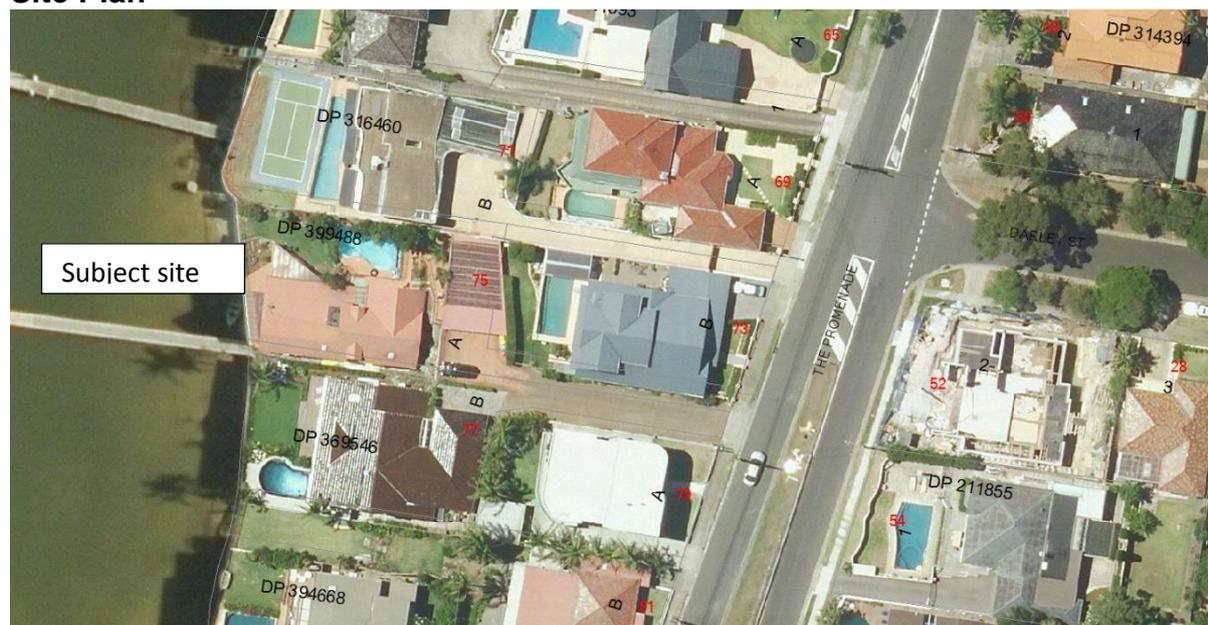


REPORT TO GEORGES RIVER COUNCIL IHAP MEETING OF 27 October 2016

IHAP Report No	1	Development Application No	DA2014/0319/3
Site Address & Ward Locality	75 The Promenade, Sans Souci Kogarah Bay Ward		
Proposal	Section 96 Application to delete conditions 35b, 35c, 35d and 35e of the Development Consent.		
Report Author	Greg Hansell – Senior Planner		
Zoning:	E4 Environmental Living		
Date of Lodgement	3 June 2016		
Owner	Mr M.S. Lee and Ms L.L. Hu		
Applicant	Saf Developments		
Submissions	Two (2) submissions		
Cost of Works	\$818,454.00		
Issues	Visual privacy, visual bulk and scale and Overshadowing		
Recommendation	That the development consent be modified by deletion of conditions 35b, 35d and 35e and by amendment of condition 35c in the manner recommended in this report.		

Site Plan



Executive Summary

Proposed Modification

1. Council granted Development Consent No. 319/2014 for demolition of the existing dwelling and construction of a new dwelling and swimming pool on 22 April 2015. This development consent was subsequently modified on 3 May 2016 by way of an application under Section 96(1A) of the Environmental Planning & Assessment Act 1979 (EP&A Act) which sought various minor modifications to the approved plans.
2. Council has received an application pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) seeking deletion of conditions 35b, 35c, 35d and 35e of the development consent. These conditions require minor design changes with respect to the height of the family room on level 1 and the side wall windows associated with this room and the kitchen area on the same level and bedroom 2 on level 2.

Site and Locality

3. The subject site is located off the western side of The Promenade. It is hatchet shaped and has an overall site area of 828m². The site falls away from the street to its water frontage on Kogarah Bay.

Kogarah Local Environmental Plan 2012 (KLEP 2012)

4. The subject site is zoned E4 Environmental Living under KLEP 2012 and the development the subject of the proposed modification is a permissible form of development with council's consent. The proposed modification satisfies all relevant clauses contained within KLEP 2012, including the matters for consideration under clause 6.4 relating to development on the designated foreshore area.

Kogarah Development Control Plan 2013 (KDCP 2013)

5. The proposed modifications generally satisfy the relevant objectives and controls contained within KDCP 2013 relating to low density areas and foreshore localities. The only concern relates to visual privacy impacts associated with the south facing window of the family room on level 1. These impacts may be readily addressed by a substantial reduction in the extent of glazing to this window.

Submissions

6. Two (2) submissions were received raising the following key concerns:
 - Visual privacy impacts
 - Visual bulk and scale impacts
 - Overshadowing impacts

Conclusion

7. The application has been assessed having regard to the provisions of Section 96(2) and Section 79C(1) of the Environmental Planning and Assessment Act 1979. The proposed modifications would result in a development that is substantially the same as that originally approved. The proposed modifications can be supported, subject to a substantial reduction in the extent of glazing associated with the south facing window of the family room on level 1 as recommended in this report.

Report in Full

Proposed Modification

8. Council granted Development Consent No. 319/2014 for demolition of the existing dwelling and construction of a new dwelling and swimming pool on 22 April 2015. This development consent was subsequently modified on 3 May 2016 by way of an application under Section 96(1A) of the Environmental Planning & Assessment Act 1979 (EP&A Act) which sought various modifications to the approved plans including:
 - An increase in the floor area and height of the family room on level 1.
 - Addition of a side access stair from the garage along the northern side boundary.
 - Addition of a wall with an opening on the northern side of the alfresco on level 1.
 - Addition of three (3) roof skylights.
 - Modifications to windows and additional windows.
 - Addition of a new door to lower level laundry.
 - Minor internal alterations.
9. The current application under Section 96(2) of the EP&A Act seeks the deletion of conditions 35b, 35c, 35d and 35e of the development consent. These conditions were placed on the development consent at the council meeting held on 26 April 2016 in response to visual bulk and privacy concerns raised by the adjoining property owners/occupants immediately to the north and south of the site. These conditions require minor design changes with respect to the height of the family room on level 1 and the side wall windows associated with this room and the kitchen area on the same level and bedroom 2 on level 2. The conditions currently read as follows:

(35b) Height of building

That there is no increase in height to the living room that occurs on the lower ground floor (Proposed Level 1), which is the single storey element located on the North West Corner of the proposed building, and the floor to ceiling height is to remain at the previously approved height of 2800mm and the structural height of the concrete floor slab is to remain the same height as previously approved.

(35c) Deletion of Windows and Glazing Areas

That the full height windows and glazing areas, (nominated as W1 on the drawings) and which face directly onto 77 The Promenade Sans Souci (southern elevation), are to be deleted and replaced with solid cavity brick work.

(35d) Deletion of Windows to Lower Ground Floor Kitchen

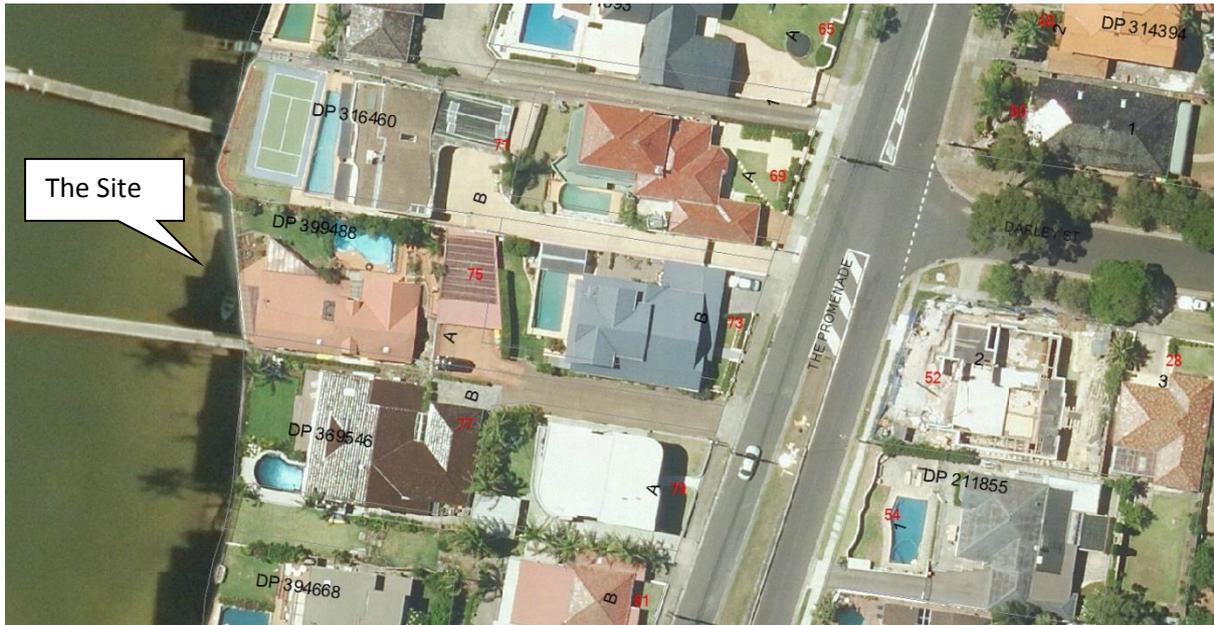
That the window proposed to the lower ground floor kitchen area (Proposed Level 1), located on the southern elevation (nominated as W9 on the drawings) is to be deleted and replaced by cavity brickwork or, alternatively, the window must be constructed as a fixed, opaque, glazed window that does not incorporate any sliding tracks or mechanisms.

(35e) Changes to Proposed Window (Bedroom 2 on level 2)

That the window proposed to Bedroom 2 on floor level 2 located on the northern elevation (nominated as W14 on the drawings) is to be deleted and replaced by cavity brickwork or, alternatively, the window must be constructed as a fixed, opaque, glazed window that does not incorporate any sliding tracks or mechanisms.

Site and Locality

10. The subject site is located off the western side of The Promenade and near the intersection of that street with Darley Street. The site is hatchet-shaped and has an overall depth along its southern side boundary of 64.7m and a total site area of 828m². It falls away over an elevation of about 12m, from the street to its water frontage on Kogarah Bay. The approved dwelling house is currently under construction on the site.
11. The site is located in an area that is characterised by detached dwelling houses which have been previously subdivided and are on battle-axe blocks. Many of the nearby dwellings are large dwellings located on the waterfront or with access to the waterfront. On the northern side of the site is a multi-level, flat-roofed dwelling with large expanses of glazed areas fronting the water. To the south is a two (2) storey dwelling which steps down from a double carport also located at an elevated level. This neighbouring dwelling contains an in-ground swimming pool and manicured gardens beyond the foreshore building line.

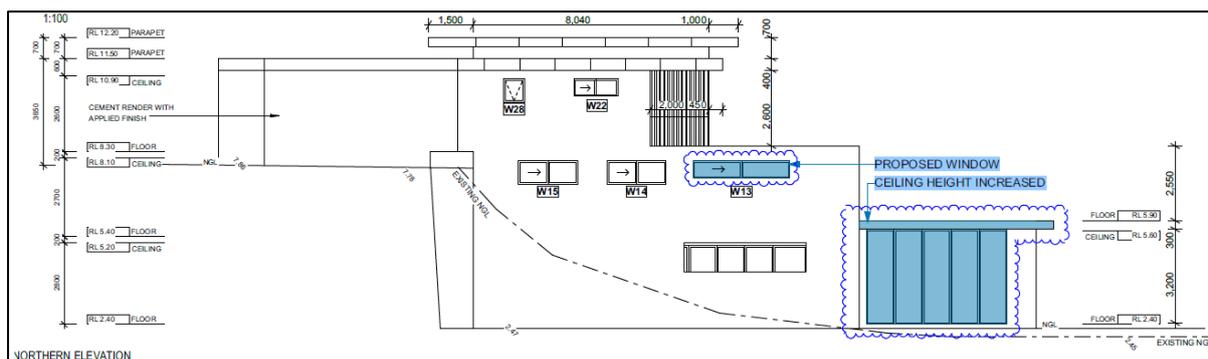


Background

12. Development Application No. 319/2014 for demolition of existing dwelling and construction of a new dwelling and swimming pool was submitted to Kogarah Council on 24 December 2014 and granted consent on 22 April 2015.
13. A Section 96 application seeking various modifications to the approved plans (as already detailed earlier in this report) was submitted to Kogarah Council on 13 November 2015. Three (3) submissions of objection were received following notification of this application. The application was considered by the elected council at its meeting held on 26 April 2016, whereupon it was resolved that the application be approved subject to the inclusion of additional conditions (i.e. conditions 35b, 35c, 35d & 35e) addressing visual bulk and privacy concerns raised by the adjoining property owners/occupants immediately to the north and south of the site. The modified development consent was subsequently issued by way of notice of determination dated 3 May 2016.
14. The current Section 96 application seeking the deletion of conditions 35b, 35c, 35d and 35e of the modified development consent was submitted to Georges River Council on 1 June 2016. The application was placed on exhibition, with the last date for public submissions being 4 July 2016. Two (2) submissions objecting to the proposed modification were received as a result.

Section 96 Considerations

15. Section 96(2) of the Environmental Planning and Assessment Act 1979 enables the consent authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided that the consent authority:
16. **Is satisfied the proposed development as modified is substantially the same development for which consent was originally granted**



25. The conditions the subject of the applicant's proposed modification and request for deletion are outlined and addressed as follows:

(35b) Height of building

That there is no increase in height to the living room that occurs on the lower ground floor (Proposed Level 1), which is the single storey element located on the North West Corner of the proposed building, and the floor to ceiling height is to remain at the previously approved height of 2800mm and the structural height of the concrete floor slab is to remain the same height as previously approved.

Applicant comment

26. The applicant in his submission states that *"It is proposed that the ceiling height to the Family room on Ground Level be increased to 3.2m as shown in the attached plans. Additionally, the overhang to the family room and glazing is proposed as shown on the attached architectural plans. Proposed ceiling height increases amenity to the waterfront property and takes advantage of the views available to the subject site."*

Officer comment

27. The deletion of this condition will mean that the overall height of the single storey element comprising the family room is increased by 500mm from that which was approved originally. Measured from the ground floor level to the top of the roof slab above, this portion of the building will be 3.5m in height as a result. This scale is not unreasonable for a single storey built form. The increased height makes little difference to the perceived vertical scale of this part of the building and associated overshadowing, overlooking and visual bulk impacts.

(35c) Deletion of Windows and Glazing Areas

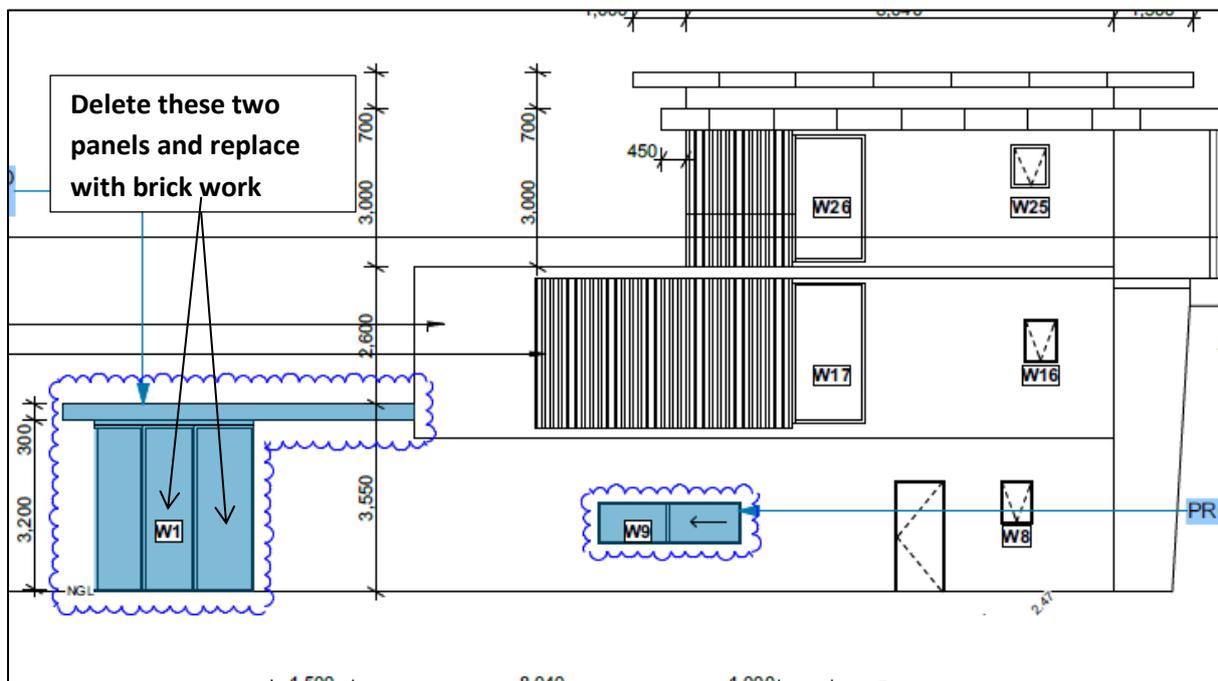
That the full height windows and glazing areas, (nominated as W1 on the drawings) and which face directly onto 77 The Promenade Sans Souci (southern elevation), are to be deleted and replaced with solid cavity brick work.

Applicant comment

28. The applicant in his submission states that “Glazing details to the family room have been proposed to incorporate corner windows and be more open to views leading out to the adjoining waterfront. Glazing is also proposed as shown in elevational views and noted in the window schedule. Southern facing window to be proposed.”

Officer comment

29. The deletion of this condition is not supported. Whilst the applicant’s desire to take advantage of the south westerly views towards Georges River is appreciated, this should not be at the expense of the visual privacy of the residents of the adjoining property. Viewed from the rear private open space of the adjoining dwelling immediately to the south of the site, it is evident that visual privacy for residents of both the subject site and the adjoining property will be significantly reduced as a result of the proposed 3m wide x 3.2m high window on the south facing external wall of the family room.
30. In order to ensure adequate visual privacy for the residents of the respective properties, it is recommended that the extent of the glazing to this window be reduced by deletion of the two (2) easternmost glass panels and the replacement of these two (2) panels with solid cavity brick work. At the same time, this outcome still maintains the aesthetic associated with the corner window design feature albeit to a lesser extent and allows for some degree of outlook in a south westerly direction towards Georges River. This design change may be readily addressed by appropriate amendments to the relevant condition of consent.



(35d) Deletion of Windows to Lower Ground Floor Kitchen

That the window proposed to the lower ground floor kitchen area (Proposed Level 1), located on the southern elevation (nominated as W9 on the drawings) is to be deleted and replaced by cavity brickwork or, alternatively, the window must be constructed as a fixed, opaque, glazed window that does not incorporate any sliding tracks or mechanisms.

Applicant comment

31. The applicant in his submission states that *“Window to the kitchen on southern wall is proposed as a sliding window that is operable in a position that acts as a functional splash back and design feature to the kitchen.”*

Officer comment

32. This window improves the amenity of the kitchen area by providing an additional source of natural light and ventilation and serving as a splash back to the adjacent bench top cooking appliance. No unreasonable visual privacy impacts will arise given its narrow slot-like design and relatively small size and its placement at a lower level relative to the adjacent lower ground floor windows of the adjoining dwelling house immediately to the south.

(35e) Changes to Proposed Window (Bedroom 2 on level 2)

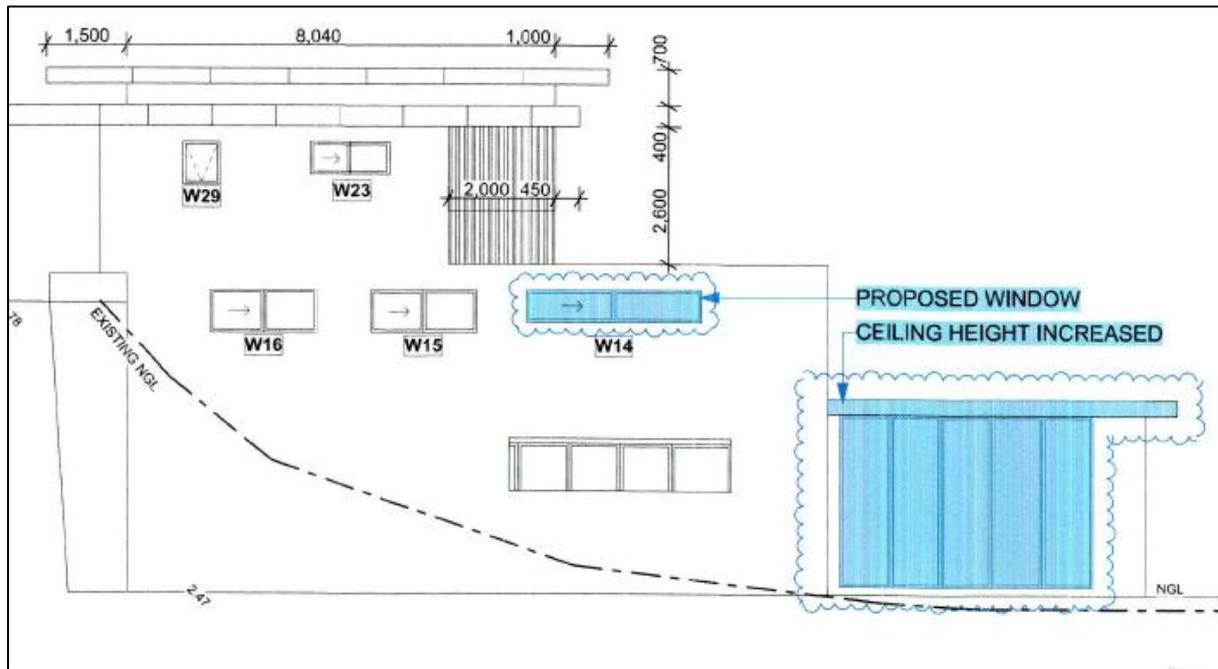
That the window proposed to Bedroom 2 on floor level 2 located on the northern elevation (nominated as W14 on the drawings) is to be deleted and replaced by cavity brickwork or, alternatively, the window must be constructed as a fixed, opaque, glazed window that does not incorporate any sliding tracks or mechanisms.

Applicant comment

33. The applicant in his submission states that *“A sliding highlight window to the northern wall of bedroom 2 is proposed for increased sunlight and ventilation to the bedroom and to introduce cross ventilation to the bedroom.”*

Officer comment

34. This window improves the amenity of the bedroom by providing an additional source of borrowed natural light and ventilation. No unreasonable visual privacy impacts will arise given its narrow slot-like design and relatively small size and its association with a room intended for passive use. This window is also provided with a high sill level, thereby further restricting view lines from the associated room into the adjoining property.



Section 79C Assessment

35. The following is an assessment of the application with regard to Section 79C(1) of the Environmental Planning and Assessment Act 1979.

(a)(i) The provisions of any environmental planning instrument

Kogarah Local Environmental Plan 2012 (KLEP 2012)

Part 2 – Permitted or Prohibited Development

Clause 2.1 – Land Use Zones

36. The subject site is zoned E4 Environmental Living and the development the subject of the proposed modification is a permissible form of development with council's consent. The proposed development as modified satisfies the objectives of the zone.



Part 5 – Miscellaneous Provisions

Clause 5.9 – Preservation of Trees or Vegetation

37. The proposed development as modified does not involve the removal of any tree or vegetation subject to the provisions of this clause.

Clause 5.10 – Heritage Conservation

38. The subject site is not listed as a heritage item in Schedule 5, is not within a Heritage Conservation Area, nor are there any heritage items located nearby.

Part 6 – Additional Local Provisions

Clause 6.1 – Acid Sulfate Soils

39. The subject site is not shown as being affected by acid sulfate soils as identified on the Acid Sulfate Soil Map.

Clause 6.3 – Flood Planning

40. The subject site has not been identified as a flood planning area on the Flood Planning Maps.

Clause 6.4 – Limited Development on Foreshore Area

41. The subject site is partly affected by a designated foreshore area (being that part of the site between the applicable 7.6m foreshore building line and the waterfront title boundary) and therefore the provisions of this clause are relevant.

42. The clause prescribes in part that “*consent must not be granted to development on land in the foreshore area except for the following purposes..... the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area...*”. The original development application took advantage of this clause, as there was previously a dwelling house on the site that occupied a large portion of the foreshore area and was much closer to the waterfront than the currently approved dwelling house. To this end, a minor portion of the single storey built form comprising the family room is located within the designated foreshore area of the site.
43. The proposed modification satisfies the provisions of this clause. Whilst the height of the family room is increased marginally, its building footprint remains unaltered. The family room is still of single storey scale. Viewed in the context of the overall built form of the approved dwelling house under construction on the site together with the built forms of existing houses along the foreshore to the north and south of the site, the additional 500mm height of the family room will not result in any cumulative adverse impacts on the amenity or aesthetic appearance of the foreshore.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

44. A BASIX Certificate has been issued for the proposed development as modified and the commitments required by the BASIX Certificate have been satisfied.

(a)(ii) *The provisions of any exhibited draft environmental planning instrument*

45. A Planning Proposal for the New City Plan to amend Kogarah LEP 2012 was on exhibition from Monday 30 March 2015 until Friday 29 May 2015. The New City Plan includes changes to zonings and the introduction of development standards in parts of the city to deliver a range of new housing options.
46. Specifically, the New City Plan proposes to rezone the site to R2 Low Density Residential. The development the subject of the proposed modification being for the purpose of a dwelling house will remain permissible with consent under this proposed zone. The proposed modifications do not raise any implications in terms of the building density and height development standards prescribed in the New City Plan, as they do not increase the gross floor area or overall building height of the dwelling house. Further, the extent of the designated foreshore area upon the site remains unchanged.
47. There are no other draft planning instruments that are applicable to this site.

(a)(iii) The provisions of any development control plan

Kogarah Development Control Plan 2013 (KDCP 2013)

48. The proposed modification is subject to the provisions of Kogarah Development Control Plan 2013 (KDCP 2013). The following comments are made with respect to the proposed modification satisfying the objectives and controls contained within KDCP 2013.

Bulk & Scale

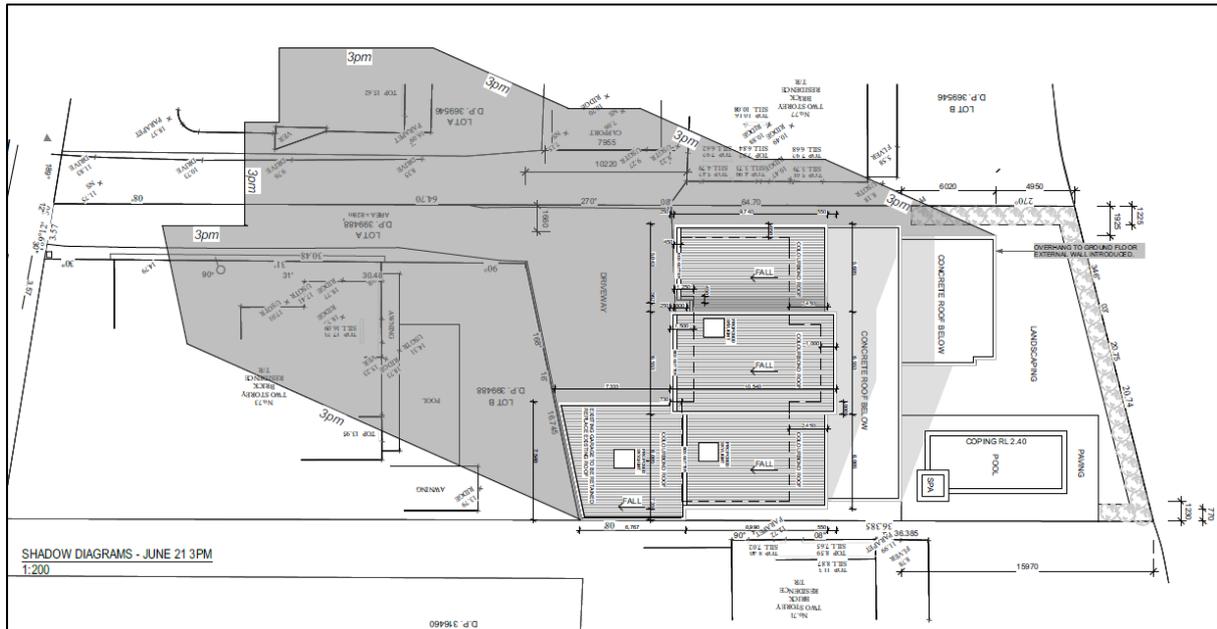
49. The proposed modification does not alter the overall height of the building from that which has been approved. The family room is maintained at a single storey scale, albeit of a marginally greater height. The family room also readily complies with the side boundary setback controls, being setback from the southern boundary by 1.95m as opposed to a minimum 1.2m setback requirement. As a result, there will be minimal difference to the perceived scale of the family room element to that which has been approved.

Privacy

50. The proposed splash back window associated with the kitchen on level 1 is somewhat offset and at a lower level relative to the northern side windows on the lower ground floor of the adjacent dwelling to the south of the site. This window is also of limited size and dimensions such that view lines from inside the associated room are somewhat restricted. As a result, this window maintains a high level of visual and acoustic privacy for residents of the adjacent dwelling to the south.
51. The proposed window associated with bedroom 2 on level 2 has a high sill level (2m above the floor level) and is of limited size and dimensions (0.6m depth x 3.29m length) such that view lines from inside the associated room are somewhat restricted. The associated room is also intended for passive use, being a bedroom. As a result, this window maintains a high level of visual and acoustic privacy for residents in the adjacent dwelling to the north.
52. The large window that is proposed on the south facing external wall of the family room does not maintain a high level of visual and acoustic privacy for residents of the adjacent dwelling. This matter is discussed in more detail elsewhere in this report (refer paragraphs 29 & 30).

Solar Access

53. Whilst the increased height of the family room will result in additional overshadowing of the adjoining property to the south, the resultant shadows cast by this element will not create unreasonable impacts, having regard to the shadow diagrams submitted with the application and the circumstances of the case.



Foreshore Locality Guidelines

56. The proposed development as modified does not detract from the satisfaction of any relevant aspect of the foreshore locality guidelines, particularly with respect to land-based development or the land-water interface.

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

57. Not applicable.

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

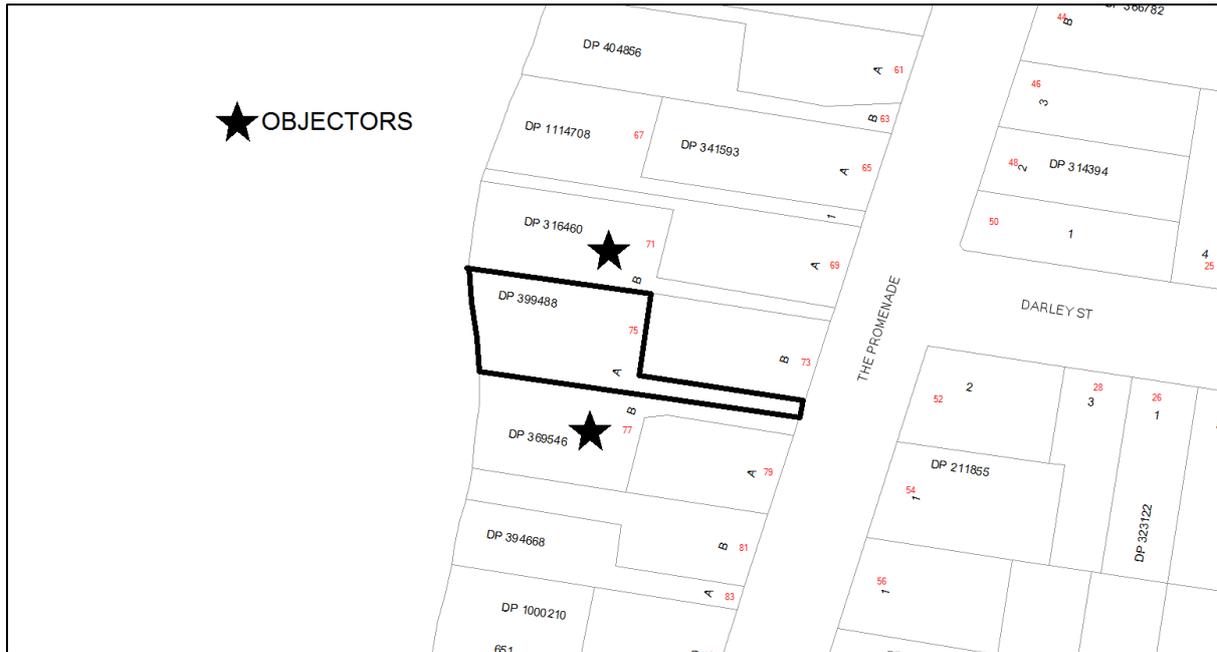
58. The proposed development as modified is of a scale and character that is in keeping with other development constructed in the locality. Accordingly, the proposal is not considered to have a significant impact on the natural and built environment of the locality.

(c) Suitability of the site for the development

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

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

60. In accordance with the public notification provisions of KDCP 2013, the application was placed on neighbour notification for a period of fourteen (14) days. Adjoining property owners were notified in writing of the proposal and invited to comment. Two (2) submissions were received as a result.



61. The issues raised in these submissions are summarised and addressed as follows:

1. Privacy impacts

62. The owners/occupants of the adjacent dwelling house to the south raise concerns over increased adverse privacy impacts from the south facing windows associated with the family room and kitchen area at level 1 upon their dwelling and rear private open space. The owners/occupants of the adjacent dwelling house to the north raise concerns over increased privacy impacts from the north facing window associated with bedroom 2 at level 2.

Comment:

63. These issues have already been substantially addressed elsewhere in this report (refer to paragraphs 28-34).

64. No unreasonable privacy impacts are likely to arise, regardless of the treatment of the relevant kitchen and bedroom windows with clear, openable glazing, having regard to the careful positioning and limited sizes and dimensions of these windows and the restricted view lines through these windows from the rooms concerned. The concerns raised over the window associated with the family room are concurred with and design changes seeking a substantial reduction in the size of this window are recommended accordingly (refer to paragraphs 29 & 30).

2. Visual bulk and scale impacts

65. The owners/occupants of the adjacent dwelling house to the south raise concerns over the increased height of the family room and associated visual bulk impacts upon their rear private open space. They argue that the increased height of this portion of the dwelling house is not appropriate being forward of the foreshore building line and within a sensitive waterfront location. They also argue that the dwelling house was allowed to exceed the height controls towards its eastern end as a trade-off for minimised bulk and scale at its western end. The owners/occupants of the adjacent dwelling house to the north share similar concerns.

Comment:

66. These issues have already been substantially addressed elsewhere in this report (refer to paragraphs 26 & 27). The trade-off alluded to by the adjacent residents is not compromised by the increased height of the family room, as this room still maintains a single storey scale consistent with the currently approved plans. The overall 3.5m height of the family room is also not excessive for a single storey built form.

3. Overshadowing impacts

67. The owners/occupants of the adjacent dwelling house to the south raise concerns over the increased height of the family room and associated overshadowing impacts upon their rear private open space.

Comment:

68. This issue has already been substantially addressed elsewhere in this report (refer to paragraphs 53-55). No unreasonable overshadowing impacts will arise due to the single storey scale and ample side boundary setbacks of the family room.

4. Fire Hazard

69. The owners/occupants of the adjacent dwelling house to the south argue that the kitchen window being openable is a potential fire hazard and non-compliant with the Building Code of Australia due to the location of the kitchen adjacent to this window being a fire source feature.

Comment:

70. The kitchen window being located well beyond 900mm from the southern side boundary raises no issues in terms of the Building Code of Australia with respect to the provisions relating to spread of fire, regardless of whether the window can be opened.

5. Inadequate justification

71. The owners/occupants of the adjacent dwelling house to the south argue that inadequate justification has been provided by the applicant in support of their proposed modification.

Comment:

72. Whilst the applicant's written submission in support of the proposed modification is not particularly comprehensive, it is evident from the plans submitted with the application and from the viewings obtained from the adjoining properties to the south and north that deletion of conditions 35b, 35d & 35e and amendment of condition 35c along the lines recommended in this report is reasonable on merit.

(e) *The public interest*

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

Conclusion

74. The application has been assessed having regard to the provisions of Section 96(2) and Section 79C(1) of the Environmental Planning and Assessment Act 1979. The proposed modifications would result in a development that is substantially the same as that originally approved.
75. The proposed modifications can be supported, subject to a substantial reduction in the extent of glazing associated with the south facing window of the family room on level 1 as recommended in this report.

Recommendation

76. That council as the consent authority and pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979 grant approval to the requested modifications to Development Consent No. 319/2014 dated 22 April 2015 (as subsequently modified on 3 May 2016) for demolition of the existing dwelling and construction of a new dwelling and swimming pool at property No. 75 The Promenade, Sans Souci (as submitted on 1 June 2016) subject to the development consent being modified as follows:
1. Condition 35b is deleted.
 2. Condition 35d is deleted.
 3. Condition 35e is deleted.

4. Condition 35c is amended to read as follows:

That the full height windows and glazing areas, (nominated as W1 on the drawings) and which face directly onto 77 The Promenade Sans Souci (southern elevation), are to be modified by the deletion of the two (2) easternmost glass panels and the replacement of these two (2) panels with solid cavity brick work. The resultant fenestration is to be a maximum 1m width.

Attachments

A4 NN plans.

Specific Development Conditions
Modification Ref No: 319/2014/3

SECTION A - General Conditions

The conditions that follow in this Section A of the Notice of Determination are general conditions which are imposed to ensure that the development is carried out in accordance with the development consent.

(1) Approved Plans of Consent

The development must be implemented in accordance with the approved plans, specifications and details listed below and any supporting information submitted with the Development Application except as amended by any conditions attached to the Development Consent:

- (i) Architectural Plans – prepared by Saf Developments, Section 96 Issue 2 dated 17 February 2016, Drawing No.'s DA01, DA02, DA03, DA04, DA05, DA06, DA08 (refer to condition 35(a).
- (ii) Stormwater plans project no. 2862, drawing S1 and S2 Revision A, drawn by Consulting Design and Inspection Engineers dated 24.12.2014 and stamped by Council on 09.04.2015

(MODIFIED - Modification Ref No: 319/2014/2 – Date of Approval 3/5/16)

SECTION B –Prior to the Issue of a Construction Certificate or Demolition Conditions

The conditions that follow in this Section B of the Notice of Determination relate to the payment of fees, amendments being made to the proposal, further investigation being undertaken or the preparation of documentation that must be complied with prior to the issue of a Construction Certificate or Demolition.

Note: A copy of the Construction Certificate shall be forwarded to Council prior to commencement of construction where Council is not the certifier who issued the Construction Certificate.

(2) Asset & Building Fees

Payment of the following amounts as detailed below:

- Damage Deposit of \$1900.00
- *Builders Long Service Levy of \$2864.00
- Asset Inspection Fee of \$ 105.00
- Section 94A Contributions of \$8184.55

*Note: The Builders Long Service Levy quoted is based on the market value of the proposed building works and the Levy Rate applicable at the time of assessing the Development Application and may be subject to change prior to payment.

(3) Section 94A Contributions

As at the date of Development Consent a contribution of \$8184.55 has been levied on the subject development pursuant to Section 94A Contributions Plan. The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of the Section 94A Development Contributions Plan. The amount payable of monetary Section 94 contributions will be indexed on 1 July each year in accordance with the Contribution Plan.

The Section 94A Contributions Plan may be inspected at the Kogarah City Council Customer Service Centre, 2 Belgrave Street, Kogarah or online at www.kogarah.nsw.gov.au.

(4) Soil and Water Management

A Soil and Water Management Control Plan, incorporating contour levels and prepared in accordance with Environmental Site Management Policy shall be submitted to Council detailing all measures to control soil erosion and sedimentation runoff from the site during excavation and construction activities.

(5) Clearances to Overhead Mains

If any part of the proposed structure, within 5m of a street frontage, is higher than 3m above footway level, the applicant is to confer with Ausgrid to determine if satisfactory clearances to any existing overhead mains will be affected. If so, the applicant is to make arrangements with Ausgrid for any necessary modification to the electrical network in question.

These works to be at the applicant's expense and Ausgrid's requirements are to be met prior to actual construction commencing on site or as agreed with Ausgrid.

(6) Sydney Water (DA Only)

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

Please refer to the web site 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.

(7) Reduce Balcony Width

Prior to the issue of a Construction Certificate the width of the balconies located on the middle level shall be reduced in width by 300mm so to not extend greater than 1700mm from the external wall of the western elevation.

SECTION C – Prior to Commencement of Construction Conditions

The conditions that follow in this Section C of the Notice of Determination are specific to the proposed development and must be complied with prior to the commencement of construction on the site.

(8) Energy Dissipating Structure

An outfall apron or energy dissipating structure at the point of discharge is to be provided on the Detailed Stormwater Plan prior to issue of the construction certificate. Discharge from the site must be via a single discharge point/pipe. For more information on Kogarah City Councils policies for discharging stormwater directly into bays and reserves, the applicant should refer to Kogarah City Councils Water Management Policy Practice Note 1 "Site Drainage and Flood Management" particularly section 6.2 "Discharge to Natural Areas."

(9) Structural Engineer's Details

Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns & other structural members. The details are to be submitted to the Principal Certifying Authority for approval prior to construction of the specified works.

A copy shall be forwarded to Council where Council is not the PCA.

(10) Protection of Site – Hoarding

A hoarding or fence must be erected between the work site and the public place if:

- the work involved in the erection or demolition of a building is likely to cause obstruction or inconvenience to pedestrian or vehicular traffic in a public place; or
- if it involves the enclosure of a public place.

If necessary an awning is to be erected which is sufficient to prevent any substance from or in connection with the work from falling into a public place.

Any such hoarding, fence or awning is to be removed when the work has been completed.

If the work site is likely to be hazardous to persons in a public place, it must be kept lit between sunset and sunrise.

(11) Driveway

In respect to vehicular access to the proposed development the gutter across the driveway are to be reconstructed between the kerb and street alignment to Council's specifications.

In this regard a separate driveway application is to be lodged with Council for works outside the property boundary. Furthermore the design boundary level is to be received from Council prior to construction of the internal driveway.

(12) Council Infrastructure Inspection

Prior to the commencement of any works an authorised representative of the applicant is to organise and attend a meeting on site with Council's Infrastructure Compliance Co-ordinator to discuss protection of Council's infrastructure. To organise this meeting contact Council's Customer Service Centre on 9330 9400.

(13) Public Liability Insurance

All nominated contractors / applicants carrying out driveway and/or restoration works on Council property must carry public liability insurance with a minimum cover of twenty million dollars (\$20,000,000.00). In this regard, prior to commencement of works, the principal contractor is to lodge an "Application for the Construction of Work by Private Contractor" to Council, which includes submitting evidence of their current insurance. The principal contractor must ensure that sub-contractors are also adequately insured.

(14) Soil Erosion Controls

Prior to commencement of any site works, erosion and sediment controls are to be installed in accordance with Environmental Site Management Policy and any approved Soil & Water Management Plan and shall incorporate:

- Measures to prevent sediment and other debris escaping from the cleared or disturbed areas into drainage systems or waterways;
- Controls to prevent tracking of sand, soil, aggregates, etc, by vehicles onto adjoining roadways.

(15) Overland Flow Route

An overland flow route is to be provided from the driveway and the front of the dwelling to the rear of the property in case of the site's drainage system becoming blocked or reaching capacity.

SECTION D – Construction and Operational Conditions

The conditions that follow in this Section D of the Notice of Determination are imposed to ensure the development is constructed and operates having regard to relevant legislation and does not unreasonably impact on the amenity of the locality or environment during the construction phase or the operation of the use.

(16) Inspections - New Dwelling

The following lists of inspections are the **MANDATORY CRITICAL STAGE INSPECTIONS** that **MUST** be carried out by the Principal Certifying Authority (PCA).

- (a) at the commencement of building works
- (b) after excavation for, and prior to the placement of, any footings, and
- (c) prior to pouring any in-situ reinforced concrete building element, and
- (d) prior to the covering of the framework for any floor, wall, roof or other building element, and
- (e) prior to covering waterproofing in any wet areas, and
- (f) prior to covering any stormwater drainage connections, and
- (g) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
- (h) in the case of a swimming pool, as soon as practicable after the barrier (if one is required under the Swimming Pools Act 1992 has been erected.

Certificates from your engineer or subcontractor are **NOT** acceptable in the first instance for the above inspections. Failure to have your PCA carry out these inspections could result in a delay or refusal to issue an Occupation Certificate.

In addition to the above, it is recommended that the following inspections be carried out for the subject development;

- Erosion Control
- Earthworks/Excavation
- Building setout
- Landscaping

(17) Storage of materials on Public Road

All building materials or waste containers must be stored within the confines of the site. The storage of such building materials, waste containers or equipment associated with the project upon the public roadway, including the pedestrian footway or unpaved verge, is prohibited.

(18) Use of Crane on Public Road

Prior approval must be obtained from Council a minimum of 24 hours before the use on any site of a crane, hoist or similar machinery that will be used to transfer materials across Council's footpath. This includes cranes that are situated on roadways, footpaths and road reserves.

Any application for approval must be accompanied by the following information:-

- Site sketch indicating the proposed location of the crane, pedestrian controls and traffic controls;
- A copy of current public liability insurance with minimum cover of twenty million dollars (\$20,000,000) indemnifying Council in the event of an incident;
- A copy of an RMS accredited traffic control plan;
- Proof that the local area command of the NSW Police have been advised of the proposal.

The use of a crane, hoist or similar machinery on any site without prior approval is prohibited.

(19) Building Height - Surveyors Certificate

The proposed building is not to be erected at a height greater than that indicated on the approved plan. This is to be verified by means of a certificate from a Registered Surveyor at ground floor level and at roof frame before the roof covering is installed.

(20) Excavation of Site

Excavation of the site is to extend only to that area required for building works depicted upon the approved plans. All excess excavated material shall be removed from the site. In this regard, all excavated waste materials shall be disposed of at an approved Waste Depot (details are available from Council).

All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.

All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

If the soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided and adequate provision shall be made for drainage.

(21) Stormwater to Kerb

Any stormwater connections to the kerb and gutter are to be in accordance with Council's '*Specification for Construction by Private Contractors*'.

(22) Redundant Driveway

All existing vehicular crossings adjacent to the subject premises that have become redundant shall be removed and the footway and kerb and gutter reinstated at the developer/applicants expense.

(23) Work within Road Reserve

A Development Consent or any related Construction Certificate does not allow for the erection of a structure or to carry out work in, on or over a public road. Should a structure or work be required a separate approval under S138 of the Road Act 1993 must be granted by Council prior to the commencement of any works within the road reserve. Applications may be made at Council's Customer Service Centre.

(24) Damage within Road Reserve & Council Assets

The owner shall bear the cost of restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site. This may include works by Public Utility Authorities in the course of providing services to the site.

(25) Public Utility & Telecommunication Assets

The owner shall bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines & cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site.

(26) Stormwater Drainage

All roof water and surface water from paved or concreted areas being disposed of to the street gutter by means of a sealed pipeline constructed in accordance with AS/NZS 3500.3.2. The line must pass through a silt arrestor pit, a standard design is available within Council's Water Management Policy.

(27) Hours of Construction

Construction may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday.

(28) Provision of Amenities

Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site or as specified by Workcover requirements .

- each toilet provided must be a standard flushing toilet and must be connected:
- to a public sewer; or
- if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council; or
- if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

The provision of toilet facilities must be completed before any other work is commenced.

(29) Basix Certificate Details – DA Only

Construction of building works given Development Consent must be carried out in accordance with a valid and current BASIX certificate and all required commitments must be satisfied.

(30) Air Conditioning / Offensive Noise

Air conditioning plant and equipment shall be installed and operated so as to not create an offensive noise as defined under the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Noise Control) Regulation 2008.

(31) Swimming Pool/Spa shall be Fenced

The proposed swimming pool and/or spa shall be fenced and constructed in accordance with the Swimming Pools Act, 1992 and the Swimming Pools Regulation 2008. If required, you may confer with Council for assistance with respect to the location of pool fencing.

(32) Pool Filter/Pump no Offensive Noise

Pool plant and equipment shall be enclosed in a sound absorbing enclosure or installed within a building to minimise noise emissions and possible nuisance to nearby neighbours.

The pool plant and equipment shall not be operated during the following hours if noise emitted can be heard within a habitable room in any other residential premises or as otherwise stated in the *Protection of the Environment Operations (Noise Control) Regulation 2008*:

- Before 8:00am or after 8:00pm on any Sunday and public holiday;
- Before 7:00am or after 8:00pm on any other day.

(33) Building Finishes

The building finishes are to be constructed in accordance with the colour board and perspective submitted with the Development.

(34) Non Trafficable Areas

The areas marked “not accessible” shall not be converted or used for the purposes of a terrace or balcony.

(35) Disposal of Roof and Hard Surface Area Water

All roof and hard surface water from paved or concreted areas being disposed of to the bay via an outfall apron or energy dissipating structure by means of a sealed pipeline constructed in accordance with AS 3500.3.2. The line must pass through a silt arrester pit.

(35a) Deletion of Side Access Stairs

The external side access stairs along the northern boundary and rear door from the garage are to be deleted and do not form part of this consent. The proposed retaining wall on the northern boundary is to be reduced to a maximum height not exceeding existing ground level at the boundary at any point.

(ADDED - Modification Ref No: 319/2014/2 – Date of Approval 3/5/16)

(35b) Height of building

(ADDED - Modification Ref No: 319/2014/2 – Date of Approval 3/5/16)
(DELETED - Modification Ref No: 319/2014/3 – Date of Approval 27/10/16)

(35c) Deletion of Windows and Glazing Areas

That the full height windows and glazing areas, (nominated as W1 on the drawings) and which face directly onto 77 The Promenade Sans Souci (southern elevation), are to be modified by the deletion of the two (2) easternmost glass panels and the replacement of these two (2) panels with solid cavity brick work. The resultant fenestration is to be a maximum 1m width.

(ADDED - Modification Ref No: 319/2014/2 – Date of Approval 3/5/16)
(MODIFIED - Modification Ref No: 319/2014/3 – Date of Approval 27/10/16)

(35d) Deletion of Windows to Lower Ground Floor Kitchen

(ADDED - Modification Ref No: 319/2014/2 – Date of Approval 3/5/16)
(DELETED - Modification Ref No: 319/2014/3 – Date of Approval 27/10/16)

(35e) Changes to Proposed Window (Bedroom 2 on level 2)

(ADDED - Modification Ref No: 319/2014/2 – Date of Approval 3/5/16)
(DELETED - Modification Ref No: 319/2014/3 – Date of Approval 27/10/16)

SECTION E – Prior to Occupation or Subdivision Certificate Conditions

The conditions that follow in this Section E of the Notice of Determination relate to conditions that ensure that the development is completed in accordance with the requirements of the Development Consent prior to the issue of either an Occupation Certificate or a Subdivision Certificate.

(36) BASIX Completion Receipt

In accordance with clause 154C of the Environmental Planning and Assessment Regulation 2000, prior to issuing a final occupation certificate the certifying authority must apply to the Director-General for a BASIX completion receipt.

SECTION F – Prescribed Conditions

The following are prescribed conditions of development consent pursuant to s.80A(11) of the Environmental Planning and Assessment Act 1979 and cl.98 of the Environmental Planning and Assessment Regulation 2000.

(37) Compliance with the Building Code of Australia

The development must be carried out in accordance with the provisions of the Building Code of Australia.

(38) Insurance Requirements under Home Building Act 1989

The builder or person who does the residential building work must comply with the applicable requirements of Part 6 of the Home Building Act, 1989. This means that a contract of insurance must be in force in accordance with Part 6 of that Act before any building work authorised to be carried out by the consent commences.

It is the responsibility of the builder or person who is to do the work to satisfy Council that they have complied with the applicable requirements of Part 6 of the Home Building Act, 1989.

If Council is the Principal Certifying Authority it will not carry out any inspections until a copy of the insurance certificate is received.

(39) Erection of Signs

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:

- (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.

(40) 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.

(41) Shoring and Adequacy of Adjoining Property

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 own 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.

The above 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 that condition not applying.

(42) Council Notification of Construction

The erection of a building which is the subject of a Development Consent must not be commenced until:

- a) *Detailed plans and specifications of the building have been endorsed with a construction certificate by Council or an accredited certifier.*
- b) *the person having the benefit of the development consent has:*
 - *appointed a Principal Certifying Authority (PCA), and*
 - *notified Council (if Council is not the PCA) in writing of the appointment, and*

- given at least 2 days notice to Council of their intention to commence the erection of the building. The notice may be in writing or by phone.

SECTION G – Demolition Conditions

The following conditions are imposed to ensure the demolition associated with the proposed development is carried out having regard to relevant legislation and does not unreasonably impact on the amenity of the locality or environment.

(43) Demolition Conditions-Asbestos

- Demolition of buildings where asbestos is determined to be present should only occur 7am – 5pm Monday to Saturdays, and must not occur on Sundays or Public Holidays, to ensure that the persons carrying out the work have access to WorkCover professionals if required.
- All asbestos removal shall be undertaken in accordance with the requirements of WorkCover's 'How to Safely Remove Asbestos' Code of Practice and Council's Asbestos Policy.
- Written notice must be provided to Kogarah Council five (5) working days (excluding public holidays) prior to commencement of any works.

Written notice is to include the following details:

- Date the demolition will commence
- Name, address, contact details (including after hours) and licence number of the demolisher and asbestos removalist (if different)

Work must not commence prior to the nominated demolition date.

Note: it is the responsibility of the persons undertaking demolition work to obtain the relevant WorkCover licences and permits.

- The owner is to notify all owners and occupiers of premises on either side, opposite and at the rear of the development site five (5) working days prior to demolition. Such notification is to be clearly written on A4 size paper stating the date the demolition will commence and is to be placed in the letterbox of every premises (including every residential flat or unit, if any). The demolition must not commence prior to the date and time stated in the notification.
- A demolition or asbestos removal contractor licensed under the *Work Health and Safety Regulations 2011* must undertake removal of more than 10m² of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current AS1 Friable Asbestos Removal Licence.

- (f) Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.
- (g) All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2005. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.
- (h) A Clearance Certificate or Statement, prepared by a suitably qualified occupational hygienist must be provided to Council upon completion of demolition and asbestos related works, which confirms that the relevant legislative requirements in relation to safe removal and disposal have been satisfied.
- (i) A Work Cover Licensed Demolisher is to be engaged to carry out any demolition works using mechanical equipment where the structure is over 4 metres in height or to carry out any manual demolition works on a structure over 10 metres in height.
- (j) The provision of temporary fences and footpath crossing pads prior to commencement of demolition operations. Further, no waste materials or bins are to be placed on Council's roadways or footpaths.
- (k) No waste materials are to be burnt on site.
- (l) No trees as defined by Council's Tree Preservation Order being removed or damaged on the site without the prior written approval of Council.
- (m) Compliance with the provisions of Australian Standard AS 2601-1991:"The Demolition of Structures", which requires notification of demolition to be submitted at least seven (7) days prior to demolition to the NSW Workcover Authority.
- (n) Effective erosion and sediment control measures are to be undertaken during the course of demolition and building works in accordance with Council's 'Environmental Site Management Policy'. Failure to implement appropriate measures may result in a \$750 Penalty Infringement Notice (individual) and/or \$1,500 (corporation) being issued and/or the incurring of a maximum penalty of \$250,000 (corporation) or \$120,000 (individual) through the Land and Environment Court.

- (o) Appropriate measures are to be implemented on site to control dust and other air borne matter and demolition material is to be stored and stacked in a manner so as to minimise the risk of damage or nuisance to neighbouring properties.
- (p) Council being notified upon completion of the demolition works so that an inspection can be made of the roadway and footpath.
- (q) All non-recyclable demolition material being disposed of at an approved waste disposal depot. Details as to the method and location of disposal of demolition materials (weight docket, receipts, etc.) should be kept as evidence of approved method of disposal.
- (r) 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:
 - (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

END CONDITIONS

Advisory Notes

(i) Worksite Safety

It is usually the owner/applicant's responsibility to ensure that the development site is a safe working environment. This may be by the engagement of an appropriately competent principal contractor. There are various legislative and WorkCover requirements with respect to maintaining a safe work-site. Details of these requirements and legislation, as well as, guidance and advisory material, can be found on the WorkCover Website www.workcover.nsw.gov.au.

(ii) Worksite Safety Scaffolding

Council is committed to worksite safety and requiring that all scaffolding is installed by competent and qualified professionals with the relative appropriate standards. The applicable Australian Standards for the scaffolding is AS/NZS1576 in respect of the design of the scaffolding and AS/NZS4576 with respect to the erection of the scaffolding. Also, you should ensure that those erecting scaffolding are appropriately qualified and have the appropriate qualifications to erect scaffolding. For further information regarding this please see www.workcover.nsw.gov.au.

(iii) Kid Safe NSW

Kidsafe NSW has produced Safer Homes for Children Design and Construction Guidelines for builders, renovators and home owners. The guidelines identify common hazards for children and recommended practical design applications to improve child safety for all areas of the home. Free copies of the Guidelines are available from Council's Customer Service Centre, or contact Kidsafe on (02) 9845 0890 or their website <http://www.kidsafensw.org/homesafety/index.htm> for more information.

(iv) Dial Before You Dig

Underground pipes and cables may exist in the area. In your own interest and for safety, telephone 1100 before excavation or erection of structures. Information on the location of underground pipes and cables can also be obtained by fax on 1300 652 077 or through the following website www.dialbeforeyoudig.com.au.

(v) Demolition Waste

Sorting your construction and demolition waste will save you money. For pricing and disposal options for sorted loads of tiles, bricks, timber concrete or asphalt call Waste Service NSW on 1300 651 116.

(vi) Property Address

Property addresses shall be allocated by Council in accordance with the Addressing Standard AS/NZS 4819:2011.