



Notice of Development Control Unit Meeting

**to be held at the Council Chambers
4 Breese Parade, Forster**

1 February 2018 at 2pm

The order of the business will be as detailed below (subject to variation by Council):

- 1, Acknowledgement of Traditional Custodians
2. Declaration of Pecuniary or Conflicts of Interest (nature of interest to be disclosed)
3. Apologies
4. Confirmation of Minutes
5. Matters arising from Minutes
6. Addresses from the Public Gallery
7. Consideration of Officers' reports
8. Close of meeting

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Steve Embry
Acting General Manager

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CONSIDERATION OF OFFICERS' REPORTS:

DIRECTOR PLANNING & NATURAL SYSTEMS

1 DA 83/2018 - ALTERATIONS, ADDITIONS & POOL - 15 WHARF STREET, TUNCURRY

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File No. / ECM Index DA 83/2018

Date of Meeting 1 February 2018

DETAILS

Date Received: 15 August 2017

Applicant: Chris Jenkins Design

Owner: Mr L Hartog and Mrs P Hobson

Land: Cnr Lot 6 Sec 34 DP759005, 15 Wharf Street Tuncurry

Property Key: 8828

Zoning: B4 Mixed Use, GLLEP 2014

SUMMARY OF REPORT

- Application submitted to construct alterations and additions to an existing two (2) storey dwelling and include a swimming pool.
- Proposal does not comply with the setback requirements of Great Lakes DCP 2014.
- Non-compliance with setback requirements and impact on streetscape discussed.

SUMMARY OF RECOMMENDATION

The proposed development application be approved, subject to a deferred commencement condition requiring the plans be amended to redesign aspects of the dwelling and pool design, and approved by Council Staff under delegated authority before the consent becomes active.

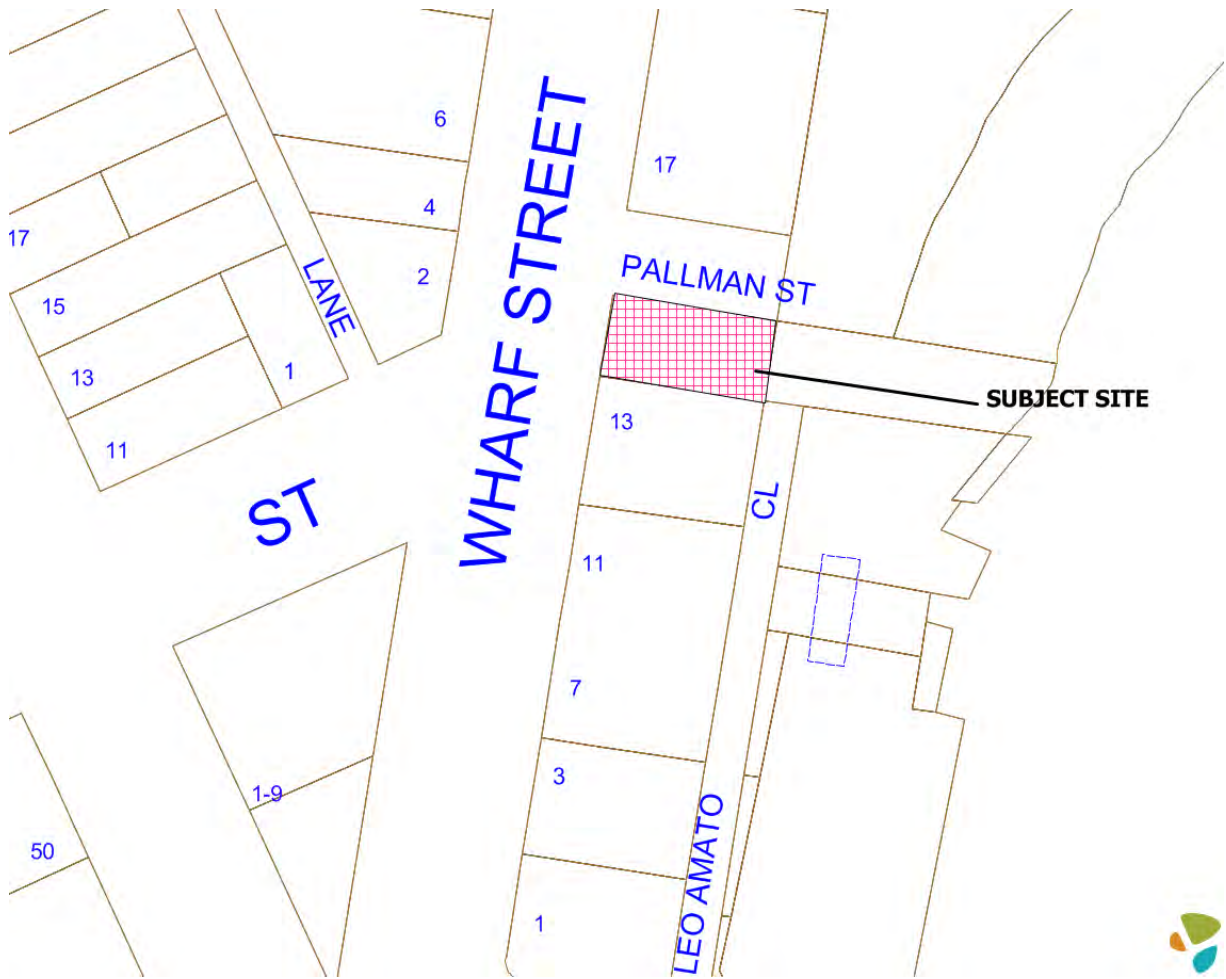
FINANCIAL/RESOURCE IMPLICATIONS

Cost of defending any appeal against Council's decision.

LEGAL IMPLICATIONS

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court requiring legal representation.

SUBJECT SITE AND LOCALITY



BACKGROUND

The site is currently being used for residential purposes with a single dwelling on the site.

A summary of previous approvals is shown below:

Approval no.	Descriptions	Determination
BA 167/1980	Dwelling	Approved
DA 536/1981	Office Extension	Approved

SITE DESCRIPTION

The subject site has an area of 461.6m² with approximately 400mm of fall across the block from west to east. The corner allotment is bounded by three (3) public roads being Wharf Street to the west, Pallman Street to the north and Leo Amato Close to the east.

The road frontages are as below:

Street name	Road frontage width
Wharf Street	15.24 m
Pallman Street	30.48 m
Leo Amato Close	15.24 m

The subject allotment is a conventional rectangular shape and is located opposite a Crown Land waterfront reserve which borders the Tuncurry Channel. The site is bordered by a shared pedestrian/cycle path on the Council road reserve and located adjacent to a pedestrian road crossing that is considered to be a busy throughfare between Tuncurry township and the Channel walkway leading to the Rockpool located in the channel.

The site currently contains a two (2) storey dwelling in centre of the allotment, with low set masonry fencing bordering the property and a covering of maintained grass. The existing dwelling is orientated north with both the front door and garage presenting towards Pallman Street.

The existing dwelling benefits from panoramic views from the north (the bar of the Forster-Tuncurry channel), across to the Forster township in the east, and south to the Forster-Tuncurry bridge and Wallis Lake.

PROPOSAL

The proposed development involves the partial demolition of an existing two (2) storey masonry dwelling, and significant dwelling alterations and additions to redevelop the structure into a three (3) storey single dwelling with swimming pool.

The proposal will retain several existing ground storey walls, and extend the footprint to the north and east.

The proposed dwelling is a modern three (3) storey design with a flat skillion sheet metal roof and extended roof skylight above the upper storey roofline. The street frontage is addressed with a front entry door and double garage presenting to Pallman Street, along with windows and open deck areas servicing habitable rooms over the upper two (2) levels.

The ground floor layout is proposed to include only non-habitable uses (three (3) car garage, laundry, storage, entry lobby and lift well) to address the Council requirements of the flood-prone site (discussed in detail under 'Flooding').

ASSESSMENT

SECTION 79C MATTERS FOR CONSIDERATION -

The following matters listed under Section 79C of the *Environmental Planning and Assessment Act, 1979*, are relevant in considering this application:

- a) *The provisions of any environmental planning instrument; any proposed instrument that is or has been the subject of public consultation and which have been notified to the consent authority; any DCP; any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F; any matters prescribed by the regulations; any coastal zone management plan that apply to the development application on the subject land.***

GREAT LAKES LOCAL ENVIRONMENTAL PLAN 2014

Having regard for the matters for consideration detailed in Section 79C(1) of the *Environmental Planning & Assessment Act 1979*, the following is a summary of the evaluation of the proposal pursuant to the provisions of the relevant clauses of the Great Lakes Local Environmental Plan 2014.

Zone: Mixed Use B4

Objectives of zone

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To encourage development that does not prejudice the established business and industrial centres.
- To ensure that traffic generation from development can be managed in a way that avoids conflict with the desired pedestrian environment.
- To ensure the inclusion and integration of housing to promote housing diversity and community activity within the business centre.
- To enable a range of tourism-related uses that supports the business centre.

LEP Requirement	Summary of Requirement	Complies
Zone Objectives	<i>See above</i>	No* Application relies on 'existing use rights' provisions of the existing dwelling
Permissible use	<i>The zoning prohibits 'residential accommodation' including dwelling houses.</i>	No*, however the site benefits from existing use rights
4.3 –Height of buildings	<i>Maximum allowable height of a building is 12 metres</i>	Yes - proposal is 10.34 metres
4.4 – Floor Space Ratio	<i>Maximum allowable floor space ratio for the zoning is 1:1</i>	Yes - proposal is 0.8:1
7.1 - Acid Sulphate Soils	To ensure that development does not disturb, expose or drain <u>acid sulfate soils</u> and cause environmental damage (site is mapped as Class 3 acid sulfate soil)	Yes - minimal excavation that can be controlled by conditions of consent.
7.3 – Flood Planning	<i>(a) to minimise the flood risk to life and property associated with the use of land, (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change, (c) to avoid significant adverse impacts on flood behavior and the environment.</i> (site is mapped as flood prone)	Yes - ground floor design to be non-habitable use, all new habitable floor area above the flood planning level of 3.2m AHD.

LEP Requirement	Summary of Requirement	Complies
7.4 – Coastal Risk	<i>(a) to avoid significant adverse impacts from coastal hazards, (b) to ensure uses of land identified as coastal risk are compatible with the risks presented by coastal hazards, (c) to enable the evacuation of land identified as coastal risk in an emergency</i>	Yes

* Non-complying issues discussed below

Zone objectives/Permissible use

The current land zoning of B4 Mixed Use prohibits the approval of new single residential dwellings, as the purpose of the zone is to provide locations for business/office use compatible with residential developments such as flat building and the like to encourage housing diversity and community activity within the business district.

The B4 Mixed Use zoning prohibits *residential accommodation* (including dwelling houses). The existing dwelling currently on the subject land is also prohibited by the LEP, but benefits from existing use rights under Section 106 of the Environmental Planning and Assessment Act, as it was lawfully approved by Council before the current zoning of B4 Mixed Use came into effect under the Great Lakes LEP 2014.

Alterations and additions to an *existing use* are permissible by regulations made under the Act (clause 43), therefore allowing Council to consider the proposal for dwelling alterations, additions and a swimming pool associated with the dwelling on the subject lot.

A referral response from Council's Strategic Planning section noted that whilst the proposal does not meet the long term strategic planning objectives of the B4 Mixed Use zoning, the Existing Use Rights provisions enjoyed under the Environmental Planning and Assessment Act prevail.

STATE ENVIRONMENTAL PLANNING POLICIES (SEPP's), AND OTHER STATE GUIDELINES & POLICIES

Having regard for the matters for consideration detailed in Section 79C(1) of the Environmental Planning & Assessment Act 1979, the following is a summary of the evaluation of the proposal pursuant to the provisions of relevant State policies.

SEPP 71 - Coastal Protection

SEPP 71 applies to all land within the Coastal Zone as defined by the Coastal Protection Act. As this land is situated within one (1) kilometre of the coast, the SEPP applies to the subject site to the extent of requiring Council to consider the matters listed within Clause 8 of the Policy.

Matters listed for consideration under clause 8 of the SEPP have been examined and the following matters thought to be relevant in the instance of this development:

Clause 2

- (e) *to ensure that the visual amenity of the coast is protected.*
- (k) *to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area.*

Clause 8

- (d) *The suitability of development given its type, location and design and its relationship with the surrounding area.*

Firstly, with regard to the visual amenity of the coast, it is considered that the development will not create a negative impact when viewed from the surrounding coastal location. In relation to the height, bulk and scale of the development, it is considered that the proposal is consistent with other developments in the locality and as such will not detract from the natural scenic quality of the surrounding area.

SEPP (BASIX)

The proposal has been submitted with a compliant BASIX certificate as required by the SEPP.

NSW Coastal Policy 1997

The 1997 NSW Coastal Policy is a Government Policy, which is a prescribed matter pursuant to Section 79C of the Environmental Planning and Assessment Act 1979. This requires Council to consider the relevant objectives and strategic actions of the policy when assessing development applications.

The objectives and strategic actions of the policy have been reviewed in regard to this application and the development proposal is considered to achieve the relevant objectives and strategic actions of the policy.

DEVELOPMENT CONTROL PLAN 2014

Having regard for the matters for consideration detailed in Section 79C(1) of the Environmental Planning & Assessment Act 1979, the following is a summary of the evaluation of the proposal pursuant to the relevant provisions of the Great Lakes Development Control Plan 2014.

The DCP provides objectives and numerical controls in relation to buildings and subdivisions. The relevant sections of Councils Great Lakes DCP 2014 for this proposal are as below:

Section 4.2 - Flooding

The building controls for alterations and additions to dwellings are:

Alterations and Additions

1. *Additions and alterations having a gross floor area of 30sqm or less may be constructed at the existing floor level of the building.*
2. *Additions and alterations having a gross floor area greater than 30sqm are to be designed and located so that any new habitable areas have floor levels located above the 2060 1% AEP flood planning level.*

Note: Any replacement or refurbishment of existing floor areas where structural changes are proposed will be considered as part of the 30sqm addition or alteration gross floor area calculation.

3. *In circumstances where construction of new habitable areas at the 2060 1% AEP flood planning level is likely to have an adverse impact on adjoining properties or the visual amenity of the location, a variation may be sought. If supported by Council, the habitable areas may be located 500mm below the 2060 1% AEP flood planning level.*

Note: Habitable areas generally include any of the following: bedrooms, living room, lounge room, music room, television room, kitchen, dining room, sewing room, study, playroom, family room, home theatre and sunrooms.

Comment:

The proposal is consistent with the DCP objectives and controls, with all habitable areas proposed to be located above the flood planning level of 3.2m AHD.

The development application was referred to Council's Coastal and Flooding Engineer. The assessment concluded that the proposal was in-line with Council's current policy, and no design changes or specific conditions were required due to the flood prone nature of the site.

Section 5.0 - Single Dwellings, Dual Occupancies, Villas & Townhouses

5.1 Solar Access and Overshadowing

The objective is to ensure solar access to private outdoor areas and minimise the impact of overshadowing. Buildings should be designed to allow at least two hours of sunshine upon the internal and outdoor living areas of adjacent dwellings and between 9.00 am and 3.00 pm on 21 June.

Comment:

The proposed development will cast shadow over the property directly adjacent to the south of the subject site (13 Wharf Street). As part of the development application, shadow diagrams were supplied depicting the shadow of 21 June (winter solstice) - copy on file.

The adjacent building to the south of the subject site is a three (3) storey unit block. The ground floor is used only for parking. The second storey contains two (2) separate units, and the third storey contains a single unit.

Shadow diagrams supplied as part of the application indicate that the northern unit #1 on the first storey and unit #3 on the upper storey will be affected by overshadowing.

The diagrams demonstrate that both affected units will still achieve the minimum two (2) hours of sunlight to internal and outdoor living areas during mid-winter (specifically to the eastern facing balconies and adjoining rooms orientated towards the channel), as required by Council's DCP.

5.2 Views and Privacy

Views

Council received three (3) separate objections during the neighbour notification period based on impact on existing views. Two (2) submissions specifically relate to the potential impact on existing views to the north caused by the elevated swimming pool and associated walls and roof of the deck/day bed area from adjacent existing residential units located to the south of the proposal.

An additional one (1) submission was received by Council concerned with a potential loss of a view to the east (due to the increased roof height) from a unit located on the western side of Wharf Street some 60m from the proposed dwelling additions.

To quantify the impact on views, reference is made to the Land and Environment Court (LEC) decision in *Tenacity Consulting v Warringah (2004)*. In this decision the court used a four step assessment to determine the application based on view sharing principals.

Below is a summary of the impacts of the proposal on views from nearby properties.

Step 1 – Views to be affected	
<i>Water views are valued more highly than land views. Iconic views (eg 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.</i>	
Property	Comment
Unit 1/13 Wharf Street	North view to pond and Oxley Park reserve
Unit 3/13 Wharf Street	North view to pond and Oxley Park reserve
Unit 6/6-8 Wharf Street	East view to Cape Hawke Harbour (water view) and Forster-Tuncurry Bridge
Step 2 – From what part of the property are views obtained	
<i>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.</i>	
Property	Comment
Unit 1/13 Wharf Street	Across a side boundary. Seated and standing view.
Unit 3/13 Wharf Street	Across a side boundary. Seated and standing view.
Unit 6/6-8 Wharf Street	Across a front (road) boundary. View position not detailed.
Step 3 – Extent of the impact	
<i>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.</i>	
Property	Comment
Unit 1/13 Wharf Street	Minor partial loss of park reserve view. Maintains water view to east and south. View loss from balcony and living room.
Unit 3/13 Wharf Street	Minor partial loss of park reserve view. Maintains water view to east and south. View loss from balcony and living room.

Property	Comment
Unit 6/6-8 Wharf Street	Partial loss of water view and view of Forster-Tuncurry Bridge. View gained by looking over top of existing house. Water view of harbour will be maintained down open space of Pallman Street (minor impact from pool structure).
<p>Step 4 – Reasonableness of the proposal</p> <p><i>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.</i></p>	
Property	Comment
Unit 1/13 Wharf Street (second storey)	D.A proposal unreasonable - the partial loss of north facing views to the reserve may be partially maintained if the subject proposal complied with the eastern property setback requirements or reduced the height of the proposed swimming pool and removed associated walls and roof for day bed area at first floor level.
Unit 3/13 Wharf Street (third storey)	D.A proposal unreasonable - the partial loss of north facing views to the reserve may be partial maintained if the subject proposal complied with the east property setback requirements or reduced the height of the proposed swimming pool and removed associated walls and roof for day bed area at first floor level.
Unit 6/6-8 Wharf Street	D.A proposal is reasonable. This property will lose view from a distant position (60m west of subject lot) across a public road looking over the top of subject dwelling. The proposed dwelling addition of the upper storey will comply with Council's height limitation for the property zoning, so it is unreasonable in this instance to maintain a distance view when the proposed structure complies with Council's height limitations.

13 Wharf Street Properties

Although the loss of view suffered by the two (2) adjacent units located at 13 Wharf Street is across a side property boundary and considered minor (both properties will retain substantial water view to the north and east), it can be demonstrated that a more skilful design for the proposed dwelling additions and pool (lowering the swimming pool and day bed deck level and deleting the walls and roof associated with the day bed) will enable view sharing.

6-8 Wharf Street Property

The property located at 6-8 Wharf Street currently gains a distance view of the Forster-Tuncurry Bridge over the roof of the existing subject dwelling. The proposed addition at 15 Wharf Street will increase the roof height of the dwelling, and remove the distance view towards the bridge. The property will retain water views to the east via the Pallman Street road. Although the Forster-Tuncurry Bridge is a prized view, due to the location and distance of the affected property at 6/6-8 Wharf Street, the ability to retain a view over the top of a compliant dwelling design is considered unreasonable in this instance.

View summary

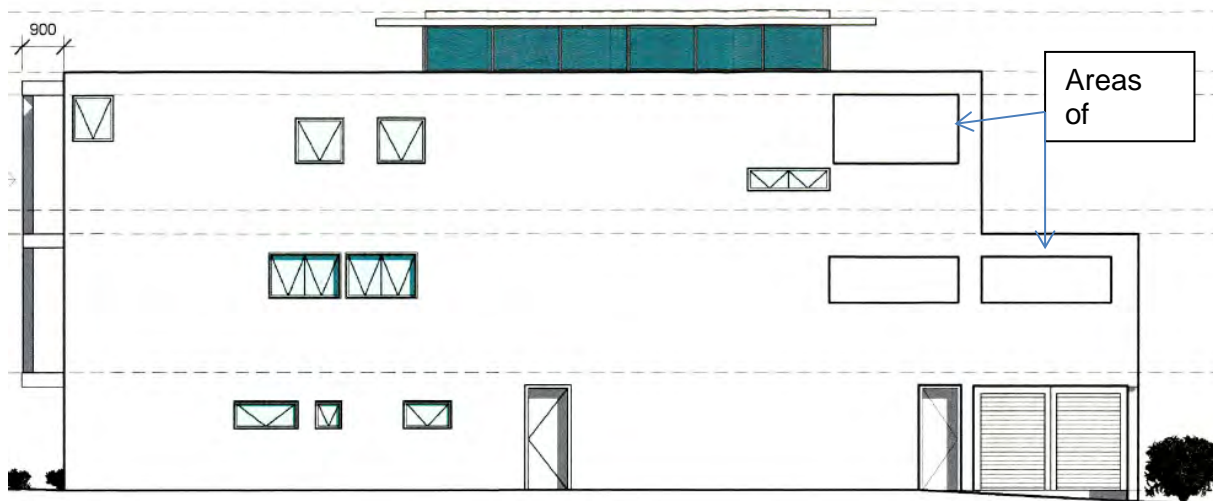
An amended building design complying with Council's setback requirements for the swimming pool and first floor deck/day bed of the proposed dwelling additions would result in a better view sharing outcome for the owners of affected units located adjacent to the proposal.

The preservation of a distant view from a unit at 6-8 Wharf Street is unrealistic in this instance as the proposed dwelling additions are 1.66m below the allowable 12m height of buildings, and will comply with Council's maximum height limitations for the site.

Privacy (Aural and Visual)

Concerns have been raised in an objection submission with regard to the impact on the adjacent neighbour's amenity from the proposed eastern facing decks of the units. An adjoining landowner raised concerns that the proposed deck on the first floor level (day bed and BBQ area) will have the potential for noise and unwanted interaction between the adjacent properties.

The proposal contains a deck on both the first and second floor plan (eastern elevation) orientated towards the Forster- Tuncurry Channel. Both the upper and lower decks form part of the external southern facade of the dwelling, and are located at 1.65m from the common property boundary to the south. The DCP states a privacy screen may be required to decks and verandas within 3m of a property boundary.



Upper level deck

The upper level deck and BBQ area on the east elevation are provided with a solid balustrade to 1m in height on the south side (providing partial privacy when occupants are seated), and a framed opening providing partial screening to the south. The deck has been designed to take advantage of the view north and east.

Any increase to the partial wall adjacent to the upper deck will add to the bulk and scale of the dwelling, and may further obscure views, light and ventilation to the adjacent property located to the south.

Given that the site is located in an established mixed residential area where the provision of a front balcony is permitted and is commonplace, it is considered that any minor level of impact on amenity of the adjacent front deck would be reasonable.

Lower level deck

The lower deck addition on the east elevation is to be located forward of the existing adjacent front deck on the neighbouring property to the south, and any interaction between the two structures will be minimal. The finished floor level of the proposed front deck will be 1.02m above floor height of the adjacent existing deck on the first storey unit located to the south, and separated by approximately 5 metres.

Any interaction would require occupants of the proposed deck to look back towards the existing decks located to the south west of the day bed deck.

The design submitted to Council proposes a solid wall with large opening adjacent to the deck and pool. This partial privacy screen stands 5.7m above existing ground level and is located forward of the established building line from Leo Amato Close. Several objections received by Council cite this aspect of the proposed design as an area of concern, and potential to cause a loss of views to the north for occupants of the units located on the adjacent property to the south.

In this instance, the potential minor impact on existing privacy and amenity on the adjacent balconies to the south of the subject site is secondary to the concerns raised over loss of view to the north from multiple units.

The issue of the wall and roof structure associated with the pool and day bed area on the first floor level located forward of the building line adds to the scale of the building, impacting views and has been addressed under the 'Views' section of this report.

5.4 General Building Design

The proposed dwelling is considered a high quality design which will comply with the objectives of the DCP and meet the majority of the building controls.

The variations proposed to the setback distances for the pool and associated wall and roof structure for the first floor deck and day bed are discussed under the 'Setbacks' section of this report.

5.5 Setbacks

The subject site is bounded by three (3) public roads, and therefore is constrained by setback requirements limiting the design and building footprint. As the proposal involves alterations and additions to an existing dwelling, the design is also partially shaped by the existing footprint.

The existing dwelling has been orientated towards Pallman Street (the longest street boundary), with the existing front door and garage both facing to the north. The proposed dwelling alterations and additions seek to continue that northern orientation, with the new design continue to present to the north.

The table below sets out the DCP requirements for building setbacks:

Elevation	Setback required (m)	Setback Proposed (m)	Complies (Y/N)
West (Wharf Street)	6m (as per existing)	6m	Yes
North (Pallman Street)	3m	3m	Yes
East (Leo Amato Close)	6m (as per established building line)	1.2m	No
South	Ground floor - 0.9m First Floor - 1.34m Second floor - 2.21m	1.61m 1.61m 1.61m	Yes Yes No

West elevation

The existing dwelling is set at 6m from the western property boundary of Wharf Street, which is a busy local road within Tuncurry. The 6m setback is consistent with existing streetscape of Wharf Street, and the adjacent residential flat building located to the south. The proposal complies with Council's DCP in this regard.

North elevation

The existing dwelling has been orientated towards Pallman Street facing north, which is the longest street frontage available for the lot. The proposal seeks to preserve that orientation, as the subject dwelling is the only dwelling located on Pallman Street. Council can allow a setback distance of 3m in this instance, as the existing building has been previously designed to maintain the setbacks on Wharf Street and Leo Amato Close as a primary consideration due to the historic setbacks on these higher traffic roads.



NORTH ELEVATION

East elevation

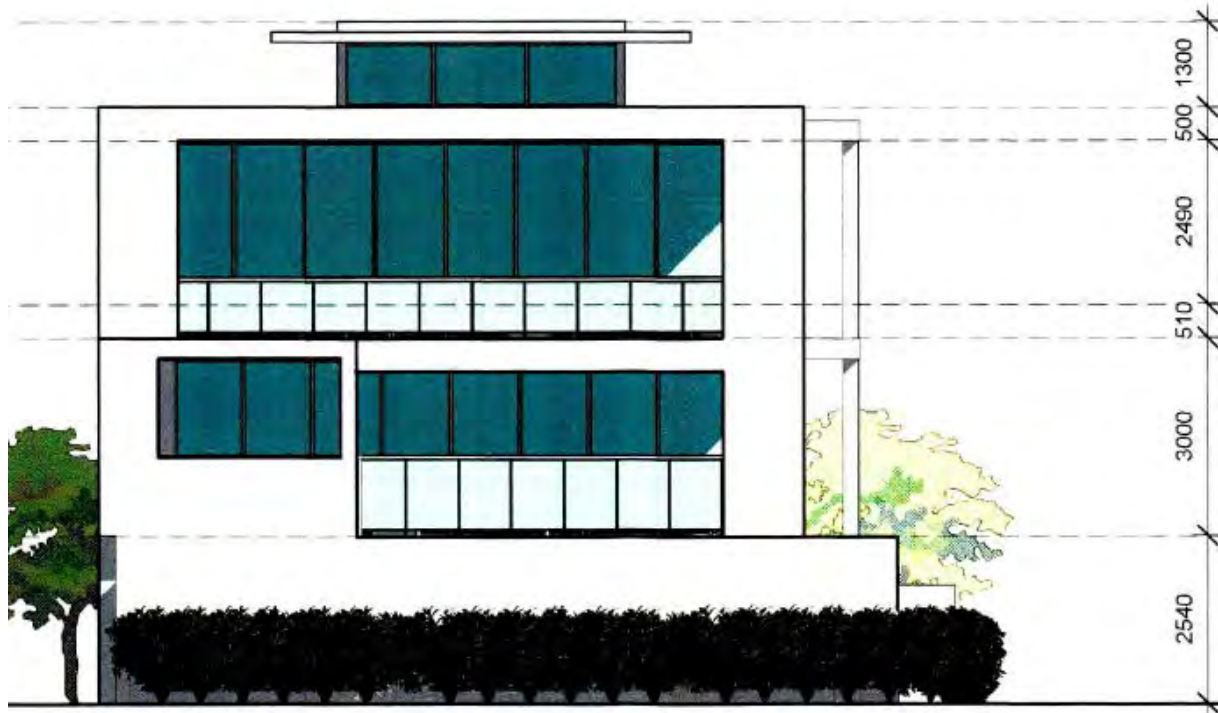
The existing building on the subject site has setback from the Leo Amato Close boundary of 6m measured to the existing brick external wall.

The proposed plans show a large departure from the existing established setback distances of the existing dwelling and established building line of Leo Amato Close.

The development application seeks to build a swimming pool and associated plant room and store, garbage and gas cylinder storage area at ground (street) level, and day bed, BBQ area and deck adjacent to the swimming pool at first storey level.

The design submitted to Council shows the swimming pool to be constructed at a height of 2.54m above the existing ground level (similar to the existing ground storey height) at a setback distance of 1.2m from the boundary. The swimming pool legislation is NSW (Swimming Pool Act 1992) would require an additional 1.2m barrier on top of that 2.54m pool wall to comply with pool barrier requirements (not shown on east elevation plans).

In addition to the swimming pool, the application seeks a 5.54m high wall (with roof over) at the same 1.2m boundary setback from the eastern boundary.



EAST ELEVATION

The principle idea behind this design appears to be that the finished swimming pool level and associated deck/BBQ/day bed area are set at the same level as the first floor of the dwelling, allowing the occupants to access the deck and pool area without any stairs.

This design has elevated the swimming pool and surrounds to a height of 2.54m above the existing ground level, and would have a dramatic effect on the established streetscape of Leo Amato Close when viewed from adjacent properties and the crown reserve (public parkland) across the street to the east.

Within Leo Amato Close, there is one (1) other existing swimming pool located adjacent to the eastern boundary of Leo Amato Close (rear of unit block at 7-11 Wharf Street). This swimming pool has been built at ground level (in-ground pool), and only the pool safety fencing extends above ground level to a height of 1.8m as required by NSW legislation. (See Annexure B for photographs).

The Council DCP numerical control applicable in this instance states:

'Where there are existing neighbouring buildings within 40m, an average of the secondary street setbacks of the nearest two neighbouring buildings, with the same secondary street frontage.'

The development application for a swimming pool and associated covered day bed at the subject property is not consistent with the established surrounds of Leo Amato Close, and does not meet the objectives or numerical controls of the Council DCP 2014.

In this instance, the recommendation of this report will seek that the design of the swimming pool and associated day bed is lowered significantly, and the covered roof and associated columns on the eastern elevations of the day bed be deleted from the design.

An amended design lowering the swimming pool and day bed and the removal of the roof and columns will reduce the visual impact of the structure when viewed from Pallman Street and Leo Amato Close, and to preserve the traditional building setback of Leo Amato Close.

The reduction in finished height of the swimming pool and day bed, along with the removal of the covered day bed roof and support columns will also allow greater view sharing to the north for the existing adjacent unit block to the south (as per multiple objections received by Council).

South elevation

The application seeks to increase the height of the existing southern external dwelling wall to accommodate the proposed second floor level. The existing two (2) storey external wall is setback 1.61m from the southern boundary, and complies with Council's current DCP requirements.

However, the proposed second floor level would require a 2.21m setback to comply with the DCP (0.6m more than proposed), however the practical reality of complying with the DCP when utilising the existing dwelling as a basis is difficult and impractical. There are minimal windows proposed on this elevation, reducing any potential impact on privacy or amenity to the adjacent unit block to the south.

A minor variation to the side boundary setback requirements in this instance will have minimal impact of the adjoining neighbouring property, and no impact on streetscape when viewed from the east or west elevations.

10.0 Car Parking

The proposal provides three (3) off street parking spaces and complies with the DCP.

13.1 Landscaping

The proposal satisfies the minimum requirement of 30% of the site area landscaped, with ample open space and a proposed swimming pool with associated landscaping.

b) The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality

Site Design and Internal Layout

The site design and internal layout of the development proposed by the majority of the dwelling design is considered to be reasonable, with the exception being the finished height of the swimming pool (2.5m above existing ground level) and the inclusion of a wall and roof associated with the first floor day bed adjacent to the pool. This portion of the proposal is forward of the establish building line of Leo Amato Close, and will adversely affect the streetscape of the locality, and impose an unacceptable impact on the adjoining premises (multiple units) situated directly adjacent to the south of the subject site (13 Wharf Street).

Visual Impact

The height, bulk and scale of the dwelling is mostly consistent with the surrounding multi-storey residential flat buildings, however the pool and eastern facing deck (day bed) will have a negative effect when viewed from street level.

There is potential for the streetscape of Leo Amato Close to be negatively impacted by the proposed pool structure, which is not in keeping with the existing established building line setback (generally 6m from the eastern property boundary). The external wall of the pool is a solid masonry structure 8.2m in length with a height of 2.54m, and is proposed at only 1.2m off the eastern property boundary.

The swimming pool will also require a pool fence to be placed on top of the external pool wall (not shown on plans) which would potentially add an additional 1.2m to the height of the structure. The associated wall and roof structure of the day bed (adjacent to the pool) would increase the structure to 5.54m above existing ground level in the south-east corner of the property.

If approved, this 5.54m high structure which is 3.8m in length would be setback only 1.2m from the eastern property boundary, and may appear dominant and overbearing when viewed from Leo Amato Close.

This aspect of the proposal is not considered to be in keeping with the existing streetscape, and will add to the bulk and scale of the dwelling. It does not meet the objectives of the setback requirements or the numerical controls of Council's DCP 2014.

Approval of such a significant structure would set an undesirable precedent and potentially lead to "development creep" within the existing building setback for the street.

An alternate building design incorporating a lower finished level of the top of the swimming pool and associated deck and day bed (by requiring the pool and deck to be stepped lower than the first floor level of the dwelling) would greatly reduce the impact of the structure when viewed from the street. The removal of the wall and roof of the day bed area of the first floor deck would also decrease the impact of the structure when viewed from the street, and would allow view sharing to the north for the existing unit block situated to the south of the proposal.

Climate Change

It is not considered that the location of the site will be negatively impacted upon as a result of climate change impacts. Council's flood planning levels take into account future climate change estimations. All new habitable floor areas will be located above the flood planning level of 3.2m AHD. The impacts of flooding have been discussed elsewhere within the report.

Cumulative Impacts

Council has historically considered the surrounding built form when assessing developments reasonableness with regard to view sharing. There is a historic building line setback distance of six (6) metres from Leo Amato Close from previously approved developments.

The proposed dwelling additions will have an effect on the views enjoyed by the existing adjacent development to the south by breaching the historic building line and proposing a structure forward of the established setback. As a result, design changes to reduce the impact on view loss are suggested as part of this report recommendation.

c) The Suitability of the Site for the Development

The subject site is considered to be suitable for residential development in the form of alterations and additions due to the existing use rights provisions under the *Environmental Planning and Assessment Act 1979*.

d) Any Submissions Made in Accordance with the Act or Regulations

The application was notified to adjoining owners in accordance with Council's Policy from 18/8/2017 - 04/9/2017. A total of four (4) submissions were received. Issues raised in submissions and responses are detailed below:

Loss of existing view

Three (3) of the submissions received by Council raised the potential loss of existing views as an impact of the new development. This has been discussed in detail under the heading of 'Views' within the report.

Potential noise impact from pool and deck

One (1) of the submissions received by Council raised the potential negative impact of additional noise from a proposed pool deck as an objection. This has been discussed in detail under the heading of 'Privacy Aural and Visual' within the report.

Overshadowing from proposal

One (1) of the submissions received by Council raised the potential negative impact of overshadowing from the increased height of the structure as an objection. This has been discussed in detail under the heading of 'Solar access and Overshadowing' within the report.

Setback distances from boundaries

Two (2) of the submissions received by Council raised the non-compliance with Council's DCP setback as an objection. This has been discussed in detail under the heading of 'Setbacks' under DCP 2014 section within the report.

e) The Public Interest

A deferred commencement approval of the development application pending amended plans to be submitted and approved by Council is not considered to raised negative impacts with regards to the public's interest.

CONCLUSION

The proposal for substantial dwelling alterations, additions and a swimming pool for an existing dwelling at 15 Wharf Street Tuncurry has been assessed by Council, and the following changes to the plans submitted to Council are recommended prior to the final approval of the proposal:

- The finished level of the swimming pool and day bed are to be lowered to a maximum 1.8m above existing ground level (maximum finished R.L 3.2) including any associated pool safety fencing.
- The walls and roof structure associated with the first floor day bed are to be deleted from the plans.

It is recommended that these changes will provide a suitable outcome when considering the existing streetscape, context and setting and will provide a suitable outcome for both the owner's and the community expectations for the redevelopment of the site.

The applicant has provided written advice that the property owners agree to the drafted deferred commencement conditions, as contained in the recommendation.

RECOMMENDATION

It is recommended that Development Application 83/2018 for Dwelling alterations, additions and a swimming pool on Cnr Lot 6 Sec 34 DP759005, 15 Wharf Street, Tuncurry be approved subject to deferred commencement conditions in accordance with the conditions of consent contained in Annexure A.

ANNEXURES

A: Conditions of Consent

DEFERRED COMMENCEMENT CONDITIONS

1. In accordance with Section 80(3) of the Environmental Planning and Assessment Act, 1979, this is a deferred commencement consent. The consent will not operate until evidence, as specified in the following deferred commencement conditions, has been submitted to and approved by the consent authority and written notice given under Section 100(4)(b) of the *Environmental Planning and Assessment Regulation 2000* that the deferred commencement conditions have been satisfied and the date from which the consent operates:
 - a) The architectural floor plans and elevations are to be amended to reflect the following changes:
 1. The finished level of the day bed deck indicated on the floor plan DA04 as 2.13 is not to exceed maximum RL 3.2m AHD.
 2. The finished level of the swimming pool indicated on the floor plan DA04 as 2.14 and any associated fencing required on the pool edging or day bed deck is not to exceed maximum RL 3.2m AHD.
 3. The walls and roof structure for the day bed are to be deleted from the plans

Reason: Compliance with Council determination and to protect the amenity of the area.

Evidence required to satisfy the above deferred commencement condition/s must, in accordance with Clause 95(3) of the *Environmental Planning and Assessment Regulation 2000*, be submitted to Council within 3 months of the date of this consent.

Under Section 80A of the Environmental Planning and Assessment Act 1979, the following conditions will apply, following written notice given under Section 100(4)(b) of Environmental Planning and Assessment Regulation 2000 and subject to any further conditions reasonably arising from compliance to the terms of the deferred commencement condition/s.

GENERAL CONDITIONS

2. Development in accordance with approved plans

The development must be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan type/Supporting Document	Plan No. & version	Prepared by	Dated

The approved plans and supporting documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

Reason: Information and to ensure compliance.

3. Compliance with National Construction Code Series- Building Code of Australia

All building work must be carried out in accordance with the requirements of the *National Construction Code Series - Building Code of Australia* as in force on the date the application for the relevant construction certificate or complying development certificate was made.

Reason: Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

4. Insurance requirements under *Home Building Act 1989*

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 has been given documentary evidence or written notice of the following information:

- a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) if the contractor is required to have a contract of insurance for any authorised works, a Statement of Cover with the name of the insurer by which the work is insured under Part 6 of that Act .
- b) in the case of work to be done by an owner-builder:
 - i) the name of the owner-builder, and
 - ii) if the owner-builder is required to hold an owner-builder permit under that Act, 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 above becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates has been given the notice of the updated information.

Reason: Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

5. Notification of *Home Building Act 1989* requirements

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:

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

Reason: Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

6. Adjustment to utility services

All adjustments to existing utility services made necessary by the development are to be undertaken at no cost to Council.

Reason: To ensure utility services remain in a serviceable condition.

7. Support for neighbouring buildings

If the development 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 one expense:

- a) protect and support the adjoining premises from possible damage from the excavation, and;
- b) where necessary, underpin the adjoining premises to prevent any such damage.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to this condition not applying.

Reason: To protect development on adjoining premises. Prescribed condition under the Environmental Planning and Assessment Regulation 2000.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions must be complied with prior to the issue of any construction certificate:

8. Acid sulphate Soils

Prior to the issue of a Construction Certificate an Acid Sulfate Soils Management Plan, prepared in accordance with the Acid Sulfate Soils Manual, is to be approved by the certifying authority.

Alternatively provide a report prepared in accordance with the Acid Sulfate Soils Manual from a suitably qualified geotechnical engineer that indicates an Acid Sulfate Soils Management Plan is not required for the works.

Any soil that is to be exported from the site is to be disposed of in a lawful manor. Details of the soil disposal are to be submitted and approved by the certifying authority prior to the issue of any construction certificate for works involving excavation of the land.

Reason: Management of acid sulphate soils.

9. Structural details

Prior to the issue of a construction certificate, structural drawings prepared by a suitably qualified and experienced structural engineer must be submitted to and approved by the certifying authority. The plans must include details for:

- a) All reinforced concrete floor slabs and/or beams or raft slab (having due regard to the possible differential settlement of the cut and fill areas.
- b) Footings of the proposed structure.
- c) Structural steel beams/columns.

Reason: To ensure structural stability and safety.

10. MidCoast Water approval

Prior to the issue of a construction certificate, a Certificate of compliance from MidCoast Water, stating that satisfactory arrangements have been made and all payments finalised for the provision of water supply and sewerage to the development, must be submitted to the certifying authority.

Reason: To ensure suitable water and sewage disposal is provided to the development.

11. BASIX Certificate

Prior to the issue of a construction certificate, plans and specifications detailing all of the BASIX Certificate commitments must be submitted to and approved by the certifying authority. The proposed development must be constructed in accordance with the requirements of the relevant BASIX Certificate. Where changes to the development are proposed that may affect the water, thermal comfort or energy commitments, a new BASIX Certificate will be required.

Reason: Prescribed condition under the *Environmental Planning and Assessment Regulation 2000*.

12. Detail of safety barrier for swimming pool

Prior to the issue of a construction certificate, plans and specifications for the swimming pool barrier must be submitted to and approved by the certifying authority. The barrier must be in accordance with the Swimming Pools Act 1992 and Australian Standard AS1926.1: Swimming pool safety – Safety barriers for swimming pools.

Reason: To ensure the development complies with swimming pool barrier construction standards.

13. A Bond is required to guarantee against damage to public land

Prior to the issue of a construction certificate, a Damage Bond Application form together with payment of a bond in the amount of \$2000 and an administration fee of \$330 must be submitted to Council. The bond is payable for the purpose of funding repairs to any damage that may result to Council assets from activities/works associated with the construction of the development and to ensure compliance with Council standards and specifications.

A final inspection will be carried out by the responsible Council officer and the bond (minus any fees required for additional inspections) will be considered for refund:

- a) once all works, including landscaping, driveway construction, turfing, etc, have been completed, and
- b) following issue of an occupation certificate by the certifying authority.

The damage bond is reviewed periodically and therefore the fee and bond amount payable will be determined from Council's current fees and charges document at the time of lodgement of the damage bond.

Reason: Protection of public assets.

PRIOR TO THE COMMENCEMENT OF ANY WORK ASSOCIATED WITH THIS CONSENT

The following conditions must be satisfied prior to the commencement of any building construction or subdivision work:

14. Construction certificate required

Prior to the commencement of any building or subdivision construction work (including excavation), a construction certificate must be issued by a certifying authority.

Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 6591 7222.

Reason: Statutory requirement under the *Environmental Planning and Assessment Act 1979*.

15. Notification of commencement and appointment of principal certifying authority

Prior to the commencement of any building or subdivision construction work (including excavation), the person having the benefit of the development consent must appoint a principal certifying authority and give at least two (2) days' notice to Council, in writing, of the persons intention to commence construction work.

Reason: Statutory requirement under the *Environmental Planning and Assessment Act 1979*.

16. Site access

Public access to the site and building works, materials and equipment on the site is to be restricted, when building work is not in progress or the site is unoccupied. The public safety provisions must be in place prior to the commencement of any demolition, excavation or building works and be maintained throughout construction.

Reason: To ensure public health and safety during the construction of the development.

17. Installation of erosion & sediment control measures

Prior to the commencement of work, erosion and sediment controls must be in place in accordance with Great Lakes Council Erosion and Sediment Control Policy and "*The Blue Book – Managing Urban Stormwater (MUS): Soils and Construction*" (Landcom). In particular, the following erosion and sediment control measures must be installed:

- a) Silt fence or sediment barrier.
- b) Temporary driveway from the edge of road to the building site.
- c) Temporary downpipes immediately upon installation of the roof covering.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

Reason: To protect the environment from the effects of erosion and sedimentation.

18. Toilet facilities - sewerred areas

Prior to the commencement of work, toilet facilities must be provided at or in the vicinity of the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be a standard flushing toilet connected to a public sewer.

Reason: To maintain public health.

19. Site construction sign

Prior to the commencement of work, a sign or signs must be erected in a prominent position at the frontage to the site.

- a) showing the name, address and telephone number of the principal certifying authority for the work, and
- b) 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
- c) stating that unauthorised entry to the work site is prohibited.

The 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.

Reason: Prescribed condition under the *Environmental Planning and Assessment Regulation 2000*.

CONDITIONS TO BE SATISFIED DURING DEVELOPMENT WORK

The following conditions must be complied with during any development work:

20. Construction times

Construction and/or demolition works, including deliveries on or to the site must not unreasonably interfere with the amenity of the neighbourhood and must occur only in accordance with the following:

Monday to Friday, from 7 am to 6 pm.

Saturday, from 8 am to 1 pm.

No construction and/or demolition work, including deliveries are to take place on Sundays or Public Holidays.

Reason: To maintain amenity during construction of the development.

21. Builders rubbish to be contained on site

All builders rubbish is to be contained on the site in a suitable waste bin/enclosure. Building materials must be delivered directly onto the property. Footpaths, road reserves and public reserves must be maintained clear of rubbish, building materials and other items at all times.

Reason: To ensure that materials and waste do not adversely affect traffic or pedestrian safety and amenity.

22. Temporary pool fencing

Temporary fencing must be installed around the pool site during its construction to prevent entry by children. The temporary fencing must remain in place until permanent fencing is erected.

Reason: Public safety.

23. Maintenance of sediment and erosion control measures

Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

Reason: To protect the environment from the effects of erosion and sedimentation.

24. Removal of asbestos

All asbestos containing material associated with demolition/renovation works must be removed, handled and disposed of in accordance with the requirements of the NSW WorkCover Authority and the following requirements:

- a) If asbestos is present in an amount greater than 10m², then the demolition and removal must be undertaken by a WorkCover licensed demolition contractor who holds the appropriate WorkCover licence (e.g. Asbestos Demolition Licence) for the material to be demolished.
- b) The person having the benefit of the consent must provide the Council/Principal Certifying Authority with a copy of a signed contract with the demolition contractor before any development pursuant to the consent commences.
- c) The contract must indicate whether any bonded asbestos material or friable asbestos material will be removed and if so, must specify the landfill site (that may lawfully receive asbestos) to which the material is to be delivered for disposal
- d) All asbestos must be removed from the site and be disposed of at an approved licensed waste facility. All asbestos waste must be delivered to an approved licensed waste facility in heavy duty sealed polyethylene bags.
- e) The bags are to be marked "Caution Asbestos" with 40mm high lettering. Twenty four (24) hours' notice must be given to the waste facility prior to disposal.
- f) Receipts of the disposal of all asbestos to a licensed waste facility must be provided to Council within fourteen (14) days of the material being disposed.

Reason: To protect public health and safety and to ensure the correct disposal of asbestos waste.

Informative:

The generator and owner of the waste, has a legal obligation under s143 of the Protection of the Environment Operations Act 1997 ("the Act") to ensure the waste is transported to and disposed of at a facility that can lawfully be used as waste facility for that waste.

In NSW, all asbestos sheeting or asbestos waste must be taken to a landfill that can lawfully receive this waste. Transporters of asbestos waste must now use WasteLocate to provide information to the EPA regarding the movement of any load over 100kg of asbestos waste, or 10m² or more of asbestos sheeting within NSW. WasteLocate makes it easy for transporters to comply with these reporting obligations under the Waste Regulation and the Asbestos and Waste Tyre Guidelines by creating a consignment number, which can be used to track the location of the waste.

If you have paid for an asbestos removal service (e.g. from a household or construction site), you should request the WasteLocate consignment number from the transporter. You can then use this number to track the load at <https://wastelocate.epa.nsw.gov.au/> to make sure it has reached its intended destination, just like a parcel in the post. If the load is not delivered, please contact the EPA.

What to do with asbestos waste

For more information on how to safely deal with asbestos at home or in the workplace, please visit:

<http://www.epa.nsw.gov.au/waste/asbestos.htm>

More information on WasteLocate

More information about WasteLocate is available on the EPA website at:

<http://www.epa.nsw.gov.au/wasteregulation/transport-asbestos-tyres.htm>

Should you require any further information, please contact the EPA on 131 555.

25. Standards for demolition work

All demolition works must be undertaken in accordance with the provisions of *Australian Standard AS 2601: The demolition of structures*. Prior to demolition, all services must be disconnected and capped off.

Reason: To protect public health and safety.

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

The following conditions must be satisfied prior to any occupation or use of the building:

26. Works to be completed

The building/structure or part thereof must not be occupied or used until an interim occupation/final occupation certificate has been issued in respect of the building or part.

Reason: To ensure compliance with the development consent and statutory requirements.

27. Stormwater drainage work

Prior to the issue of a final occupation certificate, stormwater must be collected and disposed of to the kerb and gutter via a suitably manufactured kerb adaptor. Drainage lines within the road reserve must be sewer class or other approved equivalent. All drainage works must be installed by a suitably qualified person and in accordance with the requirements of *Australian Standard AS/NZS 3500.3: Plumbing and drainage – Stormwater drainage*.

Reason: To ensure compliance with the development consent and statutory requirements.

28. Smoke Alarm/s required

Prior to the issue of an occupation certificate, a smoke alarm/s must be installed and maintained within the entire building and be located in accordance with the Building Code of Australia. The alarm must be hard wired and comply with the Australian Standard 3786 be contained in each storey.

Reason: Environmental Planning and Assessment Regulation 2000 fire safety requirement.

29. BASIX Compliance

Prior to the issue of a final occupation certificate, all of the required commitments listed in the BASIX certificate must be fulfilled.

Reason: Prescribed condition under the *Environmental Planning and Assessment Regulation 2000*.

30. Pool Safety

Prior to the issue of an occupation certificate, a warning sign/resuscitation chart must be erected in the immediate vicinity of the swimming pool/spa that is compliant with the *Swimming Pools Regulation 2008*. The sign must be in a prominent position and be in accordance with the *Swimming Pools Regulation 2008*. Fences, gates, walls, etc. enclosing the general swimming pool area must be maintained in good repair and condition at all times.

The swimming pool/spa must be registered with the NSW Swimming Pool Register with the registration number being provided to the certifier prior to the issue of an occupation certificate.

Reason: Statutory requirement and safety.

31. Swimming pool discharge

Prior to the issue of a final occupation certificate, the discharge of waste water from the swimming pool must be in accordance with *Australian Standard AS/NZS 3500: Plumbing and drainage*.

Reason: To prevent environmental pollution and health impacts.

ONGOING USE

32. Swimming pool pump location

The swimming pool filter pump must be located so that noise from the operation of the pump is not a source of offensive noise, as defined by the *Protection of the Environment Operations Act 1997*, at any other residential premises. If necessary an acoustic enclosure must be provided around the pump to achieve adequate noise attenuation.

Reason: To maintain acoustic amenity to adjoining properties.

33. Swimming pool pump operation

Noise from the swimming pool pump must not be audible within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):

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

Noise associated with the swimming pool pump must not be a source of offensive noise as defined by the *Protection of the Environment Operations Act 1997* at all other times.

Reason: To maintain acoustic amenity to adjoining properties.



Lisa Schiff
Director
Planning and Environmental Services

B: Photographs of location



Photograph 1 - Subject site. Location of the proposed swimming pool and day bed.

Note the established building line of Leo Amato Close facing south.



Photograph 2 - Establish building line of Leo Amato Close facing north.

Note the blue swimming pool fence (1.8m high) located at the rear of 7-11 Wharf Street.