



northern
beaches
council

MEMORANDUM

DATE: 10 October 2023
TO: Development Determination Panel (DDP)
CC: Adam Richardson, Manager Development Assessment
FROM: Megan Surtees, Planner Development Assessment
SUBJECT: Item 3.1 Rev2023/0016 166 Pittwater Road, Manly

Dear Panel Members,

The purpose of this supplementary memo is to provide comment on the additional documentation provided.

A response to the assessment report for Item 3.1 has been provided by Evolution Planning, which provides additional documentation not previously provided to Council during the assessment of Rev2023/0016, which is the legal advice (Appendix A within the submission) prepared by Hamer & Hamer Balgowlah, dated 26 September 2023.

Additionally, on 31 August 2023, the Applicant provided structural engineering advice (also included as Appendix B in the submission provided by Evolution Planning), prepared by Geoff Hopkins & Associates, dated 17 February 2023.

It is important to note that the assessment of this review application found no issues with the *merits* of the proposal. Rather, the reason for refusal is simply because owner's consent from the owner(s) of 168 Pittwater Road, Manly has not been provided and in the absence of this, the architectural plans and supporting documentation do not provide Council with clarity as to whether the proposal can comply with the terms of the easement (which is included within the assessment report on pages 8 and 9).

The submission from Evolution Planning states that there is no impact upon the easement. Figure 2 (which is an extract from the structural engineer drawing) within the submission has noted the following: *'existing footing retained unchanged by proposed works'*. However, Figure 3 (which is an extract from the architectural drawings prepared by ViewThru) within the submission indicates the following *'proposed footing (to be amended during detailed design to reflect structural drawings)'*. Additionally, the submission notes that *'there are no footings/foundations of the party wall and the proposed improvements will rely on a new footing separated from and independent of the party foundation and hence there is no additional load added to the "soil" beneath the easement'*. These figures and commentary are conflicting and does not provide Council with any clarity that the proposal can meet the terms of the easement.

The submission recommends three (3) conditions that would be welcomed should Council grant consent to this review application. Should the panel be inclined to grant consent, these proposed conditions do not satisfy Council's concern regarding the proposal's ability to comply with the terms of the easement.

In response to the Applicant's legal advice obtained from Hamer and Hamer Balgowlah, the following is noted:

- The party wall is within the easement identified as 'C' – easement for support 0.13 wide.
- The party wall is 0.14m from shared boundary, which is outside easement 'C'. However, and due to uncertainty as to whether the foundation is proposed or existing, the existing party wall is affixed to the existing or proposed foundation, as shown on the section plan. Part of the foundation extends into easement 'C', and without clarity as to whether this is an existing or proposed foundation, any additional load to this foundation, and therefore soil, would indicate that the proposal cannot comply to the terms of the easement.
- Information provided does not give Council any assurances that the proposal can comply with the terms of the easement.

In the absence of consistent information, the recommendation of **refusal** remains.

Recommendation

The Panel note the submission.

No changes required to the recommendation in the assessment report.