

REPORT TO APPLICATION DETERMINATION PANEL
Meeting held on 19 December 2013
31 Foam Street Freshwater - Demolition works and construction of a dwelling house and swimming pool
DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2013/0974
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Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 85 DP 5302 , 31 Foam Street FRESHWATER NSW 2096
Proposed Development:	Demolition works and construction of a dwelling house and swimming pool
Zoning:	LEP - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Warringah Council Application Determination Panel
Land and Environment Court Action:	No
Owner:	Birdpharm Property Pty Limited
Applicant:	Craig Francis Bird Judy Bird

Application lodged:	19/08/2013
Application Type:	Local
State Reporting Category:	Residential - Single new detached dwelling
Notified:	28/08/2013 to 12/09/2013
Advertised:	Not Advertised in accordance with A.7 of WDCP
Submissions:	4
Recommendation:	Approval

Estimated Cost of Works:	\$ 903,650
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ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 85 DP 5302 , 31 Foam Street FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Foam Street. The site is legally known as Lot 85 in DP 5302, No. 27 Foam Street, Freshwater.</p> <p>The site is regular in shape with a frontage of 10.06m along Foam Street and a depth of 40.235m. The site has a surveyed area of 404.7m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single-storey dwelling house that straddles the southern allotment boundary.</p> <p>The site adjoins dwelling houses and the locality is characterised by a mix of dwelling houses and walk-up apartment buildings.</p> <p>The site slopes from its north-eastern corner down to its south-western corner. The total fall is 7.5 metres, representing a slope of approximately 1 in 6 (18.5% or 10.5°).</p>

Map:



SITE HISTORY

The subject site is known as No. 31 Foam Street, Freshwater. This lot is Lot 85 in DP 5302 is one of the allotments created in the original subdivision in 1908 and No. 27 Foam Street is Lot 87 in DP5302 which was created at the same time. Additionally, No. 29 Foam Street is a newly created allotment (Lot 86 in DP 1188182), which is a consolidation of two (2) lots into one allotment under SEPP (Exempt and Complying Development Codes) 2008.

The three (3) lots are subject of a Development Application (DA) for construction of a dwelling house and swimming pool. The applicant has chosen to lodge 3 separate DA's, which are being reported to the ADP concurrently, the other applications being DA2013/0973 and DA2013/0972.

PLM2013/0047 - Subdivision of four (4) lots into three (3) lots and the construction of three (3) dwelling houses held with Council on 18 April 2013.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to demolish the existing building on the site and to construct a new dwelling house and swimming pool.

(i) Lower ground floor

Consists of a double garage and pedestrian entry to the building.

(ii) Ground Floor

Consists of a lounge, kitchen/family/dining room, laundry and bathroom, with a rear terrace.

(iii) First Floor

Consists of three bedrooms (one with robe and en-suite), a study, and a bathroom.

A courtyard is provided on the southern side of the building to provide natural light and cross-ventilation into the building. The proposal includes site landscaping.

(iv) Swimming pool

(v) External finishes

The dwelling consists of a mixture of varied materials such as fibre cement cladding panels, weatherboard cladding, render masonry, western red cedar cladding, colorbond and clear and obscured glazing and louvers in aluminum frames.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This Clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this Clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p>

Section 79C 'Matters for Consideration'	Comments
	<p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This Clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This Clause is not relevant to this application.</p>
<p>Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>In summary the main issues are:</p> <ol style="list-style-type: none"> (1) Views (2) Privacy (3) Walls height (4) Side boundary envelope (5) Destabilization of existing rock formation and retaining walls (6) Building Bulk <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 79C (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Public Exhibition” in this report.</p>
<p>Section 79C (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest. Conditions have included to address concerns raised during the</p>

Section 79C 'Matters for Consideration'	Comments
	assessment and notification period of this application to ensure the proposed is within the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mr Brian Dunphy	4 / 33 Foam Street FRESHWATER NSW 2096
Susan Mae Kettles	10 / 33 Foam Street FRESHWATER NSW 2096
Greg Wallis	19 Foam Street FRESHWATER NSW 2096
Ms Jennifer Murray	25 Foam Street FRESHWATER NSW 2096

The following issues were raised in the submissions and each have been addressed below:

- a) Building bulk/streetscape/height
- b) Inadequate landscape open space
- c) Property Values
- d) Consultation/Notification
- e) Subdivision
- f) Overdevelopment and excessive housing density
- g) Destabilizing existing rock outcrops and retaining walls
- h) Commercially and financially driven
- i) Fauna and flora issues
- j) Inadequate parking
- k) Privacy
- l) Solar access
- m) Amenity
- n) Views
- o) No Dilapidation Report

The matters raised within the submissions are addressed as follows:

(a) Building bulk/streetscape/height

Comment: The visual bulk and scale of the proposal is considered to be consistent with surrounding

development and will not dominate the streetscape by virtue of the height and articulation provided. When viewed from the street, the proposed building is stepped and articulated to ensure the building bulk is minimized. It is noted that some properties to the south of the site have been built further to the middle and rear of their allotments, but it is noted that all dwellings from Nos. 21 through to 25 Foam Street all have a 6.5m front setback.

Nevertheless, the proposal is consistent with the visual pattern of the street and therefore allows the development to integrate with the streetscape and the landscape. The stepped and articulated design reduces the visual bulk, additionally the proposal is also compliant with the overall Building Height of 8.5m. The proposed dwelling is compatible with the height, bulk and scale of adjoining dwellings.

Given the above, it is deemed that the proposed development maintains a building bulk which is consistent with the streetscape of Foam Street and the surrounding area. The height of the dwelling is compliant with the control under the Warringah Local Environmental Plan 2011 (WLEP 2011) and therefore does not warrant refusal or further amendment of the application.

(b) Inadequate Landscape Open Space

Comment: The amount of landscaped open space proposed is 40.1% (162.2sqm) and is compliant with the control which requires 40% (161.9sqm) in accordance with the WDCP under Clause D1 Landscaped Open Space and Bushland Settings.

Given the above, it is deemed that the proposed development maintains a reasonable level of landscaping and therefore does not warrant refusal or further amendment of the application.

(c) Impact on Property Values

Comment: This is not a consideration under Section 79C 'Evaluation' of Environmental Planning and Assessment Act 1979 and does not warrant refusal or further amendment of the application.

(d) Consultation/Notification

Comment: It is noted that there are two (2) similar development applications (DA's) lodged at the same time (one for No. 27 Foam Street and another No.31 Foam Street). There are no requirements for the owner (s)/applicant(s) to carry out consultation with adjoining and surrounding properties.

The application(s) have been notified in accordance with the Warringah Development Control Plan (WDCP) for a period of 14 days and submissions have been received during and after the notification period. These submissions will form part of this assessment of this DA and will be reported to the appropriate decision making body for determination being the Application Determination Panel (ADP).

(e) Subdivision

Comment: The proposed development does not involve the subdivision of any land and this allotment has been an existing allotment since the original subdivision was created in 1908. The allotment size is the same as the adjoining allotments (except for No. 48 Carlton Street & No. 33 Foam Street - which have residential flat buildings and are located on a double allotments) to the north and northeast of the subject sites.

Given the above, it is deemed that the proposed development maintains an allotment size which is consistent with surrounding allotments in the R2 zone, which are developed as dwelling houses and

therefore does not warrant refusal or further amendment of the application.

(f) Overdevelopment and housing density

Comment: It is noted that the subject application is running concurrent with two similar applications to the south DA2013/0972 and DA2013/0973. The concerns raised by the objectors in relation to overdevelopment relate to the three (3) dwellings and associated structures as a collective.

In this regard, two (2) of the proposed dwellings are to be located on existing Torrens title allotments, which pre-date the current Warringah Local Environmental Plan 2011. The allotments in between Nos. 27 & 31 Foam Street (formally Lot 1 & Lot 2 in DP359625 now DP1188182) could have been developed separately, allowing four (4) dwellings instead of the proposed three (3) dwellings. This would have been undesirable and inconsistent with development on adjoining allotments, but nevertheless may legally have been able to be lodged and to be considered.

Variations to some of the built form controls (side boundary envelope and wall height) were identified at the prelodgement meeting (PLM2013/0047) which was followed by the lodgement of Development Applications (DA2013/0972, DA2013/0973 & DA2013/0974).

It is noted that the proposed dwellings are compliant with the overall building height, front setback, rear setback, side setbacks and landscaped open space controls with the provision of appropriate landscaping addressing the streetscape of Foam Street. The proposed dwelling is in keeping with existing housing stock in the area and in comparison to the existing and approved dwelling house (DA1999/1509) at No. 25 Foam Street, which has a floor space ratio of 0.76 to 1 is compatible. Additionally, No. 40 Carlton Street (DA2002/0235 - New Dwelling) has a floor space ratio of 0.72 to 1, which compared to the proposed dwellings floor space ratio of 0.59 to 1, is considerably less.

Therefore, it is deemed that the proposed development on Lot 85, which forms part of the overall three (3) dwellings is not an overdevelopment of the site(s) and is generally consistent with if not smaller in size than the surrounding housing stock within Foam Street and within the nearby vicinity.

Given the above, it is deemed that the issue raised does not warrant refusal of the application or further amendment.

(g) Destabilizing existing rock outcrops and retaining walls

Comment: Issues were raised in relation to the destabilizing of existing rock outcrops and the retaining walls on the above properties (Nos. 42 & 44 Carlton Street) to the rear/east of the subject sites. It is noted that the existing exposed rock outcrops located at the rear of Nos. 27, 29 & 31 Foam Street are not to be altered by the proposed development. The geotechnical engineer has stated *"there were no signs of existing large scale or deep seated instability or significant geotechnical features within the site or adjoining properties"*. Additionally the report stated *"the retaining walls along the boundary with No. 44 Carlton Street. It is recommended that these walls be replaced to remove the risk to the site and proposed new development."*

Given the above conditions and recommendations of the geotechnical report submitted with the DA will be included in the draft conditions, it is deemed that the issue raised does not warrant refusal of the application or further amendment.

(h) Commercially and financially driven development

Comment: The proposed development(s) are considered against the relevant provisions of the Warringah Local Environmental Plan 2011 (WLEP 2011), Warringah Development Control Plan (WDCP), Environmental Planning Instruments (EPI's), planning principles and Environmental Planning and Assessment Act 1979. The concerns raised are not a relevant matter for consideration.

Given the above, it is deemed that the issue raised does not warrant refusal of the application or further amendment.

(i) Fauna and flora

Comment: A number of submissions raised the removal of the existing trees on the 3 sites and possible impacts on the wildlife in the area. It is noted that the 3 DA's were lodged with an Arboricultural Impact Report given that nine (9) trees were to be removed/impacted by the proposed developments. It was deemed that all trees could be removed and five (5) trees were listed as "Exempt Species" under WDCP. The street tree (Brushbox) has been recommended for removal and will be replaced by an Old Man Banksia Tree. While it is not desirable to remove all trees from the site, it is noted that the existing exposed rock outcrops at the rear of the 3 site(s) at are remain intact.

Additionally, the proposed landscape open space plan and planting plan recommends a number of significant trees, shrubs and over 1000 minor species to be planted on the site, which collectively will be a significant improvement on the existing situation. This replanting will ensure a combination of exotic and native species to address amenity issues but also assist wildlife to return to the area.

Given the above, it is deemed that the issue raised does not warrant refusal of the application or further amendment.

(j) Inadequate Parking

Comment: A number of submissions raised the issue of the additional driveway crossing (resulting in 3 crossings) compound to the current situation with two driveways. It is also noted that a space may be lost on the eastern side of Foam Street for street parking, but it is noted that six (6) new off-street car spaces will be created by the proposed developments, which is an improvement on the current situation of only three (3) spaces.

Given the above, it is deemed that the issue raised does not warrant refusal of the application or further amendment.

(k) Loss of Privacy

Comment: A number of submissions were raised by adjoining properties in relation to privacy. The properties raising issue are addressed below:

No. 33 Foam Street (Units 4 and 10 on the southern elevation facing the proposed dwelling).

Unit 4 is located on the southeastern corner and Unit 10 is located on the southwestern corner of the three/four storey residential flat building on the first floor level. A driveway for the units also separates the two buildings for a distance of 5.4m at the closest point and makes these units the most highly vulnerable. It is noted the proposed design has considered the potential impact with the use of opaque glazing for the kitchen and opaque glazed louvers for the laundry and balcony on the ground floor. Additionally, a privacy screen has been fitted to the terrace at the rear of dwelling to ensure privacy is

maintained between the two properties.

On the first floor level high level, opaque glazing has used for the stairs, bathroom 2, study/bedroom 4 to ensure privacy is maintained. The balcony on this level is located on the south-eastern corner of this floor off bedroom 2 and is inset behind bedroom 3 on the northern portion and hence does not pose as a high usage given the nature of the room and the size of the balcony (5.1sqm).

The balcony to the front of the dwelling will allow for casual surveillance of Foam Street and the public domain. As stated previously, the ground floor balcony is fitted with opaque louvers (screen) to the whole north elevation.

No. 25 Foam Street - This property is located three (3) properties away from the subject site and as such the proposal will have no impact on this property in relation to privacy.

No. 40A Carlton Street: This property is located three (3) properties away from the subject site (diagonally) and as such the proposal will have no impact on this property in relation to privacy.

No. 42 Carlton Street: This property is located two (2) properties away from the subject site (diagonally) and as such the proposal will have no impact on this property in relation to privacy.

No. 44 Carlton Street: The subject site is located to the northwest of this property. It is noted that there is a considerable height difference between the two sites. The proposed ground floor reduced level is 35.8m and the first floor level is 38.85m. Additionally, it is noted that the reduced level at the boundary is 41.1m and the land slopes up as traverses up towards Carlton Street. By comparison, the reduced level on the first floor balcony at No. 44 Carlton Street (CDC2011/0144) at the rear is 44.96m and it is noted that view line between the two properties is not direct (diagonal), nevertheless privacy impacts may occur.

Therefore, it is recommended that the glazing for the rear first floor balcony is obscured glazing or of solid construction and a privacy screen which drops from the ceiling 400mm would improve this situation for both parties. The existing rock outcrop in the rear yard makes difficult conditions for additional plantings along the rear boundary. It also noted that will be some 20 metres at the closest points between the two dwellings.

No. 23A Foam Street: This property is located four (4) properties away from the subject site and as such the proposal will have no impact on this property in relation to privacy.

Given the above, it is recommended that subject to the inclusion of a privacy screen (400mm) dropping down from the ceiling height for the balcony (bedroom 2) and the use of obscure glazing/solid construction for the balustrade, it is deemed that the proposed dwelling will allow for reasonable privacy to be maintained for adjoining and surrounding properties. The windows on the eastern elevation of the first floor are bedrooms and therefore these are not highly used areas such as kitchens and living rooms. There would be a reasonable expectation that the use of curtains and/or blinds would be used for screening/privacy of the occupants within the dwelling for these rooms.

It is deemed that the issue raised does not warrant refusal of the application subject to conditions.

(I) Solar access

Comment: The neighbouring dwelling-house to the south, No. 27 Foam Street (DA2013/0972) and will receive sunlight at 12 noon to its rear yard and at 3pm to the elevated part of the rear yard. The living areas of No. 27 Foam Street are designed to obtain sunlight to both the eastern and western elevations where

generous areas of glazing ensure that more than 3 hours sunlight is provided to those rooms.

The design of the building addresses this constraint by providing an internal courtyard for daylight, located on the northern side of the building for privacy reasons. Similarly, the landscape design and location of the pool on the southern side of the site seek to compensate for the overshadowing created by the neighbouring residential flat building.

(m) Amenity

Comment: The proposed dwelling(s) and swimming pool(s) are in keeping with the character of low density residential area and maintain a consistent allotment size with adjoining and surrounding dwelling houses. There is a reasonable expectation of noise and associated activities consistent with any residential dwelling, therefore the concerns in relation to amenity do not warrant refusal or further amendment of the current application.

(n) Views

Comment: See comments in Part D7 Views with this report. The proposal was assessed against the four (4) planning principles outlined within Tenacity Consulting Pty. Ltd. versus Warringah Council (2004) NSWLEC 140 and deemed to satisfy those principles.

Given the above it is deemed that the proposed dwelling at No. 31 Foam Street does not warrant refusal or further amendment based on views.

(o) No Dilapidation Report

Comment: A request from the one of the owners in the RFB to the north (No. 33 Foam Street) was made for a dilapidation report for the units on the southern end of the building and the driveway. Given the proximity of the building and No. 31 Foam Street, a condition will be included given the required excavation for the buildings to ensure that the buildings are not affected by the proposed works. Additionally, a condition will be included in relation to the retaining wall between No. 44 Carlton Street and No. 29 Foam Street and the retaining wall between Nos. 42 & 44 Carlton Street and the retaining wall between Nos. 48 Carlton Street and the subject site (No.31 Foam Street).

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Development Engineers	<p>The proposed relocation of the existing bus shelter and 'J' stem must be assessed by Council's Road Assets Team.</p> <p>Subject to the approval of the relocation of the shelter, the proposed driveway crossing has been assessed and is satisfactory. As the site area is less than 450 square metres, on-site stormwater detention is not</p>

Internal Referral Body	Comments
	required. No objections to approval, subject to conditions as recommended.
Landscape Officer	No objection to approval subject to conditions as recommended.
Road Reserve	Approval subject to conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW State Transit (Bus stops)	No objections, subject to temporary bus stop during the duration of the works. Additionally, costs will be borne by the applicant/developer for the relocation of the bus stop and bus shelter.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 496363S dated 15 August 2013). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 14730479 dated 15 August 2013).

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

Commitment	Required Target	Proposed

Water	40	40
Thermal Comfort	Pass	Pass
Energy	40	41

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

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

Warringah Local Environment Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	N/A	N/A	N/A	N/A
Height of Buildings:	8.5m	8.5m	N/A	Yes
Rural Subdivision:	N/A	N/A	N/A	N/A
No Strata Plan or Community Title Subdivisions in certain rural and environmental zones:	N/A	N/A	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 2 Permitted or prohibited development	Yes
2.7 Demolition requires consent	Yes
Land Use Table	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	Yes
Part 5 Miscellaneous provisions	Yes
5.9 Preservation of trees or vegetation	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
Part 6 Additional Local Provisions	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.8m	N/A	No
B2 Number of storeys	N/A	N/A	N/A	N/A
B3 Side Boundary Envelope	5m	5m (outside)	N/A	No
B4 Site Coverage	N/A	N/A	N/A	N/A
B5 Side Boundary Setbacks	0.9m	0.9m - 1.9m (north) 0.9m - 4.6m (south)	N/A	Yes
B7 Front Boundary Setbacks	6.5m	6.5m	N/A	Yes
B9 Rear Boundary Setbacks	6m	13.3m (dwelling) 10.1m (terrace) 6.5m (swimming pool)	N/A	Yes
B11 Foreshore Building Setback	N/A	N/A	N/A	N/A
B12 National Parks Setback	N/A	N/A	N/A	N/A
B13 Coastal Cliffs Setback	N/A	N/A	N/A	N/A
B14 Main Roads Setback	N/A	N/A	N/A	N/A
B15 Minimum Floor to Ceiling Height	N/A	N/A	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (161.9sqm)	40.1% (162.2sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part B Built Form Controls	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
Side Setbacks - R2	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
Front Boundary Setbacks - R2	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
Rear Boundary Setbacks - R2	Yes	Yes
Part C Siting Factors	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Residential accommodation - one or two dwellings	Yes	Yes
Part D Design	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D5 Orientation and Energy Efficiency	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposed dwelling has a maximum wall height of 7.8m for a distance of 5.9m for the Bedroom 1 section of the first floor level at the front part of the dwelling (southern elevation).

Merit consideration:

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

- **To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.**

Comment: The proposed dwelling is articulated allowing for visual relief with varying setbacks to the ground and first floor levels. Additionally, the open balcony at the front breaks up the front façade of the dwelling. The roof design is varying and adds visual interest to the dwelling and overall with all these factors combined minimizes the visual impact to adjoining properties and streetscape.

- **To ensure development is generally beneath the existing tree canopy level**

Comment: The proposed dwelling has a maximum height of 8.5m and is below the existing tree canopy level on the site. It is deemed that the development demonstrates compliance with this merit consideration.

- **To provide a reasonable sharing of views to and from public and private properties.**

Comment: The proposed development maintains reasonable sharing of views to adjoining properties with the exception of Unit 10 within No. 33 Foam Street (which will suffer substantial view loss) and Unit 4 within the same building which will suffer minor view loss. The houses located to the east (Nos. 40A, 42 & 44 Carlton Street) and the residential flat building (No. 48 Carlton Street) to the north will overlook this dwelling

given the significant height difference between the sites. It is deemed that the development demonstrates compliance with this merit consideration.

- **To minimise the impact of development on adjoining or nearby properties.**

Comment: The proposed dwelling has adequate setbacks on both the northern and southern sides. The ground floor setbacks on the southern side vary from a minimum of 1.1m up to 4.6m and on the first floor the setbacks vary from 0.9m to 4.6m. On the northern side, the setback on the ground floor is 0.9m given its position to the adjoining driveway at No. 33 Foam Street and therefore benefitting from this spatial separation between the two buildings. The first floor level has varying setbacks from 1.4m to 1.9m this providing for good articulation and visual relief.

The proposed design has been articulated on both elevations providing relief when viewed from the existing residential flat building at No. 33 Foam Street and the new dwelling to the north at No. 29 Foam Street. The spatial separation also allows for reasonable privacy levels to be maintained and amenity to the existing and new buildings/dwellings.

Given the above, it is deemed that the proposed development has been designed to minimize the impact on adjoining and nearby properties and demonstrates compliance with this merit consideration.

- **To ensure that development responds to site topography and to discourage excavation of the natural landform.**

Comment: The site slopes down from the rear eastern boundary to front western boundary with some 7.5m in vertical fall, and this is partly to blame for the non-compliance. In particular, the non-compliance occurs where the ground level is lower at the front of the proposed dwelling. The proposal has been designed to respond appropriately to the topography and the design techniques and extent of excavation for the garage have minimized the wall height encroachments. In this regard it is deemed that the proposal responds adequately to the topography.

- **To provide sufficient scope for innovative roof pitch and variation in roof design.**

Comment: The proposed roof design incorporates a flat roof with clerestory windows which assist in breaking up the bulk of the building. It is considered that the proposal demonstrates innovation and variation within the roof design to ensure compliance with this merit consideration.

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

B3 Side Boundary Envelope

Description of non-compliance

The northern and southern side boundary envelopes will be breached at the front and middle parts of the dwelling on the northern elevation and front and rear parts of the dwelling on the southern elevation. The

breaches on the northern side will be a maximum of 0.2m over a distance of 3.5m until compliance is met at the front of the dwelling. In the middle of the building on the same elevation there is a maximum breach of 0.4m for 3.5m until compliance is met.

On southern side there is a maximum breach of 0.85m which reduces to 0.3m over a distance of 6.7m at the front of the dwelling. Compliance is met in the middle of the dwelling where the courtyard is located. At the rear of the dwelling, a maximum breach of 0.4m occurs at the western edge until compliance is met over a distance of 3.5m.

Merit consideration

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

- **To ensure that development does not become visually dominant by virtue of its height and bulk.**

Comment: The proposed dwelling has varying setbacks on both the ground and first floors with an interesting roof design giving good levels of articulation to the dwelling and addressing the streetscape of Foam Street. The non-compliances will not cause the development to become visually dominant in the area by virtue of its height and bulk.

- **To ensure adequate light, solar access and privacy by providing spatial separation between buildings.**

Comment: The proposed dwelling has adequate setbacks on both the northern and southern sides. The ground floor setbacks on the northern side have a setback of 0.9m and on the first floor they vary from 1.4m to 1.9m. On the southern side, the setbacks on the ground floor vary from 1.1m to 4.6m and on the first floor level the setbacks vary from 0.9m to 4.6m.

The proposed design has been articulated highly on both elevations which provides for relief between the existing residential flat building at No. 33 Foam Street, which is located over 5m at the closest point given the location of the driveway and the new dwelling to the south at No. 29 Foam Street. This spatial separation allows for reasonable privacy levels to be maintained and amenity to the existing and new buildings/dwellings.

- **To ensure that development responds to the topography of the site.**

Comment: The site slopes down from the rear eastern boundary to front western boundary by some 7.5m in vertical fall, and this is partly the reason for the non-compliance. In particular, the non-compliance occurs where the ground level is lower. The proposal has been designed to respond appropriately to the topography and design techniques and extent of excavation for the garage have minimized the envelope encroachments. In this regard, it is deemed that the proposal responds adequately to the topography.

Having regard to the above assessment, it is concluded that the proposed development is consistent with

the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D7 Views

Merit consideration

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

- ***To allow for the reasonable sharing of views.***

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

“The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured”.

Comment on Principle 1:

The views were assessed from the adjoining residential flat building at No. 33 Foam Street, in particular Units 4 and 10 located on the first floor level. The views from Unit 4 are distant city views, district views and partially obscured views of North Head. The views from Unit 10 are distant city views and district views.

2. What part of the affected property are the views obtained

“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic”.

Comment to Principle 2:

The unit block is located on the corner of Foam Street and Wyadra Avenue and therefore makes the property a corner allotment. Foam Street would be taken as the primary street frontage and Wyadra Avenue as the secondary street frontage. Therefore, the eastern and southern boundaries are deemed to be side boundaries.

Given the above, views over the side southern boundary are difficult to maintain even from a standing position.

3. Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment on Principle 3:

The view loss for Unit 4 would be considered to be minor and the view loss for Unit 10 would be considered severe.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment on Principle 4:

The proposal is compliant with the overall height requirement of 8.5m and the front, rear and side setback requirements and landscaped open space are also compliant with their respective controls. The variations to wall height and side boundary envelope have minimal relationship to impact on views. It is noted that the existing dwellings at Nos. 27 and 31 Foam Street are both single storey and have been underdeveloped for a considerable period of time. The expectation that the houses would not be developed to their full potential as 2 storey dwellings, as currently proposed, is unrealistic and beyond normal expectation.

The design of this dwelling has considered the site and addressed issues such as privacy, building bulk and spatial separation via the stepped elevations and interesting materials and varied roof design to ensure a skilful design has been achieved. Therefore, the proposal is considered acceptable and meets the requirements of this planning principle.

- *To encourage innovative design solutions to improve the urban environment.*

Comment: The design of this dwelling has considered the site and addressed issues such as privacy, building bulk and spatial separation and is considered to be an innovative design which will enhance the character of the locality.

- *To ensure existing canopy trees have priority over views.*

Comment: The existing trees on the site are to be removed given the overall enhancement of the proposed development which is reflected in the new landscape design which will replace the exotic species with a mixture of native and exotic species suited to the site and local area.

Overall, the proposal is satisfactory in relation to view sharing and no additional design work is considered necessary to address the residents concerns.

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

D8 Privacy

A number of submissions were raised by adjoining properties in relation to privacy. The following properties were:

No. 33 Foam Street (Units 4 and 10 on the southern elevation facing the proposed dwelling).

Unit 4 is located on the southeastern corner and Unit 10 is located on the southwestern corner of the three/four storey residential flat building on the first floor level. A driveway for the units also separates the two buildings for a distance of 5.4m at the closest point and makes these units the most highly vulnerable. It is noted the proposed design has considered the potential impact with the use of opaque glazing for the kitchen and opaque glazed louvers for the laundry and balcony on the ground floor. Additionally, a privacy screen has been fitted to the terrace at the rear of dwelling to ensure privacy is maintained between the two properties.

On the first floor level high level, opaque glazing has used for the stairs, bathroom 2, study/bedroom 4 to ensure privacy is maintained. The balcony on this level is located on the south-eastern corner of this floor off bedroom 2 and is inset behind bedroom 3 on the northern portion and hence does not pose as a high usage given the nature of the room and the size of the balcony (5.1sqm).

The balcony to the front of the dwelling will allow for casual surveillance of Foam Street and the public domain. As stated previously, the ground floor balcony is fitted with opaque louvers (screen) to the whole north elevation.

No. 25 Foam Street - This property is located three (3) properties away from the subject site and as such the proposal will have no impact on this property in relation to privacy.

No. 40A Carlton Street: This property is located three (3) properties away from the subject site (diagonally) and as such the proposal will have no impact on this property in relation to privacy.

No. 42 Carlton Street: This property is located two (2) properties away from the subject site (diagonally)

and as such the proposal will have no impact on this property in relation to privacy.

No. 44 Carlton Street: The subject site is located to the northwest of this property. It is noted that there is a considerable height difference between the two sites. The proposed ground floor reduced level is 35.8m and the first floor level is 38.85m. Additionally, it is noted that the reduced level at the boundary is 41.1m and the land slopes up as traverses up towards Carlton Street. By comparison, the reduced level on the first floor balcony at No. 44 Carlton Street (CDC2011/0144) at the rear is 44.96m and it is noted that view line between the two properties is not direct (diagonal), nevertheless privacy impacts may occur.

Therefore, it is recommended that the glazing for the rear first floor balcony is obscured glazing or of solid construction and a privacy screen which drops from the ceiling 400mm would improve this situation for both parties. The existing rock outcrop in the rear yard makes difficult conditions for additional plantings along the rear boundary. It also noted that will be some 20 metres at the closest points between the two dwellings.

No. 23A Foam Street: This property is located four (4) properties away from the subject site and as such the proposal will have no impact on this property in relation to privacy.

Given the above, it is recommended that, subject to the inclusion of a privacy screen (400mm deep) dropping down from the ceiling height for the balcony (bedroom 2) and use of obscured glazing for the balustrade, it is deemed that the proposed dwelling will allow for reasonable privacy to adjoining and surrounding properties. The windows on the eastern elevation of the first floor are bedrooms and therefore there are not highly used areas such as kitchens and living rooms. There would be expectation that the use of curtains and/or blinds would be used for screening/privacy of the occupants within the dwelling for these rooms. It is deemed that the issue raised does not warrant refusal of the application subject to conditions.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 903,650		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 8,585
Section 94A Planning and Administration	0.05%	\$ 452
Total	1%	\$ 9,037

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2013/0974 for Demolition works and construction of a dwelling house and swimming pool on land at Lot 85 DP 5302, 31 Foam Street, FRESHWATER, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01	19.08.13	Watershed Design
DA02	19.08.13	Watershed Design
DA03	19.08.13	Watershed Design
DA04	19.08.13	Watershed Design

DA05	19.08.13	Watershed Design
DA06	19.08.13	Watershed Design
DA07	19.08.13	Watershed Design
DA08	19.08.13	Watershed Design
DA10	19.08.13	Watershed Design
DA11	19.08.13	Watershed Design

Engineering Plans		
Drawing No.	Dated	Prepared By
22213-1	8 August 2013	Taylor Consulting
22213-4	12 August 2013	Taylor Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Report	13 August 2013	Landscape Matrix Pty Ltd.
Report of Geotechnical Investigation (Project 2013-123)	July 2013	Crozier Taylor Geotechnical

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

c) No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

d) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
Sheet 1 of 2	6 August 2013	Rolling Stone Landscapes
Sheet 2 of 2	6 August 2013	Rolling Stone Landscapes

Waste Management Plan		
Drawing No.	Dated	Prepared By
Waste Management Plan Section 2 - Demolition and Construction	6 August 2013	Geoff Goodyer

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

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with the following:

Other Department,	eServices Reference	Dated
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Authority or Service		
State Transit Authority	Response STA Referral	23/9/2013

(NOTE: For a copy of the above referenced document/s, please see Council's 'E-Services' system at www.warringah.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's. (DACPLB02)

3. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (i) protect and support the adjoining premises from possible damage from the excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a

building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement (DACPLB09)

4. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

(b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(e) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(f) Smoke alarms are to be installed throughout all new and existing portions of any Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(l) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at www.warringah.nsw.gov.au

(m) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life

Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 903,650		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 8,585
Section 94A Planning and Administration	0.05%	\$ 452
Total	1%	\$ 9,037

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

Reason: To provide for contributions in accordance with the Warringah Section 94A Development Contributions Plan 2012.

6. Bonds

Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Councils Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection)

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to

the issue of the Construction Certificate.

Reason: To ensure adequate protection of Councils infrastructure. (DACENZ01)

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

7. **Vehicle Crossings Application Formwork Inspection**

An application for street levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property. (DACENC12)

8. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required.

All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Safety. (DACENC19)

9. **Submission of Engineering Plans for Civil Works in the Public Road Reserve**

Engineering plans are to be submitted to Council for approval under the provisions of Section 138 of the Roads Act 1993. The submission is to include four (4) copies of Civil Engineering plans for the design of bus shelter which are to be generally in accordance with the Development Application and Council's specification for engineering.

The Fee Associated with the assessment and approval of the plans may be applied in accordance with Council's Fees and Charges.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Ensure engineering works are constructed in accordance with relevant standards.
(DACHECPCC1)

10. **Construction and Associated Works Bond (Bus shelter)**

A Bond of \$50000 as security against any damage or failure to complete the relocation of a bus shelter works as part of this consent.

Construction and Associated Works Bond (Maintenance for bus shelter)

The developer/applicant must lodge with Council a Maintenance Bond of \$5000 for the construction of bus shelter. The Maintenance Bond will only be refunded on completion of the six months Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of Council.

(NOTE: This bond may be refunded and replaced by the Maintenance Bond upon submission to Council of the final Compliance Certificate or Subdivision Certificate.)

Reason: To ensure adequate protection of Council infrastructure. (DACHPCPCC1)

11. **Trees and / or Landscaping**

In order to protect and enhance onsite vegetation and trees the following applies to the development site:

(a) Existing trees which must be retained

All trees not indicated for removal on the approved plans.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

12. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.
(DACPLC02)

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not

limited to) Australian Standards are considered to be appropriate:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'***
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 - 2009* Design for access and mobility - General requirements for access - New building work**
- (m) AS 1428.2 - 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**
- (n) AS 4674 Design, construction and fit out of food premises
- (o) AS1668 The use of mechanical ventilation

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website http://www.humanrights.gov.au/disability_rights/buildings/good.htm

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to. (DACPLC02)

13. External Finishes to Roof

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development. (DACPLC03)

14. Sewer / Water Quickcheck

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website www.sydneywater.com.au for:

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLC12)

15. **Dilapidation Survey**

A photographic survey of adjoining properties ((being No. 25 Foam Street, No. 33 Foam Street (Units 2, 4, 6, 10 & 13 and the driveway along the southern boundary) and the retaining wall between Nos. 42 & 44 Carlton Street and the retaining wall between No. 44 Carlton Street and No. 29 Foam Street and the retaining wall between No.48 Carlton Street and No. 31 Foam Street) detailing the physical condition of those properties, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to Council/Accredited Certifier prior to the issue of a Construction Certificate. This survey is to be prepared by an appropriately qualified person.

On completion of the excavation and building works and prior to occupation of the building, a certificate prepared by the appropriately qualified person to the effect that no damage has resulted to adjoining premises, is to be provided to the Principal Certifying Authority.

If damage is identified by the appropriately qualified person which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to a final Occupation Certificate being issued.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to the satisfaction of Council/Accredited Certifier that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

(Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible).

Reason: Proper management of records. (DACPLCPC1)

16. **Privacy screen and balustrade (Bedroom 2)**

A 0.4 metre deep privacy screen (measured from finished ceiling level) is to be erected for the entire length of the outermost eastern edge of the balcony (located off the bedroom 2 on the first floor), as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement in design of the approved development.

The balustrade for this balcony is to use obscured glazing and/or fixed panels or louvre style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: In order to maintain privacy to the adjoining / nearby property. (DACPLCPC2)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$10 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Warringah Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land. (DACEND01)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. **Vehicle Crossings**

The provision of one vehicle crossing 3 metres wide in accordance with Warringah Council Drawing No A4-3330/1 Normal and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property. (DACENE05)

19. **Layback Construction**

A layback 3 metres wide (excluding the wings) is to be constructed in accordance with Warringah Council Drawing No A4-2276 and specifications.

Reason: To ensure suitable vehicular access to private property. (DACENE08)

20. **Maintenance of Road Reserve**

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety. (DACENE09)

21. **Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees. (DACLAE03)

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

22. **Reinstatement of Kerb**

All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To facilitate the preservation of on street parking spaces. (DACENF03)

23. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Note: The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

24. Certification of bus shelter

The Civil Engineer responsible for the supervision of the bus shelter works shall certify that the completed works have been constructed in accordance with this consent and the approved Construction Certificate.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure compliance of civil works with Council's specification for engineering works. (DACHEFPOC1)

25. Required Planting

The tree/s listed in the following schedule shall be planted in accordance with the following schedule:

No. of Trees Required.	Species	Location	Minimum Pot Size
All trees	As indicated on Landscape Plan Dwg No.L.P.3-2 Sheet 2 dated 6th August 2013 prepared by Rolling Stone Landscapes.	As indicated on the Landscape Plan	As indicated on the Landscape Plan

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To maintain environmental amenity. (DACLAF01)

26. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure bushland management. (DACPLF01)

27. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: Proper identification of buildings. (DACPLF04)

28. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (ii) Swimming Pools Regulation 2008
- (iii) Australian Standard AS1926 Swimming Pool Safety
- (iv) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (v) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

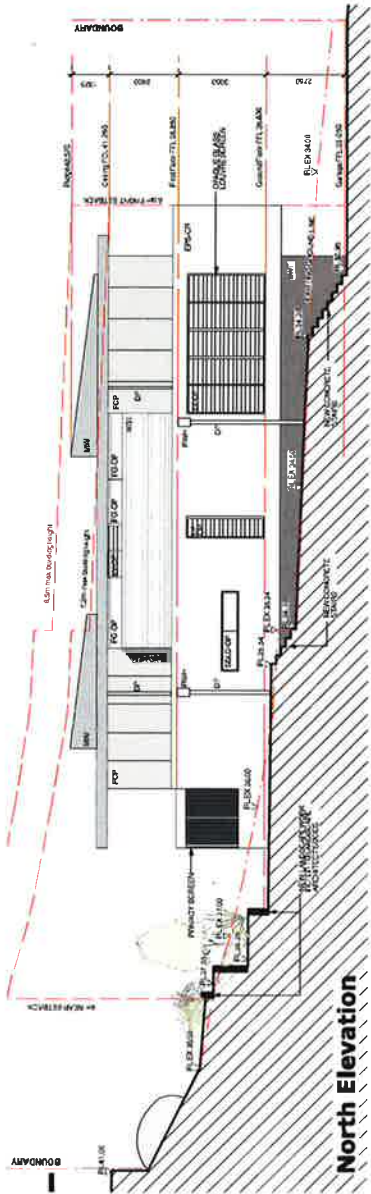
(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

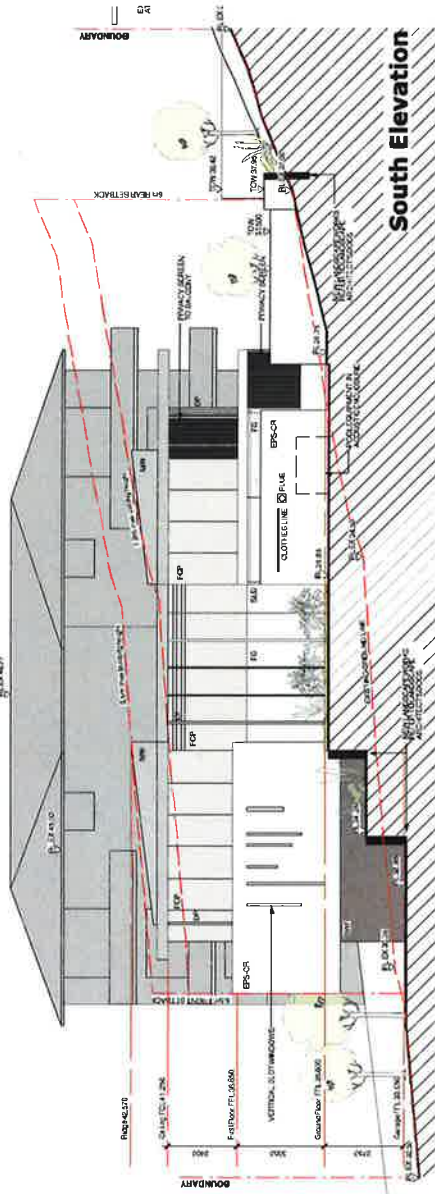
(g) Swimming pools and spas must be registered with the *Division of Local Government*.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

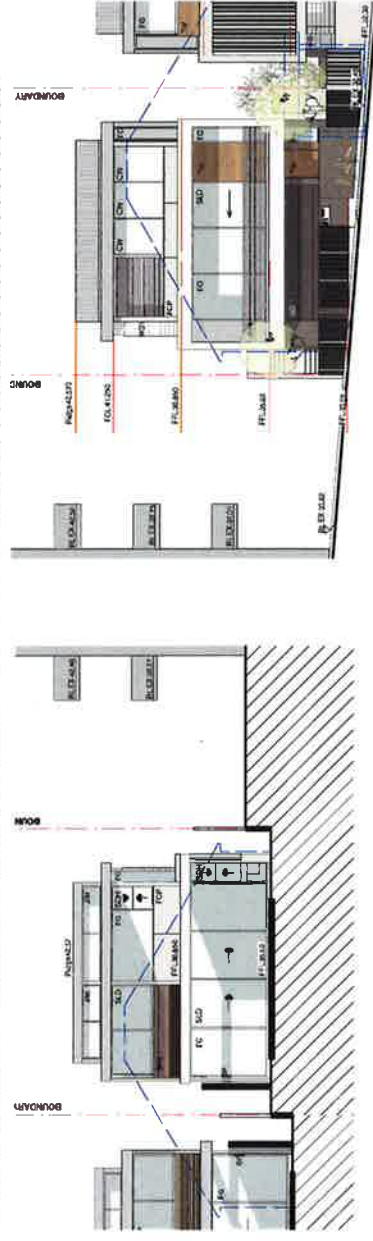
Reason: To protect human life (DACPLF09)



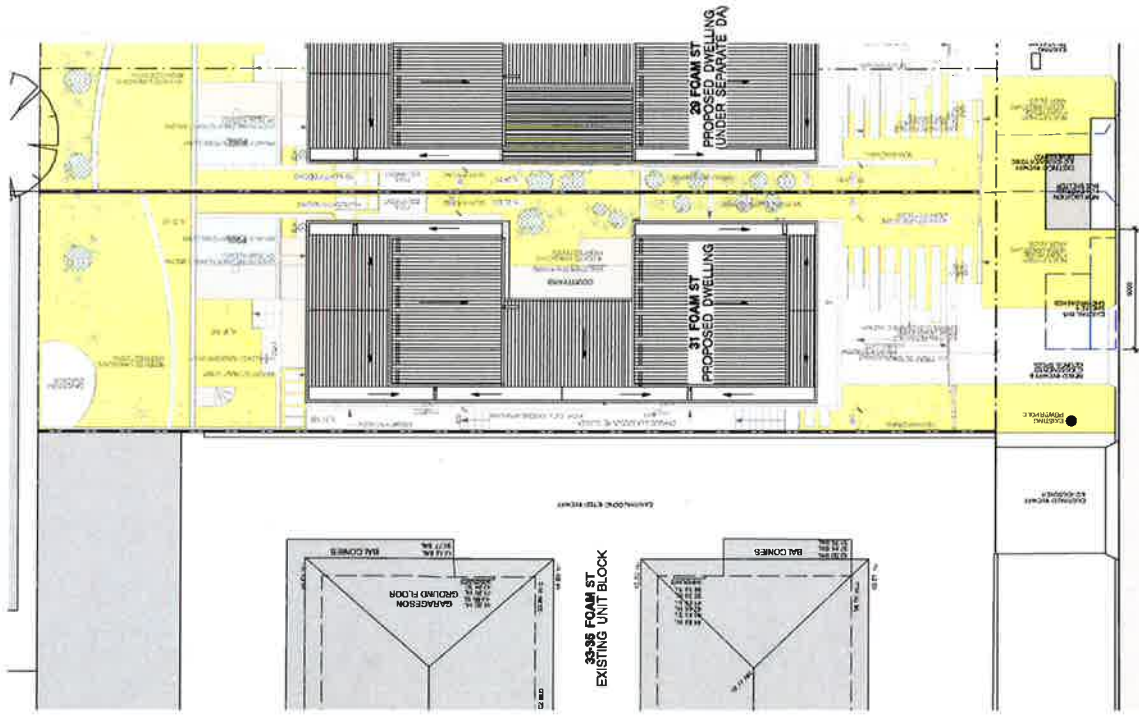
North Elevation



South Elevation



West Elevation (Foam street)



FOAM STREET

Site Plan

