

AUSTRALIA / JUDGMENT

Handley v Pittwater Council [2010] NSWLEC 1167

COURT

Land and Environment Court

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Source record**Land and Environment Court
of New South Wales****CITATION :** Handley v Pittwater Council [2010] NSWLEC 1167**APPLICANT****Roger Handley and Dianne Handley****PARTIES :****RESPONDENT**

Pittwater Council

FILE NUMBER(S) : 11018 of 2009**CORAM:** Brown C**KEY ISSUES: DEVELOPMENT APPLICATION :-** demolition of an existing dwelling and the construction of a new dwelling - breaches of the council requirements for building envelope, site coverage, side building lines, retaining walls, visual impact and private open space**Environmental Planning and Assessment Act 1979****LEGISLATION CITED:** Pittwater Local Environmental Plan 1993

Pittwater 21 Development Control Plan

DATES OF HEARING: 23 June 2010**DATE OF JUDGMENT:** 6 July 2010**APPLICANT**

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SOLICITORS

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LEGAL REPRESENTATIVES: RESPONDENT

Mr N Eastman, barrister

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JUDGMENT:**THE LAND AND****ENVIRONMENT COURT****OF NEW SOUTH WALES**

Brown C

6 July 2010

11018 of 2009 Roger Handley and Dianne Handley v Pittwater Council

JUDGMENT

1 COMMISSIONER: This is an appeal against the refusal by Pittwater Council (the council) of Development Application No. N037/09 for the demolition of an existing dwelling and the construction of a new dwelling at 413 Whale Beach Road, Whale Beach (the site).

2 The contentions raised by the council relate to breaches of the council requirements for building envelope, site coverage, side building lines, retaining walls, visual impact and private open space. Early contentions relating to building height, view loss, building colours and materials, eaves, visual privacy and solar access were not pressed by the council following the submission of amended plans or conditions acceptable to the applicant.

3 I have found that the breaches of the council requirements are not individually, or collectively sufficient to warrant the refusal of the development application.

The site

4 The site is Lot 286 in DP 16362. The site is generally rectangular in shape with a street frontage of 15.68 m, a northern side boundary of 47.29 m, a southern side boundary of 53.425 m and an area of 810 sq m. The rear boundary has a frontage to the Pacific Ocean.

5 The site is occupied by a multi-level dwelling that steps down the steeply sloping site. There is a separate garage near street level and an accessible structure containing a bedroom at the lowest level.

6 The area is dominantly residential in character with the property to the north being undeveloped and the property to the south developed with a single dwelling house. The eastern side of Whale Beach Road, in the vicinity of the site, slopes steeply from the road and has expansive views of the ocean and some locations towards Palm Beach and Barrenjoey Headland.

Relevant planning requirements

7 The site is zoned Residential 2(a) under Pittwater Local Environmental Plan 1993 and the proposed development is permissible with consent in this zone. State Environmental Planning Policy No. 71-Coastal Protection applies although the council raised no contentions in relation to these plans.

8 Pittwater 21 Development Control Plan (the DCP) applies and contains provisions for the erection of a dwelling house. The relevant sections are Section D12.8 - Building Envelope, Section D 12.10 - Site Coverage - Environmentally Sensitive Land, Section D12.6 - Side and Rear Building Lines, Section D12.13 - Construction, Retaining walls, Terracing and undercroft areas, Section D12.14 - Scenic Protection Category One Areas and Section C1.7 - Private Open Space.

9 Section A4.12 addresses the Palm Beach Locality. The site is within this designated area of the DCP. Many of the DCP requirements refer to the desired future character of this area and the principle elements from the description in Section A4.12 are:

- low density with a maximum two storeys in a landscaped setting,
- integration with the landform and landscape,
- development below the tree canopy,
- bulk and scale to be minimised,
- future development should respect the horizontal massing of existing building forms,
- development on slopes will be stepped down the slope and be integrated with the landform and landscape, and
- site disturbance will be minimised.

10 Section A1.10 provides the structure of the DCP. Relevantly, the DCP provides Outcomes which are a list of the outcomes that the development control is seeking to achieve, Controls which are generally numerical requirements that a proposed use/development should satisfy to achieve the outcomes of the development control and Variations which outline the circumstances in which consideration can be given to the variation to a control.

The evidence

11 Expert town planning evidence was provided by Mr Greg Boston for the applicant and Ms Joanne Marshall for the council. Mr William Zuccon, the project architect provided a design statement.

Building Envelope

Control

12 Section D12.8 provides for development to be sited within an envelope projected at 45° from a height of 3.5 m from the side boundaries.

13 The outcomes in Section D12.8 are:

- * To achieve the desired future character of the Locality. (S)
- * To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.
- * 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)

* To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties. (En, S)

* Vegetation is retained and enhanced to visually reduce the built form. (En)

The evidence

14 Ms Marshall states that the non-compliance is unacceptable. Compliance is appropriate given that the form of development on the adjoining vacant land is unknown at this stage. Any screening provided by the trees on the adjoining vacant land does not form part of the application and should not be considered. Ms Marshall further states that the concessions available in the DCP for eaves or shading devices do not apply in this case because of the substantial structure of the loggia and also the other non-compliances with the requirements in the DCP.

15 Mr Boston states that the DCP provides for variations to the building envelope, on a merit basis, where the building footprint is situated on a slope over 30%. On this basis, Mr Boston concludes that a variation is appropriate for a number of reasons including the extent of the breach which he states:

- is minor and exacerbated by the site topography,
- is limited to shading and balustrade elements with all wall elements fully compliant,
- will not contribute, to any discernible or appreciable extent to the bulk and scale of the building when viewed from any adjoining residential property or the public domain,
- satisfies the relevant outcomes in Section D12.8, and
- will not result in the loss of any deep soil planning opportunities.

Findings

16 The extent of the non-compliance with the building envelope was shown on a diagram attached to the joint statement of Mr Boston, Ms Marshall and Mr Zuccon. While there are non-compliances on different levels of the dwelling, Ms Marshall states that the only area of concern is on Level 1. In this location, part of the loggia floor and roof and balustrade are outside the building envelope.

17 The outcomes considered relevant by Ms Marshall and Mr Boston related to minimising bulk and scale, preservation of views, privacy, amenity, solar access and vegetation retention. Variations to the control are available where the slope is over 30% and where the non-compliance relates to eaves or shading devices. There was agreement between Ms Marshall and Mr Boston that the site is over 30% so the opportunity for variation is available.

18 I agree with Ms Marshall that the loggia area could not reasonably be defined as eaves or shading devices however I agree with the overall conclusions of Mr Boston. The area of non-compliance is relatively small and involves only a part of the loggia structure. The loggia is open on its two sides although with a roof and could not reasonably be seen to have the same bulk and scale as the dwelling proper. I am satisfied that the non-compliance has no meaningful impact on the bulk and scale of the dwelling. I am also satisfied that the non-compliance with the control raises no issues in relation to views, privacy, amenity, solar access and vegetation retention.

19 For the same reasons, I do accept that the non-compliance could be read as being inconsistent with the future desired character of locality. The proposed dwelling appropriately steps down the site, minimises site disturbance and is integrated as well as possible with the landform and landscape given the steep topography of the site.

20 While there is a non-compliance with the control, I satisfied that the outcomes for the control are achieved by the proposed development. Consequently, the non-compliance with the building envelope control would not be a reason to refuse the development application.

Site Coverage

Controls

21 Section D12.10 provides for a maximum site coverage of 40%. If the outcomes of the control are achieved, a variation to this control is available for impervious areas less than 1 m in width (i) and up to 6% of the total site area for "impervious landscape treatments providing these areas are for outdoor recreational purposes only (e.g. roofed or unroofed pergolas, paved recreation areas, patios, pathways and uncovered decks no higher than 1 m above natural ground level)" (ii).

22 The outcomes in Section D12.10 are

- * Achieve the desired future character of the Locality. (S)
- * The bulk and scale of the built form is minimised. (En, S)
- * A reasonable level of amenity and solar access is provided and maintained. (En, S)
- * Vegetation is retained and enhanced to visually reduce the built form. (En)
- * Conservation of natural vegetation and biodiversity. (En)
- * Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)
- * To preserve and enhance the rural and bushland character of the area. (En, S)
- * Soft surface is maximised to provide for infiltration of water to the water table, minimise runoff and assist with stormwater management. (En, S)

The evidence

23 Ms Marshall states that the proposed dwelling is excessive in bulk and scale as the built structures have a site coverage of 40.66%, this exceeding the permitted site cover of 40%. Ms Marshall calculates the total site coverage at 46.14%. This exceeds the control of both the maximum 40% with a 6% variation permitted under the control.

24 Mr Boston agrees with Ms Marshall that the built structure has a site coverage of 40.66% however Mr Boston calculates the total site coverage (including impervious landscape treatment areas) at 44.04%. In his opinion, if tested against the outcomes of the control, the variation even on Ms Marshall's calculations can be justified.

Findings

25 The extent of the site coverage relied on by Mr Boston and Ms Marshall was shown on a plans attached to the joint statement of Mr Boston, Ms Marshall and Mr Zuccon.

26 Mr Boston addresses each of the outcomes to reach his conclusion that a variation can be supported. I do not propose to repeat his written evidence beyond stating that I accept his conclusions and that a variation can be justified. Importantly, the variation is extremely small and in my opinion, the concerns expressed by Ms Marshall are overstated. If the 40% site coverage requirement is used to measure building bulk then a non-compliance of 0.66% (or 4.9 sq m) would not be discernible when looking at the dwelling from any location. A 46% site coverage is clearly contemplated for the proposal by Section D12.10; being a single dwelling on residential zoned land. The difference in the calculations of Ms Marshall and Mr Boston centred on a relatively small paved area land located near the entry and car turntable. Ms Marshall includes this area in her calculations whereas Mr Boston excludes the area on the basis that it can be used for "outdoor recreational purposes". Even if Ms Marshall's approach is adopted (and I do not necessarily accept this), the difference in impact to a complying development (that is, 46% site coverage or 1.1 sq m) is miniscule and would have no measurable or visual impact on any of the matters identified in the outcomes to this section.

27 Even if the site coverage was 46.14%, I am satisfied that the outcomes for the control are achieved by the proposed development. Consequently, the non-compliance with the site coverage control would not be a reason to refuse the development application.

Side Building Lines

Control

28 Section D12.5 provides setbacks for the side and rear building lines. The side building line requires "2.5 to at least one side; 1.0 for other side". There were no issues with the front or rear building line.

29 The outcomes in Section D12.5 are:

- * 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)
- * 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)
- * To ensure a landscaped buffer between commercial and residential zones is established.

The evidence

30 Ms Marshall acknowledges that there are a number of non-compliances with the side building line however she raises issue only with the 1 m setback of Level 1 on the southern elevation and the 1 m setback to the loggia on Level 3. Her concerns relate to the inability to properly landscape these areas. Ms Marshall maintains that Section D12.5 requires that each side setback should be consistent, that is either 2.5 m or 1 m and not a combination of both. A consistent 2.5 m setback to one boundary would allow for the provision of landscaping (especially canopy trees) to be provided between buildings. This allows the built form to nestle below the established tree canopy levels, and not allow the built structures to dominate the landscape especially when viewed from a distance. Ms Marshall also questions whether there is sufficient deep soil to guarantee the longevity of the landscaping.

31 Mr Boston notes that one outcome identified in Section D12.5 provides for flexibility in the siting of buildings and access. This allows the setting of setbacks that are responsive to site constraints and opportunities, the juxtaposition of adjoining development, natural site features and built form context. In his opinion, the setbacks address these matters in an appropriate manner. The 1 m setback to the southern boundary is responsive to the view lines available over the roof of this lower element from the adjoining property at 411 Whale Beach Road. Further details have been provided that indicates sufficient soil depth is available for the proposed landscaping. A 2.5 m setback is provided for the rest of the southern boundary where it adjoins the adjoining dwelling. In relation to the 1 m setback of the loggia, Mr Boston states that this is consistent with Section D12.5 in that a 2.5 m setback is provided on the opposite boundary.

32 Mr Boston further states that sufficient area is available for canopy trees and in his understanding; the council requires a minimum of three canopy trees to be provided (Section C1.1). The landscaping plan indicates that these trees have been provided and does not include the additional planting provided on the road reserve.

Findings

33 If the variations to the site setbacks identified by Ms Marshall tested against these outcomes, I agree with conclusions of Mr Boston. There is some considerable merit in the approach adopted by Mr Boston of providing setbacks that are appropriate to the particular circumstances of the setback. It is an overly simplistic approach to require a specific setback for the whole side boundary without considering the consequences of the setback on the natural topography and any adjoining development. I accept Mr Boston's evidence that sufficient area is still available for the provision of canopy trees and that sufficient soil depth is available for the provision of landscaping on Level 1 adjoining the southern boundary. Clearly, it is not necessary for every part of every setback to make provision for canopy trees given the requirements in Section C1.1.

34 Given an outcome that contemplates "flexibility in the siting of buildings", I am satisfied that the outcomes for the control are achieved by the proposed side setbacks. Consequently, the non-compliance with the site coverage control (even if the approach of a consistent setback to each side boundary is adopted) would not be a reason to refuse the development application.

Retaining walls, Terracing and undercroft areas

Controls

35 Section D12.13 provides controls that state:

- * Lightweight instruction and pier and beam footings should be used in environmentally sensitive areas
- * Where retaining walls and terracing visible from a public place, preference is given to the use of the sandstone or sandstone like materials
- * In the provision of outdoor entertaining areas, preference is given to tender its rather than cut/fill, retaining walls and/or terracing.

36 The outcomes in Section D12.13 are:

- * To achieve the desired future character of the Locality.
- * To protect and minimise disturbance to natural landforms.
- * To encourage building designed to respond sensitively to natural topography.

The evidence

37 The area of dispute relates to the lower area of open space where a new curved retaining wall is to be constructed to retain fill for the open space area. The retaining wall is to be sandstone faced and have a height near the southern boundary of 0.11 m and a height of 1.2 m near the northern boundary with a maximum height of 2.35 m near the centre of the site.

38 Ms Marshall states that decking is preferable to retaining walls. The control seeks to retain as much of the natural topography and landform as possible and terracing and retaining walls permanently affect slopes which can have detrimental effects on natural water flow over the site, retention of natural vegetation and stability of terraced areas.

39 Mr Boston states the construction of the retaining wall is generally in the location of existing retaining wall. The maximum height of 2.35 m, from the survey plan, appears to be an anomalous measurement given other nearby measurements. In his opinion, the maximum height is more in the order of 1.98 m. The finished height of the retaining wall is substantially lower than the existing elevated deck located on the site and as such will have a significantly less visual impact than currently exists. The retaining wall will not be visible when viewed from any location other than the ocean. In his opinion, the sandstone facing on the retaining wall will be consistent with other properties in the Palm Beach locality and will not appear as inappropriate.

Findings

40 Section D12.13 does contemplate retaining walls provided that they are instructed or sandstone or sandstone like material. I would agree with Ms Marshall that in many circumstances, decking is more preferable to fill and a retaining wall however in this case the use of a retaining wall has few disadvantages. The wall is not overly large, is appropriately faced in sandstone material and is only visible from the ocean at a considerable distance from the site. The wall will be largely unnoticeable as an individual element in the range of different building forms, finishes and colours in the general area. While the retaining wall will change the natural topography of the site, it is not such a significant change that it would warrant the replacement of the retaining wall with a deck.

41 It would be appropriate, in my view, to provide additional landscaping in front of the proposed wall to provide additional screening as well as increase the landscaped character of the site between the retaining wall land and the boundary of the site. The landscaping plan should also provide for the replacement of any plant located within this area that may be damaged during the construction of the dwelling and retaining wall. This can be achieved through an amendment to the landscaping condition (see condition C5).

42 I am satisfied that the outcomes for the control are achieved by the proposed retaining wall and consequently, would not be a reason to refuse the development application.

Scenic Protection

Controls

43 Section D12.14 provides a control that requires development to minimise the impact on existing significant vegetation as well as requirements for screen planting, canopy trees, maintaining the visual integrity of the site and the use of unobtrusive and nine reflective materials and colours.

44 The outcomes in Section D12.14 are:

- * To achieve the desired future character of the Locality.
- * To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront.(En,S).
- * Maintenance and enhancement of the tree canopy.(En,S)
- * Colours and materials recede into a well vegetated natural environment.(En,S)
- * To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component (En, S)
- * To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.
- * To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.
- * To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.
- * Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

45 A variation to the provision of screen planting can be considered where the outcomes of the control achieve

The evidence

46 Ms Marshall states that the proposed development will protrude forward, rather than step down the slope of the hillside. It will contain vertical elements and not horizontal massing, which is a requirement of the desired future character of the locality. As an example, Ms Marshall states that the dwelling does not provide a full length balcony across the front of the building, which is characteristic of the locality. Once the building protrudes forward, and the adjoining trees are removed, the site will be clearly visible from the ocean, the properties to the north, and adjoining properties.

47 Mr Boston states that the proposed dwelling sits comfortably the low the 8.5 m height control and presents a bulk and scale, which is entirely consistent with the established development in the visual catchment. Amendments have been made to reduce the vertical elements within the building such that a balance of both horizontal and vertical massing will be evident.

Findings

48 The site is relatively isolated from locations where it can be viewed by the general public. The most obvious location is from the ocean however because of the steep nature of the site and a cliff near the waterfront, any reasonable view of the site would be from a considerable distance. The site was viewed from a location at Palm Beach, a distance of some 1000 m from the site. While parts of the existing dwelling could be recognised, those parts would be largely unnoticeable amongst the more prominent building forms in the general area.

49 While Ms Marshall was of the view that the dwelling would become more prominent if the trees that currently screen the existing dwelling from Palm Beach are removed; I agree with Mr Boston that the removal of the trees would most likely occur when a dwelling houses is approved on the adjoining property. A new dwelling is likely to perform the same screening of the proposed dwelling as the existing trees when viewed from the Palm Beach area.

50 Ms Marshall's concerns over the absence of horizontal massing of the proposed development are, in my view, without substance. Mr Zuccon provided a detailed response by highlighting the many horizontal elements that make up the building. Mr Boston also explained the ongoing design changes that were made to protect the view lines from the adjoining property and that the inclusion of features such as a full width balcony would likely create further view loss issues.

51 I am satisfied that the outcomes for the control are achieved by the proposed design and consequently there is no reason to refuse the development application on scenic protection grounds.

Private open space

Controls

52 Section C1.7 provides that a minimum of 80 sq m of private open space per dwelling is to be provided at ground level with no dimension less than 3 m. The controls also provide that "dwellings are to be designed so the private open space is directly accessible from living areas enabling it to function as an extension of internal living areas".

53 Section C1.7 provides the following outcomes:

- * Dwellings are provided with a private, usable and well-located area of private open space for the use and enjoyment of the occupants. (S)

- * Private open space is integrated with, and directly accessible from, the living areas of dwellings. (S)

* Private open space receives sufficient solar access and privacy. (En, S)

The evidence

54 There was agreement between Ms Marshall and Mr Boston that the 80 sq m of private open space was provided however Ms Marshall states that only the private open space of the loggia (39 sq m) should be designated private open space as the lawn area on Level 1 (54 sq m) is located off Bedroom 3 and ancillary rooms and not off the living spaces which are located on Level 3 of the dwelling.

55 This assessment of the private open space is rejected by Mr Boston who states that there is internal stair access to the lawn area on Level 1 that does not require access through Bedroom 3. Mr Boston argues that such an arrangement must be reasonably anticipated for development on steeply sloping sites. He notes that all areas of private open space maintain a minimum 3 m dimension consistent with the requirements of this section

Findings

56 I agree with conclusions of Mr Boston on this matter. The quantum of open space required by Section C1.7 is achieved and while it is located in two areas, I accept that the areas will still provide private, usable and well-located areas of private open space for the use and enjoyment of the occupants. Optimally, private open space should be directly accessible from living areas however I am satisfied that the lawn area on Level 1 is sufficiently accessible that it will be used for its designated purpose by the future occupants of the dwelling, particularly given the steep topography of the site.

57 I am satisfied that the outcomes for the control are achieved by the proposed areas of private open space and consequently there is no reason to refuse the development application on the basis of inadequate private open space.

Conditions

58 The following conditions were in dispute between the parties and have not been addressed earlier in the judgement:

Condition B28 - the council's condition requires all terracing and retaining walls to use sandstone or sandstone like materials. While the applicant accepts that the curved eastern most retaining wall should be constructed of sandstone or sandstone like materials, the condition infers that the proposed walkway within the road reserve should also be constructed of similar material. This is opposed by the applicant. On this condition, I agree with the applicant that the additional requirement is unnecessary and unreasonable.

Condition C5 - the council's condition requires the provision of an amended landscape plan to address screening on the southern boundary, the removing of the existing Cocos palms and the provision of additional native trees. The applicant proposes an amended condition that does not require an amended plan but agrees to the removal of the existing Cocos palms.

59 While I accept that the proposed landscaping plan is generally acceptable, I accept that an amended landscaping plan should be provided that indicates the removal of the existing Cocos palms and replacement with an appropriate species, the provision of additional landscaping in front of the proposed retaining wall and a requirement that any existing natural vegetation damaged during the construction of the dwelling should be replaced with appropriate species.

Orders

60 The Orders of the Court are:

1. The appeal is upheld.
2. Development Application No. N037/09 for the demolition of an existing dwelling and the construction of a new dwelling at 413 Whale Beach Road, Whale Beach is approved subject to the conditions in Annexure A.
3. The exhibits are returned with the exception of exhibits 1,5 and A.

G T Brown

Commissioner of the Court

Annexure 'A'

Conditions of Consent

Roger and Dianne Handley v Pittwater Council

This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

Note: Persons having the benefit of development consent may appoint either a council or an accredited certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.

A. Prescribed Conditions:

1. The development being carried out in accordance with:

Drawings No. DA01/B, DA02/B, DA03/B, DA04/B, & DA05/B, dated 7 April 2010, prepared by Dods & Zuccon Architects Pty Ltd;

Landscape Plan and Section Drawings prepared by Peter Fudge Garden Design dated 8 June 2010;

Stormwater Drainage Concept Plans No. SW100/B, SW101/B, SW102/B, SW103/B, & SW104/B dated 7/08/09 prepared by S&G Consultants Pty Ltd;

Geotechnical Report No. 23228Zrpt dated 6 August 2009 prepared by Jeffery and Katauskas Pty Ltd; &

BASIX Certificate No. 301765S dated 15 March 2010.

as amended in red (shown clouded) or as modified by any conditions of this consent.

2. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
3. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, there is to be such a contract in force.
4. Critical stage inspections are to be carried out in accordance with clause 162A of the Environmental Planning & Assessment Regulation 2000 . To allow a Principal Certifying Authority or another certifying authority time to carry out critical stage inspections required by the Principal Certifying Authority, the principal contractor for the building site or the owner-builder must notify the Principal Certifying Authority at least 48 hours before building work is commenced and prior to further work being undertaken.
5. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - a. showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c. stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

6. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - a. in the case of work for which a principal contractor is required to be appointed:

- i. The name and licence number of the principal contractor, and
 - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
 - b. in the case of work to be done by an owner-builder:
 - i. The name of the owner-builder, and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
 7. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
 8. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.
- B. Matters to be incorporated into the development and maintained over the life of the development:
1. The recommendation of the risk assessment required to manage the hazards as identified in Geotechnical Report prepared by Jeffrey and Katauskas are to be incorporated into the construction plans.
 2. The Stormwater Harvesting and Reuse Scheme shall be installed and operated in accordance with the accepted design, Environmental and Health Risk Management Plan, Operation and Maintenance Plan, Manufacturer's Specifications and associated operational guidelines.
 3. As part of the integrated stormwater management plan, suitably positioned stormwater quality improvement devices shall be installed and operated in accordance with Manufacturer's Specifications and associated operational guidelines.
 4. As part of an integrated on-site stormwater management system, stormwater overflow from the rainwater tank is to be discharged into the adjacent coastal area with erosion minimisation facilities installed.
 5. The finish on the driveway/entry courtyard is:
 - a. to be a stable surface for all weather conditions
 - b. to be constructed of materials that blend with the environment and are of dark or earthy tones or natural materials.

6. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Metropolitan Local Aboriginal Land Council (MLALC) and Department of Environment & Climate Change (DECC) are to be notified.
7. For the life of the development, domestic pet animals are to be kept from entering wildlife habitat areas at all times. Dogs and cats are to be kept in an enclosed area or on a leash such that they cannot enter areas of bushland, unrestrained, on the site or on surrounding properties or reserves. Ferrets and rabbits are to be kept in a locked hutch/run at all times.
8. Any vegetation planted outside approved landscape zones is to be consistent with:
 - a. Species listed in the Ecological Sustainability Plan or Bushland Management Plan
 - b. Species listed from the Endangered Ecological Community
 - c. Locally native species growing onsite and/or selected from the list pertaining to the vegetation community growing in the locality as per the vegetation mapping and Native Plants for Your Garden link available from Council's website www.pittwater.nsw.gov.au
9. Over the life of the development all declared noxious weeds are to be removed/controlled in accordance with the Noxious Weeds Act 1993, within the footprint of the development. Environmental weeds are to be removed and controlled. Refer to Pittwater Council website (www.pittwater.nsw.gov.au) for noxious/environmental weed lists.
10. No environmental weeds are to be planted on the site. Refer to Pittwater Council website (www.pittwater.nsw.gov.au) for environmental weed lists.
11. Any new fencing is to be made passable to native wildlife. As a guideline, hole dimensions should be 150mm wide X 100mm long at ground level spaced at 6 metre intervals.
12. Screen planting is to be provided, which after three years will, in conjunction with the canopy planting, screen 50% of the built form when viewed from the street. Species selection is to incorporate locally native species. This screen planting is to be retained over the life of the development and replaced if any part of it should die or be destroyed or removed.
13. In accordance with Pittwater Councils Tree Preservation Order, all existing trees as indicated in the Survey Plan and/or approved Landscape Plan shall be retained except where Council's prior written consent has been obtained, as trees stand within the envelope of approved development areas. For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.
14. The eastward projection of the proposed bay window on Level 3 off the dining/living room shall be reduced by 250mm to the east, so the projection is not more than 1.5 metres from the external wall alignment of W18..

15. Windows W19 & W20 shall be fixed and provided with opaque glazing for that part of the window located at 1.6m above finished floor level and below.
16. The solid fuel or wood burning appliances shall comply with Australian Standard AS 4013-1992 or any subsequent amending standard.
17. Noise from the operation of any plant or equipment at the premises shall comply with the noise provisions of the Protection of the Environment Operations Act, 1997.
18. No emissions causing air pollution shall be created by the operation of any plant equipment or any procedure carried out at the premise.
19. That the dwelling house is to be used for single occupancy only, and a second set of cooking facilities are not to be provided within the house, especially on level 1.
20. Street trees are to be planted at 6m intervals along the road reserve frontage with preference given to the use of local endemic native species according to the list of local native species in Pittwater. (http://www.pittwater.nsw.gov.au/environment/plants_and_animals/nativeplants/species_lists). All plantings are to be 35 litre in size with 1m x1m hole and backfilled with planting medium. An amended landscaping plan shall be submitted for Council's approval prior to Construction Certificate stage.
21. Where provided, plant and equipment boxes, air conditioning units and lift over-runs are to be integrated internally into the design fabric of the built form of the building, and associated structures.
22. All plumbing and drainage fixtures are to be concealed and not exposed to public view on buildings over one storey in height.
23. All external glazing is to have a maximum reflectivity index of 25%.
24. New electrical connections are to be carried out using underground cabling.
25. Roofs to all structures are to be of dark grey, brown and/or green tones only. White and light coloured walls are not permitted.
26. The maximum height of a building or structure shall be 8.5 metres measured from any point on the structure, to natural ground level immediately below that point. This shall apply to all structures except the northern most chimney stack, which may reach a height of 9.9m.
27. The curved eastern most retaining wall and wall capping to the Whale Beach Road entry steps retaining wall are to use sandstone or sandstone-like materials to blend with the natural environment. The commitments identified in the BASIX Certificate and on the plans or specifications are to be fulfilled and maintained for the life of the development.

C. Matters to be satisfied prior to the issue of the Construction Certificate:

Note: All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

1. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Principal Certifying Authority.
2. Drainage plans including specifications and details showing the site stormwater management are to be submitted to the Accredited Certifier with the Construction Certificate application. Such details are to be accompanied by a certificate from (as appropriate) either a Licensed plumber or qualified practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field, that the stormwater management system complies with the requirements of section 3.1.2 Drainage of the Building Code of Australia Housing Provision and AS/NZS 3500.3.2 - Stormwater Drainage. The details shall include disposal of site stormwater (if the site is in a known slip area the stormwater disposal system must comply with the recommendations of a Geotechnical Engineers Report).

Note: Where Council is the Principal Certifying Authority 3 sets of plans/specifications are to be submitted.

3. A Dilapidation Report is required on the adjoining property to the south, No. 411 Whale Beach Road. The report is to be prepared by a qualified Geotechnical Engineer. A copy of the report is to be provided to the owners of 411 Whale Beach Road.
4. Civil engineering details of the proposed excavation/landfill are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who has corporate membership of the Institution of Engineers Australia (M.I.E) or who is eligible to become a corporate member and has appropriate experience and competence in the related field.
5. An amended landscape plan shall be submitted prior to Construction Certificate that provides for the existing Cocos Palms (*Syagus Romanzoffiana*) to be removed and replaced with appropriate species, additional landscaping in front of the proposed retaining wall to screen this structure and a notation that any existing natural vegetation damaged during construction of the proposed dwelling is to be replaced with appropriate species. .
6. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of Australia and satisfy all conditions shown in Part B above are to be submitted to the Principal Certifying Authority.
7. The Accredited Certifier or Council must be provided with a copy of plans that a Quick Check agent/Sydney Water has stamped before the issue of any Construction Certificate.

8. Any proposed demolition works shall be carried out in accordance with the requirements of AS2601-1991 The Demolition of Structures .

Amongst others, precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:

1. Protection of site workers and the general public.
2. Erection of hoardings where appropriate.
3. Asbestos handling and disposal where applicable.
4. Any disused service connections shall be capped off.

Council is to be given 48 hours written notice of the destination/s of any excavation or demolition material. The disposal of refuse is to be to an approved waste disposal depot.

9. The finished surface materials, including colours and texture of any building, shall blend with the surrounding and/or natural materials and shall be non-glare. A satisfactory specification which achieves this shall be submitted to the Accredited Certifier or Council with the Construction Certificate application in the form of a Schedule of Finishes.
10. Plans and details demonstrating that the commitments identified in the BASIX Certificate that apply to the construction certificate or complying development plans and specifications are fulfilled.

D. Matters to be satisfied prior to the commencement of works and maintained during the works:

Note: It is an offence to commence works prior to issue of a Construction Certificate.

1. All excavated material other than what is used on-site is to be removed from the site. No fill is to be placed eastward of the lowest retaining wall.
2. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
3. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
4. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.
5. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.

6. Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.
7. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.
8. No works are to be carried out in Council's Road Reserve without the written approval of the Council, pursuant to an application to be made per section 138 of the Roads Act 1993.
9. A Road Opening Permit, issued by Council, must be obtained for any road openings, or excavation within Council's Road Reserve associated with the development on the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
10. No skip bins or materials are to be stored on Council's Road Reserve, at the level of the road.
11. A site fence and silt and sediment control fence is to be erected and maintained during the course of works along any street boundary and park/reserve boundary to the site.
12. Access to the site through an adjoining park/reserve is prohibited without the written approval of the Council.
13. A clearly legible Site Management Sign is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
 - The builder's name, builder's telephone contact number both during work hours and after hours.
 - That no works are to be carried out in Council's Road Reserve without the written approval of the Council.
 - That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
 - That no skip bins or materials are to be stored on Council's Road Reserve.
 - That the contact number for Pittwater Council for permits is 9970 1111.
14. A satisfactory construction traffic management plan (CTMP) prepared by a suitably qualified traffic consultant is required to be submitted to the Private Certifying Authority prior to the commencement of any site works. The plan is to detail:

- Quantity of material to be transported
 - Proposed truck movements per day
 - Proposed hours of operation
 - Proposed traffic routes, noting that 3 tonne load limits apply to some roads within Pittwater
15. During site excavation, topsoil which is to be used in later landscape works is to be stockpiled on site and stabilised during construction works. Stockpiles are to be stored outside of hazard areas and not located within the dripline of existing trees which are to be retained.
 16. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
 17. Toilet facilities are to be provided in a location which will not detrimentally affect the amenity of any adjoining residents at or in the vicinity of the work site during the duration of the development.
 18. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must give the owner of the adjoining property at least seven (7) days written notice of their intention to excavate below the level of the base of the footing and furnish the adjoining property owner with particulars of the proposed work.
 19. Demolition works must be carried out in compliance with WorkCovers Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 1991 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400mm x 300mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

E. Matters to be satisfied prior to the issue of Occupation Certificate:

Note: Prior to the issue of an Occupation Certificate the principal certifying authority is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the issue of an Occupation Certificate or suitable arrangements put in place to effect those repairs at a future date to Council's written

satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to effect such works.

Note: It is an offence to occupy the building or part thereof to which this consent relates prior to the issue of an Occupation Certificate.

1. Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Principal Certifying Authority.
2. Certification is to be provided to the Principal Certifying Authority by a qualified experienced practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E.), or who is eligible to become a corporate member and has appropriate experience and competence in the related field, that the drainage/stormwater management system has been installed to the manufacturer's specification (where applicable) and completed in accordance with the engineering plans and specifications required under this consent.
3. Prior to issue of an Occupation Certificate photographic evidence of the condition of the street trees and road reserve and area adjoining the site after the completion of all construction, must be submitted to the Principal Certifying Authority showing that no damage has been done and if damage has been done that it has been fully remediated. The photographs shall be accompanied by a statement that no damage has been done (or where damage has been remediated that Council has approved that work). In this regard Council's written agreement that all restorations have been completed satisfactorily must be obtained prior to the issue of any Occupation Certificate.
4. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Occupation Certificate application.
5. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
6. All existing and /or proposed dwellings/sole occupancy units are to have approved hard-wired smoke alarms installed and maintained over the life of the development. All hard-wired smoke alarms are to be Australian Standard compliant and must be installed and certified by any appropriately qualified electrician prior to the issue of any Occupation Certificate.
7. Street numbers are to be affixed to the building prior to occupation.

8. Certification is to be provided that the commitments identified in the BASIX Certificate have been fulfilled.

F. Matters to be satisfied prior to the issue of Subdivision Certificate:

G. Advice:

1. In accordance with Section 95(1) of the Act, this consent will lapse if the development, the subject of this consent, is not physically commenced within 5 years after the date from which this consent operates.
2. Failure to comply with the relevant provisions of the Environmental Planning and Assessment Act, 1979 (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
3. The applicant is also advised to contact the various supply and utility authorities, i.e. Sydney Water, Sydney Electricity, Telstra etc. to enquire whether there are any underground utility services within the proposed excavation area.
4. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.
5. To ascertain the date upon which the determination becomes effective, refer to Section 83 of the Environmental Planning and Assessment Act, 1979 (as amended).
6. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Waters sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to the web site at www.sydneywater.com.au then see Building Developing and Plumbing then Quick Check, or telephone 13 20 92.

G T Brown

Commissioner of the Court

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Prepared on 27 October 2026 · Esheria