

SUBJECT: N0468/17 - 3 Panima Place, NEWPORT NSW 2106 Alterations and additions to a dwelling including new swimming pool

Determination Level: **Manager - Development Assessment**

SUMMARY OF RECOMMENDATION: CONSENT WITH CONDITIONS

REPORT PREPARED BY:	Rebecca Englund
APPLICATION SUBMITTED ON:	20 October 2017
APPLICATION SUBMITTED BY:	ALYSE BROWNE AND M BERRIMAN C/- MARK HURCUM DESIGN PRACTICE PTY LTD LEVEL 2, 271 ALFRED STREET NORTH NORTH SYDNEY, NSW 2060
OWNER(S):	Mr Toby Rowley Browne Mrs Julie Anne Browne

1.0 SITE DETAILS

The site is legally referred to as Lot 6 in DP 563641, and is commonly referred to as 3 Panima Place, Newport. The site has no direct frontage to a street, with pedestrian and vehicular access gained from Panima Place via a shared access driveway and rights of carriage way across both 4 and 5 Panima Place. The site is generally trapezoidal in shape, with a maximum depth of 47.8m, an irregular frontage to the Pittwater Waterway (MHWL) and a total area of 1132m². An existing two storey dwelling is located in the southern half of the site, with a swimming pool located in the northern half of the site, in close proximity to the dwelling. The area adjacent to the site below MHWL appears to be reclaimed, providing a levelled lawn area with access to a skid ramp, jetty and pontoon. The northern portion of the site features a terraced garden, however the site is free of any significant vegetation. Residential dwellings, of varied age and character surround the site, with Beaconsfield Marina located opposite the site to the north within the Pittwater Waterway. An existing stairway/pathway is located along the north-eastern side boundary connecting the access driveway to the waterway. The pathway is burdened by a right of carriageway to the benefit of other residents of Panima Place.

2.0 PROPOSAL IN DETAIL

The application seeks consent for alterations and additions to the existing dwelling, to provide for:

- an enlarged ground floor area, comprising an open plan kitchen/living/dining area, cinema room, media room, guest bedroom/office, and outdoor entertainment area,
- an enlarged first floor area, comprising 5 bedrooms, 4 bathrooms, and two new balconies,
- an extended garage, with a new workshop area and storage,
- installation of a vehicle turntable in front of the garage,
- installation of a swimming pool, and
- landscaping.

3.0 STATUTORY AND POLICY CONSIDERATIONS

The following relevant state, regional and local policies and instruments apply:

- Environmental Planning and Assessment Act, 1979 (the Act)
- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)
- State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)
- State Environmental Planning Policy No 71 - Coastal Protection (SEPP 71)
- Draft State Environmental Planning Policy - Coastal Management
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
 - Zoning Map - E4 Environmental Living
 - Acid Sulphate Soils Map - Area 1 and Area 5
 - Additional Permitted Uses Map - Area 23
 - Biodiversity Map
 - Foreshore Building Line Map
 - Geotechnical Hazard Map - H1
 - Height of Buildings Map - 8.5m
 - Lot Size Map - 700m²
- Pittwater 21 Development Control Plan (P21 DCP)
 - Newport Locality
 - Geotechnical Risk Management Policy for Pittwater
 - Estuarine Risk Management Policy for Development in Pittwater

The site is zoned E4 Environmental Living under PLEP 2014. Pursuant to the land use table in Part 2 of this instrument, dwelling houses, and alterations there to, are permissible with consent.

Variation to development standards:

The application does not seek to vary a development standard.

4.0 BACKGROUND

The application was lodged with Council on 20 October 2017, and was subsequently referred to Council's Development Engineer, Health Officer and Natural Environment Officer for comments and/or recommendations.

5.0 NOTIFICATION

The application was notified to adjoining property owners and residents for a period of 14 days from 2 November through to 15 November 2017 in accordance with Council's Notification Policy and the Regulations. During this time, one (1) submission was received as follows:

- The property owners of 4 Panima Place, clarifying some alleged inconsistencies in the statement of environmental effects. Whilst the submission is not in objection to any aspect of the proposed development, it makes reference to minor impacts upon views from side windows. This is discussed in more detail further in the report.

6.0 ISSUES

- 7.1 Acid sulfate soils
- 7.8 Limited development on foreshore area
- A1.7 Considerations before consent is granted
- B3.7 Estuarine Hazard - Low density residential
- C1.3 View Sharing
- C1.5 Visual Privacy
- C1.23 Eaves
- D10.4 Building colours and materials
- D10.7 Front building line (excluding Newport Commercial Centre)
- D10.8 Side and rear building line (excluding Newport Commercial Centre)
- D10.11 Building envelope (excluding Newport Commercial Centre)
- D10.13 Landscaped Area - Environmentally Sensitive Land
- D15.12 Development seaward of mean high water mark

7.0 COMPLIANCE TABLE

- T - Can the proposal satisfy the technical requirements of the control?
- O - Can the proposal achieve the control outcomes?
- N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
Zone E4 Environmental Living			Y	Y	Y
4.3 Height of buildings	8.5 metres	7.6 metres	Y	Y	Y
4.6 Exceptions to development standards			-	-	-
5.5 Development within the coastal zone			Y	Y	Y
7.1 Acid sulfate soils					
7.2 Earthworks			Y	Y	Y
7.6 Biodiversity protection			Y	Y	Y
7.7 Geotechnical hazards			Y	Y	Y

Control	Standard	Proposal	T	O	N
7.8 Limited development on foreshore area		See discussion.	Y	Y	Y
7.10 Essential services			Y	Y	Y
Pittwater 21 Development Control Plan 2014					
A1.7 Considerations before consent is granted		See discussion.	Y	Y	Y
A4.10 Newport Locality			Y	Y	Y
B1.3 Heritage Conservation - General			Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B3.7 Estuarine Hazard - Low density residential		See discussion.	Y	Y	Y
B4.20 Protection of Estuarine Water Quality			Y	Y	Y
B5.4 Stormwater Harvesting			Y	Y	Y
B5.8 Stormwater Management - Water Quality - Low Density Residential			Y	Y	Y
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential			Y	Y	Y
B5.11 Stormwater Discharge into Waterways and Coastal Areas			Y	Y	Y
B5.13 Development on Waterfront Land			Y	Y	Y
B6.1 Access driveways and Works on the Public Road Reserve			Y	Y	Y
B6.2 Internal Driveways			Y	Y	Y
B6.3 Off-Street Vehicle Parking Requirements			Y	Y	Y
B6.5 Off-Street Vehicle Parking Requirements - Low Density Residential (Amended 14/11/15 See B6.3)			Y	Y	Y
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y

Control	Standard	Proposal	T	O	N
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
C1.1 Landscaping			Y	Y	Y
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing		See discussion.	Y	Y	N
C1.4 Solar Access			Y	Y	Y
C1.5 Visual Privacy		See discussion.	Y	Y	Y
C1.6 Acoustic Privacy		Conditions proposed regarding pool equipment.	Y	Y	Y
C1.7 Private Open Space			Y	Y	Y
C1.9 Adaptable Housing and Accessibility			-	-	-
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.17 Swimming Pool Safety			Y	Y	Y
C1.23 Eaves		See discussion.	N	Y	Y
C1.24 Public Road Reserve - Landscaping and Infrastructure			-	-	-
D10.1 Character as viewed from a public place			Y	Y	Y
D10.4 Building colours and materials	Dark and earthy tones.	White and light coloured render. See discussion.	N	Y	Y
D10.7 Front building line (excluding Newport Commercial Centre)		No front building line. See discussion.	-	-	-
D10.8 Side and rear building line (excluding Newport Commercial Centre)	1m to one side, 2.5m to the other. FSBL to rear.	North-east side: 3.4m South-west side: 1.0m south-east side: 0.6m See discussion.	N	Y	Y
D10.11 Building envelope (excluding Newport Commercial Centre)		See discussion.	N	Y	Y
D10.13 Landscaped Area - Environmentally Sensitive Land	60% minimum.	440m ² or 39%. 697m ² or 62% with variations. See discussion.	N	Y	Y
D10.14 Fences - General			-	-	-
D10.16 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y

Control	Standard	Proposal	T	O	N
D10.18 Scenic Protection Category One Areas			Y	Y	Y
D15.12 Development seaward of mean high water mark		See discussion.	-	-	-
State Environmental Planning Policies and other					
SEPP No 71 - Coastal Protection			Y	Y	Y
SEPP (Building Sustainability Index: BASIX) 2004			Y	Y	Y
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y

8.0 DISCUSSION OF ISSUES

• 7.1 Acid sulfate soils

Council's Health Officer provided the following comments in this regard:

Acid Sulphate Soils - An Acid Sulphate Soil report was prepared by EIS titled Preliminary Acid Sulphate Soil Assessment ref no: E30842KRlet-ASS dated 9 October 2017 to determine if actual ASS or potential ASS (PASS) will be disturbed during the proposed development works. A maximum borehole depth of 1.8m was undertaken for the investigation. This does not meet the minimum requirements outlined in the ASS Manual 1998 of 2m, however the boreholes were terminated at the bedrock just above the 2m mark. The lab tests identified marginally acidic soil pH conditions in several samples that exceeded the criteria, however, these results were considered to be attributed by the presence of other organic acids in the soil, rather than being due to sulfuric acid generated via the oxidation of ASS or PASS. This conclusion is also supported by the low Total Sulphate Acidity and the Peroxide oxidisable Sulfur results. Environmental Health is satisfied that a Acid Sulphate soil management plan is not required subject to the conditions.

• 7.8 Limited development on foreshore area

The foreshore building line dissects the subject site, approximately parallel to and at distance of 14.2m from the MHW, as shown on the Foreshore Building Line Map of PLEP 2014. The application seeks consent for works within the foreshore area, including new pedestrian access stairs, terracing, retaining walls, and landscaping. A new swimming pool and deck is also located partially within the foreshore area.

The works within the foreshore area are consistent with the permissible purposes identified by part 2(b) of this clause, being waterway access stairs, swimming pools, and works associated with and ancillary to such purposes. The works do not impact upon natural foreshore processes or affect the significance or amenity of the foreshore area, and continuous public access along and to the foreshore is maintained. As such, Council can be satisfied that the objectives of the foreshore building line are achieved, and that the matters identified by part 3 of this clause are satisfied.

• A1.7 Considerations before consent is granted

The application seeks consent for alterations and additions to the existing dwelling. However, there is a considerable portion of demolition proposed, and the resultant development will have a notably different visual appearance to that which currently exists on the site. In this respect, there is some concern as to whether the proposal is appropriately described as alterations and additions, or whether the works proposed ultimately result in a new dwelling. In *Coorey v Municipality of Hunter Hill*, the 'Demolition' planning principal was developed by the NSW LEC to assist in such circumstances. The planning principal identifies that the consideration should not be based simply on the proportion of the dwelling to be retained, but rather on a complete qualitative and quantitative analysis of the existing site conditions and the proposed development. This would include issues such as:

- *How is the appearance of the existing building to be changed when viewed from public places?*
- *To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places*
- *What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?*
- *What is the extent, if any, of any proposed change to the use of the building?*
- *To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?*
- *To what extent will there be changes in the roof form?*

The proposed development seeks to retain a reasonable proportion of the existing dwelling including the existing floor structures/slabs, the majority of existing ground floor internal and external walls, and some existing first floor external walls. The footprint of the development is generally consistent with the existing footprint, but with a new addition extending towards the north-west. Access arrangements remain the same, albeit with an improved ability to manoeuvre in a forward direction, and whilst the swimming pool is extending further seaward on the site, the treatment of the foreshore is not dissimilar to that which exists on the site.

The architectural expression of the building will be the most obvious transformation, with the removal of the existing pitched roof to be replaced with a combination of skillion roof forms and parapets. The changes to the finishes of the building will also be visually apparent, with the replacement of the current somewhat Mediterranean/Tuscan appearance with a more modern palette. The quality of the landscaping will also be changed, with a greater proportion of locally native species and the removal of the existing frangipanis.

In consideration of a qualitative and quantitative comparison between the existing and proposed development, the proposal is most appropriately described as substantial alterations and additions to the existing dwelling, resulting in a new dwelling. With this in mind, variations relating to alterations and additions are not considered to be appropriately applied.

Note: At the time of lodgement there were a number of inconsistencies between what was shown to be retained and what was proposed to be demolished, with particular concern raised in regards to the sectional detail which did not differentiate between existing and proposed works. This has subsequently been addressed in amended sectional detail, and a condition is recommended to ensure that all elements marked for retention are retained throughout construction and for the life of the development. Whilst not essential with respect to the outcome of the assessment (as the assessment does not rely upon this classification), this condition is considered to be necessary as the application was notified to adjoining property owners as alterations and additions, and as such, the community will anticipate that some of the existing structural framework will be retained.

- **B3.7 Estuarine Hazard - Low density residential**

Council's Principal Officer, Coast 7 Estuary provided the following comments in this regard:

The estuarine planning level (EPL) for the subject site is RL 2.50m AHD. As the new boatshed shown dotted on the site plan is not part of the subject DA, there appears to be no development proposed below the MHWM or the EPL and the DA therefore complies with B3.7 Estuarine Hazard Controls in P21 DCP.

When submitted however the DA for the proposed boatshed should be supported by an estuarine risk management report prepared by a suitably qualified and registered coastal engineer meeting the requirements of the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7 P21 DCP) and relevant controls in P21 DCP.

- **C1.3 View Sharing**

Whilst the submission received from the adjoining property owners to the north-east at 4 Panima Place did not specifically object to the proposal based on potential impacts upon views, the correspondence provided made reference to potential minor view loss that would occur as a result of the proposed development.

Views of the Pittwater Waterway are currently available to the occupants of 4 Panima Place in a north-easterly to north westerly direction, including a view corridor currently obtained over the existing swimming pool at the subject site, as shown in **Figure 1**, attached. 4 Panima Place is under construction, and as a result of these works, the dwelling will have additional opportunities to gain views in a north-westerly across the subject site.

At the site inspection, the adjoining property owners expressed specific concerns regarding any impact associated with the retaining walls and planter boxes surrounding the rear terrace and forward projecting swimming pool, which may impact upon a foreground water view obtained over the side boundary. Whilst the privacy that the proposed planters would provide to future occupants of the dwelling is appreciated, and even consistent with the provisions of clause C1.7 of P21 DCP, the proposed hedging within the elevated planters will unreasonably impact upon views from the adjoining property, which would be considerably reduced if the planters were replaced with a transparent pool fence.

Although the views are obtained across a side boundary, there is a reasonable expectation that views obtained across the foreshore area would be reasonably retained, and as such, the potential impact upon views is considered to out-weigh the occupants desire for privacy, particularly given the otherwise exposed nature of the site. Subject to a condition requiring the deletion of the elevated planter boxes on the north-eastern side of the swimming pool and terrace, and the incorporation of glass balustrade in this area, the impact upon views from the adjoining property is considered to be minor and reasonable.

- **C1.5 Visual Privacy**

The proposed development features a narrow balcony that runs along the frontage of 3 bedrooms on the upper floor. Whilst located within 9m of the private open space of the adjoining property to the north-east, the resultant impact is not considered to be unreasonable, noting that the primary orientation of the balcony is towards the water views to the north, and as the balcony is not associated with a primary living space. Furthermore, the impact is not dissimilar to that of the existing dwelling, noting that an existing balcony runs along the rear of the entire width of the upper floor. A new balcony is also proposed adjacent to the Master Bedroom, however this balcony is not located within 9m of areas of private open space on the neighbours property.

The conversion of the pool terrace to a levelled lawn will also result in a technical non-compliance with the provisions of the clause, as the proposed area of private open space will be overlooked by the development under construction at 4 Panima Place. However, as discussed with regard to view sharing, this outcome is preferable to any impacts upon views that would result from any privacy attenuation measures, and given the exposure of the waterfront site, this impact is considered reasonable.

- **C1.23 Eaves**

The proposed development does not comprise 450mm eaves to all elevations. However, the proposal was supported by a BASIX Certificate to demonstrate that an appropriate thermal performance is achieved and the proposal is consistent with the character of the locality. As such, the proposal is considered to achieve consistency with the outcomes of the control, despite the lack of 450mm eaves.

- **D10.4 Building colours and materials**

The schedule of finishes provided to support the application proposes the use of white and light coloured render, and a light coloured roof, inconsistent with the provisions of this clause which requires the use of dark and earthy tones. A condition of consent is recommended to require an amended schedule of finishes prior to the issuance of a construction certificate. The condition is to nominate specific colours, with a further condition requiring certification of the finished colours prior to the issuance of an occupation certificate.

- **D10.7 Front building line (excluding Newport Commercial Centre)**

The subject site does not present to a street, and as such, the 6.5m front building line is not considered to apply in relation to the site. Noting that the south-eastern boundary presents to the side boundary of 2 Panima Place, the setback is considered to be more appropriately considered against the provisions of clause D10.8 (Side and rear building line) of P21 DCP.

- **D10.8 Side and rear building line (excluding Newport Commercial Centre)**

As identified above, the site is somewhat unusual in that it does not present to a street, and as such it does not conform to the standard front, 2 sides and rear approach adopted by the provisions of P21 DCP. Upon review of the context of the site, and noting that the south-eastern boundary of the site adjoins the side boundary of 2 Panima Place, the south-eastern setback is most appropriately considered as a side boundary, resulting in non-compliance with the 1m minimum setback prescribed.

The 0.6m setback proposed, which maintains the existing setback of the garage on the site, does not attribute to any unreasonable impacts upon the neighbouring property to the south-east, and does not detract from consistency with the outcomes of the control, as follows:

- the proposed development is consistent with the desired future character of the Newport locality,
- the non-compliant setback of the garage does not attribute to excessive or unreasonable bulk and scale,
- views from adjoining properties are equitably preserved,
- the siting of the development is considered to be responsive and complimentary with respect to view sharing,
- a reasonable level of privacy, amenity and solar access is provided and maintained, particularly in the circumstances where the non-compliant element is retained from the existing garage,
- the proposal will result in an enhancement of the landscape quality of the site,
- the retention of the minor non-compliant element of the garage is considered to be a flexible response to the siting of the development, and
- vegetation is enhanced to visually reduce the built form.

Furthermore, the setback will not be perceived as being non-compliant, not only because of the existing location of the garage but due to the existing brick fence surrounding the property at 2 Panima Place, which is located approximately 2.5m from the actual boundary. As such, the perceived spatial separation between the resultant garage and the adjoining property is much greater than the 0.6m setback proposed.

In consideration of the circumstances of the site, strict compliance with the control would not achieve a better planning outcome, and as such, the retention of the existing setback is supported.

• **D10.11 Building envelope (excluding Newport Commercial Centre)**

Based upon the architectural detail provided to support the application, the proposed south-western elevation extends beyond the building envelope prescribed by this development control. Noting that the clause expressly permits eaves and shading devices to extend beyond the prescribed envelope, the breach ranges between 300mm (at the Master Bedroom robe) and approximately 2.3m slightly further back along the building (at Bedroom 4).

However, the natural ground line depicted on the plans is reflective of existing excavation that has occurred on site, being the of the lower ground level of one side of a boundary retaining wall. Adjacent to the maximum breach of 2.3m, the land on the other side of the retaining wall is shown to be 2.86m higher and as such, when measured from the higher side of the boundary retaining wall, the proposed development would be maintained within the prescribed envelope. Unfortunately, these levels of the adjacent property have not provided for the full length of the boundary, and as such, this comparison cannot be undertaken for the full extent of the south-western elevation.

Irrespective of whether the proposal is seen to be technically compliant or non-compliant with the building envelope, the design of the south-western elevation does not attribute to excessive bulk and scale, nor any unreasonable impacts upon the adjoining property and overall the development is considered to reasonably achieve consistency with the desired future character of the Newport Locality. As such, despite the breach indicated by the architectural drawings, the proposal is considered to achieve compliance with the outcomes of the building envelope control.

• **D10.13 Landscaped Area - Environmentally Sensitive Land**

The proposed development results in a landscaped area calculation of 440m² or 39% of the total site, resulting in non-compliance with the 60% minimum prescribed by this development control. However, it is noted that a considerable proportion (195m² or 17%) of the non-landscaped portion of the site is associated with pathways, which may be included within this landscaped calculation as a permitted variation to the control. Non-landscaped areas used for recreation is also nominated as a permitted variation, up to a maximum of 6% of the total area of the site.

The application of these variations is considered to be warranted in the circumstances of the subject application, as the proposed development will reasonably achieve consistency with the outcomes of the landscaped area development control, as follows:

- the desired future character of the locality is achieved,
- the bulk and scale of the proposed built form is adequately minimised, and compatible with surrounding built form,
- a reasonable level of amenity and solar access is provided and maintained to occupants of the site and adjoining properties,
- vegetation is enhanced to visually reduce the built form, particularly as seen from the Pittwater Waterway,
- natural vegetation and biodiversity is reasonably conserved and enhanced,
- stormwater is appropriately managed on the site,
- the character of the foreshore is consistent with adjoining properties, and
- subject to conditions requiring new pathways to be crushed granite and for decking to allow for water infiltration, soft surfaces will be reasonably maximised.

With these variations applied, the landscaped area calculation is increased by 263m² or 23% of the total site, resulting in an overall landscaped area calculation of 703m² or 62% of the total site, consistent with the provisions of this development control.

- **D15.12 Development seaward of mean high water mark**

The architectural drawings provided to support the application appear to propose works below MHW. However, noting the absence of owners consent from Crown Land to undertake these works, the applicant has confirmed that consent is not sought for any works below MHW. A condition is recommended in this regard.

9.0 CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan, Pittwater 21 Development Control Plan and other relevant policies as listed at item 3.0.

The proposed development will result in a considerably different development compared to that which currently exists, and as such, the works are not considered to be appropriately described as alterations and additions to the existing dwelling. However, in these circumstances, the proposal was not seen to rely upon this categorisation, and achieved consistency with the outcomes of relevant standards and controls, irrespective of whether the proposal was considered as alterations and additions or as a new dwelling. Subject to conditions of consent, the proposed development will not result in any unreasonable impacts upon surrounding properties or the natural environment, and consistency with the desired future character of the Newport Locality will be achieved. As such, the proposal is recommended for approval.

RECOMMENDATION OF DEVELOPMENT OFFICER/PLANNER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application N0468/17 for the substantial alterations and additions, resulting in a new dwelling at 3 Panima Place, Newport, subject to the conditions of consent.

Report prepared by

Rebecca Englund

Date: 11 January 2018

