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MEMORANDUM

DATE: 11 March 2025
TO: Northern Beaches Development Determination Panel
CC: Steven Findlay, Manager, Development Assessments
FROM: Ben Tesoriero, Planning Consultant
SUBJECT: REV2024/0031 – 179 Riverview Road, Avalon Beach

Dear Panel,

A submission by William Fleming (WF) of BBF Town Planners has been received in relation to REV2024/0031. The submission disagrees with the Assessment Report's recommendation for refusal of the subject development application (DA) on the following grounds.

1. Building Height
2. Building Envelope
3. Bulk and Scale
4. Setbacks
5. Retaining Walls
6. Building Design

Each of the above grounds is responded to below.

1. Building Height.

WF disputes the Assessment Report's calculated building height of 10.39m, arguing that the survey point used for the calculation is incorrectly located. WF asserts the point is situated under the second-floor balcony, not the third-storey eaves, and therefore, the building height remains within the 10m limit.

To substantiate this claim, WF has provided 3D height blanket and envelope drawings, which were absent from the REV2024/0031 lodgement documents. While these diagrams are helpful, a roof plan overlaid with the site survey, as provided in our Assessment Report, would have been more effective in directly addressing and potentially disproving our height calculation. In the absence of such an overlay, I maintain the building height exceeds 10m.

In anticipation of potential disagreement regarding the building height, WF has submitted a precautionary Clause 4.6 written request.



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I have reviewed the Clause 4.6 written request. I disagree it is appropriate to support the building height contravention in the circumstances where the proposed development also fails to comply with the building envelope and side setback controls.

I provide further discussion on the proposal's non-compliant building envelope and setback controls below.

2. Building Envelope

In response to the development's non-compliant building envelope, WF's submission primarily addresses the reasonableness of the proposal in relation to overshadowing. However, the building envelope controls serve broader objectives, including maintaining the desired two-storey character of the Avalon Beach Locality and ensuring new development reinforces the existing spatial characteristics.

As indicated in the Assessment Report, despite the modest changes to the building envelope that have occurred under REV2024/0031, there remains inconsistencies between the proposed building envelope and the control's intended outcomes. These include:

- **Scale and Character:** The building's design, with a significant portion of elements protruding above the envelope in the third storey, conflicts with the desired two-storey scale of the Avalon Beach Locality.
- **Site Responsiveness:** The development relies on a large three-storey design rather than terracing the built form to follow the site's topography, resulting in a bulky design that fails to respond adequately to the natural environment.
- **Solar Access:** The building envelope non-compliance negatively impacts solar access for the southern neighbouring dwelling at 177 Riverview Road, particularly its upper level living area and balcony. Improved terracing of the three storeys would significantly mitigate these impacts.

Regarding WF's claims about unavoidable overshadowing, their submission asserts that impacts on southern neighbours are inevitable, even with compliant schemes. However, they have not provided a comparative shadow analysis to substantiate this assertion.

Therefore, I maintain that improved terracing, allowing the building to step down and conform to the site's topography, would result in a three-storey design that better aligns with the building envelope control's objectives.



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3. Bulk and Scale

The difference between the building design refused by the DDP on 25 September 2024 because of the inability to comply with the building envelope control and that currently proposal under REV2024/0031 are marginal.

These differences are shown in Figure 19 and Figure 20 in the Assessment Report and are reproduced below for convenience.

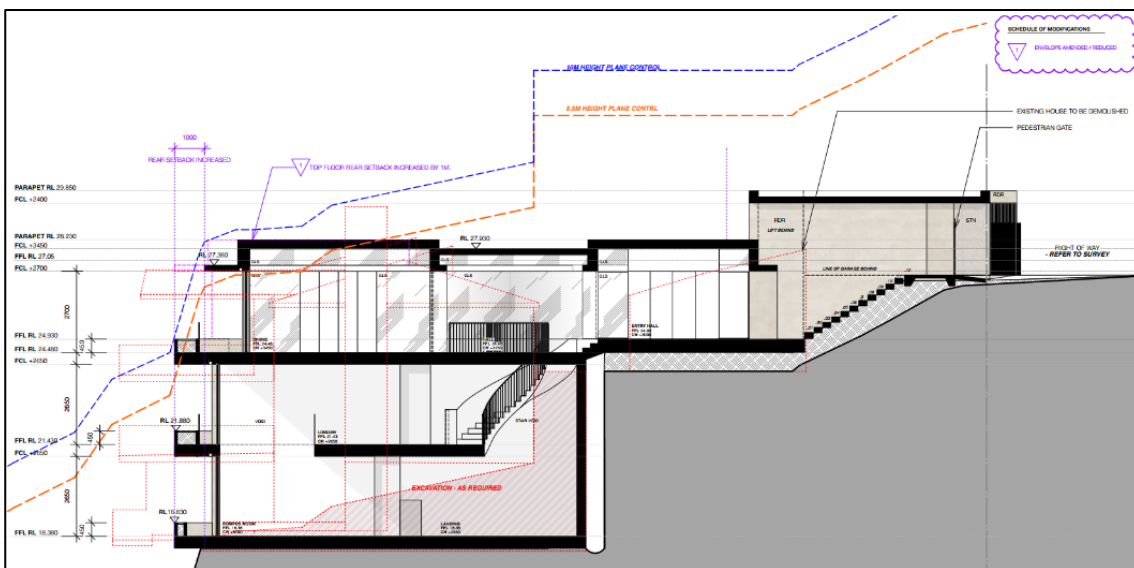


Figure 1 Proposed Long Section A-A for REV2024/0031. Building shown not to contravene the 10m standard in this location. Source: Madeleine Blanchfield Architects, December 2024.

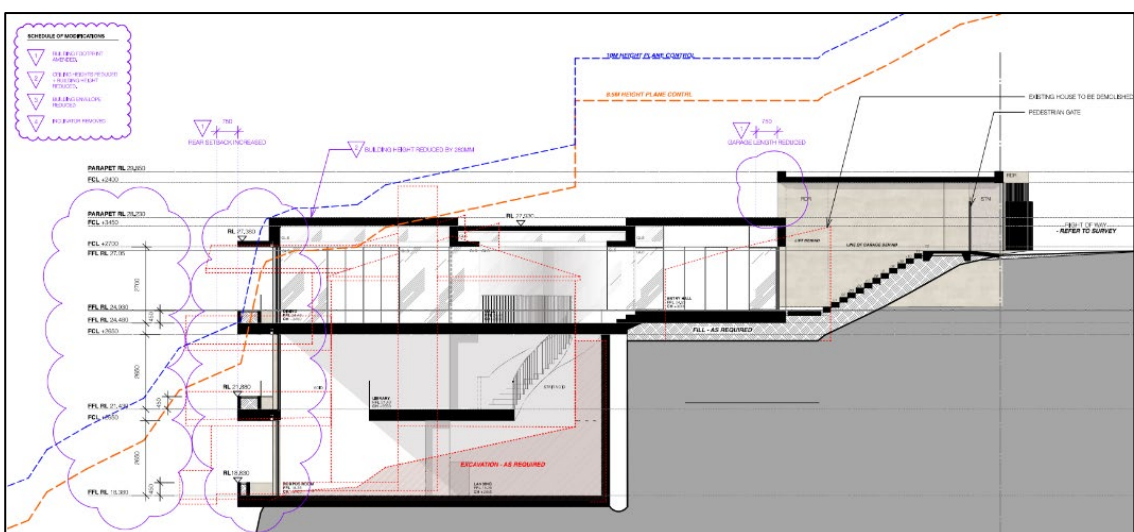


Figure 2 Previous Long Section A-A from DA2024/0725. Minor elements of building contravened the 10m height limit. Source: Madeleine Blanchfield Architects, May 2024.



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In my opinion, the 1m setback provided to the third storey on the western elevation does little to ameliorate the three-storey vertical presentation of the building in this location.

In the submission WF asks how it is possible to achieve a building on the site that better steps down the slope of the land. In the Conclusion of the Assessment Report, we explain how this could be achieved:

*A more compliant built form, maintaining the essence of the proposal, **is achievable through reconfiguration of floor space, notably by reducing or eliminating third-storey courtyard elements and recessing the living areas**. This would facilitate a terraced design that better responds to the topography of the land and relevant built form controls.*

Emphasis added.

WF disputes my assessment that recent Riverview Road developments demonstrate a better response to the site's topography through stepped designs. I maintain my position. During the assessment of REV2024/0031, I reviewed developments at 167, 187, and 189 Riverview Road. In each case, the upper levels are considerably recessed from the lower levels, illustrating a clear terraced approach to the building design.

4. Setbacks

While WF characterises the northern side setback variation as minor, this is not accepted. The building encroaches upon the 1-meter setback by 5.6 meters at both the second and third storeys, resulting in a minimum setback of 600mm as shown in Figure 30 of the Assessment Report - reproduced below for convenience.



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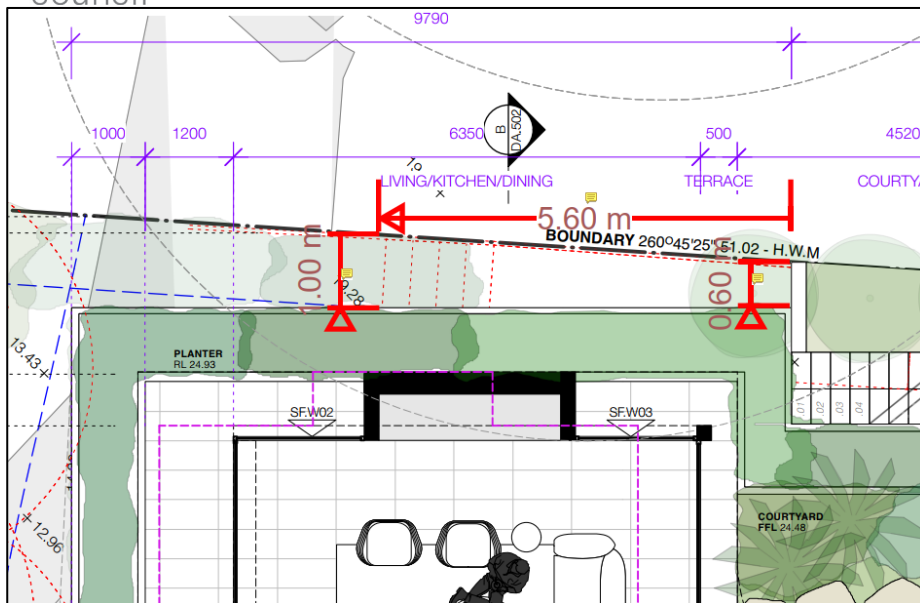


Figure 3 Extract of the third storey floor plan showing the extend of the building setback less than 1m from the northern boundary. At the eastern edge, the balcony is only setback 600mm from the boundary. This setback noncompliance is replicated on the second storey below.

Source: CPS markup of southern elevation (Madeleine Blanchfield Architects, December 2024).

WF's assertion that the non-compliant elements are minor is inaccurate and disregards the potential BCA/NCC implications arising from a dwelling's proximity to the boundary.

Furthermore, WF's claim that there is no dwelling to the north is incorrect. A one-bedroom waterside cottage is currently located at 181 Riverview Road, as evidenced by this listing: <https://www.realestate.com.au/sold/property-house-nsw-avalon+beach-126646250>

While it is acknowledged that the northern property is currently less developed compared to neighbouring properties, this does not justify encroachment on the boundary setback. The potential for future development on 181 Riverview Road exists, and the proposed development's encroachment unreasonably borrows from the neighbouring property's future development potential.

The non-compliant setback on the subject site will impose a design constraint on any future development at 181 Riverview Road.

On the southern side, despite the 2.5-meter setback requirement, significant encroachments occur. Protruding floors and planter boxes, as well as the externally located lift, reduce the setback to within 1 meter of the boundary. These encroachments are a result of specific design choices and could be avoided through alternative design solutions, such as internalising the lift and reducing the extent of the protruding floors and planter boxes toward boundary.



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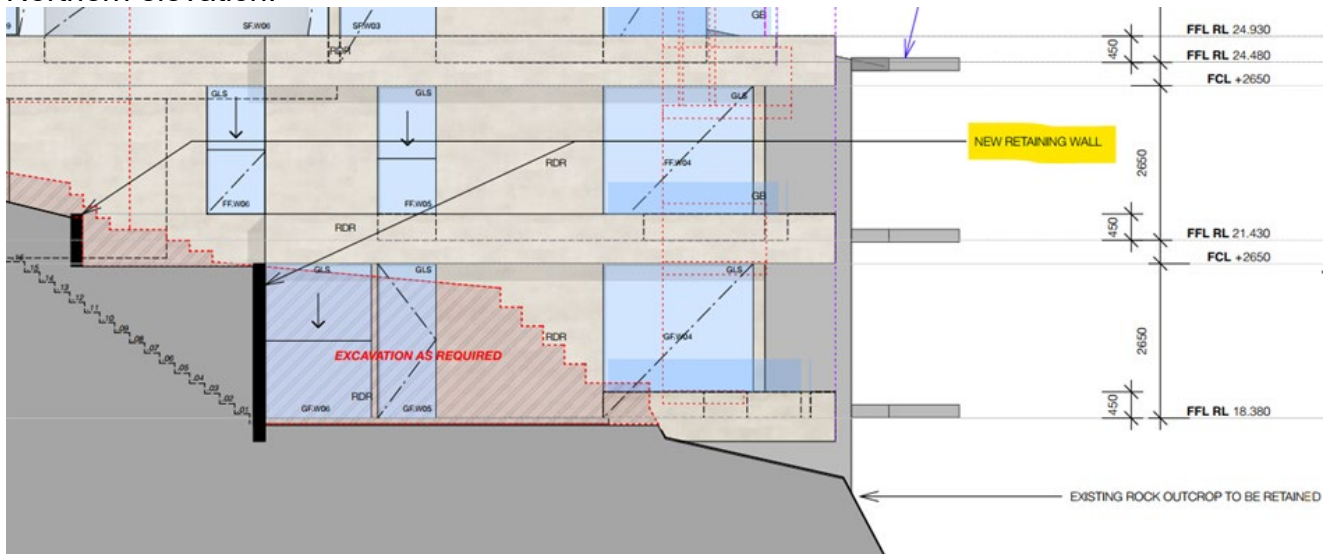
The combined encroachments on both the northern and southern side setbacks contribute to the building's excessive bulk and scale. These, in conjunction with the building envelope and height contraventions, constitute substantial grounds for refusal of REV2024/0031.

5. Retaining Walls

WF asserts that no retaining walls will be constructed along the northern boundary. However, this statement contradicts the submitted plans. The following excerpt from the northern elevation clearly depicts proposed retaining walls (highlighted in yellow) and significant excavation (marked in red) between the proposed dwelling and the boundary.

This excavation necessitates retaining walls not only across the site but also along the boundary. The submitted documentation fails to demonstrate how these retaining walls will be implemented and, critically, how a satisfactory cross-boundary relationship with the neighbouring property will be achieved.

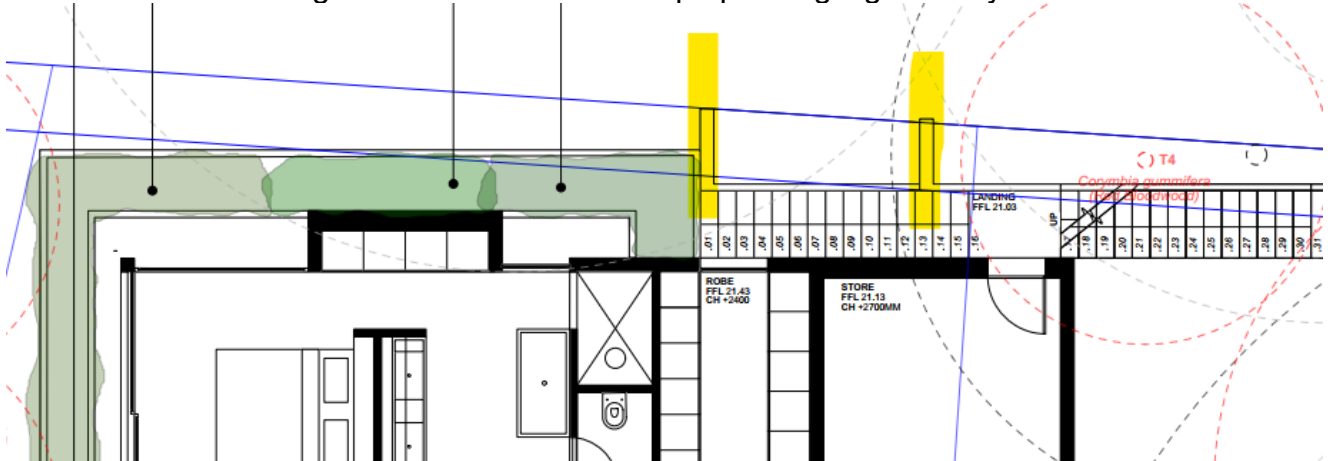
Northern elevation:





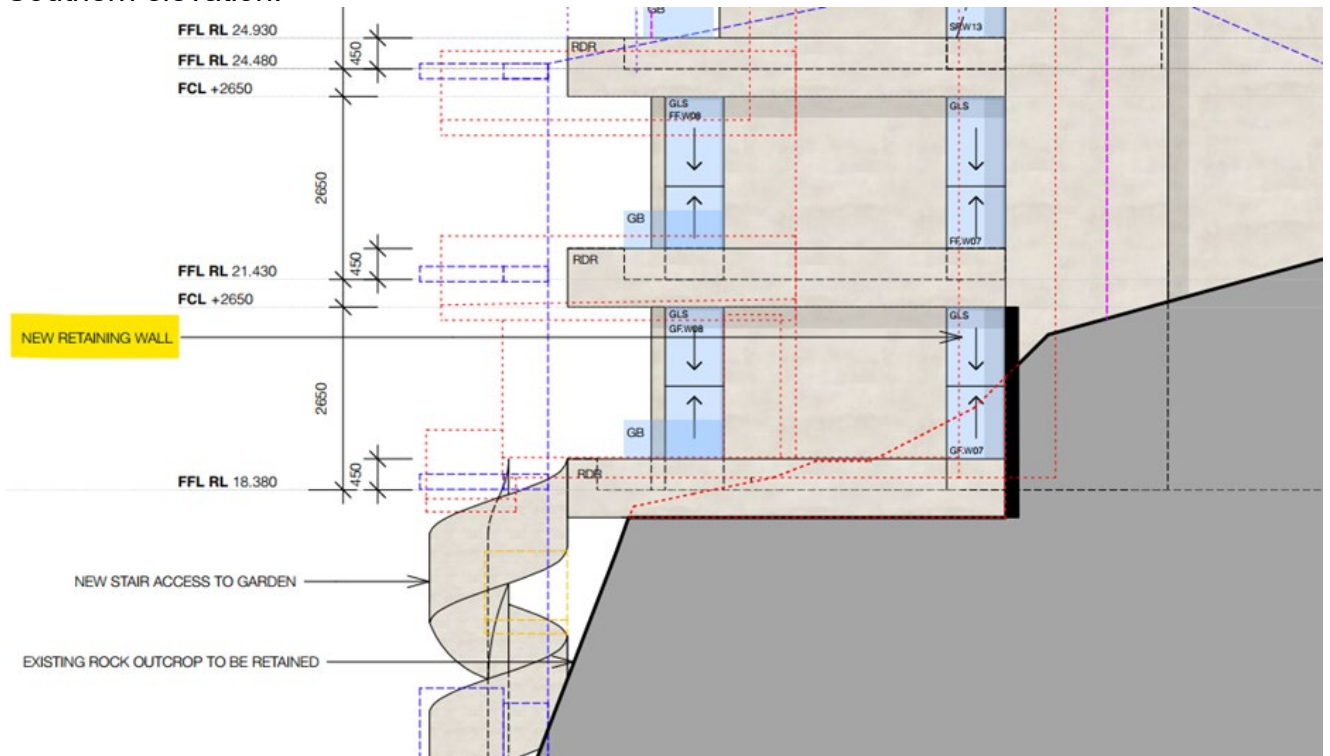
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Northern side retaining walls shown on landscape plan highlighted in yellow:



Below is an extract of the southern elevation which also shows the new retaining wall proposed. The existing ground line is shown in red, however there is no demonstration of how the excavated area will be retaining along the southern boundary.

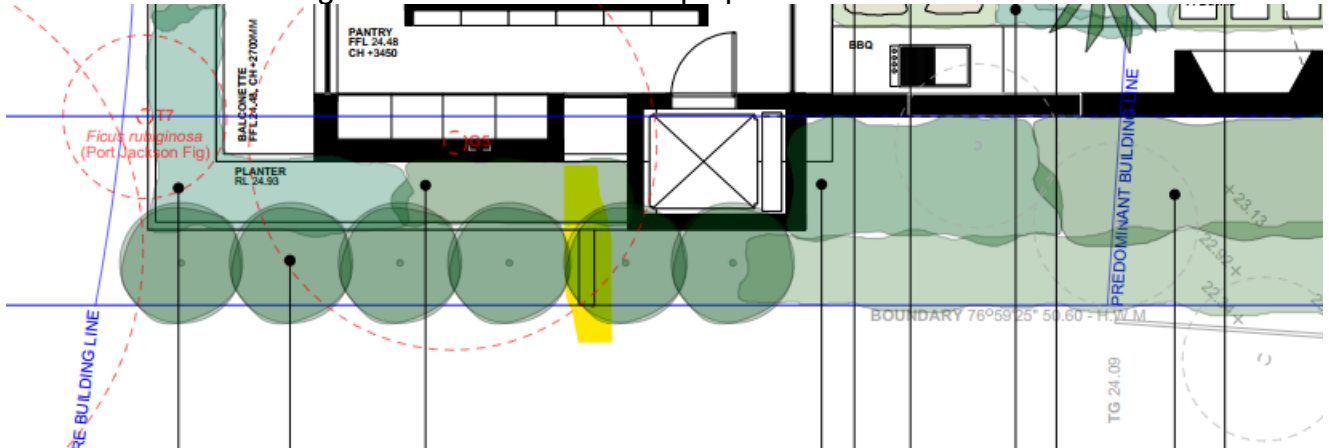
Southern elevation:





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Southern side retaining walls shown on landscape plan:



The Assessment Report highlighted the omission of side boundary retaining wall details from the stormwater plans, despite their inclusion in the architectural plans and landscape plans. This discrepancy raises concerns regarding the viability of the proposed stormwater concept. WF's submission provides no response to this point

6. Building Design

WF criticises the DDP's suggestion to remove the centrally located courtyards to reduce the upper-level building mass.

In the Assessment Report's conclusion, it was proposed that a more compliant built form, while preserving the proposal's core design intent, could be achieved by reconfiguring floor space. Specifically, reducing or eliminating the third-storey courtyard elements and recessing the living areas would significantly improve compliance.

I concur with the DDP's recommendation of the DA. This reconfiguration would enable a terraced design that more effectively responds to the site's topography and relevant built form controls.

WF argues that the suggested design modification would compromise the dwelling's amenity. However, developments on steeply sloping sites often necessitate design compromises to achieve compliance, site suitability, and compatibility with neighbouring development.



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RECOMMENDATION:

That Northern Beaches Council as the consent authority refuse REV2024/0031 for the reasons outlined in the Assessment Report.

Ben Tesoriero
Planning Consultant