

Northern Beaches Council  
PO Box 82  
Manly NSW 1655

## STATEMENT OF ENVIRONMENTAL EFFECTS

7 TH November 2022 – Revision A (14 TH February 2023)

This Section 4.56(2) Modification of Consent, application seeks Council's approval for the minor modifications to the Development Consent DA 2021/1790 granted on the 21<sup>st</sup> of April 2022 and then a subsequent Appeal to the Land and Environment Court, Case No. 2022/00225631. Sealed Orders were issued by the Court on 13 December 2022.

### SITE DESCRIPTION AND ZONING

Address:	214 Hudson Parade, Clareville NSW 2107
Legal description:	Lot 42, DP 13760
Site Area	739.8sqm
Street Frontage:	15.24 m
Land Zoning:	E4 Environmental Living
Conservation/Heritage Area:	No
Bushfire prone land:	No
Geotechnical Hazard Map:	H1
Geotechnical Risk:	Landslide Hazard
Acid Sulphate Soil:	Class 5
Maximum Building Height:	8.5 m



Property location plan

Source: <https://maps.six.nsw.gov.au/>

## EXISTING DA 2021/1790

The purpose of the approved alterations and additions to the existing dwelling house, associated garaging facilities and other buildings that abut Hudson Parade are to create what the architect describes as a “courtyard dwelling.” The approved works are described as follows:

- Level 1 – Parents’ level

This comprises of master bedroom with walk-in robe, ensuite, storeroom and a study.

- Level 2 – Bedroom level

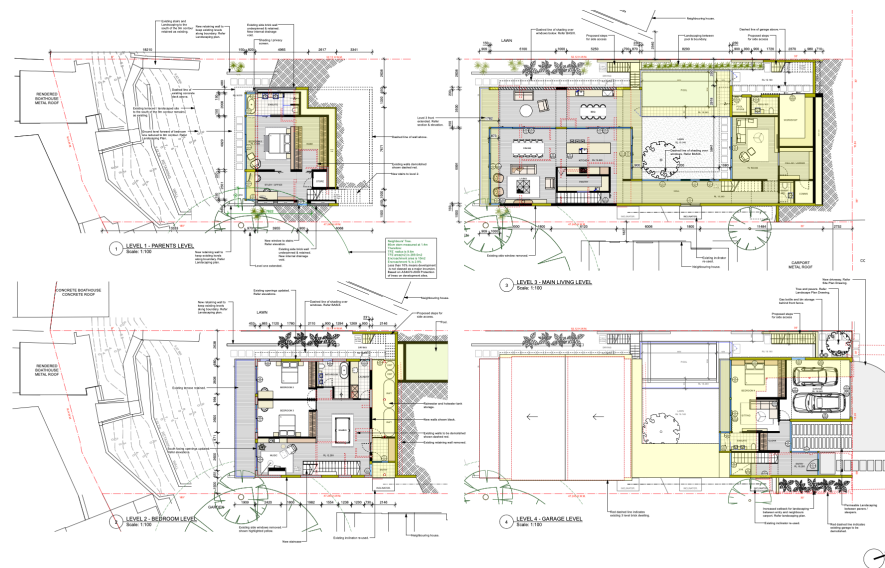
Consists of new entry facilities with tanks, two bedrooms, music room, bathroom and laundry. The existing windows on the southern elevation are changed and the existing internal configuration altered to accommodate a games room.

- Level 3 – Main Living Area

Existing internal arrangement is altered to accommodate a new kitchen, living and dining room and outdoor verandah areas. The new northern dwelling across the courtyard has new a tv room, cellar, bathrooms, workshop, and pool storage area. The new central courtyard on this level consists of lawn and a new pool.

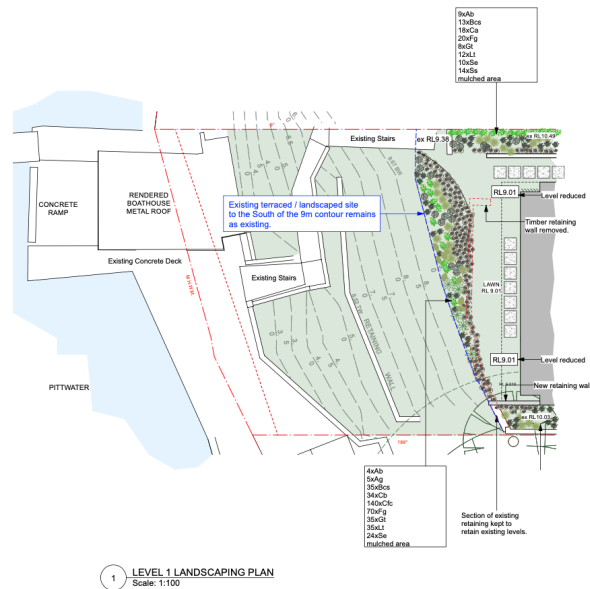
- Level 4 – Garage Level

The existing garage and other structures at this level are demolished for a double garage, new entry facilities, bedroom, sitting area and bathroom facilities.



## APPROVED LANDSCAPING IN DA 2021/1790

The approved landscaping in DA 2021/1790 consisted of a landscape designed to the 9m contour with everything to the South of this level intended to remain the same. Since then, the architect's sketch design has been handed over to landscape architects at Fifth Season Landscapes and they have proposed that this South part of the landscape also becomes terraced and updated to match the rest of the property.



Plan showing approved landscaping

## EXISTING LANDSCAPING



Photo looking east over lower sloped landscaping



Photo showing uneven steps and poorly constructed retaining walls



## EXISTING LANDSCAPING

The site at No. 214 Hudson Parade, Clareville slopes from RL 18.5 at Hudson Parade to RL 1.5 at the lower boundary towards Pittwater. The top two thirds of the site have been terraced, yet the lower third extending towards Pittwater at an angle of 38° remains a steep slope with no terracing.

The existing landscaping for this lower third extends from the rear of the house, consisting of introduced vegetation species, timber retaining walls and an access stairway down to the Foreshore Line. From the rear of the house at RL 9.00 the site slopes steeply down to RL 1.5 at the hardscaped Foreshore Line.

It has been noted in the Geological report included in this application that the timber retaining wall has begun to be creep-affected and it appears the sandstone retaining wall has some cracking from movement.



Photo showing existing timber sleeper retaining wall.



Photo showing close up of stairs and retaining walls

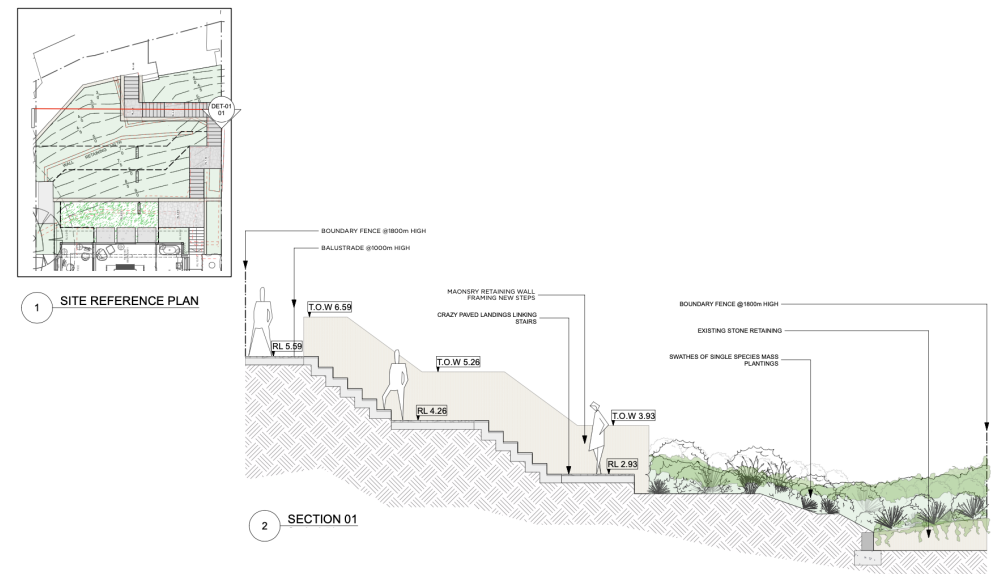
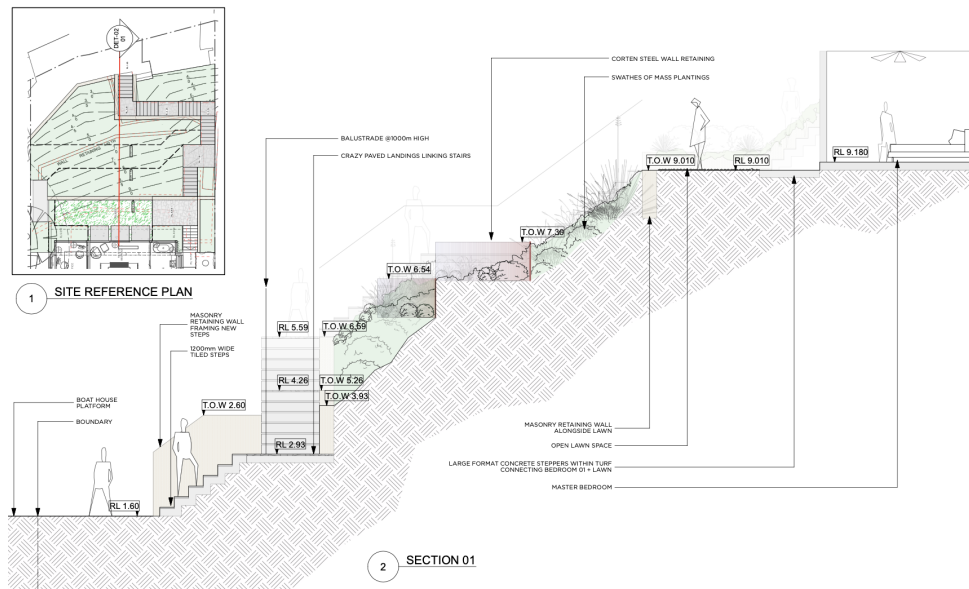


## THE PROPOSED MODIFICATIONS

The following landscaping modifications to the existing DA are sought:

### Rear Landscaping

- Existing staircase to be replaced with a new staircase with new masonry retaining walls.
- Rear landscaping to increase from 2 tiers to 4 tiers through introduction of two new Corten steel retaining walls and one new masonry wall.
- Existing stone retaining wall at rear between landscaping and Foreshore Area to be retained.
- Existing vegetation consisting of introduced species to be removed and replaced with mostly native plantings.



## STATUTORY PROVISIONS FOR SECTION 4.56 MODIFICATION BY CONSENT AUTHORITIES GRANTED BY THE COURT

It is submitted that the proposed modification falls within the definition of a Section 4.56 as described with the Environmental Planning and Assessment Act 1979.

- (1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if;*
  - (a) It is satisfied the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
  - (b) It has notified the application in accordance with;*
    - (i) The regulations, if the regulations so require, and*
    - (ii) A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
  - (c) It has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
  - (d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*
- (1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*
- (1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but in reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*
- (2) After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.*
- (3) The regulations may make provision for or with respect to the following:*
  - (a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,*
  - (b) the effect of any such deemed determination on the power of a consent authority to determine any such application,*
  - (c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.*

In relation to Section 4.56 (1), (a) of the Act a consent authority needs to ensure:

*" It is satisfied the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified"*

This Section 4.56 Modification only seeks to provide some detailed specification in terms of the landscaped area between the proposed dwelling and the water, to the south facing slope. The approved dwelling, the courtyard and the garage/ Level 4 bedroom remains exactly the same as per the Sealed Orders granted by the Land and Environment Court.

This area is currently comprised of introduced planting on steeply sloped land, in between stepped retaining walls which are old and not built to current standards. There is an existing flight of steps that connects the house down to the waterfront concrete apron which is located on the south-western corner of the site. The existing steps are narrow, steep and in disrepair. The handrail is not sturdy or safe at all and does not facilitate safe access to the waterfront.

The proposed landscaped under this Section 4.56 Modification is substantially the same development as the development for which the consent was originally granted:

- The development will look exactly the same from the public areas on Hudson Parade as the development that has been granted consent by the Court.
- The development will look substantially the same from the public areas when viewed from Pittwater. The proposed landscaping will remain similar to existing, that is, low level shrubs and plants within a sloping/ stepped area from the house down to the water with a single external set of steps to allow access from the house down to the existing boat shed and waterfront.
- There are no extensions of hard landscaping, no Cabannas or any increase in entertaining areas. The extent of soft landscaping is essentially the same as the approved development.
- The proposed landscaping, while essentially remaining the same in terms of overall effect when viewed from surrounding areas and sites, will provide improved planting in terms of native species in place of introduced European plants. It will be an overall improvement in terms of the aesthetic and will contribute to the setting of the approved development.
- The proposed landscaping will not impact upon the amenity of any neighbour, will not provide any additional overshadowing or loss of view. To that intent it will remain substantially the same as the existing area.
- The re-built staircase will improve the safety and amenity by removing the existing steep uneven stairs and creating a safe walkway from the house down to the waterfront.

In support of this position, due consideration has been given to numerous decisions made by the NSW Land and Environment Court and by the NSW Court of Appeal involving applications made pursuant to Section 4.55 of the EP&A Act. In this regard, particular reference is made to the *City of Sydney vs Ilenace Pty Ltd* (1984) 3 NSWLR 414 and *Moto Projects (No. 2) Pty Ltd vs North Sydney Council* (1999) 106 LGERA 298. In both these cases, it was established that the proposed modification would result in a building or development that would be 'essentially or materially' the same as the currently approved development.



The position has been further reinforced by the Land and Environment Court of NSW, which has held that the question of '*substantially the same*' means 'essentially or materially of having the same essence' (*Talbot J in Wolgon Action Group Incorporated vs Lithgow City Council in 2001* and *Pearlman J in Schrodgers Australia Property Management Pty. Ltd. versus Shoalhaven City Council and Anor 1999*).

It is therefore submitted that the following outcomes are relevant to this proposed modification:

- This application for modification of a development consent does not significantly alter the external appearance or built form of the subject development to any degree that it would represent a building of a different urban design to the approved development.
- The overall built form outcome on the site is indistinguishable in terms of overall bulk, scale and appearance of the development that has been previously approved.
- The amenity and streetscape outcomes of the original development consent are retained with no adverse impacts from the amendments in terms of amenity for privacy or visual impacts.
- The modification involves minimal environmental impact.
- The use of the land will remain for the purpose of a residential dwelling as approved by the Land and Environment Court under Sealed Orders 2022/00225631, dated 13 TH December 2022.

## 1. Pittwater Local Environmental Plan LEP 2014

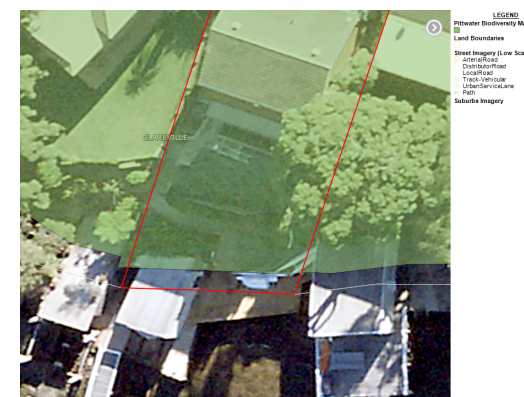
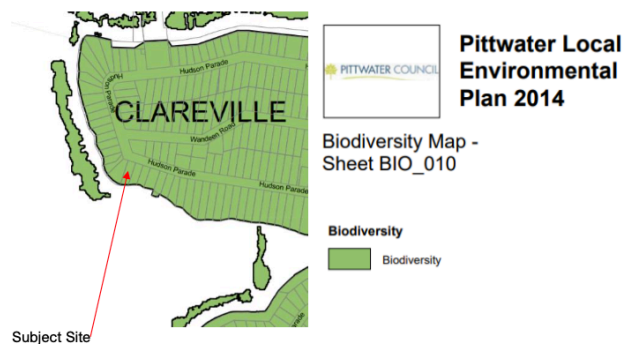
CONTROL	REQUIREMENT	MODIFICATION COMMENTS
7.1 Acid Sulfate Soils	The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.	The subject site has been identified as Class 5 Acid sulfate Soils under the Pittwater LEP. Since the proposed works are not within 500m of a Class 1,2,3 or 4 land that is 5m AHD there is no requirement for an Acid Sulfate Soils management plan.
7.2 Earthworks	The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on the environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	The Geotechnical Report included in this application by Douglas Partners identifies the collapse of excavation during construction of retaining walls as unlikely and low risk. If these retaining walls are undertaken in the manner outlined in the report they should stop the soil-creep occurring in these areas and help prevent future erosion which would impact on environmental functions, neighbours and features of surrounding land.
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.	Total Earth Care have carried out an Estuarine Risk Management report which has been included with this Section 4.55 package. The conclusion reached indicates that with the mitigation measures outlined in the report, the proposal has a low risk of adversely impacting the coastal environment area. The native planting proposed in this design is intended to bring further potential habitats for flora and fauna.
.8 Limited Development on a Foreshore Area	1. The objectives of this clause are as follows: (a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area. 3. Development consent must not be granted under this clause unless the consent authority is satisfied that: (a) the development will contribute to achieving the objectives for the zone in which the land is located, and (c) the development will not cause environmental harm such as: i) pollution or siltation of the waterway, or ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or iii) an adverse effect on drainage patterns, or iv) the removal or disturbance of remnant riparian vegetation, and	As outlined in Total Earth Care's Estuarine Risk Management Report the impact of the proposal on the biophysical, hydrological and ecological environment would be minor/moderate and temporary.  In return the proposal would reintroduce native species to the site which now largely consists of introduced species. This is more aligned with the objectives of the E4 land zone the site is located within.  The proposal would also help mitigate the soil-creep the rear of the property is starting to experience as well as preventing any future erosion on site which could pollute the waterway, impact on habitat and change drainage patterns.  The new levels of the landscaping do not change the existing historic, cultural or social significance of the land or make the rear of the

<p>f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and</p> <p>(h) sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change, have been considered.</p>	<p>property more susceptible, than the existing site, to coastal erosion or changed flood level patterns.</p>
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## Pittwater Local Environmental Plan LEP 2014 – Detailed Review

### 7.6 Biodiversity

The biodiversity map shows site 214 Hudson Parade as within a biodiversity area.



### 7.8 Limited Development on a Foreshore Area

The Limited Development on a Foreshore Area Map shows that the boatshed sits within the Foreshore Building Line.





The proposed modifications occur at the rear of the site towards Pittwater and below the Foreshore Area Line. This means the proposed modifications must address the coastal environment area, estuarine hazards and development on waterfront land requirements. The proposed modifications also sit within the biodiversity area outlined in the original DA and as such must uphold the minimal impact on flora and fauna.

### 3. State Environmental Planning Policy (Coastal Management) 2018 (SCM18)

This section applies to the local government area of Pittwater to provide best practice standards for development:

CONTROL	REQUIREMENT	MODIFICATION COMMENTS:
Division 3 – Coastal Environment Area	<p>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:</p> <p>(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,</p> <p>(b) coastal environmental values and natural coastal processes,</p> <p>(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,</p> <p>(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,</p> <p>members of the public, including persons with a disability,</p> <p>(f) Aboriginal cultural heritage, practices and places,</p> <p>3. This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.</p>	<p>Total Earth Care's Estuarine Risk Management Report, included in this application, highlights the proposals impact on biophysical, hydrological and ecological environments to be minor and acceptable.</p> <p>The proposal would have no impact on the coastal environment, only moderate and temporary impact on water quality and minor impact on native vegetation and fauna. The reintroduction of native species in the proposed landscaping instead should improve the biodiversity of the site. For further information refer to the Estuarine Risk Management report included in this application.</p> <p>The site is not marked on the Pittwater LEP 2014 Heritage Map and there is minimal excavation proposed so it is assumed that the proposal will have no impact on Aboriginal heritage or places. If any items of Aboriginal heritage are found throughout construction, they will be preserved, and expert advice sought on the matter.</p> <p>The site is <b>not</b> located within the Foreshores and Waterways Area within the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.</p>

Based on the assessments that have been undertaken of the relevant sections of the Coastal Management Act 2016 and the State Environmental Planning Policy (Coastal Management) 2018, it is evident that the proposed development is considered to be consistent with the matters that are required to be assessed under the State Environmental Planning Policy (Coastal Management) 2018.

#### 4. Pittwater 21 Development Control Plan

This section applies to the local government area of Pittwater to provide best practice standards for development:

CONTROL	REQUIREMENT	MODIFICATION COMMENTS
B3.7 Estuarine Hazard – Low Density Residential	<b>Controls:</b> The following applies to all development: - All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes; and - All structural elements below the Estuarine Planning Level shall be constructed from flood compatible materials; and - All structures must be designed and constructed so that they will have a low risk of damage and instability due to wave action and tidal inundation;	<p>The proposal is supported by a biodiversity study completed by Total Earth Care and there is no evidence of any adverse impacts associated with this low-density residential development. Mitigation measures have been outlined in the Estuarine Risk Management report to ensure no estuarine processes are adversely affected.</p> <p>All elements below the Estuarine Planning Level of RL 2.38AHD will be constructed with flood compatible materials. No new retaining walls will be constructed beneath this level.</p>
B5.13 Development on Waterfront Land	<b>Outcomes:</b> Protection of waterways and improved riparian health. Stormwater and creek flows are safely managed. Appropriate setback between waterways and development <b>Controls:</b> Any waterfront land (as defined in the Water Management Act 2000) on a the property shall be retained in their natural state to: carry stormwater/flood flows, maintain aquifers, retain stability, and provide habitat functions.	<p>The proposal outlines changes to the landscaping at the rear of the site through the upgrading of retaining walls and a greater stepping of the site to retain stability and to prevent further soil creep which is currently occurring on site and could impact on riparian health. Refer to Douglas Partners' Geotech report.</p> <p>The reintroduction of native vegetation in the proposal also aids in returning the property to a more natural state as it provides further habitat functions.</p>
B4.19 Estuarine Habitat	<b>Outcomes:</b> - Biodiversity, ecological processes and other estuarine habitat values are conserved. <b>Controls:</b> - Development shall provide adequate buffering to estuarine habitat. - Existing wildlife corridors are to be maintained and functional habitat links provided wherever possible. - Development shall ensure 80% of the area that is not covered by approved buildings or associated structure, is native vegetation	<p>Refer to the Estuarine Risk Management Report included in this application for details on habitat conservation and impacts on surrounding during construction.</p> <p>This Section 4.55 proposal includes the removal of the vegetation at the rear of the site which is largely introduced and the reintroduction of native species in the new landscape design. For a breakdown on the native species included in the new proposal look at Fifth Season Landscapes' drawings.</p>

	<p>either through retention of existing bushland or planting with locally native plant species.</p> <ul style="list-style-type: none"> <li>- Development within the Pittwater Waterway shall have regard to any adjoining important estuarine habitats at all time, particularly during the construction phase. Any impact upon estuarine habitats within the Pittwater Waterway, particularly mangroves, saltmarsh and seagrass beds, must be minimised.</li> <li>- Adequate compensatory works shall be undertaken where damage to estuarine habitats occurs.</li> <li>- Habitat for locally and migratory birds shall not be reduced or degraded. Development that will result in increased disturbance to migratory wading bird habitat shall not be permitted.</li> </ul>	
<p>B8.1 Construction and Demolition – Excavation and Landfill</p>	<p><b>Control:</b></p> <ul style="list-style-type: none"> <li>- Site disturbance is minimised</li> <li>- Excavation and construction not have an adverse impact.</li> <li>- Excavation operations not to cause damage on the development of the adjoining property.</li> </ul>	<p>Refer to the Geotech Report prepared by Douglas Partners.</p>
<p>B8.2 Construction and Demolition – Waste Management.</p>	<p><b>Control:</b></p> <ul style="list-style-type: none"> <li>- Reduction management of demolition, excavation and construction works is to be minimised by reuse on-site, recycling, or disposal at an appropriate waste facility.</li> </ul>	<p>Any waste garden organics will be dealt with by Fifth Season Landscapes who will try to recycle material where possible.</p>
<p>C1.1 Landscaping</p>	<p><b>Control:</b></p> <ul style="list-style-type: none"> <li>- A built form softened and complemented by landscaping.</li> <li>- Landscaping, reflects the scale and form of development.</li> <li>- Retention of canopy trees by encouraging the use of pier and beam footings.</li> <li>- Development results in retention of existing native vegetation.</li> <li>- Landscaping results in the long-term retention of Pittwater's locally native tree canopy.</li> <li>- Landscaping retains and enhances Pittwater's biodiversity by using local native plant species.</li> <li>- Landscape enhances habitat and amenity value.</li> <li>- Landscaping results in reduced risk of landslip.</li> <li>- Landscaping results in low watering requirement.</li> </ul>	<p>The proposal retains the generous areas of soft landscaping on site and will not require the removal of any significant vegetation or trees. The site will maintain and in fact, improve its contribution to the landscaped character of the locality.</p> <p>The proposed landscaping involves the replacement of introduced vegetation with native species and increased terracing at the rear of the property to mitigate the impacts of the existing 38° slope and the potential risk of landslip or erosion.</p>



D1.4 Scenic Protection - General	<b>Outcomes:</b> <ul style="list-style-type: none"> <li>- Achieve the desired future character of the Locality. Bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment.</li> </ul> <b>Controls:</b> <ul style="list-style-type: none"> <li>- Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.</li> </ul>	<p>The proposed landscaping reintroduces native species through the replacement of the existing introduced vegetation to become more in line with the character of the locality and the bushland landscape aspirations of the precinct.</p> <p>The proposed landscape modifications will reduce the impact of the built form when viewed from the waterway.</p>
Landscaped Area - General	<b>Outcomes:</b> <ul style="list-style-type: none"> <li>- Achieve the desired future character of the Locality.</li> <li>- The bulk and scale of the built form is minimised.</li> <li>- A reasonable level of amenity and solar access is provided and maintained.</li> <li>- Vegetation is retained and enhanced to visually reduce the built form.</li> <li>- Conservation of natural vegetation and biodiversity.</li> <li>- Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.</li> <li>- To preserve and enhance the rural and bushland character of the area.</li> <li>- Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.</li> </ul> <b>Outcomes:</b> <ul style="list-style-type: none"> <li>- The use of porous materials and finished is encouraged where appropriate.</li> </ul>	<p>The proposed landscape enhances the desired future character of the locality as it focuses on repopulating a landscape of introduced species with new native vegetation. Whilst the proposal doesn't change the visual impact of the site to a great extent it makes it more accessible through terracing and increases the biodiversity of the site through planting. The intended low-lying planting is intended so that it doesn't impact on the amenity or solar access enjoy onsite or by neighbours.</p> <p>The proposed modifications keep with the 397.7sqm of landscaping approved in the original DA and does not increase the hardscaping of the site, meaning the impervious surfaces remains at 44sqm. This is intended to reduce storm water runoff, soil erosion and allow for infiltration of water to the water table.</p>

#### Drawing and Document Schedule:

Concept Plan, Sections and Planting Plan  
Original DA 2021-1790 Drawings  
Geotechnical Report  
Estuarine Management Report

Fifth Season Landscapes  
Utz Sanby Architects  
Douglas Partners  
Total Earth Care

LCP-01, DET-01, DET-02, DET-03, PLT-01, PLT-05, SET-05  
DA-00, DA-01, DA-02, DA-03

Statement Of Environmental Effects by Utz-Sanby Architects