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# **STATEMENT OF ENVIRONMENTAL EFFECTS**

**ALTERATIONS AND ADDITIONS**

**(Section 8.3 Review Request)**

114 Whale Beach Road, Whale Beach NSW 2107  
Lot 82 DP 10782



## 1.0 SITE DESCRIPTION AND LOCATION

The site is legally described as Lot 82 DP 10782 and known as 114 Whale Beach Road, Whale Beach NSW 2107. The site consists of one (1) allotment located on the high, south-western side of Whale Beach Road and has a northerly aspect.

The site is regular in shape with a frontage of 20.115m along Whale Beach Road and respective depths of 67.055m and 69.83m along the north western and south eastern side boundaries. The site has a surveyed area of approximately 1362sqm.

The site accommodates a part-2 part-3 storey dwelling house ("the Dwelling") and a swimming pool located forward of the front building line. The site is located within moderately sloping terrain with an overall slope of 20° to 25° to the north east. An un-retained steep cut (with an estimated slope angle of 60° to 70° below horizontal) to an approximate height of 2.7m is present along the southern side of the driveway with sandstone flagging placed against the lower part. This creates a steep verge. An *Angophora floribunda* (Rough Barked Apple) ("Tree 1") is located at the top of this cut. Tree 1 has a lean of approximately 6° downslope over the lower part of the trunk. However, the upper part of Tree 1 and its canopy appear mostly vertical.

Access to the site is via a concrete driveway that is a Right of Carriageway to the adjacent site at 116 Whale Beach Road.

The rear yard comprises numerous canopy trees, whilst the site frontage and road reserve accommodate canopy trees and a retaining wall.

The site is identified within a geotechnical landslip area and is mapped as containing tree species representative of the Pittwater Spotted Gum Forest endangered ecological community.

Adjoining and surrounding development comprises low density residential development within a landscape setting.

The site is not a heritage listed item, nor is it located within a Heritage Conservation Area.

Ocean views are enjoyed from the site's frontage.



Image 1 – Site location courtesy of Google Maps



## **2.0 SITE HISTORY**

The site has been used for residential purposes for an extended period of time. Development Application No. NO391/09 for alterations and additions to the existing house was approved by the Council on 16 June 2010.

This Statement of Environmental Effects has been prepared in response to Council's refusal of development application DA2020/1186 ("the DA") and for a Section 8.3 Review Request ("the Review Request").

## **3.0 LOCALITY**

The site is in a predominantly residential area located within the E4 Environmental Living zone pursuant to the *Pittwater Local Environmental Plan 2014* ("PLEP 2014") within the Northern Beaches Council Local Government Area. The application the proposed works was prepared in accordance with Pittwater Local Environmental Plan 2014 and Pittwater Development Control Plan 2014 ("the DCP"). Consideration has also been given to State Environmental Planning Policy (Coastal Management) 2018.

## **4.0 PROPOSED WORKS – AS AMENDED BY SECTION 8.3 REVIEW REQUEST**

A portion of the existing retaining wall to the driveway has partially collapsed, exposing the roots of Tree 1. The proposal seeks approval to demolish the existing stone retaining wall which is in poor condition and partially located on the road reserve; construct two new concrete block retaining walls to create a tiered garden; and widen a section of the shared driveway, which is currently steep and tightly angled.

The proposed works are all external, situated at the front of the site. It is proposed to retain Trees 2, 3 and 4 (despite it being noted that they are dead as per the Arboricultural Impact Assessment Report prepared by Urban Arbour dated 31 August 2020 ("the Arborist's Report")) which was provided with the DA. The retention of Trees 2, 3 and 4 will provide a continuing habitat for the local wildlife.

The plans accompanying the Review Request have been amended and provide as follows:

- Only Tree 1 is proposed to be removed.
- A replacement tree has been proposed of the same species from Pittwater Spotted Gum EEC.
- Approximately 85% of proposed new planting has been selected from Pittwater Spotted Gum EEC.

The amended plans accompanying the Review Request are:

- Site Plan DA100 Rev D dated 24/08/21
- Demolition Plan DA200 Rev D dated 24/08/21
- Sections Plan DA300 Rev E dated 24/08/21
- Cut and Fill Plan DA400 Rev D dated 24/08/21
- Landscape Plan DA500 Rev D dated 24/08/21.

## **5.0 PLANNING CONTROLS**

The PLEP 2014 provisions are:

- Land Zoning E4 – Environmental Living
- Acid Sulfate Soils Map – Class 5



- Located on the Biodiversity Map
- Located on the Geotechnical Hazard Map

SEPP 55 – The site has an established history of residential zoning and use. It has not been zoned for industrial, agricultural or defence purposes at any time. There is therefore no evidence to suggest the land is likely to be contaminated or rendered unsuitable for continued residential use.

## 6.0 REVIEW OF COUNCIL'S DETERMINATION

### Reasons for refusal:

1. ***Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of the Plan of the Pittwater Local Environmental Plan 2014.***

### Reply:

The aims of the PLEP 2014 set out at Clause 1.2 are as follows:

#### *Clause 1.2 Aims of Plan*

- (1) *This Plan aims to make local environmental planning provisions for land in Pittwater in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.*
- (2) *The particular aims of this Plan are as follows—*
  - (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
  - (a) *to promote development in Pittwater that is economically, environmentally and socially sustainable,*
  - (b) *to ensure development is consistent with the desired character of Pittwater's localities,*
  - (c) *to support a range of mixed-use centres that adequately provide for the needs of the Pittwater community,*
  - (d) *to retain and enhance land used for employment purposes that is needed to meet the economic and employment needs of the community both now and in the future,*
  - (e) *to improve access throughout Pittwater, facilitate the use of public transport and encourage walking and cycling,*
  - (f) *to encourage a range of housing in appropriate locations that provides for the needs of the community both now and in the future,*
  - (g) *to protect and enhance Pittwater's natural environment and recreation areas,*
  - (h) *to conserve Pittwater's European and Aboriginal heritage,*
  - (i) *to minimise risks to the community in areas subject to environmental hazards including climate change,*
  - (j) *to protect and promote the health and well-being of current and future residents of Pittwater.*

The proposed development is consistent with the aims of the PLEP 2014.

The removal of Tree 1 will be compensated by new plantings.

The risk to the community will be minimised by the removal of Tree 1.

2. ***Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the E4 Environmental Living zone of the Pittwater Local Environmental Plan 2014.***

### Reply:

The objectives of the E4 Environmental Living Zone include:



## 1. Objectives of zone

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To provide for residential development of a low density and scale integrated with the landform and landscape.
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

It is noted that Council has formed the view that the removal of trees representative of the Pittwater Spotted Gum Forest Endangered Ecological Community is not 'low-impact' development or development that is 'integrated with the landform and landscape'. The Council considers that the removal of Tree 1 is not necessary as it is not at risk of imminent failure.

The Arborist's Report notes (at 5.1) that all trees on the site are subject to protection under the PLEP 2014 and the PDCP 2014. However, the Arborist's Report identifies (at 8.1) that Tree 1 "is located on a significant slope and at the time of inspection, the soil below the woody / structural roots and trunk appeared to be eroding, which may be undermining the tree's root system and the tree may be unstable".

The Applicant's Geotechnical Report prepared by AssetGeoEnviro dated 1 April 2021 ("the Geotech Report") notes (at 1.1) that although, in its original assessment of the DA, the Council correctly acknowledged that the property lies within a geotechnical landslip area, it did not specifically address the risk of instability of the Tree 1 in accordance with the methods in AGS 2007 (Landslide Risk Management, Australian Geomechanics, Vol 42, No 1, March 2007), which is required under Council's Geotechnical Risk Management Policy for Pittwater – 2009.

The Geotech Report provides "a more detailed assessment of the risk on instability" in relation to Tree 1 "with regard to risk to property and life as per Council requirements, in support of an appeal against Council's determination." The results of the Landslide Risk Assessment are at Section 3 of the Geotech Report, with the potential hazard / event being identified as the topple of the tree in a northerly downslope direction. The risk is described as follows:

*"For this hazard / event, the elements of development on / adjacent to the site that are at risk are the existing driveway, Whale Beach Road and footpath, and associated site development comprising services and utilities including overhead power / communications lines. Risk to persons includes those using the driveway in front of the tree, pedestrians on the footpath, and road traffic, either during the tree topple event, or afterwards (for persons in a vehicle that could potentially crash into the fallen tree). We have not considered the electrocution hazard that could apply in the event of fallen power lines. Table A provides our risk assessment for the site with respect to risk to property and Table B provides our risk assessment for the site with respect to risk to life."*

The Geotech Report provides the following:

### 1.1 Risk to Property

*"... erosion of up to about 400mm extent under the tree has already occurred and further erosion is inevitable, to the extent that a topple is expected in the next 5 years .."*

### 1.2 Risk to Life

*A vulnerability of 1 is assigned (i.e. it is assumed that the tree would cause death if it struck a person). It is possible that a person might see the tree falling without sufficient warning to then avoid being struck, and an alternative 0.5 is adopted for best case scenario.*

*We have assumed that the falling tree would happen with sufficient speed such that the probability of avoiding the strike is very low (i.e. Probability of not evacuating = 1).*

*The combination of the above assessed factors gives a risk of  $3.88 \times 10^{-6}$  for the best case scenario and  $2.31 \times 10^{-5}$  for the worst-case scenario, which are both **Tolerable** as per AGS 2007 definition. We note that this is higher" (meaning a greater risk) "than the acceptance criteria for Northern Beaches Council*



with respect to life, which is **Acceptable**.”

The Geotech Report makes the following conclusion and recommendations:

*“Based on the observations, assessments and interpretations described above, it is our opinion that the risk of instability posed by the tree in question does not meet Northern Beaches Council’s minimum requirements with respect to life.*

*Underpinning or provision of additional support to the tree is not considered to be feasible without further jeopardizing the stability of the tree. Whilst such measures, if possible, would reduce erosion from the base and roots of the tree, they would not extend the life expectancy of the tree.*

*We therefore recommend prompt removal of the tree by a licensed and experienced tree removal contractor in accordance with Council and SafeWork requirements.”*

The proposed development is consistent with the objectives of the E4 Environmental Living zone on the basis that:

- The proposed works will have no adverse impacts on the ecological, scientific or aesthetic values of the locality. The tree to be removed is posing a risk to life.
- The proposed works will not change the existing topographical features of the site. The proposed retaining wall replaces an existing wall with a new wall to create a more level garden space to plant and prevent erosion and landslip. The proposed retaining wall will be designed to engineering specifications to prevent landslip.

**3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.6 Biodiversity protection of the Pittwater Local Environmental Plan 2014.**

**Reply:**

Clause 7.6 of the PLEP 2014 provides that:

*7.6 Biodiversity*

- (1) *The objective of this clause is to maintain terrestrial, riparian and aquatic biodiversity by—*
  - (a) *protecting native fauna and flora, and*
  - (b) *protecting the ecological processes necessary for their continued existence, and*
  - (c) *encouraging the conservation and recovery of native fauna and flora and their habitats.*
- (2) *This clause applies to land identified as “Biodiversity” on the [Biodiversity Map](#).*
- (3) *Before determining a development application for development on land to which this clause applies, the consent authority must consider—*
  - (a) *whether the development is likely to have—*
    - (i) *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
    - (ii) *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
    - (iii) *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
    - (iv) *any adverse impact on the habitat elements providing connectivity on the land, and*
  - (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*
- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*
  - (a) *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
  - (b) *if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*



The steep embankment and soil erosion around the roots of Tree 1 compromise its stability and it is recommended for removal, for safety reasons, by the Geotech Report. The proposed development is consistent with the requirements of clause 7.6 of the LEP.

**4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.12 Palm Beach Locality of the Pittwater 21 Development Control Plan.**

**Reply:**

The Palm Beach Locality Statement notes as follows:

*“A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.”*

The Council in its assessment of the DA deemed that: “The proposed development requires the removal of significant trees within the embankment in the road reserve to accommodate for the widened driveway and retaining walls.” It is the Council’s view that “the trees show no signs of deteriorating health and form a distinct nature feature within the streetscape. The proposal has not been designed to maintain the natural landform and tree canopy and therefore, is contrary to the future character of the Palm Beach locality.”

The proposal has been amended to only provide for the removal of Tree 1 and the landscape plans have been amended to meet the Council’s requirement for replacement planting to include 80% species representative of the Spotted Gum Community.

The following are relevant DCP provisions:

**D12.1 Character as viewed from a public place**

The proposed retaining wall will be visible on Whale Beach Road due to part being located on the Council verge. The proposed retaining wall will be engineered to ensure further erosion and landslip does not occur onto the road. The proposed retaining wall will be clad in stone to blend in with the natural environment and enhance the existing streetscape. It is compatible with other existing retaining walls located on the street verge along Whale Beach Road (refer to Image 2).

**D12.3 Building Colours and Materials**

The proposed retaining wall will be clad in stone to blend with the natural surroundings. The upper retaining wall will be clad in Corten steel which will complement the bushland landscape.

**D12.5 Front Building Line**

The proposed extension of driveway and retaining walls are permitted forward of the building line.

**D12.6 Side and Rear Building Line**

The proposed retaining wall is permitted within the side building line.

**D12.10 Landscape Area - Environmentally Sensitive Land**

There is a minimal change to the existing Landscaped Area.

Standard	Required	Proposed
Site area		1,362 sq m
Landscaped Area	817.2 sq m	829.4 sq m
Impervious area allowance	-	81.72 sq m (6%)
Total landscaped area	-	911.1 sq m (66.8%)



D12.13 Construction, Retaining walls, terracing and undercroft areas

The proposed retaining wall which is visible from a public space will be clad in stone, which is Council's preferred material.

- 5. Pursuant to Section 4.15(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community of the Pittwater 21 Development Control Plan.**

**Reply:**

Tree 1 has been assessed as posing a risk of harm. Compensatory replacement planting will be completed as part of the proposed works.

The landscape plans have been amended to comply with clause B4.7 of the DCP.

- 6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B4.22 Preservation of Trees and Bushland Vegetation of the Pittwater 21 Development Control Plan.**

**Reply:**

Tree 1 is proposed to be removed as it poses a risk of harm. Compensatory replacement planting will be completed as part of the proposed works.

- 7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.1 Landscaping of the Pittwater 21 Development Control Plan.**

**Reply:**

The proposed landscaping is consistent with the following specific outcomes of Clause C1.1 of the DCP:

Outcomes

- A built form softened and complemented by landscaping. (En)
- Landscaping reflects the scale and form of development. (En)
- Development results in retention of existing native vegetation. (En)
- Landscaping results in the long-term retention of Pittwater's locally native tree canopy. (En)
- Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species (En)
- Landscaping enhances habitat and amenity value. (En, S)
- Landscaping results in reduced risk of landslip. (En, Ec)
- Landscaping results in low watering requirement. (En)

New planting will only occur behind the proposed retaining wall. Planting will be all native species. No large canopy trees are proposed within the new gardens due to the limited width of the beds and steepness of terrain. However, a large canopy tree (*Angophora Floribunda*) is proposed to be planted in the rear yard (see Landscape Plan DA500 Rev D dated 24/08/21).

No views will be obstructed by the proposal due to the topography of the site and location of the retaining walls.

The proposal will not impact the visual privacy of any adjacent properties.

There will be no effect on acoustic privacy by the proposed works.



**8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.14 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.**

**Reply:**

The relevant provisions in Clause D12.14 of the DCP are:

**Outcomes**

To achieve the desired future character of the Locality.

To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront.(En,S).

Maintenance and enhancement of the tree canopy.(En,S)

Colours and materials recede into a well vegetated natural environment.(En,S)

To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component (En, S)

To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.

Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

**Controls**

Screen planting shall be located between structures and boundaries facing waterways.

Canopy trees are required between dwellings and boundaries facing waterways and waterfront reserves.

Development is to minimise the impact on existing significant vegetation.

The applicant shall demonstrate the retention and regeneration of existing native vegetation outside of the immediate area required to carry out the development.

The development is to incorporate measures for planting and maintenance of native vegetation within those areas which are already cleared, and which are not required to be cleared to allow for the development.

The siting, building form, orientation and scale of the development shall not compromise the visual integrity of the site by removal of canopy trees along ridges and upper slopes.

The development must incorporate the use of unobtrusive and non-reflective materials and the colours of exterior surfaces shall help blend structures into the natural environment.

Applicants are to demonstrate that proposed colours and materials will be dark and earthy.

The amended plans that accompany the Review Request ensure that the proposal is consistent with the outcomes and controls in Clause D12.14.

## **7.0 OTHER ASSESSMENT ISSUES**

### **State Environmental Planning Policy (Coastal Management) 2018**

The site is subject to the SEPP (Coastal Management) 2018. The relevant clauses are set out below:

**13 Development on land within the coastal environment area**

(1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*

(a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*

(b) *coastal environmental values and natural coastal processes,*

(c) *the water quality of the marine estate (within the meaning of the [Marine Estate](#)*



*Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*

- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

Comment:

The proposed retaining wall is to replace an existing wall. Although the wall has been lengthened, it is required to ensure the bank is stabilised. The proposal is unlikely to cause any adverse impacts to the ecological environment, coastal environmental values and natural coastal processes, water quality, marine vegetation, native vegetation and fauna or their habitats. The site does not contain any Aboriginal cultural heritage and the development will not have any impact on the surf zone due to its distance from the water.

#### **14 Development on land within the coastal use area**

- (1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*
  - (a) has considered whether the proposed development is likely to cause an adverse impact on the following—*
    - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
    - (ii) overshadowing, wind funneling and the loss of views from public places to foreshores,*
    - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
    - (iv) Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and*
  - (b) is satisfied that—*
    - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
    - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
    - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
  - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development*

Comment:

The site does not have access to or along the foreshore. The retaining walls will not cause any overshadowing due to the location on the site. The proposal is consistent with the surrounding coastal and built environment which is low-density residential dwellings that have similar retaining walls to that which is proposed. The walls are of appropriate bulk, size and scale to suit the topography of the site.

#### **15 Development in coastal zone generally—development not to increase risk of coastal hazards**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

Comment:

The land is not identified as being affected by any coastal hazards and is not likely to cause increased risk of coastal hazards on any other land. It is therefore considered that the application complies with the requirement of the SEPP (Coastal Management) 2018.



### **Improved traffic and vehicular safety**

The existing driveway serves the subject property and the immediately adjoining property at 116 Whale Beach Road. The existing driveway does not comply with the relevant Australian Standard 2890.1. Therefore, vehicular ingress to and egress from the driveway are movements which must be treated with caution by users.

The Review Request is supported by a report prepared by Varga Traffic Planning dated 24 August 2021. The conclusion in the Varga Report is that the proposed works to widen the driveway will significantly improve the current situation by providing a fully compliant path for a B99 vehicle turning to / from the south, thereby eliminating any scraping or wheel lifting. This should be accepted by the Council as a positive aspect of the proposed development and a reason for approval.

### **8.0 CONCLUSION**

The proposal has been designed to improve the safety and amenity of the existing site and to reflect the values of the E4 Environmental Living. The failing stone wall will be replaced with engineered walls that will prevent future landslip and erosion of the embankment. New native planting will soften the walls and improve the existing streetscape.

The proposed development complies with all relevant controls and it is respectfully requested that the Council review the decision to refuse the DA and grant consent to the application.

### **SITE PHOTOS:**



*Image 2 - Existing stone retaining walls located on council verge and alongside driveways on Whale Beach Road.*





*Image 3 - Showing existing failing stone wall to be replaced and tree to be removed.*



*Image 4 - Showing existing failing stone wall and tree with exposed roots.*