



25<sup>th</sup> June 2021

The General Manager  
Northern Beaches Council  
council@northernbeaches.nsw.gov.au

**Attn: Gareth David**

Dear Gareth,

**Development Application No: DA2021/0317 for Construction of a dwelling house at 141 Riverview Road AVALON BEACH.**

We act on behalf to our clients' Mrs Kavitha and Mr Uday Bonu (our "**clients**"). Our clients are the owners of a property known as Lot 2 in DP 833902 No. 141 Riverview Road, AVALON BEACH (the "**site**"). We are in receipt of Council's letter dated 10th June 2021 that identifies additional information requirements to enable Council to undertake a comprehensive assessment of the subject development application. Council provided three (3) options to 'progress the handling' of the application. In response, we have taken the option offered to submit further supporting information and revised plans to address the issues raised by Council.

On a procedural point, we note that the request for additional information ought be made by Council on the NSW Planning Portal in accordance with the provisions of clause 54(2) of the Environmental Planning and Assessment Regulation 2000 (the "**Regs**"). We seek to provide amended plan detail and information in response to the request of council.

In accordance with the provisions of clause 55(1) & (2) of the Regs, the particulars of the amendments and additional information is provided as follows:

**Pittwater Local Environmental Plan 2014**

**Clause 7.6 Biodiversity protection**

'Revised plans' accompanying the documentation forming part of this submission includes minor changes to the dwelling house design including a reduction to the building footprint of the proposed dwelling house to maximise the site landscaped area and minimise tree removal in accordance with Clause 7.6 of Pittwater LEP and Clause C1.1 of Pittwater DCP.

Firstly, regarding the proposed tree removal, of the thirty-seven (37) existing trees identified on the site in the Arborist report accompanying the development application, the revised plans propose the removal of only fifteen (15) trees. Of the fifteen (15) trees identified for removal, tree no. 5, 17, 27 and 31 as identified in Arborist Report are categorised as "exempt" under the Northern Beaches Council's exempt tree species list. Tree no. 35 (as identified in Arborist report) even though not

required for removal for the proposed dwelling house has been identified for removal due to its poor condition as per the Arborist report.

An accredited assessor (NARLA Environmental Pty. Ltd.) has been commissioned to prepare a Biodiversity Development Assessment Report (BDAR) and accompanying Vegetation Management Plan (VMP) to respond to the matters raised by the council Ecologist. The reports accompany the documentation forming part of this response to council.

The BDAR concluded that the proposed development has been purposefully designed to minimise impacts on biodiversity values as much as possible. In summary, the BDAR states (in part):

*“Due to the vegetated nature of the property, there are limited alternate locations for the proposed development.*

*The proposed development is expected to impact one (1) Plant Community Type (PCT): PCT 1214: Spotted Gum - Grey Ironbark open forest in the Pittwater and Wagstaffe area, Sydney Basin Bioregion. The following ecosystem credit is required to be offset in order to mitigate the impacts upon biodiversity as a result of the proposed development:*

- *One (1) ecosystem credit for PCT 1214.*

*Additionally, Suitable habitat was identified within the Subject Land for two (2) species credit species who were not able to be appropriately surveyed for and have therefore been assumed present. The following species credits are required to be offset in order to mitigate the impacts upon these species as a result of the proposed development:*

- *One (1) species credit for *Genoplesium baueri* (Bauer's Midge Orchid; Assumed Present); and*
- *One (1) species credit for *Hygrocybe aurantipes* (Assumed Present).”*

A Vegetation Management Plan (VMP) has also been produced to guide the rehabilitation and revegetation of PWSGF within the site.

Refer to attached reports “210517-Narla-BDAR-141 Riverview Rd Avalon Beach-Final” and “210517-Narla-VMP\_141RiverviewRd Avalon Beach-Final”.

## **Pittwater 21 Development Control Plan**

### **A4.1 Avalon Beach Locality**

The Architect has prepared a plan view of the proposed dwelling house (see Figure 1) from the frontage to Riverview Road. The trees depicted on the plan view are representative of the size and scale of the species present and to be retained on the site following development. In consideration of the development application, council must consider the relevant objectives of the E4 Environmental living Zone contained in the LEP 2014. The revised design of the proposed dwelling house will provide a low-impact residential development that ‘respects’ the ecological, scientific and aesthetic values of the site. The design has been ‘stepped’ up the natural slope of the site and

proposes minimal cut and fill and site disturbance. The development will integrate with the landform and landscape in accordance with the zone objectives.

Figure 1 illustrates that the roof level of the proposed dwelling house is similar to the RL of the site frontage to Riverview Road. The visual impact of the development upon the streetscape is negligible due to the natural topography and the adopted design. In fact, the view of the proposed development from Riverview Road will be dominated by the retained tree canopy, and an almost uninterrupted view of the Pittwater and the hill scape on the western horizon.

The council has raised concern that the proposed dwelling house will comprise an excessively large footprint. The footprint of the proposed dwelling house will occupy only 26.8% of the site area in terms of hard surface area (including 42 m<sup>2</sup> for outdoor living) and is designed to 'stepped' with the slope of the land.

*Figure 1* – Perspective from Riverview Road



### C1.1 Landscaping

A landscape plan prepared by Aspect Developments Pty Ltd. accompanies the revised documentation forming part of this submission. It is an objective to retain the existing natural features of the site where possible. It is proposed to embellish areas around the curtilage of the proposed dwelling house with the additional planting of endemic plant species as depicted on the attached landscape plans. An area within the north-western corner of the site occupied by a car parking space constructed by a neighbour will be re-established by the proponents with native landscaping. The revised plans will achieve a Landscape area of 55% of the site. Although this represents a minor departure from the requirements of the DCP, consideration should be given to the large amount of site area that is burdened by an access driveway that forms part of a right of carriageway (ROW) to the benefit of adjoining properties. The ROW and hard pavement are a consequence of the historic subdivision approved by council and should be given proper consideration in the minor departure to landscape area being sought. In other words, the hard pavement currently forming part of the ROW comprises a total of 133.5m<sup>2</sup> (18% of the site area). If

the ROW was excluded from the site area the proposal would achieve a landscaped area of 73.2% of the site.

It should be noted that the hard surface/impervious area resulting from the proposed dwelling house is 198.53m<sup>2</sup> (including 42m<sup>2</sup> for outdoor living) i.e., only 26.8% approx. of the site area will comprise built upon area.

### **C1.19 Incline Passenger Lifts and Stairways**

The stairway on the southern elevation is now removed. Refer to revised plans in file “210621-DA Design Development-Issue 08”.

### **D1.5 Building colours and materials**

The proposed external colours have been revised in accordance with the colour schedule contained within clause D1.5 of the DCP. The revised plans depict the use of ‘Mid Grey’ and ‘Dark grey’ as external colours. Refer to “page 19” of the Architect plans in file “210621-DA Design Development-Issue 08”.

### **D1.8 Front Building line**

A substantial part of the front building facade and the front walkway have been revised to meet the objectives of Clause D1.8 of the DCP (refer to “page 2” of the Architect plans in file “210621-DA Design Development-Issue08”). The result of the design changes will result in only a small portion of the front of the building encroaching into the front building line. Due to the natural topography of the site and the reduced elevation of the proposed building as viewed from Riverview Road, the minor encroachment is considered to have a negligible impact upon the streetscape and warrants support of council.

As previously indicated, the revised plans have enabled retention of five (5) trees (tree no. 11, 12, 13, 14 and 25) that were previously identified for removal. Additionally, it should be noted that the retained trees in the south-east and east of the site frontage to Riverview Road will be approximately between 3 to 20 metres above the finished roof level of the proposed dwelling house. The roof level of the proposed dwelling will be near the RL of the Riverview Road on the East, thus making the proposed dwelling appear with a very low built profile.

The public views off the Riverview Road, would in-fact be dominated by retained tree canopy, and an almost uninterrupted view of the Pittwater and the hill scape on the western horizon.

### **D1.9 Side and Rear building line**

The plans have been revised to maintain the required side setbacks to satisfy the objectives of Clause D1.9 of the DCP (refer to the Architect plans in file “210621-DA Design Development-Issue08”).

The stairway proposed adjacent to the southern side boundary has been deleted on the revised plans. The decking on the living (upper ground) level has been reduced in size along the southern side of the proposed building.

Consequently, the minimum setback of the proposed dwelling house is a minimum 2 metres to the northern side boundary line and 2.5 metres on the southern side boundary. There's a minor section of the balcony on the south elevation that will breach the 2.5m side setback requirement.

Additionally, it should be noted that the decking along the southern boundary does not necessitate removal of any trees or has any adverse impact on vegetation.

#### Issues with the Supporting Documentation

- (a) **Geotechnical Report** – The Geotechnical Report has been updated to refer to the current Issue-08 version of the plans. (refer file “210624-Report-Geotechnical+Update Letter” attached).
- (b) **Excavation/fill plan** – Detail as requested provided on revised documentation (refer “page 5” of the Architect plans in file “210621-DA Design Development-Issue08”).
- (c) **Landscape plan** - A Landscape plan prepared by Aspect Developments Pty Ltd. is attached. (refer to file “210622-Aspect-Landscape Plan” also refer to the updated Landscape plan on “page 4” of the Architect plans in file “210621-DA Design Development-Issue08”).
- (d) **Easement details** - The “Easement for Support” is as marked on the Survey Plan attached.
- (e) **Demolition Plan** - Not Applicable, as the development application does not seek consent for demolition.
- (f) **Building Envelope Diagrams** - Updated (refer “page 13” of the Architect plans in file “210621-DA Design Development-Issue08”). The plans identify a minor protrusion of the proposed dwelling house (in part) to the envelope to the northern side boundary. The impacts upon the neighbouring property to the north are negligible due to the proximity of the adjoining dwelling house and the spatial separation that will result. No adverse impacts upon the privacy and amenity of the adjoining property to the north of the site will occur because of the proposed minor encroachment.
- (g) **Survey and RL Error** - Updated and confirm that RLs on the submitted drawings are correct and match the survey plan (refer to Survey in file “201020-Survey-3008B” and the Architect plans in file “210621-DA Design Development-Issue08”).
- (h) **Carport** – No changes to the carport design are proposed under the development application through this DA. The carport will be built in accordance with the terms and conditions of development consent DA2019/1149.
- (i) **Arborist report** - The trees identified in the Arborist report and the trees depicted on the revised plans correspond.
- (j) **Site Plan** – Updated. (refer to “page 3” of the Architect plans in file “210621-DA Design Development-Issue08”).

The revised plans include a minor departure to the provision of the DCP in relation to front building line, side (southern) setback, landscaped area, and breach of the northern building envelope. A justification for the variations sought is provided in this submission above. The minor variation will not result in an inferior development and warrant the support of council in consideration of the characteristics and constraints of the site.

On this point, we note that amendments were made to the Environmental Planning and Assessment Act 1979 (the Act), which largely changed the key purpose of development control plans (DCP), came into effect on 1 March 2013. In short, the new principal purpose of a DCP is to provide ‘*guidance*’ and the provisions of a DCP are expressly said not to be

*'statutory requirements'.*

Specifically, section 4.15(3A) of the Act states that if a DCP contains provisions that relate to a pending development application, the consent authority must not impose more onerous standards, where the development proposal complies with the standards of a DCP. However, this provision does not apply when standards are set by a local environment plan.

Alternatively, where the proposed development does not comply with the standards of a DCP, a consent authority will be obliged to 'be flexible in applying those provisions' and to 'allow reasonable alternative solutions' that achieve the objectives of those standards. This means that a consent authority cannot apply a DCP rigidly and is required by the Act to allow reasonable alternative solutions that still achieve the desired character for the relevant local government area. Accordingly, in these circumstances a consent authority is precluded from refusing consent in relation to an aspect of a development because of non-compliance with provisions of a DCP. If a development application proposes a reasonable alternative solution, the consent authority must allow that solution.

A consent authority may only consider DCP provisions in connection with the assessment of the subject development application. This means that a consent authority will not be able to consider the consequences of a decision on hypothetical future development applications, and so should not be able to hide behind the notion that an approval may set an undesirable precedent. Additionally, a consent authority is not to have regard to how the provisions in the DCP have been applied previously.

Please do not hesitate to contact the undersigned on **0432 678 268** should you require any further assistance in this matter.

Yours faithfully,

**Peter Fryar**

BTP(UNSW), CERT T&CP(Ord4), MPIA

A handwritten signature in black ink, appearing to read 'Peter Fryar', with a large, stylized loop at the end.

Director,

KEY URBAN PLANNING

**Attachments:**

1. Revised plan documentation by Fyffe Design Pty Ltd. - File "210621-DA Design Development-Issue08" dated 21/06/21
2. Revised Geotechnical consultant report by White Geotechnical Group Pty. Ltd. - File "210624-Report-Geotechnical+Update Letter" dated 24/06/21
3. Landscape Plan by Aspect Developments Pty Ltd. - File "210622-Aspect-Landscape Plan" dated 18/06/21
4. Biodiversity Development Assessment Report (BDAR) by NARLA Environmental Pty. Ltd - File "210517-Narla-BDAR-141RiverviewRd Avalon Beach-Final" dated 17/05/21
5. Vegetation Management Plan (VMP) by NARLA Environmental Pty. Ltd - File "210517-Narla-VMP-141RiverviewRd Avalon Beach-Final" dated 17/05/21
6. Survey by DP Surveying - File "201020-Survey-3008B" dated 16/10/20