

13 April 2016

**DEVELOPMENT ASSESSMENT REPORTS FOR THE
REGULAR COUNCIL MEETING - TUESDAY, 26 APRIL 2016**

Attached are the Development Assessments reports that will be submitted to the next Council Meeting.

If you have any enquiries regarding these applications, please contact the Director Planning and Environmental Services, Rod Logan on 9330 9450.



Paul Woods
General Manager

Development Assessment Reports

- D1** No. 75 The Promenade, Sans Souci - Development Application No. 319/2014 - Section 96 Modification to approved dwelling and swimming pool - SAF Developments Pty Ltd (Applicant) - Mr M.S. Lee & Ms L.L. Hu (Owners) - North Ward - Annexure..... 1
- D2** No. 999 Beach Street, Blakehurst - Development Application No. 199/2015 - Construction of a new amenities building at Carss Bush Park (near the corner of Torrens and Beach Streets) - Kogarah City Council (Applicant & Owner) - Middle Ward - Annexures 16

Item D1: No. 75 The Promenade, Sans Souci - Development Application No. 319/2014 - Section 96 Modification to approved dwelling and swimming pool - SAF Developments Pty Ltd (Applicant) - Mr M.S. Lee & Ms L.L. Hu (Owners) - North Ward - Annexure

Author: Rod Logan - Director Planning and Environmental Services (BL)

Reason for report: Ward Councillor request.

Recommendation:

- a) That Council, as the consent authority, pursuant to Section 96 (1A) of the Environmental Planning and Assessment Act, 1979, grant approval to the requested modifications to Development Consent No. 319/2014 dated 22 April 2015 for demolition of existing dwelling and construction of a new dwelling and swimming pool at No. 75 The Promenade, Sans Souci submitted on 13 November 2015 subject to the development consent being modified as follows:

Condition 1 be modified as follows:

(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

The following additional condition be inserted:

35 (a) 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.

- b) That the applicant be advised of their right of appeal to the Land and Environment Court with regard to Council's decision in this matter.
 - c) That those who made a submission be advised of Council's decision in this matter.
-

Item D1 (cont.)**Report Summary****Proposal**

1. Council has received an application pursuant to Section 96 (1A) of the Environmental Planning and Assessment Act 1979 (EPA Act) to modify the approved demolition of existing dwelling and construction of a new dwelling and swimming pool. The modifications seek to increase floor area and height of a single storey living room, add a side access stair from the garage along the northern boundary, add a wall with opening to northern side of the alfresco area, add three skylights, modify and add windows, provide a new door to lower level laundry and minor internal alterations.

Site and Locality

2. The site is located on the western side of The Promenade, comprising an irregular shape allotment and yielding an area of 828m². The land falls approximately 12m from the street to Kogarah Bay.

Zoning and KLEP 2012 Compliance

3. The site is zoned E4 - Environmental Living under KLEP 2012 and the proposal is a permissible form of development with Council's consent. The proposed development satisfies all relevant clauses contained within KLEP 2012 with the exception of the proportion of glazing to the waterway.

Kogarah Development Control Plan 2013 (KDCP 2013)

4. The proposed development satisfies the provisions of Section 1.1 – Streetscape Character and the Foreshore Locality Guidelines of KDCP 2013 and complements the existing streetscape character. The proposed modifications do not result in any additional non-compliances with Councils controls.

Submissions

5. Three submissions were received raising the following concerns:
 - Privacy;
 - Visual impact;
 - Modifications not considered “substantially the same development” and therefore requiring a new application;
 - Poor quality of plans and documentation of modifications;
 - Construction and compliance issues;
 - Height of approved dwelling; and
 - Side access stairs.

Item D1 (cont.)**Conclusion**

6. The application has been assessed having regard to the provisions of Section 96 (1A) and Section 79C (1) of the Environmental Planning and Assessment Act 1979. It is considered that the modifications would result in a development that is substantially the same as that originally approved and does not give rise to any significant additional impact on adjoining sites. Accordingly, the proposed modifications can be supported.

Report in Full**Proposal**

7. Council granted Development Consent No. 319/2014 for demolition of existing dwelling and construction of a new dwelling and swimming pool on 22 April 2015.
8. The application made pursuant to Section 96 (1A) of the Environmental Planning and Assessment Act to modify Development Consent No. 319/2014 involves a number of amendments to the approved development including:
 - Increase floor area and height of roof to single storey living room;
 - add side access stair from garage along northern boundary;
 - add wall with opening to northern side of alfresco area;
 - add three skylights;
 - modified and added windows, new door to lower level laundry; and
 - minor internal alterations.

The Site and Locality

9. The site is a battle-axe allotment located on the western side of The Promenade near the intersection with Darley Street. The site comprises an irregular quadrangle shape allotment having a depth along the southern boundary of 64.7m and a total site area of 828m². The land falls approximately 12m from the street to Kogarah Bay.
10. The approved development is currently under construction.
11. The site is located in an area that is characterised by detached single dwellings 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 storey dwelling which steps down from a double carport, also located at an elevated level. The neighbouring dwelling contains an inground swimming pool and manicured gardens beyond the foreshore building line.

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Item D1 (cont.)



Background

12. On 22 April 2015 the application subject of the Section 96 application was granted consent.
13. On 13 November 2015 the Section 96 application subject of this report was lodged with Council.
14. From 27 November to 11 December 2015 the Section 96 application was placed on neighbour notification.
15. On 28 January 2016 a letter was sent to the applicant advising that the following issues were to be addressed:
 - A number of errors and inconsistencies to be amended to allow for accurate and proper assessment. Further clarity with ground lines required with respect to proposed stairs.
 - Reduction to height of lower level living room and reduced projection of eave (slab) overhang
 - Concern over height of side access stairs above ground line.
16. On 23 February 2016 amended plans were submitted to Council.
17. The amended plans are relied upon for assessment in this report.

Section 96 Considerations

18. The application has been made pursuant to Section 96 (1A) of the Environmental Planning and Assessment Act 1979 to modify Development Consent No. 319/2014 dated 22 April 2015 and involves the following modifications to the approved development:

Item D1 (cont.)

a) Increase floor area and height of roof to single storey living room.

Comment

19. The proposed modifications involve the following changes to the approved living room on the lower ground floor level:
- Square up the splayed indent to the southern corner of the room.
 - Increase ceiling height from 2.8m to 3.2m an overall height increase of 500mm.
 - Altered roof to incorporate an overhanging projection to the roof slab by 300mm on the western and southern sides and up to 900mm on the internal facing northern side.
20. The proposed modifications have been amended since lodgement of the Section 96 application to reduce the overall height of the room from 3.7m to 3.5m to reduce potential impacts to a minimum on adjoining properties and the waterway. This results in an overall increase in the single storey built form element of 300mm. The modification is minor.
21. The proposed increase in area does not result in any significant bulk impacts, comprising a glazed enclosure of a 3.5m² splayed indent. The modification is minor.
22. The proposed roof overhang was originally lodged in the Section 96 application with a 700mm overhang which has since been amended to a 300mm overhang. The outer edge of the overhanging slab is setback 1.6m from the side boundary, well in excess of the minimum requirement of 900mm for single storey walls or a 450mm setback for eaves and gutters.

b) Add side access stair from garage along northern boundary,

Comment

23. The proposed modifications include the construction of a set of concrete stairs along the northern boundary, connecting the garage via a rear door to the rear yard.
24. The proposed stairs, due to substantial level change from garage to rear yard, do not follow the natural fall of the land closely and are up to 1.7m above existing ground level. This results in users of the stairs being able to stand and walk well above the fence line and will consequently impact on the neighbouring property at No. 71 The Promenade.
25. It is recommended that the stairs and door be deleted from the plans and not form part of the Section 96 approval.

c) Add wall with opening to northern side of alfresco area,

Item D1 (cont.)Comment

26. The proposed modifications add a wall to the northern side of the alfresco area, replacing the two columns off the barbecue area supporting the dwelling above. The barbecue is also moved 800mm closer to the northern boundary, against the proposed wall. In the wall is proposed a 4200mm x 800mm opening above the barbecue.
27. The proposed wall maintains the 1210mm setback of the dwelling and is partially below ground level and fully below the fence line. The proposed wall is not considered to result in unacceptable impacts and is supported.

d) Add three skylights,

Comment

28. The proposed modifications involve the addition of three skylights to the roof. The proposed skylights are minor modifications that do not impact adjoining properties or affect the external appearance of the building as seen from neighbouring properties or the public domain.

e) Modified and added windows, new door to lower level laundry,

Comment

29. The proposed modifications involve modified window dimensions to the western (waterway facing) elevation and new or altered windows to the side elevations. The modifications involve:
- A new door off the kitchen is proposed at the lower ground floor level.
 - Larger windows to the lower level living room to increase window widths and height.
 - Enlarged glazing to storage room and laundry to alfresco area.
 - Addition of a window to the kitchen (southern side elevation) on the lower ground floor.
 - Increased size of windows to top floor windows facing waterway (west elevation).
 - Addition of a small awning window to Pantry on lower ground floor level.
 - Addition of a long horizontal window to northern side of Bedroom 2 (Level 2).
 - Minor relocation of window to Bedroom 3 on Level 2.

30. The proposed modifications to windows are minor in nature and do not result in any significant impacts on neighbouring properties or the waterway and are supported.

f) minor internal alterations.

Comment

31. The proposed internal modifications move a few internal walls to bedrooms and ensuites and enlarge the lift well. The kitchen layout has also been altered internally.
32. The proposed modifications are minor in nature and do not result in any significant impacts on adjoining properties and are supported.

Item D1 (cont.)

33. Section 96(1A) 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:

- 1. Is satisfied that the proposed modification is of minimal environmental impact?**

Comment

34. The modifications proposed will result in minimal environmental impact.

- 2. Is satisfied the proposed development as modified is substantially the same development for which consent was originally granted?**

Comment

35. The proposed development as modified would represent substantially the same development for which consent was originally granted.

- 3. Has consulted with the relevant Minister, public authority or approval body with respect to a condition imposed on the consent or general terms of approval.**

Comment

36. Not Applicable

- 4. Has advertised and or notified the application in accordance with the regulations or a development control plan?**

Comment

37. The application was neighbour notified in accordance with the provisions of Section A2 – Public Notification of KDCP 2013.

- 5. Has considered any submissions made concerning the proposed modification.**

Comment

38. Three submissions were received raising a number of concerns which are discussed later in this report.

Section 79C Assessment

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

Item D1 (cont.)

(1) Matters for consideration – general

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

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

Kogarah Local Environmental Plan 2012 (KLEP 2012)**Part 2 – Permitted or Prohibited Development**Clause 2.1 – Land Use Zones

- 40. The subject site is zoned E4 - Environmental Living and the proposal is a permissible form of development with Council's consent. The proposed development satisfies the objectives of the zone.

Part 5 – Miscellaneous ProvisionsClause 5.9 – Preservation of Trees or Vegetation

- 41. 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

- 42. 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 ProvisionsClause 6.1 – Acid Sulfate Soils

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

Clause 6.2 – Earthworks

- 44. The proposed earthworks are considered acceptable having regard to the provisions of this clause as the works are not likely to have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

Clause 6.3 – Flood Planning

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

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Item D1 (cont.)

46. In addition, consideration has been given to the provisions of Section B6 – Water Management of KDCP 2013 and the proposed development satisfies the relevant controls related to flooding and drainage.

Clause 6.4 – Limited Development on Foreshore Area

47. The site is subject to a 7.6m Foreshore Building Line (FBL) in accordance with Clause 18 of KLEP 1998. The approved development observes an FBL of 4.95m. Clause 6.4 of KLEP 2012 states that “*consent must not be granted to development on land in the foreshore area except for the following purposes:*
(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area...”
48. The approved dwelling rebuilds upon land below the foreshore building line which was previously occupied by a dwelling house.
49. The proposed additional 300mm in height and squaring up of the wall to the living room encroaching the FBL is minor in nature, maintaining a single storey scale and results in negligible additional impact on the foreshore.
50. The proposal as modified satisfies the provisions of Clause 6.4 of KLEP 2012.

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

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

Deemed State Environmental Planning Policy – Georges River Catchment

52. All stormwater from the proposed development can be treated in accordance with Council’s Water Management Policy and would satisfy the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment
- (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and*
53. A Planning Proposal for the New City Plan to amend Kogarah LEP 2012 was placed on exhibition from Monday 30 March 2015 until Friday 29 May 2015.
54. The New City Plan includes changes to zoning and the introduction of development standards in parts of the City to deliver a range of new housing options.
55. Specifically, the New City Plan proposes to rezone the land from E4 – Environmental Living to R2 – Low Density Residential.
56. The height of building and floor space ratio (FSR) controls are proposed to be introduced into KLEP 2012. The maximum building height and FSR proposed for the subject site under the New City Plan is 9m and 0.4.9:1 respectively. These proposed changes remain generally consistent with the development controls for height and FSR currently contained within KDCP 2013.

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Item D1 (cont.)

57. The proposal is not inconsistent with the objectives and standards within the New City Plan.
58. There are no other draft planning instruments that are applicable to this site.

(iii) any development control plan,

Kogarah Development Control Plan 2013 (KDCP 2013)

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

Building Scale

60. The approved development has a floor space ratio of 0.5:1 or 415.25m², which does not comply with the allowable FSR of 0.49:1 or 408m². The proposed 'squaring up' of the southern corner of the living room adds an additional 3.5m² to the FSR.
61. The proposed FSR is 0.50:1 (418.75m²) or a variation of 10.75m². The variation is minor in nature and contributes in no significant way to the bulk of the building or visual impact to adjoining properties.
62. The proposed modifications do not alter the overall height of the building from that approved. However, the single storey living room on the western side of the lower ground floor level is increased in height by 300mm to a height of 3.5m. The room complies with height and is setback 1.95m from the side boundary resulting in minimal difference to the perceived scale of the element to that approved.

Amenity Issues

Open Space

63. The proposed modifications do not affect the provision of deep soil landscaping on the site which is provided in excess of 15% of the site area.

Privacy

64. The proposed modifications involve a number of window amendments which satisfy the privacy requirements contained in KDCP 2013. The proposed side windows are either on the lower ground floor level or off a bedroom, resulting in negligible impact.

Foreshore Locality Guidelines

65. The proposal 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 Land Water Interface.

Item D1 (cont.)

66. The proposed increase in glazing to the waterway is increased from the approved percentage of 56.3% to 61.8% or a 5.5% increase. A large part of the glazed area is shaded by overhangs and balconies, thereby reducing glare and reflectivity to the waterway. The variation is supported.
- (iv) *any matters prescribed by the regulations, that apply to the land to which the development application relates,*
67. 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,*
68. 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) *the suitability of the site for the development,*
69. 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,*
70. In accordance with the provisions of Section A2 – Public Notification of KDCP 2013 the application was placed on neighbour notification for a period of fourteen days. Adjoining property owners were notified in writing of the proposal and invited to comment. Three submissions were received.
71. The amended plans were not formally renotified as they reduce the level of impact and clarify a number of issues with the plans. The objectors from No.'s 77 and 71 The Promenade were met at their residences to view and discuss the amended plans. The objector from No.73 The Promenade was not met as their concern relates to the approved height and not the modifications. There is no change to the height of the building proposed as viewed from their residence.
72. The submissions raise the following concerns:

1. PrivacyComment

73. The objectors from No.71 The Promenade raise concern over the proposed side facing bedroom windows overlooking their property. The objectors have large side facing glass walls facing the subject site and they are worried that the users of the bedroom will be able to look up at their living room. It was explained that the impact comes from the objectors' property which has the larger windows looking down from a higher level living room, and that bedrooms are not active rooms and not given

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Item D1 (cont.)

weight in consideration of overlooking impacts. The issue is unreasonable and no further modification is warranted.

74. The objectors from No.77 The Promenade want assurance that the roof over the lower level living room will not be converted to a terrace. This is already covered by condition 34 in the consent which states:- “The areas marked “not accessible” shall not be converted or used for the purposes of a terrace or balcony.” The proposal maintains the label “not accessible” on the Section 96 issue plans. No further action is necessary.

2. Visual impact

Comment

75. The objectors from No.77 The Promenade are opposed to the increased height of the single storey living room on the lower ground floor level, stating that it has adverse visual impacts on their property, both in terms of its height and encroachment of the protruding roof slab overhang, particularly as a cumulative impact of the dwelling as a whole.
76. The Section 96 application was submitted with a height increase of 700mm (height of 3.7m) as seen from the objectors’ property with a roof slab overhang of 700mm.
77. In response to the concerns raised, the plans were amended to reduce the height of the room by 200mm to 3.5m and reduce the overhang of the roof slab to 300mm.
78. The amendment was not supported by the objectors. It was explained to the objectors that the wall is setback 1.95m from their boundary and the roof overhang is setback 1.6m from the boundary to No.77 The Promenade, where a setback of 900mm is permissible for wall heights up to 3.5m and eaves may extend to a setback of 450mm.
79. The proposal as amended is not considered to result in significant visual impact and is supported.

3. Modifications not considered “substantially the same development” and therefore requiring a new application.

Comment

80. The objectors from No.71 The Promenade question whether the proposed modifications are substantially the same development.
81. The proposed development as modified is substantially the same development and can be considered as a Section 96 application.

4. Poor quality of plans and documentation of modifications.

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Item D1 (cont.)

Comment

82. The objectors raise concern with the quality of the plans lodged with the application which contained a number of errors including modifications not highlighted, errors with levels and lack of clarity.
83. The amended plans rectify the errors which resolve the issue.

5. Construction and compliance issues

Comment

84. The objectors from No.'s 71 and 77 The Promenade raise issue with a number of ongoing construction compliance issues.
85. These issues cannot be considered as part of the assessment of the Section 96 application and are for the Principal Certifying Authority to address with the applicant/owner and builder.

6. Height of approved dwelling

Comment

86. The objectors from No.73 The Promenade are concerned that the proposed modifications increase the overall height of the dwelling and add height through the provision of skylights.
87. The proposal as seen from No.73 The Promenade is unaltered from that approved. The proposed skylights will not project above the parapet line.

7. Side Access Stairs

Comment

88. The objectors from No.73 The Promenade object to the proposed stairs covering stormwater pipes from their property to the waterway.
89. The application does not address how the stairs will affect the pipes or provide servicing access.
90. The objectors from No.71 The Promenade object to the height of the proposed stairs being close to the top of the boundary fence-line.
91. The stairs have been found to result in unacceptable likely impacts with respect to the above matters and are recommended for deletion.

8. Smoke from barbecue in alfresco area

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Item D1 (cont.)

Comment

92. The objectors verbally raised issue in the site meeting of 14 March 2016 that the side ventilation opening to the alfresco area will result in barbecue smoke wafting up the side boundary and into their bedroom windows.
93. The barbecue in the alfresco area is approved, though the barbecue is moved from 2.2m to 1.6m from the side boundary. The approved plans shows the alfresco area as fully open and supported by two columns, where the Section 96 plans show a solid wall to the side boundary with a single rectangular opening. The level of impact would be similar and within acceptable limits in any case.
94. It is unreasonable to require a domestic barbecue to be mechanically ventilated to another part of the site, particularly given the open, waterfront location.

Mediation/Public Meeting

95. On 28 January 2016 the objectors from No.77 The Promenade were met at their residence to discuss their concerns with visual impact, compliance and construction issues, plan quality, kitchen window and use of roof.
96. On 28 January 2016 the objectors from No.71 The Promenade were met at their residence to discuss their concerns with privacy, quality of plans and side access stairs.
97. The objectors from No.73 The Promenade were not met as their issues related to the approved development and its height. The issues were discussed with them on the phone where it was clarified that the proposed modifications did not result in a higher or wider building than that approved. The objectors were advised that amended plans would clarify maximum height RLs accordingly.
98. On 15 March 2016 the objectors from No.'s 71 and 77 The Promenade were met on site to discuss the amended plans. The issues remain unresolved.

(e) *the public interest.*

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

Conclusion

100. The application has been assessed having regard to the provisions of Section 96(1A) and Section 79C (1) of the Environmental Planning and Assessment Act 1979, the provisions of KLEP 2012 and KDCP 2013.
101. Having regard to the above, it is considered that the modifications would result in a development that is substantially the same as that originally approved. Accordingly, the proposed modifications can be supported.

Item D1 (cont.)

Attachments/Annexures

<u>1</u>	Neighbour Notificaton Map	1 Page	Annexure
<u>2</u>	A4 set of Plans	3 Pages	Annexure

End of Report

Item D2: No. 999 Beach Street, Blakehurst - Development Application No. 199/2015 - Construction of a new amenities building at Carss Bush Park (near the corner of Torrens and Beach Streets) - Kogarah City Council (Applicant & Owner) - Middle Ward - Annexures

Author: Rod Logan - Director Planning and Environmental Services (PC)

Reason for report: Unresolved objections and the submission of a petition.

Recommendation:

- a) That Council as the Consent Authority pursuant to Section 80(1)(a) Environmental Planning & Assessment Act 1979, grant consent to Development Application No. 199/2015 for the construction of a new amenities building at Carss Bush Park (near corner Torrens and Beach Street) subject to the following conditions:-

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 by Designs for Living, drawing number Da02, Revision 2 dated Jan. 16.

SECTION B – Prior to the Issue of a Construction Certificate 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.

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:

- Principal Certifying Authority/Inspections Fees of Paid
- *Builders Long Service Levy of \$700.00

Item D2 (cont.)

*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.

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.

3. 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.

4. Tree Protection

Prior to the commencement of any works on the site the tree protection measures required for the established Tree Protection Zone (TPZ) of the trees to be retained shall be installed in accordance with Section 4 - *Australian Standard AS 4970-2009 - Protection of trees on development sites*.

Unless otherwise specified in AS 4970-2009 a protective fence consisting of 1.8m high fully supported chainmesh shall be erected around the base of the tree. The distance of the fence from the base of each tree is to be in accordance with the TPZ listed below. A layer of organic mulch 100 millimetres thick shall be placed over the protected area and no soil or fill should be placed within the protection area.

There shall be no services installed within the drip line TPZ of the tree. This fence shall be kept in place during demolition, construction and also have a sign displaying "Tree Protection Zone" attached to the fence, this must also include the name and contact details of the Project Arborist.

5. 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.

Item D2 (cont.)

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.

6. Health and Public Nuisance

The use of the premises shall not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance or damage other premises.

7. Inspections - Outbuildings/Miscellaneous

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

- (a) after excavation for, and prior to the placement of, any footings, and
- (b) prior to pouring any in-situ reinforced concrete building element, and
- (c) prior to the covering of the framework for any floor, wall, roof or other building element, and
- (d) prior to covering any stormwater drainage connections, and
- (e) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

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.

8. Roof Water

All roof water is to be connected to an approved drainage disposal system.

9. 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.

10. Avoid Annoyance from lighting

Any lighting of the premises shall be installed in accordance with Australian Standard AS 4282 – 1997: Control of the Obtrusive Effects of Outdoor Lighting so as to avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads. Flashing, moving or intermittent lights or signs are prohibited. The intensity, colour or hours of illumination of the lights shall be varied at Council's discretion if Council considers there to be adverse effects on the amenity of the area.

Item D2 (cont.)

11. Tree Retention

The trees identified in the table below shall be retained and not damaged, pruned or removed without the prior approval of Council. These trees shall be protected in accordance with the requirements of Section 4 - *Australian Standard AS 4970-2009 - Protection of trees on development sites*.

<u>Tree Species</u>	<u>Location of Tree/Tree No</u>	<u>TPZ</u>
Eucalyptus sp	1	4.56 metres
Eucalyptus sp	2	3.84 metres
Eucalyptus sp	3	4.56 metres

12. Locked at Night

The proposed amenities building is to be locked at night, except when there is an approved event in the park.

13. Landscaping

The area of landscaping indicated on the approved plans are to be maintained so as to provide a visual buffer to the front, side and rear of the amenity building.

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.

Nil

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.

14. Compliance with the Building Code of Australia

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

15. 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

Item D2 (cont.)

- (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.

16. Notification Requirements (Other)

In relation to non-residential work, prior to the commencement of construction the Principal Certifying Authority must be informed in writing of:-

- (i) the name and contractor licence number of the licensee who has contracted to do or intends to do the work;
- (ii) the name and permit number of the owner-builder who intends to do the work, with a copy of the permit submitted; and
- (iii) the date of their intention to commence the erection of the building.

Further, if a contract is entered into for the work to be done by a different licensee or arrangement for doing the work are otherwise changed, the Principal Certifying Authority is to be immediately informed in writing of sufficient particulars for it to update its records.

17. 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.

END CONDITIONS

SECTION H – 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) 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.

- b) That the applicant be advised of their right of appeal to the Land and Environment Court with regard to Council's decision in this matter.
- c) That those who made a submission be advised of Council's decision in this matter.

Report Summary**Proposal**

1. Council is in receipt of an application for the construction of a new amenities building at Carss Bush Park (near the corner of Torrens & Beach Streets) on the subject site. This assessment relates to an amended proposal that re-sited the proposed building and reduced the scale of the facility from the original application.

Site and Locality

2. Carss Bush Park is located on the foreshore of Kogarah Bay, with access from Carwar Avenue & Bunyala Street, Carss Park and Torrens Street & Beach Street, Blakehurst.

REGULAR COUNCIL MEETING

Item D2 (cont.)

Zoning and KLEP 2012 Compliance

3. The site is zoned RE1 (Public Recreation) under KLEP 2012 and the proposal is a permissible form of development with Council's consent. The proposed development satisfies all relevant clauses contained within KLEP 2012.

Submissions

4. Five letters and a petition containing 79 signatures, representing 33 properties in the adjacent Beach and Torrens Streets, the Kogarah Bay Progress Association and 15 properties away from the immediate vicinity of Carss Park, were received to the original application raising the following concerns:
 - 'Spend the money to upgrade the old amenities on the other side of the park'.
 - 'This side of the park only gets used on Sundays'.
 - 'It will be an eyesore when coming down Torrens or Beach Streets'.
 - 'It will devalue our homes'.
 - 'It will attract undesired activity at night'.

The design of the amenities building was reduced in size and located further away from the corner of Beach and Torrens Streets, then renotified to the residents of those streets and to the other fifteen addresses on the petition.

5. Two letters of objection were received to the amended proposal that reflected the aforementioned concerns.

Conclusion

6. Having regard to the Heads of Consideration under Section 79C (1) of the Environmental Planning and Assessment Act 1979 and following a detailed assessment of the proposal, it is recommended that Development Application No. 199/2015 should be approved subject to conditions.

Report in Full

Proposal

7. Council is in receipt of an application for the construction of a new amenities building at Carss Bush Park (near the corner of Torrens and Beach Streets) on the subject site. The original proposal was for a toilet block being 10m in length, a curved width of between 5.7 – 7.0m and a height of between 2.4 – 3.82m, with a disabled access path, located in an open grass area adjacent to the corner of Beach and Torrens Streets, Blakehurst.
8. The current revised proposal is for a toilet block being 7.92m in length, a curved width of between 5.7 – 6.6m and a height of between 2.7 – 3.88m, with a disabled access path, located further away from the corner of Beach and Torrens Streets, Blakehurst towards the waterfront, close to three existing trees to the southern end (rear) of the proposed building.

Item D2 (cont.)

9. Landscaping is proposed to the front, side and rear of the building to soften the visual impact.

The Site and Locality

10. Carss Bush Park is located on the foreshore of Kogarah Bay, with access from Carwar Avenue and Bunyala Street, Carss Park and Torrens Street and Beach Street, Blakehurst. The park land consists of a relatively large area of public open space partly adjoined by residential properties. It covers an area of approximately 25 hectares and is classified as a place of Local Heritage Significance under the provisions of the Kogarah Local Environmental Plan, 2012.
11. The park is classified as a Regional Park and supports a wide variety of recreational facilities and services. These include the Carss Park Café and Grill, the Kogarah War Memorial Olympic Swimming Pool, sports fields, bushland, playground areas, bicycle and pedestrian walking paths, picnic and BBQ facilities, intertidal swimming area, Carss Cottage, Life Savers building, internal car parks, stage area and other amenities and infrastructure.



Aerial Shot of Carss Bush Park

Item D2 (cont.)



Carss Bush Park close up. Proposed Amenities Building location superimposed in white.

Background

12. Carss Bush Park Plan of Management was adopted by Council in 2004. That plan identified the need to provide new toilet facilities within the park and nominated the southern portion of the park (BBQ area) as an appropriate location. It also notes that the “*facility should not be unreasonably close to nearby adjoining residential housing in Beach and Torrens Street, Carss Park*”.... “*to be of small scale and discretely located away from residential housing and water views*”.
13. Extensive community consultation was undertaken as part of the Plan of Management process. A detailed summary of all submissions is provided in the Carss Bush Park Plan of Management 2004. The proposed toilet facility received both support and objections during this consultation. However the most notable issues identified during this consultation involved the conversion of the existing Kiosk building to a Licensed Café and the construction of a skate park in Todd Park.
14. In August 2010, *Knox and Partners Landscape Architects Pty Ltd* were engaged to prepare a Landscape Master Plan for Carss Bush Park as recommended in the adopted Plan of Management. A Draft Landscape Master Plan was placed on Public exhibition between 7 February and 1 April 2011 and adopted by Council in May 2011.
15. As part of the exhibition phase, Council distributed 530 brochures to residents surrounding Carss Bush Park, including Beach Street and Torrens Street. The Public Exhibition was also advertised in the St George and Sutherland Shire Leader on Tuesday, 8 February 2011.

REGULAR COUNCIL MEETING

Item D2 (cont.)

16. As part of the exhibition, a Public Open Day was conducted by consultants Knox & Partners Landscape Architects Pty Ltd on Wednesday, 16 March 2011 between 4pm - 7pm at Carss Park Life Saving Hall. This allowed the public and interested parties to discuss the proposals in the plan with the consultants. There were 25 registered attendees at the Public Open day.
17. The Landscape Master Plan notes both community support for, and objection to, additional toilets in the locality.

Existing Toilet Block

18. In 2005 a Landscape Heritage Study was prepared as a recommendation of the Plan of Management. The Heritage Study called for the removal of the existing brick toilet block located above the Carss Vault noting that it is intrusive and ugly.
19. That existing toilet building is not accessible and is largely redundant due to the upgrades to the toilets located in the adjacent Kiosk building.
20. The park is classified as a Regional Park with high visitation rates. The user catchment extends beyond the Kogarah City Council boundaries. The popular southern portion of the park (BBQ area) has been embellished with new seating, shelters and trees over the past five years in accordance with the Masterplan. The distance from this area to the existing toilets is approximately 200-250m.
21. Knox and Partners Landscape Architects provided a presentation to Councillors on the Landscape Master Plan at the Assets & Services Working Party meeting in May 2011. The final Landscape Master Plan ultimately included a new toilet to be constructed in the southern portion of the park (BBQ area).
22. Council engaged “Designs for Living” in August 2015 to complete the design of a toilet block at this location. The design brief was to provide a modern facility that is safe, clean and inviting and adequately meet the needs of the volume of park visitors utilising this area. The new toilets will be locked at night by security contractors. Landscaping has been included in the design to minimise any visual impacts and security lighting will be installed to deter unfavourable or unsociable behaviour.
23. The design of the toilet is smaller than the existing building above the Carss Vault. It has been positioned slightly cut into the slope to reduce height in keeping with the location nominated in the Landscape Masterplan. The style of the building is also in keeping with Council’s recent amenity buildings constructed in Donnelly Park, Hogben Park and Quarry Reserve.

Section 79C Assessment

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

Item D2 (cont.)

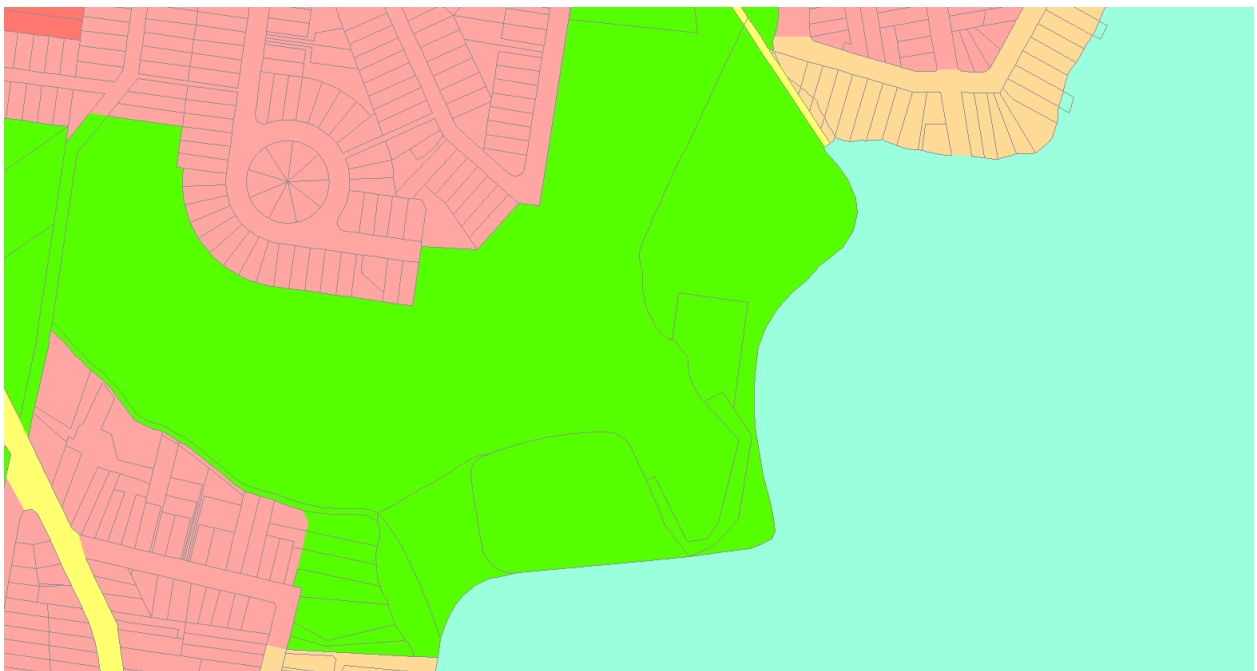
(1) Matters for consideration – general

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

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

Kogarah Local Environmental Plan 2012 (KLEP 2012)**Part 2 – Permitted or Prohibited Development****Clause 2.1 – Land Use Zones**

25. The subject site is zoned RE1 (Public Recreation) and the proposal is a permissible form of development with Council's consent. The proposed development satisfies the objectives of the zone.

**Part 5 – Miscellaneous Provisions****Clause 5.9 – Preservation of Trees or Vegetation**

26. The proposed development involves construction of a structure adjacent to several trees subject to the provisions of this clause.
27. Council's Coordinator of Parks and Recreation has inspected the subject trees and found that the works will not cause an unreasonable impact on those trees and has proposed conditions to require arborist supervision of excavation adjacent to those trees.

REGULAR COUNCIL MEETING

Item D2 (cont.)

Clause 5.10 – Heritage Conservation

28. The subject site is listed as a heritage item in Schedule 5, of Kogarah Local Environmental Plan, 2012 and as such was referred for comment to Council's heritage advisor.
29. No objections were raised on heritage grounds.

Part 6 – Additional Local Provisions

Clause 6.1 – Acid Sulfate Soils

30. The area of the proposed development is identified as within the 100m buffer zone for acid sulfate soils.
31. A report was carried out by environmental consultants which detected no evidence of acid sulfate soils in the vicinity of the proposed structure.

Clause 6.2 – Earthworks

32. The proposed earthworks are considered acceptable having regard to the provisions of this clause as the works are not likely to have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

Clause 6.3 – Flood Planning

33. 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

34. The subject site is not affected by a foreshore building line and therefore provisions of this clause are not applicable.

State Environmental Planning Policy No. 19 – Urban Bushland.

35. The subject site includes bushland on land zoned RE1 – Public Recreation under KLEP 2012. Therefore, pursuant to Clause 9 of SEPP No. 19 development consent cannot be granted unless Council has taken into account:
 - *the need to retain any bushland on the land,*
 - *the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and*
 - *any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.*

Item D2 (cont.)

36. Having regard to the above, the proposed development will not have an adverse effect on any bushland within the public reserve and the submitted Landscape Master Plan proposes the planting of appropriate species that will provide an appropriate buffer between the adjoining bushland. In addition, the installation of appropriate sedimentation and stormwater controls will ensure the proposal will not result in the siltation of the waterways.

Deemed State Environmental Planning Policy – Georges River Catchment

37. All stormwater from the proposed development can be treated in accordance with Council's Water Management Policy and would satisfy the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment
- (ii) *any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and*
38. The New City Plan includes changes to zoning and the introduction of development standards in parts of the City. Specifically, the New City Plan proposes to maintain the zoning of the land as RE1 – Public Recreation. The proposal is not inconsistent with the objectives and standards within the New City Plan. There are no other draft planning instruments that are applicable to this site.
- (iii) *any development control plan,*
39. None applicable
- (iv) *any matters prescribed by the regulations, that apply to the land to which the development application relates,*
40. 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,*
41. The proposed development is of a scale and character that is in keeping with other structures within the park. Accordingly, the proposal is not considered to have a significant impact on the natural and built environment of the locality.
- (c) *the suitability of the site for the development,*
42. It is considered that the proposed development 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,*
43. The original application was placed on neighbour notification for a period of fourteen days, where nearby property owners were notified in writing of the proposal and invited to comment.

REGULAR COUNCIL MEETING

Item D2 (cont.)

44. Five letters and a petition containing 79 signatures, representing 33 properties in the adjacent Beach and Torrens Streets, the Kogarah Bay Progress Association and 15 properties located away from the immediate vicinity of Carss Park, were received raising the following concerns:

Spend the money to upgrade the old amenities on the other side of the park

Comment

45. The old amenity block located on the opposite side of Carss Park to the rear of the Carss Vault memorial is proposed to be removed due to its condition and the existence of the toilets to the rear of the Carss Park Café. The intent of this proposal is to give a diversity of choice for park users on the southern side of the park. Upgrading the old amenity building will not achieve this goal.

This side of the park only gets used on Sundays

Comment

46. Sundays are generally the busiest days for the park, including the BBQ area. These facilities will still be used at other times, noting that Sundays will be the busiest.

It will be an eyesore when coming down Torrens or Beach Streets

Comment

47. After the original objections, the revised plans have reduced the size of the structure, moved it further away from the corner of Beach and Torrens Streets and provided additional landscaping to soften the visual impact.

It will attract undesired activity at night

Comment

48. The amenity block will be locked at night by Council contractors, so access into the amenity block after dark will not be available.

It will devalue our homes

Comment

49. Possible impact on the value of adjacent homes is not a head of consideration under the Environmental Planning & Assessment Act and cannot form the basis of a decision on this matter. The contention is also not supported by any documentation.
50. After the initial exhibition period the design of the amenities building was reduced in size and located further away from the corner of Beach & Torrens Streets, then renotified to the residents of those streets and to the other fifteen addresses on the petition.

REGULAR COUNCIL MEETING

Item D2 (cont.)

51. Two letters of objection were subsequently received that reflected the aforementioned concerns and one new issue from the resident at No. 4 Beach Street as follows:-

The amenity block is seen from my balcony and detracts from the existing park views

Comment

52. An inspection from the dwelling at No. 4 Beach Street confirmed that the rear of the amenity block would be visible from the balcony and living areas of the upper level of the dwelling, at a distance of approximately 40m.
53. The proposal will not impact on the existing water views and the view of the rear of the proposal will be obscured by the existing trees and proposed landscaping to the rear of the new building.

Mediation/Public Meeting

54. A public consultation meeting was held on 24 November 2015 between Paul Cox and Glenn Moody of Council and 32 residents of Beach and Torrens Streets and one resident from Cooleen Street, Blakehurst (as per attendance sheet) to discuss concerns raised with the proposed amenity building.
55. The proposed location of the original amenity building was pegged out and red tape was placed around the stakes to indicate where the building was to go. Photos were taken and these are included in the annexures.
56. The meeting started at 4.30pm and concluded at 6.00pm.
57. Later discussions were held with the applicant to convey the issues raised at the public meeting, which resulted in revised plans being prepared to vary the location of the structure and reduce the size of the facility.
58. After re-notifying the revised plans and receiving two written objections, meetings were held individually with the owners of No. 28 Torrens Street and No. 4 Beach Street Blakehurst, both of whom live in dwellings adjoining Carss Bush Park. Their concerns have not been resolved.

(e) *the public interest.*

59. It is considered that the proposed development is of a scale and character that does not conflict with the public interest.

Conclusion

60. The application has been assessed having regard to the Heads of Consideration under Section 79C of the Environmental Planning and Assessment Act 1979 and the provisions of KLEP 2012.
61. Following detailed assessment it is considered that Development Application No. 199/2015 should be approved subject to the aforementioned conditions to minimise the potential impact on neighbours, the environment and park users in general.

Item D2 (cont.)**Attachments/Annexures**

1	Neighbour Notification Map	1 Page	Annexure
2	Original Plans	2 Pages	Annexure
3	Aerial Original Position	1 Page	Annexure
4	Original Position Photos	2 Pages	Annexure
5	A4 Revised Plan	1 Page	Annexure
6	Revised Plans	2 Pages	Annexure
7	Revised Location Photo	1 Page	Annexure
8	Photo from 4 Beach Street balcony	1 Page	Annexure

End of Report