

STATEMENT OF ENVIRONMENTAL EFFECTS

Section 4.55 (2) Modification to DA2021/1790 – approved by Northern Beaches Council on 18 April 2022 for alterations and additions to a dwelling house, including a swimming pool and garage – Modification to Part Condition 10

UNDER THE
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979
(AS AMENDED) AND *REGULATIONS 2021*



PROPERTY: 214 HUDSON PARADE, CLAREVILLE
(LOT 41 DP 13760 AND LOT LIC 187249)

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1. INTRODUCTION

This report has been prepared as part of the supporting documentation for a Section 4.55(2) Modification to Development Application 2021/1790 for alterations and additions to a dwelling house, including a swimming pool and garage, to 214 Hudson Parade, Clareville. The modification relates to the first point in Condition 10, as follows:

“10. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- *The maximum height of the roof to "Bedroom 4" in the module at the front of the site is not to exceed RL 21.08. This is to minimise the view impacts of the development.”*

The modification seeks to delete the above part of Clause 10 and to reinstate the height of the roof for bedroom 4 to as per the plans submitted with Development Application DA2021/1790.

This report has been prepared following instructions from the owner of the subject site and from the project architect, Utz Sanby.

In preparing this document, consideration has been given to the following:

- *The Environmental Planning and Assessment Act, 1979, as Amended (EP&A Act);*
- *The Environmental Planning and Assessment Regulation;*
- *Pittwater Local Environmental Plan 2014 (PLEP 2014);*
- *Pittwater 21 Development Control Plan (PDGP21);*
- *Notice of Determination for DA 2021/1790 dated 18 April 2022;*
- *Assessment Report dated 18 April 2022;*
- *Stamped Plans dated 18 April 2022;*
- *Architectural Drawings prepared by Utz Sanby;*
 - DA- 00 – Rev B – Site Plan/Roof Plan
 - DA – 01 – Rev B – Floor Plans
 - DA – 02 – Rev B – DA Sections
 - DA – 03 – Rev B – Elevations
 - DA – 05 – Shadow Plans – Equinox
 - DA – 06 – Shadow Plans – Winter Solstice
 - View Sharing Photomontage Study prepared by Utz Sanby:
 - Drawing DA-16 – Photomontage - View one
 - Drawing DA-17 – Photomontage - View two.

2. BACKGROUND INFORMATION

The site is known as 214 Hudson Parade, Clareville, which was the subject of Development Application DA2021/1790 for alterations and additions to a dwelling house including swimming pool and garage. The application was the subject of protracted discussions with Council, in particular concerning issues relating to possible view loss for the occupants of the dwelling on the opposite side of the subject road. Various submissions were made to Council demonstrating that there was a minor view loss; however, the proposal met the relevant criteria for the NSW Land and Environment Court principles for view sharing. Council, in assessing the application, approved the development on 18 April 2022 subject to various conditions, in particular Condition 10, which requires a reduction in the height of the roof to bedroom 4 in the module at the front of the site. Council's reasoning was to "minimize view impacts of the development."

Following the determination of the application by Council, the owner in consultation with the project architects and other relevant consultants, requested that modification to Condition 10 be submitted and that Condition 10 remove that component that relates to the height of roof to bedroom 4 to not exceed an RL of 21.08m.

3. SITE PROFILE

The subject property is described as 214 Hudson Parade, Clareville, being Lot 41 in DP13760 with an area of 739.8sqm. The property is located on the southern side of Hudson Parade and has a frontage of 15.24m to Hudson Parade with a varying depth of 52.12m on the western side and 47.245m on the eastern boundary. The parcel of land is regular in shape and the rear part of the property abuts Pittwater waterway.

Erected on the land is a single detached residential dwelling with car parking accommodation located to the Hudson Parade frontage. A boatshed and jetty are located at the rear of the property. The property has a Foreshore Building Line; however, there are no new works proposed in the foreshore building line area or any alterations to the structures that are located within the foreshore building line.

This precinct is dominated by single detached dwellings of varying ages. Some of the sites have been the subject of redevelopment with alterations and additions to the existing dwellings. Other dwelling houses have been constructed on sites on the higher side of Hudson Parade that are of significant mass and scale.

Locality Plans



Subject Property

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



Subject Property

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

4. THE PROPOSAL

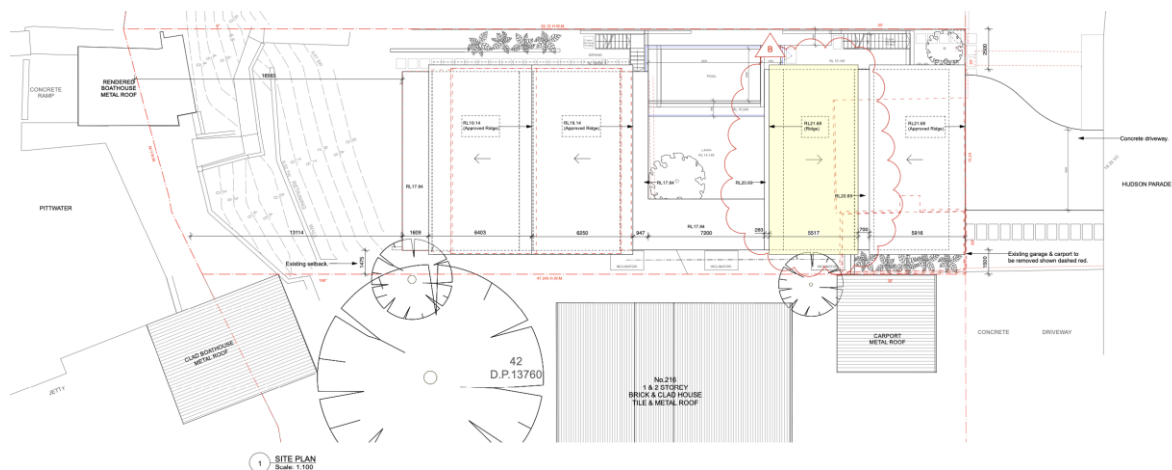
The proposal, the subject of the modification, relates to the removal of part of Condition 10 of the Notice of Determination for DA 2021/1790 dated 18 April 2022. The relevant part of Condition 10 that this modification seeks to delete is highlighted as per the condition below:

“10. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- *The maximum height of the roof to "Bedroom 4" in the module at the front of the site is not to exceed RL 21.08. This is to minimise the view impacts of the development.”*

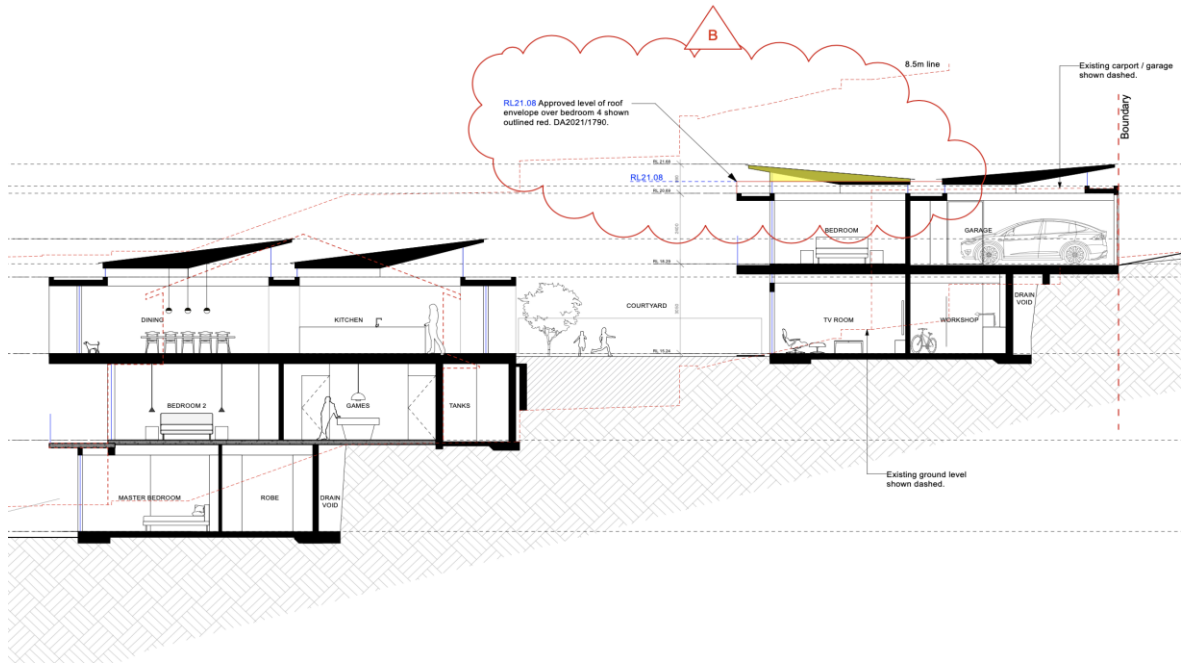
The modification seeks to delete the above part of Clause 10 and to reinstate the height of the roof for bedroom 4 to as per the plans submitted with Development Application DA2021/1790.



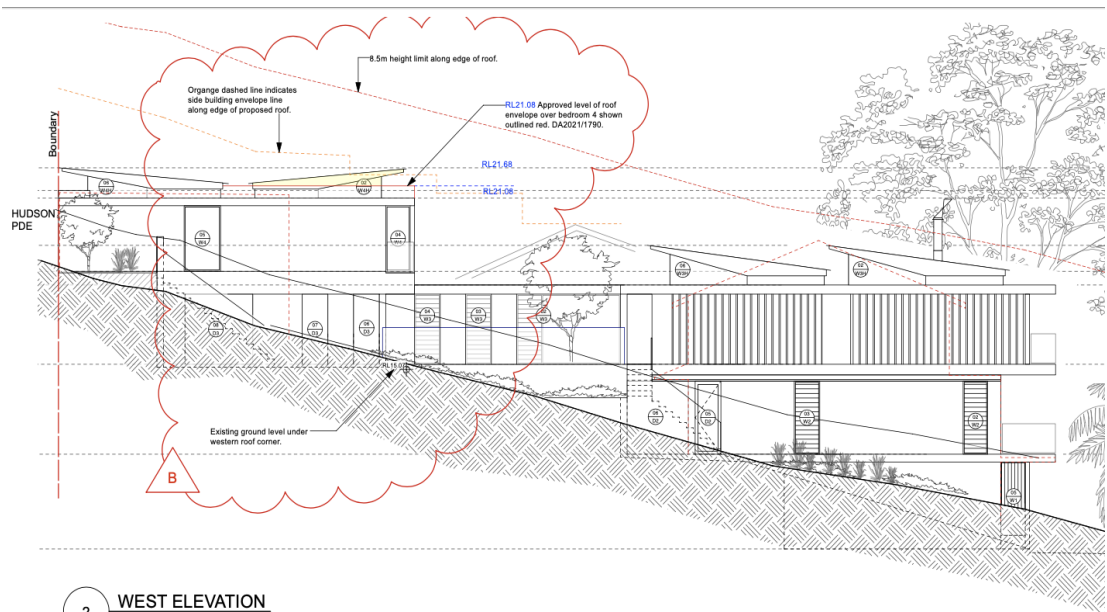
Yellow highlight – subject to application

Source: Drawing – Utz Sanby Drawing DA-00 – Site Plan/Roof Plan

Section 4.55 (2) Modification to DA 2021/1790
214 Hudson Parade, Clareville

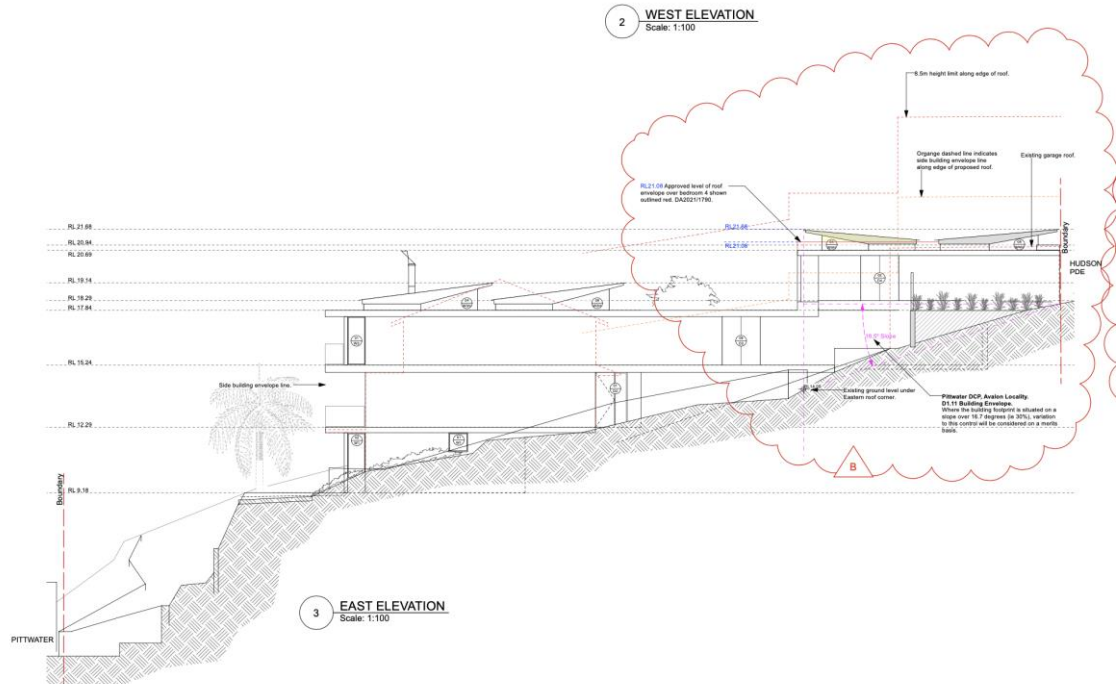


Source: Drawing – Utz Sanby Drawing DA-02 – DA Section

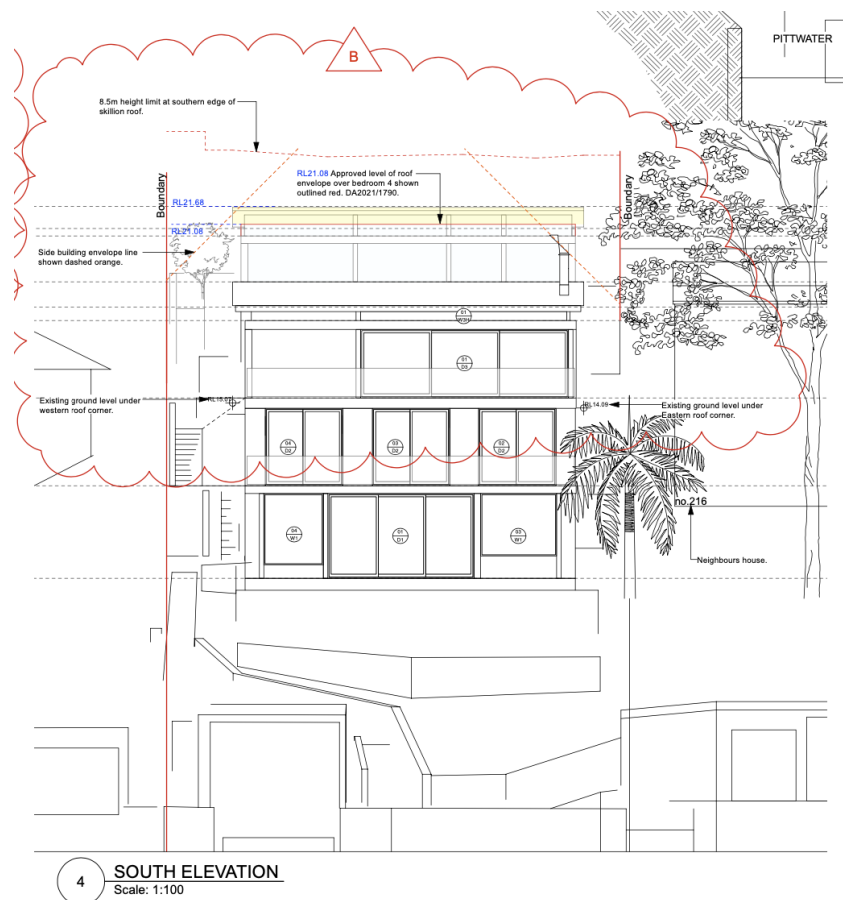


Source: Drawing – Utz Sanby Drawing DA-03 – DA Elevations

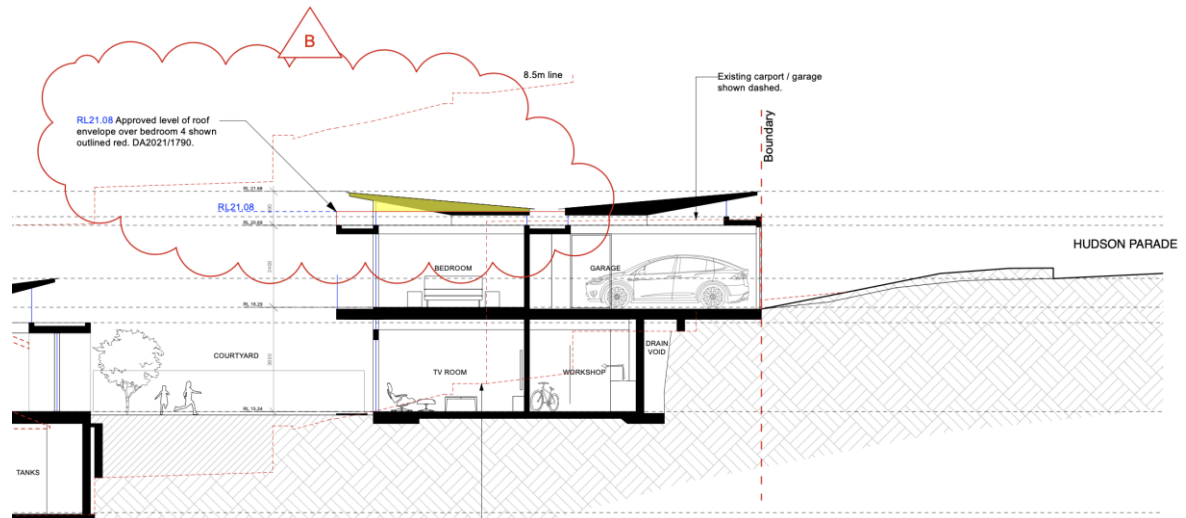
Section 4.55 (2) Modification to DA 2021/1790
214 Hudson Parade, Clareville



Source: Drawing – Utz Sanby Drawing DA-03 – DA Elevations



Source: Drawing – Utz Sanby Drawing DA-03 – DA Elevations



Source: Drawing – Utz Sanby Drawing DA-02 – DA Section

4.1 General Comment

The architectural drawings clearly depict in yellow the roof structure above bedroom 4 being the item the subject of this application. There is also a very small, glazed area shown on drawing DA02 which forms part of the integrated roof design. There are no other works highlighted on the architectural drawings other than that relating to the roof structure above bedroom 4. It is important for Council to acknowledge that what the client is seeking by the modification is to reinstate the roof structure above bedroom 4 to that shown on the original DA documentation submitted with the application. This component of the roof structure does not result in any adverse impacts on the neighbouring properties by way of privacy, amenity, overlooking or overshadowing. The development, when viewed from a public place (Hudson Parade), remains substantially the same as that originally approved by Council under DA2021/1790. It is noted that the modification does not result in a breach of height of building and fits well within the 8.5m height plane as prescribed under PLEP2014.

4.2 View Sharing

It is noted that when the Development Application was submitted to Council the supporting Statement of Environmental Effects addressed the principles of view sharing established under the parameters of the Tenacity Principle as defined by the NSW Land and Environment Court. The assessment officer, in reviewing the subject application, noted that the proposal had been assessed against the View Loss Provisions under Part 7 of Warringah DCP and the Land and Environment Court Case of '*Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140*'.

It is submitted that there is no requirement as part of this application for the modification to further assess view sharing as the overall footprint of the building remains the same together with the same side boundary, rear and front alignments remaining consistent with Council's requirements and noting that the height of the building is well within the 8.5m height limitation. However, the assessment officer, in determining the Development Application and in consideration of one submission concerning view loss from owners of No. 211 Hudson Parade, has formed the view that the maximum height of the roof to bedroom 4 in the module at the front of the site is not to exceed RL 21.08 *"and this is to minimize the view impacts of the development"*.

The following excerpts from the assessment officer's report have been reviewed as it is considered that Council's conclusions are not substantiated and fail to give consideration to the principles of reasonable sharing of views amongst dwellings as prescribed under the Tenacity Principle. It is interesting to note that the assessment officer has indicated that the *"development area impacting the Pittwater (water views) to the south-east represents a complying building height standard of 8.5m (6.6m). The development however exhibits a non-compliance with side building envelope control and character as viewed from a public place affecting the extent of view loss from No. 211 Hudson Parade."*

The officer has formed the opinion that these non-compliances are found to be acceptable and will achieve consistency with the objectives of the controls, subject to an imposed condition to lower the height of the skillion roof over bedroom 4.

This would result in a flat roof imposed by Council and not create the same potential - it gives a minimum ceiling height of 2.4m and under the National Construction Code (NCC), does not even achieve the minimum requirements for an apartment design which are 2.7m. It dramatically affects the efficiency of solar panels and, if necessary, this can be supported by expert consultants.

The NCC has a minimum habitable room ceiling height of 2.4m, which is what Council's assessment officer relies upon in her report. It is submitted that this is the minimum standard. The SEPP 65 Apartment Design Guide, which is the document that all apartments have to comply with in order to be approved in NSW, states that a minimum ceiling height of 2.7m must be achieved for all habitable areas. It is important for Council to acknowledge that the height of the building at this particular point is 1.9m below the maximum building height requirement under the LEP.

There is no valid reason why bedroom 4 and this module cannot achieve a 2.7m minimum ceiling height given that all apartments are designed with this minimum requirement and the proposal is a single-storey dwelling built on a waterfront property. It is unreasonable to impose ceiling heights below those considered to be a minimum standard in basic apartment design.

As a result of the conclusions reached by the assessment officer, a further comprehensive view analysis has been undertaken by the project architects in an endeavour to demonstrate that the proposal does achieve reasonable sharing of views amongst dwellings. The project architects have prepared documentation which shows the approved development (existing) and then images outlining in red the proposed modification. These images clearly define, without any uncertainty, that the occupants of No. 211 maintain a substantial component of the Pittwater views and, in particular and more importantly, the interface of water and land in a westerly direction. The proposal has no impact at all upon these views.

As outlined above, the assessment officer has formed the view that the lowering of the roof over bedroom 4 will substantially enhance the occupants of No. 211 Hudson's views of Pittwater (water views). This view of Council's officer is disputed as Council fails to acknowledge that the proposed modification, which represents the plans as submitted with the original DA, results in a minimal view loss for the occupants of 211 Hudson Parade. The occupants of 211 Hudson Parade will maintain a substantial view/vista of Pittwater waterway and the interface of water and land to the backdrop in a westerly direction. This is indeed an important component of any assessment in determining the reasonableness of the proposal that could cause any adverse impact.

There is no justification submitted by Council on why a development of this nature should have a bedroom height reduced to 2.4m – this requirement is considered unreasonable when the total height of the building at this location is only 6.6m versus a development standard for height of 8.5m. The project architect has skilfully designed the building to a height which is substantially less than what could be achieved and still be compliant to ensure there is a reasonable and acceptable level of view sharing from No. 211 Hudson Parade which is the only objector on view loss in this immediate precinct. Council has based their entire case on one objection which has driven the conclusion in the assessment officer's report that the roof level for bedroom 4 needs to be reduced to 2.4m, a standard which is less than what is required for a residential flat building (minimum ceiling height 2.7m) under the Provisions of SEPP65 Apartment Design Guide. As emphasised previously in this report, the 2.4m requested ceiling height by Council is an absolute minimum prescribed under the NCC.

The following photographs (supplied by Council) have been taken from strategic locations of the residence at 211 Hudson Parade. It cannot be disputed that the modification would result in an adverse view loss to the residents of Pittwater and surrounding waterway environment. The photographs demonstrate that there may be a loss of view of 5 to 6 vessels; however, the view they maintain represents some 40 vessels that are moored in Pittwater while maintaining water-to-land interfacing.



Source- Utz Sanby – DA 16 Photmontage View 1



2 OUTLINED WIREFRAME MODEL OVERLAY

Source-Utz Sanby – DA 16 Photmontage View 1



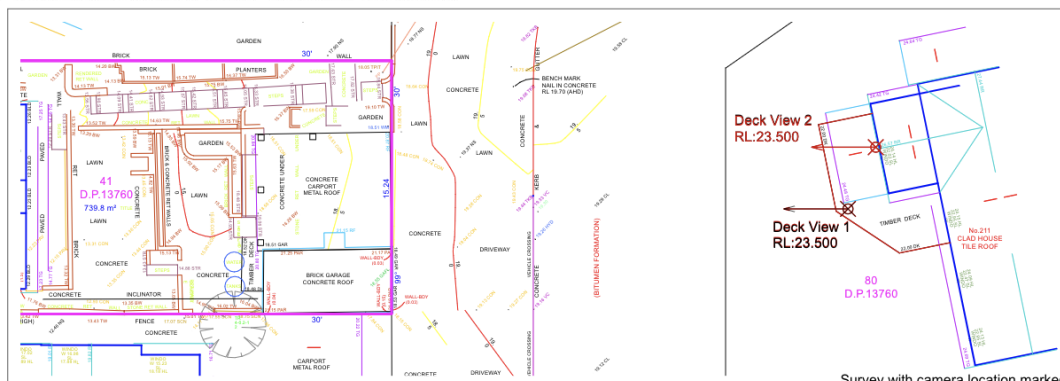
1 APPROVED / EXISTING

Source- Utz Sanby – DA 17 Photmontage View 2



2 OUTLINED WIREFRAME MODEL OVERLAY

Blue: Existing approved envelope / Red: Proposed envelope



5 LOCATION: 211 Hudson Parade Clareville, Deck View 2.
CAMERA HEIGHT: 1500mm

Source- Utz Sanby – DA 17 Photmontage View 2

The following is an extract from the assessment officer's report with relevant comments by Tomasy Planning:

"The development is considered against the underlying Outcomes of the Control as follows:

- A reasonable sharing of views amongst dwellings.*

Comment

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity

Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. *Nature of Views affected*

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g., of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g., a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment on Principle 1

The affected view to No. 211 Hudson Parade is to the south-west consisting of Pittwater (water views, land and water interface). The view is not considered to be significantly obstructed, apart from one canopy tree located on No. 216 Hudson Parade, Claireville.

TOMASY COMMENT: It is evident from the photographs taken by Council that there is more than one form of vegetation that does obstruct views from 211 Hudson Parade towards Pittwater. This vegetation significantly impacts on the total view corridor that the occupants currently maintain towards Pittwater waterway when compared with the proposed modification which represents a minor increase in the height of the approved roof structure over bedroom 4.

2. *What part of the affected property are the views obtained*

"The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment on Principle 2

The views are primarily obtained from the ground floor living/dining room and two bedrooms (habitable rooms) and outdoor deck area (main private open space) from both a sitting and standing point of view.

TOMASY COMMENT: Based on the photographs supplied by Council this appears to be the situation.

3. *Extent of Impact*

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating"

Comment on Principle 3

The view to the south-west over the subject site (214 Hudson Parade) of Pittwater (land and water interface) will be wholly retained from both a sitting and standing position from the internal bedrooms, living room and outdoor dining area. However,

a substantial section of Pittwater (water views) obtained from the affected site will be obliquely impacted upon both from a standing and sitting position. These views are considered uninterrupted by significant vegetation creating larger view corridor over the subject site.

TOMASY COMMENT: It is agreed that the view to the south-west over the subject site (214 Hudson Parade) of Pittwater (land and water interface) will be wholly retained from both a sitting and standing position of the occupant's internal bedrooms, living room and dining area. We disagree with Council's comment that a substantial section of Pittwater views obtained from No 211 will be obliquely impacted upon from a standing and sitting position. The significant vegetation that exists on the site does not create an 'uninterrupted view corridor' over No. 214 Hudson Parade.

4. *Reasonableness of the proposal that is causing the impact*
"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment on Principle 4

The development area impacting the Pittwater (water views) to the south-east presents a complying building height standard of 8.5m (proposing 6.6m). The development however exhibits non-compliance with the side building envelope control and character as viewed from a public place affecting the extent of view loss from No. 211 Hudson Parade. These non-compliances are found to be acceptable and will achieve consistency with the objectives of the controls, subject to an imposed condition to lower the height of the skillion roof over Bedroom 4.

A more skilful design can provide the applicant with a similar development potential and amenity whilst reducing the extent of impact on the views obtained from neighbouring property No. 211 Hudson Parade. It is demonstrated that if the ceiling height of Bedroom 4 was lowered to a compliant height of 2.4m (minimum habitable room height in BCA), with an additional roof depth of 0.4m, this will result in an overall height of 2.8m (RL 21.08) when measured from finished floor level.

This is considered to reduce the obliquely impacted water view of Pittwater by more than 50%, significantly improving the view loss outcome. Therefore, the proposed dwelling house is considered reasonable subject to conditions and does demonstrate a reasonable sharing of views.

- Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.

Comment

The proposed development encourages an innovative design solution when accompanied by the abovementioned condition of consent, improving the urban

environment allowing for views to be appropriately shared from the public places and roads.

- Canopy trees take priority over views.

Comment

The subject development is not proposing the removal of canopy trees, ensuring that any existing canopy trees have priority over views. However, a condition of consent will be included to change the proposed Banksia tree (located within the front setback) to avoid future view impacts to No. 211 Hudson Parade.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

TOMASY COMMENT: In respect to the assessment officer's views in regard to Principal 4, the following is submitted:

- The proposed modification does not in our opinion result in a reduction of 50% of view loss as referenced above by the assessment officer. The view loss associated with the application is deemed reasonable and represents a sound outcome when one assesses the sharing of views under the Land and Environment Court Principles for view sharing.
- The proposed modification complies with the relevant DCP requirements in terms of the following:
 - Deep soil planting
 - site landscaping
 - Visual privacy
 - Car parking requirements
 - Solar access
 - Natural ventilation
 - Private open space and balconies
 - Acoustic privacy
 - Landscape design
 - Energy efficiency
 - Waste management
 - Front and rear building line setbacks as per existing
 - Side boundary setbacks as per existing
 - Character of area as viewed from a public space.
- The proposed development does not breach any of the Pittwater LEP development standards and in particular the Height of Building, Clause 4.3 Provisions and Clause 7.8, Limited Development on Foreshore Area.
- The proposed modification represents a contemporary form and design which will contribute to the immediate context in the form of a development that is the right fit for the neighbourhood and is consistent with the streetscape of this precinct.
- Council's argument that a more skillful design could provide the applicant with the same development potential and amenity with a 2.4m high ceiling height for bedroom 4 and associated module is flawed. On the following pages are diagrams from the SEPP 65 Apartment Design Guide which justify why 2.7m ceilings are required.

4C Ceiling heights

Ceiling height is measured internally from finished floor level to finished ceiling level. The height of a ceiling contributes to amenity within an apartment and the perception of space. Well designed and appropriately defined ceilings can create spatial interest and hierarchy in apartments.

Ceiling height is directly linked to achieving sufficient natural ventilation and daylight access to habitable rooms. The ground and first floor levels of mixed use apartment buildings should have increased ceiling heights to ensure their longer term adaptability for other uses.

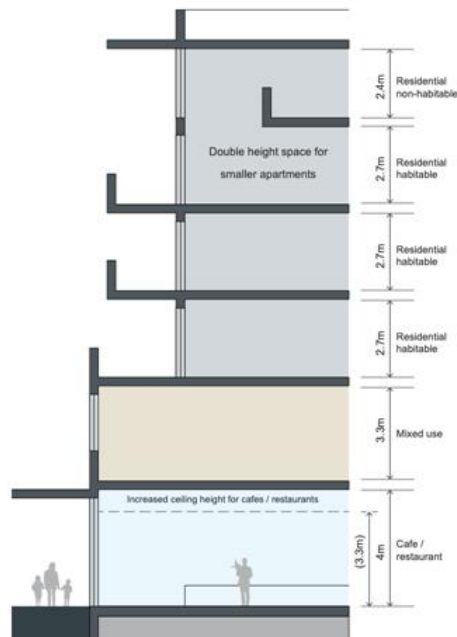


Figure 4C.1 Greater than minimum ceiling heights for retail and commercial floors of mixed use developments are encouraged to promote flexibility of use. Cafe and restaurant uses need greater minimum ceiling heights of 4m to allow for additional servicing needs

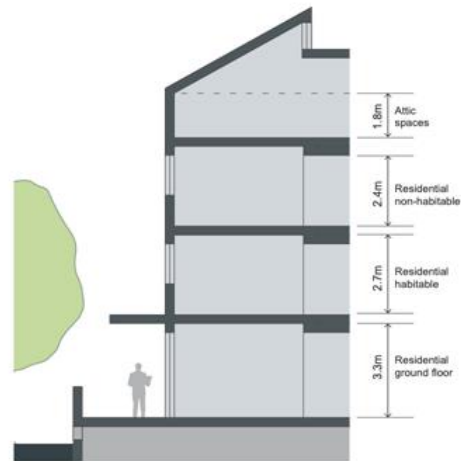


Figure 4C.2 Ceiling heights of minimum 2.7m help to achieve good daylight access and natural ventilation to residential apartments



Figure 4C.3 Ground floors often need to accommodate a range of uses such as retail, cafes and restaurants, and should provide increased ceiling heights to allow for maximum flexibility of use



Figure 4C.4 Differing ceiling heights are an opportunity to provide visual interest in the building facade

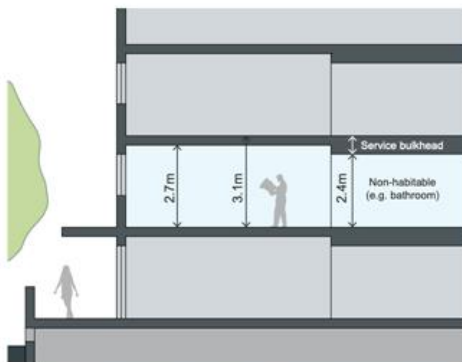


Figure 4C.5 Service bulkheads are wholly contained within non-habitable rooms and do not intrude into habitable spaces

Objective 4C-1

Ceiling height achieves sufficient natural ventilation and daylight access

Design criteria

1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

Minimum ceiling height for apartment and mixed use buildings

Habitable rooms	2.7m
Non-habitable	2.4m
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use

These minimums do not preclude higher ceilings if desired

Design guidance

Ceiling height can accommodate use of ceiling fans for cooling and heat distribution

Objective 4C-2

Ceiling height increases the sense of space in apartments and provides for well proportioned rooms

Design guidance

A number of the following design solutions can be used:

- the hierarchy of rooms in an apartment is defined using changes in ceiling heights and alternatives such as raked or curved ceilings, or double height spaces
- well proportioned rooms are provided, for example, smaller rooms feel larger and more spacious with higher ceilings
- ceiling heights are maximised in habitable rooms by ensuring that bulkheads do not intrude. The stacking of service rooms from floor to floor and coordination of bulkhead location above non-habitable areas, such as robes or storage, can assist

Objective 4C-3

Ceiling heights contribute to the flexibility of building use over the life of the building

Design guidance

Ceiling heights of lower level apartments in centres should be greater than the minimum required by the design criteria allowing flexibility and conversion to non-residential uses (see figure 4C.1)

The diagrams on the previous pages demonstrate that the amenity of the occupants of the dwelling will be adversely impacted upon if they are required to reduce the ceilings to 2.4m, as per Condition 10 of the Consent. The SEPP 65 Apartment Design Guide gives reasons why the 2.7m ceilings are required such as:

- The height of a ceiling contributes to amenity and the perception of space;
- Ceiling height is directly linked to achieving natural ventilation and daylight access to habitable rooms.

In addition to the above, the ceiling height of 2.7m provides the option to instal ceiling fans, which are a sound environmental option to air conditioning.

The limiting of development potential is a direct impact on the effect of the solar panels that are proposed on this section of the roof. The roof is designed to slope back towards the north to increase the efficiency of the panels and generate more electricity. A requirement of this development is to rely, as much as possible, upon solar power, storing this within efficient batteries that will power the house for upwards of 90% of the year.

It is therefore respectfully submitted that this further assessment of views has clearly demonstrated that this modification has been considered from a view-sharing perspective and the principles of reasonable view sharing have been maintained.

5 STATUTORY PROVISIONS FOR SECTION 4.55 MODIFICATION (cf previous S96)

It is submitted that the proposed modification falls within the definition of a Section 4.55 Modification of Consents – generally, subsection (2);

- (1) **Modifications involving minor error, misdescription or miscalculation** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.

Note—

Section 380AA of the Mining Act 1992 provides that an application for modification of development consent to mine for coal can only be made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.

- (1A) **Modifications involving minimal environmental impact** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—
- (a) it is satisfied that the proposed modification is of minimal environmental impact, and
 - (b) it is satisfied that 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
 - (c) it has notified the application in accordance with—
 - (i) the regulations, if the regulations so require, or
 - (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
 - (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.

Subsections (1), (2) and (5) do not apply to such a modification.

- (2) **Other modifications:** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
- (c) it has notified the application in accordance with—
 - (i) the regulations, if the regulations so require, or

- (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**
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.**

Subsections (1) and (1A) do not apply to such a modification.

Source: EP&A Act 1979, Section 4.55

The proposed modification as described in Section 4, The Proposal, principally relates to reinstating the height of the roof for bedroom 4 to as per the plans submitted with the Development Application DA 2021/1790. The modification maintains a proposed height of 6.6m, which is well below the development standard for height limitation. In respect to the appearance of the building when viewed from a public place, the development is seen as a residential dwelling which has been the subject of alterations and additions.

Therefore, the change proposed to the approved residential dwelling and associated facilities does not constitute a substantial change to the development as consented, or to such a degree that it would not be considered substantially the same development. The modification, as submitted, has been reviewed and it is concluded that the modification is acceptable and does not result in any significant adverse impacts upon the amenity or privacy of the neighbourhood, nor significantly change the development as approved and notified to the public previously.

In respect to any potential view loss to the occupants of No. 211 Hudson Parade, this has been the subject of a further view impact analysis which demonstrates the reasonableness of the modification and its compliance with the L&E Court Principles of View Sharing.

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 Ilenc 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.

This position has been further reinforced by the Land and Environment Court of New South Wales, 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 versus Lithgow City Council in 2001* and *Pearlman J in Schroders Australia Property Management Pty Ltd versus Shoalhaven City Council and Anor 1999*).

A number of other cases have also been reviewed as part of the qualitative assessment of the application and it is submitted that the development the subject of this application is substantially the same as previously approved. The essential components of the principal end land use (i.e. a residential dwelling) and physical characteristics of the approved dwelling are not significantly altered as a consequence of the proposed modification (i.e. building scale, materials, presentation to Hudson Parade when viewed from a public place).

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 premises to any degree that it would represent a building of a different urban design to the approved development.
- The built form outcome 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 development does not give rise to any unreasonable impacts associated with views from the residents of the dwelling at 211 Hudson Parade. The additional view analysis undertaken as part of this modification further reinforces this opinion and there is no evidence produced by Council that would justify a reduction in the roof height of bedroom 4 as submitted with this modification.
- The use of the land will remain for the purpose of a residential dwelling as approved by Council on 18 April 2022 under DA2021/1790.

The modification does not alter the merit-based assessment that generated the approval granted by Northern Beaches Council on 18 April 2022. The approval, if modified, will retain the essence of the original consent and is therefore considered to fall within the relevant tests for Section 4.55 of The Act.

The application meets the requirements of a Section 4.55 (2) Modification and, therefore, the consent authority can consider, and grant consent to, the application on the basis that the development will remain substantially the same as that originally approved by Northern Beaches Council.

6 STATUTORY PLANNING

6.1 PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

Under PLEP 2014 the property is zoned E4 Environmental Living as per the map below:



Source: PLEP 2014

Subject Site

The zone objectives and permissible land uses are set out below:

Zone E4 Environmental Living

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.

2 Permitted without consent

Home businesses; Home occupations.

3 Permitted with consent

Bed and breakfast accommodation; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Environmental protection works; Group homes; Health consulting rooms; Home-based child care; Home industries; Jetties; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Respite day care centres; Roads; Secondary dwellings; Tank-based aquaculture; Water recreation structures.

4 Prohibited

Industries; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

Comment: Dwellings houses are a permissible land use under the E4 Environmental Living zoning under PLEP 2014; therefore, the alterations and additions to a permissible land use (dwelling house) are consistent with the objectives of this zone as per the comments below.

Objectives:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment: The modification to an approved DA for alterations and additions to an existing residence which represents a low-impact residential development in an area that does have special environmental values such as coastal area, water views and aesthetic values.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment: The proposal does not result in any adverse impacts on areas which would fall within a category of special ecological, scientific or aesthetic values.

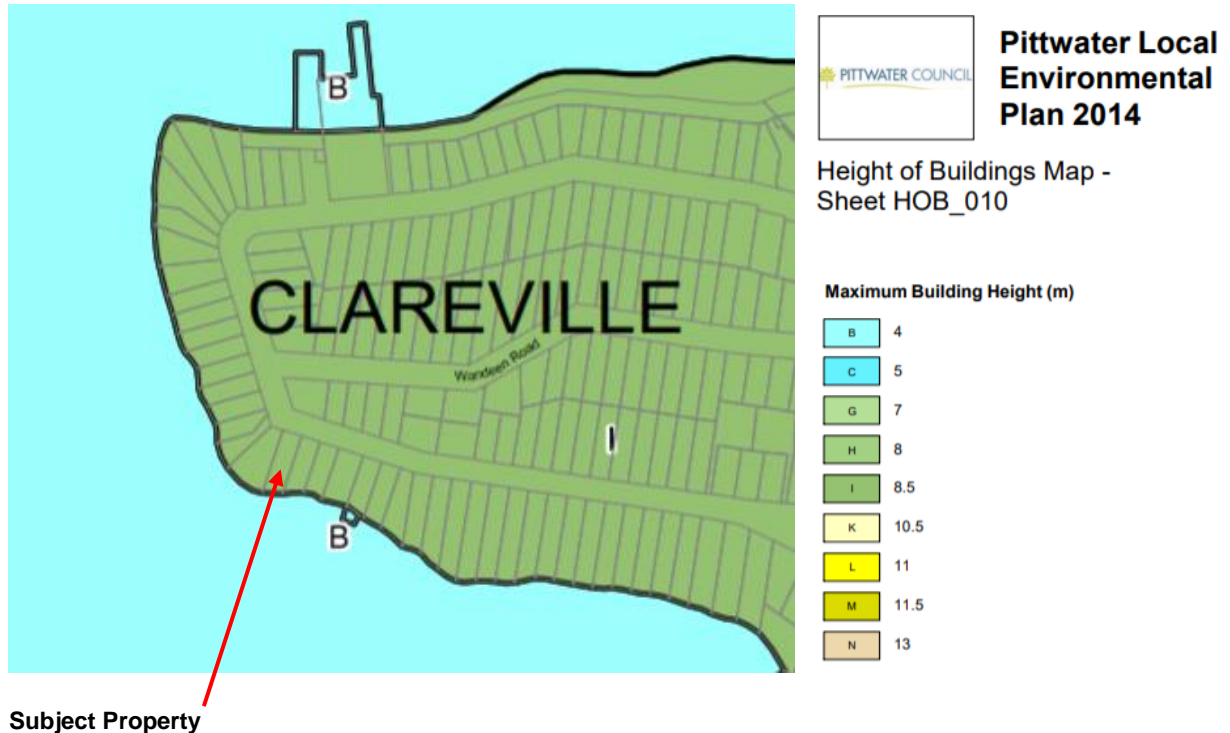
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment: The scale of the development is of a low-density, single detached residential dwelling which has been specifically designed to be integrated with the land form and existing landscape.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment: The proposal does not have any impact upon foreshore vegetation or wildlife corridors.

6.2 PLEP 2014 – CLAUSE 4.3 - HEIGHT OF BUILDINGS



Comment: The height of buildings map defines an 8.5m height limitation for the subject property. The proposed development is compliant with this development standard.

7. OTHER MATTERS UNDER PART 4, DIVISION 4.3 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

7.1 Evaluation 4.15 (1) Matters for Consideration - General

In determining a Development Application, a Consent Authority should take into consideration such of the following matters as are relevant to the development, the subject of the Development Application:

- (a) the provisions of:
 - (i) any draft environmental planning instrument;
 - (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;
 - (iii) any development control plan;
 - (iv) any matters prescribed by the regulations that apply to the land to which the development application relates.
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality;

- (c) the suitability of the site for the development;
- (d) any submission made in accordance with the Act or the regulations;
- (e) the public interest.

The relevant issues are addressed in broad terms below:

7.2 Statutory and Policy Considerations

The modification is considered to be consistent with the fundamental objectives and provisions of the governing instruments and, accordingly, the modification represents a development type and use facilitated by such instruments.

The modification is predominantly consistent with the relevant guidelines identified in the PDCP21 in regard to built form and the natural environment. In addition to the above, the proposal also represents a permissible land use under PLEP2014.

Furthermore, the modification is consistent with the development approved under DA2021/1790.

7.3 Likely Impacts of the Development (Section 4.15 (1) (b) and Suitability of the Site (Section 4.15 (1) (c))

The Character, Siting, Design and External Appearance of the Development; Relationship to Adjoining Land; Suitability of the Site

The modification seeks to reinstate the height of the roof for bedroom 4 to as per the plans submitted with Development Application DA 2021/1790.

The modification represents a development with minimal environmental impacts on both the natural and built environments. The proposal will have no adverse social impacts on the surrounding area and has been skilfully designed to positively relate to the surrounding locality. The proposal will not alter the character of the area and is considered compatible with other developments within the proximity.

The proposed modifications will have negligible impact on surrounding neighbours particularly regarding privacy, noise, solar etc. In respect to possible view loss of the occupants of No. 211 Hudson Parade over the subject site, this has been the subject of a further comprehensive view loss analysis which provides adequate evidence to conclude that the view loss is acceptable from a view sharing perspective of residential dwellings. The occupants of No. 211 Hudson Parade maintain a substantial view corridor of Pittwater (waterway) and, in particular, the interface of land and water in a westerly direction with a heavily forested backdrop.

The modification is deemed to be substantially the same development as approved under DA2021/1790. The bulk, scale and architectural character of the building remain unchanged, particularly when viewed from a public place. The principal use of the land remains for the purpose of a dwelling house.

7.4 Submissions (Section 4.15(1) (d))

No submissions are available at this time.

7.5 The Public Interest (Section 4.15(1) (e))

The proposed modifications will not have any adverse impact on the natural or built environments and it is considered that the existing amenity of Hudson Parade and the adjoining reserve land that abuts Pittwater waterway will be maintained. The original development has been skilfully planned, having due regard to the amenity of adjoining neighbours, and to the existing streetscape and configuration of surrounding residential dwellings and adjoining public spaces. The proposed modification does not change the principal elements of the dwelling as approved by Council.

The built form modification is minor and generally unnoticeable in the context of the locality and would be considered as virtually the same as that approved under DA2021/1790.

8. CONCLUSIONS

- The merits of the proposal have been assessed in accordance with the Provisions of the relevant Clauses of PLEP2014 and the Provisions of Part 4, Section 4.15 of the *Environmental Planning and Assessment Act, 1979 (as amended)*.
- The proposed modification to Development Consent DA2021/1790 within a category of Section 4.55 (2) Modification of the EP&A Act in that it is a modification that is substantially the same development as that for which the consent was originally granted under DA 2021/1790.
- The proposed modification works at 214 Hudson Parade, Clareville, are permissible with consent under PLEP2014 and considered to be consistent with relevant Objectives of both PLEP2014 and PDCP21.
- The proposed modification will have no environmental impacts; however, the proposal will result in a minor loss of view of the Pittwater waterway for the residents at 211 Hudson Parade. This view has been comprehensively analysed and assessed having regard to the Principles of the Land and Environment Court for view sharing and the view loss is considered reasonable and compliant with the 'Tenacity Principles'.
- The proposed modification will contribute to an exceptionally high standard of residential amenity for the occupants of 214 Hudson Parade in terms of solar access, usable private open space, privacy, noise and outdoor setting.
- Accordingly, the application to modify the approval is as set out below:

"Removal of part of condition 10 of the Notice of Determination for DA 2021/1790 dated 18 April 2022. The relevant part of Condition 10 that this modification seeks to delete is highlighted as per the condition below:

"10. Amendments to the approved plans

The following amendments are to be made to the approved plans:

The maximum height of the roof to "Bedroom 4" in the module at the front of the site is not to exceed RL 21.08. This is to minimise the view impacts of the development."

The modification seeks to delete the above part of Clause 10 and to reinstate the height of the roof for bedroom 4 to as per the plans submitted with the Development Application DA2021/1790.

It is considered acceptable from environmental, social and planning perspectives and approval should therefore be granted by Council.