

IDAP REPORT – SECTION 4.55(2) MODIFICATION

Property:	2 Sylvanus Street GREENACRE LOT 28 SEC 8 DP 845 DA2012.50.4
Proposal:	S4.55(2) modification application for alterations and additions to existing dwelling and secondary dwelling.
Applicant:	AUSTRALIAN EXECUTOR TRUSTEES LIMITED
Owner:	A Rajab
Date of lodgement:	22 April 2022
Notification period:	10 May 2022 - 24 May 2022
Submissions received:	Nil
Assessment officer:	L Gibson
Estimated cost of works:	\$165,000.00
Zoning:	R2-Low Density Residential - SLEP 2012
Heritage:	No
Flood affected:	Yes
Is a Clause 4.6 Variation Proposed:	No
RECOMMENDATION OF OFFICER:	APPROVAL



Figure 1: Aerial View of subject site (outlined in yellow) and surrounding context.

EXECUTIVE SUMMARY

Proposal

Approval is being sought for the modification of development consent DA2012/50/4 for the S4.55 (2) modification application for alterations and additions to existing dwelling and secondary dwelling.

Site and Locality

The site is identified as 2 Sylvanus Street GREENACRE and has a legal description of Lot: 28 Sec: 8 DP: 845. The site is a corner allotment and regular shaped parcel of land located south of the T-intersection of Sylvanus Street and Drone Street.

The site has a frontage width of 19.965m (to Sylvanus Street), a secondary frontage width of 39.655m (to Drone Street), a rear boundary width of 20.565m (east) and an overall site area of 803m².

The locality surrounding the subject site contains a mixture of dwelling development predominantly comprised of single storey and two (2) storey dwellings. Architectural styles vary widely in the streetscape including original fibro and weatherboard cottages to two (2) storey rendered dwellings of grander proportions and a modern-style appearance.

Strathfield Local Environmental Plan

The site is zoned R2-Low Density Residential under the provisions of Strathfield LEP 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 LEP.

Development Control Plan

The proposed development as amended generally satisfies the provisions of Strathfield Consolidated DCP 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 from (10 May 2022 until 24 May 2022), where no submissions were received.

Issues

- Associated building compliance issues

Conclusion

Having regards to the heads of consideration under Section 4.15 of the *Environmental Planning & Assessment Act 1979*, Development Application 2012/50/4 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 2012/50 for the S4.55(2) modification application for alterations and additions to existing dwelling and secondary dwelling. More specifically, the proposal includes;

Dwelling A (Frontage to Sylvanus Street)

- Lowered garage level from RL23.40 to RL22.610 to adjoin slab height for existing concrete driveway servicing the site from Sylvanus Street.

Dwelling B (Frontage to Drone Street)

- Demolition and reconstruction of Dwelling B in its entirety;
- Reconfiguration of Dwelling B involving changes to façade including new hipped portico entrance;
- Internal reconfiguration of internal floor plan to comprise 2 bedrooms (one with an ensuite and WIR);
- Reconfiguration of rear verandah to wrap around the dwelling's south-western extremity;
- Relocation of internal garage door from eastern internal wall to southern rear wall leading to verandah;
- Provision of sliding door from dining room to verandah and to bedroom 2 on southern rear elevation wall;
- Provision of south-facing window adjacent kitchen;
- Widening of western-facing garage window;
- Creation of study room to northern extremity of the building adjacent to front entrance;
- Relocation of rainwater tank from southern extremity to eastern wall;
- Increased setback to eastern elevation from 1m to 1.925m;
- Increased rear setback from 4m to 4.280m; and
- Decreased western side setback from 1.325m to 1m; and
- Increased width of driveway layback from 3m to 5m;

The proposed modifications will not result in any changes to the building envelope with regard to side and rear setbacks. The proposal results in a minor increase in the overall floor space of Dwelling B from 96.4m² to 97.2m².

The following modifications have already been undertaken to the dwelling however, as they are non-structural and do not require a BIC, an assessment has been carried out having regard for the use of these modifications and the impacts they may or may not impose.

Dwelling A (Frontage to Sylvanus Street)

- Modifications to front façade to include rendered element with parapet above awning line;
- Reconfiguration of bedroom 1 western window from 1 side slider window to two (2) separate double hung windows;
- Relocation of internal doorway from garage to living room to eastern side elevation to rear yard;
- Provision of side door upon eastern building elevation;
- Changes to landscape plan including concrete works around northern and western peripheries of the site;
- Deletion of internal front foyer stairs leading to living room;

- Overall reduction in finished floor levels from RL23.90 (to living room) and RL22.90 (all remaining internal floor space) to RL23.070; and
- Removal of northern and eastern planters.

Figures 2-9 below reflect the stamped approved plans and the proposed modifications:

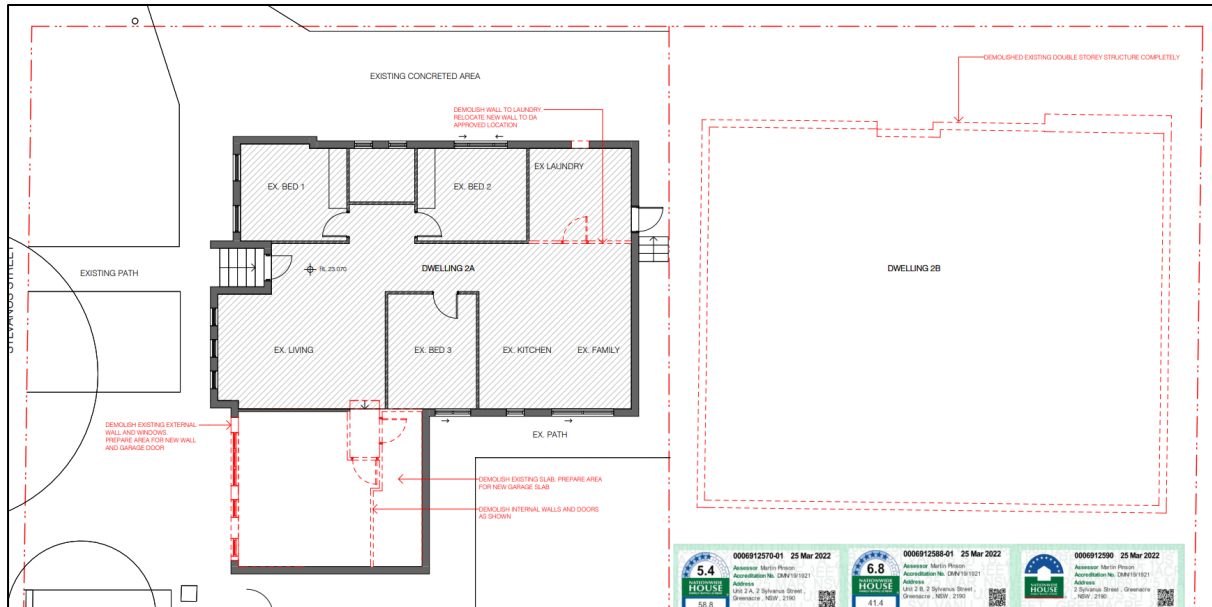


Figure 2: Proposed Demolition Plan

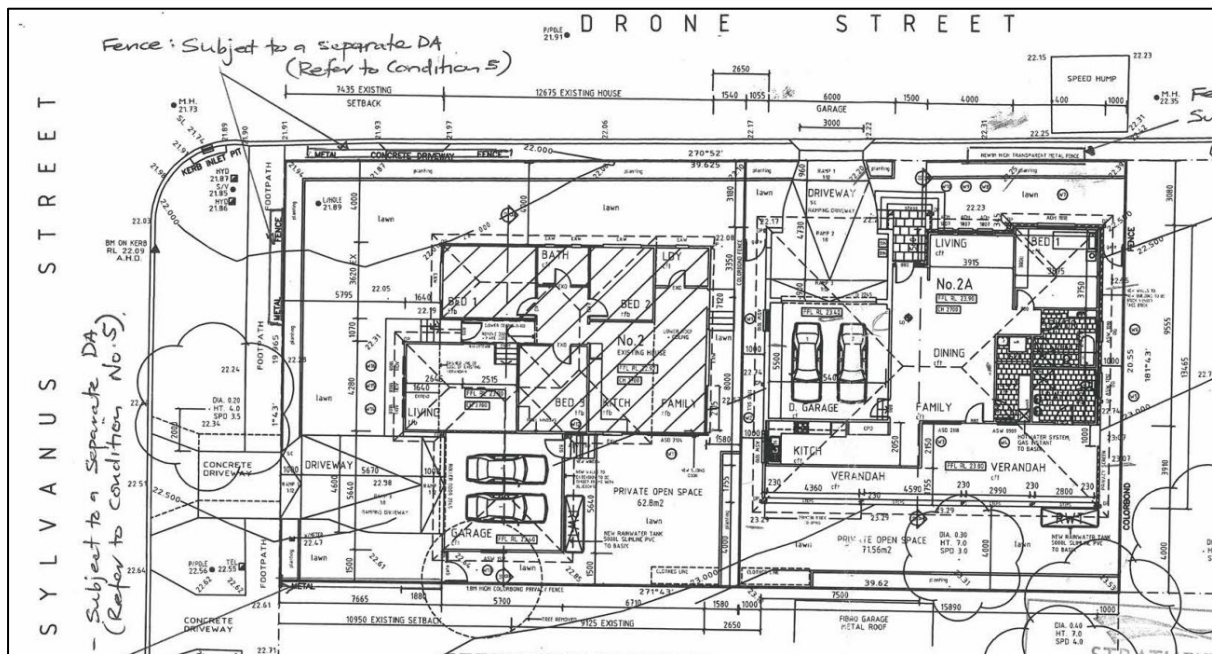
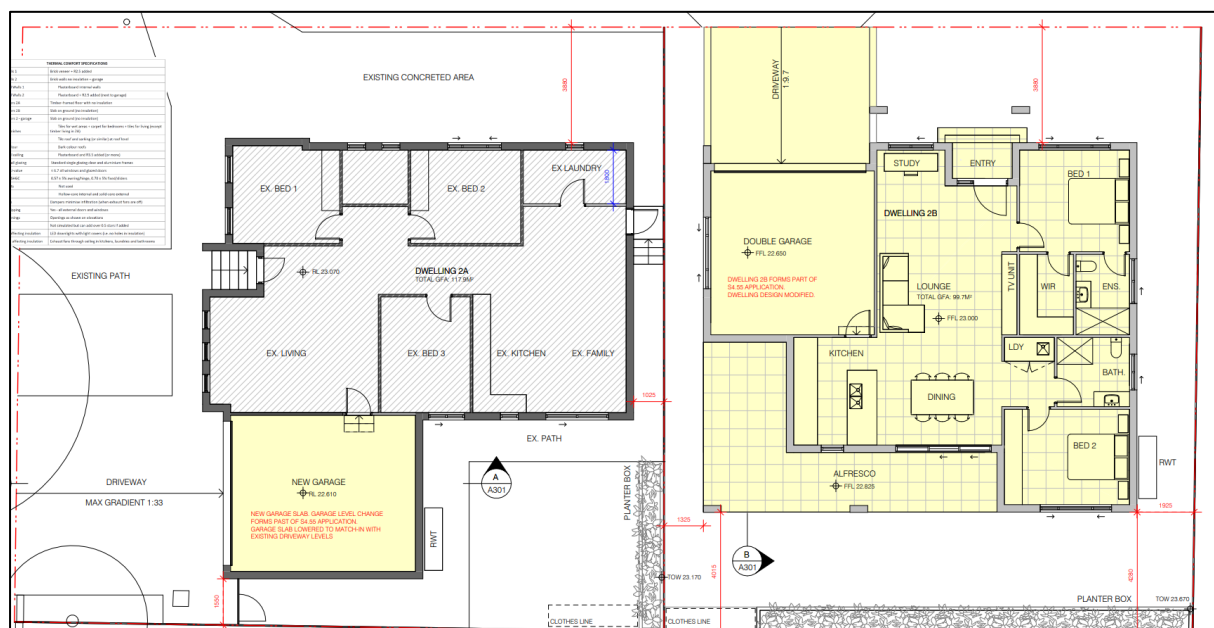
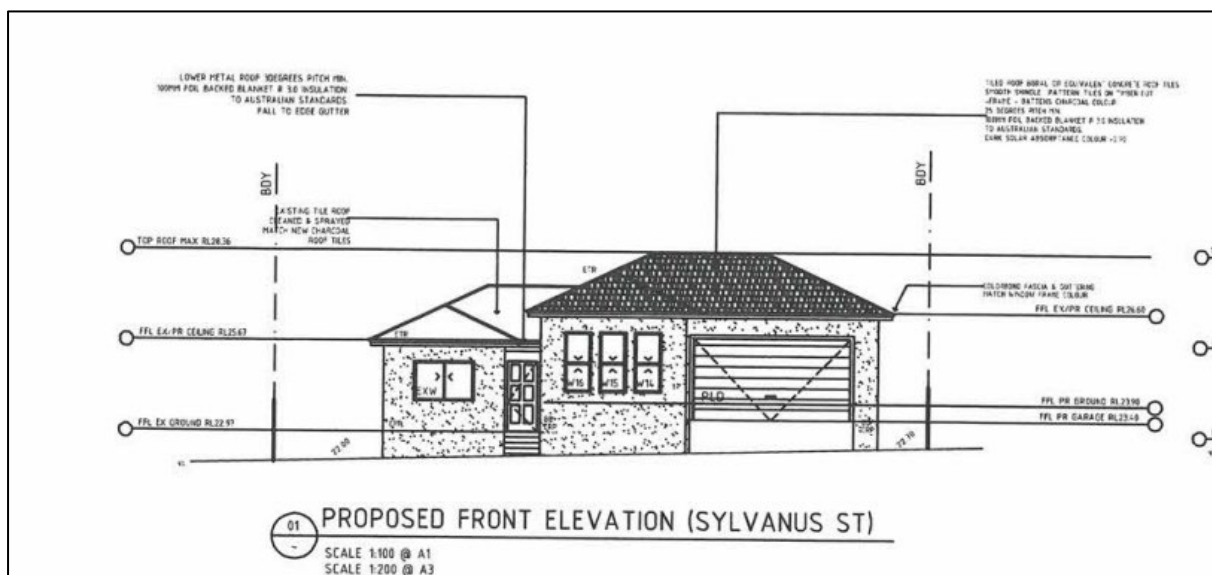
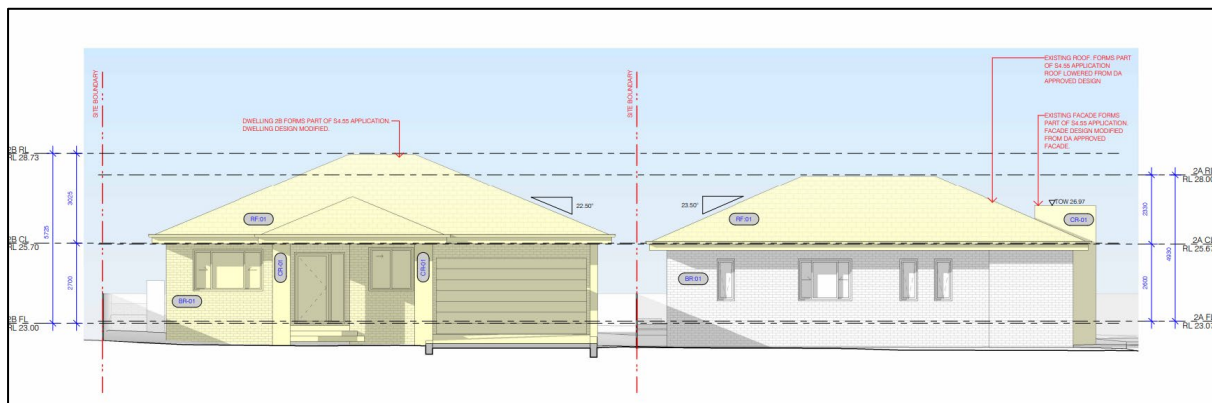


Figure 3: Approved floor plan





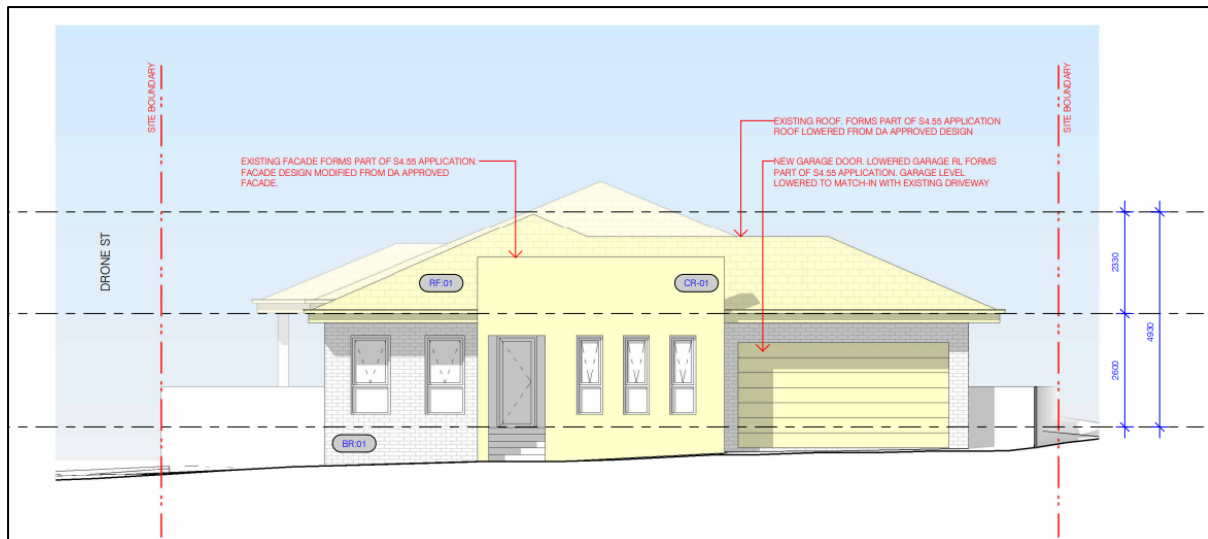


Figure 9: Proposed West Elevation Plan (Dwelling A fronting Sylvanus Street)

The Site and Locality

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The site has a frontage width of 19.965m (to Sylvanus Street), a secondary frontage width of 39.655m (to Drone Street), a rear boundary width of 20.565m (east), and an overall site area of 803m².

The site is presently occupied by a detached secondary dwelling development. Dwelling A is a single storey development with direct frontage to Sylvanus Street and driveway access provided by an existing driveway along the southern portion of the site. Dwelling B is located behind Dwelling A with direct frontage to Drone Street. Dwelling B features a two (2) storey rendered dwelling with attached garage integrated into the design (refer to Figures 10 – 13 for reference).

The locality surrounding the subject site contains a mixture of dwelling development predominantly comprised of single storey and two (2) storey dwellings. Architectural styles vary widely in the streetscape including original fibro and weatherboard cottages to two (2) storey rendered dwellings of grander proportions and a modern-style appearance.



Figure 10: Dwelling A fronting Sylvanus Street



Figure 11: Dwelling B fronting Drone Street



Figure 12: Dwelling B fronting Drone Street



Figure 13: Corner of Drone Street and Sylvanus Street with Dwelling A in foreground and Dwelling B in background to the left.

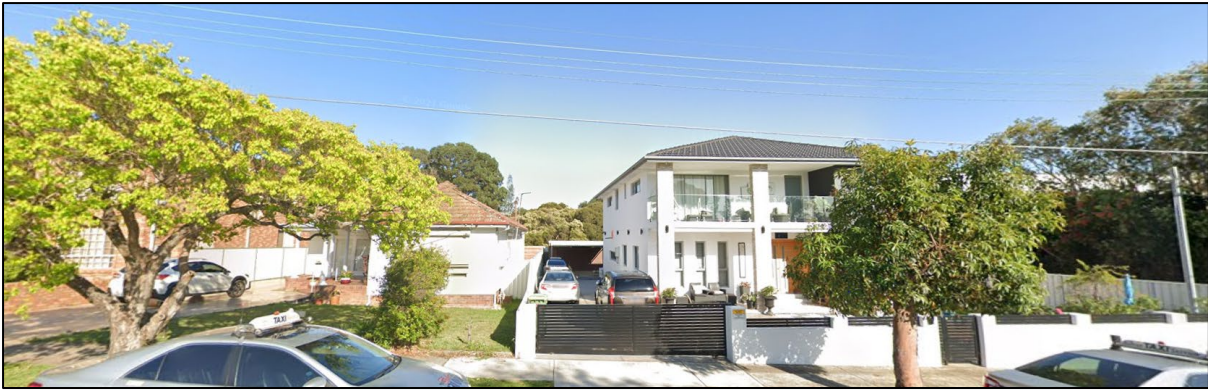


Figure 14: Dwelling development immediately west of site on Sylvanus Street



Figure 15: End of Sylvanus Street (subject site pictured right and industrial uses immediately north).

Background

21 November 2012	Council granted development consent for alterations and additions to the existing dwelling and construction of a detached secondary dwelling to the rear (DA2012/050)
14 February 2013	A Construction Certificate was issued by the Accredited Certifier Ting Jian Qiu (No.PC12739).
5 July 2013	A Stop Work Order was issued to the owner to immediately cease the unlawful works at the site involving the construction of the first floor of the secondary dwelling (dwelling B).
10 June 2021	Council issued a Notice of Proposed Development Control Order requiring Development Consent 2012/050 be complied with.
3 November 2021	Council advised the owner's representative that a Section 4.55 modification application for works on the site would be required to remedy some of the non-compliances of the development.
22 April 2022	The subject application was lodged with Council.

10 May 2022 – 24 May 2022	The subject application was placed on neighbour notification for a period of 14 days. No submissions were received during this time.
25 July 2022	A request for further information was sent by Council's assessing officer requiring a Flood Report to be prepared and submitted to Council.
12 August 2022	A Flood Study and amended architectural plans were submitted to Council via the online NSW Planning Portal.
22 August 2022	Council's Development Engineer provided comments and conditions in response to the flood report submitted to Council.

Referrals – Internal and External

Stormwater

The application was referred to Council's Development Engineer for comment. No concerns were raised subject to the imposition of conditions of consent.

Building

The application was referred to Council's Building Compliance Officer. No concerns were raised subject to the imposition of conditions of consent.

Section 4.55 of the EP&A Act 1979

The application has been lodged under the provisions of s4.55(2) of the EPA Act which requires the consent authority (Council) to be satisfied that the Section 4.55 application is substantially the same development as the development for which the consent was originally granted (DA2012.50). 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 Westlme 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 modification will facilitate the demolition and reconstruction of Dwelling B so to enable a better quality construction and design to be achieved compared to what has been constructed on the site. The dwelling will be reduced from a two (2) storey to a single storey construction so to align with what was originally approved on the site. In turn, the development will achieve a height, bulk and scale that is more commensurate with existing development surrounding the site and assist in achieving an improved solar access outcome to adjoining residents. Further, the proposed modifications will see the conversion of the living room to the garage to Dwelling A to assist in providing for the parking needs of future residents on the site. Overall, the proposed modifications are considered beneficial and facultative.

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 Realty at [16]);*

This assessment of substantially the same relates to the development itself and compares to the consent as originally granted rather than the subsequent modification approval. An assessment of environmental impacts is provided under the Section 4.15 assessment 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 Statement of Environmental Effects (SEE) submitted with the DA has provided written justification demonstrating that the application is substantially the same. This is sufficient to reach such a conclusion.

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]);*

Given that the use and building envelope are to remain relatively unchanged, the proposal is considered to remain ‘essentially or materially’ substantially the same.

While portions of the façade to each dwelling as well as some internal layout changes are proposed, the development will remain for the purpose of a dual occupancy development comprised predominantly of facebrick and render. These elements are considered to remain substantially the same.

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]);*

On this point the Applicant's SEE stated the following:

- *The proposal will remain a primary dwelling and secondary dwelling (detached) having a near identical building envelope and footprint to that previously approved by the Council (refer to the approved plans).*
- *The proposed secondary dwelling will have a floor area of less than 100m² consistent with the requirements of the Strathfield Planning Scheme Ordinance and which applied at the time of the original approval.*
- *The proposed modification will not result in any significant or apparent height, bulk and scale of the approved development.*
- *The existing approved landscaped and deep soil areas will be retained by the proposal.*

This demonstrates the modification application will not 'radically transform' the approval, with no change to the use, operation or building envelope (other than the minor change to Dwelling B).

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 dual occupancy development 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 proposed modifications will change the proposal quantitatively through slight increase in FSR from 0.257: 1 to 0.272:1, increase in the number of bedrooms to Dwelling B from 1 to 2, a marginal reduction in building height and modifications to the façade of Dwelling A and B. The changes are not considered significant with the number of elements such as siting, setbacks, building separation, material finishes, and bulk and scale to remain unchanged. Qualitatively, the use remains for the purposes of dual occupancy development with no significant changes to the relationship with adjoining development.

When these changes are considered having regard for the original scheme as approved, the development is still considered substantially the same as originally approved.

Accordingly, the application is considered to be of minimal environmental impact, is substantially the same development for which consent was originally granted (DA 2012/50), has been notified in accordance with the provisions of Council's CPP and any submissions made will be considered as part of this assessment. In addition, under the provisions of Section 4.55(3), the reasons for the granting of the consent that is sought to be modified have been taken into consideration.

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 Environmental Planning and Assessment 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 proposed development as modified does not result in the removal or loss of any trees or vegetation subject to the provision of this SEPP.

The aims and objectives outlined within the SEPP are considered to be satisfied.

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

A BASIX Certificate 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 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

The development site is subject to the Strathfield Local Environmental Plan 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 was approved as (and is being modified for) the purposes of a dual occupancy development. A dual occupancy development is a permissible form of development with Council's consent.

Part 4 – Principal Development Standards

Applicable SLEP 2012 Clause	Development Standards	Approved Development	Proposed Development	Compliance/ Comment
4.3 Height of Buildings	9.5m	Dwelling A: 6.36m Dwelling B: 7.67m	Dwelling A: No change Dwelling B: 6.48m	Yes
4.4 Floor Space Ratio Site Area = 803m ²	0.55:1 (441.65m ²)	Dwelling A: 111.6m ² Dwelling B: 95m ² <u>TOTAL</u> 0.257:1 (206.6m ²)	Dwelling A: 118.5m ² Dwelling B: 100m ² <u>TOTAL</u> 0.272:1 (218.5m ²)	Yes

Part 5 – Miscellaneous Provisions

Heritage Conservation

The subject site is not listed as a heritage item or located within a heritage conservation area. The site does not adjoin nor is in close proximity to a heritage item and as such, the provisions of this clause are not applicable.

Flood Planning

The subject site has been identified as being at or below the flood planning level. A Flood Impact Report was requested to be prepared and submitted to Council for consideration. The report, along with revised architectural plans was referred to Council's Engineer for assessment. Council's Engineer who has advised that subject to suitable conditions, the development is considered compatible with the flood hazard of the land. It 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 development is considered to satisfy the objectives of this clause.

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 and as such an Acid Sulfate Soils Management Plan is not required.

Earthworks

The proposal modifications do not result in any additional or significant excavation works and will not have any further detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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 Strathfield LEP 2012.

(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 applicable to this site.

(iii) any development control plan,

The proposed development, as modified, is subject to the provisions of the Strathfield Consolidated Development Control Plan 2005. The following comments are made with respect to the proposal satisfying the objectives and controls contained within Part B of SCDCP 2005, where applicable to the proposed changes;

PART B – DUAL OCCUPANCY HOUSING

Applicable DCP Controls	Development Proposal	Compliance/ Comment
Density, Bulk and Scale		
.1. The maximum floor space ratio for dual occupancy developments (attached and detached) is 0.5:1. This excludes the area for any carport or garage.	Dwelling A: 118.5m ² Dwelling B: 100m ² <u>TOTAL</u> 0.272:1 (218.5m ²)	Yes
.2. Building in a detached dual occupancy does not exceed one storey in height except in the case of the dwelling addressing the primary or main street frontage, in which case a 2 storey building may be considered in similar	The proposal involved the entire demolition and reconstruction of Dwelling B thus reducing it from a two storey to single storey structure.	Yes

<p>circumstances to attached dual occupancy</p> <p>.3. The detached dual occupancy has a maximum floor space of 100m². This excludes the area of any carport or garage.</p>	<p>Dwelling A results in an exceedance of 18.5m² beyond the maximum permissible 100m² floor space required for detached dual occupancy development. Notwithstanding this, the proposed exceedance is negligible given the 800m² sizing of the allotment. This enables the dwelling to achieve ample separation from site boundaries with its single storey nature being of compatible scale in the streetscape. Further, the development is based upon alterations to an existing dwelling which has sought to utilise the existing foundations of the structure. The development therefore remains acceptable in this regard.</p>	<p>No – however acceptable on merit.</p>
<p>2.4.2 Solar Access</p>		
<p>1. To the extent that existing developments and site orientation allow, site layout and design shall ensure:</p> <p>(i) reasonable solar access to the site;</p> <p>(ii) the protection of solar access to neighbouring properties;</p> <p>(iii) buildings to maximise the benefits of solar access in terms of reducing winter heat loss and the impact of summer afternoon sun;</p> <p>(iv) adequate natural light to the living areas of dwellings for normal domestic duties; and</p> <p>(v) orientation to the north, with priority in dwelling layout being given to living areas and bedrooms</p> <p>2. Dual occupancy developments are to be designed to maximise solar access to living areas and private open space. The following guidelines indicate the preferred levels of solar access for dwellings, and any departures from these standards will require justification that resultant energy efficiency and solar access is acceptable:</p>	<p>Both Dwellings A and B are proposed as single storey development. The impact of overshadowing to adjoining neighbours is therefore minimal and acceptable in this regard.</p> <p>Living areas are provided to the rear of each dwelling and will benefit from the direct easterly sun.</p>	<p>Yes</p> <p>Yes</p>

<p>(i) the main living areas and at least 50 percent of the principal private open space of each dwelling have at least four hours of sunlight between the hours of 9am and 3pm on June 22 (winter solstice); and</p> <p>(ii) sunlight access to the main living areas and principal private open space of adjacent properties is not unreasonably reduced by the proposal.</p> <p>3. In the case of alterations or additions to existing dwellings, solar access to the windows of habitable rooms and to the majority of private open space must be substantially maintained or achieved for a minimum period of 4 hours between 9.00am and 3.00pm at the winter solstice (June 22).</p>	<p>Habitable rooms within each dwelling are capable of receiving ample solar access through the day.</p>	<p>Yes</p>
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2.5 Streetscape and Building Orientation and Materials

<p>1. New development, particularly when viewed from the street or other public places is to be compatible with the predominant character and architectural detail of existing residential development in the street and in particular with any existing building to be retained on the site. New development shall also address the street frontage</p>	<p>Each dwelling is provided with direct frontage to the street – Dwelling A to Sylvanus Street and Dwelling B to Drone Street. The modifications proposed are considered sympathetic with surrounding architectural styles of dwelling development in the street.</p>	<p>Yes</p>
<p>3. Building materials, finishes and colours are to be sympathetic with the materials, finishes and colours of any existing buildings to be retained, adjoining buildings and buildings in the streetscape.</p>	<p>The proposed modifications seek to maintain the predominant facebrick finish with rendered accents. This is considered compatible with existing dwelling development in the street which display similar materials and colours.</p>	<p>Yes</p>
<p>9. Garages and parking structures, shall be sited and designed not to dominate the street frontage</p>	<p>The garages are recessed behind the front building line and integrated into each dwelling design so to minimise its dominance in the streetscape.</p>	<p>Yes</p>

2.7 Open Space and Landscaping

<p>Landscape design should be used to provide attractive and useable outdoor living areas.</p>	<p>A revised landscaping scheme is proposed seeking to embellish Dwelling B with consolidated deep soil zone to the</p>	<p>Yes</p>
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The design should also aim to protect the privacy of occupiers and neighbours and define the function of buildings and spaces within the development.	front and rear portions of the site. Planters are proposed along Dwelling B's southern rear boundary to provide improved amenity to private open space areas.	
2.8 Privacy and Security		
Windows are not to be located less than 9m apart from other dwellings. Windows to be offset from adjoining dwelling by 0.5m; Have a sill height of 1.7m or have obscure glazing to a height of 1.7m.	All windows to the dwellings are suitably located so to minimise opportunities for overlooking into adjoining properties.	Yes
2.9 Access and Parking		
A minimum of 1 carparking space for each dwelling with a gross floor area of 150m ² or less shall be provided on site.	Each dwelling adequately provides for 1 parking space within the garage.	Yes

Building Envelope

The proposed development as modified satisfies the objectives and controls within the development control plan relevant to:

- Building Scale, height and floor space ratio
- Rhythm of Built Elements in the Streetscape,
- Fenestration and External Materials, and
- Street Edge

The proposal involves modifications to the façade of both Dwelling A and Dwelling B. The proposed works achieve an appropriate level of articulation so to break the bulk of the dwelling and achieve a design which is compatible with the streetscape. The proposed render and facebrick finishes are in keeping with existing development in the streetscape and are considered appropriate.

The proposed internal layout changes to Dwelling B will achieve improved amenity for future residents. Whilst the proposal results in an additional bedroom, the floor plan has been rationalised to achieve a better flow between living areas which leads out directly to a consolidated alfresco area.

The building envelopes have remained relatively unchanged as a result of this modification. This has enabled appropriate building separation to be achieved and maintained not only between Dwelling A and B developments but also between adjoining residential developments.

Landscaping and Open Space

The proposed development as modified satisfies the relevant objectives and controls of the SCDCP 2005. The development is considered to enhance the existing streetscape, adequate areas for deep soil planting have been provided and can accommodate large canopy trees and where possible trees have been retained and protected.

Water and Soil Management

The proposed development, as modified, satisfies the relevant objectives and controls of the SCDCP 2005 and complies with Council's Stormwater Management Code. A soil erosion plan has been submitted with the application to prevent or minimise soil disturbances during construction.

Access, Safety and Security

The proposed development, as modified, satisfies the relevant objectives and controls of the SCDCP 2005. Separate pedestrian and vehicle access provisions are provided, passive surveillance of the public street has been provided providing safety and perception of safety in the street.

PART H – Waste Management (SCDCP 2005)

A waste management plan was submitted with the original application. The existing 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 addressed/considered 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, 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.

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

It is considered that the proposed development, as modified, is of a scale and design that is suitable for the site having regard to its size and shape, its topography, vegetation and relationship to adjoining developments.

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

In accordance with the provisions of Council's Community Participation Plan, 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. No submissions were received during this time.

(e) *the public interest.*

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

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. This section prescribes in part as follows:

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).

Section 7.12 Contributions are not applicable to the proposed modifications as Direct Contributions were levied previously under the parent consent.

Conclusion/Recommendation

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

Pursuant to Section 4.55(2) of the Environmental Planning & Assessment Act 1979 and following detailed assessment of the proposed modifications to Development Consent No. DA2012/50/4 for alterations and additions to the existing dwelling and construction of a detached secondary dwelling to the rear be approved subject to following changes.

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 No. 2012/50 as approved Council - 21 November 2012 for alterations and additions to the existing dwelling and construction of a detached secondary dwelling to the rear except were amended as below.
3. As part of this Section 4.55(2) application, the following conditions are to be modified, added or deleted;
 - Modify Condition 1 (Plans);
 - Modify Condition 13 (Drainage / stormwater condition); and
 - Modify Condition 20 (Flood Report);

Accordingly, Development Consent 2012/50/4 is approved as per the following;



Signed:

**L Gibson
Senior Planner**

Date: 22 August 2022

- ☒ I confirm that I have determined the abovementioned development application with the delegations assigned to my position;
- ☒ I have reviewed the details of this development application and I also certify that Section 7.11/7.12 Contributions are not applicable to this development.

Report and recommendations have been peer reviewed by;

Signed:
J W Brown
Planner

Date: X

The following conditions of consent are imposed for the following reasons:

- (a) To ensure compliance with the terms of the relevant Environmental Planning Instrument and/or Building Code of Australia and/or Council's codes, policies and specifications.
- (b) To protect the environment.
- (c) To ensure that there is no unacceptable impact on the amenity of the area, or to private and public property.
- (d) It is in the public interest.

PART B - OTHER CONDITIONS

Plans

1. The development shall be completed in accordance with the approved plans and documents listed below. prior to the building being used or occupied, and subject to any amendments "in red" and any variation as required by conditions of this consent:

~~Proposed Site/Ground Floor Plan Drawing No. 01 Issue C dated 24/10/2012 received by Council on 25 October 2012;~~

~~Proposed Site/Roof Plan Drawing No. 02 Issue C dated 24/10/2012 received by Council on 25 October 2012;~~

~~Proposed Section AA Secondary Dwelling (New Building) Plan Drawing No. 03 Issue C dated 24/10/2012 received by Council on 25 October 2012;~~

~~Proposed Elevations Secondary Dwelling (New Building) Plan Drawing No. 04 Issue C dated 24/10/2012 received by Council on 25 October 2012;~~

~~Proposed Section BB Primary Dwelling (Existing House) Plan Drawing No. 05 Issue C dated 24/10/2012 received by Council on 25 October 2012;~~

~~Proposed Elevations Primary Dwelling (Existing House) Plan Drawing No. 06 Issue C dated 24/10/2012 received by Council on 25 October 2012;~~

~~Proposed Streetscape Elevations Drawing No. 07 Issue C dated 24/10/2012 received by Council on 25 October 2012;~~

~~Proposed Landscape Plan Drawing No. 08 Issue C dated 24/10/2012 received by Council on 25 October 2012;~~

Proposed Site Analysis Site Management, Erosion & Sediment Control Plan Drawing No. 09 Issue C dated 24/10/2012 received by Council on 25 October 2012;

~~Flood Levels and Action Plan received by Council on 25 October 2012 Flood Levels and~~

Action Plan received by Council on 25 October 2012

~~Basix certificate dated 26 April 2012 received by Council on 2 May 2012;~~

Site Plan, Drawing A001, Issue C, prepared by Daniel Siric Architects, dated 11 August 2022

Demolition Plan, Drawing A003, Issue C, prepared by Daniel Siric Architects, dated 11 August 2022

Ground Floor Plan, Drawing A101, Issue C, prepared by Daniel Siric Architects, dated 11 August 2022

Roof Plan, Drawing A102, Issue C, prepared by Daniel Siric Architects, dated 11 August 2022

North Elevation Plan (Drone Street), Drawing A201, Issue C, prepared by Daniel Siric Architects, dated 11 August 2022

South Elevation Plan, Drawing A202, Issue C, prepared by Daniel Siric Architects, dated 11 August 2022

West Elevation Plan (Sylvanus St), Drawing A203, Issue C, prepared by Daniel Siric Architects, dated 11 August 2022

West Elevation Plan (Dwelling 2B), Drawing A204, Issue C, prepared by Daniel Siric Architects, dated 11 August 2022

East Elevation Plan, Drawing A205, Issue C, prepared by Daniel Siric Architects, dated 11 August 2022

Section Plans, Drawing A301, Issue C, prepared by Daniel Siric Architects, dated 11 August 2022

Landscape Plan L/01, prepared by Discount Landscape Plans, Revision A, dated 3 December 2021.

BASIX Certificate issue No. 1266378M_02, issued 25 March 2022.

Concept Stormwater Drainage Plans, SW21596, Issue B, Sheets 1-5, Deboke Engineering Consultants.

Flood Impact Assessment, Version A dated 10 August 2022, prepared by ACOR Consultants.

Construction Certificate must be obtained either from Council or a privately accredited person before commencement of any construction/demolition associated with this consent.

The Principal Certifying Authority must be appointed prior to work commencing to supervise the work and authorise occupation/use of the building when completed.

MODIFIED: DA2012.50.4 26 August 2022

2. A copy of the endorsed stamped plans and specifications, together with a copy of the Development Consent, Construction Certificate and any approved Traffic Management Plan are to be retained on site at all times.

Special Conditions

3. The proposed extensions to the existing building and the new dwelling shall not have the subfloor area enclosed or utilised for storage in order to allow for unobstructed passage of overland flow of water.
4. The existing driveway shall remain intact during all construction works. The driveway shall only be constructed upon completion of all construction works on site.
5. A separate application must be submitted for the construction of the front and side fence unless exempt under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

General

6. The building shall not be occupied or used until the development has been completed in accordance with the conditions of this consent, construction has been completed in accordance with the Construction Certificate and an Occupation Certificate has been issued by the Principal Certifying Authority.
7. A Works Permit shall be obtained from Council's Customer Service Centre at least 48 hours prior to undertaking any works on public/Council-controlled areas. The permit must be retained on site at all times.
8. Prior to the issue of a Construction Certificate, photographs documenting any existing damage to the kerb and gutter and footpaths adjacent to the property shall be submitted to the consent authority. In the absence of this documentation, the applicant is liable for all damage that occurs to Councils' assets.
9. The applicant or any contractors carrying out works in public or Council controlled lands shall have public liability insurance cover to the value of \$10million and shall provide proof of such cover to Council prior to carrying out works.

Financial Matters

10. In accordance with the provisions of Section 94(1)(b) of the Environmental Planning and Assessment Act 1979 and the Strathfield Direct Development Contributions Plan 2010-2030, a contribution in the form of cash, cheque or credit card (financial transaction fee applies) shall be paid to Council for the following purposes:

Provision of Community Facilities	\$538.80
Provision of Major Open Space	\$2593.20
Provision of Local Open Space	\$462.00
Administration	\$110.40
TOTAL	\$3704.40

The total amount of the contribution is valid as at the date of determination and is subject to annual indexation. If the contribution is paid after 1st July in any year, the amount of the contribution under this condition shall be indexed in accordance with clause 2.14 of the Strathfield Direct Development Contributions Plan 2010-2030.

The required contribution shall be paid prior to the issue of a Construction Certificate or as otherwise specified in writing by Council.

11. A security payment of \$5,254.00 in the form of cash, bank guarantee, cheque or credit card (financial transactions fees apply) shall be paid to Council **prior** to the issue of a Construction Certificate. The security payment is GST inclusive and comprises the following:

Refundable tree protection bond	\$1,000.00
Refundable works bond	\$4,000.00
Non-refundable administration fee (\$127/bd)	\$254.00
TOTAL	\$5,254.00

The security payment covers the following matters and will be released upon satisfactory completion of these items:

- (a) road and stormwater drainage works in roadways and public areas; connection to Council's stormwater drainage system;
- (b) installation and maintenance of sediment control measures for the duration of construction activities;
- (c) tree final inspection to ensure that Council's street trees have been retained, protected or replanted in accordance with conditions of consent and/or Arborists' report for the post final inspection twelve (12) month period; and
- (d) Ensuring no damage occurs to or building debris/materials are left on Council land including footpath, nature strip, kerb and gutter. The security bond may be used to

recover the costs incurred by Council in cleaning and restoring the land to its original condition.

12. Fees are payable where Council is appointed as principal certifying authority to carry out the post approval inspections. A quotation for the fees can be obtained by contacting Council and the fees shall be paid prior to the carrying out of any of the inspections.

Any re-inspection which is necessary due to site access not being available, defective work, or the matter not being ready for inspection will be charged in accordance with Council's Fees and Charges Policy. Council will advise in writing if an additional re-inspection is required and the re-inspection fee shall be paid prior to release of the damage deposit. If the additional fee is not paid it will be deducted from the damage deposit.

Drainage/Stormwater

13. Stormwater runoff from all the roof and paved surfaces shall be collected and discharged by means of a gravity fed system to Council's existing kerb inlet pit as shown on the concept stormwater management plan prepared by ~~United Consulting Engineers Drawing no. 12MB5303/D01 Issue A submitted to Council on 12/09/2012~~ **Deboke Engineering Consultants Revision B, dated 29 March 2022**. The gutters, downpipes and pipes shall be sized for the 20 year, 5 minute storm event. Grated drains shall be provided along and within the property boundaries at the proposed vehicular crossing entries and are to be connected to the internal drainage system designed for the site.

MODIFIED: DA2012.50.4 26 August 2022

14. A rainwater tank of at least 5000 litres shall be installed to each dwelling and shall collect stormwater runoff from all roof areas within the site. The proposed rainwater tanks must meet and be installed in accordance with, the requirements of all applicable regulatory authorities. The applicant must connect the rainwater tank(s) to all toilets for toilet flushing and at least one outdoor tap per dwelling within the development. NSW health does not recommend that rainwater be used for human consumption in areas with potable water supply.

A certificate from a registered plumber stating that this condition has been satisfied must be submitted to the Principle Certifying Authority prior to the issue of an Occupation Certificate.

15. Overflow from rainwater tank must be collected and discharged by means of a gravity pipe system and shall be connected to the downstream drainage system approved for the development.
16. In this project the above engineering plans are satisfactory as Concept plans. The assessment authority, (either (a) Council, or (b) a Private Certifier), is to satisfy themselves of the adequacy of the above plans for the purposes of Construction. They are to independently determine what details, if any, are to be added to the Construction Certificate plans, in order for the issue of the Construction Certificate.

Where a Private Certifier issues the Construction Certificate a copy must be provided to Council, once the Construction Certificate is issued.

17. Allowance shall be made for surface runoff from adjacent properties, and to retain existing surface flow path system draining the site.
18. The following documents shall be submitted to the Principal Certifying Authority prior to the issue of Occupation Certificate.
 - a. Written verification from a suitably qualified professional civil engineer, stating that all stormwater drainage and related work has been constructed in accordance with the approved plans.
 - b. Full work-as-executed plans prepared and signed by a registered surveyor or engineer. Where changes have occurred the plans shall be marked-up in red ink and shall include levels and locations for all drainage structures and works, buildings, and finished ground and pavement surface levels, and the extent of pervious and impervious areas.
19. Habitable floor levels for the dwelling shall be at a minimum of RL 23.9m AHD.
20. The applicant shall comply with the flood recommendations provided in the ~~Flood Impact Report prepared by United Consulting Engineers Ref no. 12MB5319 dated 23 October 2012 submitted to Council on 25 October 2012~~ **Flood Impact Assessment prepared by ACOR Consultants, Revision A dated 10 August 2022**. A certificate from a suitably qualified Engineer shall be submitted to the Certifying Authority stating compliance with these recommendations prior to the issue of the Occupation Certificate.

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21. The proposed extensions to the existing building and the new dwelling shall not have the subfloor area enclosed or utilised for storage in order to allow for unobstructed passage of overland flow of water.
22. A Positive Covenant under Section 88E of the Conveyancing Act shall be created on the title of the property where the lowest habitable floor area is elevated above finished ground level. This is to place a restriction on the title that the subfloor space is not to be enclosed or used for storage in order to allow for unobstructed passage of overland flow of water.

The wording of the Instrument shall be submitted to, and approved by Council prior to lodgement at Land & Property Information NSW. The Instrument shall be registered and a registered copy of the document shall be submitted to and approved by the consent authority prior to the issue of an Occupation Certificate/use of the building.

The positive covenant is required to prevent future modification or alteration without the written consent of the consent authority, and to ensure suitable maintenance is carried out

23. Boundary fencing shall be erected in such a manner as not to interfere with the natural flow of ground and surface water to the detriment of any other party.

24. Temporary measures shall be provided and regularly maintained during demolition, excavation and construction to prevent sediment and polluted waters discharging from site. Plans showing such measures in accordance with the NSW Department of Housing, Managing Urban Stormwater, Soils and Construction Manual dated August 1998 shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate.
25. The applicant or any contractors carrying out works in public or Council controlled lands shall have public liability insurance cover to the value of \$10 million, and shall provide proof of such cover prior to carrying out the works.
 - (1) A Works Permit shall be obtained from Council's Customer Service Centre at least 48 hours prior to undertaking any works on public/Council controlled areas. This includes any work on the nature strip, footpaths, driveways, stormwater outlets, Council's drainage, kerb & guttering and roadways.
 - (2) The permit must be retained on site at all times and produced on request from any Council Officer.
26. For drainage works
 - a) Within Council controlled lands
 - b) Connecting to Council's stormwater drainage system inspections will be required:
 - i. After the excavation of pipeline trenches.
 - ii. After laying of all pipes prior to backfilling.
 - iii. After the completion of all pits and connection points.
 - iv. A minimum of 48 hours notice shall be given to Council to inspect works. Inspections may be arranged by telephoning Council's Infrastructure Planning Section on 9748-9999 during office hours. Work is not to proceed until the works are inspected and approved by Council.
 - v. Inspection fees schedule can be found on Strathfield Council's website.

Landscaping/Tree Matters

27. The following listed trees are permitted to be removed to accommodate the proposed development:

<u>Tree</u>	<u>Height/ Spread (m)</u>	<u>Location</u>
1) Lagerstroemia indica (Crepe Myrtle)	6m/4m	Along the front half of the Southern boundary (adjacent to the proposed garage)

28. A minimum of one (1) x 100 litre size additional trees which have a minimum mature height of 6 metres shall be planted between the front of the building and the street frontage boundary.

29. The trees listed below shall be retained at all times:

<u>Tree</u>	<u>Height/ Spread (m)</u>	<u>Location</u>	<u>Protection zone (m)</u>	<u>Excavation zone (m)</u>
Lophostemon confertus (Brush Box)	9m/10m	Street Tree	4.92m	2.3m

And protected by the establishment of a **protection zone** before any site works begin (including any demolition/excavation). The protection zone shall be maintained for the duration of works and implemented as follows: The barrier however shall be reduced in radius to 1.0 to the south of the tree so that the driveway remains unobstructed to allow vehicular access.

- A minimum 1.2m high barrier (made of hardwood/metal stakes with suitable hessian or canvas material) shall be erected around the perimeter of the stated Protection Zone as measured from the base of the tree (or where practical). The barrier shall be constructed so as to prevent pedestrian and vehicular entry into the protection zone. The barrier shall not project beyond the kerb onto the roadway or any adjacent footpath.
- The overall radius of the Protection Zone is 4.92m. To ensure that the driveway remains unobstructed to allow vehicular access, the radius may be reduced to 1.0m to the South of the tree only.
- No concrete slurry or wash, building materials, builders' rubble, excavation spoil or similar shall be placed or stored within the tree protection zone.
- The whole of the tree protection zone shall be mulched to a minimum depth of 75mm.
- The tree protection zone shall be regularly watered.
- Any major structural roots which are encountered shall be pruned by a qualified Arborist.
- No excavation or construction shall be carried out within the stated Excavation Zone distances from the base of the trunk surface.
- Only permeable surfaces (e.g. decomposed granite, gravel, turfpave, permeable paving systems or soft landscaping) are permitted within the canopy spread of the trees to be protected.

30. Manual excavation and manual sawing of all roots is required within canopy spread of the Lophostemon confertus (Brush Box) referred to in Condition No. 29.

Construction Matters

31. The proposed development shall comply with the Building Code of Australia and details demonstrating compliance shall be submitted to the Principal Certifying Authority for approval prior to the issue of a Construction Certificate.
32. All construction, demolition and excavation work shall be restricted to 7am and 5pm (Eastern Standard Time) on Mondays to Saturdays (inclusive) and prohibited on Sundays and public holidays.

Building Matters

33. Identification numbers are to be clearly displayed at the front of the premises and be easily visible from the street
34. Where building intruder alarms are installed in the building they shall be fitted with an automated "cut-off" timing device and operated as per the Protection of the Environment Operations (Noise Control) Regulation 2008.

Sustainability

35. Water collected in the rainwater tank must be roof water only and not surface water. Water from the rainwater tank must only be used for following purposes and not for human consumption:
 - Toilet flushing;
 - Clothes washing;
 - Garden irrigation;
 - Car washing and similar outdoor uses;
 - Filling swimming pools, spa pools and ornamental ponds; and

Demolition

36. Demolition shall be carried out in accordance with Australian Standard 2601 - The demolition of structures' or any subsequent standard and the relevant legislation.
37. Details demonstrating that excavated and demolished materials including asbestos-based materials will be disposed of at an approved site shall be submitted to the Principal Certifying Authority prior to any work **commencing on site**.

Subdivision

38. In accordance with Clause 22 of the Strathfield Planning Scheme Ordinance, 1969, the Strata/Torrens title subdivision of the proposed development is not permitted.

Waste Management

39. Full compliance must be given to the endorsed Waste Management Plan submitted for the proposed development. Copies of any weighbridge receipts from all approved waste disposal facilities shall be retained for presentation to the Principal Certifying Authority upon request.