

DEVELOPMENT UNIT REPORT

SUBJECT: BC0030/14 - 117 Pacific Road, Palm Beach - Building Certificate for a brushwood fence

Meeting: Development Unit

Date: 28 August 2014

SUMMARY OF RECOMMENDATION

Issue Building Certificate

REPORT PREPARED BY:	Cheryl Williamson/Wal Dover
APPLICATION SUBMITTED ON:	26/3/2014
APPLICATION SUBMITTED BY:	RICHARD & JAN FREEMANTLE
OWNER(S):	RICHARD & JAN FREEMANTLE

RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER

That Council as the consent authority pursuant to Section 149 of the Environmental Planning and Assessment Act 1979 grant consent to Building Certificate Application BC0030/14 for the retention of a Brushwood fence at 117 Pacific Road, Palm Beach.

Report prepared by
Cheryl Williamson, Senior Planner
Wal Dover, Senior Building Surveyor

Andrew Pigott
MANAGER, PLANNING & ASSESSMENT

SUBJECT: BC0030/14 – 117 Pacific Road, Palm Beach (Lot 1 DP 650029) - Building Certificate for a Brushwood Fence.

SUMMARY OF RECOMMENDATION

ISSUE BUILDING CERTIFICATE

REPORT PREPARED BY: Cheryl Williamson and Wal Dover
APPLICATION SUBMITTED ON: 20/3/2014
APPLICATION SUBMITTED BY: RICHARD & JAN FREEMANTLE
PO BOX 214
NORTHBIDGE NSW 1560

OWNER(S): FREEMANTLE, RICHARD (Own)
FREEMANTLE, JANICE (Own)

1.0 SITE DETAILS

The site is legally referred to as Lot 1 in Deposited Plan (DP) 650029 and is known as 117 Pacific Road, Palm Beach. The site is located on the eastern side of Pacific Road and is irregularly shaped with a 51 metre access handle from Pacific Road leading to a generally rectangular site area of approximately 1,289m².

A decrease of approximately 25 metres occurs from the boundary with Pacific Road and the easternmost corner of the site, resulting in a 21% or 12 degree slope. The site is occupied by a detached two storey dwelling, located within the eastern (rear) portion of the site. Separate to that now under review, the site includes an approved section of brushwood fencing located along the southern side of the site including a portion of the driveway.

Surrounding sites also comprise residential properties. A number of similar brushwood fences, located much closer to the public domain than that now under review, are present within the locality. Examples can be seen at 68, 69, 71, 73, 75, 107, 108A and 125A Pacific Road.

2.0 PROPOSAL IN DETAIL

The subject Building Certificate application seeks the regularisation of a 1.8m high brushwood fence which was erected without development consent. The fence comprises a 28.5 metre section along the easternmost part of the northern side of the site's access handle, and an 8 metre section along the site's western boundary, adjacent to neighbouring property 119 Pacific Road.

Figures 1, 2 and 3 below demonstrate the location and appearance of the subject fence:

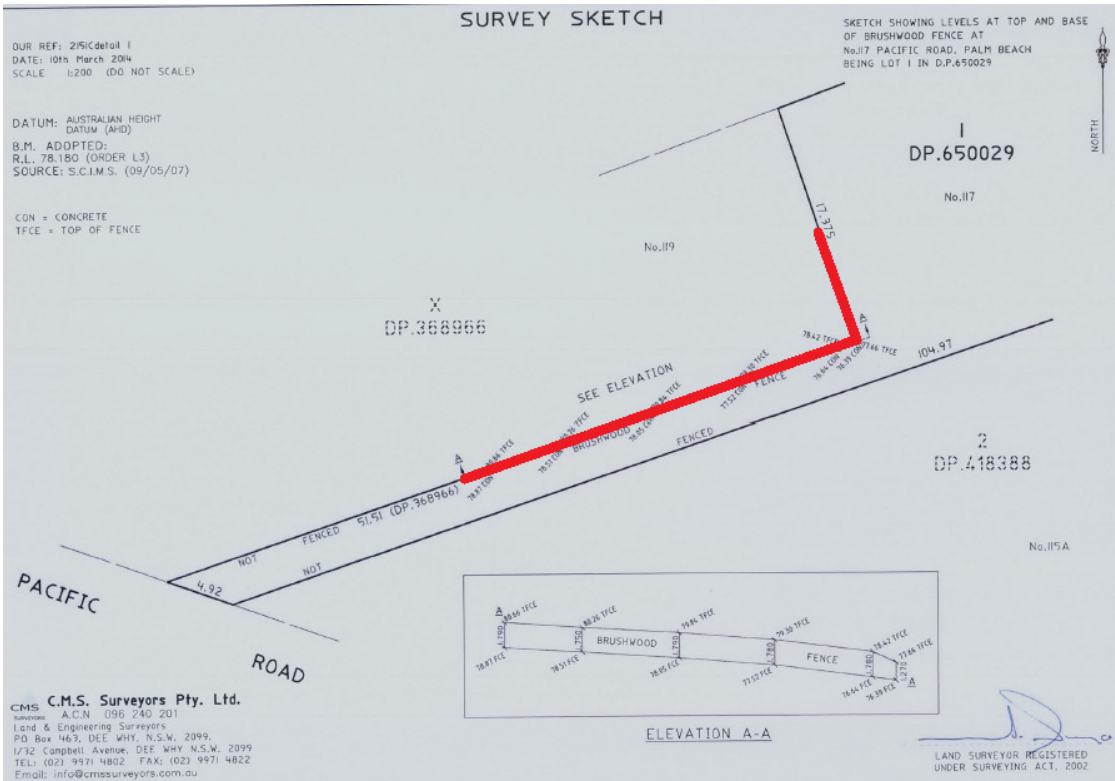


Figure 1: Location of subject fencing



Figure 2: Section of fencing along northern side of access handle



Figure 3: Section of fence along western boundary between nos. 117 and 119 Pacific Road

3.0 BACKGROUND

The subject Building Certificate application was received on 20 March 2014. The application was publicly notified in line with Council's notification policy. The application was referred to Council's Heritage Officer for comments and/or recommendations.

A site inspection of the exterior areas of the subject site and the immediate vicinity was carried out on 30 June 2014 and an inspection of the internal and external areas of 119 Pacific Road, the western neighbouring property, was carried out on 17 July 2014.

4.0 NOTIFICATION

The Building Certificate application was publicly notified to six (6) neighbouring properties for a period of 14 days between 8 April 2014 and 22 April 2014. As a result of this notification, five (5) submissions were received. The matters raised are outlined below and are followed by Council's response:

- **Approval would set a precedent for other sites to erect brushwood fences**
Response: Other sites would be entitled to erect boundary fences without Council approval subject to compliance with the criteria of SEPP (exempt and complying development codes). Otherwise, a development application would be required, which would consider such a structure on its individual merits, taking into account the relevant planning policies and constraints of the site.
- **Loss of views from the public domain**
Response: The fence does not impede views of the ocean from Pacific Road. Refer to Section 9.0 below.

- The fence has been constructed without the appropriate approval; Council should not now agree, retrospectively, to approve the structure.**
Response: Section 149 of the Environmental Planning and Assessment Act 1979 permits consideration of a building certificate application for works which have already been carried out. The subject application is a building certificate application.
- The fence breaches LEP, DCP and SEPP planning controls.**
Response: Compliance with the provisions of Pittwater LEP 2014 and Pittwater 21 DCP are outlined below within the compliance table and within Section 9.0 of this report. As a Building Certificate, the development is not obliged to comply with the provisions of SEPP (Exempt and Complying Development Codes) 2008.
- There is insufficient detail to enable to assessment of the building certificate application.**
Response: The information submitted is considered sufficient and given that the subject fence is in situ, it is possible to evaluate the impacts of this.
- The structure causes considerable impact to the use and amenity of the neighbouring property**
Response: The level of impact to the western neighbouring site is considered to be minimal, and acceptable. Refer to Section 9.0 below for further discussion.
- A fence of this height and density is out of character within the Pacific Road area and Palm Beach locality.**
Response: Numerous brushwood fences of a similar height and density are evident within the locality. Many of these are much closer to the public domain and provide a significantly higher level of screening than the subject fence. Within Pacific Road itself, similar fences have been noted at 68, 69, 71, 73, 75, 107, 108A and 125A Pacific Road. Examples of these fences are shown below within figure 4. The fence can therefore be considered as characteristic of the existing locality.



75 Pacific Road



107 Pacific Road



48 Pacific Road



73 Pacific Road

Figure 4: Examples of existing brushwood fences within the locality.

- **The fence serves no purpose. It is unnecessary and should therefore be removed.**
Response: The assessment of an application for a fence be it through a building certificate application or a development application, requires consideration of the impacts of a development, and need not take into account the reason why the structure is required by the applicant.
- **The fence blocks out light to 119 Pacific Road.**
Response: The fence is located south of 'Craboon' and does not throw shadows onto this site. Having visited this neighbouring site, it is held that a generous level of daylight to this property will remain.
- **The fence has a harmful impact on 'Craboon', a heritage listed building within 119 Pacific Road.**
Response: The fence is held to have an acceptable impact upon this neighbouring site and the subject site, both of which are heritage listed. Refer to Section 9.0 below for further discussion.

5.0 STATUTORY AND POLICY CONSIDERATIONS

Section 149 of the Environmental Planning and Assessment Act enables Council to grant a building certificate to the whole of, or to part of, a building. In this Act, a building is defined as:

building includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure or part of a manufactured home, moveable dwelling or associated structure.

The subject fence forms a 'structure' and is eligible for consideration under the subject building certificate application.

Section 149D of the Act outlines the obligations of Council to issue building certificates and lists a number of criteria which, if met, must form the basis for a building certificate to be issued. These criteria are outlined below:

149D Obligations of council to issue building certificate

1. The council must issue a building certificate if it appears that:
 - (a) there is no matter discernible by the exercise of reasonable care and skill that would entitle the council, under this Act or the Local Government Act 1993:
 - (i) to order the building to be demolished, altered, added to or rebuilt, or
 - (ii) to take proceedings for an order or injunction requiring the building to be demolished, altered, added to or rebuilt, or
 - (iii) to take proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, or
 - (iv) there is such a matter but, in the circumstances, the council does not propose to make any such order or take any such proceedings.

In order to ascertain whether the retention of the subject fence is appropriate, an assessment against Council's planning controls has been carried out (as would have been the case if a development application had been lodged for the fence prospectively). This assessment is detailed below within Sections 7.0 and 9.0 of this report.

6.0 DEVELOPMENT CONTROLS

The site is located within the E4: Environmental Living zone under the provisions of Pittwater Local Environment Plan 2014. Whilst not separately defined, the subject fence is considered to be a structure used ancillary to a dwelling house. Such development is permissible with consent within this zone.

The following relevant local and state policies apply to the subject development:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulations 2000;
- Pittwater Local Environmental Plan 1993;
- Pittwater Local Environmental Plan 2014;
- Pittwater 21 Development Control Plan.

7.0 COMPLIANCE TABLE

T - Can the proposal satisfy the technical requirements of the control?

O - Can the proposal achieve the control outcomes?

N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
1.9A Suspension of covenants, agreements and instruments		None identified.	-	-	-
Zone E4: Environmental Living		The development is permissible with consent and consistent with the zone objectives.	Y	Y	Y
4.3 Height of buildings	Max. 8.5 metres	The fence is noted as 1.8 metres in height, which complies with this control. Submissions have been received objecting to the height of the fence. The fence height is consistent with Council's LEP and DCP control; refer to section 9.0 below.	Y	Y	N
4.6 Exceptions to Development Standards			-	-	-
5.10 Heritage conservation		The fence responds appropriately to its heritage context. Submissions have been received raising concern as to the impact on 'Craboon' within the western neighbouring site. Refer to Section 9.0 below.	Y	Y	N
7.1 Acid Sulfate soils			-	-	-
7.2 Earthworks			-	-	-
7.6 Biodiversity protection		The subject site is listed on the LEP Biodiversity map. The subject development is not considered to present any adverse impacts to the ecology, flora or fauna on the site. This fence has been located alongside a pre-existing fence.	Y	Y	Y
7.7 Geotechnical hazards			-	-	-
7.10 Essential Services			-	-	-

Environmental Planning and Assessment Model Provisions 1980					
Part III – 5. Consideration of certain applications		The site is not located within the Foreshore Scenic Protection Area. The fence is set back from Pacific Road by approximately 22 metres; it is visible from limited positions only and does not result in a material impact upon the character of the area.	Y	Y	Y
Part IV – 7. Foreshore Building Line		The site is not located adjacent to the foreshore.	-	-	-
Pittwater 21 Development Control Plan					
3.1 Submission of a development application and payment of an appropriate fee		Submissions have been received which state that there is not enough information within the application. It is considered however, that an appropriate level of information has been provided with the Building Certificate Application to enable assessment.	Y	Y	N
3.2 Submission of a Statement of Environmental Effects			-	-	-
3.3 Submission of supporting documentation – Site Plan/Survey Plan/Development Drawings			Y	Y	Y
3.4 Notification		The Building Certificate Application was publicly notified for a period of 14 days, in line with Council's notification policy.	Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
3.6 State Environmental Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)		The fence does not form exempt or complying development under SEPP (Exempt and Complying Development Codes) 2008 as the subject site and neighbouring site are heritage listed.	-	-	-
4.1 Integrated Development: Water supply, water use and water activity			-	-	-

4.6 Integrated Development: Aboriginal Places of Heritage Significance and Aboriginal Objects			-	-	-
4.8 Integrated Development – Roads			-	-	-
5.3 Referral to NSW Office of Environment and Heritage			-	-	-
5.4 Referral to the NSW Office of Water and NSW Health			-	-	-
A1.7 Considerations before consent is granted		This assessment includes consideration of section 79C of the Environmental Planning and Assessment Act 1979, Pittwater LEP 2014, Pittwater 21 DCP and the desired character of the area.	Y	Y	Y
A4.12 Palm Beach Locality		<p>The description of desired character contained within this control seeks new development to blend appropriately with the natural landscape and minimise bulk and scale where possible. Dark and earthy colours are preferred and the protection of heritage significance is sought. The development is held to be consistent with this stated desired character of the Palm Beach locality.</p> <p>Submissions have been received which raise concern that the fence is out of character with the locality. It is held to be consistent with the surrounding character however, and numerous similar brushwood fences have been identified within Pacific Road.</p> <p>Further discussion on heritage impacts can be found within Section 9.0 below.</p>	Y	Y	N

<p>B1.1 Heritage Conservation – Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014</p>		<p>The subject site and western neighbouring site are listed as heritage items. The control requires compliance with the provisions of Pittwater LEP 2014 and that new development respects the character and fabric of heritage items.</p> <p>Submissions have been received raising concerns in this regard. Refer to Section 9.0 below.</p>	Y	Y	N
<p>B1.4 Aboriginal Heritage Significance</p>		<p>No apparent issues</p>	-	-	-
<p>B3.1 Landslip Hazard</p>			-	-	-
<p>B3.6 Contaminated Land and Potentially Contaminated Land</p>			-	-	-
<p>B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor</p>		<p>The fence does not have an adverse impact upon flora or fauna in the locality.</p> <p>The control states that where fencing is proposed, this is to be made passable to native wildlife. The variations within the control state however that this can be varied if it is upon a part of the site which will not impede the movement of wildlife.</p> <p>The subject fence occupies approximately half of the northern boundary of the access handle and approximately half of the site's western boundary with the western neighbour. It does not relate to the total boundary of the site, and wildlife is still able to move between the sites.</p> <p>The subject fence has been sited directly adjacent to an existing open metal fence which includes gaps of approximately 50mm; this is less than the 150mm suggested within the control. In the event that the fence had not been erected, or were now removed, the pre-existing fence would not</p>	N	Y	Y

		have permitted the passage of wildlife in this area of the site.			
B5.2 Wastewater disposal			-	-	-
B5.3 Greywater Reuse			-	-	-
B5.4 Stormwater Harvesting			-	-	-
B5.7 Stormwater Management – On-Site Stormwater Detention			-	-	-
B5.8 Stormwater Management – Water Quality – Low Density Residential			-	-	-
B5.10 Stormwater Discharge into Public Drainage System			-	-	-
B5.12 Stormwater Drainage Systems and Natural Resources			-	-	-
B5.13 Development on Waterfront Land			-	-	-
B6.1 Access Driveways and Works on the Public Road Reserve		The fence does not impede the existing access driveway	-	-	-
B6.3 Internal Driveways – Low Density Residential			-	-	-
B6.6 Off-Street Vehicle Parking Requirements – All Development other than Low Density Residential			-	-	-
B8.1 Construction and Demolition – Excavation and Landfill			-	-	-
B8.2 Construction and Demolition – Erosion and Sediment Management			-	-	-
B8.3 Construction and Demolition – Waste Minimisation			-	-	-
B8.4 Construction and Demolition – Site Fencing and Security		The application relates to a permanent boundary fence rather than construction fencing.	-	-	-
B8.5 Construction and Demolition – Works in the Public Domain			-	-	-

B8.6 Construction and Demolition – Traffic Management Plan			-	-	-
C1.1 Landscaping		<p>The fence does not materially affect or jeopardise the existing landscaping on the subject site or adjacent site, including the adjacent mature gum trees.</p> <p>The control refers to the screening of the front boundary, and suggests landscaping rather than built structures. In this instance, the northern boundary of the access road is considered a side boundary, and this control is therefore not relevant to the subject fence.</p>	Y	Y	Y
C1.2 Safety and Security		The fence does not obscure views from the house along the access drive. The fence provides territorial reinforcement and does not include areas which could readily be used for concealment.	Y	Y	Y
C1.3 View Sharing		<p>The fence allows a satisfactory level of view sharing.</p> <p>Submissions raising concerns relating to a loss of view from the public and private domain have been received. Refer to Section 9.0 below.</p>	Y	Y	N
C1.4 Solar Access		The orientation of the site is such that shadows from the fence will largely fall upon the site's own access driveway and the fencing/landscaping on the southern side of the driveway. The fence does not result in the undue loss of sunlight to neighbouring residential properties.	Y	Y	N

		Submissions have been received which state that the fence blocks out daylight to the western neighbouring property. There are three windows located adjacent to the fence; a multi-paned secondary window to the kitchen, a small bathroom window and a glazed door at the end of a hallway. The kitchen primarily receives its daylight from the glazed doors to the north east, and the bathroom and hallway are not considered as habitable areas; the impacts in this regard are considered to be acceptable.			
C1.5 Visual Privacy		It is understood that the fence has been erected to increase the level of visual privacy between the subject site and the western neighbouring site.	Y	Y	Y
C1.6 Acoustic Privacy			-	-	-
C1.7 Private Open Space			-	-	-
C1.9 Adaptable Housing and Accessibility			-	-	-
C1.12 Waste and Recycling Facilities			-	-	-
C1.13 Pollution Control			-	-	-
C1.14 Separately Accessible Structures			-	-	-
C1.16 Development ancillary to residential accommodation – Tennis Courts			-	-	-
C1.19 Incline Passenger Lifts and Stairways			-	-	-
D12.1 Character as viewed from a public place		The fence is set back from Pacific Road by approximately 22 metres; it is visible from limited positions only and does not result in a material impact upon the overall character of the area.	Y	Y	N

		Submissions have been received which raise concerns that the fence is out of character and results in the loss of a view from a public place; this is not considered to be the case; refer to Section 9.0 below.			
D12.3 Building colours and materials		The fence is constructed in Brushwood which is a natural finish and a suitably dark colour. This material is appropriate for fencing in this locality.	Y	Y	Y
D12.5 Front building line		The fence is wholly located behind the front building line.	Y	Y	Y
D12.6 Side and rear building line		The control excludes fences from the side boundary requirements and as such the location of the fence along the boundary is compliant. The outcomes of the control require consideration of the desired character of the area and the equitable preservation of views from public and private spaces. This is discussed further within Section 9.0 below.	Y	Y	Y
D12.8 Building envelope		The fence is 1.8 metres high and complies with the building envelope control.	Y	Y	Y
D12.10 Landscaped Area – Environmentally Sensitive Land		The fence does not alter the amount or type of landscaping on the site.	Y	Y	Y
D12.12 Fences – Flora and Fauna Conservation Areas		The development complies; refer to Section 9.0 below.	Y	Y	Y
D12.13 Construction, Retaining walls, terracing and undercroft areas			-	-	-
D12.14 Scenic Protection Category One Areas		The development complies in this regard; refer to Section 9.0 below.	Y	Y	Y

8.0 ISSUES

- Comments from Council's Building Surveyor
- 5.10 Heritage Conservation
- C1.3 View Sharing
- D12.12 Fences – Flora and Fauna Conservation Areas
- D12.14 Scenic Protection Category One Areas

9.0 DISCUSSION OF ISSUES

Comments from Council's Building Surveyor

1. Reason for Report

To determine a Building Certificate application for a brushwood fence erected without prior approval of Council when Council consent was necessary due to the adjoining premises at 119 Pacific Road, Palm Beach (known as Craboon) containing heritage items.

2. Site Details

Building Certificate application BC0030/14 has been received from R & J Freemantle, owners of 117 Pacific Road, Palm Beach for approval of a 26m x 1.8 brushwood fence erected without consent of Council.

The fence has been erected on part of the northern side of the access driveway to the battle axe allotment at No 117, being part of the southern boundary of 119 Pacific Road.

The fence commences approximately 26m from the front boundary of the allotment and extends for a distance of 26m to the end of the access driveway.

In addition a small 2m section of brushwood fence is erected on the site's western boundary being the rear boundary of No 119.

A survey report by CMS Surveyors Pty Ltd indicated the fence has been erected accurately on the common boundaries as described and an inspection of the fencing indicates it to be in a good state of repair.

It should be noted that a 20m brushwood fence approved by Council in 2008 is erected on part of the southern boundary of the same access driveway but within the allotment area.

3. Issues

(Discussed more fully in the body of the attached Town Planners Report).

Support for the Application

- (i) Supporting comments on behalf of the applicant have been received from Mr Brian McDouall of CCG Architects who states inter alia:-

"The house Craboon is architecturally significant due to its stone construction, battered gables and porch with stone piers which represents design from the 1930's.

However, additions and alterations built about 2006 have almost completely obscured the view of the cottage. The extent of these works is such that the significance of Craboon which was derived from its simplicity, as a small holiday cottage, has been lost.

There is no physical impact on Craboon resulting from the erection of the brush fence.

Furthermore the brush fence is a very appropriate choice that blends with the Palm Beach landscape character and is quite common throughout the area".

(ii) Mr Robert Moore – Council Heritage Architect

Comments inter alia as follows:

“The heritage item Craboon, has until now “borrowed” the landscape and space of the driveway to the house at 117 which contributed to the pleasantness and amenity of its setting.

Whilst the fence clearly has impacts, I do not agree that the heritage interests of the matter are such that the removal of the fence can be required on heritage grounds.

I do not accept that the heritage significance of Craboon has been extinguished by development that has taken place”.

OBJECTION

A letter of objection, on behalf of the owners of 119 Pacific road has been received from Mr John Rose of TKD Architects stating inter alia that:

- (i) The view of the cottage from the public realm is clearly compromised by the solidity and height of the fence.
- (ii) The fence would not have been allowed by Council as part of the assessment of DA 0121/06 for Craboon (additions and alterations).
- (iii) The fence has a detrimental impact on the considered modulation of built form and landscape design of 119.
- (iv) The fence is of an inappropriate scale when viewed from 119 impacting upon garden growth, views, light, ventilation and the overall amenity of the occupants.
- (v) The fence provides no utility and has no apparent purpose needed by the occupants of 117 Pacific Road.

Comment

The brush wood fence is a common form of fencing in the locality and blends into the Palm Beach landscape. It establishes a consistent and harmonious character with the brush fence already erected on the south side of the driveway and provides a neat and attractive approach to the house at 117 Pacific Road.

The fence complies in all respects in what would ordinarily be required by Council in a similar situation.

Craboon is located well down the allotment from Pacific Road and a casual observer from the street would find it difficult to identify the heritage significance of the building with or without a fence.

It is considered the brush fence does not have any significant negative impact on the heritage items of the cottage.

RECOMMENDATION

The brushwood fence as described be approved.

5.10 Heritage Conservation

Both the subject site and the western neighbouring site are identified as heritage items within the Pittwater LEP 2014. Notwithstanding this, both the subject site and the western neighbouring site include contemporary buildings, and these are the buildings which are most immediately apparent from the public domain. 'Craboon', a 1930s sandstone cottage, is located within the rear portion of 119 Pacific Road; glimpses of the roof of this element are visible from Pacific Road.

Clause 5.10 of the Pittwater LEP 2014 seeks to conserve the heritage significance of heritage items and heritage conservation areas including associated fabric, setting and views.

The building certificate application is accompanied by a report on the environmental and heritage impacts of the fence authored by Caldis Cook Group Architects. The report concludes that the fence does not harm the physical fabric of the neighbouring sandstone cottage (Craboon) and that the fence does not harm the heritage character of the sandstone cottage given the contemporary additions added to the site in the past decade.

The owner of this neighbouring site has objected to the retention of the fence and has provided a response to this report authored by Tanner Kibble Denton Architects. In this response, the author opines that the fence has an adverse impact upon the heritage significance of 'Craboon' as it screens the building from public view.

The application documents, including both of the aforementioned reports, was referred to Council's Heritage Advisor who notes:

"I do not agree that the heritage interests of the matter are such that the removal of the fence can be required on heritage grounds."

and:

"I do not accept the arguments that the heritage significance of 'Craboon' has been extinguished by the development that has taken place".

In considering all three viewpoints on this matter, it is held that the fence does not have an unacceptable level of impact upon the heritage significance of 'Craboon' or on the remainder of the two heritage listed sites. The fence does not interfere with the fabric of the building and provides an appropriate visual response to it.

C1.3 View Sharing

The control requires a reasonable sharing of views amongst dwellings and that views and vistas from public places are protected and maintained.

Views from 119 Pacific Road (private views)

The orientation of 119 Pacific Road and the buildings therein are such that views are primarily gained to the north east of the site (towards Palm Beach). Both the 1930s sandstone cottage and the more contemporary two storey dwelling at the front of the site are oriented to maximise views in this direction as far as possible.

The subject fence is located to the south and west of this neighbouring site, and both the sandstone cottage and the contemporary house can be said to have 'turned their back' on these aspects. This is evidenced by the fact that only secondary windows are located along the southern boundary and that a solid 20 metre wall has been constructed along this boundary. Figure 5 below demonstrates the relationship between the living areas of 119 Pacific Road and the subject fence:

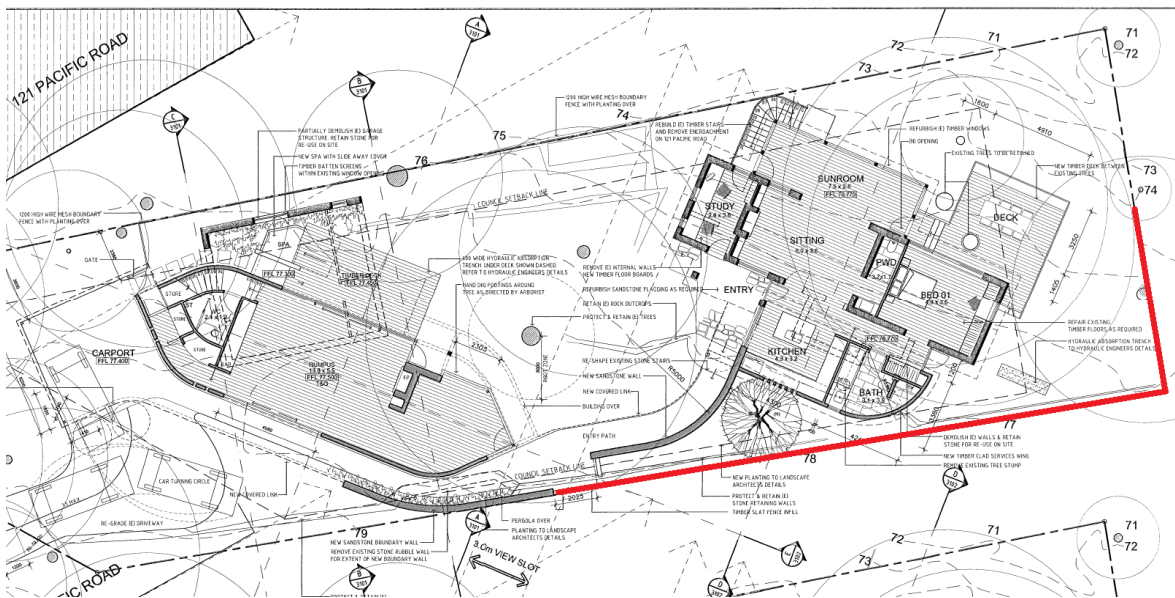


Figure 5: Relationship between living areas of 'Craboon' and subject fence.

The view from the primary living areas of 'Craboon' can be seen within figure 14 below. In light of the above, it is held that the impact of the development on the views achieved from 'Craboon' is acceptable.

Outlook

The owner of 119 Pacific Road also raises concern regarding a loss of outlook (as distinct from views) from 'Craboon' as a result of the fence. This neighbour notes that views of landscaping could previously be achieved from the kitchen and hallway areas which have now been replaced by the fence. While this was indeed apparent when visiting this site, this is not considered to be unreasonable; these are secondary windows or windows to non-habitable rooms and the overall amenity of 'Craboon' is not unduly compromised. Figures 8 and 9 below demonstrate this relationship:



Figure 8: Secondary kitchen window



Figure 9: Glazed door within hallway

Views from Pacific Road (public views)

The subject fence is set back from the roadway by approximately 22 metres and is not immediately apparent when walking or driving along the road. The fence is not held to result in an undue loss of views from the public domain for the following reasons:

- With the exception of the two concrete driveways, the front setback along this part of Pacific Road is well vegetated with mature landscaping. Any ocean views appear as glimpses only, rather than as a wide, unobstructed view;
- The fence sits in front of 'Craboon' at a lower height than this building's ridgeline; the absence of the fence would not therefore open up a view from the public domain as this is already obstructed in part by existing buildings.
- The fence is of a dark colour and constructed in a natural material; it recesses appropriately with the existing surrounding natural environment.

The following photos demonstrate the view from the public domain:



Figure 10: View from western end of driveway of 117 Pacific Road



Figure 11: View from western end of driveway of 115A Pacific Road



Figure 12: View from Pacific Road adjacent to 113 Pacific Road

The fence is held to have appropriate impacts regarding the sharing of public views.

D12.12 Fences – Flora and Fauna Conservation Areas

Outcomes of the control

The outcomes of the control seek to ensure that fences are suitably screened from public view, compliment and conserve visual character, maintain an open view to any waterway and ensure heritage significance is protected. The outcomes also seek to ensure safe and unhindered travel for native wildlife

The subject fence is located approximately 22 metres back from Pacific Road and is not immediately apparent when walking or driving along this part of the road. Other than the two adjacent concrete driveways, the front boundary setback of Pacific Road is well vegetated, and the fence can be seen from limited views only. It is not considered therefore, to cause a significant impact to the character of the surrounding area.

The fence does not obstruct public views from Pacific Road to the ocean. As can be seen within figure 13 below, the fence is located in front of, and at a lower height than, an existing building.

The fence is not held to have a harmful impact on the heritage significance of either the subject site, or the western neighbouring site, both of which are heritage listed. Further discussion on this can be found above.

The subject fence, while solid in construction, has not prevented the free passage of wildlife. The pre-existing fence along this boundary (a lower, open metal fence) has gaps of approximately 50mm, which is far less than the 150mm specified within the control. In the event that the fence had not been erected or were now removed, no change to the passage of native wildlife would therefore occur.

Technical requirements of the control

The control provides different requirements for front, side and rear fences, and a differentiation is also made between side fences which are within the front building setback (section (a) of the control) and side fences up to the front building line (section (b) of the control). As a battleaxe lot, there is ambiguity here, as the subject fence is well behind the front building setback of Pacific Road and well behind the front building line of 119 Pacific Road, but before the front building line of the house on the subject site.

Section (b) of the control states:

'Fencing is permitted along the rear and side boundaries (other than within the front building setback) to a maximum height of 1.8 metres.'

The subject fence is held to be located along a side boundary and set much further back than the front building setback of 6.5 metres to Pacific Road, and section (b) is therefore held to be most applicable control in this instance. This permits a maximum height of 1.8 metres and the development complies with this.

For fencing in Category 1 and 2 areas, the control requires side and rear fences to be constructed of dark coloured materials and not to obstruct the passage of wildlife. The pre-existing fence did not permit the passage of wildlife (as its gaps are approximately 50mm in diameter) and the presence of this new fence does not therefore hinder wildlife.

D12.14 Scenic Protection Category One Areas

The outcomes of this control seek the integration of new development with the desired character of the locality and with the natural environment. The subject fence is held to be consistent with the character of the locality, in terms of its height and nature, which is similar to many other fences within the Pacific Road locality (refer to figure 4 above). The installation of the fence has not involved the removal of any trees or vegetation and is not likely to jeopardise the health of any remaining vegetation, including the adjacent gum trees.

The outcomes also seek to preserve views, from public and private places. As can be seen within figure 13 below, the height of the fence, as viewed from the public domain, is lower than the ridge height of 'Craboon' on 119 Pacific Road; this fence has not obstructed public views through the site to the water; the absence of the fence would not increase views.



Figure 13: View from western end of 115A Pacific Road driveway, looking north east

In terms of private views, a site visit to 119 Pacific Road has revealed that views associated with 'Craboon' are gained primarily to the north east, and are therefore unobstructed by the fence which runs along the southern and western boundaries of this neighbouring site. Figure 14 below demonstrates the primary view from the balcony of 'Craboon' and figure 15 below demonstrates that no loss of view to the east will occur from the subject fence:



Figure 14: View from balcony of 'Craboon' looking north east



Figure 15: View from balcony of 'Craboon' looking east towards subject site.

The control seeks to ensure that development consists of unobtrusive, non-reflective, dark and earthy materials and colours, which blend into natural environment. The subject brushwood fence meets each of these criteria.

10.0 CONCLUSION

The subject Building Certificate application seeks the regularisation of an existing 1.8 metre high Brushwood fence which has been erected along part of the subject site's boundaries without development consent.

Section 149 of the Environmental Planning and Assessment Act 1979 permits and obligates Council to issue a Building Certificate provided that there are no reasons for the subject development to be considered inappropriate. As has been demonstrated above, the subject development has been assessed in accordance with Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan 2014, Pittwater 21 DCP and other relevant Council policies; the development has been found to be appropriate in this regard.

The resulting development does not result in unreasonable or unsafe impacts to the character of the area, neighbouring amenity or the natural environmental. Accordingly, it is recommended that the Building Certificate be issued.

RECOMMENDATION OF DEVELOPMENT OFFICERS

That Council as the consent authority pursuant to Section 149 of the Environmental Planning and Assessment Act 1979 grant consent to Building Certificate Application BC0030/14 for the retention of a 28.5 metre section of brushwood fence along the access driveway to 117 Pacific Road, Palm Beach, together with a 2 metre section on the site's western boundary.

Report prepared by
Cheryl Williamson, Senior Planner
Wal Dover, Senior Building Surveyor

Andrew Pigott
MANAGER, PLANNING & ASSESSMENT

LOCATION MAP

