



## Pre-lodgement Meeting Notes

**Application No:** PLM2022/0110  
**Meeting Date:** 16 June 2022  
**Property Address:** 13 Ilya Avenue BAYVIEW  
**Proposal:** Construction of a secondary dwelling  
**Attendees for Council:** Penny Wood (Planner)  
Adam Urbancic (Planner)  
**Attendees for applicant:** Jon Pemberton (Owner)  
Gail Pemberton (Owner)  
Rex Pemberton (Applicant)

### 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

#### Rear Setback

D2.6 Side and rear building line in the Pittwater 21 DCP stipulates that sites located in an R5 Large Lot Residential zone must provide a minimum 20m setback to the rear boundary. The outcomes of this control are as follows:

*To achieve the desired future character of the Locality. (S)*  
*The bulk and scale of the built form is minimised. (En, S)*  
*Equitable preservation of views and vistas to and/or from public/private places. (S)*  
*To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*  
*To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and to residential properties. (En, S)*  
*Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)*  
*Flexibility in the siting of buildings and access. (En, S)*  
*Vegetation is retained and enhanced to visually reduce the built form. (En)*  
*A landscaped buffer between commercial and residential zones is achieved. (En, S)*  
*To preserve and enhance the rural and bushland character of the locality. (En, S)*  
*To ensure a landscaped buffer between commercial and residential zones is established.*

The applicant proposes to site the secondary dwelling in the northern corner of the lot, 10m from the rear boundary. A visit to the site revealed that the location proposed for the secondary dwelling is relatively clear of vegetation with rock outcrops present. The rear of the property is bordered by a private road which provides vehicle access to No. 1 – No. 11 Ilya Avenue and No. 10, 11, 12, 13 and 14 Taminga Street.

The site presents a number of constraints which has resulted in the proposed location of the secondary dwelling. The site provides a 53.5% slope where the structure is proposed and given the elevated nature of the structure and being 10m from the rear boundary, it is anticipated that it will be visible when viewed from the private road and the dwellings to the north.

It is recommended that the applicant increase the rear setback by relocating the structure south and possibly pushing the lower level further underneath the upper level. It is acknowledged that this may require the site to be excavated to accommodate this. Clause D2.12 Construction, Retaining walls, terraces and undercroft areas encourages building design to respond sensitively to natural topography. Undercroft areas shall be limited to a maximum height of 3.5 metres with adequate landscaping proposed to screen undercroft areas. Given the slope of the site, the building is designed to terrace down the site, however lowering the overall height will reduce the undercroft area, hence minimising the overall bulk and scale of the development.

The secondary dwelling measures 7.9m in height which complies with the 8.5m maximum building height prescribed in the PLEP 2014. However, given the prominent location of the secondary dwelling the applicant is encouraged to reduce the height. The floor to ceiling height of the proposed upper level is considered excessive at 3.53 – 6.05m and the Applicant is to reduce the height by at least 2.0m at the highest point which will still allow for a maximum 4m high ceiling and will dramatically reduce the visual impact of the structure particularly if the 20m rear setback cannot be achieved.



### Response to Matters Raised by the Applicant

The site is located in the Bayview Heights Locality. The character of this locality is very much centred around the natural environment to ensure that the built form is secondary to landscaping and vegetation. The 20m rear setback assists in minimising the bulk and scale of the built form and to retain the substantial landscaping at the rear of the site which is characteristic of the larger lots within the vicinity of the subject site in particular 15, 17 and 19 Ilya Avenue.

It is recommended that the rear setback be increased taking into consideration site constraints and removal and protection of trees. The height of the secondary dwelling should be significantly reduced by lowering the overall floor to ceiling height of the upper level and reducing the height of the undercroft areas where possible and without increasing excavation.

#### Tree Removal

The site contains a large number of canopy trees, however the proposed location of the structure 10m from the rear boundary will allow for the structure to be visible when viewed from a public place. It is noted that the subject site is constrained and that it may be difficult to fully comply with the 20m setback requirement and therefore a detailed landscape plan is required to ensure the built form is well screened. See landscaping comments below.

#### Stormwater Plan

See Development Engineering and Environmental Health comments below.

#### Detached Dual Occupancy

A visit to the site has revealed the existing building has been converted from an attached dual occupancy to a single dwelling. The Applicant is to lodge a development application applying for the use of the building as a single dwelling. The Applicant must also lodge a Building Information Certificate to authorise the works to the existing building which have resulted in converting the building from an attached dual occupancy to a single dwelling.

Given the building is currently identified as a single dwelling, the proposed development is defined as a detached dual occupancy, which are prohibited in the R5 Large Lot Residential zone.

Clause 5.5 Controls relating to a secondary dwelling on land in a rural zone states the following:

*If development for the purposes of a secondary dwelling is permitted under this Plan on land in a rural zone—*

*(a) the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—*

- (i) 60 square metres,*
- (ii) 25% of the total floor area of the principal dwelling*

The secondary dwelling proposes 102.4sqm of floor area. For a compliant proposal, the applicant is required to demonstrate that the existing floor area of the principal dwelling is at least 409.6sqm. Floor plans of the dwelling are to be provided for a full assessment of the proposal to be undertaken.



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

Part 2 - Zoning and Permissibility	
<b>Definition of proposed development:</b> (ref. PLEP 2014 Dictionary)	<b>secondary dwelling</b> means a self-contained dwelling that— (a) is established in conjunction with another dwelling (the <b>principal dwelling</b> ), and (b) is on the same lot of land as the principal dwelling, and (c) is located within, or is attached to, or is separate from, the principal dwelling.
<b>Zone:</b>	R5 Large Lot Residential
<b>Permitted with Consent or Prohibited:</b>	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
<b>4.3 Height of Buildings</b>	8.5m	7.9m	Yes

#### PITTWATER 21 DEVELOPMENT CONTROL PLAN (P21DCP)

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

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

B6 Access and Parking
B6.3 Off-Street Vehicle Parking Requirements
For a secondary dwelling, a minimum of one space is required in addition to existing requirements for the principal dwelling (based on number of bedrooms in principal dwelling). The site provides adequate parking for both the existing single dwelling and the proposed secondary dwelling. The location of existing parking is to be provided as part of any future development application.
C1 Design Criteria for Residential Development



Control	Permitted	Proposed
<b>C1.11 Secondary Dwellings and Rural Worker's Dwellings</b>		
<p>Secondary Dwellings are permitted with consent in the R5 Large Lot Residential zone. The Applicant is to ensure the outcomes (listed below) are achieved. It is discussed throughout the notes that there is concern regarding the overall height of the development including the floor to ceiling height of the upper level. Whilst the control states that one (1) storey secondary dwellings can be permitted in the zone, a two storey secondary dwelling may be considered in this instance given the constraints of the site. It is also noted that the floor area of the secondary dwelling may measure over 100sqm and therefore providing this floor space over two levels will ensure less tree removal, site disturbance and better compliance with the 80% landscaped area requirement.</p> <p><b>Outcomes</b>  <i>Limitation of the visual bulk and scale of development. (En, S)</i>  <i>Provision of design flexibility for second storey development.</i>  <i>Restriction of the footprint of development site. (En)</i>  <i>Retention of natural vegetation and facilitation planting of additional landscaping. (En)</i>  <i>Provision of rental accommodation. (S)</i></p>		
<b>C1.5 Visual Privacy</b>		
<p>A visit to the site revealed that there is a private road to the north at the lower side of the property. This road provides vehicle access to the properties to the north. The southern elevation of these dwellings is predominantly parking structures and garages with the private open space of these dwellings located on the northern side overlooking Pittwater.</p> <p>It is acknowledged that given the topography of the site, the elevated deck off the upper level is the only dedicated private open space area for the secondary dwelling. It is unlikely to result in severe privacy impacts, however, a 20m rear setback for the structure would be more acceptable.</p>		
<b>D2 Bayview Heights Locality</b>		
<b>D2.1 Character as viewed from a public place</b>		
<p>The Applicant is encouraged to address the outcomes of this Clause. As mentioned in these notes, the prominence of the building is to be minimised as to ensure the development is secondary to the natural environment. The advice in these notes to reduce the height and increase the setback to the rear boundary will assist in reducing the overall bulk and scale of the development.</p>		
<b>D2.3 Building Colours and Materials</b>		
<p>The development must provide external colours and materials which are dark and earthy tones. Given the prominent location and visibility from a public place. A detailed materials and colours schedule is to accompany any future development application.</p>		
<b>D2.6 Side and rear building line</b>		
Control	Permitted	Proposed
Rear Building Line Setback	20.0m	10.0m
Side Building Line Setback	6.5m for both sides	East – 28m



		West – 6.5m
The rear setback creates a 50% variation to the control. The applicant is required to address the concerns raised under Response to Matters Raised by the Applicant on page 2 of these notes.		
The proposed setback to the eastern and western side boundaries complies.		
D2.9 Landscaped Area – Non Urban		
Residential development in R5 Large Lot Residential zone	80% of the site area	Unable to calculate
The applicant is required to submit a detail site plan and landscape plan to indicate the area dedicated to landscaped area on the site. The applicant is strongly encouraged to provide a development which achieves the desired future character of the locality. See landscape comments below.		

Specialist Advice
<p><b><u>Landscape Comments</u></b></p> <p>The Statement of Environmental Effects shall include commentary of relevant landscape clauses of the DCP, and in this instance the following:</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D2 Bayview Heights Locality</li> </ul> <p>The land is zoned R5 Large Lot Residential and as such the objectives of the zone shall be satisfied.</p> <p><b><u>B4.22 Preservation of Trees and Bushland Vegetation</u></b></p> <p>The SoEE shall include discussion on the trees and vegetation within the site and within adjoining properties. Should all trees and vegetation be 5 metres or less in height ie. Exempt Species, no Arboricultural Impact Assessment is required, and this is to be reported in the SoEE.</p> <p>For prescribed (protected) trees under the DCP, ie. 5 metres and over, excluding Exempt Species, An <b>Arboricultural Impact Assessment</b> is required to provide clarification on which trees are to be retained, including tree protection measures, and which trees are to be removed.</p> <p>The Arboricultural Impact Assessment report shall indicate the impact of development upon the existing trees within the site, and for any existing tree on adjoining properties located 5 metres from the site (building and associated excavation or fill zones).</p> <p>The report shall be prepared by a qualified Arborist AQF Level 5 and shall cover assessment of excavation and construction impacts upon the SRZ and TPZ, tree protection requirements, and recommendations. Recommendations shall include the setback distance from each tree where no construction impact is to occur to ensure the long-term retention of the tree.</p> <p>Any development impact shall be outside of the structural root zone, and impact to the tree protection zone, for trees retained, shall be limited to satisfy AS4970-2009.</p> <p>Existing trees and vegetation within adjoining property and within the road verge is not permitted to be impacted upon. Council does not support the removal of street trees unless the street tree is proven to present an arboricultural risk.</p>



### **Specialist Advice**

No impact to existing trees and vegetation within adjoining properties is acceptable, regardless of species type.

As a general principle, the site planning layout shall be determined following arboricultural investigations and recommendations. Any proposal to remove existing trees of moderate to high retention value will not be supported by Council if an alternative design arrangement is available, as assessed by Council.

### **Landscape concerns**

A minimum landscape area of 80% is required under R5 Large Lot Residential. The design shall allow for the preservation of existing rock outcrops and the retention of significant trees, as assessed in the Arboricultural Impact Assessment.

### **Development Engineering Comments**

1. The proposed development will require OSD in accordance with Council's Water Management for Development Policy.
2. The position of the dwelling appears to be on the low side of the block and the Geotechnical report provided requires stormwater to be piped to Council's drainage system. The property has a frontage along the south eastern boundary with Ilya Ave and it is recommended that stormwater is connected to the kerb via gravity to this frontage. Where this is not possible, a drainage easement through one of the downstream properties fronting Taminga St or Ilya Ave will be required for the proposal.
3. A Geotechnical report including Forms 1 and 1A in accordance with the Council's Geotechnical Risk Management Policy is to be lodged with the DA.

### **Environmental Health Comments**

Council's Environmental Health Officer has reviewed the plans and raises no concerns, however encourages the Applicant to ensure the building is able to connect to sewer along the contour line to the sewer junction on the east of the property.

### **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.
- Certified Shadow Diagrams (depicting shadows cast at 9am, Noon and 3pm on 21 June).
- Cost of works estimate/ Quote
- Survey Plan (Boundary Identification Survey)
- Site Analysis Plan
- Demolition Plan
- Excavation and fill Plan



- Geotechnical Report
- Arboricultural Impact Assessment
- 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

#### **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 16 June 2022 to discuss the construction of secondary dwelling at 13 Ilya Avenue, Bayview. The notes reference the plans prepared by JJ Drafting dated April 2022.

The proposal is generally compliant in regard to the building height, side setbacks and car parking. The applicant is however required to amend the design to provide a more compliant setback to the rear boundary. Whilst it is noted the site is heavily constrained due to the topography and existing trees, the secondary dwelling could be located further south up the site to assist in providing a more compliant rear setback in line with the controls. This will assist in minimising visual and privacy impacts.

The floor to ceiling height of the upper level is also required to be substantially reduced in height to minimise the overall bulk and scale of the development when viewed from a public place. Further detail is required to accurately assess the proposed landscape open space for the site.

A full list of reports and comments provided by Council's referral bodies has been provided in these notes which will provide further guidance on the requirements for the site. A compliant and sensitively designed development is achievable provided the advice in these notes is undertaken.

#### **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.