flood Impact Report-DA	21/05/2021	01	De Boke Engineering Consultants
Survey plan	121024	22/01/2021	-	New South Surveys
BASIX Certificate	1218636S	06 July 2021		AKV Pty Ltd
BASIX Certificate	1218636S_02	19 April 2022		Planning Industry & Environment
Waste Management Plan	-	July 2021	-	Dickens Solutions
Cost summary	Q2021-CR198	29 July 2021	-	QPC & C Pty Limited

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SEPARATE APPROVALS REQUIRED UNDER OTHER LEGISLATION

2. **Section 138 Roads Act 1993 and Section 68 Local Government Act 1993**

Unless otherwise specified by a condition of this consent, this Development Consent does not give any approval to undertake works on public infrastructure.

Separate approval is required under Section 138 of the [Roads Act 1993](#) and/or Section 68 of the [Local Government Act 1993](#) for any of the following activities carried out in, on or over a public road (including the footpath) listed below.

An application is required to be lodged and approved prior to the commencement of any of the following works or activities;

- (a) If any excavation is to be supported by the use of below ground (cable) anchors that are constructed under Council's roadways/footways.
- (b) Swinging or hoisting goods over any part of a public road by means of a lift, crane or the like;
- (c) Establishing a "works zone";
- (d) Placing or storing materials or equipment;
- (e) Placing or storing waste containers or skip bins;
- (f) Stormwater & ancillary to public infrastructure on private land
- (g) Erecting a structure or carrying out work

These separate activity approvals (a)-(g) must be obtained and evidence of the approval provided to the Certifying Authority prior to the issue of the Construction Certificate.

- (h) Pumping water from the site into the public road;
- (i) Constructing a vehicular crossing or footpath;
- (j) Digging up or disturbing the surface of a public road (e.g. Opening the road for the purpose of connections to utility providers);
- (k) Stormwater & ancillary works in the road reserve; and
- (l) Pumping concrete from a public road;

These separate activity approvals must be obtained and evidence of the approval provided to the Certifying Authority prior to the activities commencing.

The relevant Application Forms for these activities can be downloaded from Council's website www.strathfield.nsw.gov.au. For further information, please contact Council's Customer Service Centre on (02) 9748 9999.

3. **Vehicular Crossing - Minor Development**

Constructing a vehicular crossing and/or footpath requires a separate approval under Section 138 of the [Roads Act 1993](#) prior to the commencement of those works.

To apply for approval, complete the *Works Permit Application Form* which can be downloaded from Strathfield Council's Website at www.strathfield.nsw.gov.au. Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Civic & Urban Services Section in Council's adopted *Fees and Charges* for the administrative and inspection charges associated with *Works Permit* applications.

An approval for a new or modified vehicular crossing will contain the approved access and/or alignment levels which will be required to construct the crossing and/or footpath. Once approved, all work shall be carried out in accordance with Council's specifications applicable at the time, prior to the issue of an Occupation Certificate.

REQUIREMENTS OF CONCURRENCE, INTEGRATED & OTHER GOVERNMENT AUTHORITIES

4. **Sydney Water – Tap in™**

The approved plans must be submitted to a Sydney Water Tap in™ to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately endorsed. For details please refer to 'Plumbing, building and developing' section of Sydney Water's web site at www.sydneywater.com.au then see 'Building', or telephone 13000 TAP IN (1300 082 746). The Certifying Authority must ensure that a Tap in™ agent has appropriately stamped the plans prior to the issue of the Construction Certificate.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

5. **Fees to be Paid**

The fees listed in the table below must be paid in accordance with the conditions of this consent and Council's adopted Fees and Charges applicable at the time of payment (available at www.strathfield.nsw.gov.au).

Payments must be made prior to the issue of the Construction Certificate or prior to the commencement of work (if there is no associated Construction Certificate).

Please contact council prior to the payment of s7.12 Contributions to determine whether the amounts have been indexed from that indicated below in this consent and the form of payment that will be accepted by Council.

A summary of the fees to be paid are listed below:

Fee Type	Fee
GENERAL FEES	

Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See https://longservice.force.com/bci/s/levy-calculator	\$ 7,266.00
Security Damage Deposit	\$ 18,000.00
Administration Fee for Damage Deposit	\$ 130.00
Tree Bond	\$ 30,450.00
Administration Fee for Tree Bond	\$ 130.00
DEVELOPMENT CONTRIBUTIONS	
Indirect (Section 7.12) Contributions	\$20,761.40

General Fees

The fees and charges above are subject to change and are as set out in the version of Council's Schedule of Fees and Charges or as required by other Government Authorities, applicable at the time of payment.

Development Contributions

A Section 7.12 contribution has been levied on the subject development pursuant to the Strathfield Section 94A Indirect Development Contributions Plan.

Indexation

The above contributions will be adjusted at the time of payment to reflect changes in the cost of delivering public amenities and public services, in accordance with the indices provided by the relevant Development Contributions Plan.

Timing of Payment

The contribution must be paid and receipted by Council prior to the release of the Construction Certificate.

Further Information

A copy of the *current Development Contributions Plans* may be inspected at Council's Customer Service Centre at 65 Homebush Road, Strathfield or on Council's website www.strathfield.nsw.gov.au.

6. Required Design Changes

The following changes are required to be made and shown on the Construction Certificate plans:

Driveway sight splays	A minimum 1m x 1m splay to be provided on both side of the vehicular access, within the property boundary. The areas should be kept clear from obstructions and only allow ground cover landscaping, to maintain sight distances for pedestrians and motorists. Any front fence or gate opening adjustments required as a result of this splay must be illustrated on the plans lodged with the application for the Construction Certificate.
Amendments made in red on approved plans	<p>Prior to the issue of a Construction Certificate, amended plans are to be submitted to and approved by Council which details the following:</p> <ul style="list-style-type: none"> a) The ceiling height above the front entry/stairwell is to be reduced so as to not unnecessarily add bulk to the dwelling; b) The cantilevered component of bed 1 be relocated to the void area over the ground floor living room; c) The rear of the first floor not extend beyond the external walls of the ground floor below.

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7. Damage Deposit – Minor Works

In order to insure against damage to Council property the following is required:

- (a) Pay Council, before the issue of the Construction Certificate, a damage security deposit for the cost of making good any damage caused to any Council property as a result of the development: \$18,000.00
- (b) Pay Council, before the issue of the Construction Certificate, a non-refundable administration fee to enable assessment of any damage and repairs where required: \$130.00
- (c) Submit to Council, before the commencement of work, a photographic record of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

At the completion of work Council will inspect the public works, and the damage deposit will be refunded in full upon completion of work where no damage occurs. Otherwise the amount will be either forfeited or partly refunded according to the amount of damage.

8. Tree Bond

A tree bond of \$30,450.00 (calculated in accordance with Council's adopted Fees and Charges) shall be paid to Council, prior to the issue of a Construction Certificate.

The deposit is required as security against any damage to existing trees to be retained on Council's road reserve, during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development.

A sound protection barrier anchored firmly into the ground 1.8m in height x 2 metres clear of the base of the tree at any one point and that the fence is to extend up to the back of the kerb and to the edge of the footpath.

Payment may be accepted in the form of cash, bank guarantee, cheque or credit card (financial transactions fees apply). Note: Additional fees apply for the lodgement of a bank guarantee in lieu of cash bond applies in accordance with Council's adopted Fees and Charges.

A request for refund of the Tree Bond must be made in writing.

Tree Bonds may be forfeited if a tree is dead, made dangerous or has been terminally damaged, or will be held until tree/s have fully recovered from the construction damage or were replacement/planted trees have become fully established and are over 6 metres in height.

9. **Site Management Plan**

Minor Development

A Site Management Plan detailing all weather access control points, sedimentation controls, waste management plans, fencing, builder's site sheds office, amenities, materials storage and unloading arrangements must be submitted with the application for the Construction Certificate.

10. **BASIX Commitments**

The approved BASIX Certificate shall be submitted to the Accredited Certifier with the application for a Construction Certificate.

All measures and commitments as detailed in the BASIX Certificate **No. 1218636S_02** must be implemented on the plans lodged with the application for the Construction Certificate.

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11. **Erosion & Sedimentation Control**

Erosion and sediment controls must be provided to ensure:

- (a) Compliance with the approved Erosion & Sediment Control Plan
- (b) Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)
- (c) All clean water run-off is diverted around cleared or exposed areas
- (d) Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways
- (e) All erosion and sediment controls are fully maintained for the duration of demolition, excavation and/or development works
- (f) Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway

- (g) All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar
- (h) Compliance with [Managing Urban Stormwater – Soils and Construction \(Blue Book\) produced by Landcom 2004.](#)

These measures are to be implemented prior to the commencement of work (including demolition and excavation) and must remain until works are completed and all exposed surfaces are landscaped/sealed.

12. Stormwater System

The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system in accordance with Council stormwater management code and AS/NZS 3500.3: 2015 (as amended), prepared by a professional engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate.

13. Pump-Out System Design for Stormwater Disposal

The design of the pump-out system for storm water disposal will be permitted for drainage of basement areas only, and must be designed in accordance with the following criteria:

- (a) The pump system shall consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one-hour duration storm. The holding tank shall be capable of holding four hour's runoff from a one-hour duration storm of the 1 in 100 year storm;
- (b) The pump system shall be regularly maintained and serviced, every six (6) months; and
- (c) Any drainage disposal to the street gutter from a pump system must have a stilling sump provided at the property line, connected to the street gutter by a suitable gravity line.

Details and certification of compliance from a professional engineer specialising in civil engineering shall be provided for approval with the Construction Certificate application.

14. Stormwater Drainage Plan Details

Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineering specialising in hydraulic engineering shall be submitted with the Construction Certificate application.

These plans shall be prepared in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Stormwater Management Code.

15. Compliance with Swimming Pool Act 1992

The alterations and additions to the dwelling house and/or the construction of the new dwelling house subject of this consent must not generate any non-compliances with the Swimming Pools Act 1992, Swimming Pool Regulation 2018 and the Building Code of Australia. Details of compliance to be illustrated on the plans lodged with the application for the Construction Certificate.

16. **Swimming Pools – Use and Maintenance**

The following apply to the construction, use and maintenance of swimming pools and spas:

- (a) no ground level may be raised or filled except where shown specifically on the approved plans;
- (b) all pool/spa waste water is to be discharged to the sewer according to the requirements of Sydney Water;
- (c) the swimming pool must not be used for commercial or professional purposes;
- (d) drain paved areas to the landscaped areas or a suitable lawful drainage system; and
- (e) arrange any external pool/spa lighting to minimise glare nuisance to adjoining owners.

17. **Off Street Parking – Compliance with AS2890**

All driveways, access ramps, vehicular crossings and car parking spaces shall be designed and constructed in accordance with the current version of Australian Standards, AS 2890.1 (for car parking facilities), AS 2890.6 (parking for people with disabilities) and AS 2890.2 (for commercial vehicle facilities).

18. **Landscape Plans**

All landscape works shall be carried out in accordance with the approved landscape plans. The landscaping shall be maintained in accordance with the approved plans in perpetuity.

19. **Compliance with Submitted Arborist Report**

The recommendations outlined in the Arborist's Report titled Arboricultural Impact Assessment & Tree Management Plan prepared by Horticultural Management Services dated 17 June 2021 must be implemented throughout the relevant stages of construction. Details of tree protection measures to be implemented must be detailed and lodged with the Construction Certificate application for approval and shall be in accordance with *Section 4 - Australian Standard AS 4970-2009: Protection of trees on development sites*.

The tree/s to be protected are listed in the table below.

Tree No.	Tree Species	Location of Tree	Tree Protection Zone (metres)
1	Liquidamber styraciflua	Street tree located front of 42 Barker Road	6.9 metres
2	Lophostemon confertus	Street tree located front of 42 Barker Road	7.0 metres
3	Corymbia citriodora	40 Barker Road	11.9 metres
7	Celtis australis	42 Barker Road	7.7 metres
8	Liquidamber styraciflua	44 barker Road	5.8 metres

9	Cupressocyparis leylandii	42 Barker Road	3.0 metres
10	Cupressocyparis leylandii	42 barker Road	3.0 metres

20. Tree Protection and Retention

The following trees shall be retained and protected:

Tree No.	Tree Species	Location of Tree	Tree Protection Zone (metres)
T1	Liquidambar <i>Liquidambar styraciflua</i>	Road reserve (street tree)	6.9
T2	Brush Box <i>Lophostemon confertus</i>	Road reserve (street tree)	7
T3	Lemon Scented Gum <i>Corymbia citriodora</i>	Front yard, eastern boundary	11.9
T7	Nettle Tree <i>Celtis australis</i>	Rear yard, western boundary	7.7
T8	Liquidambar <i>Liquidambar styraciflua</i>	Rear yard, rear boundary	5.8
T9	Leyland Cypress <i>Cupressocyparis leylandii</i>	Rear yard, eastern boundary	3
T10	Leyland Cypress <i>Cupressocyparis leylandii</i>	Rear yard, eastern boundary	3

Details of the trees to be retained must be included on the Construction Certificate plans.

General Tree Protection Measures

- (a) All trees to be retained shall be protected and maintained during demolition, excavation and construction of the site.
- (b) The tree protection measures must be undertaken in accordance AS4970 -2009 *Protection of trees on development sites*.

- (c) Details of the tree protection measures to be implemented must be provided with the application for a Construction Certificate by a suitably qualified Arborist (AQF Level 5 or above in Arboriculture).
- (d) The Arborist must be present on-site during the stages of construction when works are being undertaken that could impact on the tree canopy or root zone within the tree protection zone to implement the tree protection measures as required.
- (e) Unless otherwise specified in AS 4970-2009, a protective fence consisting of 1.8 metres high, fully supported chainmesh fence shall be erected around the base of the tree. The distance of the fence from the base of each tree is to be in accordance with the TPZ listed in the table above. A layer of organic mulch 100 millimetres thick shall be placed over the protected area and no soil or fill should be placed within the protection area.
- (f) No services shall be installed within the TPZ of the tree unless approved by Council. This fence shall be kept in place during demolition, construction and also have a sign displaying 'Tree Protection Zone' attached to the fence and must also include the name and contact details of the Project Arborist.

Specific Street Tree Protection Measures

- (g) A sound protection barrier anchored firmly into the ground 1.8m in height x 2 metres clear of the base of the tree at any one point and that the fence is to extend up to the back of the kerb and to the edge of the footpath.

Excavation works near tree to be retained

- (h) Excavations around the trees to be retained on site or the adjoining properties shall be supervised by the Project Arborist to ensure that the root system will not adversely be affected.
- (i) Where the Tree Protection Zone (TPZ) of trees on site or adjoining sites become compromised by any excavation works, the Project arborist shall be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.
- (j) Tree Protection Zone around the trees to be retained are not to have soil level changes or services installed in this area. Any structures proposed to be built in this area of the trees are to utilise pier and beam or cantilevered slab construction.

Details satisfying this condition shall be shown on the Construction Certificate plans.

21. Tree Removal & Replacement

Tree removal

Permission is granted for the removal of the following trees:

Tree No.	Tree species	Number of trees	Location
T4, T5 and T6	Honey Myrtle <i>Melaleuca decora</i>	3	Western side boundary

General Tree Removal Requirements

All tree removal shall be carried out by a certified Tree Surgeon/Arborist to ensure that removal is undertaken in a safe manner and complies with the AS 4373-2007 - Pruning of Amenity Trees and Amenity Tree Industry Code of Practice (Safework NSW, August 1998).

Tree Replacement

All trees permitted to be removed by this consent shall be replaced with three (3) trees species selected from Council's Recommended Tree List and must have a minimum mature height of 15 metres.

Replacement trees shall be a minimum 1000 litre container size. Trees are to conform to the NATSPEC guide and Guide for assessing the quality of and purchasing of landscape trees by Ross Clarke, 2003. Trees are to be true to type, healthy and vigorous at time of delivery and planting, shall be pest and disease free, free from injury and wounds and self-supporting; and shall be maintained until maturity.

All trees are to be staked and tied with a minimum of three (3) hardwood stakes. Ties are to be hessian and fixed firmly to the stakes, one tie at half the height of the main stem, others as necessary to stabilise the plant.

Root deflection barriers having a minimum depth of 600mm are to be installed adjacent to all footpaths and driveways.

Soil conditioner/fertilizer/moisture retention additive/s are to be applied in accordance with manufacturer's recommendations, and mixed into the backfilling soil after planting tree/s.

A minimum 75mm depth of organic mulch shall be placed within an area 0.5m from the base of the tree.

Details demonstrating compliance shall be demonstrated to the Principal Certifying Authority, prior to the issue of any Occupation Certificate.

PRIOR TO THE COMMENCEMENT OF WORK (INCLUDING DEMOLITION & EXCAVATION)

22. Demolition & Asbestos

The demolition work shall comply with the provisions of Australian Standard AS2601:2001 – Demolition of Structures, NSW [Work Health & Safety Act 2011](#) and the NSW [Work Health & Safety Regulation 2011](#). The work plans required by AS2601:2001 shall be accompanied by a written statement by a suitably qualified person that the proposals contained in the work plan comply with the safety requirements of the Standard. The work plans and the safety statement shall be submitted to the PCA prior to the commencement of works.

For demolition work which involves the removal of asbestos, the asbestos removal work must be carried out by a licensed asbestos removalist who is licensed to carry out the work in accordance with the NSW [Work Health & Safety Act 2011](#) and the NSW [Work Health & Safety Regulation 2011](#) unless specified in the Act and/or Regulation that a license is not required.

All demolition work including the removal of asbestos, shall be undertaken in accordance with the [Demolition Code of Practice](#) (NSW Work Cover July 2015)

Note: Copies of the Act, Regulation and Code of Practice can be downloaded free of charge from the SafeWork NSW website: www.SafeWork.nsw.gov.au.

23. Demolition Notification Requirements

The following notification requirements apply to this consent:

- (a) The developer /builder must notify adjoining residents five (5) working days prior to demolition. Such notification is to be a clearly written note giving the date demolition will commence, contact details of the developer/builder, licensed asbestos demolisher and the appropriate regulatory authority. Notification is to be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately at the rear of the demolition site.
- (b) Five (5) working days prior to demolition, the developer/builder is to provide written notification to Council advising of the demolition date, details of the SafeWork licensed asbestos demolisher and the list of residents advised of the demolition.
- (c) On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm is to be erected in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.

24. Demolition Work Involving Asbestos Removal

Work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work must be undertaken by a person who carries on a business of such removal work in accordance with a licence under clause 458 of the [Work Health and Safety Regulation 2011](#).

25. Dial Before You Dig

The applicant shall contact "Dial Before You Dig on 1100" to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Council's Engineers for their records.

DURING CONSTRUCTION

26. Hours of Construction for Demolition and Building Work

Any work activity or activity associated with the development consent that requires the use of any tools (including hand tools) or any power operated plant and machinery that creates noise on or adjacent to the site shall not be performed, or permitted to be performed, except between the hours of 7.00 am to 5.00 pm, Monday to Friday and 8:00am to 1:00pm on Saturdays. No work or ancillary activity is permitted on Sundays, or Public Holidays.

Where the development involves the use of jack hammers/rock breakers and the like, or other heavy machinery, such equipment may only be used between the hours of 7:00am to 5:00pm Monday to Friday only.

Note: A penalty infringement notice may be issued for any offence.

27. Ground Levels and Retaining Walls

The ground levels of the site shall not be excavated, raised or filled, or retaining walls constructed on the allotment boundary, except where indicated on approved plans or approved by Council.

28. Obstruction of Road or Footpath

The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the [Roads Act 1993](#) and/or under Section 68 of the [Local Government Act 1993](#). Penalty infringement Notices may be issued for any offences and severe penalties apply.

29. Swimming Pools – Filling with Water

The pool/spa shall not be filled until the safety fences have been completed in accordance with the approved plans and specifications and inspected by the PCA.

30. Tree Removal on Private Land

The trees identified as 'to be removed/pruned' on the approved plans or by conditions of this consent shall be removed in accordance with *AS4373 -2007* and the *Amenity Tree Industry Code of Practice* (SafeWork NSW, August 1998).

31. Excavation Works Near Tree to be Retained

Excavation around the tree/s to be retained on site or the adjoining properties shall be supervised by the Project Arborist to ensure that the root system will not be adversely affected.

Where the Tree Protection Zone of trees on site or adjoining sites become compromised by any excavation works, the Project Arborist shall be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.

PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

32. BASIX Certificate

All energy efficiency measures as detailed in the approved BASIX Certificate in the plans approved with the Development Consent, must be implemented before issue of any Occupation Certificate.

33. Completion of Landscape Works

The approved landscape works have identified that the side setback area between the dwelling and boundary be nominated as landscaped area to ensure compliance with the minimum landscape area requirements. In this regard, this area shall be maintained as landscaped area and can only be used for growing plants, grasses and trees and cannot include any building, structure or hard paving (including rainwater tanks, air-conditioning units of ground mounted hot water systems).

34. Minor Development

Internal driveways and parking spaces are to be adequately paved with concrete or bitumen, or interlocking pavers to provide a dust-free surface.

35. Stormwater Certification of the Constructed Drainage Works (Minor)

The constructed stormwater system shall be certified by a suitably qualified person, in accordance with Council's Stormwater Management Code, prior to the issue of any Occupation Certificate.

36. Vehicular Crossing - Minor Development

The vehicular crossing and/or footpath works shall be constructed by a private contractor at the expense of the applicant, in accordance with the Works Permit Approval issued by Council's Civic & Urban Services and in accordance with Council's Driveway Specifications.

Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant and in accordance with Council's Driveway Specifications.

The work must be completed before the issue of an Occupation Certificate.

37. Stormwater Drainage Works – Works As Executed

Prior to the issue of the Occupation Certificate, stormwater drainage works are to be certified by a professional engineer specialising in hydraulic engineering, with Works-As-Executed drawings supplied to Council detailing:

- (a) Compliance with conditions of development consent relating to stormwater;
- (b) That the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations;
- (c) Pipe invert levels and surface levels to Australian Height Datum;
- (d) Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

Council's Engineering Services section must advise in writing that they are satisfied with the Works-As-Executed prior to the issue of an Occupation Certificate.

OPERATIONAL CONDITIONS (ON-GOING)

38. Maintenance of Landscaping

All trees and plants forming part of the landscaping must be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilizing, pest and disease control, replacement of dead or dying plants and any other operations required to maintain healthy trees, plants and turfed areas

39. Swimming Pools – Resuscitation Notice

An expired air resuscitation warning notice complying with the [Swimming Pools Act 1992](#) must be affixed in a prominent position adjacent to the pool.

40. Private Swimming Pools & Spas – Pump Noise

The swimming pool/spa pump and associated equipment must be located so that the noise emitted does not exceed 5dB(A) above the background level. If this cannot be achieved, a ventilated and sound-proofed enclosure must enclose the pump to achieve the required noise levels.

Swimming pool is to be installed with a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):

- (a) before 8 am or after 8 pm on any Sunday or public holiday, or
- (b) before 7 am or after 8 pm on any other day.

41. Entering & Exiting of Vehicles

All vehicles shall enter and exit the premises in a forward direction.

42. Greywater System

In order to conserve and re-use water, Council encourages all developments for new dwellings to incorporate a greywater reuse system. The system can incorporate a *greywater diversion device* or a *domestic greywater treatment system*. Any system installed is to ensure that it complies with the Plumbing Code of Australia, maintained at all times and does not result in any adverse amenity impacts on the subject premises and surrounding properties.

OPERATIONAL REQUIREMENTS UNDER THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

43. Requirement for a Construction Certificate

The erection of a building must not commence until a Construction Certificate has been issued.

44. **Appointment of a PCA**

The erection of a building must not commence until the applicant has:

- (a) appointed a PCA for the building work; and
- (b) if relevant, advised the PCA that the work will be undertaken as an Owner -Builder.

If the work is not going to be undertaken by an Owner - Builder, the applicant must:

- (c) appoint a Principal Contractor to undertake the building work. If residential building work (within the meaning of the [Home Building Act 1989](#)) is to be undertaken, the Principal Contractor must be a holder of a contractor licence; and
- (d) notify the PCA of the details of any such appointment; and
- (e) notify the Principal Contractor of any critical stage inspections or other inspections that are required to be carried out in respect of the building work.

45. **Notification of Critical Stage Inspections**

No later than two days before the building work commences, the PCA must notify:

- (a) the consent authority and the Council (if not the consent authority) of his or her appointment; and
- (b) the applicant of the critical stage inspections and other inspections that are to be carried out with respect to the building work.

46. **Critical Stage Inspections**

The last critical stage inspection must be undertaken by the PCA. The critical stage inspections required to be carried out vary according to Building Class under the Building Code of Australia and are listed in Clause 162A of the [Environmental Planning and Assessment Regulation 2000](#).

47. **Notice to be Given Prior to Critical Stage Inspections**

The principal contractor for a building site, or the owner-builder, must notify the PCA at least 48 hours before each required inspection needs to be carried out.

48. **Occupation Certificate**

A person must not commence occupation or use of the whole or any part of a new building unless an Occupation Certificate has been issued in relation to the building or part.

PRESCRIBED CONDITIONS

49. Clause 97A – BASIX Commitments

This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.

50. Clause 98 – Building Code of Australia & Home Building Act 1989

Requires all building work to be carried out in accordance with the Building Code of Australia. In the case of residential building work to which the [Home Building Act 1989](#) relates, there is a requirement for a contract of insurance to be in force before any work commences.

51. Clause 98A – Erection of Signs

Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the PCA and the Principal Contractor.

52. Clause 98B – Home Building Act 1989

If the development involves residential building work under the [Home Building Act 1989](#), no work is permitted to commence unless certain details are provided in writing to Council. The name and licence/permit number of the Principal Contractor or Owner Builder and the name of the Insurer by which work is insured under Part 6 of the [Home Building Act 1989](#).

SIGNED on behalf of
Strathfield Municipal Council


GEOFF BAKER
PUBLIC OFFICER

END CONDITIONS

ADVISORY NOTES

1. Review of Determination

Section 8.2 of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of the application the right to lodge an application with Council for a review of such determination. Any such review must however be completed within 6 months from its determination. Should a review be contemplated sufficient time should be allowed for Council to undertake public notification and other processes involved in the review of the determination.

Note: review provisions do not apply to Complying Development, Designated Development, State Significant Development, Integrated Development or any application determined by the Sydney East Planning Panel or the Land & Environment Court.

2. **Appeal Rights**

Division 8.3 (Reviews and appeals) Part 8 of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.

3. **Lapsing of Consent**

This consent will lapse unless the development is physically commenced within 5 years from the Date of Operation of this consent, in accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979 as amended.

4. **Access to NSW Legislations (Acts, Regulations and Planning Instruments)**

NSW legislation can be accessed free of charge at www.legislation.nsw.gov.au

5. **Long Service Levy**

The Long Service Corporation administers a scheme which provides a portable long service benefit for eligible workers in the building and construction industry in NSW. All benefits and requirements are determined by the Building and Construction Industry Long Service Payments Act 1986. More information about the scheme and the levy amount you are required to pay to satisfy a condition of your consent can be found at <http://www.longservice.nsw.gov.au>.

The required Long Service Levy payment can be direct to the Long Service Corporation via their web site <https://online.longservice.nsw.gov.au/bci/levy>. Payments can only be processed on-line for the full levy owing and where the value of work is between \$25,000 and \$6,000,000. Payments will be accepted for amounts up to \$21,000, using either MasterCard or Visa.

6. **Disability Discrimination Act**

This application has been assessed in accordance with the [Environmental Planning and Assessment Act 1979](#). No guarantee is given that the proposal complies with the [Disability Discrimination Act 1992](#). The applicant is responsible to ensure compliance with this and other anti-discrimination legislation. The [Disability Discrimination Act 1992](#) covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which refers to AS1428.1-Design for Access and Mobility.

7. **Stormwater & Ancillary Works – Applications under Section 138 Roads Act and/or Section 68 Local Government Act 1993**

To apply for approval under Section 138 of the [Roads Act 1993](#):

- (a) Complete the Works Permit Application Form which can be downloaded from Strathfield Council's Website at www.strathfield.nsw.gov.au.
- (b) In the Application Form, quote the Development Consent No. (eg. DA/172/2021) and reference this condition number (e.g. Condition 23)

- (c) Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Council's adopted Fees and Charges for the administrative and inspection charges associated with Works Permit applications.

An approval for a new or modified vehicular crossing will contain the approved access and/or alignment levels which will be required to construct the crossing and/or footpath. Once approved, all work shall be carried out by a private contractor in accordance with Council's specifications prior to the issue of an Occupation Certificate.

The developer must meet all costs of the extension, relocation or reconstruction of any part of Council's drainage system (including design drawings and easements) required to carry out the approved development.

8. **Site Safety Fencing**

Site fencing must be erected in accordance with SafeWork Guidelines, to exclude public access to the site throughout the demolition and/or construction work, except in the case of alterations to an occupied dwelling. The fencing must be erected before the commencement of any work and maintained throughout any demolition and construction work.

A demolition licence and/or a high risk work license may be required from SafeWork NSW (see www.SafeWork.nsw.gov.au).

9. **Register your Swimming Pool**

All swimming pools in NSW are required to be registered. Fines apply for pools that are not registered. To register please visit: www.swimmingpoolregister.nsw.gov.au

10. **Noise**

Council will generally enforce noise related conditions in accordance with the *Noise Guide for Local Government* (<http://www.environment.nsw.gov.au/noise/nglg.htm>) and the *Industrial Noise Guidelines* (<http://www.environment.nsw.gov.au/noise/industrial.htm>) publish by the Department of Environment and Conservation. Other state government authorities also regulate the [Protection of the Environment Operations Act 1997](#).

Useful links relating to Noise:

- (a) Community Justice Centres—free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).
- (b) Department of Environment and Conservation NSW, Noise Policy Section web page (www.environment.nsw.gov.au/noise).
- (c) New South Wales Government Legislation home page for access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* (www.legislation.nsw.gov.au).
- (d) Australian Acoustical Society—professional society of noise-related professionals ([www.acoustics.asn.au /index.php](http://www.acoustics.asn.au/index.php)).

- (e) Association of Australian Acoustical Consultants—professional society of noise related professionals (www.aaac.org.au).
- (f) Department of Gaming and Racing - (www.dgr.nsw.gov.au).

11. **Electricity Supply**

This development may need a connection to the Ausgrid network which may require the network to be extended or its capacity augmented. You are advised to contact Ausgrid on 13 13 65 or www.ausgrid.com.au (Business and Commercial Services) for further details and information on lodging your application to connect to the network.

12. **Australia Post – Letter Box Size and Location**

The size and location of letterboxes servicing the development are to comply with the requirements and standard of Australia Post (see attached link:
https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-02.pdf