

STATEMENT OF ENVIRONMENTAL EFFECTS

New dwelling house
with the retention of
the existing tennis
court

2A Allen Avenue,
Bilgola Beach

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Statement of Environmental Effects

Construction of a new dwelling house with the retention of the existing tennis court

2A Allen Avenue, Bilgola Beach



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December 2024

TABLE OF CONTENTS

- 1 Introduction..... 4**
- 2 Site Analysis 7**
 - 2.1 Site Description and location 7
 - 2.1.1 The Site..... 7
 - 2.1.2 The Locality 12
- 3 Description of Proposed Development 13**
 - 3.1 Details of the proposed development..... 13
- 4 Statutory Planning Framework 16**
 - 4.1 Pittwater Local Environmental Plan 2014..... 16
 - 4.1.1 Zoning 16
 - 4.1.2 Height of Buildings 16
 - 4.1.3 Heritage Conservation 21
 - 4.1.4 Flood Planning 21
 - 4.1.5 Acid Sulfate Soils 21
 - 4.1.6 Earthworks 22
 - 4.1.7 Biodiversity 22
 - 4.1.8 Geotechnical Hazard 22
 - 4.1.9 Essential Services 22
 - 4.2 Pittwater 21 Development Control Plan 23
 - 4.2.1 Bilgola Locality 23
 - 4.2.2 DCP Compliance Table 25
 - 4.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021 41
 - 4.3.1 Vegetation in non-rural areas 41
 - 4.4 State Environmental Planning Policy (Resilience and Hazards) 2021 41
 - 4.4.1 Coastal Hazard 41
 - 4.4.2 Remediation of Land..... 42
 - 4.5 Matters for Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended 42
- 5 Conclusion 47**

Attachment 1 Clause 4.6 variation request - Height of buildings

1 Introduction

This Statement of Environmental Effects (SoEE) has been prepared on behalf of Mark Bradshaw/ Wimbledon 1963 Pty Limited in support of a development application proposing the construction of a new dwelling and swimming pool at 2A Allen Avenue, Bilgola Beach. The proposed new dwelling has been designed to allow for the retention of the existing tennis court located at the front of the property which in accordance with the client is a fundamental component of the development.

We note that on 30 April 2024 the Land and Environment Court of NSW dismissed an appeal against Council's refusal of development application DA2022/1494 proposing the construction of a new dwelling house on the subject allotment and also involving the retention of the existing tennis court. The dwelling house design, the subject of this application, responds to the matters that remained in dispute between the planning experts as detailed within the joint expert report prepared to assist the Court in the previous proceedings namely:

- The experts agree that as a consequence of joint conferencing that the elements of the proposal remaining in dispute relate to the extent of building height breach calculated above ground level (existing) and consequential visual impacts and whether a 3 metre setback should apply to the whole of the dwelling to increase deep soil landscaping at the rear of the property and minimise building bulk as viewed from the properties to the west. The experts agree that the balance of the contentions are capable of resolution as detailed within this Expert Report.*

In response to the disputed matters the perimeter of the Level 3 roof form has been lowered by 1010mm whilst the uppermost ridge level has been lowered by 500mm compared to that previously proposed. The proposal also now incorporates a 3 metre deep soil rear setback with both design changes depicted in the following plan extract.



Accordingly, we are satisfied that the proposed development appropriately responds to the issues raised by Council's town planning expert in relation to the previous proposal with the lowering of overall building height providing for a view sharing outcome and the 3 metre rear deep soil setback facilitates additional landscaping to minimise the building bulk as viewed from the properties to the west.

Whilst the proposal requires the consent authority to give favourable consideration to a variation to the building height standard, strict compliance has been found to be unreasonable and unnecessary having regard to the particular circumstances of the case, the attainment of an appropriate contextual fit and general paucity of unacceptable environmental consequences. Sufficient environmental planning grounds existing to support the variation proposed including the topography of the site and prior excavation which distorts the reasonable application of the building height standard on this particular site.

The proposed development results in non-compliance with the side and rear setback control, the prescribed building envelope and landscaped area controls. These non-compliances have been acknowledged and appropriately justified having regard to the outcomes of the controls. Such variations succeed pursuant to section 4.15(3A)(b) of the Environmental Planning and Assessment Act, 1979 (the Act) which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.

This document will demonstrate that the proposed development will not give rise to inappropriate or jarring streetscape impacts and will maintain appropriate residential amenity to adjoining development in terms of views, privacy and solar access. In addition to this SoEE, the application is also accompanied by the following:

- Architectural Plans by Ursino Architects
- Survey by John Lowe and Associates
- Landscape Plans by Paul Scrivenor
- Stormwater Management and Overland Flow Plans by Partridge Partners
- Bushfire Assessment prepared by Bushfire Planning Australia
- Geotechnical Risk Management Report by Crozier Geotechnical Consultants
- Waste Management Plan
- QS Report
- BASIX Certificate

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

- Environmental Planning and Assessment Act 1979,
- Environmental Planning and Assessment Regulation 2021,
- State Environmental Planning Policy (Biodiversity and Conservation) 2021

- State Environmental Planning Policy (Resilience and Hazards) 2021,
- State Environmental Planning Policy (Sustainable Buildings) 2022,
- Pittwater Local Environmental Plan 2014 (**PLEP 2014**), and
- Pittwater 21 Development Control Plan 2012 (**P21 DCP**).

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15(1) of the EP&A Act. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent.

2 Site Analysis

2.1 Site Description and location

2.1.1 The Site

The site comprises two separate allotments, being Lot 20 in DP 11978 and Lot A in DP 379490, and is commonly referred to as 2A Allen Avenue, Bilgola Beach. The site is slightly irregular in shape, with a 18.288m wide frontage to Allen Avenue to the east, a maximum depth of 48.033m and a total area of 850.38m².

An aerial location photograph is at Figure 1 below.

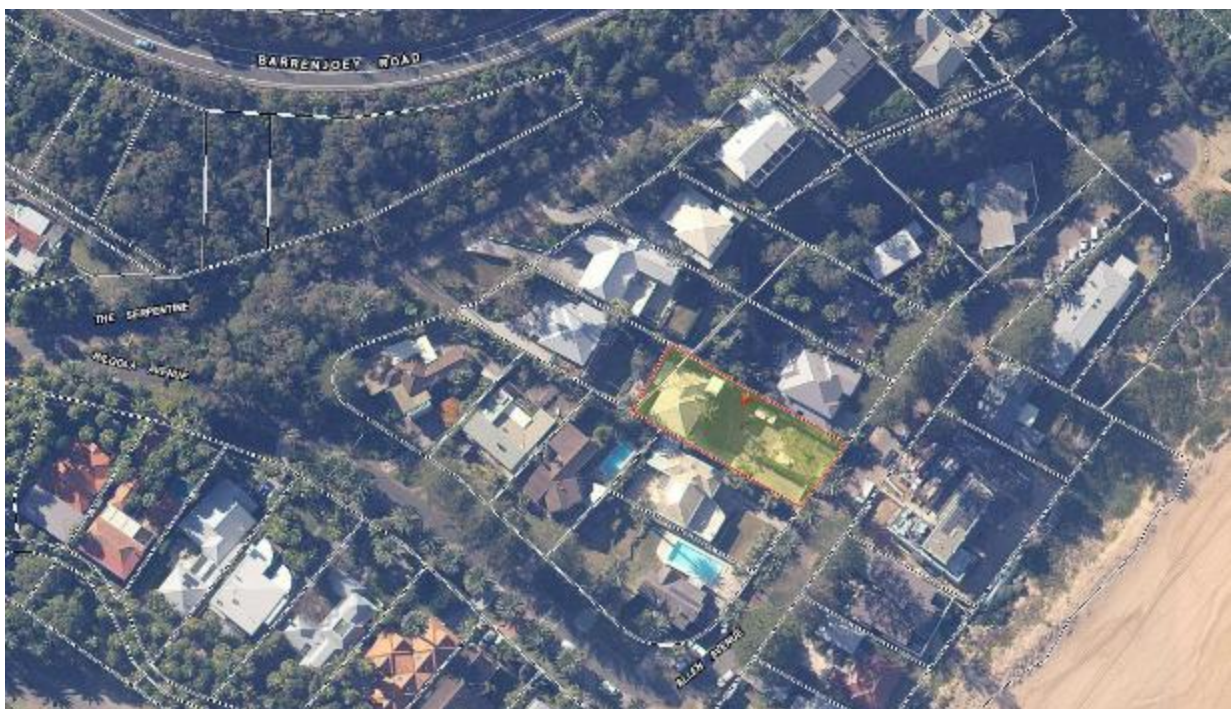


Figure 1: Aerial photograph of the subject site

The site currently contains a 2 storey dwelling house, located to the rear of the site, with a tennis court occupying the front of the site. A driveway extends along the southern side boundary, along the side of the tennis court, connecting the dwelling to the street. A number of significant retaining walls are located between the tennis court and dwelling house and around the rear of the property to accommodate the existing structures. The height of these retaining walls together with the levels established on surrounding properties confirm that the natural ground levels on the site have been highly modified.

The site has a fall of approximately 9.3m from the upper northern corner of the site down towards the street frontage. The front of the site is generally level, with a slope of approximately 25% at the rear of the site. The physical and topographical characteristics of the site are depicted on the Surveys provided to support the application and are highlighted in the images at Figures 2 and 4.



Figure 2: Subject property as viewed from Allen Avenue to the east, with the existing tennis court screened by vegetation



Figure 3: Subject property as viewed from Allen Avenue (south-east)



Figure 4: Subject property as viewed from Allen Avenue (north-east)

By way of historical background, we confirm that in 1951 the property known today as Lot 20, DP 11978, No. 2A Allen Avenue was purchased by our client's grandfather Herbert Horrie Dening, a founding committee member of the 1949/50 Bilgola Surf Life Saving Club, a keen tennis player and Master Builder, with the additional triangulated area of land known as Lot A, DP 379490 purchased shortly after in 1952 to accommodate the construction of a dwelling house at the rear of the property and a tennis court on the front portion of the site.

Shortly after purchase, the existing dwelling house was constructed together with a tennis court with black cyclone wire fencing to the standard tennis court height. The significant retaining walls which currently exist on the site were also constructed at this time to facilitate a reasonably level building platform towards the rear of the property with such walls constructed by bricklayers who had learned their trade constructing brick walls and viaducts for Sydney Railways. The existing natural topography of the land was artificially modified at this time to accommodate the existing dwelling house and tennis court as depicted in the photograph at Figure 5, over the page.

Vehicular access to the ground level garage accommodation was facilitated via a driveway located adjacent to the southern boundary of the property with the driveway ramping up approximately 3 metres to the level of the dwelling house as depicted in Figure 6 over the page.

The owner's daughter, our client's mother, would finish runner up at the Wimbledon Juniors in 1963 with the tennis court extensively used by local residents and Rotary Club Members who would meet regularly at the subject property. The tennis court was resurfaced in 1975 with the property remaining in the ownership of the Bradshaw family until it was sold in 2002.

Our client purchased the subject property in 2019 returning it to its historical family ownership with a Building Information Certificate BC2020/0091 recently issued by Northern Beaches Council for the existing dwelling and tennis court structures. Our client's intention is to return from the UK, where he is currently working and residing with his family, to live on the Northern Beaches and occupy the property as his family home.



Figure 5: Photograph showing the construction of the existing dwelling house and tennis court



Figure 6: Photograph of completed dwelling house showing ramped driveway along the southern boundary of the property and the significant retaining wall which extended along the northern boundary before returning along the western and southern boundaries of the property to create a generally level building footprint



Figure 7: Photograph showing available ocean views from the property prior to the construction of the dwelling house to the east of the site at No. 7-9 Allen Avenue, Bilgola Beach (Development Application N0073/15)

2.1.2 The Locality

The site is zoned C4 Environmental Living under the provisions of PLEP 2014. The site is surrounded by land zoned C4 Environmental Living that comprises residential development of varying age, style and character, within a vegetated setting. An extract of the Zoning Map is provided in Figure 8 below.



Figure 8: Extract of Zoning Map

The adjoining property to the south, No. 2 Allen Avenue, is occupied by a 2 storey residence with pitched and tile roof and a large first floor balcony, accessed from the adjacent living room, orientated to the east to take advantage of available views, sea breezes and solar access. The adjoining property to the north, No. 4B Allen Avenue, is occupied by a 2 storey weatherboard dwelling house with integrated off-street car parking.

The properties to the rear of the site, No's 4, 6, 8 and 10 The Serpentine, are occupied by a multilevel dwellings located at a higher elevation with these properties obtaining views, to a varying extent, across the subject property towards Bilgola Beach and the Pacific Ocean beyond.

The property located directly opposite the site on the eastern side of Allen Avenue, No. 9 Allen Avenue, is occupied by a recently constructed and substantial 2 storey dwelling house which extends the width of the property and obstruct views of the ocean from the subject site (Development Application N0073/15).

We note that the 2 immediately adjoining dwellings at No's 2 and 4 Allen Avenue are located towards the front of the respective sites and immediately adjacent to the existing tennis court located on the subject property. This established built form relationship ensures that the dwelling houses do not have an immediate spatial relationship where potential issues associated with privacy and solar access ordinarily occur. The maintenance of this established built form relationship will afford superior residential amenity outcomes to and from adjoining development.

3 Description of Proposed Development

3.1 Details of the proposed development

The application seeks consent for the demolition of the existing dwelling, the construction of a new dwelling house and swimming pool, with the retention of the existing tennis court, as depicted in the drawing set prepared by Ursino Architects.

Specifically, the resultant development will comprise:

Basement

- Four (4) car garage with turntable
- Plant room
- Laundry
- Cellar
- Storage
- Bathroom
- Internal stair access and lift

Level 1

- Rumpus room
- Four (4) bedrooms, two (2) with ensuites,
- Bathroom and store
- Internal stair access and lift

Level 2

- Master bedroom with ensuite and WIR
- Study
- Formal dining and living area
- Powder room
- Internal stair access and lift

Level 3

- Open plan kitchen/living/dining area
- Scullery
- Internal stair access and lift
- Terrace
- Swimming pool and spa
- Landscaping.

External works

- Retention of the existing tennis court
- Driveway
- Front fence
- Landscaping

This application seeks to replace the existing 70 year-old residence with a new contemporary dwelling house which will meet the reasonable floor space needs of a contemporary family whilst respecting the historical value of the place through the retention of the existing tennis court.

A number of design options were explored including carrying out extensive alterations and additions to the existing dwelling however it was ultimately decided to construct a new dwelling house given the existing substandard lower ground floor ceiling heights and the ability for car parking to be located within a basement level facilitating the removal of a significant portion of the existing driveway and elevated ramp.

Particular attention has been given to maintaining an appropriate spatial relationship with surrounding development noting that the retention of the tennis court provides significant amenity benefits to the immediately adjoining properties in terms of privacy, solar access and views. The maintenance of the long-established building footprint on the site facilitates the maintenance of appropriate levels of residential amenity and superior streetscape outcomes compared to the circumstance whereby a new dwelling house was constructed in the location of the existing tennis court.

The location of Level 3 massing has also been carefully considered, to maintain a view corridor across the site from No's 8 and 10 The Serpentine located to the rear of the property towards Bilgola Beach, the rock pool and the Pacific Ocean beyond.

The application proposes the implementation of enhanced site landscape regime as depicted on the accompanying Landscape Plans prepared by Paul Scrivenor. These landscape plans incorporate a detailed design statement with both deep soil and on-slab plantings proposed around the perimeter of the development including with the 3 metre rear setback proposed.

The subject property currently has a total landscaped area as defined of 32m² representing 3.8% of the total site area. The subject application seeks to significantly improve the existing landscaped area circumstance with the provision of a combination of 116.7m² deep soil landscaping, 61.5m² of on slab planting and 88.6m² % of functional landscaped area representing a total of 266.8m² or 31.3% of the site area. The proposed development provides for a significant quantitative and qualitative improvement in terms of landscaping on the site through the implementation of the proposed landscape regime.

The application is also supported by a Geotechnical Risk Management Report that confirms that the proposed works can be constructed to be safe from the geotechnical hazard that affects the site. Further, Stormwater Management Plans have been produced to ensure a suitable stormwater management solution for the site.

In response to the identified bushfire affectation, a Bushfire Risk Management Report has been prepared to confirm that the proposed development is consistent with the relevant provisions of Planning for Bushfire Protection.

Finally, the application is supported by a Construction and Demolition Waste Management Plan detailing how waste is to be managed during construction.

4 Statutory Planning Framework

The following section of the report will assess the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15 of the EP&A Act, as amended. Those matters which are required to be addressed are outlined, and any steps to mitigate against any potential adverse environmental impacts are discussed below.

4.1 Pittwater Local Environmental Plan 2014

An assessment of the relevant provisions of PLEP 2014 is undertaken, below.

4.1.1 Zoning

PLEP 2014 applies to the subject site and this development proposal. The subject site is located within the C4 Environmental Living zone, and dwelling houses are permissible with consent.

The objectives of the C4 Environmental Living zone are as follows:

- *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.*

The works do not result in any unreasonable impacts upon adjoining properties or the surrounding natural environment and maintain the low-density residential character of the locality. As such, Council can be satisfied that the proposed works are consistent with the objectives of the zone.

Accordingly, there is no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

4.1.2 Height of Buildings

Pursuant to the Height of Buildings Map of PLEP 2014, the site has a maximum building height limit of 8 metres.

The objectives of this control are as follows:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

- (c) to minimise any overshadowing of neighbouring properties,
- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

We note that Council has recently adopted the interpretation of ground level (existing) as that established in the matter of *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 where at paragraphs 73 and 74 O'Neill C found:

73. *The existing level of the site at a point beneath the existing building is the level of the land at that point. I agree with Mr McIntyre that the ground level (existing) within the footprint of the existing building is the extant excavated ground level on the site and the proposal exceeds the height of buildings development standard in those locations where the vertical distance, measured from the excavated ground level within the footprint of the existing building, to the highest point of the proposal directly above, is greater than 10.5m. The maximum exceedance is 2.01m at the north-eastern corner of the Level 3 balcony awning.*

74. *The prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.*

In this regard, it has been determined that the Level 3 terrace planter breaches the height standard by a maximum of 1.180m (14.75%) at its northern end and 1.240m (15.5%) towards its southern end. The perimeter of the Level 3 roof form breaches the standard in part by up to 540mm (6.7%) whilst the ridge breaches the standard by 830mm or 10.37%. The building height breaching elements are depicted on the building height blanket diagram over page.

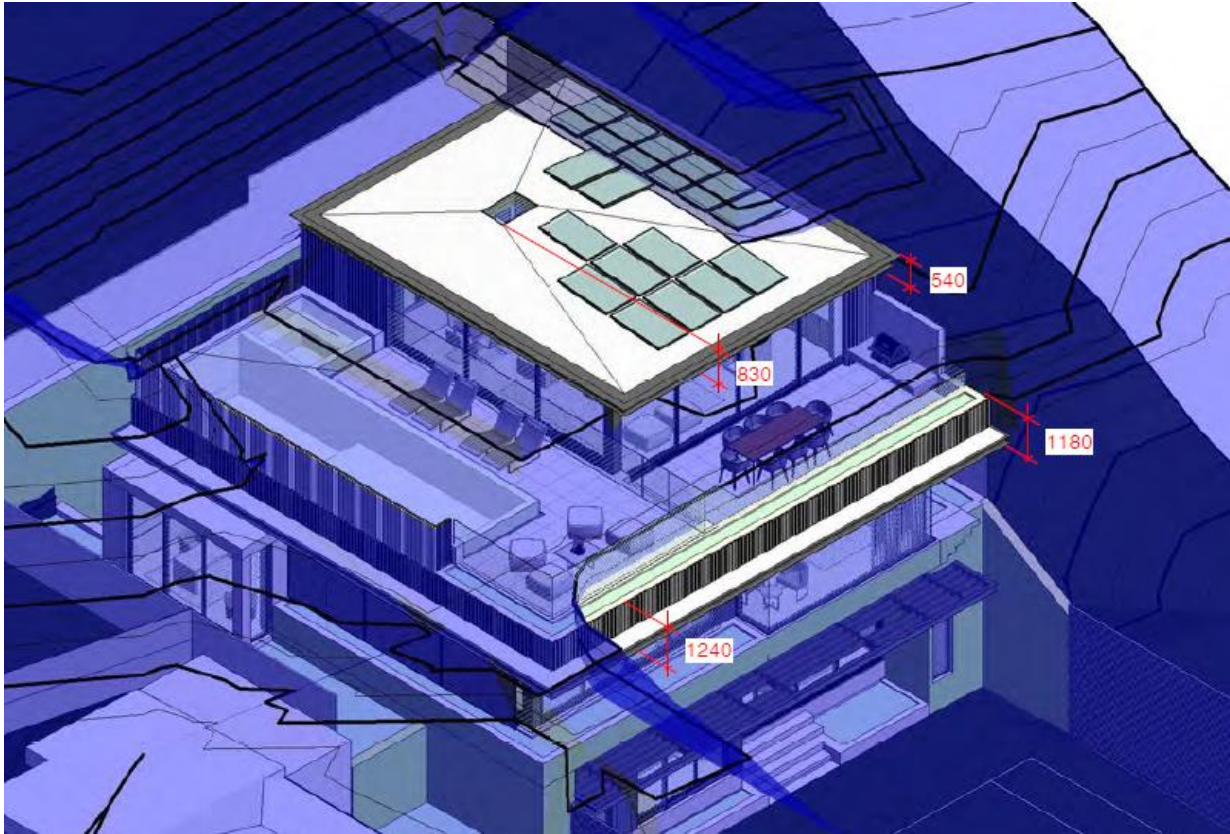


Figure 9: Plan extract showing 8 metre building height blanket (in blue) determined in accordance with *Merman Investments Pty Ltd v Woollahra Municipal Council* with the building height breaching elements shown uncoloured.

We note that the prior excavation of the site within the footprint of the existing building significantly distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill. Having regard to paragraph 74 *Merman Investments Pty Ltd v Woollahra Municipal Council* John, Low and Associates Surveyors were engaged to prepare a survey plan to identify the assumed undisturbed levels on the site being the ground level (existing) of the land prior to any development occurring. An extract of this survey is at Figure 10 over page.

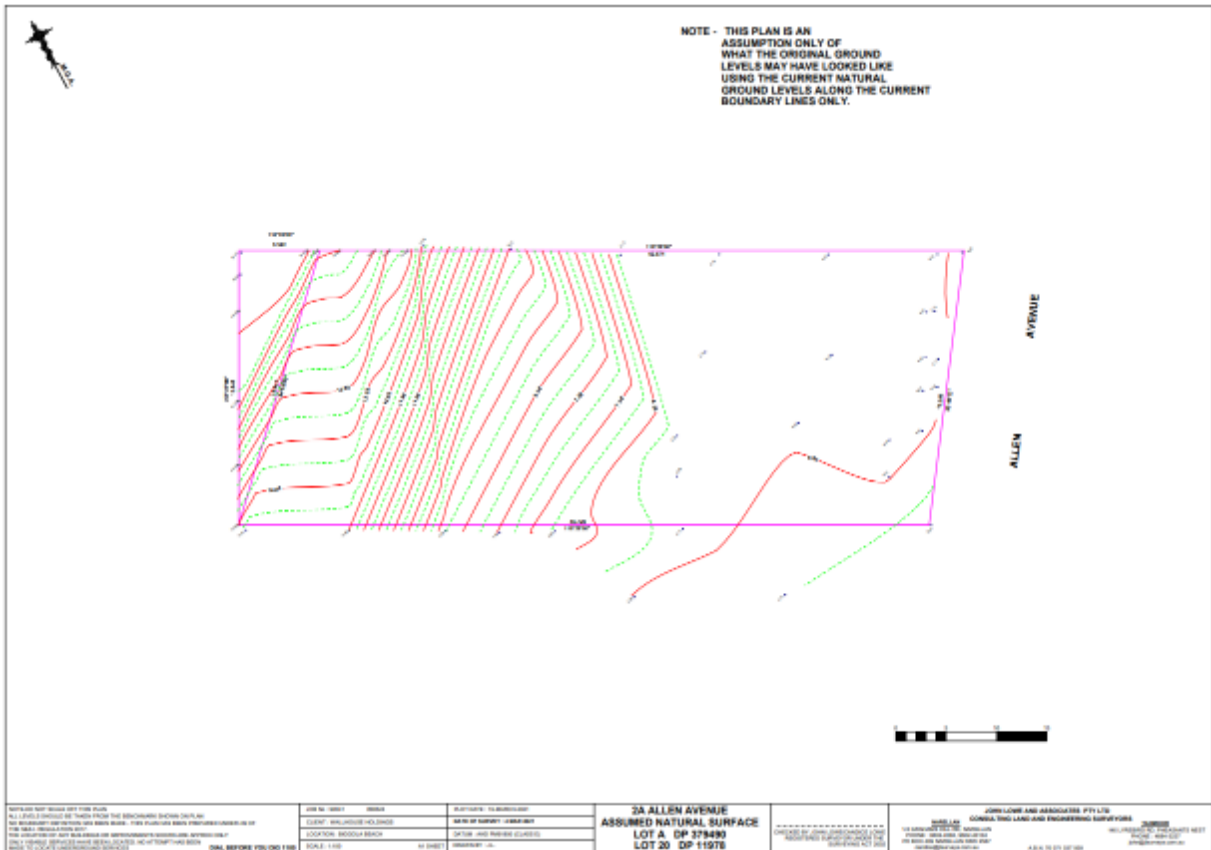


Figure 10: Survey extract showing assumed undisturbed levels on the site being the ground level (existing) of the land prior to any development occurring.

On the basis of this survey information, an 8 metre building height blanket was able to be overlaid on the plans to determine the height of the development relative to undisturbed levels being the levels of the land prior to excavation occurring to accommodate the existing dwelling house.

Whilst the majority of the proposed dwelling sits well below the 8.0m maximum building height plane there is a minor protrusion of 100mm at the south-eastern corner of the upper level roof form as depicted in the diagram is at Figure 11 over page.



Figure 11: Plan extract showing 8 metre building height blanket (in yellow) determined from assumed undisturbed levels on the site being the ground level (existing) of the land prior to any development occurring with the building height breaching elements shown in yellow.

Clause 4.6 of PLEP 2014 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Having regard to these provisions, strict compliance has been found to be unreasonable and unnecessary having regard to the particular circumstances of the case including the ability to satisfy the objectives of the zone and the objectives of the development standard. Sufficient environmental planning grounds exist to support the variation proposed, as outlined in the accompanying clause 4.6 variation request at **Attachment 1**.

4.1.3 Heritage Conservation

Canary Island Date Palms of local heritage significance are located within the public road reserve adjacent to the site. The proposed works will not result in any physical impacts to these trees.

Further, Council can be satisfied that the setback between the proposed dwelling and the trees affords sufficient spatial separation to ensure that there is no adverse visual impact upon the tree-lined streetscape setting. Overall, the proposed development is considered to have a neutral impact upon the significance of the street trees, and consistency with the provisions of clause 5.10 of PLEP 2014 is achieved.

4.1.4 Flood Planning

The site is identified as being affected by Low and Medium Risk flooding on Council's Flood Risk Precinct Maps and the provisions of clause 5.21 of PLEP 2014 are applicable in relation to the site and the proposed development.

Pursuant to clause 5.21(2) of PLEP 2014, development consent must not be granted unless the consent authority is satisfied that the development:

- (a) *is compatible with the flood function and behaviour on the land, and*
- (b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

The application is supported by Stormwater Management and Overland Flow Plans by Partridge Partners that confirm that the proposed development has been appropriately designed in consideration of the flood affected nature of the site, and that the development is consistent with Council's design requirements of clause B3.11 of P21 DCP.

4.1.5 Acid Sulfate Soils

The site is identified within Class 5 on the Acid Sulfate Soils Map of PLEP 2014. The proposed development does not involve works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

4.1.6 Earthworks

The consent authority can be satisfied that the excavation proposed to accommodate the proposed basement will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, consistent with the provisions of clause 7.2 of PLEP 2014. The application is supported by a Geotechnical Risk Management Report and Stormwater Management Plans, which demonstrate that the development has been designed, sited and will be constructed to minimise risk and achieve consistency with Council's requirements.

4.1.7 Biodiversity

The site is identified as "Biodiversity" on the Biodiversity Map of PLEP 2014. The consent authority can be satisfied that the proposed development has been designed, sited and will be managed to avoid any significant adverse environmental impact, consistent with the provisions of clause 7.6 of PLEP 2014.

4.1.8 Geotechnical Hazard

The site is identified as being within Geotechnical Hazard H1 on the Geotechnical Hazard Map of PLEP 2014. The application is supported by a Geotechnical Risk Management Report that considers each of the matters prescribed by clause 7.7(3) of PLEP 2014, and confirms that the development has been designed, sited and will be constructed to minimise risk, consistent with the provisions of clause 7.7(4) of PLEP 2014.

4.1.9 Essential Services

Pursuant to clause 7.10 of PLEP 2014, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable vehicular access.*

The consent authority can be satisfied that these services will be available prior to occupation, and if necessary, conditions of consent can be imposed in this regard.

4.2 Pittwater 21 Development Control Plan

4.2.1 Bilgola Locality

The site is located within the Bilgola Locality, which is described as follows:

The Locality was occupied by small farming settlements from the early 1800s, and included the grazing of cattle. As the road improved and beach holidays became popular, Bilgola expanded. Until the 1950s, Bilgola remained largely a holiday location with few permanent residents. Residential development and permanent occupation of dwellings increased from the 1950s.

Since this time, the locality has developed into a predominantly low-density residential area, with dwellings built along plateau and slopes. The locality is characterised mainly by one and two-storey dwelling houses on 550-950 square metre allotments (some smaller blocks may exist). The residential areas are of a diverse style and architecture, a common thread being the landscaped, treed frontages and subdued external finishes.

The Bilgola Locality is characterised by a small steeply rising ridgeline to the north, plateau to the south, and small self-contained valley to the east. Due to the topography, significant views can be obtained through all points of the compass. Conversely, the slopes and ridge tops and headlands of the locality are visually prominent. Due to this visual prominence, the building height along the beach area shall be reduced.

*Extensive areas of natural vegetation are dominated by large specimens of the Smooth barked Apple (*Angophora costata*) on the escarpments upper slopes with the Rough Barked apple, Turpentine (*Syncarpia glomulifera*) and Bloodwood (*Eucalyptus gummifera*) present along the lower slopes and Cabbage Tree Palms (*Livistona australis*) in the Bilgola valley.*

Much of the indigenous vegetation has been retained, particularly where there are large areas of open space, and there are significant wildlife habitats and corridors within the locality, such as on the original Wentworth Estate in the Pittwater Foreshore Area.

A unique flora and fauna green belt exists in the Bilgola Beach Area by the interconnection of Hewitt Park with Attunga Reserve via the dedicated portion of public land, previously known as Hamilton Estate, at the western end of the Bilgola Valley.

Many of the areas unique features are contained in the Bilgola Beach Area, notably:

- *The remnant littoral rainforest, recognised as one of the largest and best urban examples remaining on the New South Wales coast, and characterised by the abundant subtropical vegetation which includes a mixed variety of shrubs, ferns and palms such as the Cabbage Tree Palms (*Livistona australis*) along Bilgola Creek and its drainage lines and in the valley,*
- *The headlands with the formalised public lookout at Bilgola Head, which provides expansive coastal views,*
- *The Bilgola Bends section of Barrenjoey Road that traverses the valley escarpment and is bordered by thick indigenous vegetation,*

- *The Bicentennial Coastal walkway that passes over the southern headland to the valley, along the beach and on to the Bilgola Head lookout.*
- *Houses, vegetation, stone walls and structures in the vicinity of Bilgola Avenue, The Serpentine and Barrenjoey Road Bilgola Beach are indicative of the early settlement in the Locality, and have been identified as heritage items.*

Additionally the Bilgola Beach, headlands and valley escarpment provide unique cultural and social significance. Surveys of beach usage have revealed that crowd attendance was the fifth to sixth largest of the twenty ocean beaches in Warringah and Pittwater. Reasons for this include: uncrowded, quiet, natural environment and absence of commercial facilities. Respondents indicated that preservation of the beach and the surrounding areas unique character is desirable.

All of these unique features are valued by the community and contribute to the essence of the Bilgola Beach Area. These are to be retained and protected

Strong community objection to the widening of Barrenjoey Road and straightening the bends, and the sub-division of the Hamilton Estate, are indicative of the extent of community concern for the need to retain the unique character of the Bilgola Beach amphitheatre and limit further public infrastructure development.

The Plateau Area is serviced by neighbourhood retail centres at Bilambee Avenue and at the intersection of Plateau Road and Grandview Drive. The locality also contains the Bilgola Plateau Primary School, Bilgola Surf Life Saving Club, and recreational facilities including rock baths, Bilgola Beach, and several reserves.

The Localitys particular topographic and natural features create a particular fragility in the area, which is characterised by its vulnerability to bushfire, landslip, flood, coastal (bluff) erosion and beach fluctuation, and estuary wave action and tidal inundation. Attempts to stabilise the bluff erosion on the southern headland in the mid 1990s with wire netting, resulted in a disastrous environmental and visual outcome.

4.2.2 DCP Compliance Table

A table demonstrating compliance with the relevant provisions of the P21 DCP is detailed as follows:

Control	Requirement	Proposed	Compliance
Part B General Controls			
B1.2 Heritage Conservation	Developments in the vicinity of a heritage item, heritage conservation area, archaeological site or potential archaeological site are to be designed to respect and complement the heritage significance in terms of the building envelope, proportions, materials, colours and finishes, and building alignment.	The proposed development will not result in any adverse impacts upon the heritage significance of street trees along Allen Avenue.	Yes
B1.4 Aboriginal Heritage Significance	Development must conserve the significance of any Aboriginal place of heritage significance or Aboriginal object.	The site is highly disturbed and its not known to contain any items or areas of Aboriginal cultural significance.	Yes
B3.1 Landslip Hazard	All development on land to which this control applies must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater	The application is supported by a Geotechnical Risk Management Report and associated Forms 1 and 1a.	Yes
B3.2 Bushfire Hazard	All development is to be designed and constructed so as to manage risk due to the effects of bushfire	The application is supported by a Bushfire Risk Management Report confirming that the proposed development is consistent	Yes

Control	Requirement	Proposed	Compliance
	throughout the life of the development.	with the provisions of Planning for Bushfire Protection 2019.	
B3.11 Flood Prone Land	Development must comply with the prescriptive controls set out in the Matrix.	The application is supported by a Flood Risk Management Report confirming consistency with Council's Matrix.	Yes
B4.6 Wildlife Corridors	Development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees.	The proposed development does not result in any unreasonable impacts upon existing vegetation. Rather, the proposed development results in the enhancement of the quality and quantity of landscaping on the site, providing new habitat for wildlife.	Yes
B5.15 Water Management	The stormwater drainage systems for all developments are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.	The application is supported by Stormwater Management Plans which demonstrate consistency with Council's Water Management for Development Policy.	Yes
B6.1 Access Driveways and Works on the Public Road Reserve	Access Driveways include the driveway pavements, gutter crossings, supporting retaining walls, suspended slabs and related structures located on the public road reserve between the road edge and property boundary as illustrated in	The proposed new driveway crossing will be constructed in accordance with Council's Design Profiles.	Yes

Control	Requirement	Proposed	Compliance
	Appendix 10 -Driveway Profiles.		
B6.2 Internal Driveways	The design of all Internal Driveways and ramps shall be in accordance with the current edition of the following Australian Standard AS/NZS 2890.1-2004: Parking Facilities - Off-Street Car Parking.	The proposed internal driveway has been designed in accordance with the relevant provisions of AS2890.1. Vehicles can enter and exit the basement in a forward direction.	Yes
B6.3 Off-Street Vehicle and Parking Requirements	2 spaces (min.)	4 spaces	Yes
B8.1 Construction and Demolition - Excavation	All development on land to which this control applies must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater.	The application is supported by a Geotechnical Risk Management Report.	Yes
B8.3 Construction and Demolition – Waste Minimisation	Waste materials generated through demolition, excavation and construction works is to be minimised by reuse on-site, recycling, or disposal at an appropriate waste facility.	The application is supported by a Construction and Demolition Waste Management Plan.	Yes

Control	Requirement	Proposed	Compliance
C1 Design Criteria for Residential Development			
C1.1 Landscaping	<p>A built form softened and complemented by landscaping.</p> <p>Landscaping that reflects the scale and form of development.</p>	The application is supported by detailed Landscaped Plans demonstrating an enhancement of landscaping across the site.	Yes
C1.2 Safety and Security	The development is to be designed in accordance with the four CPTED principles.	The dwelling house provides appropriate casual surveillance of the street, with visitors able to be seen before opening the door.	Yes
C1.3 Views	All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.	<p>The upper floor of the proposed development has been sited to maximise views across the site from upslope properties. As demonstrated in the view analysis on plans DA4.06(A) – DA4.11(A) prepared in support of the application a view sharing arrangement is achieved for the properties to the rear.</p> <p>The proposed upper level also allows for occupants of the dwelling to regain some of the views lost as a consequence of the development of 9 Allen Avenue as demonstrated on the Site Analysis prepared to accompany the application.</p>	Yes

Control	Requirement	Proposed	Compliance
		<p>A detailed view analysis is contained within the accompanying clause 4.6 variation request in support of the building height breach.</p>	
<p>C1.4 Solar Access</p>	<p>The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.</p> <p>Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).</p>	<p>In relation to shadowing impacts on adjoining properties we note that at least 3 hours of solar access is maintained to the main private open space and windows to the principal living area of adjoining properties including the southern adjoining property at 2 Allen Avenue noting that principal living area is defined at clause A1.9 of PDCP as the living room currently benefiting from the most solar access during midwinter.</p> <p>The bulk of the development is focused to the north of the site in order to maximise sunlight to the properties to the south.</p>	<p>Yes</p>
<p>C1.5 Visual Privacy</p>	<p>Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation (measured from a height</p>	<p>The proposed development has been designed to maximise privacy for occupants of the dwelling and adjoining properties. The retention of the existing position of the dwelling at the rear of the site assists in this regard, particularly noting that the primary areas of private open space of adjoining properties are further forward</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
	of 1.7 metres above floor level).	on the sites. Appropriate privacy screening has been provided to the southern side of the swimming pool to restrict overlooking to the southern adjoining property.	
C1.6 Acoustic Privacy	Noise-sensitive rooms, such as bedrooms, should be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like.	The proposed development is unlikely to result in any adverse acoustic privacy impacts. Plant rooms are proposed in the basement, which will assist in mitigating noise associated with the operation of any equipment.	Yes
C1.7 Private Open Space	Minimum 80m ² of private open space per dwelling at ground level, with no dimension less than 3 metres. No more than 75% of this private open space is to be provided in the front yard.	Whilst occupants will have access to ample space to be used for open space, the majority of it is located forward of the front building line. This is considered acceptable in this specific context, as the tennis court is proposed to be retained.	No Acceptable on merit
C1.17 Swimming Pool Safety	Swimming pool fencing and warning notices (resuscitation chart) shall be manufactured, designed, constructed, located and maintained in accordance with the Swimming Pools Act 1992 and regulations. The fencing and warning notices (resuscitation chart) shall be permanent structures.	Swimming pool fencing is proposed, consistent with the provisions of the Swimming Pools Act.	Yes

Control	Requirement	Proposed	Compliance
Part D3 Bilgola Locality			
D3.1 Character as viewed from a public place	<p>The facades of buildings presenting to any public place must address these public places, provide visual interest, have a street presence and incorporate design elements that are compatible with any design themes existing in the immediate vicinity.</p> <p>The bulk and scale of buildings must be minimised.</p>	The proposed development is of superior architectural quality, with a high degree of articulation, varied materiality and integrated landscaping to ensure that the visual impact of the dwelling is appropriately minimised.	Yes
D3.3 Building Colours	Dark and earthy tones	The proposed works will be finished in dark and earthy materials to blend with the natural environment, as demonstrated on the External Finished Schedule (DA4-05).	Yes
D3.6 Front Building Line	6.5m	The basement commences approximately 17m from the front boundary, with the dwelling setback approximately 29m from the street. The existing tennis court forward of the proposed dwelling is to be retained.	Yes
D3.7 Side and Rear Building Lines	<p><u>Side</u>: 1m to one side, 2.5m to the other.</p> <p><u>Rear</u>: 6.5m</p> <p>Note: Retaining wall and side access steps/pathways are</p>	<p><u>Side</u></p> <p>North: 1m to all levels South: 2.5m to basement, variable 1.5m to 2.5m at Levels 1 and 2 and 2.5m at Level 3.</p>	No Acceptable on merit

Control	Requirement	Proposed	Compliance
	<p>permitted within the side setback.</p> <ul style="list-style-type: none"> • <i>To achieve the desired future character of the Locality. (S)</i> • <i>The bulk and scale of the built form is minimised. (En, S)</i> • <i>Equitable preservation of views and vistas to and/or from public/private places. (S)</i> • <i>To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.</i> • <i>To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)</i> • <i>Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)</i> • <i>Flexibility in the siting of buildings and access. (En, S)</i> • <i>Vegetation is retained and enhanced to visually reduce the built form. (En)</i> 	<p><u>Rear</u></p> <p>The proposal maintains a minimum 3 metre setbacks from the rear boundary.</p> <p>The rear setbacks of the proposed dwelling building are generally consistent with those of the existing dwelling, which ensures that impacts associated with the development are appropriately minimised.</p> <p>As the proposed dwelling is limited to one to two storeys above natural ground levels at the rear boundary, the impact of the development is considered to be reasonably minimised.</p> <p>Despite non-compliance with the side and rear setbacks, the proposed new dwelling is consistent with the outcomes of this control, as follows:</p> <ul style="list-style-type: none"> • The proposed development is consistent with the desired future character of the locality, in so far as the proposal has been designed to step up and follow the slope of the land, with the appearance of two storeys in any one place. • The bulk and scale of built form is minimised, and complemented by high-quality landscaping, 	<p>No</p> <p>Acceptable on merit</p>

Control	Requirement	Proposed	Compliance
		<ul style="list-style-type: none"> • Equitable view corridors are maintained, as the above ground portion of the development is sited in strict compliance with the side setback control. Given the angle of views available from the rear of the site, the reduced rear setback is also advantageous for the retention of views for the property to the rear. • The proposed development has been designed with the more generous setbacks to the south to minimise overshadowing. • The proposed development results in a significant enhancement of landscaping across the site compared to that which currently exists. • The proposed siting of the dwelling demonstrates a flexible solution that places greater emphasis on the existing context of the site to achieve a superior planning outcome. <p>Such variations succeed pursuant to section 4.15(3A)(b) of the EP&A Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.</p>	

Control	Requirement	Proposed	Compliance
<p>D3.9 Building envelope</p>	<p>Development is to be maintained below planes projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height.</p>	<p>Minor elements of the side elevations of Level 3 protrude beyond the prescribed envelope, as demonstrated on plan DA4-02 prepared to support the application.</p> <p>In relation to the building envelope breaches, we have considered the developments performance when assessed against the stated objectives of the clause D3.9 PDCP building envelope control and provide the following analysis:</p> <p><i>To achieve the desired future character of the Locality.</i></p> <p>Comment: Consistent with the reasons provided in support of the proposed rear boundary setbacks we consider that in this particular instance the building envelope breaching components of the development do not result in a development which is inconsistent with the DFC as reasonably applied to a steeply sloping site in that the development preserves the areas unique qualities through adopting a building design and setbacks that are sensitive to the area's establish built form, landscape and setback characteristics and which do not give rise to unacceptable streetscape or residential amenity impacts.</p>	<p>No Acceptable on merit</p>

Control	Requirement	Proposed	Compliance
		<p>The subject property is not located within the Visual Protection Area.</p> <p>We note that the development does not significantly alter the established topography of the site with the exception of the provision of basement car parking nor does it impact any significant natural features. Further, the subject property is not located on the beachfront, on a headland nor does it impact any stands of cabbage tree palms. The variation to the building envelope control does not impact on the developments performance when assessed against this component of the DFC.</p> <p><i>To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.</i></p> <p>Comment: We note that the proposed building envelope breaching elements do not contribute to overall building bulk and scale to the extent that they have an adverse streetscape impact given the substantial setbacks to Allen Avenue. We are of the opinion that the siting of the proposed development towards the rear of the property compared to a dwelling house setback 6.5 m from the front boundary provides for an enhanced streetscape outcome. Further,</p>	

Control	Requirement	Proposed	Compliance
		<p>the building height breaching elements are located below the height of established trees within the sites visual catchment including the heritage listed Norfolk Island Pines located along Allen Avenue.</p> <p>We consider that this objective is achieved notwithstanding the non-compliant building envelope elements proposed.</p> <p><i>To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.</i></p> <p>Comment: In relation to this particular site to spatial characteristics of the existing natural environment characterised by the excavation which has occurred at the rear of the site to accommodate the existing dwelling house and tennis court. The design and siting of the new dwelling house responds to, reinforces and sensitively relates to the spatial characteristics of the established site levels with the proposal not requiring the removal of any significant trees or natural features. This objective is achieved notwithstanding the building envelope breaching elements proposed.</p>	

Control	Requirement	Proposed	Compliance
		<p><i>The bulk and scale of the built form is minimised.</i></p> <p>Comment: We consider the site to be steeply sloping along its side boundaries and in excess of 16.7 degrees. In this regard, pursuant to the variation provisions at clause D3.9 variations to the control are to be considered on merit.</p> <p>We are satisfied that the building envelope breaching elements do not contributing to building bulk and scale to the extent that they result in a building form which is perceived as inappropriate or jarring in a streetscape context or which gives rise to unacceptable visual bulk impacts in relation to views or overshadowing. This objective is achieved notwithstanding the building envelope breaching elements proposed.</p> <p><i>Equitable preservation of views and vistas to and/or from public/private places.</i></p> <p>Comment: We have formed the considered opinion that the building envelope breaching elements do not impact public views and to the extent that they may contribute to view affectation maintain a view sharing outcome between development. This objective is achieved notwithstanding the building envelope breaching elements proposed.</p>	

Control	Requirement	Proposed	Compliance
		<p><i>To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.</i></p> <p>Comment: We are satisfied that the building envelope breaching elements do not contribute to unreasonable privacy, visual amenity or solar access impacts with compliant solar access maintained to surrounding development as detailed within this evidence. Further, the building envelope breaching elements contribute to the amenity of the development in relation to privacy, amenity and solar access. This objective is achieved notwithstanding the building envelope breaching elements proposed.</p> <p><i>Vegetation is retained and enhanced to visually reduce the built form.</i></p> <p>Comment: The building envelope breaching elements do not require the removal of any trees or significant vegetation nor do they impact on the ability to effectively landscape the site to visually reduce the built form. This objective is achieved notwithstanding the building envelope breaching elements proposed.</p>	

Control	Requirement	Proposed	Compliance
		<p>Such variation succeeds pursuant to section 4.15(3A)(b) of the EP&A Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.</p>	
<p>D3.11 Landscaped Area – Environmentally Sensitive Lane</p>	<p>60% minimum</p> <ul style="list-style-type: none"> • <i>Achieve the desired future character of the Locality.</i> • <i>The bulk and scale of the built form is minimised.</i> • <i>A reasonable level of amenity and solar access is provided and maintained.</i> • <i>Vegetation is retained and enhanced to visually reduce the built form.</i> • <i>Conservation of natural vegetation and biodiversity.</i> • <i>Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.</i> • <i>To preserve and enhance the rural and bushland character of the area.</i> • <i>Soft surface is maximised to provide for infiltration of water to the water table,</i> 	<p>The subject property currently has a total landscaped area as defined of 32m² representing 3.8% of the total site area. The subject application seeks to significantly improve the existing landscaped area circumstance with the provision of a combination of 116.7m² deep soil landscaping, 61.5m² of on slab planting and 88.6m² % of functional landscaped area representing a total of 266.8m² or 31.3% of the site area. The proposed development provides for a significant quantitative and qualitative improvement in terms of landscaping on the site through the implementation of the proposed landscape regime.</p> <p>Consistent with the feedback from Council in the Pre-lodgement Minutes, the proposed non-compliance is supportable on merit, noting that:</p>	<p>No Acceptable on merit</p>

Control	Requirement	Proposed	Compliance
	<p><i>minimise run-off and assist with stormwater management.</i></p>	<ul style="list-style-type: none"> • The treatment of the southern and western boundary is significantly enhanced with a landscaped buffer along half of the southern boundary. • The building footprint is generally consistent with that which currently exists, yet the proposal provides a significant enhancement of landscaping on the site. • The proposed landscaped area non-compliance does not give rise to any unreasonable impact upon the amenity of adjoining properties. As above, the amenity of neighbouring properties is enhanced by additional landscaping proposed. <p>The proposed development is supported by detailed Stormwater Management Plans demonstrating the appropriate management of stormwater on the site.</p> <p>Overall, Council can be satisfied that the proposed development is consistent with the outcomes of this clause, and the proposed variation is supportable on merit.</p>	

4.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

4.3.1 Vegetation in non-rural areas

The provisions of Chapter 2 of this policy are applicable to all non-rural land across the state and aim to protect the biodiversity values of trees and other vegetation in non-rural areas and to preserve the amenity of non-rural areas through the preservation of trees and other vegetation.

The proposed development does not seek consent for the removal of any existing trees or vegetation and is consistent with the requirements and objectives of Chapter 2 of SEPP (Biodiversity and Conservation).

4.4 State Environmental Planning Policy (Resilience and Hazards) 2021

4.4.1 Coastal Hazard

Chapter 2 of SEPP (Resilience and Hazards) aims to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner that is consistent with the objects of the *Coastal Management Act 2016*.

The site is identified as “coastal use area” of the Coastal Use Area Map, and the provisions of Chapter 2 of this policy are applicable.

Clause 2.11(1)(b) of SEPP (Resilience and Hazards) prescribes that development consent must not be granted unless the consent authority is satisfied that the proposed development is designed, sited and will be managed to avoid an adverse impact on the matters referred to in clause 2.11(1)(a) of this policy and that the application has taken into account the surrounding coastal and built environment and the bulk, scale and size of the proposed development. The relevant matters are addressed as follows:

- (a) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

Comment: The proposed development is located on private property and does not impact upon public access along the foreshore, beach, headland or rock platform.

- (b) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*

Comment: The proposed development is not anticipated to result in any unreasonable impacts upon adjoining or nearby properties with regard to overshadowing, wind funnelling or view loss. The development has been sensitively designed to allow for the sharing of views between properties, with the bulk of the development located on the northern side of the site to retain view corridors along the southern side of the site.

- (c) *the visual amenity and scenic qualities of the coast, including coastal headlands,*

Comment: The proposed development is a high-quality architectural design solution that will positively contribute to the visual amenity of the area.

(d) *Aboriginal cultural heritage, practices and places,*

Comment: The proposed works do not adversely impact upon any known/nominated sites of Aboriginal cultural significance.

(e) *cultural and built environment heritage,*

Comment: The proposed development does not adversely impact upon any known/nominated sites of heritage significance.

The consent authority can be satisfied with regard to clause 2.11 of SEPP (Resilience and Hazards).

Clause 2.12 of SEPP (Resilience and Hazards) prescribes that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposed development is not likely to cause increased risk at the site or for adjoining land, and the consent authority can be satisfied in this regard.

Overall, the proposed development is consistent with the provisions of Chapter 2 of this policy.

4.4.2 Remediation of Land

Chapter 4 of SEPP (Resilience and Hazards) applies to all land and aims to provide for a state-wide planning approach to the remediation of contaminated land.

Clause 4.6(1)(a) of this policy requires the consent authority to consider whether land is contaminated. The existing site has been used for residential purposes for an extended period of time with no prior known land uses. Council can be reasonably satisfied that there is no contamination risk, subject to the imposition of suitable conditions relating to demolition.

Overall, the proposed development is consistent with the relevant provisions of SEPP (Resilience and Hazards).

4.5 Matters for Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the EP&A Act (as amended):

(i) *any environmental planning instrument*

The proposed dwelling is permissible and consistent with the objectives of PLEP 2014 and P21 DCP as they are reasonably applied to the proposed works given the constraints imposed by the site's location, environmental and topographical characteristics.

- (ii) *Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

There are no draft instruments that are applicable in relation to the proposed development.

- (iii) *Any development control plan*

P21 DCP applies and the relevant provisions have been considered in this statement.

- (iiia) *Any Planning Agreement that has been entered into under section 7.4 or any draft planning agreement that a developer has offered to enter into under Section 7.4, and*

N/A

- (iv) *The Regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*

N/A

- (v) *Any Coastal Zone Management Plan (within the meaning of the Coastal Protection Act 1979)*

N/A

- (b) *The likely impacts of that development, including environmental impacts on both the natural and built environments and social and economic impacts in the locality,*

[The assessment considers the Guidelines (in italics) prepared by the Department of Planning and Environment in this regard].

Context and Setting

- i. *What is the relationship to the region and local context in terms of:*

- *The scenic qualities and features of the landscape*
- *The character and amenity of the locality and streetscape*
- *The scale, bulk, height, mass, form, character, density and design of development in the locality*
- *The previous and existing land uses and activities in the locality*

These matters have been discussed in the body of this report.

ii. *What are the potential impacts on adjacent properties in terms of:*

- *Relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)*
- *visual and acoustic privacy*
- *views and vistas*
- *edge conditions such as boundary treatments and fencing*

These matters have been discussed in detail earlier in this report.

Access, transport and traffic:

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *Travel Demand*
- *dependency on motor vehicles*
- *traffic generation and the capacity of the local and arterial road network*
- *public transport availability and use (including freight rail where relevant)*
- *conflicts within and between transport modes*
- *Traffic management schemes*
- *Vehicular parking spaces*

The development provides adequate carparking facilities in conformity with the objectives of P21 DCP.

Public Domain

The proposed development will have no adverse impact on the public domain.

Utilities

This matter has been discussed in detail in the body of this report.

Flora and Fauna

The proposal will result not result in any unreasonable impacts upon flora and fauna.

Waste Collection

The proposed development provides appropriate onsite waste storage, will waste to be collected from the street weekly by Council's contractors.

Natural hazards

The site has been designed to be safe from hazards at affect the land.

Economic Impact in the locality

The proposed development will generate temporary employment during construction, which is appropriate given the residential nature of the site.

Site Design and Internal Design

i) *Is the development design sensitive to environmental considerations and site attributes including:*

- *size, shape and design of allotments*
- *The proportion of site covered by buildings*
- *the position of buildings*
- *the size (bulk, height, mass), form, appearance and design of buildings*
- *the amount, location, design, use and management of private and communal open space*
- *Landscaping*

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be minimal and within the scope of the general principles, desired future character and built form controls.

ii) *How would the development affect the health and safety of the occupants in terms of:*

- *lighting, ventilation and insulation*
- *building fire risk – prevention and suppression*
- *building materials and finishes*
- *a common wall structure and design*
- *access and facilities for the disabled*
- *likely compliance with the Building Code of Australia*

The proposed development will comply with the provisions of the Building Code of Australia. The proposal complies with the relevant standards pertaining to health and safety and will not have any detrimental effect on the occupants.

Construction

i) What would be the impacts of construction activities in terms of:

- *The environmental planning issues listed above*
- *Site safety*

Normal site safety measures and procedures will ensure that no safety or environmental impacts will arise during construction.

(c) The suitability of the site for the development

- *Does the proposal fit in the locality*
- *Are the constraints posed by adjacent development prohibitive*
- *Would development lead to unmanageable transport demands and are there adequate transport facilities in the area*
- *Are utilities and services available to the site adequate for the development*
- *Are the site attributes conducive to development*

The adjacent development does not impose any unusual or impossible development constraints. The site is well located with regards to utility services. The development will not cause excessive or unmanageable levels of transport demand.

The development responds to the topography and constraints of the site, is of adequate area, and is a suitable design solution for the context of the site.

(d) Any submissions received in accordance with this act or regulations

It is envisaged that Council will appropriately consider any submissions received during the notification period.

(e) The public interest

The proposed works are permissible and consistent with the intent of the PLEP 2014 and P21 DCP standards and controls as they are reasonably applied to the proposed development. The development would not be contrary to the public interest.

5 Conclusion

The proposal is permissible and in conformity with the objectives of PLEP 2014 as they reasonably relate to this form of development on this particular site, and the guidelines contained within the P21 DCP.

We note that on 30 April 2024 the Land and Environment Court of NSW dismissed an appeal against Council's refusal of development application DA2022/1494 proposing the construction of a new dwelling house on the subject allotment and also involving the retention of the existing tennis court. The dwelling house design, the subject of this application, responds to the matters that remained in dispute between the planning experts as detailed within the joint expert report prepared to assist the Court in the previous proceedings namely:

8. *The experts agree that as a consequence of joint conferencing that the elements of the proposal remaining in dispute relate to the extent of building height breach calculated above ground level (existing) and consequential visual impacts and whether a 3 metre setback should apply to the whole of the dwelling to increase deep soil landscaping at the rear of the property and minimise building bulk as viewed from the properties to the west. The experts agree that the balance of the contentions are capable of resolution as detailed within this Expert Report.*

In response to the disputed matters the perimeter of the Level 3 roof form has been lowered by 1010mm whilst the uppermost ridge level has been lowered by 500mm compared to that previously proposed. The proposal also now incorporates a 3 metre deep soil rear setback.

Accordingly, we are satisfied that the proposed development appropriately responds to the issues raised by Council's town planning expert in relation to the previous proposal with the lowering of overall building height providing for a view sharing outcome and the 3 metre rear deep soil setback facilitates additional landscaping to minimise the building bulk as viewed from the properties to the west.

Whilst the proposal requires the consent authority to give favourable consideration to a variation to the building height standard, strict compliance has been found to be unreasonable and unnecessary having regard to the particular circumstances of the case, the attainment of an appropriate contextual fit and general paucity of streetscape impacts. Sufficient environmental planning grounds existing to support the variation proposed with the accompanying clause 4.6 variation request well founded.

The proposed development results in non-compliance with the side and rear setback control, the prescribed building envelope and landscaped area controls. These non-compliances have been acknowledged and appropriately justified having regard to the outcomes of the controls. Such variations succeed pursuant to section 4.15(3A)(b) of the EP&A Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.

Having given due consideration to the matters pursuant to Section 4.15(1) of the EP&A Act as amended, it is considered that there are no matters which would prevent Council from granting consent to this proposal in this instance, and that the development is appropriate on merit and worthy of approval.

Boston Blyth Fleming Pty Limited

A handwritten signature in black ink, appearing to read 'Greg Boston', written in a cursive style.

Greg Boston

Director