

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held in the Walamai Room Northern Beaches Council on

**FRIDAY 22 SEPTEMBER 2017**



**Ashleigh Sherry**  
**Manager Business System and Administration**



**Agenda for a Meeting of the Development Determination Panel  
to be held on Friday 22 September 2017  
in the Walamai Room Northern Beaches Council Dee Why**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF PECUNIARY INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Development Determination Panel held 8 September 2017	
<b>3.0</b>	<b>DEVELOPMENT DETERMINATION PANEL REPORTS .....</b>	<b>2</b>
3.1	131 Pacific Road, Palm Beach - Modification of Development Consent N0455/15 for demolition of the existing dwelling and construction of a new dwelling .....	2



## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 8 SEPTEMBER 2017**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Development Determination Panel held 8 September 2017 were approved by all Panel Members and have been posted on Council's website.

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### 3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

**ITEM 3.1**                                      **131 PACIFIC ROAD, PALM BEACH - MODIFICATION OF DEVELOPMENT CONSENT N0455/15 FOR DEMOLITION OF THE EXISTING DWELLING AND CONSTRUCTION OF A NEW DWELLING**

**REPORTING MANAGER**                      **Matthew Edmonds**

**TRIM FILE REF**                                **2017/341251**

**ATTACHMENTS**                              1 [↓](#) **Assessment Report**  
2 [↓](#) **Site and Elevation Plans**

#### **PURPOSE**

To refer the attached application for determination as required under adopted delegations of the Charter

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#### **RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority grant approval to Modification Application No. N0455/15 granted for demolition of the existing dwelling and construction of a new dwelling at at Lot 3D DP 13780 at 131 Pacific Road, Palm Beach subject to the conditions outlined in the report.

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**SUBJECT: Section 96 Modification Application - N0455/15/S96/1 – S96 (2) Modification –****131 Pacific Road, Palm Beach NSW 2107****Modification of Development Consent N0455/15 – which approved demolition of the existing dwelling and construction of a new dwelling****Determination Level:** Development Determination Panel

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**Summary of recommendation:** **APPROVAL**

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<b>REPORT PREPARED BY:</b>	Hugh Halliwell
<b>APPLICATION SUBMITTED ON:</b>	16 May 2017
<b>APPLICATION SUBMITTED BY:</b>	Rachel Hudson Architect
<b>OWNERS:</b>	Harumi Daley
<b>NO. OF SUBMISSIONS:</b>	0
<b>COST OF WORKS:</b>	\$1.379 million

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**1.0 SITE DETAILS**

The site is legally known as Lot 3D in Deposited Plan 13780, and is commonly referred to as 131 Pacific Road, Palm Beach. The site is rectangular in shape, with a 14.68m wide frontage to Pacific Road, a maximum depth of 58.3m and a total area of 1010m<sup>2</sup>. The site currently contains a dilapidated and partially demolished dwelling which is currently under construction since approval N0455/15 was granted. The lower portion of the site is free of development and heavily vegetated. The site experiences a maximum fall of approximately 28m, with a slope of approximately 48%. With the exception of the vacant allotment adjoining the site to the south (Council owned land), the surrounding sites comprise low-density residential development.

**2.0 PROPOSED DEVELOPMENT**

The applicant seeks consent to modify development consent N0455/15 in the following way:

**Upper Floor Plan**

- ☐ Extension of external walls to northern and southern sides and rear elevation, reconfiguration of ensuite and walk-in robe to master bedroom, reconfiguration of rear deck, replacement of three sets of casement windows with two sets of sliding windows with privacy screening in northern and southern side elevations; and
- ☐ Revised driveway alignment.

**Mid Floor Plan**

- ☐ Replacement of casement windows with sliding windows;
- ☐ Swap WC and pantry and relocate window openings to WC and pantry, reconfigure kitchen and living rooms; and
- ☐ Relocate retaining wall in front yard.

#### Lower Floor Plan

- ☐ New retaining wall within southern side setback.

#### Roof Plan

- ☐ Extension of roof to follow extension of upper floor level, three new skylights.

Note: A number of these modifications directly affect a series of conditions in consent N0455/15 applied by the previous assessing officer. These conditions were applied due to concerns relating to building height, bulk, scale and view sharing from neighbouring properties.

### 3.0 LEGISLATION, PLANS AND POLICIES

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

The following relevant state and local policies apply:

- ☐ Environmental Planning and Assessment Act 1979 ("The Act")
- ☐ Environmental Planning and Assessment Regulation 2000
- ☐ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- ☐ Pittwater Local Environmental Plan 2014 ("PLEP 2014");
  - Acid Sulphate Soils Map - Area 5
  - Biodiversity Map
  - Geotechnical Hazard Map
  - Height of Buildings Map – 8.5m (with 10m variation)
  - Lot Size Map – 700m<sup>2</sup>
  - Draft LEP – Housekeeping Amendment
- ☐ Pittwater Scenic Streets Register
- ☐ Pittwater 21 Development Control Plan ("P21 DCP");
  - Palm Beach Locality
  - Landscaped Area 1
  - Geotechnical Risk Management Policy for Pittwater

### 4.0 BACKGROUND

Development application N0455/15 was lodged on 28 October 2015 and subsequently referred to Council's Development Engineer, Natural Environment Officer, Strategic Planning Team (Heritage) and Heritage consultant for comments and/or recommendations.

Development application N0455/15 was approved by the delegated authority of Development Unit on 17 March 2016.

Section 96 Modification Application was lodged on 16 May 2017 and subsequently referred to Council's Natural Environment Officer, Development Engineer and Strategic Planning Team (Heritage) for comments and/or recommendations.



## 5.0 NOTIFICATION

The application was notified to adjoining property owners for 14 days from 23 May through to 6 June 2017 in accordance with Council's Notification Policy. During this time, zero (0) submissions were received from those notified properties.

An additional notification period was required from 27 June to 10 August 2017 to an adjoining property. This was to address an error in the original notification period which failed to notify the original objector of DA N0455/15 at No. 127 Pacific Road. During this additional notification period, zero (0) submissions were received.

## 6.0 KEY ISSUES

- ☐ View sharing
- ☐ Building height
- ☐ Building envelope

## 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?

The compliance table below was generated as part of the assessment of Development Application N0455/15. Comments in **bold** are made in relation to the amendments proposed as part of the subject Modification Application N0455/15/S96/1.

Control	Standard	Proposal	T	O	N
<b>Pittwater Local Environmental Plan 2014</b>					
Zone E4 Environmental Living			Y	Y	Y
4.3 Height of buildings	8.5 metres	<b>9.54m</b> <b>See discussion.</b>	<b>N</b>	<b>N</b>	<b>Y</b>
5.10 Heritage conservation			Y	Y	Y
7.1 Acid sulphate soils			Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.6 Biodiversity			Y	Y	Y
7.7 Geotechnical hazards			Y	Y	Y
7.10 Essential services			Y	Y	Y
<b>Pittwater 21 Development Control Plan</b>					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
A1.7 Considerations before consent is granted			Y	Y	Y

Control	Standard	Proposal	T	O	N
A4.12 Palm Beach Locality			Y	Y	Y
B1.2 Heritage Conservation – Development in the vicinity of a heritage item or conservation area			Y	Y	Y
B1.2 Heritage Conservation – Development in the vicinity of a heritage item or conservation area (Draft)			Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B1.4 Aboriginal Heritage Significance (Draft)			Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y
B3.6 Contaminated land and potentially contaminated land			Y	Y	Y
B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community		See discussion.	Y	Y	Y
B5.2 Wastewater Disposal			Y	Y	Y
B5.4 Stormwater Harvesting			Y	Y	Y
B5.7 Stormwater Management – On-site Detention			Y	Y	Y
B5.8 Stormwater Management – Water Quality			Y	Y	Y
B5.10 Stormwater Discharge into the public drainage system			Y	Y	Y
B6.1 Access driveways and works in the public road reserve			Y	Y	Y
B6.1 Access driveways and works in the public road reserve (Draft)			Y	Y	Y
B6.2 Internal driveways (Draft)			Y	Y	Y
B6.3 Internal Driveways - Low Density Residential			Y	Y	Y
B6.3 Off-street Vehicle Parking Requirements (Draft)			Y	Y	Y
B6.5 Off-street Vehicle Parking Requirements - Low Density Residential			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
B8.3 Construction and Demolition - Waste Minimisation			-	-	-
B8.4 Construction and Demolition - Site Fencing and Security			-	-	-
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
B8.6 Construction and Demolition - Traffic Management Plan			-	-	-
C1.1 Landscaping			Y	Y	Y
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing		See discussion.	N	N	Y
C1.4 Solar Access			Y	Y	N
C1.5 Visual Privacy			Y	Y	N
C1.6 Acoustic Privacy			Y	Y	Y
C1.7 Private Open Space			Y	Y	Y

Control	Standard	Proposal	T	O	N
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			Y	Y	Y
C1.24 Public Road Reserve -Landscaping and Infrastructure			Y	Y	Y
D12.1 Character as viewed from a public place			N	Y	Y
D12.3 Building colours and materials			Y	Y	Y
D12.5 Front building line	6.5m	Nil	N	Y	Y
D12.6 Side and Rear Building lines	1m to one side, 2.5m to the other 6.5m to rear	North (side): 2.5m South (side): 1m West (rear): 32.6m	Y	Y	N
D12.8 Building envelope		See discussion.	N	N	Y
D12.10 Landscaped Area – Environmentally sensitive locations	60% minimum	711m <sup>2</sup> or 70.4%	Y	Y	Y
D12.12 Fences – Flora and Fauna Conservation Areas			N	Y	Y
D12.13 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
D12.14 Scenic Protection Category One Areas			Y	Y	Y
SEPP (Building Sustainability Index: BASIX)			Y	Y	Y

Issues marked with a (-) are not applicable to this Application.  
Issues marked with a (N) are addressed in further detail, in the discussion section below.

## 8.0 DISCUSSION OF ISSUES

### Building Height; Building Envelope; and View Sharing

**Clause 4.3 (Height of Buildings) of PLEP 2014; Clause C1.3 (View Sharing) of P21 DCP; and Clause D12.8 (Building Envelope) of P21 DCP.**

Development consent N0455/15 was granted subject to a number of conditions being imposed by the previous assessing officer to address view sharing concerns raised by the neighbouring property at No. 127 to the south, as well as breaches to the prescribed building height plane and envelope. The view from this property can be seen overleaf.

The architectural plans were to be amended to reflect the following (below each condition is the Applicant's response to the conditions – dot points - which have been reflected in the modification plans):

- a) The eastern end of the upper floor is to be setback a further 1.8m from the eastern boundary, such that the eastern external glazed wall of the master bedroom aligns with the red dashed line as shown on the approved Upper Floor Plan (DH-03-DA) referenced in this consent;
  - ☐ The eastern end of the upper floor has been setback 0.8m rather than 1.8m from the eastern boundary.

- b) The eastern eave of the upper floor roof shall not extend more than 600mm past the relocated eastern external glazed wall of the master bedroom;
- ☐ The proposed eave line remains approximately 950mm beyond the position it is to be relocated to as required by the above condition.
- c) Any windows lost as a result of the reduced size of the upper floor must not be reintroduced elsewhere along the wall. To avoid confusion, only one 1m wide window is to remain at the eastern most points of the northern and southern upper floor elevations;
- ☐ Windows have been reintroduced along the northern and southern upper floor elevations.
- d) The eastern balustrade of the upper floor deck is to be situated at a maximum distance of 2.4m from the relocated eastern external glazed wall of the master bedroom;
- ☐ The eastern balustrade of the upper floor deck is still 0.5m beyond the position required under the above condition.
- e) With the exception of the upper floor deck with maximum dimensions of 2.4m x 6.0m, the remaining area of the mid floor roof is to be non-trafficable;
- ☐ The upper floor deck has a maximum dimension of 2.0m x 6.4m. The remaining area of the mid floor roof is non-trafficable.
- f) The eastern extent of the roof above the mid floor rear deck is to be reduced by 1m, so that it does not extend more than 2.7m from the eastern external glazed wall of the living room; and
- ☐ The eastern extent of the roof above the mid floor deck has been reduced by 1m, so that it does not extend more than 2.7m from the eastern external glazed wall of the living room.
- g) The southern-most 2.5m of the roof above the mid floor rear deck shall not extend more than 600mm beyond the eastern external glazed wall. This reduction to the southern end of the roof above the mid floor rear deck may be mimicked on the northern side of development, if desired.
- ☐ The plans have been amended to reflect the above condition.

The subject S96 modification application is not consistent with many of the above conditions, resulting in a continuing impact as viewed from No. 127 Pacific Road.



Figure 1 - View from rear deck at 127 Pacific Road (photo taken by previous assessing officer as part of the assessment of the original development application N0455/15) Roofline connected by solid red lines, balustrade of upper floor balcony indicated by dashed red line.

As well as the aforementioned conditions, the modification application seeks to modify the approval by widening the upper floor. Whilst acknowledging the widening is minor, the result creates further built form and a larger building envelope non-compliance, which this assessment does not support.

A meeting was held with the Applicant and consulting town planner on 12 July 2017 to discuss Council's concerns regarding compliance with the previously mentioned conditions. At the meeting the Applicant responded by stating that the depth of the deck could be reduced 0.4m to (2.0m) to help address Council's concern.

The previous assessing officer acknowledged in their assessment that subject to conditions of consent (previously mentioned), the proposed development is considered to be consistent with the criteria of clause 4.3(2D) of PLEP 2014 and the minor resultant breach of the 8.5m is seen to be warranted and justified. The proposed modifications, however, are not considered to be consistent with clause 4.3(2D) of PLEP 2014.

Pursuant to clause 4.3(2D), the portion of the building above the maximum permitted building height shown on the Height of Buildings Map is to be minor. In this case, the modifications result in an increase in built form above 8.5m. Clause 4.3(2D) also states that buildings are to be sited and designed to take into account the slope of the land by allowing for a stepped design down the slope. The increase in overall building height creates additional built form above 8.5m which is considered unreasonable. The proposal does not result in a design that is sympathetic to the topography of the land. The following comments have been taken from the Assessment Report of



DA N0455/15, which confirmed the need to provide a stepped design that is sympathetic to the topography:

*As currently proposed, the stepped nature of the dwelling design is limited and somewhat abrupt at the eastern façade. Conditions recommended requiring a reduction to the eastern projection and height of the development will create greater steps in the built form, to more appropriately mimic the natural fall of the land. Subject to these conditions, it can be said that the building has been designed to sensitively respond to the natural topography of the site.*

In response to the above, these modifications fail to achieve an appropriate design for the site and a design that is considerate of the natural fall of the land and views enjoyed by adjoining properties.

The changes proposed represent a breach, not only to clause 4.3(2D), but also to the following objectives of clause 4.3:

- a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- b) *to allow for the reasonable sharing of views,*
- c) *to encourage buildings that are designed to respond sensitively to the natural topography,*

The desired future character of the Palm Beach locality is identified by clause A4.12 (Palm Beach Locality) of P21 DCP, which emphasises that the bulk and scale of development shall be minimised, and that development on slopes is to be designed to step down the slope of the site, to integrate with the landform and landscape, and have the appearance of being a maximum of two storeys in height in any one place.

The original proposal under N0455/15 did not minimise the bulk and scale of the development, particularly with respect to the eastern projection of the development, which would be visually prominent, as seen from Palm Beach. However, subject to conditions of consent adopted by Council, requiring a reduction to the eastern projection of the upper floors, the bulk and scale of the development is considered to be appropriately minimised.

The previous assessing officer noted the following in their assessment of the original proposal and conditions:

*The proposed amendments will also emphasise the stepped nature of the eastern façade, in a manner that is more consistent with the desired future character of the locality. Whilst the development will exceed two storeys in height over a depth of 8.8m, the stepped nature of the resultant development will minimise the visual appearance of the three storey dwelling, with only one storey visible at street level and two storeys visible from downslope. Furthermore, the limited footprint of the development allows for the retention and enhancement of existing vegetation within the rear yard, which further reduces the apparent size of the proposed dwelling, and ensures consistency with the desired future character of the locality.*

The modifications being proposed as part of this application fail to do this. The changes will further add to the visual impact created by the additional bulk and scale that is inconsistent with the conditions imposed as part of consent N0455/15.

No objection was received from No. 127 against the proposed S96 application, but this assessment is able to rely on Figure 1 as a reference point. Using Figure 1, the proposed modifications will continue to result in an impact to the existing views of the land and water interface at Palm Beach and Barrenjoey Headland. The views in question were described by the previous assessing officer as:

*The dwelling at 127 Pacific Road features a deck at the north-eastern corner of the upper floor, adjacent to a bedroom, living area and dining room. Expansive views are obtainable from the elevated rear deck in a south-easterly through to a north-north-easterly direction, encapsulating the entire length of Palm Beach, Barrenjoey Headland and the Central Coast coastline beyond. As proposed, the development will interrupt the view of the northern end of Palm Beach.*

It is believed that the subject modification application has not provided adequate reasoning and justification for the proposed modifications at the first floor, particularly along the eastern elevation in relation to view sharing. Given the extensive conditioning relating to view sharing recommended by the previous assessing officer and Council's Development Unit supporting the conditions, it would not be unreasonable to expect some level of view analysis be undertaken prior to the submission of this modification application to support such changes.

In accordance with clause C1.3 of P21 DCP and the planning principle, *Tenacity vs Warringah*, whilst views across side boundaries are typically more difficult to protect the views in question are considered of high value, encapsulating the land water interface of Palm Beach and north towards Barrenjoey Headland and beyond to the Central Coast. The impact also comes as a result of technical non-compliances with built form controls relating to building height and building envelope, which can be amended to achieve an improved outcome. The proposal is not considered to be reasonable particularly noting the ability to amend the first floor design to achieve the same level of amenity, and also ensuring high valued views are retained. Whilst acknowledging that the views in question are not the only views obtainable from No. 127 where views across the rear boundary are enjoyed, the views in question are of high value for the reasons listed above, therefore ensuring that the views are retained is vital to ensure consistency with the planning principle, *Tenacity v Warringah*.

The previous assessing officer made the following comments in relation to the rear deck and technical breach to the maximum building height,

*The impact upon views may be further compounded when the proposed upper floor rear balcony is in use, noting that anything on the rear deck with a height greater than the 1m balustrade (such as a person or pot plant) will obstruct the view of Barrenjoey Lighthouse, which is considered an iconic view in the Pittwater LGA. As discussed with regard to building height, the balustrade as proposed is in breach of the building height development standard, and in this instance, is seen to attribute to an unreasonable impact upon an iconic view. The condition recommended to reduce the height non-compliance by limiting the depth of the upper floor, will bring the eastern projection of the upper floor balcony back in line with the two taller height poles, ensuring that the views of Barrenjoey Headland will be retained.*

As the rear balcony fails to comply with previously mentioned conditions, the impact noted above by the previous assessing officer still stands and can only be addressed through the amendment of the plans in accordance with the conditions noted earlier in this assessment.

There appears to be no justifiable reason as to why the first floor cannot be amended in accordance with the conditions of consent under approval N0455/15. Therefore, it is recommended that the following condition be imposed:

*With the exception of the driveway realignment, retaining walls, window changes and privacy screens on the mid floor, this consent does not grant consent for those works to the first floor, which include changes to windows, reconfigurations to the master bedroom, ensuite, walk-in-robe, and garage.*

The dwelling at 127 Pacific Road will maintain uninterrupted views in an easterly direction, which are obtained across the rear property boundary and are unlikely to be obstructed by future vegetation growth or built form. As proposed, the development attributes to an unreasonable impact upon views currently enjoyed from the primary area of private open space, being the rear upper floor deck associated with the primary internal living area, and amendments are recommended to the proposed design to reduce this potential impact to acceptable levels. Subject to conditions of consent, the proposal is considered to achieve a reasonable level of view sharing, consistent with the provisions of clause C1.3 of P21 DCP.

## **9.0 INTERNAL REFERRAL COMMENTS**

Council's Development Engineer has provided the following comments and/or recommendations in relation to the proposed modifications:

*There are no engineering objections to the proposed modifications.*

Paul Brisby – 26 May 2017

Council's Natural Environment Officer has provided the following comments and/or recommendations in relation to the proposed modifications:

*The proposed Section 96 modification is to make internal changes, extend external walls, construct a new retaining wall and relocate driveway alignment.*

*A Tree Root Investigation has been submitted (Growing My Way, 28 April 2017) which provides evidence that a trench was dug to a depth of 200mm near to the Spotted Gum in the Council road reserve. The distance from the tree was not listed in the letter. No tree roots greater than 50mm were uncovered. The arborist has concluded that no compromise to either Tree 1 or 2 could reasonably be predicted provided the original 'Tree Protection Strategy' is complied with. This report is supported. Council's Tree Preservation Officer has assessed the report and impacts and supports the arborist recommendations.*

Jodi Harvey – 13 June 2017

Council's Assistant Strategic Planner – Heritage has provided the following comments and/or recommendations in relation to the proposed modifications:

*The conservation area is significant because; "The Florida Road Heritage Conservation Area includes a group of houses representing an early phase of residential development in Palm Beach. The street is an anthology of local architectural styles."*

*Florida House is significant because; "Florida House, at 81 Pacific Road in Palm Beach, built in 1916 as a guest house by the local stonemason Lawrie Gallagher, has historic and aesthetic significance as a holiday and guest house typical of the early Pittwater subdivisions."*

*The proposal is for modifications to an approved new three story dwelling, pool and associated works. The proposed modifications include a minor extension of the top floor,*



*changes to the driveway crossover, new retaining walls, changes to windows/doors and some internal reconfiguration.*

*While there are a number of changes proposed, the combined scale of them is not considered to be substantially different from the previously approved dwelling. The works are considered to be minor and to have little to no impact on the heritage item and heritage conservation area located below the site on Florida Road. The proposal can be supported by Strategic Planning (Heritage).*

Brendan Gavin – 15 June 2017

## 10.0 CONSIDERATION OF S96

The modification application has been lodged and considered in accordance with Section 96(2) of the *Environmental Planning & Assessment Act 1979*.

Section 96(2) of the *Environmental Planning & Assessment Act 1979* is considered as follows;

Are the proposed modifications considered to result in substantially the same development as that which was originally approved?

The proposal has been considered in accordance with the provisions of S96 (2) of the Environmental Planning and Assessment Act 1979 and is found to be essentially and materially the same as the development that was previously approved in March 2016. The external fabric of the development will remain substantially the same. Although being found to be essentially and materially the same, the proposed changes to the first floor will have an unreasonable level of impact on adjoining properties, specifically view sharing.

The development has been assessed as being substantially the same development under Section 96(2). The proposed internal and external modifications with the exception of those on the first floor already mentioned are considered to be consistent with the original approval for the construction of a new dwelling. The modifications seek consent for internal and external changes, therefore the resultant development is considered to be substantially the same development as originally approved.

Has the proposed modification application been notified in accordance with the regulations and P21 DCP?

Adjoining property owners were notified from 23/05/2017 to 6/06/2017 in accordance with Council's Notification policy. The application was re-notified from 27/07/2017 to 10/08/2017. It is considered that the modified application has been adequately notified.

Have all submissions made within the notification period been considered as part of the assessment?

Over the course of the notification period, zero (0) submissions were received in response to the proposed development.

The proposal is considered to fall under the provisions of Section 96(2) of the EP&A Act 1979.

The proposal was notified in accordance with Council's Notification Policy, and meets the provisions of S96 (2) of the Act.

## 11.0 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 2014, Pittwater 21 DCP and other relevant policies and regulations.

The proposed modifications to the driveway, retaining walls on the mid floor and lower floor, as well as window changes and privacy screens on the mid floor are acceptable. However, the changes to the upper floor are not acceptable. These modifications are not consistent with many of the conditions required under consent N0455/15 to reduce the overall bulk and scale and minimise the impact upon view sharing from No. 127 Pacific Road. The modifications in question result in an increase to the overall bulk and scale of the built form and breach to the maximum building height development standard, including a breach to the prescribed building envelope. This bulk and scale is unacceptable. The design has not appropriately considered the topography and natural fall of the subject site, therefore has not minimised the bulk and scale of the built form. However, in spite of these concerns, there is considered to be sufficient scope to approve all other modifications which are acceptable and result in no unreasonable level of impact upon the amenity of adjoining property owners.

Subject to an additional condition not permitting the aforementioned works, the proposed modifications are seen to achieve consistency with the outcomes and objectives of PLEP 2014 and P21 DCP. Furthermore, the proposal represents a significant improvement to the streetscape and amenity of adjoining properties when compared to the dwelling that previously existed on the site.

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### RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER

That Council as the consent authority pursuant to Section 96 of the Environmental Planning and Assessment Act 1979 modify development consent N0455/15 which approved the construction of a new dwelling at 131 Pacific Road, Palm Beach in the following way;

#### As further modified by;

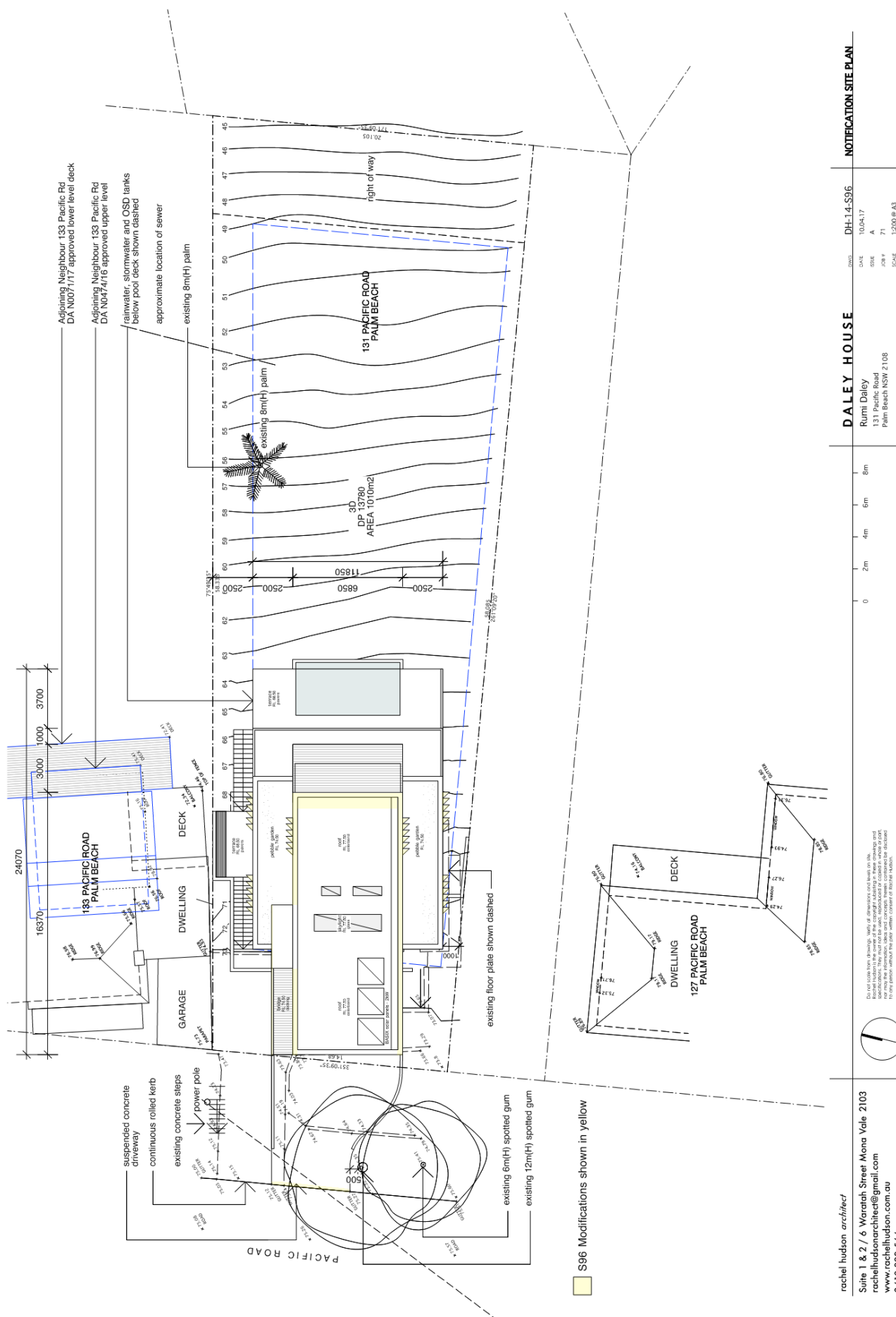
- **Architectural drawings:**
  - DH 01-S96 Issue A and DH 02-S96 Issue A, both dated 10/04/2017, both prepared by Rachel Hudson Architect;
  - DH 03-S96 Issue B, dated 17/07/2017, prepared by Rachel Hudson Architect;
  - DH 04-S96 through to DH 13-S96 Issue A, all dated 10/04/2017, prepared by Rachel Hudson Architect.
- **BASIX Certificate, 814522S, dated 21/04/2017.**

#### Additional condition:

**B27. With the exception of works to driveway, this modified consent does not authorise any proposed changes to the upper floor.**

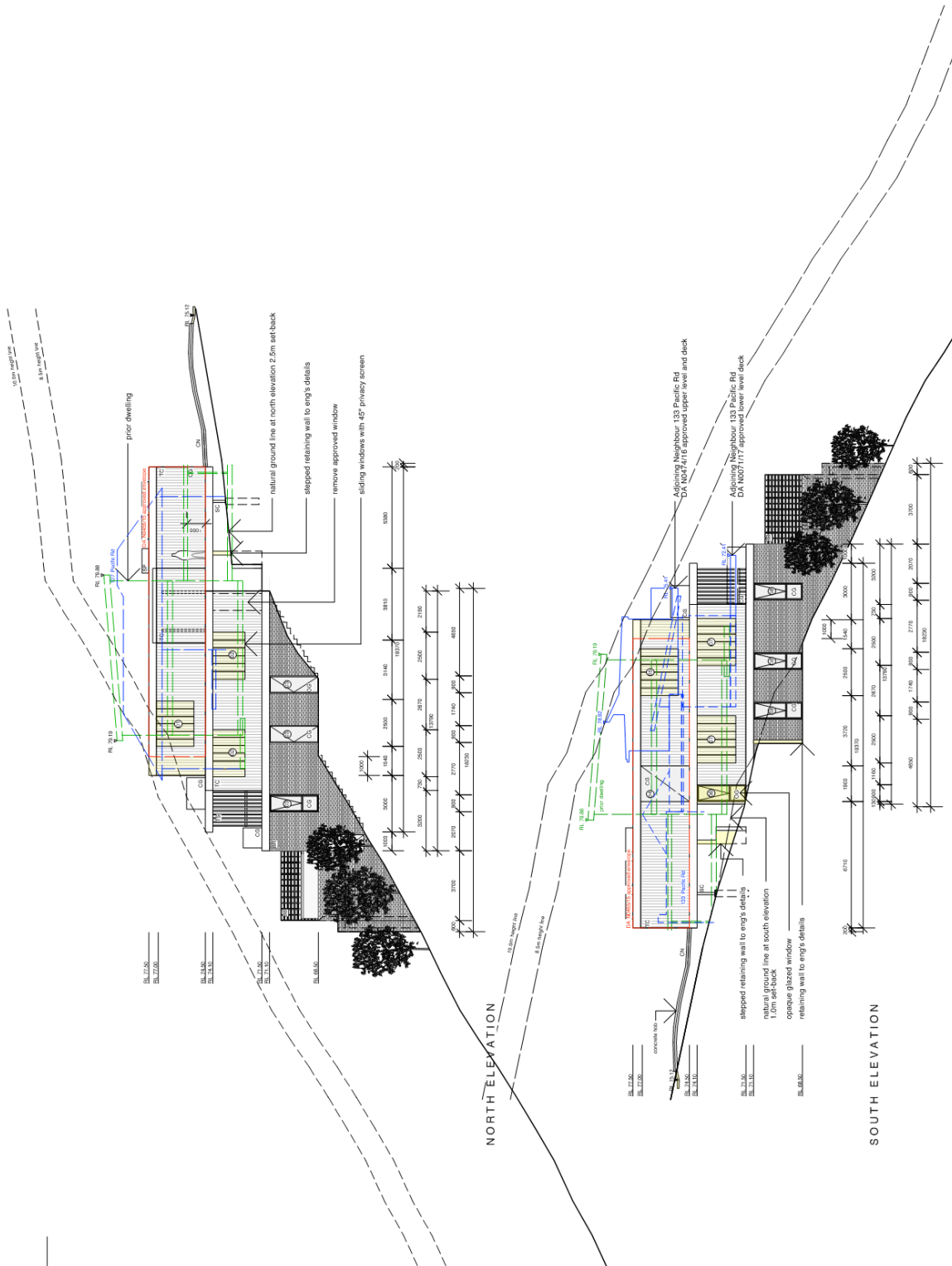
Report prepared by

Hugh Halliwell  
**PLANNER**



**LEGEND**

- TC timber cladding - paint finish
  - TS timber screen
  - BR brick - charcoal grey paint finish
  - BB breezeblock - paint finish
  - CN concrete - natural finish
  - SC steel column - paint finish
  - CB Colourbond - windspray
  - CG clear glazing
  - OG opaque glazing
  - SP solar panel
- S96 Modifications shown in yellow



rachel hudson architect

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**DALEY HOUSE**

Rumi Daley  
 131 Pacific Road  
 Palm Beach NSW 2108

DH-15-S96

DATE 10.04.17  
 DRAWN A  
 CHECKED 71  
 SCALE 1:200 @ A3

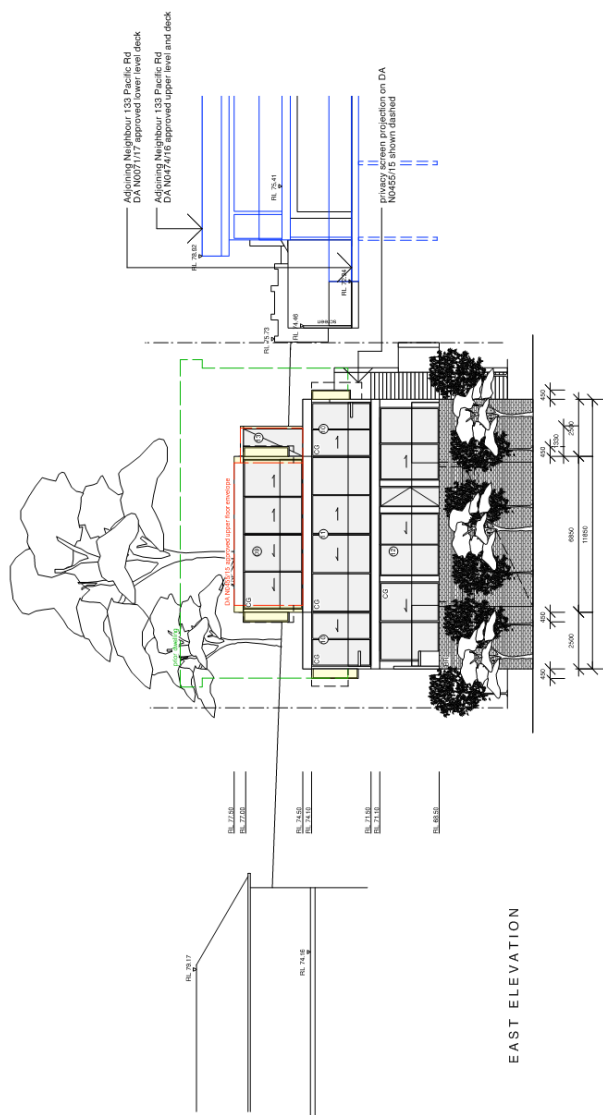
**NOTIFICATION ELEVATIONS 1**

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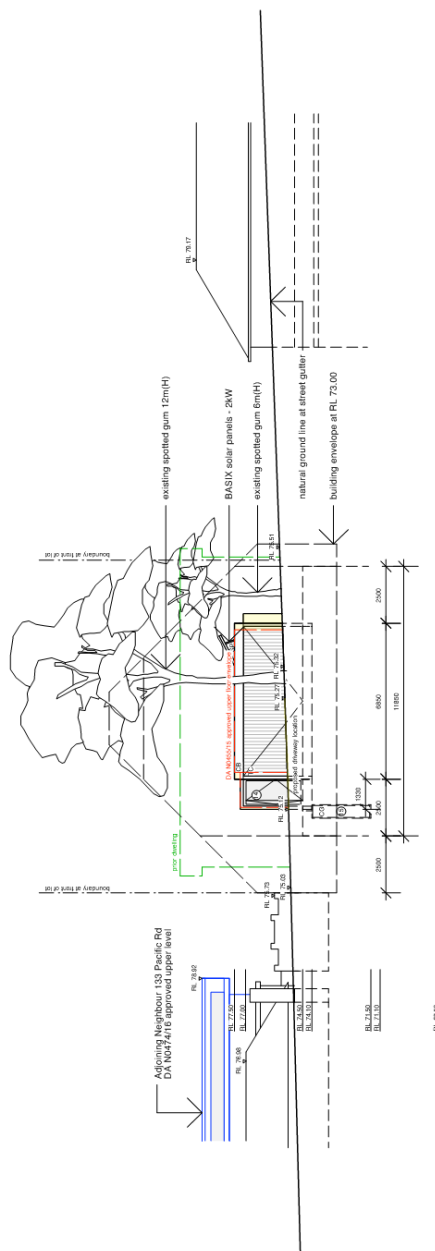
LEGEND

- |    |                                    |
|----|------------------------------------|
| TC | timber cladding - paint finish     |
| TS | timber screen                      |
| BR | brick - charcoal grey paint finish |
| BB | breezeblock - paint finish         |
| CN | concrete - natural finish          |
| SC | steel column - paint finish        |
| CB | Colourbond - windspray             |
| CG | clear glazing                      |
| OG | opaque glazing                     |
| SP | solar panel                        |

S96 Modifications shown in yellow



EAST ELEVATION



WEST ELEVATION

rachel hudson architect

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DALEY HOUSE		NOTIFICATION ELEVATIONS 2	
	DATE	DATE	DATE
Rumi Daley	10/04/17		
131 Pacific Road	A		
Palm Beach NSW 2108	71		
	1:200 @ A3		