

Our Ref 14051\_S96

26 March 2014

The General Manager  
Warringah Council  
725 Pittwater Road  
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**Attention Mr Steven Findlay**

Dear Steven,

**RE SECTION 96 MODIFICATION FOR DEVELOPMENT APPLICATION (DA NO 2008/1216)  
RELOCATION OF EXISTING BASEMENT PARKING AND CONSTRUCTION OF REVETMENT SEA WALL  
NOS 1184-1186 PITTWATER ROAD, NARRABEEN**

On behalf of Yadev Holdings Pty Ltd, applicants of the above-mentioned consent, we hereby seek Council approval for a Section 96 modification of a development consent (DA No 2008/1216). The modification seeks to relocate the basement car parking area by extending the approved basement to the east of the building. The proposal also seeks consent to provide coastal protection via the construction of a revetment sea wall east of the proposed basement level car parking area.

The proposed development is the subject of a Section 96 modification and not a new development application. This is because the proposal is substantially the same as the approved development and will not alter the presentation of the proposed building. The proposal will involve no change to the number of resident or visitor car parking spaces and, as the modification relates predominately to basement car parking that will take place wholly below existing ground level, there will be minimal environmental impact.

The submission contains a brief site analysis, a brief background to the proposal, the conditions of development consent requested to be modified, a description of the proposed modifications, an environmental planning assessment, and, a conclusion.

## **1.0 SITE ANALYSIS**

### ***The site***

The subject site is located on the eastern side of Pittwater Road, between Clarke and Wetherill Streets and is known as Nos 1184-1186 Pittwater Road, described as Lot 6 in DP 659074.

The site is trapezoidal shaped, with a northern frontage to Clarke Street of 54.58m, an eastern frontage to Narrabeen Beach of 29.825m, a southern boundary of 54.58m and a western frontage to Pittwater Road of 30.48m, providing a total site area of 1,645m<sup>2</sup>.

The site is occupied by a two-storey residential flat building comprising 12 units and a single-storey shop on the north-western part of the site, with a frontage to Pittwater Road.

### ***The surrounds***

To the north, on the opposite side of Clarke Street, is a single-storey dwelling-house on the corner of Pittwater Road and Clarke Street.



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Further to the north is a two-storey residential flat building. To the east is Narrabeen Beach. To the south at No 1182 Pittwater Road is a two-storey cement rendered brick and tile duplex, comprising one dwelling on the ground floor and one on the first floor. Further to the south are single-storey dwelling-houses and three-storey residential flat buildings.

To the west, on the opposite side of Pittwater Road, is a single-storey vacant shop on the corner of Clarke Street and Pittwater Road, and single-storey dwelling-houses to the south of that.

## **2.0 BACKGROUND**

On **21 August 2008**, a Development Application (DA No 1216/2008) was lodged with Warringah Council for the demolition of part of an existing heritage building and the construction of alterations and additions to create five (5) residential units with basement car parking and strata subdivision at Nos 1184 and 1186 Pittwater Road, Narrabeen.

On **23 April 2009**, Council granted development consent to the proposal subject to a number of conditions.

Since approval was granted for the development, it has come to the attention of the property owner that Council has approved a number of applications within the Zone of Wave Impact. The most notable of these being Development Application (DA No 1230/2008) at No 1196 Pittwater Road.

On **15 September 2009** Council approved a Section 96 modification to Development Consent (DA No 1230/2008) which allowed structures to be built over the Zone of Wave Impact. The basis for this decision was on the advice of a Coastal Engineer's Report which stated that the elements over the Zone of Wave Impact would have 'have no effect on wave processes, wave loading or wave impacts to neighbouring properties'.

On **6 and 12 February 2014** pre Lodgement Meetings were held with Warringah Council with respect of the proposed modification. Council have provided written comment outlining matters to be addressed as part of the application.

## **3.0 REQUESTED MODIFICATIONS TO DEVELOPMENT CONSENT**

As indicated, this submission is for the modification of the approval to relocate basement car parking, and construct a revetment sea wall. These modifications will require amendments to conditions of development consent to reflect the amended architectural drawings and updated consultant reports.

### ***Car Parking***

The approval locates basement car parking associated with the new development beneath the existing building on the subject site, and forward of the building line. It is proposed to relocate the car parking proposed that is forward of the building, to the rear of the site (see Figures 1 and 2 on the following page).

### ***Revetment Sea Wall***

The proposal also seeks consent for the construction of a revetment sea wall adjacent to the eastern boundary with Narrabeen Beach. Adjoining properties to the north and south have existing seawalls and the proposal seeks to continue this coastal protection. The seawall is to be constructed wholly within the subject site (see Figure 2 on the following page).

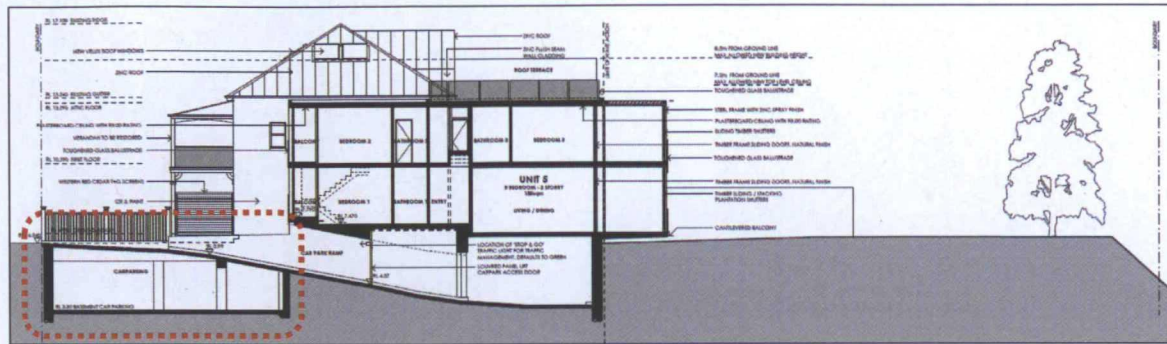


FIGURE 1: APPROVED SECTION PLAN

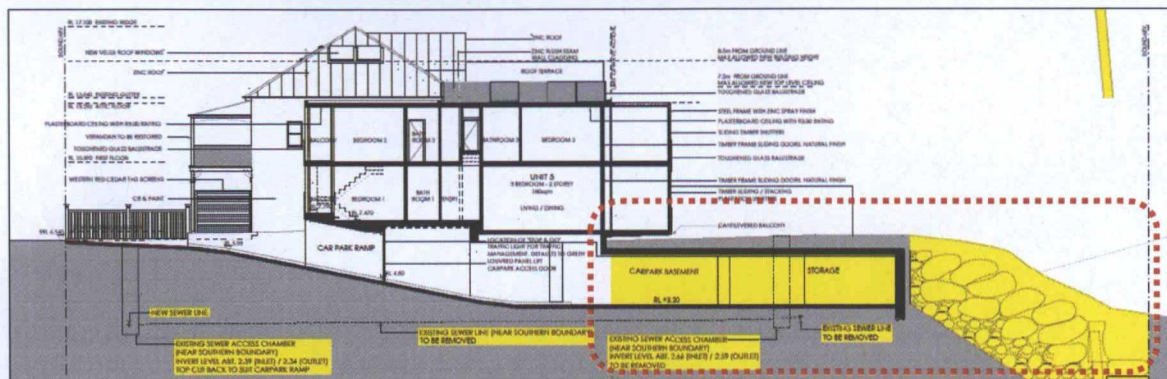


FIGURE 2: PROPOSED SECTION PLAN SHOWING RELOCATED PARKING AND SEAWALL

## 4.0 ENVIRONMENTAL PLANNING ASSESSMENT

This section deals with the proposal's consistency with the various statutory and non-statutory provisions. It also addresses the relevant matters for consideration under Section 79C(1)(b) to (e) of the Environmental Planning and Assessment Act (1979).

### 4.1 Statutory and Policy Compliance

There are two (2) statutory and one (1) non-statutory documents that relate to the subject site. The statutory documents the Warringah Local Environmental Plan (LEP) 2011 and State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development. The non-statutory document is the Warringah Development Control Plan (DCP) 2011. The relevant sections of the above statutory and non-statutory documents will now be outlined.

#### 4.1.1 Warringah Local Environmental Plan (LEP) 2011

The subject site is zoned R2 Low Density under the Warringah Local Environmental Plan (LEP) 2011, which was gazetted on 9 December 2011. The site is a heritage item however is not within a heritage conservation area.

The LEP Land Use Table contains the permissible uses of the R2 Zone. Residential flat buildings are an innominate use and are therefore prohibited in the zone.

The existing three storey building on the subject site was constructed in c1919 and has been used as a residential flat building since 1928. The earliest records for the existing single story building are from 1962 but the exact date of construction is unknown. This building has been used as a shop.

A letter from the Council dated 26 February 1988 provides evidence that the site enjoys existing use rights. Relevantly it states, inter alia

*"Notwithstanding the above, councils records indicate that the building on the property has existing use rights for 11 flats and a real estate shop. The building having been in existence on the site since at least 1937."*

In addition to the above, the proposed residential flat building was approved prior to the commencement of the Warringah LEP 2011, and this approval is still current. On the basis of the above, the proposal enjoys existing use rights in accordance with the EP&A Act.

The proposal will not alter either the height or FSR of the proposal. The re-location of car parking and storage areas is to occur entirely below ground and the seawall does not involve any alteration to the approved building.

### ***Development within the Coastal Zone***

Clause 5.5 of the LEP relates to development within the coastal zone. In Council's pre-lodgement advice, specific reference is made to ensuring that protective works on adjoining properties are not weakened, that the new sea wall would not result in increased coastal risks to adjoining properties, that there will be no detrimental environmental impact and that the matters of SEPP No 71 – Coastal Protection are satisfied. These four key matters are addressed in the response prepared by Haskoning Australia Pty Ltd which concludes the following, inter alia

*The proposed protective works would not be expected to*

- *Weaken the existing protective works on adjoining properties,*
- *Result in significant detrimental increases in coastal risks to other development or properties, nor*
- *Significantly alter coastal hazards to the detriment of the environment*

*The proposed protective works satisfy the matters for consideration in Clause 8 of under [sic] State Environmental Planning Policy No 71- Coastal Protection*

The Haskoning Pty Ltd report also outlines that the implementation of protective works on the subject site will fill a gap that exists between protective works on adjoining sites. Rather than cause adverse impact, the proposal may act to reduce risk on adjoining sites. On this basis, the proposal satisfies the requirements of Clause 5.5 of the LEP and is appropriate in terms of coastal protection.

### ***Heritage Conservation***

Clause 5.10 relates to heritage conservation and, as outlined, the subject site is identified as a Heritage Item. As outlined, the proposed car parking relocation occurs at basement level and will have no visual impact on the site.

The proposal will also not change the presentation of the existing building when viewed from the street or within the site. The relocation of the basement is in fact a positive heritage outcome for the building as it reduces basement excavation beneath the dwelling, minimising risk to the existing building. The construction of the seawall similarly will not have any impact on the existing building.

The proposal has been subject to various Heritage studies with Heritage Impact Statements, a Conservation Schedule of Works and a Conservation Management Plan (2006) all having been prepared for the site.

Graham Brooks and Associates have reviewed the amended drawings and have provided a concise comment with respect to Heritage considerations

The currently proposed s96 amendments to the approved project will have a positive effect on the heritage significance of the property, primarily due to the relocation of the approved basement garage away from below the footprint of the historic house, thereby reducing construction risk to the building

In addition, the proposal will result in a significant reduction in the cost of the project, an outcome that will be beneficial to the extent that the project has yet to move forward in challenging economic times partly due to the high construction costs. If the project commencement can be facilitated by this amendment, there is an increased potential for the overall project to commence earlier than may have otherwise been the case. The proposed outcome for the overall project is regarded as very positive for the appearance and condition of the historic house as it presents to Pittwater Road. An earlier commencement and completion will be a positive boost for the environmental heritage of Warringah.

In our opinion, on the basis of these positive conclusions, the proposal is appropriate from a heritage point of view

### **Coastline Hazards**

Clause 6.5 of the WLEP 2011 relates to coastline hazards and includes considerations relating to protection of coastal environments and implementation of the NSW Coastal Policy. Once again, these matters have been addressed in supporting documentation prepared by Haskoning Australia Pty Ltd and the proposal is considered to be appropriate in this instance.

### **4.1.2 SEPP No 65 – Design Quality of Residential Flat Development**

State Environment Planning Policy No. 65 – Design Quality of Residential Flat Development was gazetted on 26 July 2002 and applies to the subject site. The SEPP aims to improve the design quality of residential flat development. The Design Code relating to SEPP No. 65 states the following, inter alia:

*In addition to cupboards and bedroom wardrobes, provide accessible storage at the following rates:*

- |                                 |                  |
|---------------------------------|------------------|
| - Studio Apartments             | 6m <sup>3</sup>  |
| - One-Bedroom Apartments        | 6m <sup>3</sup>  |
| - Two-Bedroom Apartments        | 8m <sup>3</sup>  |
| - Three Plus Bedroom Apartments | 10m <sup>3</sup> |

The proposal includes sufficient storage for each unit to satisfy these requirements. Accordingly, the proposal complies with the storage requirements of SEPP No. 65.

### **4.1.3 Residential Development Control Plan (DCP) 2011**

The Warringah DCP 2011 came into effect on 9 December 2011 and applies to the subject site. As the proposal does not involve any alteration to the buildings on site and the works are confined to below ground, the majority of DCP controls are not applicable in this instance. The relevant sections of the DCP will now be considered.

### **Side Boundary Setbacks**

The DCP outlines that a side setback of 0.9m applies to the subject site and that the area within the setback is to be free of underground structures. The basement is proposed to be built to both side boundaries which does not comply with the setback requirement.



The approved development includes the basement level built to the boundary and the proposal is consistent with this. The relocated basement at the rear of the site will also be built to the boundary however, in Council's pre-lodgement minutes it has been indicated that the proposed setbacks are supported on merit. The excavation work required for this basement will be carried out in accordance with the geotechnical report prepared for the proposal, and this is discussed below.

The setback of the basement from Pittwater Road is improved as a result of the proposal and there is not likely to be any impact on the coastal interface as a result of the proposed sea wall. In our opinion, the side setbacks as proposed are appropriate in this instance.

### **Excavation**

The DCP contains various controls relating to excavation which primarily relate to minimising potential impact. The proposal relates excavation for car parking on the subject site. A revised geotechnical report has been prepared by Geotechnique Pty Ltd in support of the proposal.

This report outlines that the assessments and recommendations for the original proposal are still relevant to the amendments. It is our opinion, based on the geotechnical report, that the proposal is appropriate in this instance and will not result in any unreasonable impact upon adjoining properties.

### **Landscaping**

On the subject site, the DCP requires 40% of the site area to be landscaped open space. In order to be included in this calculation, there must be a soil depth of at least 1m. The landscaped areas over the garage have a depth of 1m and therefore are included in this instance. The proposal complies with the 40% requirement and in our opinion is acceptable in this instance.

## **4.2 Appearance of the Building and Landscape Considerations**

As outlined, the proposal will not result in any alteration to the existing building. The relocated car parking will be confined to below ground and the new seawall will not adversely impact the appearance of the subject site.

## **4.3 Relationship to Surrounding Development**

It is our opinion that the amendments will improve the relationship of the proposal with the adjoining developments. As outlined, the seawall will improve continuity of coastal protection measures in the locality and may reduce coastal risk to adjoining properties. The proposal is not likely to have any adverse visual impacts on Narrabeen Beach given that seawalls/coastal risk mitigation are common, given the coastal context of the locality.

There is not likely to be any impact on surrounding development as a result of the car parking as it is similar to the existing approval and contained within a basement level. In our opinion the proposal will relate well to surrounding developments and is appropriate in this instance.

#### **4.4 The Suitability of the Site**

As the modifications do not alter the intensity of the development on site, the traffic generation will not change from that of the approved development. Accordingly, the traffic to be generated by the proposed development is not likely to have an impact on the level of service, capacity and function of nearby intersections.

The proposal maintains the approved number of car spaces which are simply being relocated to a different location on site. The proposed car parking has been designed in accordance with Australian Standard AS 2890 and complies with the requirements of this standard. Given the consistency of traffic and parking considerations with the previous approval, it is our opinion that the proposal is appropriate in this instance.

#### **4.5 The Public Interest**

As outlined throughout this report, the proposal does not alter the streetscape presentation of the approval. The alterations are contained to below ground level, or the rear of the site. The car parking is appropriate as it simply relocates approved parking elsewhere on the site. The seawall is appropriate as it affords greater protection to the subject site, and adjoining allotments. In our opinion, the proposal is in the public interest.

### **5.0 CONCLUSION**

It is considered that the above-mentioned minor modification to DA 2008/1216, will not significantly alter the external appearance of the building and is not likely to adversely affect the amenity of the surrounding residences. In addition, the proposal continues to provide the approved number of car parking spaces and improves coastal protection arrangements for the subject site.

Accordingly, for the reasons stated above, we respectfully request that Council modify development consent No. DA 2008/1216 to reflect the amended plans.

Please find enclosed the required architectural drawings, Section 96 form and lodgement fee. If you have any queries regarding this matter, please do not hesitate to contact our office on 9362 3364.

Yours faithfully,



George Karavanas  
**DIRECTOR**