



Urbanism
P l a n n i n g & D e v e l o p m e n t

STATEMENT OF ENVIRONMENTAL EFFECTS

ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE AND
NEW SWIMMING POOL

45 CAREFREE ROAD, NORTH NARRABEEN

PREPARED FOR
WARREN DESIGN

AUGUST 2019

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This report remains a preliminary draft report unless signed above.

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Appendix 1 Site Photos

Appendix 2 Clause 4.6 Variation

1 Introduction

Urbanism has been engaged by Warren Design to prepare a Statement of Environmental Effects to support a development application for the alterations and additions to the existing dwelling house at 45 Carefree Road, North Narrabeen.

The aims of this report are to:

- Provide an assessment of the locality, subject site and applicable planning controls,
- Describe the proposed development, and
- Assess the impacts of the development against Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

2 Site Assessment

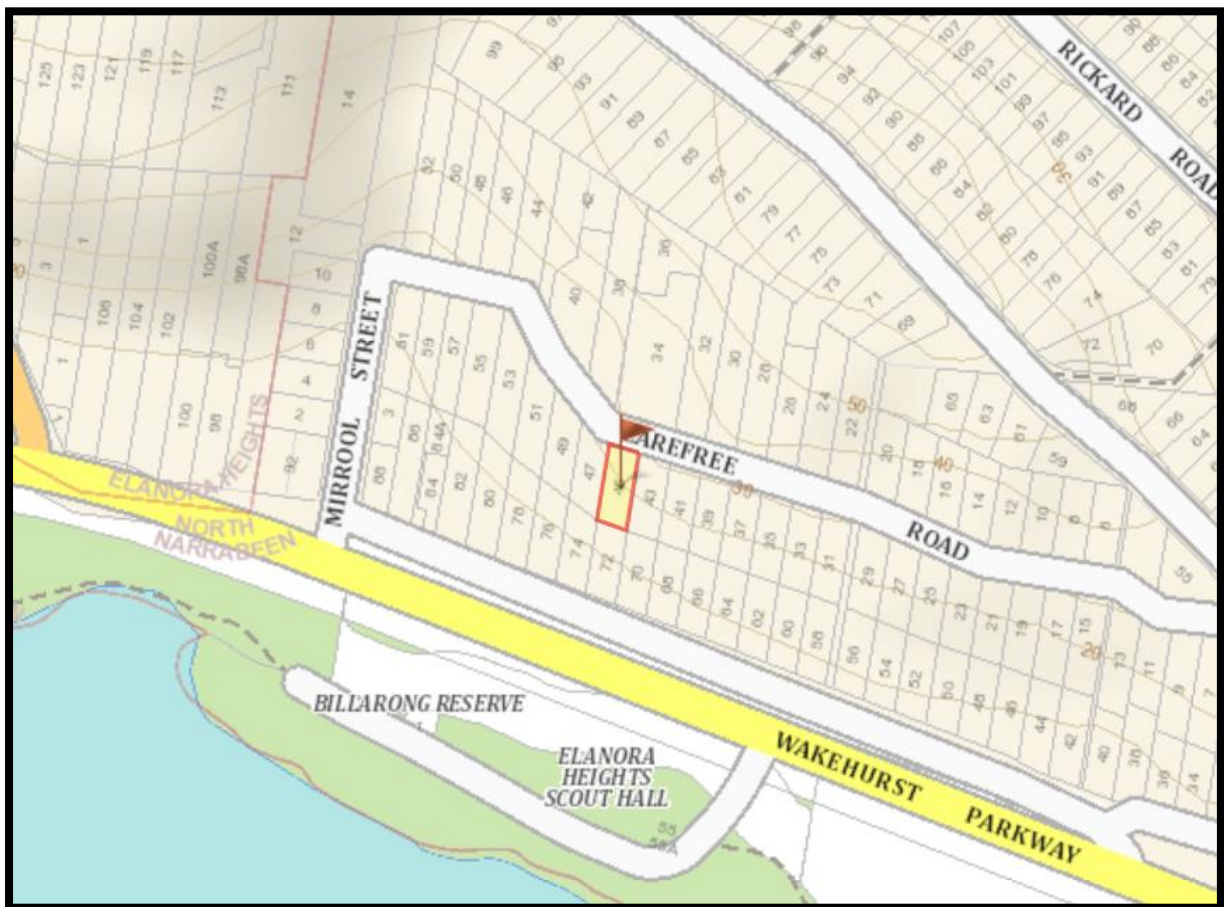
2.1 Locality Assessment

The subject site is located within the suburb of North Narrabeen which is approximately 45 kilometres north of the Sydney CBD.

The site is located within an established residential area characterised by a range of housing styles with varying front and rear setbacks and attractive streetscapes featuring generous street tree planting. The steep topography of the locality most significantly influences housing design in this locality with elevated pole homes being typical.

The site is favourably located a short distance to Narrabeen Lagoon, Narrabeen Beach and Narrabeen Town Centre.

The following figure shows the location of the subject site in relation to the surrounding locality.



Source: Six Maps (2019)

2.2 Site Description

The subject site, 45 Carefree Road, North Narrabeen is legally known as Lot 25 DP 11547.

The subject site is a rectangular north to south oriented block 540.6m² in area with a 15.6m wide frontage to Carefree Road. The subject site slopes from front (north) to rear (south) with an approximate fall of 10.9m (30.1%).

The subject site comprises of a two-storey weatherboard pole home, containing private open space to the front, and private open space to the rear.

The following figure illustrates the subject site and its setting within the immediate vicinity.



Source: Six Maps (2019)

2.2.1 Surrounding Development

Streetscape character and visual setting:

Development within the locality is similar to the development on the subject site in terms of block size, built form, materials and land use.

Existing vegetation:

The Carefree Road streetscape features intermittent medium and large, mature sized street trees within the road reserve, with moderate sized trees in the front yard and vegetation on both sides of Carefree Road. The majority of the blocks have mature sized trees both within the front and rear yards of the blocks. The subject site features multiple medium sized trees in the front yard. Four will be removed with the large melaleuca to the western boundary being retained.

Topography:

The land in the immediate vicinity of the subject site is sloped from north to south over look Narrabeen Lagoon. The street falls from east to the west along Carefree Road down towards Mirol Street.

Views:

There are significant views from Carefree Road south across Narrabeen Lagoon. Buildings along Carefree Road do impede view lines to immediately adjoining properties typically owing to the steep topography and the need to build elevated pole style housing.

Heritage:

The subject site is not a Heritage item, nor is it located within a Heritage Conservation Area.

Form of adjacent buildings:

The surrounding locality is characterised by development similar to the proposed development on the subject site in terms of block size, built form, bulk, materials and land use. Buildings within the locality are predominantly two-storey in height.

Surrounding noise sources:

The locality is predominately residential in character; therefore, no significant noise sources are located nearby.

3 The Proposal

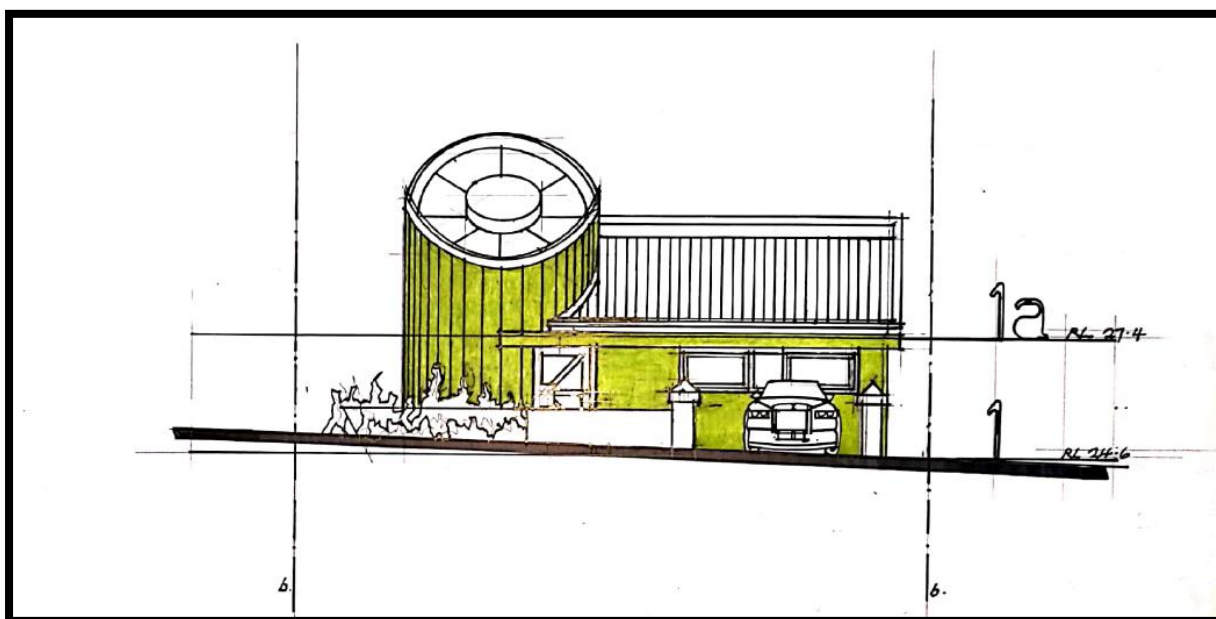
3.1 Description of Proposal

The proposal involves the following alterations:

Front Façade (Northern Elevation)

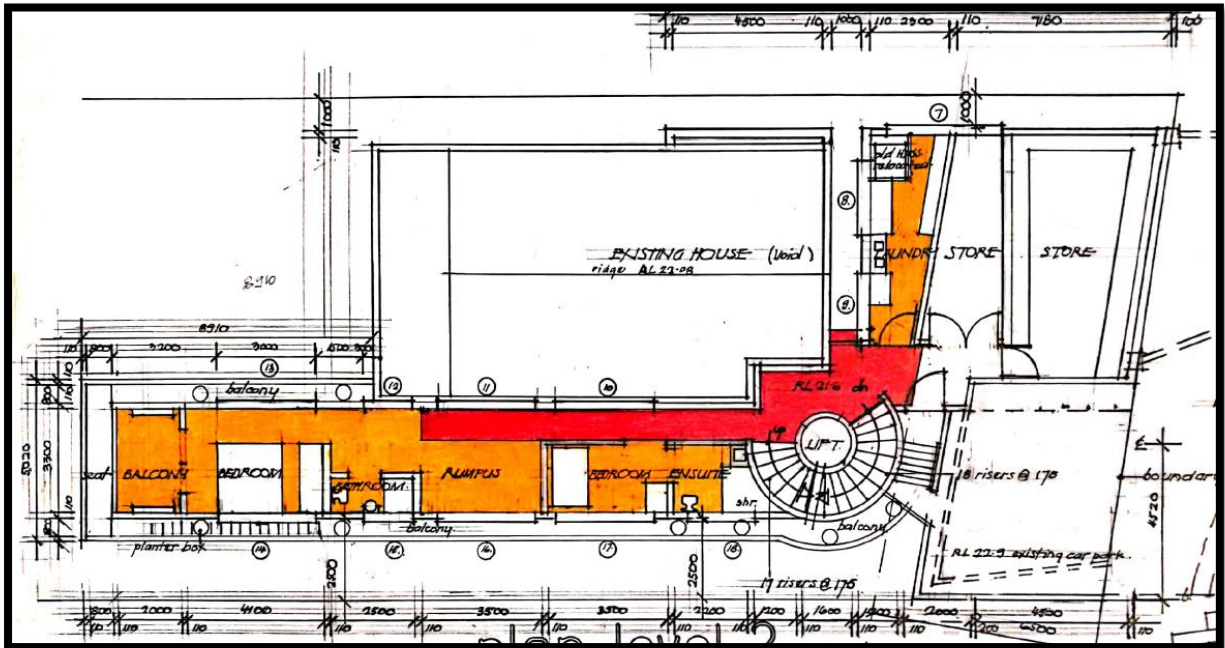
At present, the front façade is not visible from Carefree Road as the finished floor level of the first (top) floor site approximately 6.3 below the Carefree Road surface. The driveway leads down to a double vehicle hard stand area that has since completely given way and is now covered by a temporary pedestrian access structure with hand rails.

This proposal includes a new front façade that will address the Carefree Road streetscape. This is achieved by the construction of three (3) additional floors over the existing first (top) floor level, a new front fence, a new driveway crossover and double vehicle hard stand area, a new carport, a new decking area as well as new planter boxes and landscaping that both incorporates the removal of some existing trees along the eastern elevation, and the retention of a large grey gum on the western boundary to maintain the green aesthetic of the existing streetscape.



Source: Warren Design

Additionally, a new lift has been included to the north eastern corner of the building, which will service the dwelling from Level 2 through to Ground/Street Level (1).

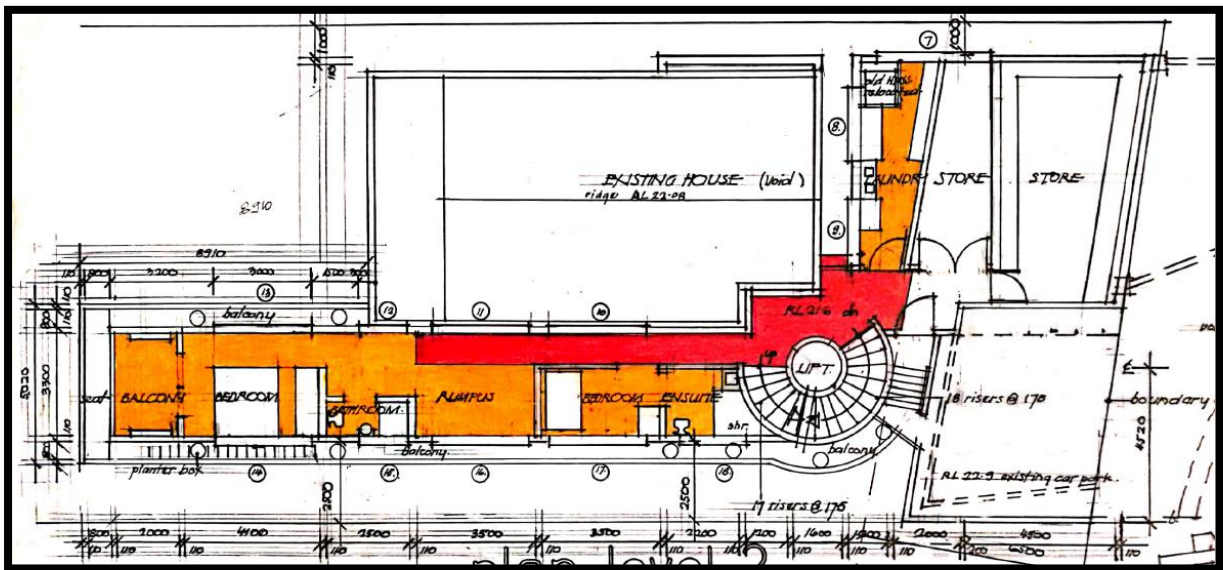


Source: Warren Design

Level Two (2):

This level is designed in a way where the new level will wrap around the existing house from the northern side of the house, around to the eastern elevation with a void over the original house.

This level will include two new bedrooms (one including an ensuite), a rumpus room, additional bathroom, laundry, and a balcony that faces south to utilise the view potential of Narrabeen Lagoon. Privacy screening is included along both sides of this balcony to mitigate any overlooking.



Source: Warren Design.

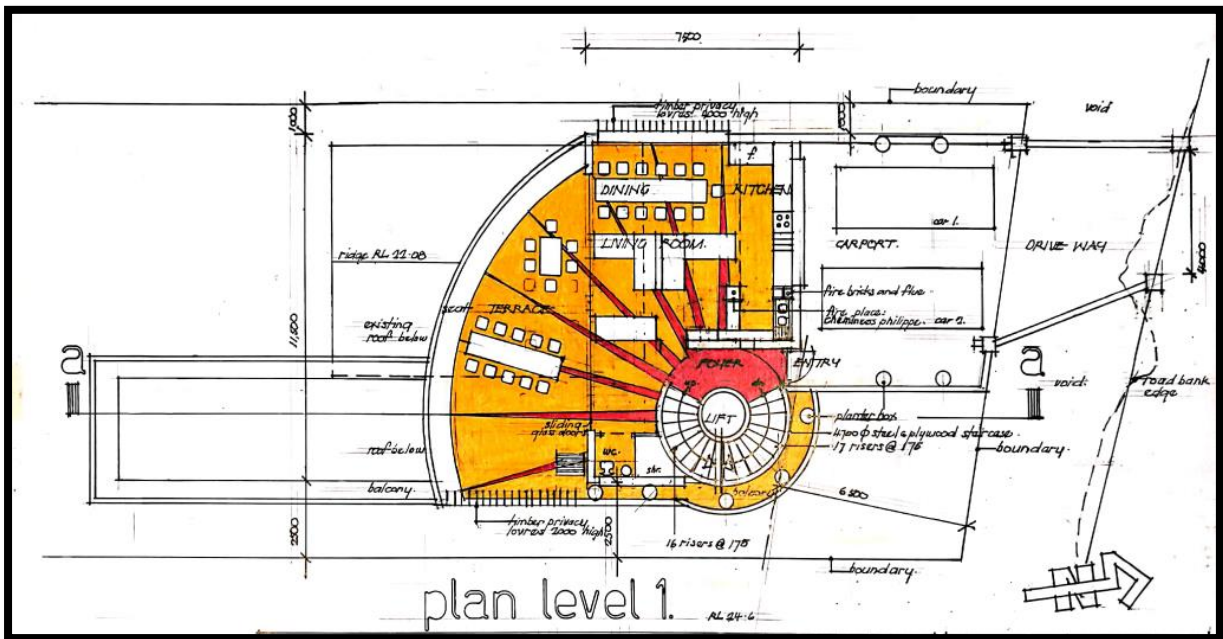
Level One (1):

New first floor addition that will be visible from Carefree Road. This includes the incorporation of an open terrace area (with timber louvered privacy screening along the eastern elevation), new internal dining and living area that adjoins a new kitchen and foyer. The screening will only be along the eastern side due to the design of the deck and the setback from the adjoining property, which has been included to mitigate any potential detrimental noise and overlooking impacts to the adjoining neighbours.

A new foyer has been included that abuts the top of the stairs that wrap around the new lift.

A new driveway crossover, as well as new double hardstand area with carport has been included.

New landscaping is proposed around the new driveway area, as well as new planter boxes along the edges of the hardstand area. Refer to the Landscaping Plan for further details.



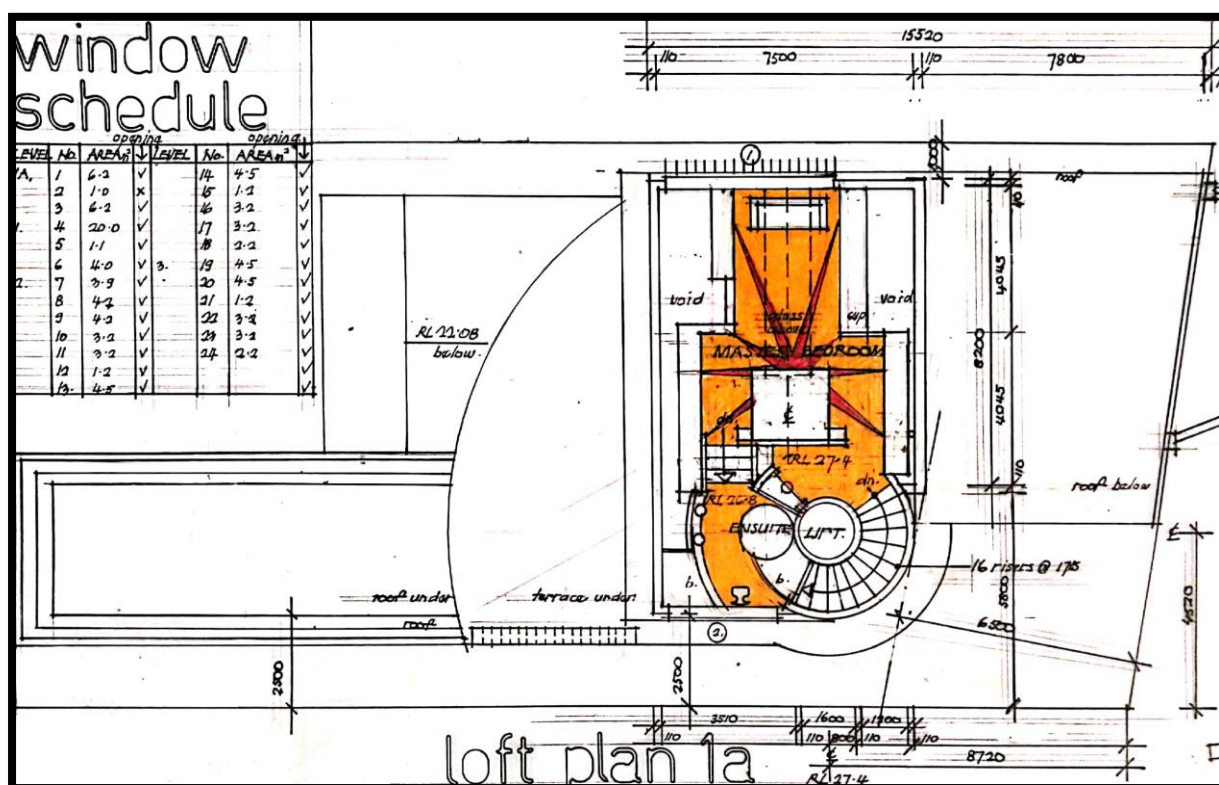
Source: Warren Design

Level One A (1a)/Loft Plan:

Level one consists of a private master bedroom in a loft like space with ensuite.

This space is serviced by the proposed lift and is not expected to cause any adverse effects in terms of overlooking as the loft is set back from the existing building line from both the rear and the front setback.

From the street, this level goes virtually unnoticed as it appears to be tucked within the roof, avoiding adding any unnecessary bulk and scale.



Source: Warren Design

3.2 Development Statistics

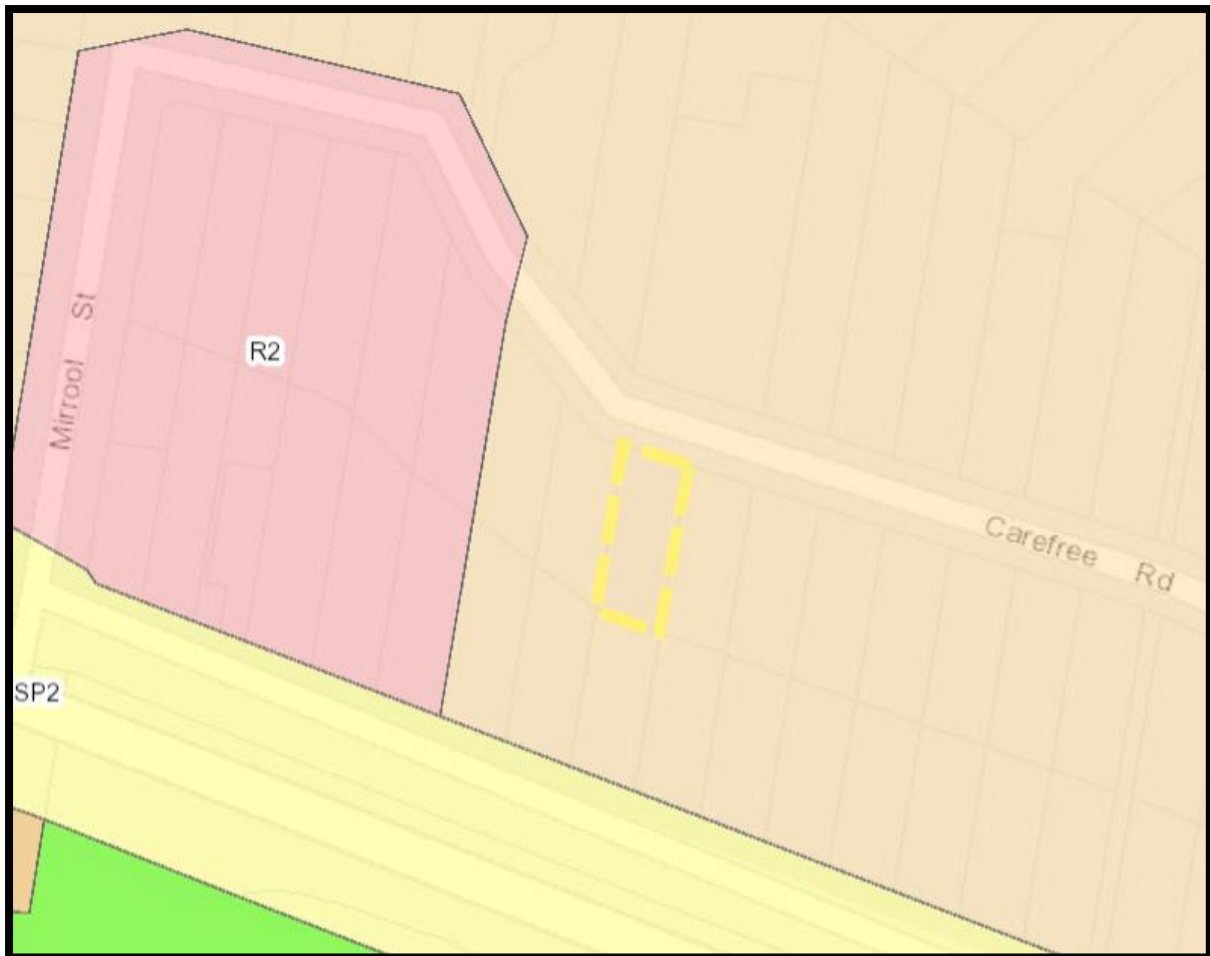
The existing building has an approximate GFA of 155m².

Item	Proposal
Site Area	540.6m ²
Gross Floor Area	155m ² Dwelling (existing) 308m ² Dwelling (proposed) Total = 463m ²
Height of Building	10m
Landscaped Area	374m ² or 69% of the site area
Front Setback (Carefree Road)	6.5m
Rear Setback	7m
Side Setback (Eastern Boundary)	2.5m
Side Setback (Western Boundary)	1.3m

4 Planning Controls

4.1 Pittwater Local Environmental Plan 2014

The subject site is zoned E4 Environmental Living under the provisions Pittwater Local Environmental Plan 2014.



Source: NSW Legislation

The proposed construction of alterations and additions to existing dwelling is considered to be permissible with the consent of Council.

The development of and use of the land for residential purposes within the E4 Environmental Living Zone is consistent with the zone objectives, which are noted as:

- *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.*

It is considered that the proposed new works will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing detached style housing within the locality.
- The proposed development respects the scale and form of other new development in the vicinity and therefore complements the locality. The proposal provides for construction of a new passenger lift, which will not have any significant or adverse impact on the neighbouring properties.
- The setbacks are compatible with the existing surrounding development.
- The proposal does not have any adverse impact on long distance views.

The following table reviews the proposal against relevant planning controls contained within the LEP:

Item	Requirement	Proposal	Compliance
CI.2.2 Permissible land use	Residential accommodation is permissible in the E4 Environmental Living Zone	Alterations and additions to existing residential accommodation	✓
CI.4.3 Height of buildings	Maximum height of 8.5 metres	The proposal seeks to exceed the maximum roof height of 8.5m. Please refer Clause 4.6 Variation.	Merit
CI.4.4 Floor space ratio	No FSR	No FSR identified.	✓
CI 5.9 Preservation of Trees	Preservation of Trees	The proposal will not require the removal of any significant trees or vegetation.	✓
CI.5.10 Heritage conservation	Not heritage affected.	N/A	N/A
CI.7.1 Acid Sulfate Soils	Acid sulfate soils management plan and preliminary works required for	Class 5 soil. Works do not involve those described as a risk. Complies.	✓

Item	Requirement	Proposal	Compliance
	certain activities		
CI 7.2 Earthworks		The proposal will not require any substantial excavation of the site to accommodate the proposed new works.	✓
CI 7.6 Biodiversity		<p>The land is noted within Council's Biodiversity mapped area.</p> <p><i>(1) The objective of this clause is to maintain terrestrial, riparian and aquatic biodiversity by:</i> <i>(a) protecting native fauna and flora, and</i> <i>(b) protecting the ecological processes necessary for their continued existence, and</i> <i>(c) encouraging the conservation and recovery of native fauna and flora and their habitats.</i></p> <p>The proposed development does not necessitate the removal of any significant vegetation and will mostly retain existing area of soft landscaping. Accordingly, the proposal is therefore considered to be consistent with the provisions of this clause.</p>	✓
CI 7.7 Geotechnical Hazards		<p>The site is identified as 'W Hazard H1' on Council's Geotechnical Map. The proposal seeks the construction of alterations and additions to an existing dwelling, including a new passenger lift.</p> <p>The proposed swimming pool and minor excavation is not expected to have any detrimental impact or disturb the existing ground; therefore a Geotechnical Report is not considered necessary in this instance and the proposal is considered to satisfy the provisions of this clause.</p>	✓
CI.6.2 Flood	Not flood affected	NA	NA

Item	Requirement	Proposal	Compliance
planning			

4.2 Pittwater 21 Development Control Plan

The DCP was adopted by Council on 8 December 2003 and came into effect on 1 February 2004. This DCP applies all within the LGA where the Municipality of Northern Beaches is the consent authority.

The following table assesses the proposal against the relevant controls contained in the DCP:

Item	Requirement	Proposal	Compliance
Section B - General Controls			
B3 Hazard Controls			
B3.1 Landslip Hazard	Must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater.	Complies. Refer Section 5.7.1	✓
B3.2 Bushfire Hazard	Development land to which this control applies must comply with the requirements of Planning for Bushfire Protection (2006)	Lands is not mapped as being Bushfire Prone Land	NA
B5 Stormwater Management			
B5.8 Stormwater Management - Water Quality - Low Density Residential	Various requirements	Refer to 5.5.3	✓
B6 Access and Parking			
B6.1 Access driveways and Works on the Public Road Reserve	Various requirements	Refer to 5.4.3	Merit
B6.2 Internal Driveways	Various requirements	Refer to 5.4.3	✓
B6.3 Off-Street Vehicle Parking Requirements	Various requirements	Refer to 5.4.3	✓
B8 Site Works Management			

Item	Requirement	Proposal	Compliance
B8.1 Construction and Demolition - Excavation and Landfill	Must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater.	Complies, refer 5.7.1	✓
B8.2 Construction and Demolition - Erosion and Sediment Management	Erosion and sediment control measures to be installed.	Complies, refer 5.5.4	✓
B8.3 Construction and Demolition - Waste Minimisation	Waste materials generated to be minimised by reuse on-site, recycling, or disposal at an appropriate waste facility.	Complies, refer 5.4.10	✓
B8.4 Construction and Demolition - Site Fencing and Security	All sites are to be protected by site fencing for the duration of the works and works undertaken in accordance with the Roads Act 1993 where applicable.	Complies, 5.5.1	✓
B8.5 Construction and Demolition - Works in the Public Domain	Importation or exportation of fill material is 100m ³ or greater, a Construction Traffic Management Plan indicating truck movements.	No fill or excavated material greater than 100m ³ proposed.	NA
Section C Development Type Controls			
C1 Design Criteria for Residential Development			
C1.1 Landscaping	Various requirements	Refer to 5.5.2	✓
C1.2 Safety and Security	Various requirements	Refer to 5.4.6	✓
C1.3 View Sharing	Various requirements	Refer to 5.4.5	✓
C1.4 Solar Access	Various requirements	Complies, refer 5.4.4	✓
C1.5 Visual Privacy	Various requirements	Complies, refer 5.4.7	✓
C1.6 Acoustic	Avoid noise sensitive room exposure	Complies, refer	✓

Item	Requirement	Proposal	Compliance
Privacy	to noise sources.	5.4.8	
C1.7 Private Open Space	Various requirements	Complies, refer 5.4.9	✓
C1.12 Waste and Recycling Facilities	Various requirements	Complies, refer to 5.4.10	✓
C1.13 Pollution Control	Residential development must be designed, constructed, maintained and used in a proper and efficient manner to prevent air, water, noise and/or land pollution.	Complies.	✓
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 <i>Swimming Pools Act 1992</i> and regulations. The fencing and warning notices (resuscitation chart) shall be permanent structures.	Complies, refer 5.4.6	✓
C1.23 Eaves	Dwellings shall incorporate eaves on all elevations. Eaves must be a minimum of 450mm in width, excluding any fascia/barge boards and gutters	Various design features used to similar effect.	Merit
C1.25 Plant, Equipment Boxes and Lift Over-Run	Where provided lift over-runs are to be integrated internally into the design fabric of the built form of the building	Complies.	✓
Section D Locality Specific Development Controls			
D11 North Narrabeen Locality			
D1.1 Character as viewed from a public place	Various requirements	Refer to 5.4.1	Merit
D11.2 Scenic protection - General	Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.	Complies, refer 5.4.1	✓

Item	Requirement	Proposal	Compliance
D11.3 Building colours and materials	Colour schedule provided in DCP	Refer to drawings	✓
D11.6 Front building line	10 metres or established building line, whichever is the greater	6.5 metres. Variation allowed given topography and architectural stairwell and lift feature	Merit
D11.7 Side and rear building line	One side 2.5 metres One other side 1.0 metres 6 metres to the rear boundary	Complies. West = 1.3m East = 2.5m Rear = 7m	✓
D11.9 Building envelope	45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height	Does not comply, as slope is greater than 30% variations allowed given excellent design and broad compliance	Merit
D11.11 Landscaped Area - Environmentally Sensitive Land	E4 Environmental Living shall be 60% of the site area.	Complies, landscaped areas = 374m ² or 69% of the site is landscaped area	✓
D11.12 Fences - General	Front fences not exceed a maximum height of 1 metre above existing ground level	Complies, new masonry front fence = 1m	✓
D11.14 Construction, Retaining walls, terracing and undercroft areas	Lightweight construction and pier and beam footings should be used in environmentally sensitive areas	Complies.	✓

5 Section 4.15 Assessment

5.1 Section 4.5(1)(a)(i) – Provisions of Any Environmental Planning Instrument

5.1.1 State Environmental Planning Policy (Coastal Management) 2018

The works are located on land identified as “coastal wetlands” under the SEPP.

Under the SEPP, a consent authority must not grant consent for development (including earthworks) unless the consent authority is satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest.

The subject site contains an existing residential dwelling subject to the alterations and additions proposed in this application. The site has been significantly cleared of vegetation and excavation has already occurred and therefore could not be described as coastal wetlands. Controls can be conditioned to ensure that water quality and run off do not significantly impact the biophysical, hydrological or ecological integrity of the coastal wetland.

5.1.2 Pittwater Local Environmental Plan 2014

The subject site falls under the jurisdiction of the Pittwater Local Environmental Plan 2014.

The subject site is zoned E4 Environment Living under PLEP 2014.

Under the LEP, alterations and additions to existing permissible developments are permissible with consent.

5.2 Section 4.15(1)(a)(ii) – Provisions of Any Draft Environmental Planning Instrument

There are no draft EPIs which apply to the proposal development or subject site.

5.3 Section 4.15(1)(a)(iii) – Provisions of Any Development Control Plan

As previously discussed in Section 4, Pittwater Development Control Plan 2014 applies to development proposed on the subject site.

Section 4 outlines the relevant provisions and the specific development controls and provisions are discussed in greater detail in this Section.

The proposed alterations and additions are considered to satisfy all relevant development controls.

5.4 Section 4.15(1)(b) – Likely Impacts of That Development – Built Environment

5.4.1 Site Analysis, Site Design and Streetscape

Pittwater DCP 21 requires that:

Character

Buildings which front the street must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality. Blank street frontage facades without windows shall not be permitted.

Walls without articulation shall not have a length greater than 8 metres to any street frontage.

Any building facade to a public place must incorporate at least two of the following design features:

- *entry feature or portico;*
- *awnings or other features over windows;*
- *verandahs, balconies or window box treatment to any first floor element;*
- *recessing or projecting architectural elements;*
- *open, deep verandahs; or*
- *verandahs, pergolas or similar features above garage doors.*

The bulk and scale of buildings must be minimised.

Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place. Parking structures must be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser.

Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.

Television antennas, satellite dishes and other telecommunications equipment must be minimised and screened as far as possible from public view. General service facilities must be located underground.

General service facilities must be located underground.

Attempts should be made to conceal all electrical cabling and the like. No conduit or sanitary plumbing is allowed on facades of buildings visible from a public space.

Response:

The design now provides an attractive presence to the Carefree Road streetscape where there is currently not street presence.

The front façade presents a stylish architectural character to the streetscape with a vertical cylindrical element for the internal stairwell and lift with varied roof forms.

Importantly, the dwelling will have the appearance of a single dwelling with an architectural roof feature. It will therefore not give the appearance of excessive bulk and scale within the streetscape.

The DCP requires that garages, carports and hard stand car parking areas generally do not dominate the frontage and are located behind the building line. This is not possible given the steep topography of the site. In order to provide the required 2 on site car parking space, these must be located within the front setback area. This is a common off street parking solution in steeply sloping areas where providing car parking on-site is impractical. **Pictures 1 and 2 in Appendix 1** show that this solution has precedent within the locality. It is considered that strict compliance with the DCP is impractical in this instance and should be relaxed to enable off-street car parking to be provided.

Scenic Protection

Pittwater DCP 21 requires that:

Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

An analysis of the development in terms of how it impacts on the visual character of the area, demonstrating that the proposal ensures that the bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment.

Response:

The subject site is located towards the top of a very steep hillside north of Narrabeen Lagoon. From the Lagoon and the Bilarong Reserve along its foreshore it is likely that the dwelling can be seen albeit through mature tree canopy along Wakehurst Parkway.

The design of the alterations however give the overall impression of a maritime character. The Section and Elevations would reveal that the additions have the appearance of a ship with the forecastle projecting forwards and the stairwell and lift core the Bridge. The use of contrasting angles of roof forms can be interpreted as an abstract salute to oars and sails.

As such when viewed from the public domain or the water, the overall design offers a pleasing tribute to the maritime heritage of the Pittwater peninsula.

5.4.2 Height, Bulk and Scale

The proposed alterations and additions do not result in an unreasonable increase of height of the residential dwelling, with consideration being given to the existing topography of the land.

5.4.3 Access, Servicing, Parking and Traffic

Pittwater 21 DCP requires that:

Access Driveways within Road Reserve

The design of all Access Driveways shall be in accordance with the current edition of following Australian Standards:

- *Australian Standard AS/NZS 2890.1-2004: Parking Facilities - Part 1: Off-Street Car Parking.*
- *Australian Standard AS/NZS 2890.2-2002: Parking Facilities – Part 2: Off-Street Commercial Vehicle Facilities except as qualified in this control.*

The number of permissible Access Driveways to an allotment is as follows:

- *where the frontage of an allotment to a local public road is less than 30m, one only access driveway.*

Access Driveways shall be designed and located to provide adequate sight distance to maximise pedestrian and vehicular safety as follows:

- *minimum clear distance along the road frontage edge of kerb of 50 metres for 40 and 50 kph speed limit roads measured from a point on the centreline of the driveway 2.5 metres from the face of kerb; and*
- *minimum clear distance along the frontage footway of 5 metres, measured from a point on the centreline of the driveway 2.5 metres from the edge of footway area closest to property boundary.*

The maximum width of an Access Driveway for dual occupancies, dwellings houses, secondary dwellings, exhibition homes, rural works dwellings and tourist and visitor accommodation shall be as follows:

- *Where distance building line to boundary is Greater than 6.5m:*
 - *Width at Boundary = 3.0m*
 - *Width at Kerb = 3.5m*

Access Driveway profiles shall conform to the profiles as illustrated in Appendix 10 - Driveway Profiles.

All Access Driveways shall be constructed with an impervious pavement and gutter crossing construction.

Gutter crossings are to be in plain concrete.

Access Driveways are to be either in plain concrete or a cosmetic finish consisting of concrete, asphaltic concrete or paver construction in dark earthy tones. Cosmetic Access Driveways on a public road reserve are subject to a Deed of Agreement releasing Council in respect to liability and damage to the driveway by any means.

Access Driveways are to match with the adjacent constructed footpaths or alternatively adjacent constructed footpaths are to be adjusted to provide a continuous surface with no trip points with a maximum 1:14 (V:H) transition.

The Access Driveway is to be structurally adequate for its intended use.

Suspended driveways must not use the existing road structure for support.

All Access Driveways on the low side of the road are to be designed and constructed such that stormwater drainage is directed away from the Access Driveway.

Internal Driveways

Internal Driveways are to be designed and constructed to provide safe access and shall have a maximum gradient of 1:5 (V:H). Recommended maximum gradient of an Internal Driveway for a distance of 2m on the approach to a garage, parking area or carport is 1:20 (V:H). There must be a minimum 2 metre long transition between the driveway and the garage/parking area/carport in accordance with the standards.

Internal Driveway grades, cross falls and grated drains are to be designed to reduce discharge into the public drainage system and to maximise stormwater discharge into adjacent landscape areas by the use of grass swales and soakage pits.

The design of all Internal Driveways and ramps shall be in accordance with the current edition of the following Australian Standards:

- *Australian Standard AS/NZS 2890.1-2004: Parking Facilities - Off-Street Car Parking.*
- *Australian Standard AS/NZS 2890.2-2002: Parking Facilities - Off-Street Commercial Vehicle Facilities except as qualified in this control.*

The Internal Driveway shall be contained within the driveway corridor. The minimum width of the driveway corridor (i.e. impervious pavements together with grassed shoulder area) shall be as follows:

- *Single Dwelling: 3.0 metres minimum.*

Internal Driveways shall be designed and constructed to the minimum practical pavement width needed to facilitate access and turning movements.

Internal Driveways shall be designed and constructed to minimise the area of impervious pavement within the land. Track style driveways are encouraged where practical.

Turning movements are to be in accordance with the turning paths for a B85 vehicle (Australian Standard AS/NZS 2890.1-2004: Parking Facilities - Part 1: Off-Street Car Parking).

The minimum number of vehicle parking spaces to be provided for off-street parking is as follows for dual occupancies, dwelling houses, secondary dwellings, exhibition homes, rural workers' dwellings and tourist and visitor accommodation:

- *2 bedrooms or more = 2 spaces*

Response:

The new driveway will be constructed to all relevant building standards. This can be applied as a condition of consent.

Only one driveway is proposed as permitted by the DCP.

The location of the driveway is such that the site distance meets the DCP requirements.

The driveway width at the boundary at the property boundary (6.89m) and width at the kerb (4.0m) both exceeds the controls in the DCP. However, this is unavoidable given that the existing dwelling is located on the south side of Carefree Road which is steeply sloping falling approximately 6 metres from the kerb location to the front building line. This makes providing a single driveway of 3 metres at the kerb and 3.5 metres at the boundary to access a garage impractical. The design solution requires a new 2 car hard stand car parking area within the front setback area of the site on the front boundary. As such the driveway at the kerb must be 4.0 metres and widening to a 2 car width at the property boundary. This is a common off street parking solution in steeply sloping areas where providing car parking on-site is impractical. **Pictures 1 and 2** in the Appendix show that this solution has precedent within the locality. It is considered that strict compliance with the DCP is impractical in this instance and should be relaxed to enable off-street car parking to be provided.

The driveway will be constructed of plain concrete, will be structurally adequate for the site profile, not rely on the carriageway for support and be connected to the drainage system.

5.4.4 Sunlight and Shadow

Pittwater 21 DCP requires that:

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.

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).

Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid winter.

Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.

The proposal must demonstrate that appropriate solar access is achieved through the application of the Land and Environment Court planning principle for solar access. The required controls to achieve the outcomes are to ensure that private open spaces of the subject and adjoining dwellings maintain a minimum of 3 hours of solar access in mid-winter.

Response:

The proposal is accompanied by shadow diagrams which demonstrate that the subject and adjoining properties will maintain approximately 2 hours during the winter solstice.

However, it is important to note that this is largely a direct result of the of the topographical constraints of the site which makes it virtually impossible to achieve any development on the site without having any detrimental impact on the adjoining property at 43 Carefree Road, North Narrabeen.

Importantly, the proposed development will not further reduce solar access to adjacent windows at No 43 Carefree Road.

5.4.5 Views

Pittwater 21 DCP requires that:

All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The proposal must demonstrate that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.

Where a view may be obstructed, built structures within the setback areas are to maximise visual access through the structure e.g. by the provision of an open structure or transparent building materials.

Views are not to be obtained at the expense of native vegetation.

Response:

The view enjoyed by the adjoining property at No 43 Carefree Road can be observed in **Picture 9** in **Appendix 1**.

Following the *Principles of View Sharing* as maintained by the Land and Environmental Court we consider the impact as follows:

Step 1 – View to be affected

It is not considered that there is a significant view that is being partially or fully obstructed by the proposed development. The view to the south west as observed by the adjoining property at No 43 Carefree Road is obscured by a couple of tall palm trees and the rooftops of houses beyond. In the absolute distance, there is the hinterland as a backdrop however this is to expansive and any resulting loss will not be unacceptable.

The view is not iconic, the Narrabeen Lagoon is to the south of the site however, this is heavily obstructed by the tree canopy. To the south west where the proposed development is to occur there is no discernible view of the Lagoon as it is entirely obstructed by the tree canopy

Step 2 – Where is the view obtained from?

The LEC principles acknowledge that “*protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries*” and that “*the expectation to retain side views and sitting views is often unrealistic*”. This is the case with the proposed development.

The views are observed from an average sized window and wide but not deep deck (see **Picture 10** and **Picture 11** in **Appendix 1**). The images also show the mature tree canopy on the adjacent property that act to obscure any distance view.

Step 3 – Extent of the impact

The proposed development will extend further back towards the rear boundary and reduce the view across the subject site to the south west moderately. However, the built form is architecturally pleasing and is generously articulated with architectural features, materials,

colours, finishes and planter boxes on each level. While the view across the side boundary may be moderately impacted, the overall design is very tasteful and not stark or overbearing.

Step 4 – Reasonableness of the impact

The LEC principles state that *“a development that complies with all planning controls would be considered more reasonable than one that breaches them”*.

Importantly, the development complies with the rear boundary setback controls so does not extend back further than it should. However, the proposed development does seek to vary the building height by 1.3 metres for the rear portion of the building. This is a result of the steeply sloping terrain of the locality making full compliance difficult to achieve even where the proposed development is designed to contour to the natural terrain as the proposed development does. In any event, this would only obscure any view towards the sky, not the distant and obscured hinterland/plateau and will have no impact on any view to the Lagoon directly south of the subject site.

It must also be recognised that the minimum side setback required in the DCP is at least 2.5 metres to one side boundary and 1 metre to the other. The proposed development proposes a 2.5 metre setback to the eastern boundary with 43 Carefree Road thus maximising the view sharing on this elevation.

For these reasons, it is not considered reasonable for the proposed development of the subject site to be restricted on the basis of the modest impact on views that are not of high value and secondary to the more significant views directly south to the rear of the adjoining property towards the Lagoon.

The proposal is therefore not considered to result in any unreasonable view loss for neighbouring properties.

5.4.6 Safety and Security

Pittwater 21 DCP requires that:

- *Surveillance is designed in with good lighting*
- *Access control is provided through building entrances visible from the street*
- *Territorial enforcement is maintained through use of landscaping and blank walls minimised*
- *Space management is ensured by site cleanliness and maintenance*

Response:

The proposed development will provide a frontage and building entrance to the street that is not currently provided. The current entrance is approximately 6 metres below the

carriageway. The proposed development will provide a clearly visible entrance at street level.

Swimming Pools

Pittwater 21 DCP requires that:

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.

Response:

The proposed development will comply with all relevant Australian Standards. These can be applied as a condition of consent.

5.4.7 Privacy

Pittwater 21 DCP requires that:

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 as shown in the diagram below (measured from a height of 1.7 metres above floor level).

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

Response:

The required controls to achieve the outcomes are to ensure that the private open space, recreation areas and living rooms within 9m of a development are suitably protected to limit the effects of direct overlooking.

The proposal seeks to provide for the construction of alterations and additions to the existing dwelling, which will not have any implications for the privacy enjoyed by neighbouring properties.

New privacy screening is proposed to the elevated decks and swimming pool located towards the rear of the building on the eastern elevation which will further enhance the privacy of the neighbouring property at 43 Carefree Road.

5.4.8 Acoustic Privacy

Pittwater 21 DCP requires that:

Development avoids noise sensitive rooms being exposed to noise sources, eg, pools, POS.

Response:

The required controls to achieve the outcomes are to ensure that noise sensitive living areas and bedrooms are located away from major noise sources.

Given the residential nature of the works, there will not be any significant impact on the surrounding locality in terms of acoustic privacy.

The lift motor is contained within a pit at the base of the lift, which will suitably mitigate the effects of acoustic intrusion to the neighbours.

5.4.9 Private Open Space

Pittwater 21 DCP requires that:

Minimum 80m² 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.

Within the private open space area, a minimum principal area of 16m² with a minimum dimension of 4m and grade no steeper than 1 in 20 (5%).

Dwellings are to be designed so that private open space is directly accessible from living areas enabling it to function as an extension of internal living areas.

Private open space areas are to have good solar orientation (i.e. orientated to the north-east or north-west where possible). Where site or slope constraints limit optimisation of orientation, the private open space area must have access to some direct sunlight throughout the year (see Solar Access).

Private open space should be located to the rear of the dwelling to maximise privacy for occupants.

Where this open space needs to be provided to the front of the dwelling, the area should be screened from the street to ensure that the area is private.

A balcony located above ground level, but which has access off living areas of dwellings, can be included as private open space. The dimensions should be sufficient so that the area can be usable for recreational purposes (i.e. a minimum width of 2.4m). First floor balconies along the side boundary must be designed to limit overlooking and maintain privacy of adjoining residential properties.

Private open space areas should include provision of clothes drying facilities, screened from the street or a public place. Shared clothes drying facilities are acceptable.

An accessible and usable area for composting facilities within the ground level private open space is required.

Response:

The proposed development provides the required amount of private open space at 210m² and in the dimensions of 15m x 14m.

Given the significant slope of the site, much of the private open space is now provided on each new floor level. It is not possible to have POS at less than 5% grade at natural ground level.

5.4.10 Waste Management

Pittwater 21 DCP requires that waste generated is minimised through reuse on-site or removed to licenced waste facility.

This can be applied through a condition of consent.

5.4.11 BCA and Australian Standards

The proposed development will be constructed to all relevant Building Codes and Australia Standards. These can be ensured through a condition of consent.

5.5 Section 4.15(1)(b) – Likely Impacts of That Development – Natural Environment

5.5.1 Landform, Cut and Fill

There will be cut and fill required as part of this proposal due to the existing slope of the land and previous excavation.

A geotechnical report is submitted under separate cover to advise on appropriate footings.

5.5.2 Landscaping

Pittwater 21 DCP requires that:

All canopy and a minimum of 50% of other vegetation, shall be locally native species.

In all development a range of low-lying shrubs, medium-high shrubs and canopy trees shall be retained or provided to soften the built form.

At least 2 canopy trees in the front yard and 1 canopy tree in the rear yard are to be provided on site. Where there are existing canopy trees, but no natural tree regeneration, tree species are to be planted to ensure that the canopy is retained over the long-term. Where there are no canopy trees the trees to be planted are to be of sufficient scale to immediately add to the tree canopy of Pittwater and soften the built form.

Each tree planted is to have a minimum area of 3 metres x 3 metres and a minimum 8m³ within this area to ensure growth is not restricted.

The following soil depths are required in order to be counted as landscaping:

- 300mm for lawn
- 600mm for shrubs
- 1 metre for trees

The front of buildings (between the front boundary and any built structures) shall be landscaped to screen those buildings from the street as follows:

- A planter or landscaped area with minimum dimensions of 4m² for shop top housing developments,
- 60% for a single dwelling house, secondary dwelling, rural workers' dwellings, or dual occupancy, and
- 50% for all other forms of residential development.

Screening shall be of vegetation (not built items), and shall be calculated when viewed directly onto the site.

Landscaping shall not unreasonably obstruct driver and pedestrian visibility.

Development shall provide for the reasonable retention and protection of existing significant trees, especially near property boundaries, and retention of natural features such as rock outcrops.

Canopy trees are to be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used

Response:

A Landscaping Plan has been provided with the development application.

In total, 5 trees/shrubs are to be removed to accommodate the proposed development, 4 of which are located within the front setback area and one other within the road reserve.

The appropriate planting of new species to comply with the DCP can be conditioned on consent.

5.5.3 Stormwater Drainage and Water Quality

Pittwater 21 DCP requires that:

Development shall incorporate the installation of the following stormwater quality improvement measures:

- *Pre-screening of organic matter (eg leaf litter) prior to the collection of rainwater in the rainwater tank*
- *A water quality filtration basket or equivalent primary treatment Stormwater Quality Improvement Device (SQID) to collect leaf litter and coarse sediments is to be installed prior to the discharge of stormwater from the land.*

All Stormwater Quality Improvement Devices (SQIDs) must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

Applicants are also encouraged to apply advanced water quality techniques through primary and secondary treatment techniques to reach and/or exceed the following objectives:

- *Primary treatment (eg. physical screening, rapid sedimentation techniques) of stormwater to collect and retain gross pollutants (i.e. litter and organic matter) and coarse sediments (with associated entrained pollutants) prior to the discharge of stormwater from the land.*
- *Secondary treatment (eg. fine particle sedimentation and filtration techniques) of stormwater to collect and retain medium to fine sediments (with associated entrained pollutants) prior to the discharge of stormwater from the land.*

Response:

The above requirements can be satisfied through the application of a condition of consent.

5.5.4 Soils, Erosion and Sedimentation

Erosion and sediment control measures will be installed to Council's requirements.

5.5.5 Endangered Flora and Fauna

No endangered flora or fauna are impacted by the proposal.

5.6 Section 4.15(1)(b) – Likely Impacts of That Development – Social and Economic

5.6.1 Safety and Social Impact

The proposed development will not cause any impact on safety and social issues.

5.7 Section 4.15(1)(b) – Likely Impacts of That Development – Hazards

5.7.1 Soil Instability, Subsidence, Slip, Mass Movement

The subject site is mapped as Geotechnical Hazard H1 under Pittwater LEP 2014.

Under the Pittwater DCP 21, Development must be designed and constructed to ensure that every reasonable and practical means available is used to remove risk to an acceptable level as defined by the Geotechnical Risk Management Policy for Pittwater for the life of the development.

The development must not adversely affect or be adversely affected by geotechnical processes nor must it increase the level of risk for any people, assets and infrastructure in the vicinity due to geotechnical hazards.

A Report (attached under separate cover) prepared by an engineer found the site to be classified, in accordance with AS 2870 to be “s” which is “most silt and some clay sites”.

The Report recommended that the level of the underside of the footings be 0.5 metres below natural ground level.

5.7.2 Acid Sulfate Soils

The proposed development is not expected to disturb acid sulfate soils.

5.7.3 Flooding, Tidal Inundation

The subject site is not located within a flood prone area and will not adversely impact on natural overland flood paths.

5.7.4 Bushfire

The subject site is not located in a Bushfire Prone Area therefore it will not increase the risk of bushfire or create a fire hazard to nearby developments.

5.7.5 Contamination

The land is not considered be at risk of being contaminated given its long term use as a residential dwelling.

5.8 Section 4.15(1)(d) – Submissions Made in Accordance with the Act or Regs

Not relevant at the SEE preparation stage.

5.9 Section 4.15(1)(e) – The Public Interest

The proposed development is not considered to be contrary to the public interest.

6 Summary

The subject site is zoned E4 Environmental Living and alterations and additions to existing dwellings are permissible within this zone with consent.

The proposal is permissible with development consent and performs favourably in relation to the relevant aims, objectives and development standards of the relevant environmental planning instruments and associated development control plan.

The proposed alterations and additional are permissible with consent and are generally compliant with the relevant council planning controls and policies and should be supported.

APPENDIX 1



PICTURE 1: A VIEW OF THE FRONT OF THE PROPERTY FROM CAREFREE ROAD LOOKING SOUTH



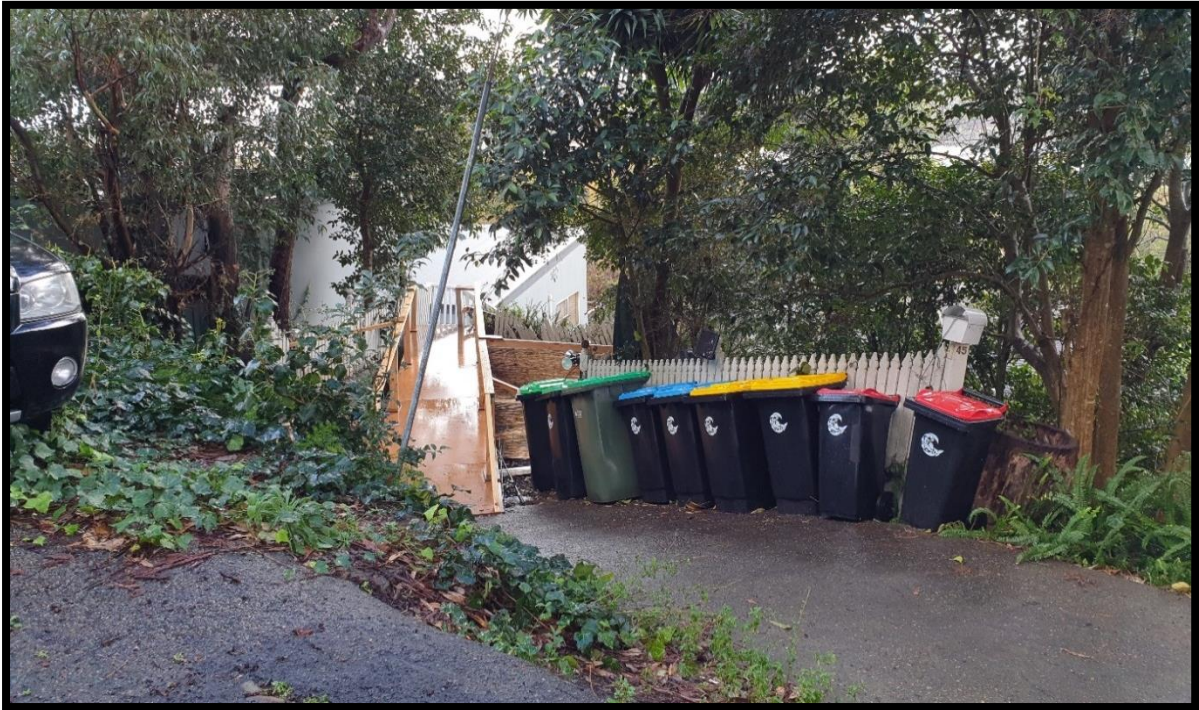
PICTURE 2: A VIEW OF STREETSCAPE LOOKING EAST ALONG CAREFREE ROAD



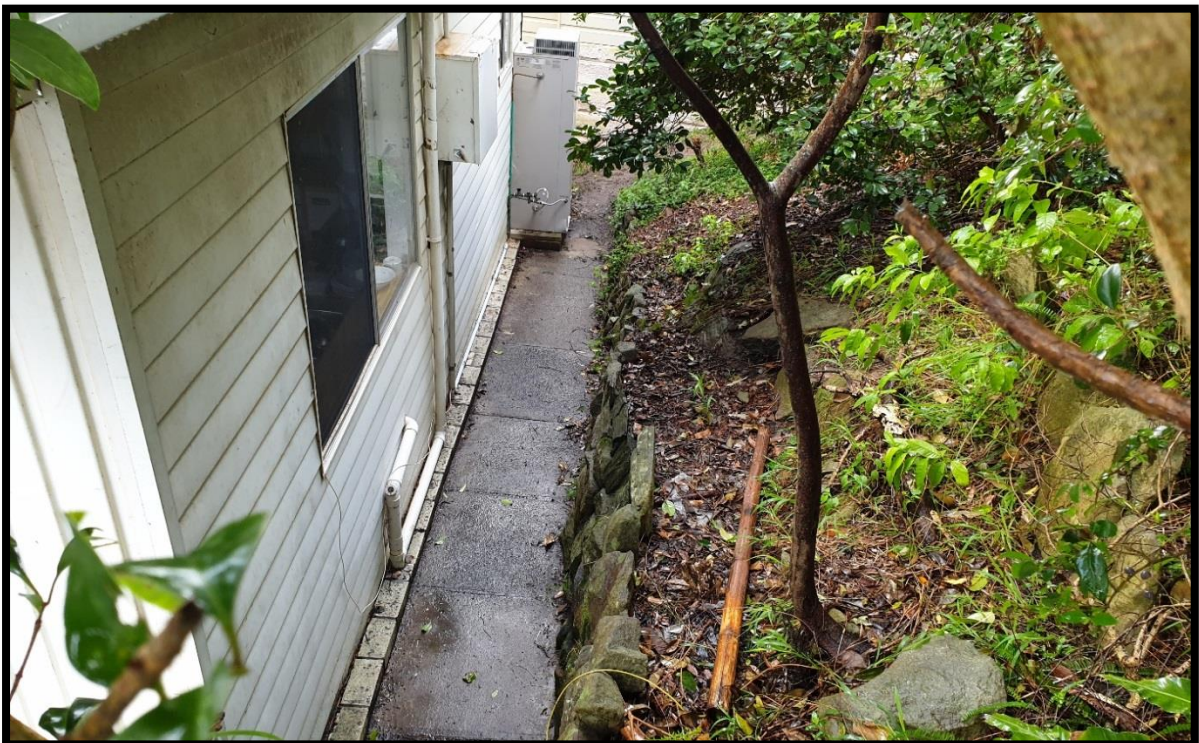
PICTURE 3: A VIEW OF STREETScape LOOKING WEST ALONG CAREFREE ROAD



PICTURE 4: A VIEW OF THE EXISTING DECK (TO BE REMOVED) AND THE ADJOINING TENANCY AT 43 CAREFREE ROAD.



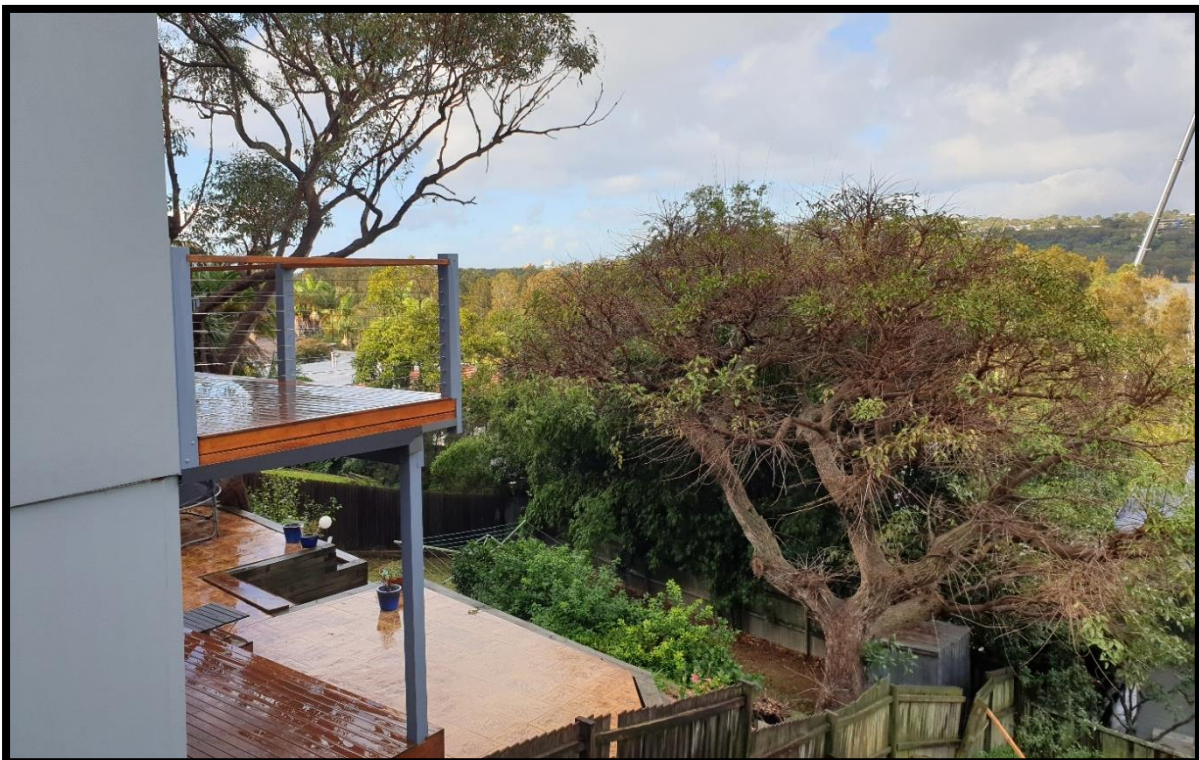
PICTURE 5: EXISTING DETERIORATING DRIVEWAY. MAKESHIFT/TEMPORARY WOODEN WALKWAY IN PLACE TO ACCESS HOUSE.



PICTURE 6: EXISTING FRONT OF HOUSE (FACING CAREFREE ROAD) AND UNUSABLE FRONT YARD



PICTURE 7: EXISTING BACKYARD



PICTURE 8: ADJOINING NEIGHBOUR (43 CAREFREE ROAD) EXISTING DECK AREA.



PICTURE 9: ADJOINING NEIGHBOUR (43 CAREFREE ROAD) VIEW ACROSS SUBJECT SITE TO THE SOUTH WEST



PICTURE 10: ADJOINING NEIGHBOUR (43 CAREFREE ROAD) REAR YARD AND DECK



PICTURE 11: ADJOINING NEIGHBOUR (43 CAREFREE ROAD) SIDE WINDOW AND DECK

APPENDIX 2

**OBJECTION PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL
PLAN 2014**

45 CAREFREE ROAD, NORTH NARRABEEN

**PROPOSED CONSTRUCTION OF A NEW CARPORT AND ALTERATIONS AND
ADDITIONS TO EXISTING DWELLING INCLUDING NEW PASSENGER LIFT**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE WORKS WITHIN
COUNCIL'S MAXIMUM BUILDING HEIGHT AS DETAILED IN CLAUSE 4.3 OF THE
PITTWATER LOCAL ENVIRONMENTAL PLAN 2014**

For: Alterations and additions to existing dwelling house, including new lift.
At: 45 Carefree Road, North Narrabeen
Applicant: Wesley Folitarik - Urbanism

1.0 Introduction

This objection is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

2.0 Background

Clause 4.3 restricts the height of a building within this area of the North Narrabeen locality and refers to the maximum height noted within the "Height of Buildings Map."

The relevant building height for this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

Due to the existing excavation on site and sloping topography of the site, the proposed new works will be up to approximately 10m in height.

The proposal is considered acceptable and there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause

contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been considered in this request for a variation to the development

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

(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.

The development will achieve a better outcome in this instance as the site will provide for construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the E4 Environmental Living Zone, which are noted as:

- 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.

As sought by the zone objectives, the proposal will provide for alterations and additions to an existing dwelling which are sensitive to the location and the topography of the locality.

The proposal includes modulated wall lines and a consistent palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

The proposed building elements which exceeds the 8.5m height standard will assist in better meeting the accessibility and housing needs of the property owners by providing for convenient and safe vertical access to all levels of the building and improved amenity and

solar protection to the upper floor terrace, without adversely affecting the outlook and amenity of the surrounding properties.

5.0 Onus on Applicant

Clause 4.6(3) provides that:

Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) That there are sufficient environmental planning grounds to justify contravening the development standard.

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument & Pittwater LEP should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 11 & *Samadi v Council of the City of Sydney* [2014] NSWLEC 1199.

Paragraph 27 of the judgement states:

Clause 4.6 of LEP 2014 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The proposed development of and use of the land within the E4 Environmental Living Zone is consistent with the zone objectives, which are noted over as:

- 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.

Comments

It is considered that the proposed development will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing residential development within the locality.
- The proposed development respects the scale and form of existing development in the vicinity and therefore complements the locality.
- The setbacks maintain compatibility with the existing surrounding development.
- The proposal does not have any unreasonable impact on long distance views.

Accordingly, it is considered that the site may be developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.3 are articulated at Clause 4.3(1):

(1) The objectives of this clause 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.*

Comments

Despite the variation to the statutory height control which occurs as a result of the sloping topography of the site, the proposed new development is considered to be in keeping with the desired future character of the locality.

The proposed new passenger lift and balcony roof keeping within the maximum height of the existing dwelling. The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

The works are mostly within the existing footprint of the existing dwelling and therefore do not provide any adverse impacts to the view of neighbouring properties.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for additions and alterations to an existing dwelling, which are constrained by the siting of the existing building and sloping topography of the site.

Council's controls in Clause 4.3 provide a maximum overall height of 8.5m.

It is considered that the proposal achieves the Objectives of Clause 4.3 and that the development is justified in this instance for the following reasons:

- The proposed new works are modest in scale and will maintain consistency with the general height and scale of residential development in the area and the character of the locality.
- The new works are mostly within the footprint of the existing dwelling and are below the maximum height of the existing dwelling.
- The proposed height and the overall scale of the new works will maintain amenity and appropriate solar access for the subject site and neighbouring properties.

For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Council's controls in Clause 4.3 provide a maximum overall height of 8.5m for the subject development.

Due to the siting of the existing development and sloping topography of the site, the proposed new works will be up to approximately 10m in height.

The development is justified in this instance for the following reasons:

- Compliance with the height control is constrained by the siting of the existing building and sloping topography of the site.
- The development does not result in a significant bulk when viewed from either the street or the neighbouring properties.
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The extent of the proposed new works where they are not compliant with Council's maximum height control do not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale.
- The proposed works will provide for improved access and amenity for the buildings occupants, which promotes good design and amenity which is consistent with the Objective 1.3 (g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum building height.

In the recent 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The decision on appeal of Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February 2016 the Chief

Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

Accordingly, in regard to the proposed development at 97 Prince Alfred Parade, Newport, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The proposed additions incorporating the additional building elements which exceed the 8.5m height standard are considered to promote good sustainable design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard
- The development is constrained by the siting of the existing development and sloping topography of the site.
- The variation to the height control is inconsequential as it is of negligible impact to the streetscape and the amenity of neighbouring properties.

In the *Wehbe* judgment (*Wehbe v Warringah Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

3. the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development. Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

Comment: Not applicable.

5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Comment: The development standard is applicable to and appropriate to the zone.

7.0 Conclusion

This development proposed a departure from the maximum building height development standard, with the proposed alterations and additions to provide a maximum overall height of 10m.

This variation occurs as a result of the sloping topography of the site and the form of the existing dwelling.

This objection to the maximum building height specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.