
Sent: 20/09/2016 2:30:36 PM

Subject: DA N380.16 - 44 Bynya Road, Palm Beach - Submission on behalf of owners of 46 Bynya Road

Attachments: Submission.pdf; Submission.pdf;

Matthew Benson
Principal - MB Town Planning

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20 September 2015

Mr Mark Ferguson
General Manager
Northern Beaches Council
1 Park Street
MONA VALE NSW 2103

By email: pittwater@northernbeaches.nsw.gov.au

Dear Mr Ferguson,

**Development Application N380/16 | 44 Bynya Road, Palm Beach
Proposed alterations and additions to dwelling house | Submission on
behalf of the owners of 46 Bynya Road**

I write for Mr Ramon and Ms Nada Ristuccia – registered proprietors of 46 Bynya Road at Lot B, DP384738 and Lot 126, DP14961 containing a dwelling house and associated works spanning both lots.

Mr and Ms Ristuccia have received notice of a development application for their neighbouring property to their south at 44 Bynya Road – being DA N380/16. Mr and Ms Ristuccia have made a submission regarding that application. However, they have requested that I undertake an independent review and of how the proposal may impact upon them. It should be noted that 46 Bynya Road has approval under DA N0192/13 and that works under that consent will soon commence.

The site

The site of the proposed development at 44 Bynya Road has the real property description of Lot 127, DP14961 (Figure 1). It is on the western side of Bynya Road, which runs alongside a ridgeline and is a relatively narrow locally classified road. Bynya Road runs alongside to the west of that ridgeline, and properties on its western side enjoy excellent views of Pittwater.

The submitted survey plan for the subject site shows a fall by up to 11.2 metres from the street boundary at the northeastern corner to the rear boundary at the southwestern corner. There is little level change from north to south across the site.

Existing on the subject site is a two storey detached dwelling house with a wall setback of between around 2600mm and 1800mm from the northern side boundary (to 44 Bynya Road) and with rear setbacks of between 17 metres and 17.8 metres and a balcony setback of between 13.2 metres and 16.8 metres. There is an inground swimming pool within the rear setback area (Figure 2).

46 Bynya Road contains a detached dwelling house with a rear deck set back around 2500mm rearward of the rear part of the dwelling house on the subject site, and being one level higher.

To the rear of the site there is a public reserve with bushland.

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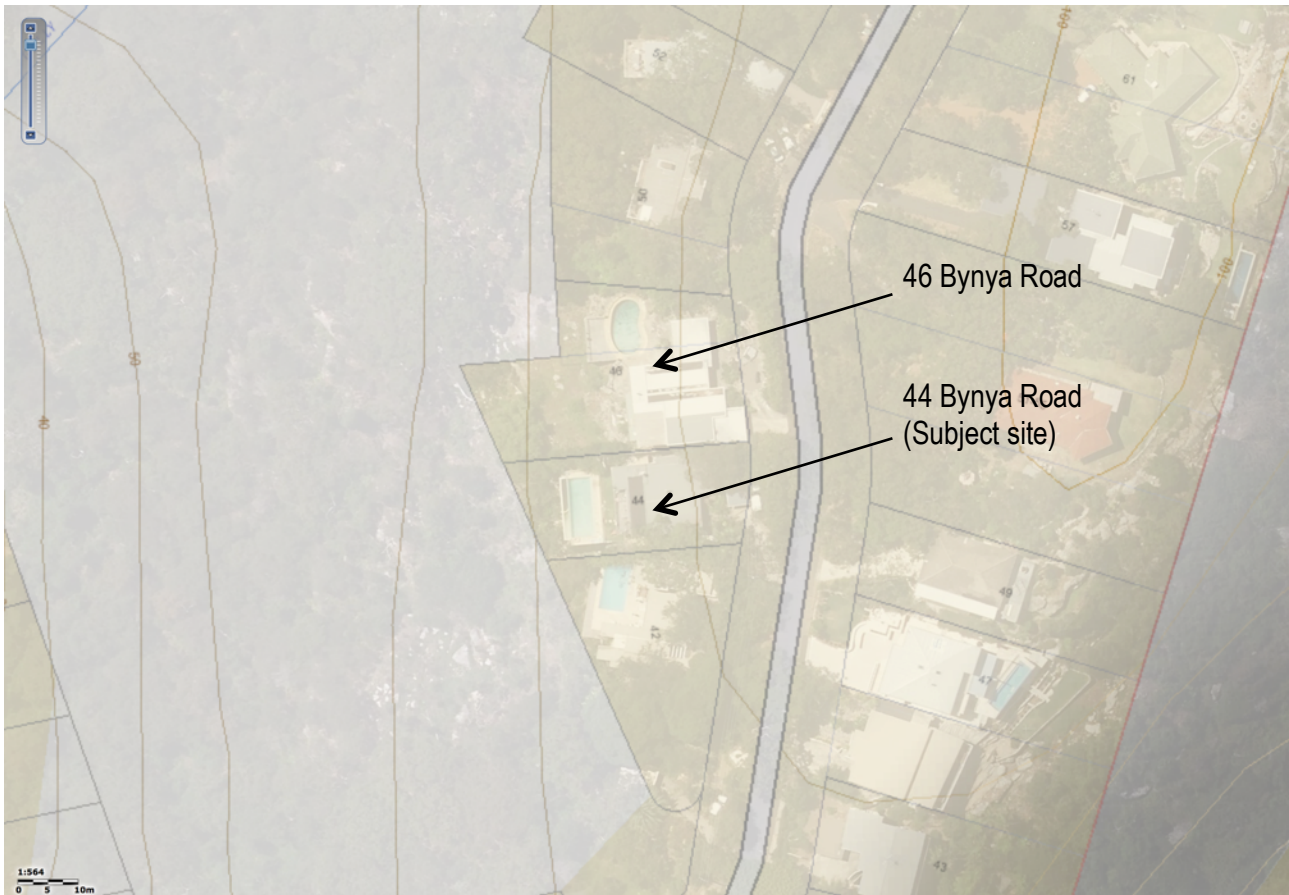


Figure 1: Subject site and 46 Bynya Road (Base source: Six Maps)



Figure 2: View from rear balcony of 46 Bynya Road across towards the subject site

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The proposed development

The proposal involves substantial alterations and additions to the existing dwelling house and associated works. It is possible that the proposal should be properly characterised as a new dwelling house because it appears that greater than 50 percent of the existing dwelling house will be demolished. However, that will be a matter for Council to resolve.

The proposal indicates works at lower ground level that do not extend the building any further towards the rear boundary or northern side.

The proposal indicates works at the ground floor level (which is at a level of around RL91.110 compared to the equivalent approved lower ground level at 46 Bynya Road at RL92.670) that would include a rear terrace extending 1.0 metre further to the rear than the existing rear wall. (That figure has been obtained by comparing the proposed development to existing using scaling and using the rear wall of 44 Bynya Road as a common reference point). The northern side setback would be 1800mm (eliminating the existing step back to a 2500mm setback). The rear balcony would extend 4.0 metres beyond the line of the existing rear balustrade of 46 Bynya Road. The proposal actually reduces the extent of the building adjacent to the northern side boundary and replaces it with balcony area. The proposal would provide a 1310mm southern side setback compared to an existing 3300mm southern side setback. The northern edge of the rear balcony would be unenclosed other than by a picket balustrade.

The proposal also includes a new first floor level that would have a floor level of RL93.82 (compared to the approved first floor level at 46 Bynya Road of RL95.72) and would have a rear wall setback around 1300mm back from the existing rear wall setback and a 1.0 metre deep balcony to the rear of that line. The general northern side setback of the uppermost level would be 1800mm – however a bathroom would protrude to within 900mm.

The uppermost level is for bedrooms and lower levels are predominantly living areas.

The proposal includes two chimneys – one to the proposed bedroom near to the northern side boundary and the other to the southern side to the lower level living area. The plans indicate that one of those would be fitted with gas appliances, whilst the other would presumably be fitted with a wood combustion or solid fuel stove. The proposal indicates a woodfired pizza oven at the lowest level nearest the northern side boundary. It also indicates a “BBQ pit” within the northern side setback area.

Consideration of the impact of the proposal on the amenity of 46 Bynya Road

The approved development at 46 Bynya Road keeps the same rear setback as existing but would have louvres enclosing the southern edge of the balustrade and would include a substantially windowless wall to the southern elevation except for a highlight window (Figure 3).

One of the main areas of potential amenity impact is from the proposed rear ground level deck, which is to extend significantly closer to the northern side by replacing a currently enclosed area. The level of that deck will be approximately the same as the yard area to the rear of the subject site. Because of its lack of enclosure to its northern side, the use of that deck will have the potential to cause acoustic privacy impacts to the subject site. It is noted, however, that the yard area of 46 Bynya Road closest to the proposed terrace is steeply sloping and not particularly usable. The usable yard/terrace/pool areas of 46 Bynya Road are towards the northern area – away from the proposed balcony, reducing potential acoustic impacts.

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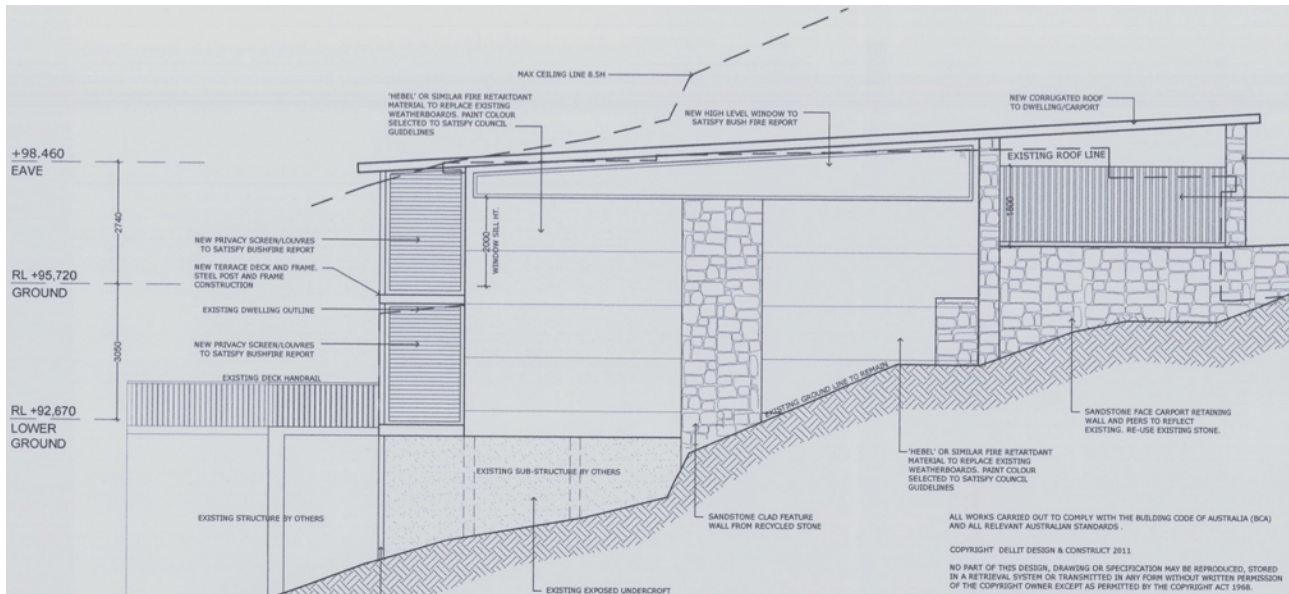


Figure 3: Approved south elevation of 46 Bynya Road

The proposed reduced northern side setback will present additional bulk. However, the design of the proposed new development at 46 Bynya Road is such that it will not be impacted in terms of solar access and visual privacy.

It is understood that the use of the existing dwelling house at 44 Bynya Road involves use of a wood combustion stove that often generates very significant smoke pollution related impacts to the residents of 46 Bynya Road. The proposal includes two chimneys. In order to ensure that the residents of 46 do not continue to be impacted upon by smoke pollution, a condition of consent should be imposed making it clear that fireplaces associated with the proposed chimneys are not to be fitted with any wood combustion or solid fuel stoves.

The proposal includes a pizza oven, that may be intended to be wood-fired. Additional information should be required with full details of the way in which that pizza oven will be operated. In that regard, the applicant should be required to demonstrate that there will be no smoke emissions from the oven affecting 46 Bynya Road. In the absence of that information, the residents of the proposal would be justified in objecting to the proposal until that matter is completely addressed.

The proposal includes a BBQ pit within the northern side setback area. No information is provided as to the nature of the use of that area or the type of equipment to be installed. The location of the proposed BBQ should be away from the boundary so that there is reduced potential for charcoal smoke or other smoke to affect the amenity of 46 Bynya Road. The location of the proposed BBQ is objectionable.

The proposal will intrude into a view from the existing and proposed upper level rear balcony of 46 Bynya Road of bushland. A rough estimate of the view impact is provided in Figure 4 below, with the intention of identifying whether the potential impact is such as to warrant an expectation for the applicant to provide a detailed view impact analysis. In that regard, the impact can be seen in the context of the total view from the rear deck. The area impacted is of bushland viewed to the side, which contributes to the total view of Pittwater but represents a relatively minor proportion of the total view. The view impact is relatively minor – however full consideration of that view impact depends upon the extent to which the proposal complies with the relevant town planning controls.

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Figure 4: Estimate of the view impacts of the proposal



Figure 5: Panorama from rear deck

Consideration of the proposal in relation to the planning controls

The principal environmental planning instrument relevant to the proposal is *Pittwater Local Environmental Plan 2014* (PLEP2014), under which the site is zoned E4 Environmental Living. The proposal is permitted with consent. The zone objectives are:

- *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.*

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The main relevant considerations in relation to the visual impacts of the proposed development are the first, second and third bullet points. The locality possesses significant scenic values, being an aesthetic value, and development should not adversely affect those values.

The site is identified as being in a geotechnical hazard area. It is anticipated that relevant geotechnical issues are addressed in the accompanying geotechnical report and that conditions will be imposed to ensure that construction works do not undermine 46 Bynya Road in a way that will affect the construction works to take place.

The site is subject to a maximum building height under clause 4.3 of PLEP2014 of 8.5 metres, with a variation to 10 metres for certain steeply sloping sites. Checking of existing ground levels and the proposed height of the building indicates that compliance is achieved – that will be the subject of detailed review by Council. The applicant states that the proposal remains within 10 metres and complies with the height control. That appears to be correct.

The principal controls within *Pittwater 21 Development Control Plan 2014* (PDGP2014) are within Part D12.

Part D12.6 relates to the side and rear building line. The side setback provision is that one side is set back 2.5 metres and the other 1.0 metre. The present proposal is set back 1800mm on one side except for a bathroom setback 900mm, and 1310mm on the other. The proposal therefore does not comply with the setback controls. The applicant may contend that the side setbacks are constrained by the existing building – however, the proposal is effectively for demolition and in any case the side setbacks of the uppermost level are not constrained.

Part D12.8 relates to building envelope controls. It requires that the building sit within an envelope formed by projecting a line into the site from a point 3500mm above ground at all points on the boundary at a 45-degree angle. Variations are considered for steeply sloping sites – on a merits basis. The proposal does not comply with the control. The proposal involves a major intrusion into that building envelope in relation to both side boundaries. It is considered that some level of departure from the control might be anticipated for the steeply sloping site. However, the applicant has not demonstrated how they have designed the proposal to achieve the objectives of the control. The applicant should be required to demonstrate the extent of the breach in that control that is sought and what the justification is for the proposed non-compliance.

The above represents a broad overview of the relevant controls – Council would undertake a more comprehensive and detailed assessment.

Summary of issues arising

The proposed development does not comply with key side setback and building envelope controls. Some level of departure with the building envelope control might be acceptable – however the merits basis for that departure has not been set out in the accompanying statement of environmental effects.

The proposal would affect the setting of the water views enjoyed from the existing and approved developments at 46 Bynya Road. That impact is caused by the manner in which the proposed development protrudes rearwards of the rear building line of 46 Bynya Road.

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In circumstances in which the proposal also does not comply with the side setback and building envelope controls, the onus is upon the proponent to demonstrate the acceptability of the proposed level of impact.

In order for the consent authority to assess the impact, the following should be provided:

- The proponent should provide a computer rendering that clearly illustrates the extent to which the proposal varies from the relevant building envelope and side setback controls;
- The proponent should install height poles verified by a surveyor that indicate the outermost points and heights of the proposed development, so that the view impact and general visual impact of the proposed development may be understood;
- The proponent should provide an assessment of the view impacts of the proposed development and should seek to demonstrate why the proposed departures from the building envelope control are acceptable; and
- The proponent should consider modifications to reduce the extent of non-compliance in such a way as to reduce view impacts and visual intrusion to 46 Bynya Road. The proposal should then be re-notified for further comment.

The proponent should be requested to review the visual and acoustic privacy impacts of the proposed rear ground level terrace and to consider greater enclosure to reduce those impacts. The submitted SEE does not adequately explain the impact of the proposed rear terrace or seek to justify the lack of enclosing elements to mitigate visual and acoustic privacy impacts.

There has been a history of smoke related impacts from wood combustion fireplaces on the subject site. A condition of consent should be imposed on any consent that may be issued to require that there is no wood-fired or solid fuel combustion stove installed. The proposal also includes a wood-fired pizza oven. The proponent should be required to provide additional information to demonstrate that it will not cause smoke pollution that will affect the amenity of 46 Bynya Road.

The proposal includes a BBQ within the northern side setback, with the potential to impact upon the amenity of 46 Bynya Road. Whilst inadequate information about the nature of that area has been provided, it appears that the use of that area would be likely to generate excessive noise and smoke related impacts to 46 Bynya Road. That area should be relocated away from the boundary of 46 Bynya Road.

Please let me know if there are any questions about this submission.



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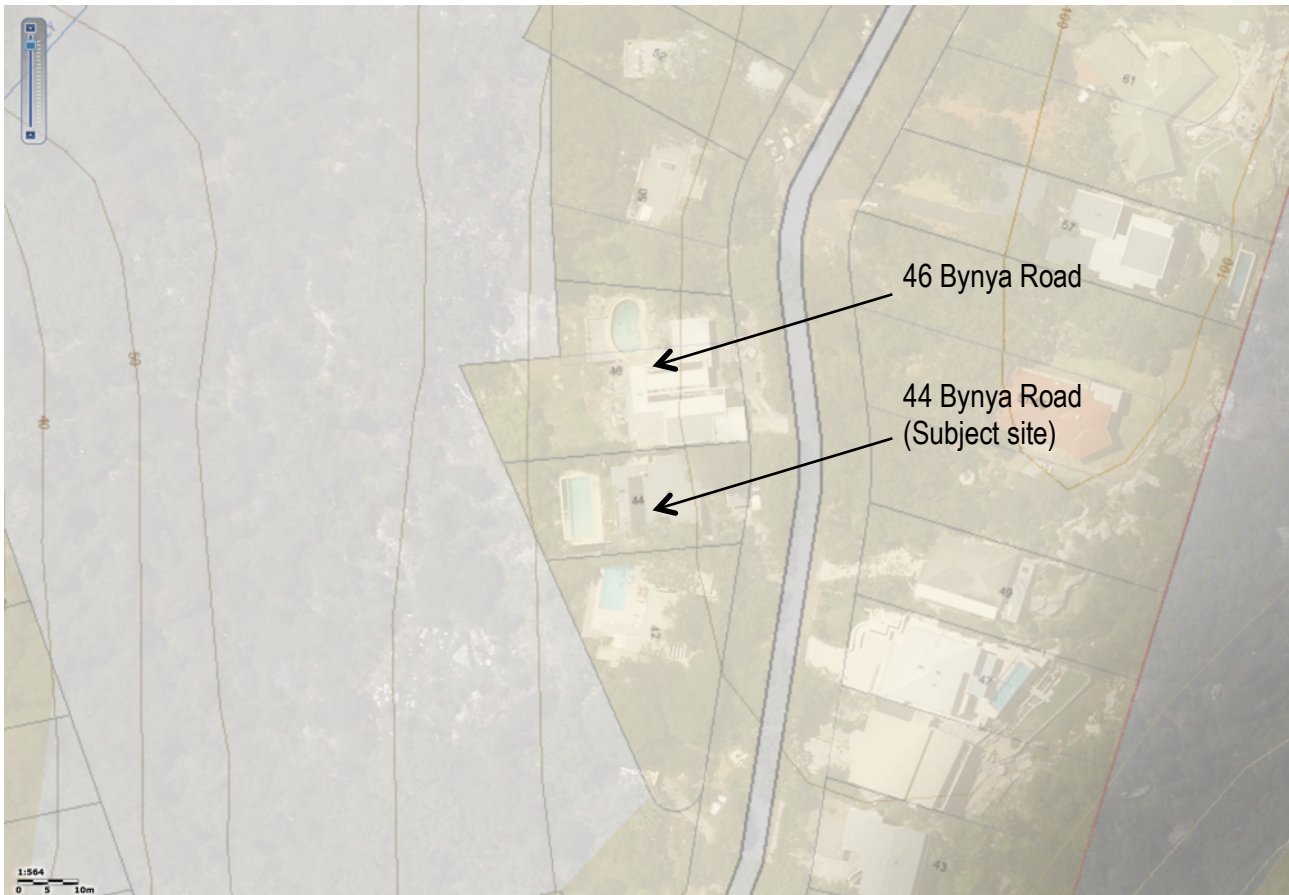


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Figure 2: View from rear balcony of 46 Bynya Road across towards the subject site

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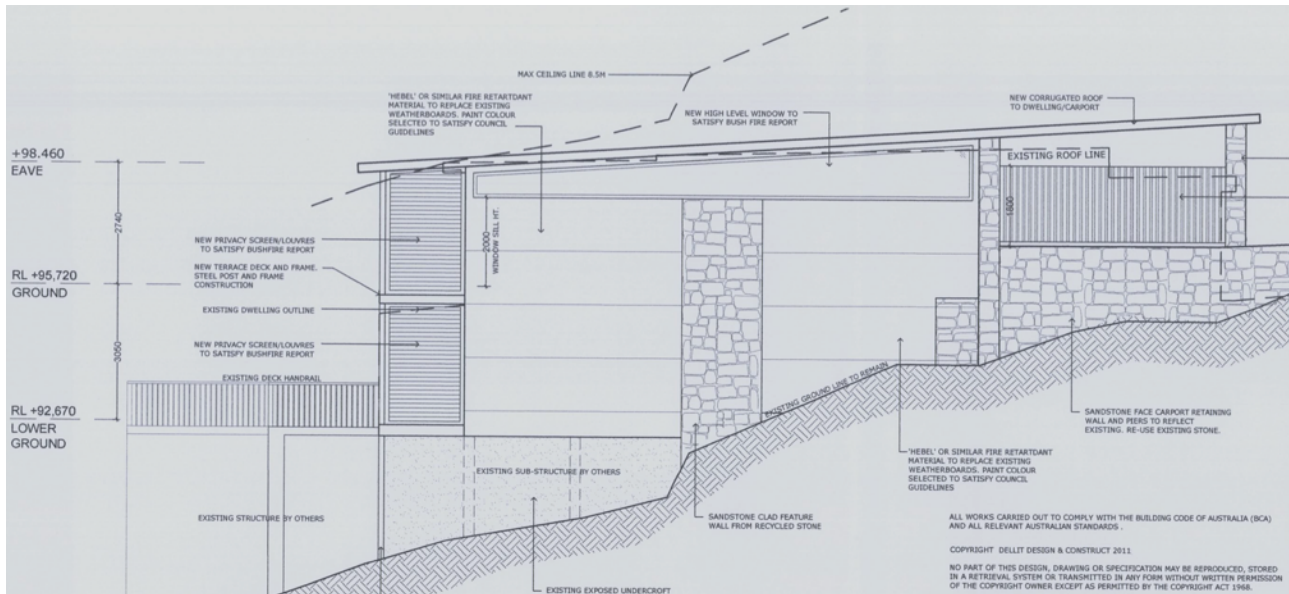


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