



northern
beaches
council

11 September 2025



Kristen Rooney
45 Hunter Street
NEWCASTLE NSW 2300

Dear Kristen,

Development Application No: Mod2025/0277 for Modification of Development Consent REV2020/0023 granted for alterations and additions to a dwelling house including a swimming pool at 205 Riverview Road AVALON BEACH.

An assessment has been undertaken of your application. Unfortunately, the assessment has found that it is unsatisfactory in its current form for the reasons which are discussed below:

Insufficient information

The set of plans submitted with the application do not have an elevation of the proposed modification from the south (side) boundary of the site.

There is therefore insufficient information to make a proper assessment of the application and its potential impacts on adjoining properties.

Substantially The Same Development

Upon consideration of the proposed modifications against the originally approved development, and the principles established in the decision of the NSW Land and Environment Court in *Canterbury-Bankstown Council v Realize Architecture Pty Ltd* [2024] NSWLEC 31 ('Realize Architecture (2)'), it is found that the application is not "substantially the same development", which is a fundamental prerequisite for any modification made under Section 4.55 of the Environmental Planning & Assessment Act 1979 (the Act).

In quantitative terms, the proposed modification will represent: an increase in the maximum building height approved; significant increases in the wall heights of the approved development on the north and south elevations; changes in the levels of the approved lower, ground and 1st floors; and substantial changes to the layouts of these floors.

However most importantly in qualitative terms, the proposed modification represents a significant departure from the overall physical representation of approved building, from all of its elevations.

Further, these modifications represent a distinct change in the characterisation of the originally approved development, which is discussed in greater detail below. In short, it is



now considered that the development does not constitute alterations and additions to the existing dwelling (as originally approved) but rather a new dwelling.

For these reasons, the application is not consistent with the provisions of Section 4.55(2)(a) of the Act and is not supported.

Alterations and additions vs New Dwelling

The characterisation of the original consent, under the notice of determination of REV2020/0023, is “ . . . alterations and additions to a dwelling house including a swimming pool”.

Applying the NSW Land and Environment Court Planning Principle – “Demolition” (Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187) to the application, specifically those relevant qualitative and quantitative issues outlined in the principle, the application will:

- result in a complete change of the appearance of the building when viewed from the public domain;
- lose the characteristics of the form of the existing structure;
- exacerbate existing non-compliances with the side setback and building envelope development controls adjoining the northern boundary of the site (refer to discussion further in this correspondence);
- represent complete demolition of the existing lower ground and ground floor levels;
- constitute a non-compliance the Height of Buildings development standard;
- result in the existing roof form being completely altered; and
- result in substantive differentials in floor space, boundary setbacks and roofed areas, to the extent that the existing building will bear no distinct proportion from the proposed development.

Further, no information is provided on the plans as to which component of the existing walls of the dwelling will be retained or a method of construction on both: if the walls are capable of supporting the proposed works and how they will be protected and retained during constructions.

As such, the plans are reasonably interpreted to be a demolition of the existing dwelling, rather than alterations and additions to the existing dwelling.

Building Height

Based on the information provided, the proposed works will have a maximum Building Height of 10.7m.

The relevant development standard that would apply to the site under Clause 4.3 (2D) of the Pittwater Local Environmental Plan 2014 (PLEP 2014), based on the slope beneath the proposed works exceeding 30%, is 10m.

Such a variation is not consistent with the objectives of the Height of Buildings development standard, particularly the following:



to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

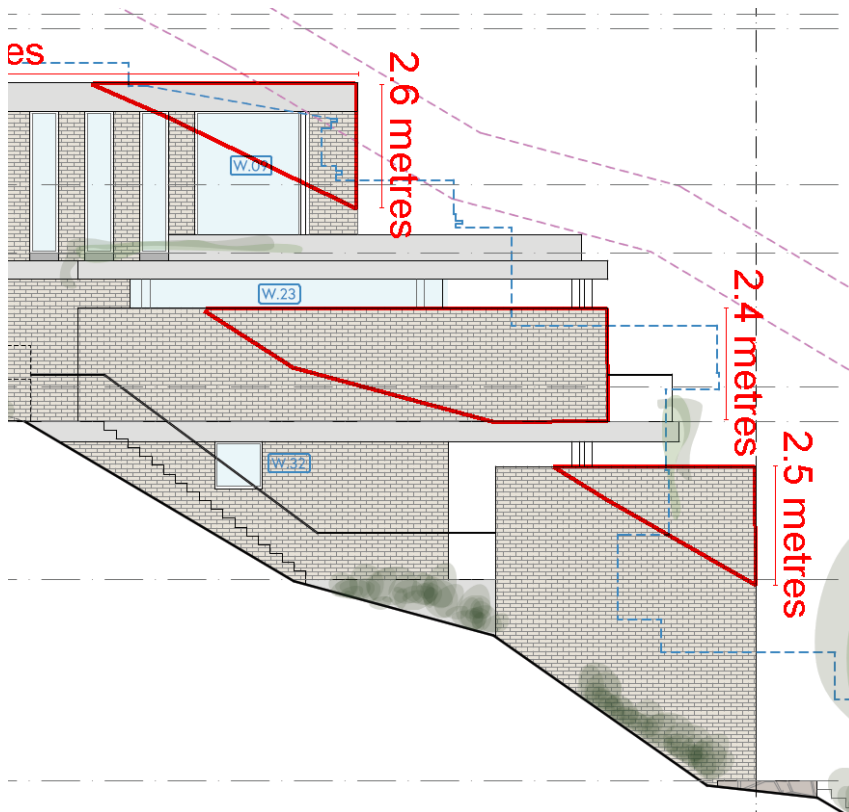
to allow for the reasonable sharing of views,

to encourage buildings that are designed to respond sensitively to the natural topography,

to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Building Envelope

The application represents significant breaches with the Building Envelope development control specified under Part D1.11 Building envelope of the Pittwater 21 Development Control Plan (P21 DCP), an estimate of which is provided below:



These breaches are significant (up to 2.6m on the horizontal axis) and are not consistent with the following objectives of the control:

To achieve the desired future character of the Locality. (S)

To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

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)

Note that as no south elevation was provided, compliance with this control cannot be verified. However, it is likely that there are significant non-compliances on this elevation which similarly cannot be supported.

Side Setbacks

Part D1.9 Side and rear building line of P21 DCP requires an alternate 1 / 2.5m setback from side boundaries. The proposed development on the pool, lower ground, ground and 1st floor levels cannot meet this control and therefore unable to meet the following objectives of the control:

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 maintained to residential properties. (En, S)

Setbacks for Incline Passenger Lifts

Part C1.19 Incline Passenger Lifts and Stairways of P21 DCP specifies a minimum setback of two (2) metres from the side boundary to the outer face of the carriage. The proposed extension to the existing incline lift adjacent the southern side boundary is setback at an estimated 0.1m.

This is a significant non-compliance with this control, which fails the objective of the control that seeks to minimise visual and acoustic disturbance to the environment and neighbours.

Given that the proposal seeks to also install an internal lift, there is no reasonable need to extend the existing facility and in turn justify the impact this will have on the adjoining dwelling at No.203 Riverview Road.

View Sharing

Given the identified non-compliances with the relevant development standards and controls identified in this correspondence, there is reasonable concern that the proposed development will result in an unacceptable loss of views from both adjoining private properties and the adjoining public domain.

In this regard, the application is not consistent with both Part C1.3 View Sharing of P21 DCP and the Planning Principles established in the NSW Land and Environment Court, in the matters of:

- *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140; and
- *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [[2013] NSWLEC 1046.



Objector's concerns

You are encouraged to review the submissions that have been lodged in relation to the application and consider any design solutions that may resolve relevant concerns.

Submissions that are available online in accordance with the Northern Beaches Community Participation Plan can be viewed on Council's website at the following link, using the application number as a reference:

<https://eservices.northernbeaches.nsw.gov.au/ePlanning/live/Public/XC.Track/SearchApplication.aspx>

Options available to the Applicant

It is the general policy of Council that applicants are given one (1) opportunity to make amendments or provide additional information to resolve any issues identified in our assessment.

However, the special circumstances of the application are such that Council is not recommending, nor inviting, amendments / additional information. These are as follows:

1. The fundamental aspects of the proposed design is not of a nature than can be favourably supported under any application made under Section 4.55(2) of the Act; and
2. The operational date of the existing consent, REV2020/0023, is in effect only until 29 September 2025 and given the impending lapse date of the consent and other procedural requirements for its determination, there is no reasonable possibility of a favourable determination being issued before this date.

We regret these outcome, however after both a complete assessment of the application and a consideration of the special circumstances and complexities of the site, Council is firmly of the opinion that the proposal can only be reasonably sought as a new development application.

This said, any new application will also need to respond and adequately address the concerns raised in this assessment.

Hence, it is advised that you withdraw this application **within 7 days of the date of this letter** by email sent to council@northernbeaches.nsw.gov.au marked to the attention of the assessment officer.

As per the requirements of section 36 of the *Environmental Planning and Assessment Regulation 2021*, you are advised that this application was accepted on 11 June 2025 and 92 days in the assessment period have now elapsed.

This letter will be released on Council's webpage as part of the application's documentation.

Should you wish to discuss any issues raised in this letter, please contact me on 1300 434 434 during business hours Monday to Friday.



Yours faithfully,



Nic England
Planner