

MODIFICATION APPLICATION ASSESSMENT REPORT

Application Number:	Mod2022/0518
Responsible Officer:	Scott McInnes Creative Planning Solutions Pty Limited
Land to be developed (Address):	26 Ralston Road, Palm Beach NSW 2108 Lot 4, Sec. 10, DP 14048 Lot 5, Sec. 10, DP 14048
Proposed Development:	Modification of Development Consent DA2020/0096 granted for demolition of a dwelling house and construction of two dwelling houses.
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Tony Melhem Nassif
Applicant:	Tony Nassif
Application Lodged:	04/10/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	11/10/2022 to 25/10/2022
Advertised:	Not Advertised
Submissions Received:	Three (3) submissions received
Clause 4.6 Variation:	No
Recommendation:	Refusal

EXECUTIVE SUMMARY

The s.4.55(2) application seeks modification of DA2020/0096, which granted consent for demolition of a dwelling house and construction of two dwelling houses.

The modifications proposed include:

- Changes to the design of the Lot 4 pool terrace, in accordance with consent condition 20.
- Changes to the size of the entry stairway from the driveway/urban entry court for Lot 5.
- Changes to proposed floor levels which result in an increase in building height.

The proposed modification also seeks to increase the height of the building's approved parapet walls, despite Condition 18 of the development consent imposed by Development Determination Panel (DDP) to limit the height of such parapets. Accordingly, the subject modification application is being referred to the DDP for determination.

Three submissions objecting to the proposed modifications were received following notification of the application. The objections generally relate to view loss, visual privacy, solar access, adverse

acoustic impacts, visual bulk and scale of the development, and that the proposed development as modified is not 'substantially the same' as that which was approved.

The application was originally lodged as a s.4.55(1A) modification, but subsequently amended to a s.4.55(2) following a preliminary assessment of the impacts associated with the proposal.

Requests for additional information from the Applicant were sought, including amended shadow diagrams, the erection of surveyed height poles, and a view impact analysis.

Shortcomings were identified with the photomontages relied upon by the Applicant for the purposes of their view impact analysis. Nonetheless, an assessment of the expected view loss from the proposed modifications has been undertaken based on observations of the surveyed height poles installed at the objector site inspections.

The assessment has concluded the views from openings to the north facing living room on the second storey at 8 Ebor Road will be adversely affected by the proposed building height increase. This includes obstruction of more than 50% of the Broken Bay water view, and degrading the land/water interface view which is currently enjoyed from the living area. This outcome fails to comply with Part C1.3 of the P21 DCP and forms the first reason for refusal of the application.

The proposed increase to the overall wall heights also generates additional bulk and scale to the western elevations the proposed dwellings at Lots 4 and 5, and on the eastern elevation of the dwelling proposed for Lot 4. This contravenes the building height plane prescribed by control 2 of the P21 DCP.

The ability to satisfactorily screen and soften the offending building envelope cannot occur given the RFS asset protection zone requirements (Condition 1 and 5) which limit tree canopy spread across the site to 15% and within 2m of the dwelling. This prevents any genuine softening of the non-compliant building envelope from within the site, and compounds the development's bulk and scale when viewed from the neighbouring properties. This will be particularly evident in the rear yard of 28 Ralston Road. This is contrary to Part D12.8 outcome 1, 2, and 3, and control 2 of the P21 DCP. This forms the second reason for refusal of the application.

This assessment has taken into consideration the submitted plans and all other documentation supporting the application. Having regard to section 4.55 of the *Environmental Planning and Assessment Act 1979*, the proposed modifications are deemed unsatisfactory.

Based on the detailed assessment contained in this report, it recommended that the request to modify development consent DA2020/0096 be refused for the reasons summarised above, and as detailed within this report.

PROPOSED DEVELOPMENT IN DETAIL

The subject s.4.55(2) Modification Application seeks to modify Development Consent Noo. DA2020/0096, which approved the demolition of a dwelling house and the construction of two dwelling houses at 26 Ralston Road, Palm Beach.

The modifications proposed by the s.4.55(2) application are as follows:

- Changes to the design of the Lot 4 pool terrace, in accordance with consent Condition 20.
- Changes to the size of the entry stairway from the driveway/urban entry court for Lot 5.
- Changes to proposed floor levels and overall roof height, which are detailed within the following table:

Lot 4	Approved (DA2020/0096)	Proposed
Lower ground floor	RL 99.00m	No change

Ground floor	Terrace: RL 100.55 Internal: RL 100.7	No change
First floor	RL 103.4	Terrace: RL 103.615 Internal: RL 103.7
Roof/terrace	Terrace: RL 106.25 Parapet: RL 106.25m (per consent condition no. 18)	Terrace: RL 106.7 Parapet: RL 107.2
Lot 5	Approved (DA2020/0096)	Proposed
Lower ground floor	RL 99.00	No change
Ground floor	Terrace: RL 100.7 Internal: RL 101.85	No change
First floor	RL 104.55	Terrace: RL 104.765 Internal: RL 104.85
Roof/terrace	Terrace: RL107.4 Parapet: RL 107.85 (other than eastern elevation) Parapet eastern elevation: RL107.4 (per consent condition no. 18)	Terrace: RL 107.85 Parapet: RL 108.35 Parapet RL108.35

As a result of the above changes, the subject application will require modifications to consent Condition 1, to reference the amended plans now submitted.

Further, the subject application also proposes to delete consent condition 18, which for reference reads as follows:

18. Roof Parapet

The proposed roof at the western elevation of Lot 4 is to be deleted. The maximum height of the western wall/elevation is to be RL106.25.

The proposed roof parapet to the east of the roof terrace of Lot 5 is to be reduced in height by 450mm.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To reduce the bulk and visual impact of the dwelling at the western elevation.

Aside from the above, no other changes are proposed to Development Consent No. DA2020/0096.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* (the Act) and the *Environmental Planning and Assessment Regulation 2021* (Regulations). With regard to the Regulations:

- An assessment report and recommendation has been prepared (the subject of this report) considering all relevant provisions of the Act and the associated Regulations;

- Notification of adjoining and surrounding properties has been undertaken in accordance with the Act, Regulations, and relevant Community Participation Plan (CPP);
- In accordance with the criteria at page 11 of the CPP, Council has formed a view that notification of the amended plans submitted on 29 March 2023 was not required as the submitted material was to supplement the assessment of the application and is unlikely to result in a reduction of environmental impacts.
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal has been undertaken.

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan – C1.3 – View Sharing

Pittwater 21 Development Control Plan – C1.4 – Solar Access

Pittwater 21 Development Control Plan – C1.5 – Visual Privacy

Pittwater 21 Development Control Plan – C1.6 – Acoustic Privacy

Pittwater 21 Development Control Plan – D12.8 – Building Envelope

SITE DESCRIPTION

Property Description:	26 Ralston Road, Palm Beach NSW 2108 Lot 4, Sec. 10, DP 14048 Lot 5, Sec. 10, DP 14048
Detailed Site Description:	<p>The street address of the site is 26 Ralston Road, Palm Beach. It comprises of two allotments identified by title as Lot 4, Sec. 10, DP 14048 and Lot 5, Sec. 10, DP 14048.</p> <p>The site is irregularly-shaped, with an angled western-side boundary and slightly angled front and rear boundaries. The front (i.e. northern) boundary adjoins the Ralston Road, and all other boundaries adjoin residential allotments.</p> <p>The site has a combined area of 1,497.9m², and contains an east-to-west (i.e. a side-to-side) downhill slope, that varies between 2.7 and 3.9 metres.</p> <p>The site is located within the C4 Environmental Living zone under the <i>Pittwater Local Environmental Plan 2014</i> (PLEP 2014); part of the rear boundary adjoins a C2 Environmental Conservation zone; however all other boundaries adjoin C4-zoned sites/areas.</p> <p>The site is mapped as being bushfire prone, affected by class 5 acid sulphate soils, and as being within an area of biodiversity significance. The subject site is not mapped as containing a heritage item, being within a Heritage Conservation Area or near a mapped heritage item.</p> <p>Development on the site consists of a part one-and-two storey dwelling that is located towards the rear; other development consists of paved areas and retaining walls. Other parts of the site consist of landscaped areas, with numerous trees located around the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>

	<p>Except for MacKay Reserve located to the southwest (32A Ralston Road) which is zoned C2 Environmental Conservation development on surrounding sites is zoned C4 Environmental Living and comprises of dwelling houses and ancillary structures (e.g. swimming pools, parking facilities, etc.).</p> <p>The adjoining site to the east at 24 Ralston Road contains a two-storey dwelling house. The adjoining site to the west at 28 Ralston Road contains a two-storey dwelling house that is located towards the rear of the site, with a swimming pool and garage (attached to the dwelling via a covered walkway) being located towards the front of that site. The adjoining site to the south at 8 Ebor Road contains a part two-and-three storey dwelling house, with a secondary-dwelling type structure and a swimming pool located within the rear setback.</p> <p>Development on the opposite (i.e. northern) side of Ralston Road (i.e. 27, 29 and 31 Ralston Road) comprises of two-storey dwellings houses.</p> <p>Other land within the surrounding area contains a variety of low-density residential development (i.e. dwelling houses and associated development such as swimming pools, outbuildings, etc.).</p>
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Figure 1: An aerial photograph of 26 Ralston Road, Palm Beach (subject site outlined in red).

Source: Nearmap, 23 November 2022

SITE HISTORY

The land has been used for residential purposes for an extended period. A search of Council's records has revealed the following relevant history:

- 9 September 2020: Development Application no. DA2020/0096 approved for the demolition of a dwelling house and construction of two dwelling houses.
- 4 October 2022: Subject Section 4.55 Modification Application lodged.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The application has been assessed in accordance with the requirements of the Act and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Act and associated Regulations;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/0096 in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, are:

Section 4.55(2) – Other Modifications	Comments
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	<p>Yes</p> <p>The development, as modified is substantially the same development as that approved. The proposed modifications do not alter the essence or character of the development in any material way. It remains as a two dwelling development with no changes to the overall building footprint; however, it is noteworthy that changes to the approved building envelopes are proposed.</p>
(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	Not applicable.

Section 4.55(2) – Other Modifications	Comments
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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Act, the Regulations and the Northern Beaches Community Participation Plan.
(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.	Three (3) submissions were received in response to the notification of this application. Refer to the notification and submissions section of this report for an assessment of submissions received in relation to this application.
(3) 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.	This assessment report includes consideration of the matters specified in section 4.15 of the Act (see discussion following this table below). The Development Determination Panel, in its determination on 9 September 2020, provided the following reason for the decision to grant consent to DA2020/0096: <i>Further conditions have been applied to the roof terraces to restrict structures and lighting.</i> <i>The roof parapet on Lot 5 has been conditioned to be reduced in height to reduce the impact of view loss.</i> <i>Conditions have also been included to provide noise attenuation for the pool filters.</i> <i>1. The amendment of the following conditions:</i> 18. Roof Parapet <i>The proposed roof parapet at the western elevation of Lot 4 is to be deleted. The maximum height of the western wall/elevation is to be RL106.25. The proposed roof parapet to the east of the roof terrace of Lot 5 is to be reduced in height</i>

Section 4.55(2) – Other Modifications	Comments
	<p><i>by 450mm. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.</i></p> <p><i>Reason: To reduce the bulk and visual impact of the dwelling at the western elevation.</i></p> <p>20. Pool Terrace Planter <i>The planter box to the Lot 4 Pool Terrace is to extend along the western elevation of the terrace. The extension of the planter box is to have a minimum width and height of 1000mm and is to contain plantings with a minimum height of 400mm. The plantings to be maintained for the life of the development.</i></p> <p><i>Details including species, mature height, planting, pot size and spacing to provide continuous screening are to be submitted to Certifying Authority prior to the issue of the Construction Certificate.</i></p> <p><i>Reason: To maintain visual privacy between the subject site and No. 28 Ralston Road.</i></p> <p><i>2. The addition of the following conditions:</i></p> <p>Roof terraces <i>All lighting on the roof terraces is to be low voltage and not to be located above balustrade height. No fixtures or temporary structures, such as shade structures, umbrellas etc or other items with a height greater than 1200mm are to remain on the roof terraces.</i></p> <p><i>Reason: To reduce the bulk and visual impact of the dwelling</i></p> <p>Acoustic Treatment of Pool Filter <i>The pool filter is to be enclosed within a housing and acoustically treated so that it does not emit any noise louder than 5dB(A) above background noise at the nearest residential receiver. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Occupation Certificate.</i></p> <p><i>Reason: To ensure the acoustic amenity of the neighbouring residents.</i></p> <p>The proposed modifications would increase the bulk and visual impact of the dwellings, and increase view loss impacts. As such the proposed modifications confute the Development Determination Panel reasons for granting development consent to DA2020/0096. This is discussed further below within the DCP compliance section of the report.</p>

Section 4.15 Assessment

In accordance with Section 4.55(3) of the Act, in determining a modification application made under Section 4.55 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 relevant matters for consideration under Section 4.15 of the Act, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	There are no draft Environmental Planning Instruments that are of relevance to this proposal.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15(1)(a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Regulations	<p>Part 4, Division 2, Subdivision 1 to consider conditions prescribed by the Regulations. These matters have been addressed via a condition in the original consent.</p> <p>Clause 36 of the Regulations allow Council to request additional information. Additional information was requested during the assessment process and subsequently provided. The information provided by the applicant is however insufficient to enable a proper assessment of the development's impacts. This is discussed further later within this report.</p> <p>Clause 61 of the Regulations requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. Such a matter has been addressed via a condition in the original consent.</p> <p>Clause 69 of the Regulations requires the consent authority to consider insurance requirements under the <i>Home Building Act 1989</i>. This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the low density residential character of the proposal.</p> <p>(iii) Economic Impact</p>

Section 4.15 'Matters for Consideration'	Comments
	The proposed development will not have a detrimental economic impact on the locality considering the low density residential nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	For the reasons discussed in this report the proposed modification is not in the public interest.

EXISTING USE RIGHTS

Existing use rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. The nature of the proposed modifications are such that the subject modification application does not seek to alter the recommendations of the bush fire assessment report approved as part of Development Consent No. DA2020/0096.

NOTIFICATION & SUBMISSIONS RECEIVED

The modification application was publicly exhibited from 11 October 2022 to 25 October 2022 in accordance with the Act, the Regulations, and the Community Participation Plan. Amended information submitted in response to a request for additional information was not publicly re-notified. The amendments included supporting information for Council's assessment and did not amount to physical changes to the proposed modifications. Therefore re-exhibition is not required.

As a result of the public exhibition of the application, Council is in receipt of three (3) submissions objecting to the proposal. The details of these submissions and the addresses they relate to are as follows:

Name:	Address:
Danielle and Kevin Wallis	28 Ralston Road, Palm Beach
David Plank	8 Ebor Road, Palm Beach
Therese Burke	24 Ralston Road, Palm Beach

The following list is a summary of the issues raised within the submissions:

- View loss,
- Visual privacy,
- Solar access,
- Adverse acoustic impacts,
- Visual bulk and scale of the development, and
- The proposed development as modified is not 'substantially the same' as that which was approved.

The above issues are addressed as follows:

- **View loss**

Comment – Multiple site inspections were undertaken at all properties from which submissions were received, and these inspections helped form part of Council's view loss analysis. A photomontage and report was provided to Council by the Applicant to assist with the view loss analysis; however the document has been found to be missing key information and cannot be relied upon. This forms a reason for refusal. Reference is made to the assessment of Part C1.3 (View Sharing) within Section C1 of the P21 DCP within this assessment report for a detailed assessment of view impact.

The amendment to Condition 18 was imposed by the Development Determination Panel (DDP) to reduce the impact of view loss. The proposed modification is contrary to the DDP's recommendation, and this also forms a reason for refusal.

- **Visual privacy**

Comment – Reference is made to the assessment of Part C1.5 (Visual Privacy) within Section C1 of the P21 DCP within this assessment report for a detailed assessment of visual privacy. To summarise, despite the proposed increase to the roof top terrace FFL, the approved locations, dimensions, and separation to adjoining swimming pools and living rooms remains unchanged and is reasonably protected from direct overlooking.

- **Solar access**

Comment – Reference is made to the assessment of Part C1.4 (Solar Access) within Section C1 of the P21 DCP within this assessment report for a detailed assessment of solar access to adjoining sites. To summarise, the shadow diagrams submitted indicate the proposed development will maintain a minimum of 3 hours of solar access to adjacent private open space and living areas at no. 28 Ralston Road (to the west), no. 24 Ralston (the east), and no. 8 Ebor Road (the south). Internally, both Lot 4 and Lot 5 of the proposed development will also maintain a minimum of 3 hours of solar access to adjacent private open space and living areas according to the submitted shadow diagrams.

- **Adverse acoustic impacts**

Comment – The residential nature of the two-approved dwellings is unlikely to result in adverse and unreasonable noise impacts. While their floor levels will be raised, the locations and sizes of the rooftop terraces are not proposed to be altered; the proposed modifications will therefore not facilitate changes that may unduly increase residential noise impacts on surrounding sites (i.e. increasing the height of the terraces will not alter the volume and distribution of noise from these areas).

Noise associated with plant equipment (i.e. pool filters) was addressed by condition 21 within Development Consent no. DA2020/0096. This condition is to remain as part of the proposed modifications.

- **Visual bulk and scale of the development**

Comment – Lot 4 breaches the building height plane controls contained in D12.8 of the DCP which results in unacceptable bulk and scale impacts to the property at 28 Ralston Road, particularly the rear yard. This forms a reason for refusal (refer to the DCP assessment section of this report for additional details).

Lot 5 also breaches the building height plane controls and will result in unacceptable bulk and scale impacts on the property at Lot 4, particularly the rear yard. This also forms a reason for refusal (refer to the DCP assessment section of this report for additional details).

- **The proposed development as modified is not ‘substantially the same’ as that which was approved**

Comment – The development, as modified, is substantially the same development as that approved. The proposed modifications do not alter the essence or character of the development in any materially significant way. The modifications will maintain residential development on the site in the form of two dwellings houses that are substantially the same as that which was originally approved.

REFERRALS

Internal Referral Body	Comments
Biodiversity	<p>The proposed modifications are limited to the existing and/or approved building footprint, and therefore will not result in additional impacts to native vegetation or wildlife habitat. There are no objections, subject to retention of existing biodiversity conditions.</p> <p>The proposal is therefore supported.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)

All Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst the provisions of each applicable Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant to the proposed modifications.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS) AND STATE REGIONAL ENVIRONMENTAL PLANS (SREPS)

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

The approval of Development Consent no. DA2020/0096 required that the development satisfy the provisions of two BASIX certificates that were submitted with that application. The proposed modifications do not seek to change the commitments of the as-approved BASIX certificates.

Pittwater Local Environmental Plan 2014

Standard	Requirement	Approved	Proposed	Complies
Height of buildings	8.5m	Lot 4: 7.7m top of parapet	Lot 4: 8m (top of glass balustrade)	YES
		Lot 5: 6.6m top of parapet	Lot 5: 7.13m (top of glass balustrade)	YES

Pittwater 21 Development Control Plan

Built form Assessment:

Lot 4

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	14.3m	No change	N/A
Rear building line	6.5m	6.7-7.2m	No change	N/A
Side building line	East: 1m	Garage: 1.1m Dwelling: 2.5m	No change	N/A
	West: 2.5m	2.9-3.9m	No change	N/A
Building envelope	3.5m	East: Within envelope	0.2m projection outside of envelope	NO
	3.5m	West: Outside envelope	1.8m projection outside of envelope	NO
Landscaped area	60%	61.1% (468.2m ²)	No change	N/A

Lot 5

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	14.5m	No change	N/A
Rear building line	6.5m	7.5-8m	No change	N/A
Side building line	East: 2.5m	2.8-3.3m	No change	N/A
	West: 1m	Garage: 1.1m Dwelling: 2.5m	No change	N/A
Building envelope	3.5m	East: Within envelope	No change	N/A
	3.5m	West: Outside envelope	0.47m projection outside of envelope	NO
Landscaped area	60%	64.6% (472.7m ²)	No change	N/A

***Note:** The percentage variation is calculated on the overall numerical variation (i.e.: for LOS – Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.2 Bushfire Hazard	Yes	Yes
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor	Yes	Yes
B5.15 Stormwater	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.3 View Sharing	No	No
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.16 Swimming Pool Safety	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.8 Building envelope	No	No

C1.3 View Sharing

Views to Pittwater, Broken Bay, Barrenjoey Head, Lion Island, Umina and Ettalong Beaches, and associated land/water interfaces are currently enjoyed from the site and neighbouring properties. Some of these views from neighbouring properties are obtained across the subject site. In response to the notification of the application, submissions have been received objecting to potential view loss impacts from the owners of dwellings at 24 Ralston Road and 8 Ebor Road (while a submission was also received from 28 Ralston Road, it did not raise issues regarding view loss).

Height poles were erected as part of Council's additional information request to demonstrate the building height of the modified proposal. The heights of the erected poles have also been certified by a qualified surveyor. Photographs of views captured across the subject site from the objector's living areas and private open space areas by Council were provided to the Applicant. A view sharing assessment has been provided by the Applicant below, and is supported by three photomontages referred to by the Applicant as Annexure 1, 2, and 3 (see below):

24 Ralston Road

24 Ralston Road is located to the east and uphill of the subject site. The photos provided by Council indicate distant water views are obtained in a westerly direction from the upper floor side balcony over the common side boundary. The views are heavily filtered by vegetation and are highly vulnerable to future vegetation growth, including the extensive landscaping approved at the subject site in the original development consent.

It is unknown if any other views are available in a northerly direction from the dwelling at 24 Ralston Road.

Based on the height poles erected on site (Annexure One), it appears that these distant and heavily vegetated views will not be affected by the increased height proposed in the subject modification application, with no additional adverse impact associated with the modifications proposed.

However, even if these views were to be removed as a consequence of the development, such an impact cannot be said to be unreasonable in consideration of the vulnerability of the views, the obtainment of the views over a side boundary, and noting that the impact is not associated with a dwelling that is located centrally on the site that is maintained well below the maximum height limit.

28 Ralston Road

28 Ralston Road is located to the west and downslope of the subject site. The photos provided to Council do not demonstrate the obtainment of any views available over the subject site, and as such, the proposed modified development does not result in any adverse view impacts in relation to 28 Ralston Road.

8 Ebor Road

8 Ebor Road is located to the south and uphill of the subject site. The photos provided by Council indicate distant water views are obtained in a northerly direction from the second storey living area, the third floor study and the third floor bedroom. The views are obtained across the side boundary of 8 Ebor Road, are heavily filtered by vegetation and are highly vulnerable to future vegetation growth, including the extensive landscaping approved at the subject site in the original development consent.

It is unknown if any other views are available in a westerly direction from the dwelling at 8 Ebor Road.

Based on the height poles erected on site (Annexure Two), it appears that the proposed development will impact upon views from the second storey living room. However, as demonstrated, the view from this area was also lost as a consequence of the approved development, and in this respect, the impact remains the same as that originally approved.

The height poles also confirm that the views from the third floor will be wholly retained, with no additional impact arising as a consequence of the proposed modifications.

The landscaping approved under DA2020/0096 is also relevant for the discussion of view loss. 10 Cheese Trees, with a maturity height of 8m, and 27 Cabbage Tree Palms, with a maturity height of 20m, are to be planted across the site in accordance with the Approved Landscape Plan referenced in DA2020/0096. The approved trees are predominately to be located in a linear arrangement around the perimeter of the development and will ultimately grow to obscure any views through or across the site. The subject modification does not seek to alter this approved landscaped outcome.

Overall, the proposed modified development will not result in any new or intensified impacts upon views and view sharing between properties is achieved.



Figure 1 - View from standing position of second floor living area at 24 Ralston Road (as described/identified by Council) with red lines indicating the development as approved and the black lines indicating the modified proposal

Figure 2: Photomontage from standing position of second floor living area at 24 Ralston Road, Palm Beach. Red lines indicating approved building envelope and black lines indicating the proposed modifications.

Source: Applicant



Figure 2 - View from sitting position at western windows of second floor living area at 8 Ebor Road (as described/identified by Council with red lines indicating the development as approved and the black lines indicating the modified proposals)

Figure 3: Photomontage from sitting position at western window of second floor living area of at 8 Ebor Road, Palm Beach. Red lines indicating approved building envelope and black lines indicating the proposed modifications.

Source: Applicant



Figure 3 - View from sitting position at eastern windows of second floor living area at 8 Ebor Road (as described/identified by Council with red lines indicating the development as approved and the black lines indicating the modified proposals)

Figure 4: Photomontage from sitting position at eastern window of second floor living area of at 8 Ebor Road, Palm Beach. Red lines indicating approved building envelope and black lines indicating the proposed modifications.

Source: Applicant

The Applicant's photomontages are lacking the following critical information preventing Council from relying on the photomontages for an accurate view share analysis:

- A copy of the existing photograph with the wire frame lines depicting the existing surveyed elements which correspond with the same elements shown in the existing photograph
- A 2D plan showing the location of the camera and target point that corresponds to the same location the existing photograph was taken.
- Confirmation that accurate 3D survey data has been used to prepare the photomontages,
- The applicant has not included the name and qualifications of the surveyor who prepared the survey information.

View Share Analysis:

Despite the insufficient photomontages described above, a simple view share analysis can be undertaken based on the surveyed height poles erected by the Applicant on site, along with observations made by the assessing officer during the site inspections. The four-step planning principle established by *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* has been undertaken for the above property. For reference, the four tests are as follows:

The first step is the assessment of 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.

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.

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.

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.

While they were considered, it was determined that views from public areas will not be affected by the development. As such, views from public areas will not be discussed further by this assessment.



Figure 5: Aerial photograph of the subject site (denoted by the green border) and its relation to the sites from where submissions raising view loss were received (denoted by the red borders).

Source: Nearmap, 23 November 2022

24 Ralston Road

This property adjoins the eastern side of the subject site. Development on this site comprises of a two-storey dwelling house (approved by Development Consent no. DA2018/1972).

The design of this dwelling enables it to enjoy views to the north and west. Aspects to the north provide distant views of Pittwater, Broken Bay, Barrenjoey Head, Lion Island and Umina Ettalong Beaches and some foreshore areas. Views to the west are achieved from the side setback include some glimpses of Pittwater, however these are heavily filtered by existing structures and established trees located within McKay Reserve, 30 and 32 Ralston Road (refer to **Figure 6**).

The views detailed above are obtained from areas on the first floor, and include a large open plan living area at the front (i.e. northern end) of this level, a bedroom and balconies and decks that wrap around the northern and western sides of the aforementioned living areas. Views to the west are obtainable from mostly standing perspectives and are considered partial views (visible between branches), while views to the north are obtainable from both standing and seated positions.

Views to the north are not assessed, given that the location of the proposed works will not affect views in this direction.

With regards to the western views, the established trees will continue to screen the views despite the proposed height increase and therefore the impacts are considered negligible. Part C1.3 of the PDCP is satisfied.



Figure 6: Photograph from standing position of second floor living area at 24 Ralston Road, Palm Beach and the three blue height poles in the background
Source: CPS March 2023

28 Ralston Road

This property adjoins the western side of the subject site. Development on this site comprises of a two-storey dwelling house and is located downslope from the subject site.

The design of this dwelling enables it to enjoy views to the north and west. Aspects to the north provide distant views of Pittwater, Broken Bay, Barrenjoey Head, Lion Island, Umina and Ettalong Beaches, and some foreshore areas. Views to the west include some glimpses of Pittwater, however these are heavily filtered by vegetation and existing development.

The photographs at **Figure 7, 8** and **11** indicate the property is noticeably lower than the subject site, and do not demonstrate the obtainment of any eastern views available over the subject site to the east. The dwelling layout is orientated to the north and south and window openings to living areas respond accordingly. As such, the proposed modifications do not result in any adverse view impacts from the private open space areas in relation to 28 Ralston Road. Part C1.3 of the DCP is satisfied.



Figure 7: Photograph taken from seated position in the front private open space at 28 Ralston Road and the blue height pole in the background

Source: CPS March 2023



Figure 8: Photograph taken from standing position in the front private open space at 28 Ralston Road and the blue height pole in the background

Source: CPS March 2023

8 Ebor Road

This property adjoins part of the subject site's southern rear boundary and contains a part-two-and-three storey dwelling house. A swimming pool and cabana are contained within the rear setback area, however there are no views obtainable from these features, they will not be discussed further. Distant views to Pittwater, Broken Bay, the western-most section of Barrenjoey Head, Lion Island and Umina/Ettalong Beaches and associated land/water interfaces are currently enjoyed by the upper two levels of this dwelling.

The views detailed above are obtainable from northern windows within a study, living area and an adjacent deck on the two upper levels. While some views are obtainable from a bedroom and study on the third floor, such views are limited to water views and land/water interface on the northern side of Broken Bay; views of other significant features from the bedroom are obscured by trees/vegetation and development on both the subject site and adjoining site at 24 Ralston Road. On the ground floor, the only significant views are of water glimpses thorough trees and vegetation on the subject site and adjoining site.

Views to the east, south and west are not assessed, given that the location of the proposed works will not affect views in this direction.

Regarding the above, the openings to the north facing living room on the second storey will be adversely affected by the proposed height increase. Based on the height pole in **Figure 9** and **10** the existing view is likely to be adversely impacted by obstructing more than 50% of the Broken Bay water view and degrading the land/water interface which is currently enjoyed from the living area. It is important to note that the top of the height pole level is RL107.14 and is 60mm lower than the maximum proposed parapet level of RL107.20 for Lot 4 and also does not include the levels for the roof top glass balustrade and is therefore not an accurate reflection of the proposed height shown on the section drawings. Despite this inconsistency, Council's view share analysis can still reach a reasonable conclusion regarding view impact.

The view in question is from a side boundary and the Tenacity planning principle provides that views across side boundaries are difficult to protect. However, when the Development Determination Panel (DPP) deliberated over the approved development they considered that views could be reasonably protected and amended Condition 18 requiring the lowering of the parapet walls to reduce the view impact. The proposed modification seeks to confute this outcome which will result in an adverse view loss impact to the second storey living room at 8 Ebor Road. This is unacceptable.

The impacts of the proposal upon the views currently enjoyed at 8 Ebor Street would be adverse and is contrary to Part C1.3 of the PDCP. This forms a reason for refusal.

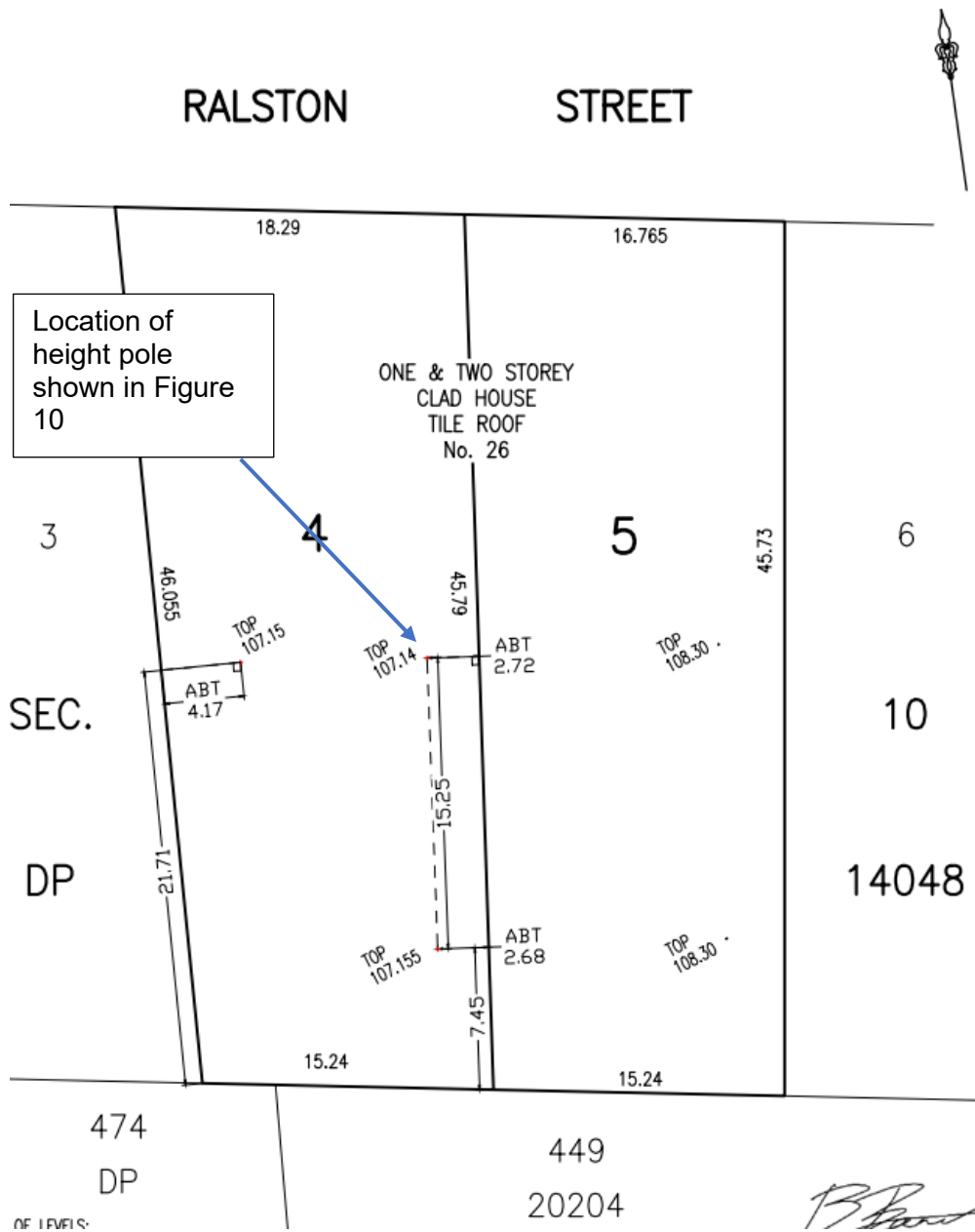


Figure 9: Height pole location survey at the subject site

Source: Brandon Bowd, registered surveyor (Surveyor ID No. 9122), dated 01/03/2023
(provided on behalf of the Applicant)



Figure 10: Photograph from standing position of second floor living area at 8 Ebor Street, Palm Beach and the blue height pole for Lot 4 in the background
Source: CPS March 2023

C1.4 Solar Access

The orientation of the site is such that on June 21, the proposed development (if modified as proposed) will cause:

- Notable overshadowing of the site to the west (i.e. 28 Ralston Road) prior to 12:00pm,
- Some overshadowing of the site to the rear from 9am to 12pm (i.e. 8 Ebor Road)
- Notable overshadowing of the site to the east (i.e. 24 Ralston Road) after 12:00pm.

Despite causing overshadowing of adjoining sites, the dwellings will allow for at least three hours of and solar access to private open space and living areas of adjoining sites on June 21. The development (as modified) therefore satisfies the provisions of Part C1.4 of the DCP.

C1.5 Visual Privacy

Apart from increasing the FFL of the rooftop terraces from RL106.250 to RL106.700 (450mm) for Lot 4 and from RL107.400 to RL107.850 (450mm) for Lot 5, the following design features remain unchanged:

- both roof terraces are located centrally within their respective lots
- both roof terraces are stepped in from the level below on the northern, western and southern elevations
- minimum physical separation to adjoining private open spaces of 15m to the south (No. 8 Ebor), 11m to the west (No. 28 Ralston) and 7m to the east (No. 24 Ralston) is retained
- despite the 0.45m increase in FFL, the relative height between the Lot 4 and 5 rooftop terraces is retained as approved at 1.15m, and does not increase the extent of overlooking.

The proposed modification increases the depth of the parapet wall on the eastern elevation for Lot 4, and western elevation for Lot 5 to 0.33m, thus increasing the separation between the rooftop terraces to 5.7m. This further prevents direct overlooking from the Lot 5 rooftop terrace into Lot 4. The development (as modified) therefore satisfies the provisions of Part C1.5 of the DCP.

D12.1 Character as viewed from a public place

The approved 14.30m and 14.50m front setbacks for Lot 4 and 5 respectively remain unchanged. These setbacks are considered generous and suitable for absorbing the increased building height and parapets when viewed from Ralston Road.

D12.8 Building envelope

The modification to Lot 4 proposes an increased wall height, including an increase in the parapet height from RL106.70 to RL107.20, creating additional bulk and scale which breaches the building envelope by 1.8m on the western elevation and 0.2m on the eastern elevation. The ability to satisfactorily screen and soften the offending building envelope cannot occur given the RFS asset protection zone requirements (Condition 1 and 5) limit tree canopy spread across the site to 15% and within 2m of the dwelling. This will prevent any genuine softening of the non-compliant building envelope from within the site, and compound the development's bulk and scale when viewed from the neighbouring properties. This will be particularly evident (refer to Figure 11) in the rear yard of 28 Ralston Road, and is contrary to Part D12.8 outcome 1,2, and 3, and control 2 of the P21 DCP. This forms a reason for refusal of the application.



Figure 11: Photograph of the rear yard at 28 Ralston Road and the first floor of the existing dwelling (ridge: RL106.58) at the subject site in the background, the height of the proposed parapet wall (RL108.35) at this location will be 1.77m higher than the existing dwelling.

Source: CPS November 2022

The modification to Lot 5 proposes an increase to the overall wall height including an increase in the parapet height from RL107.85 to RL108.35, creating additional bulk and scale which breaches the building height plane by 0.47m on the western elevation. The ability to satisfactorily screen and soften the offending building envelope for Lot 5 cannot occur given the RFS asset protection zone requirements (Condition 1 and 5) as discussed above. The proposed breach will result in unacceptable bulk and scale impacts on the property at Lot 4, particularly the rear yard, and is contrary to Part D12.8 outcome 1,2, 3 and control 2 of the P21 DCP. This forms a reason for refusal of the application.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

PLANNING CONCLUSION

The proposed modification is for internal and external changes, including changes to the approved floor levels increasing the height and bulk and scale of both dwellings on Lots 4 and 5.

The key planning issues considered within the assessment are the amenity impacts relating to view sharing, visual bulk and scale, and numerical non-compliances relating to the building height plane controls prescribed by P21 of the PDCP.

The three submissions received have been considered and are addressed within this report. The issues raised relating to view sharing were considered to be pre-eminent.

Condition 18 was imposed by the DDP to reduce the impact of view loss. The proposed modification would confute this outcome, which is contrary to the DDP's recommendation. Pursuant to s.4.55(3) of the Act, this forms a reason for refusal.

The proposed increase to the overall wall heights also generates additional bulk and scale to the development which contravenes the building height plane prescribed by control 2 of the P21 DCP.

The ability to satisfactorily screen and soften the offending building envelope cannot occur given the RFS asset protection zone requirements. This prevents any genuine softening of the non-compliant building envelope from within the site, and compounds the development's bulk and scale when viewed from the neighbouring properties. This is contrary to Part D12.8 outcome 1, 2, and 3, and control 2 of the P21 DCP. This forms the second reason for refusal of the application.

This assessment has taken into consideration the submitted plans and all other documentation supporting the application. Having regard to section 4.55 of the *Environmental Planning and Assessment Act 1979*, the proposed modifications are deemed unsatisfactory.

Based on the detailed assessment contained in this report, it recommended that the request to modify development consent DA2020/0096 be refused for the reasons summarised above, and as detailed within this report.

GENERAL CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the Applicant and the provisions of:

- *Environmental Planning and Assessment Act 1979*;
- *Environmental Planning and Assessment Regulation 2021*;
- All relevant Environmental Planning Instruments;
- *Pittwater Local Environment Plan 2014*;
- Pittwater 21 Development Control Plan; and
- Relevant codes and policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application, and concludes that having regard to section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, the proposed modifications to the development consent are unsatisfactory.

RECOMMENDATION

THAT Council, as the consent authority refuse the modification application for the following reason:

Adverse View Loss

1. The proposed increase height will adversely affect the sharing of views with 8 Ebor Road, Palm Beach.

Particular:

- a) Part C1.3 of the Pittwater Part 21 Development Control Plan requires that new development is designed to achieve a reasonable sharing of views available from surrounding and nearby properties.
- b) The openings to the north facing living room on the second storey at 8 Ebor Road will be adversely affected by the proposed Lot 4 height increase. Based on the submitted height poles the existing view is likely to be adversely impacted by obstructing more than 50% of the Broken Bay water view and degrading the land/water interface which is currently enjoyed from the living area and is unacceptable.
- c) Despite the adverse view loss impacts the height poles shown on the survey plan, prepared by Brandon Bowd and dated 01/03/2023 do not reflect the proposed parapet levels or include the glass balustrade shown on Section Drawings A310 (Issue 04) prepared by Crawford Architects and dated 26/09/2022.
- d) The approval of DA2020/0096 by the Development Determination Panel was subject to Condition 18 requiring the lowering of the parapet walls to reduce the view impact. The proposed modification seeks to confute this outcome which will result in an adverse view loss impact to the second storey living room at 8 Ebor Road and is unacceptable.
- e) The impacts of the proposal upon the views currently enjoyed by 8 Ebor Street would be adverse and is contrary to Part C1.3 of the P21 DCP and forms a reason for refusal.

Excessive Bulk and Scale

2. The proposed increase in building height will result in excessive built form that is unable to be satisfactorily screened and softened.

Particulars:

- a) Part D12.8 of the Pittwater Part 21 Development Control Plan requires buildings to be sited with the building envelope for development other than residential flat buildings and multi dwelling housing.
- b) The modification to Lot 4 proposes an increased overall wall height including an increase in the parapet height from RL106.70 to RL107.20, creating additional bulk and scale which breaches the building height plane by 1.8m on the western elevation and 200mm on the eastern elevation. This results in an overbearing visual impact to the neighbouring property.
- c) The modification to Lot 5 proposes an increased overall wall height including an increase in the parapet height from RL107.85 to RL108.35, creating additional bulk and scale which breaches the building height plane by 470mm on the western elevation. This results in an overbearing visual impact to Lot 4 within the proposed development.

- d) The ability to satisfactorily screen and soften the offending building envelope for both Lot 4 and 5 cannot occur given the approved RFS asset protection zone requirements (Condition 1 and 5) limit tree canopy spread across the site to 15% and within 2m of the dwellings. This will prevent any reasonable landscape softening of the built form from within the site. This further contributes to the overbearing visual impact of the building to neighbouring property, and within the development.
- e) The development control breaches associated with the dwelling house on Lot 4 will result in unacceptable bulk and scale impacts on the property at 28 Ralston Road, particularly the rear yard. This is contrary to Part D12.8 outcome 1,2, and 3, and control 2 of the P21 DCP.
- f) The development control breaches associated with the dwelling house on Lot 5 will result in unacceptable bulk and scale impacts on the property at Lot 4, particularly the rear yard. This is contrary to Part D12.8 outcome 1,2, and 3, and control 2 of the P21 DCP.
- g) The amendment to Condition 18 was imposed by the Development Determination Panel as part of the approval for DA2020/0096, with the reason for the condition being *"To reduce the bulk and visual impact of the dwelling at the western elevation"*. When considering Pursuant to s.4.55(2)(3) of the Act, the proposed modifications would confute the Development Determination Panel's reasons for granting consent to DA2020/0096.

Insufficient Information

- 3. The documentation submitted is inadequate and cannot be relied upon.

Particular:

- a) The applicant's reliance on the photomontages depicting the proposed built form from the living area at 24 Ralston Road and from the second floor living area at 8 Ebor Road are lacking critical information preventing Council from relying on the view share analysis. The photomontages have not been prepared in accordance with the best practice guidelines established by the NSW Land and Environment Court for the use of photomontages.
- b) The applicants view share analysis cannot be relied upon because the following information was not provided with the photomontages:
- c) An existing photograph showing the current unchanged view of the location;
- d) A copy of the existing photograph with the wire frame lines depicting the existing surveyed elements which correspond with the same elements shown in the existing photograph;
- e) A 2D plan showing the location of the camera and target point that corresponds to the same location the existing photograph was taken;
- f) Confirmation that accurate 3D survey data has been used to prepare the photomontages;
- g) To rely on the photomontages the applicant has not included the name and qualifications of the surveyor who prepared the survey information;
- h) the camera type and field of view of the lens used for the purpose of the photograph from which the photomontage has been derived; and
- i) Without reliable photomontages the Council is unable to verify the Applicants view impact analysis and therefore the proposal is contrary to Part C1.3 of the P21 DCP.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Scott McInnes
Principal Planner, Creative Planning Solutions Pty Ltd