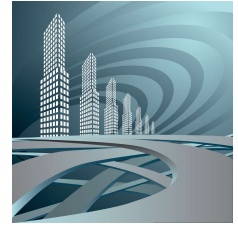


EVOLUTION PLANNING

Evolution Planning Pty Limited
PO Box 309
Frenchs Forest NSW 1640.



E: [REDACTED]
M: [REDACTED]

26 September 2023

The General Manager
Northern Beaches Council
725 Pittwater Road
Dee Why NSW 2099

Email: council@northernbeaches.nsw.gov.au

Att: Development Determination Panel

Dear Sir or Madam:

RE: REV2023/0016 - DA2022/2270 – 166 Pittwater Road, Manly – Submission to DDP

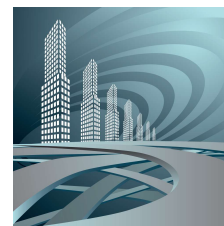
We offer this submission to Council's Development Determination Panel (DDP) to assist the Panel in its consideration of this matter.

The recommendation to the Panel is one of refusal for reasons related to there being "*insufficient information*" to provide certainty that the terms of the easement of support associated with the party wall between 166 and 168 Pittwater Road, Manly, would not be hindered.

Our client has gone to extensive efforts to gain neighbouring owners' consent which we believe has been unreasonably withheld and now it appears that Council is acting overly cautiously perhaps so as not to be party to any potential dispute between the neighbours and/or has not given sufficient forensic assessment to the additional material we have provided which clearly shows there will be no infringement to the easement.

We therefore respectfully request that the learned members of the DDP give careful consideration to this submission and accompanying material, (and the documentation which has already been provided to Council which we will refer to), since we do not envisage any eventuality where neighbouring owners consent might be given and since, in light of the nature of this small domestic renovation project, an Appeal to the Land and Environment Court would be prohibitive in terms of cost.

Aside from this town planning opinion, our position is also supported by the accompanying legal advice prepared by Hamer & Hamer Balgowlah Solicitors, dated 25 September 2023, (**Appendix A**) and advice from the project Structural Engineer, dated 1 September 2023, (**Appendix B**) which has already been provided to Council but is provided again at this juncture for ease of reference.



Background

Council's RFI letter of 13 April 2023 (in response to the previously refused DA) states: *"if landowner's consent cannot be obtained the application must be amended to remove any works to the party wall and that such amendments be diagrammatically supported through detailed construction drawings and methodology which demonstrate how the proposal complies with the terms of the existing easement for support and in no way relies upon or affects the integrity of the party wall in any way"*

Since considerable effort had been put into gaining neighbouring owners' consent (and where we thought at the time progress was being made in this regard) our client decided to continue to pursue consent but ultimately to no avail. Council was unwilling to allow for additional time to amend the drawings and the DA was refused for the following reason:

"Reasons for Refusal:

1. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, the Development Application does not comply with the provisions of Clause 23 of the EP&A Regulation 2021 and must be refused as the application does not constitute a legitimate Development Application.

Particulars:

i). The application is not accompanied by sufficient information in the form of owners consent from No. 168 Pittwater Road for the works on and over the common boundary and those subject to the existing easement for support of the party (or common) wall between the two properties."

It was then decided to lodge a Review Application under s.8.2 of the Act (the subject application) to do as suggested by Council in the RFI dated 13 April 2023 to *"remove any works to the party wall and that such amendments be diagrammatically supported through detailed construction drawings and methodology which demonstrate how the proposal complies with the terms of the existing easement for support and in no way relies upon or affects the integrity of the party wall in any way"*.

Despite making these amendments which, as demonstrated below, do not infringe the terms of the easement or effect the integrity of the party wall or its foundations, Council has again formed the opinion that insufficient information has been provided to ensure the terms of the easement are satisfied.

Easement for Support

Figure 1 below shows an extract from the Land Survey showing parts of the easement for support identified as (C) and (D). The easements run for the length of the party wall and have a width of 0.13m each.

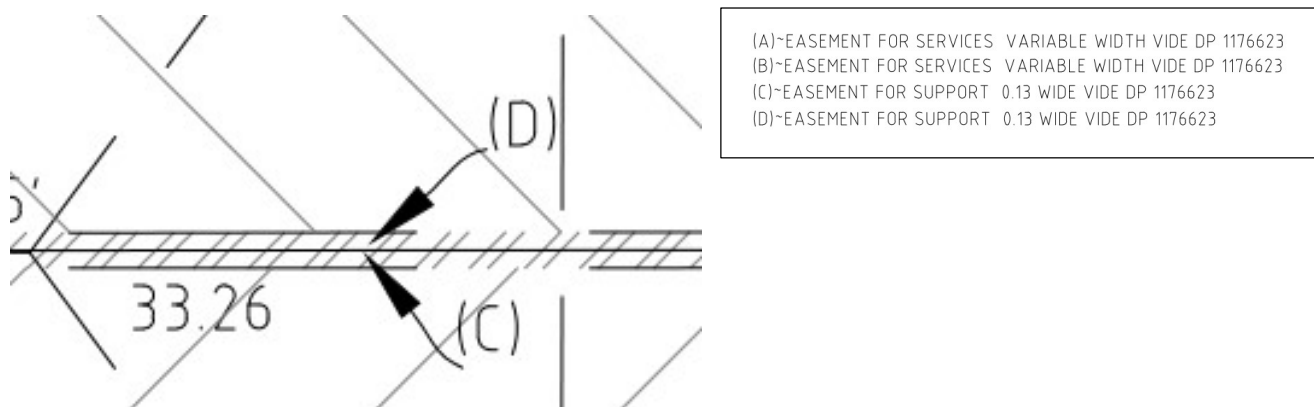


Figure 1: Extract from survey showing easement for support.

DP1176623 sets out the terms of easement created under Section 88B of the Conveyancing Act 1919 as follows:

1. The owner of the lot benefited:-

(a) may insist that improvements on that part of the lot burdened specified by the letter [C] or [D] as appropriate and any future improvements erected on the same foundations and requiring for stability the same or any less support than the said improvements from the soil and other improvements erected on the lot burdened be supported, upheld and maintained by the soil and improvements on the said part of the lot burdened and shall remain supported, upheld and maintained by the soil and existing improvements on the lot burdened to ensure the stability of improvements on the lot benefited;

(b) must keep the improvements supported in good repair and safe condition;

(c) may do anything reasonably necessary for the above purposes including -

- entering the lot burdened
- taking anything on to the lot burdened
- carrying out work

Submission

The terms of easements apply to:

- i. "Improvements on that part of the lot burdened specifically by the letter (C) or (D)"; and;
- ii. *"any future improvements erected on the same foundations and requiring for stability the same or less support than the said improvements from the soil and improvements erected on the said part of the lot burdened and shall remain supported..."*

[emphasis added]



In response to (i), no improvements are proposed on that part of the lot burdened by (C) (as relevant to this case) and all works are proposed within the subject site. Refer to the extract below from the already submitted structural drawings showing the section of the proposed works as they relate to the party wall.

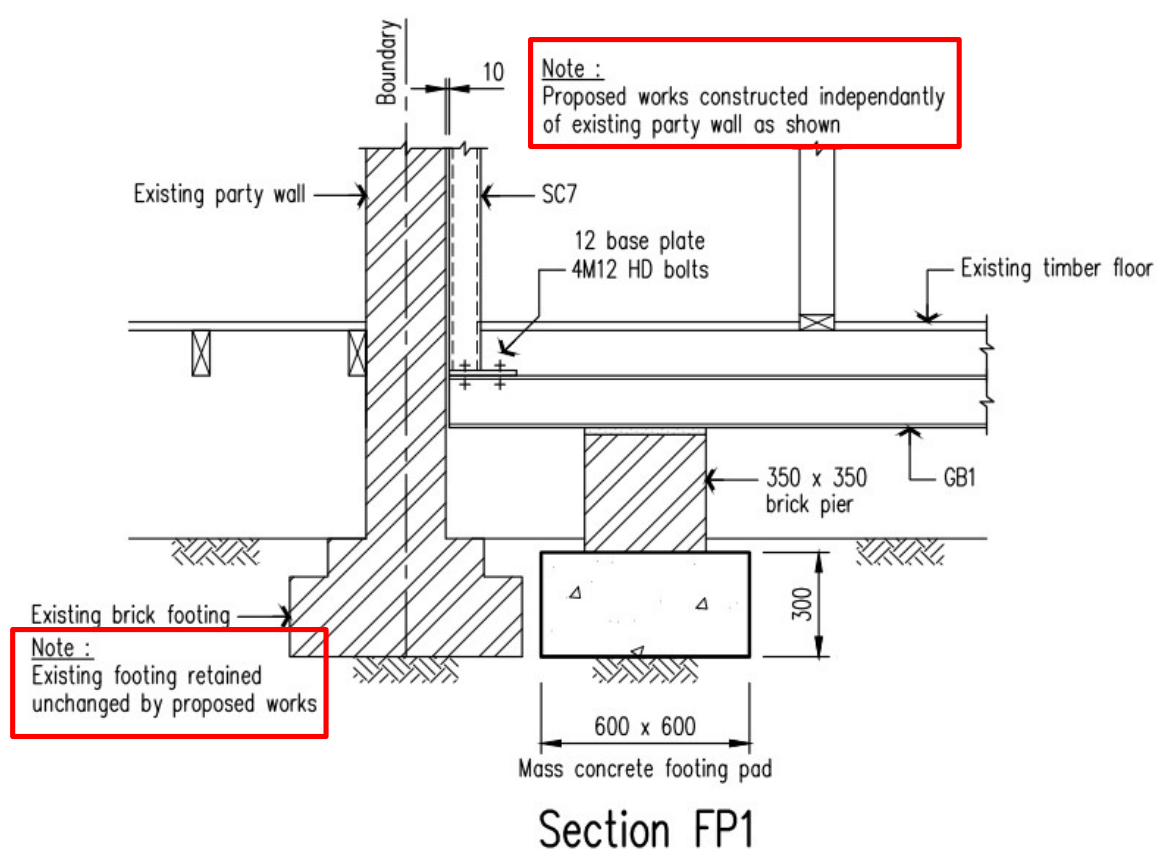


Figure 2: Extract Section FP1, prepared by Geoff Hopkins and Associates, Consulting Structural and Civil Engineers.

The width of the easement (C) is the same as the width of the party wall located on the subject site. Figure 2 clearly shows that the proposed works will be independent of the party wall and located outside of the easement by (10mm).

In response to (ii), there are no changes to the footings/foundations of the party wall and the proposed improvements will rely on a new footing separated from and independent of the party foundation and hence there is no additional load added to the “soil” beneath the easement.

This is confirmed in the accompanying letter (which has already been provided to Council) from Geoff Hopkins and Associates, Consulting Structural and Civil Engineers, dated 1 September 2023, which states:



“We have prepared structural details for the proposed modifications to the above mentioned dwelling and are described on drawing No 93632 Revision A dated 1.7.2023.

This is to confirm that these details have been prepared to ensure that there is no additional load transferred to the attached party wall.”

The separation of the new works (including the wall and footings) are similarly shown in the submitted architectural drawings as extracted below.

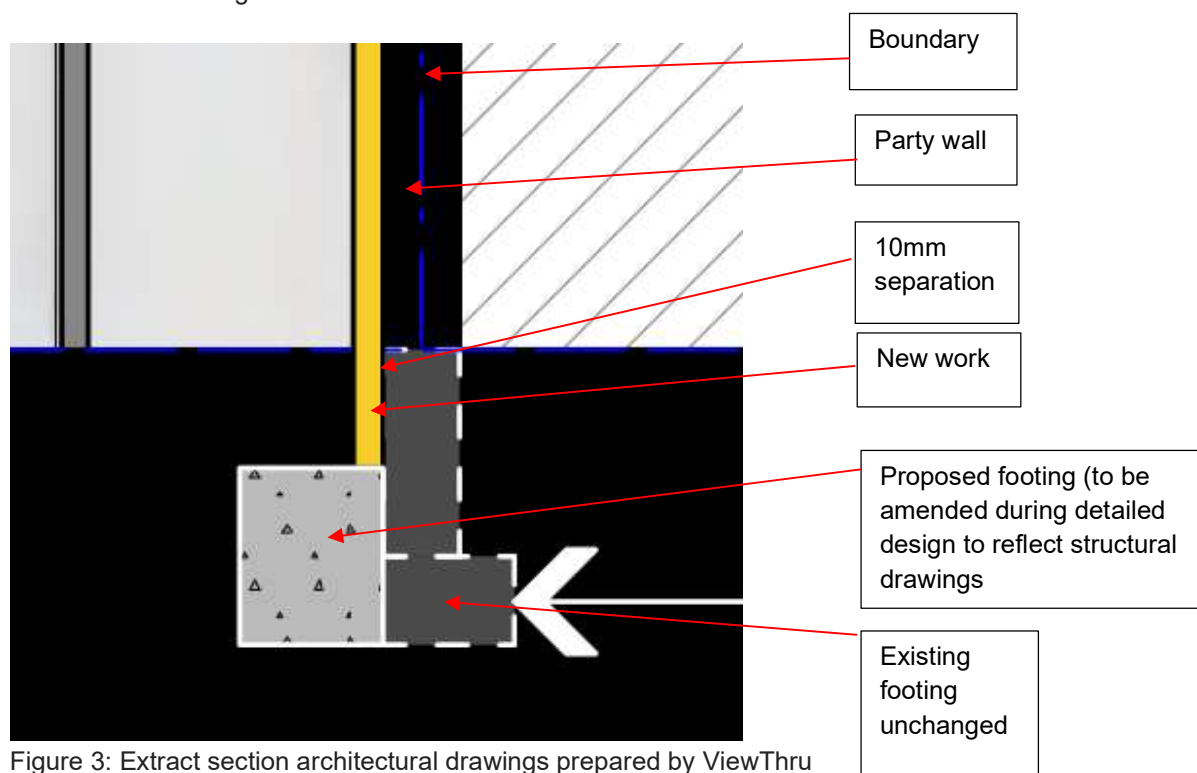
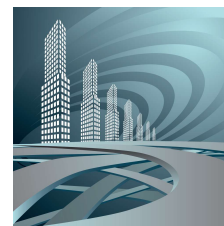


Figure 3: Extract section architectural drawings prepared by ViewThru

To provide additional comfort to Council, consent conditions could be imposed to:

- require that the separation between the new wall and the party wall be increased to 20mm (which could be done but was not deemed to be necessary);
- the preparation of a detailed construction management plan prior to construction certification to demonstrate how the proposed footings will be constructed without undermining the integrity of the existing party footing or wall; and,
- include a reference to the easement and (whilst not legally necessary since the s.88B instrument prevails), a requirement in the consent for the proponent to satisfy and not hinder the terms of the easement.



We understand Council's caution when considering such matters but, in this case, we firmly disagree that insufficient information has been provided for Council to approve this application given the amendments to the design and the provision of separate town planning, legal and structural engineering advice all forming the opinion that the terms of the easement will not be hindered.

We trust that this letter is of assistance to the DDP and is sufficient to overturn the recommend for refusal and approve the application.

Please contact the undersigned directly on 0430007725 should you wish to discuss the proposal further.

Yours sincerely,



Tony Robb
BA (Hons) UPS, Grad.Dip.TP (Westminster) RPIA
Principal



Planning
Institute
Australia



APPENDIX A

Legal Advice,
Hamer & Hamer Balgowlah Solicitors.

OUR REF: MRH:9080

YOUR REF:

26 September 2023

The General Manager
Northern Beaches Council
By Email: Megan.Surtees@northernbeaches.nsw.gov.au

Dear Madam,

**RE: DEVELOPMENT APPLICATION NUMBER REV2023/0016 FOR REVIEW
OF DETERMINATION OF DA2022/2270 FOR ALTERATIONS AND
ADDITIONS TO SEMI DETACHED DWELLING HOUSE AT 166
PITTWATER ROAD MANLY
PROPERTY: 166 PITTWATER ROAD MANLY**

We act on instructions from Benjamin Laws and Chloe Laws (nee Wallace).

We have been requested to provide an opinion in relation to council's assessment and determination of the above application, the content of your letter dated 24 August 2023 and the content of your email dated 7 September 2023.

We *enclose a copy of the title search for 168 Pittwater Road, Manly folio identifier 108/1176623. We note that the registered proprietor of the property is Lawrence Melville Tomlinson.

We have reviewed all documents available on the council's website in relation to our client's applications to council in particular the following documents which council has on their files:

1. DP 1176623 and DP 1176623 section 88B instrument (**"the party wall cross easements for support"**)
2. Submissions of Sebastian De Brennan dated 21 March 2023 and 13 August 2023 (**"the De Brennan submissions"**).

3. Submissions of Collard Maxwell Architects Pty Limited dated 22 March 2023 and 7 August 2023 (**"the CMA submissions"**).
4. Development Application Assessment Report dated 6 June 2023 (**"the council DAAP report"**).
5. Notice of Determination of Development Application number DA 2022/2270 dated 6 June 2023 (**"the Notice of Determination"**).
6. Plans, Sections and Details of Geoff Hopkins & Associates dated 17 February 2023 revised 1 July 2023 (**"the structural engineer plans"**).
7. Building Assessment Referral Response to application number REV2023/2016 dated 14 August 2023 (**"the BAR Response"**).
8. Email from Megan Surtees to Jim O'Brien of Viewthru dated 24 August 2023 (**"email dated 24 August 2023"**).
9. Letter from council to Viewthru Pty Ltd dated 24 August 2023 (**"letter dated 24 August 2023"**).
10. Letter from Geoff Hopkins & Associates Pty Ltd dated 1 September 2023 (**"Geoff Hopkins letter dated 1 September 2023"**).
11. Email from Megan Surtees to Tony Robb and Jim O'Brien dated 7 September 2023 (**"email dated 7 September 2023"**).

In our opinion the position of council as most recently demonstrated in the email dated 7 September 2023 is flawed and unreasonable for the following reasons:

- a) **Council has misinterpreted the provisions of the party wall cross easements** – The renovations the subject of the application are not within the areas shown as [C] or [D] (on the Deposited Plan) and are not on the same foundations or soils as the party walls which are the subject of the cross easements for support. The terms of the cross easements for support only refer to the area of the land within which the party wall stands and are of no relevance to any part of the land outside the area of the party walls and are therefore of no relevance to the works contemplated in our clients' DA.
- b) **Council has required the consent of the owners of 168 Pittwater Road, Manly in error** – We refer to the comments on page 5 of the DAAP report under the heading Clause 23 in particular the words: *"The Development Application relates to the adjoining land known as No. 168 Pittwater Road, as works are proposed over the common boundary."* This is factually incorrect. The proposed works do not relate to No 168 Pittwater Road, Manly as no part of the renovations proposed for 166 Pittwater Road are on 168 Pittwater Road and/or within the area affected by the cross easements for support.
- c) **Council has either not considered or has misinterpreted the structural engineer plans and the Geoff Hopkins letter dated 1 September 2023** –
 - Section FP1 of the Plans, Sections and Details of Geoff Hopkins dated 17 February 2023 and amended 1 July 2023 states: *"Note: Proposed works constructed independently of existing party wall as shown."*

- The letter from Geoff Hopkins dated 1 September 2023 is self explanatory and confirms that *“there is no additional load transferred to the attached party wall.”*

In her email to Tony Robb and Jim O’Brien dated 7 September 2023 Ms Megan Surtees states: *“There is no evidence that the proposed development will not have an unreasonable impact upon the foundation of the soils. Council’s position remains.”*

It would appear from this statement that Ms Surtees has either not considered all relevant information provided to council or has misinterpreted the plans and engineers plans and engineer’s report which confirm:

- The works are outside the area of the cross easements for support.
- The proposed works are constructed independently of the existing party wall; and
- There is no additional load transferred to the attached party wall.

- d) **Council has considered submissions made in the De Brennan submissions and the CMA submissions from persons who have not provided documentary evidence to show that they have any legal standing to make submissions on behalf of the owner of 168 Pittwater Road, Manly** – The title search for 168 Pittwater Road, Manly being folio identifier 108/1176623 shows that the registered owner of that property is Lawrence Melville Tomlinson. Submissions have been accepted and considered from Christiane De Brennan-Pearce who claims to be the executor of the estate of the late Lawrence Melville Tomlinson, however has not provided a copy of the will and death certificate, or the grant of probate to confirm Christiane De Brennan’s legal authority to make submissions to council and for council to consider those submissions.

Submissions have been accepted and considered from Sebastian De Brennan who states in his email dated 13 August 2023 *“I confirm my family owns 168 Pittwater Road at Manly.”* Sebastian De Brennan’s claim is unsubstantiated by any documentary evidence, in particular evidence to show that Mr De Brennan has any legal standing to make submissions in relation to our client’s application and for council to consider those submissions.

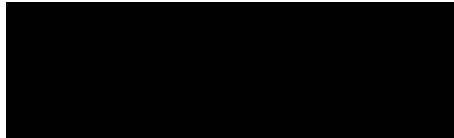
It is our opinion that council has considered the submissions in error and they should be disregarded.

Our clients have provided council with all relevant information to address the matters raised by council as being reasons for the refusal and that information confirms that there is no reason for council to refuse the application. Accordingly it is our opinion that in the interests of providing our clients with procedural fairness and

minimising further waste of rate payers resources, council should proceed to approve our clients' application as a matter of priority.

Yours Sincerely,

HAMER & HAMER BALGOWLAH



MURRAY HAMER





SEARCH DATE	TIME	EDITION NO	DATE
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22/9/2023	2:10 PM	1	10/7/2012

LAND

LOT 108 IN DEPOSITED PLAN 1176623

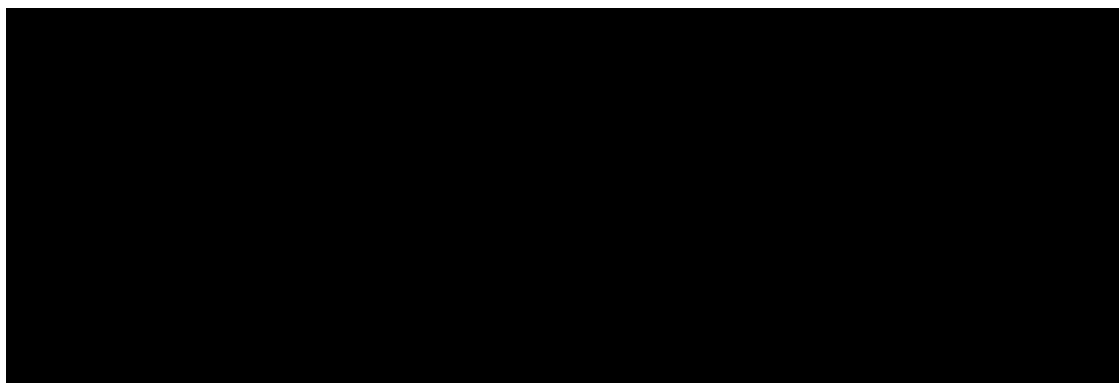
AT MANLY

LOCAL GOVERNMENT AREA NORTHERN BEACHES

PARISH OF MANLY COVE COUNTY OF CUMBERLAND

TITLE DIAGRAM DP1176623

FIRST SCHEDULE



NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***



APPENDIX B

Structural Engineering Advice,
Geoff Hopkins and Associates.

Geoff Hopkins & Associates Pty Ltd

Consulting Structural & Civil Engineers

ABN No. 49 002 752 338

7 Latona Street

West Pymble NSW 2073

Telephone :Mob: 0419 600 545

Email ghop@bigpond.net.au

Our Ref: 93632

1st September 2023

Viewthru Pty Ltd

BALGOWLAH NSW 2093

Jim O'Brien <jim@viewthru.com.au>

166 PITTWATER ROAD, MANLY

PARTY WALL STRUCTURAL

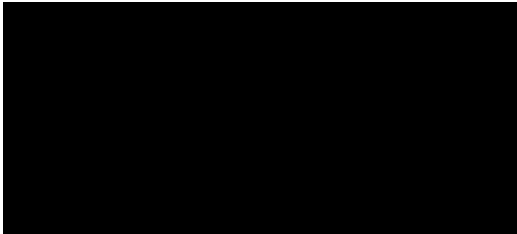
Dear Sir,

We have prepared structural details for the proposed modifications to the above mentioned dwelling and are described on drawing No 93632 Revision A dated 1.7.2023.

This is to confirm that these details have been prepared to ensure that there is no additional load transferred to the attached party wall.

Yours faithfully,

GEOFF HOPKINS & ASSOCIATES PTY LTD



GEOFF HOPKINS BE MIE CPEng