



Pre-lodgement Meeting Notes

Application No:	PLM2024/0093
Meeting Date:	27 August 2024
Property Address:	133 Riverview Road AVALON BEACH
Proposal:	Construction of a dwelling house including a swimming pool, detached garage and studio
Attendees for Council:	Nick Keeler, Planner Fathima Shajar, Student Planner Daniel Milliken, Manager Development Advisory Services
Attendees for applicant:	Jamie Bryant, Town Planner Antonio Bryant, Architect Daniel Pszczonka, Builder

General Comments/Limitations of these Notes

These notes have been prepared by Council's Development Advisory Services Team on the basis of information provided by the applicant and a consultation meeting with Council staff. Council provides this service for guidance purposes only.

These notes are an account of the advice on the specific issues nominated by the Applicant and the discussions and conclusions reached at the meeting.

These notes are not a complete set of planning and related comments for the proposed development. Matters discussed and comments offered by Council will in no way fetter Council's discretion as the Consent Authority.

A determination can only be made following the lodgement and full assessment of the application.

In addition to the comments made within these Notes, it is a requirement of the applicant to address the relevant areas of legislation, including (but not limited to) any State Environmental Planning Policy (SEPP) and any applicable sections of the Pittwater Local Environmental Plan 2014 and Pittwater 21 Development Control Plan, within the supporting documentation including a Statement of Environmental Effects, Modification Report or Review of Determination Report.

You are advised to carefully review these notes and if specific concern have been raised or non-compliances that cannot be supported, you are strongly advised to review your proposal and consider amendments to the design of your development prior to the lodgement of any development application.



SPECIFIC ISSUES RAISED BY APPLICANT FOR DISCUSSION

Response to Matters Raised by the Applicant

General Comment on Proposed Development

Overall, Council views the proposed development as an overdevelopment of the subject site.

As discussed in more detail below, the following issues are identified.

- The upper-level bulk and scale of the proposed development is unreasonable by virtue of its non-compliance with the building envelope control.
- The proposed extent of excavation is excessive given the environmental sensitivity of the site. The lower ground floor area should be reduced to lessen need for significant excavation.
- The combination of the large area of excavation and building envelope non-compliances is not supported.
- The proposed building footprint does not allow for sufficient landscaped area.
- The siting of the proposed development will likely impact upon significant canopy trees.

It is acknowledged the applicant has designed the proposal to minimise view impacts upon adjacent properties. Where a non-compliance is caused by a design outcome seeking to limit view impacts, the applicant must clearly demonstrate the proposed development compared as opposed to a compliant development. The use of photomontages will assist the assessing planner determine the appropriateness of any non-compliance. However, this does not guarantee that Council will support non-compliant built form elements.

PITTWATER LOCAL ENVIRONMENTAL PLAN 2014 (PLEP 2014)

PLEP 2014 can be viewed at <https://www.legislation.nsw.gov.au/view/html/inforce/current/epi-2014-0320>

Part 2 - Zoning and Permissibility

Definition of proposed development: (ref. PLEP 2014 Dictionary)	Dwelling house
Zone:	C4 Environmental Living
Permitted with Consent or Prohibited:	Permitted with consent

Clause 4.6 - Exceptions to Development Standards

Clause 4.6 enables the applicant to request a variation to the applicable Development Standards listed under Part 4 of the LEP pursuant to the objectives of the relevant Standard and zone and in accordance with the principles established by the NSW Land and Environment Court.

A request to vary a development Standard is not a guarantee that the variation would be supported as this needs to be considered by Council in terms of context, impact and public interest and whether the request demonstrates sufficient environmental planning grounds for the variation.



Part 4 – Principal Development Standards			
Standard	Permitted	Proposed	Compliance
4.3 Height of Buildings	Subclause 2D – 10m (33% gradient)	9.8m	Yes
<u>Comment:</u> The proposed development relies upon subclause 2D which allows development up to a maximum height of 10m where the following criteria are achieved: (a) <i>the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and</i> (b) <i>the objectives of this clause are achieved, and</i> (c) <i>the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and</i> (d) <i>the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.</i> The applicant will need to demonstrate that the proposed development is designed and sited in a manner that achieves the above criteria. It is considered the proposed development does not achieve (d) in that the area and depth of excavation is excessive, leading the development not to appropriately respond to the topography of the site. The extent of excavation for the proposed development must be reduced for Council to consider the application of subclause 2D when calculating building height.			

Part 7 – Additional Local Provisions	
Standard	
7.2 Earthworks	<u>Comment:</u> It is considered the proposed extent of excavation does not achieve the objective of this clause. As the site is zoned C4 Environmental Living and adjoins the waterfront, the land and its surrounds are environmentally sensitive. Development must be sited and designed to minimise site disturbance in environmentally sensitive areas. It is recommended the applicant revise the design of the dwelling to greatly reduce the extent of excavation. Any large-scale area of excavation more than 1.5m-2m deep may be considered excessive. Excavation for the proposed lift shaft from the garage is acceptable. Excavation within 1m of the property boundaries is not recommended.

PITTWATER 21 DEVELOPMENT CONTROL PLAN (P21DCP)

P21DCP can be viewed at

<https://eservices.northernbeaches.nsw.gov.au/ePlanning/live/Pages/Plan/Book.aspx?exhibit=P21DCP>

The following notes the identified non-compliant areas of the proposal only.



Part D4 – Church Point and Bayview Locality		
Control	Permitted	Proposed
D4.5 Front building line	Greater of prevailing building line or 6m	Garage – 0.5m to 1.4m
<u>Comment:</u> As the proposed garage is less than 6m setback from the front boundary, the applicant must demonstrate that the setback of the structure is consistent with the prevailing building line of adjacent development.		
D4.6 Side and rear building line	2.5m one side, 1m other side	<u>Second Floor</u> North – 3.25m South – 1m <u>First Floor</u> North – 2.5m (2.2m privacy screens) South – 1m <u>Ground Floor</u> North – 2.5m (1.9m balcony) South – 1m <u>Cellar / Pool</u> North – 2.5m South – 1.2m (Nil planter box)
<u>Comment:</u> While the proposal generally complies with the side boundary setback requirements, the planter box on the southern side of the pool deck is not supported as it does not comply with the setback requirement and is outside the permitted building envelope. This element should be deleted.		
D4.8 Building envelope	45 degrees from 3.5m above side boundaries	Outside envelope both sides
<u>Comment:</u> As elevation plans have not been provided in the PLM plans, an accurate assessment of the numerical building envelope non-compliance cannot be undertaken. As such, the following assessment is undertaken using the submitted envelope height plane. There are several elements of the proposed development that breach the building envelope along the northern and southern elevations, including much of the second floor, along the north elevation of the first floor and elements of the ground and lower ground floors. Due to the number and severity of some of the envelope breaches, Council considers the proposed development to be excessive and does not appropriately respond to the control outcomes. It is understood that design of the building has taken into consideration the built form and view impact from adjacent properties, however the extent of the non-compliances indicates the proposed development is an overdevelopment of the site.		



Part D4 – Church Point and Bayview Locality

Council acknowledges that full numerical compliance with the building envelope control requirement on a steeply sloped site is often unrealistic. However, it is recommended the non-compliant areas of the first and second floors be reduced and ensure the floors below the first floor comply with building envelope requirement.

D4.10 Landscaped Area - Environmentally Sensitive Land

60% site area

Approx. 49.6% (562.4m²)

Comment:

No landscape area calculation plan has been submitted. The above calculation is based off the site plan.

The proposed development is significantly deficient in landscaped area. As the proposal involves demolition of the existing dwelling and construction of a new dwelling, Council will not support a variation of the minimum landscaped area requirement. Only the variations permitted under the control will be considered in any development application, i.e.

Provided the outcomes of this control are achieved, the following may be permitted on the landscaped proportion of the site:

1. *impervious areas less than 1 metre in width (e.g. pathways and the like);*
2. *for single dwellings on land zoned R2 Low Density Residential or E4 Environmental Living, up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only (e.g. roofed or unroofed pergolas, paved private open space, patios, pathways and uncovered decks no higher than 1 metre above ground level (existing)).*

It is recommended to reduce the proposed building footprint to ensure appropriate landscaped area can be provided.

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Biodiversity

Biodiversity Planning Controls

The following biodiversity related legislation and planning controls apply to the subject lot. Compliance with applicable provisions will need to be demonstrated within the submitted Statement of Environmental Effects (SEE) and/or supporting documentation.

- Biodiversity Conservation Act (BC Act) 2016
- Biodiversity Conservation Regulation (BC Reg) 2017
- SEPP (Resilience and Hazards) 2021 – clause 2.10 Development on land within the coastal environment area
- Pittwater LEP clause 7.6 Biodiversity Protection
- Pittwater 21 DCP clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community

Required Supporting Documentation

On review of the submitted pre-lodgement plans, the following documentation is required to accompany the Development Application (DA):

- Landscape Plan
- Arboricultural Impact Assessment



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- Biodiversity Development Assessment Report (BDAR)

Further information on assessment requirements can be found in Council's Biodiversity Guidelines for Applicants.

Understanding the different levels of assessment required

Is the development footprint on the Biodiversity Values Map?	Level of impact from proposal	Assessment required	Relevant Guideline
No	The development will not impact upon any of the following: - Five or more protected (prescribed) native trees* - Any threatened species or ecological communities - More than 50m² of native vegetation - Important resources or habitat features for wildlife. This may include features like tree hollows, rock overhangs or wetlands. In many, some residential properties also provide important habitat for endangered penguins and bandicoots. Please see Guideline 1 for more information.	Compliance with relevant LEP/DCP biodiversity objectives is to be addressed in the Statement of Environmental Effects (SEE) . OR as determined by Council at pre-lodgement meeting. Note: this level of assessment is typical for minor developments with limited impacts such as landscaping works or modification applications which do not require additional vegetation removal.	
	The development will impact upon any of the following: - More than four protected (prescribed) native trees* - Any threatened species or ecological communities - More than 50m² of native vegetation, but less than the applicable Biodiversity Offsets Scheme (BOS) area clearing threshold - Important resources or habitat features for wildlife. This may include features like tree hollows, rock overhangs or wetlands. In many, some residential properties also provide important habitat for endangered penguins and bandicoots. Please see Guideline 1 for more information.	The application is to be accompanied by a Flora and Fauna Assessment (FFA) prepared by a suitably qualified ecologist. OR as determined by Council at pre-lodgement meeting. Note: this level of assessment is typical for small to medium lot subdivisions, construction of a new dwelling, and other medium to large scale developments (such as a Seniors Living development). Compliance with relevant LEP/DCP biodiversity controls is to be addressed in any FFA .	Guideline 1 Guideline 4
	The development will result in either of the following: - A significant impact to a threatened species, population or ecological community as determined by a 'threatened species test of significance' - Impacts to an area of native vegetation greater than the applicable Biodiversity Offsets Scheme (BOS) area clearing threshold	The application is to be accompanied by a Biodiversity Development Assessment Report (BDAR) prepared by an accredited assessor in accordance with the NSW Biodiversity Assessment Method (BAM). Compliance with relevant LEP/DCP biodiversity controls is to be addressed in any BDAR.	Guideline 2 Guideline 4 Guideline 3 (if a BAMP is required)
Yes	The development will impact upon: Areas identified on the NSW Biodiversity Values Map, including the Little Penguin 'Area of Outstanding Biodiversity Value'	Where developments require a BDAR due to the scale of impacts such as clearing of native vegetation above the Biodiversity Offsets Scheme clearing threshold, such developments may also require a Biodiversity Management Plan (BMP) . The requirement for a BMP will be determined by Council.	

Important Note: Developments should always be designed and sited to avoid environmental impacts in the first instance. Assessment of impacts must consider direct and indirect impacts of the proposal, including clearing of vegetation within the development footprint and clearing requirement for the establishment of bush fire asset protection zones (APZs).

* The assessment requirements outlined above address biodiversity-related controls only. Additional reports, such as an Arboricultural (tree) Impact Assessment, may also be required if the proposal is likely to impact upon protected (prescribed) trees.

Figure 1. Triggers for Biodiversity Assessment

General Biodiversity Comments

The site is mapped as containing Pittwater Spotted Gum Forest which is listed as an Endangered Ecological Community (EEC) under the Biodiversity Conservation Act 2016. The Draft Arborist Report notes that native tree removal will be required. It is noted that proposed impacts on large native canopy trees have largely been avoided. Avoiding and minimising impacts to biodiversity within the BV map is a fundamental concept under the Biodiversity Conservation Act 2016 and must be demonstrated within the BDAR. The Pre-lodgement meeting report (Willowtree Planning, August 2024) states that a BDAR is currently being prepared and will be submitted with the Development Application.

Biodiversity Assessment Development Report (BDAR) Requirements

The site is mapped within the Department of Climate Change, Energy, the Environment and Water (DCCEEW) Biodiversity Values Mapping (BV Map; purple polygon).



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Development occurring within DCCEEW's Biodiversity Values Mapping will require assessment under the Biodiversity Assessment Methodology (BAM) 2020 if they involve:

- Impacts to Native Vegetation (as defined under 60B of the Local Land Services Act 2013), or
 - Including clearing and/or establishment of Asset Protection Zones.
- Prescribed actions (as defined under 6.1 of the Biodiversity Conservation Regulation 2017).

As the site is located within the BV Map, the applicant will be required to engage an Accredited Assessor under the BAM (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>) to determine whether a Biodiversity Development Assessment Report (BDAR) is required.

If the Accredited Assessor determines that **a BDAR is NOT required**, a concise letter report should be submitted within the DA explaining why the BAM does not apply.

If the Accredited Assessor determines that **a BDAR is required**, the BDAR must demonstrate what measures have been taken to avoid and minimise before offsetting of vegetation is applied. Council may not support the proposal, unless minimisation of impacts is clearly demonstrated in accordance with the BAM. The BDAR must address the *Serious and Irreversible Impact (SAIL)* guidelines for the candidate SAIL Pittwater Spotted Gum Forest EEC, and any other applicable SAIL candidates.

Advice provided to Council by DCCEEW, The approval authority must not grant approval if they determine the proposal is likely to have a serious and irreversible impact on biodiversity values. In



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in addition to the *Biodiversity Conservation Act 2016* (BC Act), the BDAR must also address the requirements of relevant State Environmental Planning Policies, and the Commonwealth *Environment Protection Biodiversity Conservation Act 1999* (EPBC Act).

A BDAR submitted with the DA must be finalised and signed by the Accredited Assessor within 14 days of the DA lodgement date in accordance with 6.15 of the Biodiversity Conservation Act 2016. The assessor is required to add Northern Beaches Council as a case party to the BAM assessment in BOAMS and submit the case to the consent authority in BOAMS prior to the lodgement of the DA (per DPIE's *Release notes – Consent Authority user access to BOAMS, March 2020*). This will assist assessment of the DA and allow Council's Biodiversity Officers to view the BAM Calculator and electronically approve credit requirements.

All shapefiles are to be submitted to Council either via BOAMS or email upon submission of the DA to the NSW Planning Portal to ensure the assessment by Council's Biodiversity Officers can be completed in a timely manner.

Landscape Plan

Development shall ensure that at least 80% of any new planting incorporates native vegetation (as per species listed in the appropriate ward of the Native Planting Guide which is available on the Council website). Landscaping is to be outside areas of core bushland and not include environmental weeds.

Arboricultural Impact Assessment

An Arboricultural Impact Assessment Report, prepared by a qualified AQF5 (or higher) arborist, must be submitted when works are proposed within 5.0m of a tree irrespective of property boundaries. No Arborist Report is required for trees and species within the development site that can be removed without approval under the relevant DCP. The Arborist Report will be essential in identifying native trees that may require removal as a result of the proposed development.

Coast & Catchments

Relationship with other documents

- Pittwater 21 Development Control Plan
- *Pittwater Local Environmental Plan 2014*
- Pittwater Estuary Mapping of Sea Level Rise Impact Study (Cardno 2015)
- *Coastal Management Act 2016*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*

Coastal Management Act 2016 and State Environmental Planning Policy (Resilience & Hazards) 2021

The proposed development is located within the coastal zone of NSW and is subject to the provisions of the Coastal Management Act 2016 (CM Act) and State Environmental Planning Policy (Resilience and Hazards) 2021 (CM SEPP)



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Under the CM SEPP the subject site has been included on the Coastal Environment Area Map as well as the Coastal Use Area Map. The objectives and requirements of both the CM Act and the CM SEPP must be addressed within the **Statement of Environmental Effects (SEE) Report** as they relate to development within these coastal management areas.

ESTUARINE RISK MANAGEMENT

Estuarine Hazards

The subject property has been identified as being affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. The Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any development of the site.

Estuarine Planning Level (EPL)

Based on the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.66m AHD has been adopted by Council for the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.06m reduction to the EPL for every 5 m distance from the foreshore edge up to a maximum distance of 40 m.

The EPL provided is indicative only and may be subject to revision based upon any additional information lodged in support of a development application for the site

As proposed developments are located above the adopted EPL, no Estuarine Risk Management Report will be needed.

Development on Foreshore Area

A large section of the subject property is within the foreshore building line and it is not demonstratively clear if any development activity will happen within the foreshore area. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area and the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014 needs to be addressed within the **Statement of Environmental Effects (SEE) Report** as they relate to development within the foreshore area.

Development Engineering

- The method of stormwater disposal is to be in accordance with Council's Water Management for Development Policy. The policy is available in Council's web page. <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/policies-register/water-management/water-management-development-policy/water-management-development-policy-aug2020.pdf>. The site falls to the rear and as such stormwater discharge shall be to the rear.
- Due to the topography of the site, geotechnical engineer's comments/concurrence on the proposed stormwater management system shall be submitted with the application.
- The driveway crossings are to be in accordance with one of Council's Vehicular Crossing standard profile available on Council's web page.



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<https://www.northernbeaches.nsw.gov.au/planning-development/permits-and-certification/driveway-and-vehicle-crossings>.

- Engineering long sections for the proposed driveway are to be included in the submission. Transitions are to be provided in accordance with AS2890.1. to a level parking facility.
- The site is located within the H1 hazard area, a geotechnical engineers report is required to be submitted in accordance with Geotechnical Risk Management Policy for Pittwater – 2009 with the DA.

Landscape

The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment with ecological, scientific or aesthetic values, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone, including a minimum 60% landscaped area that comprises: a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.

A Landscape Plan is required in accordance with Council's DA Lodgement Requirements and to satisfy Pittwater Local Environment Plan (PLEP) clause C4 zone Environmental Living, and the following Pittwater 21 Development Control Plan (PDCP) controls (but not limited to): B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; and D1 Avalon Locality.

An Arboricultural Impact Assessment is to be submitted in accordance with Council's DA Lodgement Requirements, to assess impacts to existing trees within the property and within adjoining properties where existing trees are located within 5 metres of any proposed development work and to satisfy B4.22 Preservation of Trees and Bushland Vegetation.

The submitted draft Arboricultural Impact Assessment includes proposed tree removal. The property is located within the Department of Planning, Industry and Environment's (DPIE) Biodiversity Values Map (BVM) under the Biodiversity Conservation Act, and any tree removal within the BVM may trigger the Biodiversity Offsets Scheme (BOS) and may require a Biodiversity Development Assessment Report (BDAR). This specific matter is deferred to Council's Bushland & Biodiversity Referral team.

Concerns:

- Impact to existing tree identified tree 8 (*Angophora costata*) that is located on common boundary:
 - Should the building layout be approved, the tree will be located within 2 metres of an 'approved' building, thus resulting in the tree location becoming exempt under the 2 metre rule, and able to be removed without Council consent.
 - It is considered that the proposed proximity of building structure (regardless of its proposed elevated siting) results in a major encroachment of natural ground surface utilised for water penetration and thus existing root loss and tree vigour is anticipated. Any proposed structure should be more than 2 metres from the tree trunk and at least 3 metres is advised.
- Impact to existing tree identified tree 23 (Grey Ironbark) that is located within adjoining property:



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- Should the building layout be approved, the tree will be located within 2 metres of an 'approved' building, thus resulting in the tree location becoming exempt under the 2 metre rule, and able to be removed without Council consent.
- It is considered that the proposed proximity of building roof structure results in a major encroachment of natural ground surface utilised for water penetration and thus existing root loss and tree vigour is anticipated. A reduced driveway width and realignment of the garage structure northward will assist to better preserve the tree.
- Impact to existing trees within the road reserve will be more than necessary due to the proposed wide driveway that exceeds Council standard driveway widths.

Documentation to accompany the Development Application

- Lodge Application via NSW Planning Portal
- Statement of Environmental Effects
- Scaled and dimensioned plans:
 - Site Plan;
 - Floor Plans;
 - Elevations; and
 - Sections.
- BASIX Certificate
- Certified Shadow Diagrams (depicting shadows cast at 9am, Noon and 3pm on 21 June).
- Cost Summary Report / Quantity Surveyors Report
- Survey Plan (Boundary Identification Survey)
- Site Analysis Plan
- Demolition Plan
- Excavation and fill Plan
- Waste Management Plan (Construction & Demolition)
- Driveway Design Plan (if any change is proposed to the driveway)
- Erosion and Sediment Control Plan / Soil and Water Management Plan
- Stormwater Management Plan / Stormwater Plans and On-site Stormwater Detention (OSD) Checklist
- Landscape Plan
- Arboricultural Impact Assessment
- Biodiversity Development Assessment Report (BDAR)
- Geotechnical Report

IMPORTANT NOTE FOR DA LODGEMENT

Please refer to the Development Application Lodgement Requirements on Council's website (link details below) for further detail on the above list of plans, reports, survey and certificates.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/development-application-da-modification-or-review-determination/2060-da-modification-lodgement-requirements-mar21.pdf>

The lodgement requirements will be used by Council in the review of the application after it is lodged through the NSW Planning Portal to verify that all requirements have been met for the type of application/development.



Concluding Comments

These notes are in response to a pre-lodgement meeting held on 27 August 2024 to discuss construction of a dwelling house including a swimming pool, detached garage and studio at 133 Riverview Road AVALON BEACH. The notes reference the plans prepared by Rise Projects dated 10 May 2024.

Council does not support the proposal in its current form. A refinement in design to address the issues identified within the specialist advice and recommendations is required to form a sensible response to the site, and its context and constraints. Any breaching of the planning controls would need to be supported by an analysis of the benefits compared to a complying scheme including demonstration of improvements with respect to; amenity; compatibility with adjoining development; impacts on context and public benefit.

Question on these Notes?

Should you have any questions or wish to seek clarification of any matters raised in these Notes, please contact the member of the Development Advisory Services Team at Council referred to on the front page of these Notes.