

S U B M I S S I O N : S I M M O N S
a written submission by way of objection to DA 2020/0318

David A Simmons

46 The Serpentine
Bilgola Beach
NSW 2107

27 April 2020

Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
Dee Why
NSW 2099

Northern Beaches Council
council@northernbeaches.nsw.gov.au

Dear Chief Executive Officer,

Re:
48 The Serpentine, Bilgola Beach NSW 2107
DA 2020/0318

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission: Simmons

This document is a written submission by way of objection to DA 2020/0318
lodged under Section 4.15 of the EPAA 1979 [the EPA Act]

The DA seeks development consent for the carrying out of certain development, namely:

“the construction of alterations and additions to an existing dwelling including new double garage”

\$750,000 Cost of Work

Council should note that the DA Application description makes no reference to the new pool, new external works or retaining walls in the description. In this respect the DA description does not correspond with the DA drawings.

Executive Summary

This Written Submission addresses my objection to the above development.

My main concerns are:

View Sharing

Solar Access

Visual Privacy

Acoustic Privacy

Visual Bulk

My amenity losses are directly attributable to non-compliance of the main PLEP and PDCP controls:

PLEP 4.3 Height of Buildings: Control 8m v 9.1m Proposed >13% non-compliance

PDCP D3.6 Front Setback: 6.5m control v 0.6m Proposed >90% non-compliance

PDCP D3.9 Building Envelope: significantly outside envelope

PDCP D3.11 Landscape Area: Control 60.0% v 41.7% Proposed >30% non-compliance

The overall combined effect caused by the Height of Building and Building Envelope non-compliance leads to a considerable unreasonable **Visual Bulk**, when viewed from my ocean side private open space, and my living room zones at this level.

Prior to the submission of the DA by the Applicant, the Applicant did not have any prior proper consultation with me. The very brief description that he gave me bears no similarity to what is contained within the DA submission. The Applicant suggested that he would forward plans: they never arrived.

I want to emphasise the fact that I take no pleasure in objecting to my neighbour's DA.

I am objecting because the proposed DA has a very poor impact on the amenity of my property and this is caused by the DA being non-compliant to multiple controls.

If the DA was fully compliant to all controls my amenity loss would be more reasonable.

It does seem unreasonable that the Applicant wishes to remove my amenity to improve his own, and is proposing a catalogue of non-compliant outcomes that would seriously adversely affect my amenity.

The Applicant or his Advisors did not visit my property to assess my significant view loss.

I am very concerned that the Applicant and his Advisors have under forecast the non-compliance, by not representing the registered surveyor's Ground Level [Existing] accurately onto the DA drawings. The height of the building is higher and the building envelope is more non-compliant than the DA drawings and the SEE suggests.

I bring to the attention of Council that the Applicant has not represented the Ground Level [Existing] from the Applicant's Survey, correctly onto the DA drawings, in particularly Plans, Elevations and Sections.

The misrepresentation of Ground Level [Existing] from the Applicant's Survey has led to the maximum building height being shown in a misleading way.

I ask that Council insist that the Applicant positions on each Plan, Elevation and Section the precise Ground Level [Existing] from the Applicant's Survey and to adjust the maximum height envelope and side boundary envelopes accordingly.

The height of building is 9.1m. The existing dwelling already exceeds 8m, and this proposed development simply adds more non-compliant building height causing neighbours view loss, street view loss, solar loss, privacy loss, and unreasonable visual bulk.

Council does not have before it a Statement of Environmental Effects that it can rely upon.

The SEE has not conducted a Tenacity Assessment on greater than moderate view loss from my property.

The SEE has not conducted a Rose Bay Marina Assessment on the public domain street loss of view.

The SEE has not assessed the overshadowing drawing correctly, nor identified that these drawings are incomplete.

The SEE has not considered the considerable privacy issues caused by large windows immediately facing my private open space and living and kitchen windows.

The SEE has not addressed the issue that this DA should be considered a new build, and not an alteration and addition considering the extent of the proposed new works, and how the extent of the new works completely changes the character of the dwelling. I ask Council to consider this matter under *Coorey v Municipality of Hunters Hill* [2013] NSWLEC 1187.

The character to the street completely changes, by unreasonably removing the available street view to the iconic coastline. The proposed additional non-compliant envelope, takes

street view, neighbours view, solar loss, privacy loss, and adds considerable unreasonable visual bulk. The dwelling goes from a generally compliant envelope, to a considerably non-compliant envelope. The qualitative and quantitative issues are extensive:

[59] Qualitative issues

- *How is the appearance of the existing building to be changed when viewed from public places?*
- *What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?*
- *To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?*
- *Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?*

Comment: The appearance of the existing building is to be changed when viewed from public places. The New garage dominates the entry area, and takes street view. The existing building height is raised taking public view. The area of demolition is extensive taking down most of the street and ocean side elevation. The streetscape will change by the introduction of the substantial garage structure. The characteristics of the existing dwelling will alter considerably.

[60] Quantitative issues

To what extent is the site coverage proposed to be changed?

- *To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?*
- *To what extent is the building envelope proposed to be changed?*
- *To what extent are boundary setbacks proposed to be changed?*
- *To what extent will the present numerical degree of landscaping on the site be changed?*
- *To what extent will the existing floor space ratio be altered?*
- *To what extent will there be changes in the roof form?*
- *To what extent will there be alterations to car parking/garaging on the site and/or within the building?*
- *To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?*
- *What relationship does the proportion of the retained building bear to the proposed new development?*

Comment: The existing non-compliances with numerical controls are substantially increased by the proposal. The building envelope proposed is to be changed, and enlarged considerably. The front boundary setbacks are proposed to be changed to create 90% non-compliance. The building height is substantially increased, and all new development proposed at the upper level is outside the maximum building height control. The present numerical degree of landscaping on the site will be changed from a compliant to a non-compliant outcome. The existing floor space ratio will be altered and increased. The changes in the roof form will present non-compliant outcomes particularly to the south-east and the street frontage. Car parking will be altered by the introduction of a new garage structure in the front setback zone. Excavation will occur for a new pool. The retained part of the building will present a minor middle core to the new building, and will be dominated by the new development.

Council must consider these matters closely. I contend there is more than sufficient evidence to identify that there is significant departure from the existing development, giving the greater likelihood that this proposal should be characterised as a new development

I refer Council to the *Byron Shire Businesses for the Future Inc v Byron Council* [the Club Med Case], showing that absence of relevant detail invalidates the very decision-making process.

I have offered a very constructive alternative to resolve my amenity loss issues, and I do hope the Applicant submits amended plans to achieve that outcome.

Site Description

The SEE describes the site:

The site is located on the southern side of The Serpentine and slopes towards the rear, southern boundary facing the public reserve over Bilgola Beach, with a total fall of approximately 16.5 metres.

The site is regular in shape, with an angled front boundary measuring 14.435m to The Serpentine, and eastern and western side boundaries of 49.815m and 50.11m respectively.

The existing site area is approximately 716.5m².

The site is currently developed with a three storey brick and timber residence with a metal roof. Vehicular access is provided from The Serpentine via a concrete driveway.

The details of the lots which comprise the parcel are contained within the survey report prepared by TSS Total Surveying Solutions, Reference No. 180023, dated 19 January 2018, which accompanies the DA submission.

Proposed Development in Detail

The SEE describes the proposed development

As detailed within the accompanying plans, the proposal seeks to provide for alterations and additions to an existing dwelling including a new garage.

The works will comprise:

Entry Level

Alterations and additions to existing entry level to provide for new entry, open plan living, dining and kitchen, extension of existing terrace, new internal access stairs and WC

Bedroom Level

Alterations and additions to existing bedroom level to provide for new bedroom, two ensuites, bathroom, laundry, internal access stairs and extension of existing balcony

Garden Level

Alterations and additions to existing garden level to provide for new bedroom

External Works

New swimming pool paved and turf terraces and planter box

New double garage over existing parking hardstand

The external colours and finishes of the new works will complement the existing dwelling.

Misleading Information & Outstanding information

Height Poles/ Templates

I ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor.

The Height Poles will need to define:

- All Roof Forms
- Extent of all Decks
- Extent of Privacy Screens and balustrades

The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

I require these height poles to fully determine view loss.

Existing Ground Levels

I bring to the attention of Council that the Applicant has not fully surveyed my property to properly assess view sharing, solar loss, and privacy loss.

The position of my main living room window that view loss occurs has not been surveyed.

My windows, facing the subject site, that are subject to solar loss have not all been recorded

The existing ground levels that have been surveyed are not located onto existing DA drawings in a consistent manner.

This is contrary to submission standards and requires amendment by amended plans.

I bring to Council's attention that the ground level [existing] levels of RL 30.20 at the SW corner of the existing building is not shown correctly.

Statement of Environmental Effects

The Applicant has not provided a full SEE in accordance with Council controls.

The SEE has failed to adequately address:

- View Sharing
- Solar Access
- Visual Privacy
- Acoustic Privacy

The SEE, as submitted, cannot be relied upon.

There is no Tenacity Assessment, nor proper consideration on solar loss to my windows and external private open space, nor proper consideration to privacy issues.

Site Analysis

Site Analysis has not been properly addressed and is contrary to DCP controls.

- View Sharing
- Solar Access
- Visual Privacy
- Acoustic Privacy

Tenacity Assessment & Rose Bay Marina Assessment

Not Submitted

Overshadowing Diagrams

Incomplete, inaccurate and fails to give Council any comfort that compliance is achieved to controls.

Privacy

Incomplete privacy study and commentary

Coastline [Bluff] Hazard

Report outstanding

Summary of Assessment Issues

I list the main assessment issues that I will comment upon.

There may be other issues that affect other neighbours.

PLEP 2014

- 1.2 Aims
- 2.3 Zone Objectives
- 2. Zone 4 Environmental Living
- 4.3 Height of Buildings
- 4.6 Exceptions to Development Standards
- 7.1 Acid Sulphate Soils
- 7.2 Earthworks
- 7.5 Coastal Risk Planning
- 7.7 Geotechnical Hazards

P21DCP

- D4.3 Bilgola Locality
- B3.1 Land Slip
- B3.4 Coastline [Bluff] Hazard
- B4.5 Flora & Fauna Enhancement Category 2 Land
- B5.8 Stormwater Management
- B5.10 Stormwater Discharge
- B6.2 Internal Driveways
- B6.3 Off-Street Vehicle Parking Requirements
- B8.1 Construction and Demolition: Excavation & landfill
- C1.1 Landscaping
- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.6 Acoustic Privacy
- C1.23 Eaves
- C1.25 Plant
- D3.1 Character as viewed from a public place
- D3.3 Building Colours and Materials
- D3.6 Front Building Line

- D3.9 Building Envelope
- 3.11 Landscape Area - Environmentally Sensitive Land
- D3.12 Fences
- D3.13 Construction, Retaining Walls, Terracing & Undercroft Areas
- D3.15 Scenic Protection Category One Areas

Site History

I have lived in my property for over 30 years.

I am a good member of the community. I am chairperson of the finance committee of the Catholic Parish of Pittwater, which includes the suburbs from Mona Vale to Palm Beach. I was a previous Captain of Bilgola Beach SLSC. I have allowed neighbours to walk across my property to gain safer access to the beach.

The Owner purchased the subject site in 2015, and listed it on Airbnb and Stayz in 2016, as weekend and short-term rental. It has been continuously listed and let out on these sites ever since. The Owners do not live on the premises. Visitors are often weekend party guests, who often do not respect my residential amenity. Many guests become very boisterous and noisy. Considerable alcohol is always consumed by these guests, which adds to the overall poor amenity outcomes. The guests spill out onto the decks and often cause considerable noise and disturbance. On the various rental websites this house advertises for sleeping arrangements of up to 10 people: often there are more than 10. Unfortunately, often it becomes a 'party house', with significant greater numbers. The 'commercialisation' of the property over the past 5 years has led to a significant decline in my residential amenity, as I am sure Council and the NBLPP will fully understand. I am therefore very concerned that this DA will attempt to make the property an even larger dwelling housing more people, creating even more concern.

I do realise that this is not an issue under PLEP and PDCP controls, but Council must thoroughly consider this DA to ensure that the outcomes to my amenity become even worse than I currently have to deal with.

When the previous owners carried out their extension, they were very careful to respect my views and other amenity by not bringing the house further forward towards the ocean and not enclosing the external balcony next to my home. They also set the massing back to ensure that the visual bulk was acceptable.

This proposed development proposes to extend the house, causing me the loss of view, the loss of privacy, the loss of solar access, and creating an unreasonable visual bulk.

Council should take note of the Council Planning Report on that approval, that identified that the proposal was generally compliant to Council envelope and building height controls, and therefore recommended approval.

This DA proposes development that extends the already extended building envelope further towards the ocean, in non-compliance to building envelope controls. In doing so, I suffer significant amenity losses.

Environmental Planning & Assessment Act 1979 [EPAA]

The EPAA issues that I wish council to closely consider are:

- Section 4.15[1] [a][i] Provisions of any Environmental Planning Instrument
- Section 4.15[1] [a][iii] Provisions of any DCP
- Section 4.15[1] [a][iv] Provisions of EPA&A 2000
- Section 4.15[1] [b][i] Likely Impacts of the development

The following Zoning and Overlays apply:

- Coastal Management SEPP
- Land Zoning Map - E4 Environmental Living
- Land within Area 1 of the Landscaped Area Map

I do not intend to repeat every clause from Council's PLEP & PDCP outcomes and controls, but wish to emphasis the main non-compliances to the planning outcomes and controls, and identify the amenity losses that are directly attributable to that non-compliance to outcomes and controls.

As NSW LEC Planning Principles state:

How much of the impact is due to the non-complying elements of the proposal?

Are the impacts consistent with impacts that may be reasonably expected under the controls?

The subject site is sizable, and there is no reason, unique or otherwise why a fully complaint solution to the PLEP and PDCP outcomes and controls cannot be designed on the site.

Main Concerns within this Written Submission

My main concerns within this Written Submission are:

- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.6 Acoustic Privacy

These amenity losses are directly attributable to non-compliant:

- Height of Buildings
- Building Envelope
- Front Building Line

I also have concerns on the following matters, and request that Council condition any consent with appropriate conditions:

- Stormwater Disposal
- Geotechnical Report Recommendations incorporated within design and structural engineering plans
- Boundary Identification Survey
- Structural Adequacy & Excavation work
- Soil & Water Management Program
- Compliance with Standards
- Tree protection
- Road Reserve
- Removing, Handling and Disposing of Asbestos
- Survey Certificate
- Protection of Adjoining Property: Excavation
- Landscape Completion Certificate
- Stormwater Disposal
- Certification of Structures
- Geotechnical Certification prior to Occupational Certificate
- Dilapidation Survey of Neighbours Property prior to Construction Certificate
- Post Construction Dilapidation Survey of Neighbours Property prior to Occupational Certificate
- Swimming Pool Requirements

- Noise Nuisance controls from plant and occupants
- Lighting Nuisance from internal and external light sources
- Vibration to be below 2.5mm/sec on boundary
- No excavation within 1m of boundary
- Retaining wall structures near boundary to be fully designed and certified by structural engineer
- Glare and Reflection

Environmental Planning Instruments

I ask Council to carefully consider SEPP [Coastal Management] 2018. [CM SEPP]

The site is located within the Coastal Use Area and Coastal Environmental Area as identified by SEPP [Coastal Management] 2018 and the provisions are applicable in relation to the proposal.

I am concerned that the proposals have not been designed, sited to avoid adverse impacts on matters listed within cl 13[1][a], cl 14[1][ii], and cl 15 of the CM SEPP.

I am concerned that the proposals are inconsistent with the provisions of the CM SEPP, including the matters prescribed by cl 13, 14, and 5 of this policy.

Views to and from the site are a considerable issue not addressed by the Applicant.

Pittwater LEP 2014

A summary of my main issues:

- 1.2 Aims
- 2. Zone 4 Environmental Living
- 4.3 Height of Buildings
- 4.6 Exceptions to Development Standards
- 7.2 Earthworks
- 7.7 Geotechnical Hazards

Clause 1.2 Aims of Plan

In these proposals the local amenity and environmental outcomes would be challenged by non-compliance.

I contend that the proposed development does adversely affect the character or amenity of the area or its existing permanent residential population by view loss, and other amenity losses.

I contend that the DA fails the major objectives of this control as follows:

1.2 Aims of Plan

- 1) *This Plan aims to make local environmental planning provisions for land in Pittwater in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.*
- (2) *The particular aims of this Plan are as follows*
 - (a) *to promote development in Pittwater that is economically, environmentally and socially sustainable,*
 - (b) *to ensure development is consistent with the desired character of Pittwater's localities,*
 - (g) *to protect and enhance Pittwater's natural environment and recreation areas,*
 - (i) *to minimise risks to the community in areas subject to environmental hazards including climate change,*
 - (j) *to protect and promote the health and well-being of current and future residents of Pittwater.*

The requirements under this clause clearly have not been met.

Zone E4 Environmental Living

I am concerned that the proposed development does not accord with the objectives of Zone 4 Environmental Living

Objectives of zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

I am concerned that the proposed development does not provide for residential of a low density, with a scale integrated with the landform and landscape. The scale of the development is excessive, and exceeds controls, and causes unreasonable view loss, solar loss, privacy loss, and unreasonable visual bulk.

4.3 Height of Buildings

I contend that the proposed development does not minimise the overshadowing of my property, and does not to allow for the reasonable sharing of views.

The scale of the development is excessive, and exceeds controls, and causes unreasonable view loss, solar loss, privacy loss, and unreasonable visual bulk.

The proposed building heights simply refuse to accord with the PLEP 8m control, and progresses southwards presenting a maximum building height of 9.1 m, representing a non-compliance of over 13 %.

Council should note the SE Corner Survey mark @ 30.01, under the proposed Roof @ 39.1, resulting in 9.1m building height.

Council should also note that the existing south east leading edge of the existing roof to the existing dwelling is at RL 38.82, whilst the accommodation below is at RL 30.36. The existing

dwelling is already over the 8m maximum building height, across all of this south east zone. There is no excuse, unique or otherwise, how Council can approve a further extension to the south-east at this level. The roof must not exceed the existing height at RL 38.82 and be maintained at the same alignment and profile. Any additional built form would take my view, would take further street view, would cause additional overshadowing, increased privacy problems, whilst presenting an unacceptable visual bulk to my property and to the generally local environment. The DCP makes it abundantly clear:

D4.3 Bilgola Locality

The DCP states:

The Bilgola Beach Area:

Is a visual catchment that is environmentally significant and extremely susceptible to degradation. Its unique local and regional significance requires protection and preservation, and further investigation for listing as an environmental protection and/or conservation area. Strict development controls will apply to this area (including a reduced building height limit to 8m) to ensure that its unique qualities are preserved through development that is sensitive to the area's characteristics. A Visual Protection Area (as identified in Bilgola Locality Map 3) contains particular controls to minimise the impact of development that is visible from public places. The beach, valley and headlands represent a quiet uncrowded environment with no formal commercial activity. Its unique natural, unspoilt, non-commercial character makes it attractive to local residents and visitors alike and reflects the relaxed beach lifestyle. The local topography and natural features, notably the beachfront, headlands and stands of cabbage tree palms in the valley demand different sets of constraints on building design.

This non-compliant height of building is caused by an excessive storey height at the upper level, and excessive eaves overhang that are not required for a dwelling facing generally south.

The proposed development does not step with the topography of the land, and does not respond sensitively to the natural topography.

The zone of non-compliance above the 8m height control, along with the zone outside the building envelope, presents concern and contributes to my amenity loss.

4.6 Exceptions to Development Standards

The Clause 4.6 does not satisfactorily address what environmental planning grounds exist to justify contravening the standard. Nowhere within the Applicant's Clause 4.6 is there identification of any environmental planning ground, unique or otherwise, that justifies the contravention.

The Clause 4.6 submitted fails as (a) the request to vary the control could not identify any environmental planning ground that justifies the contravention, and does not exist; and (b) the proposal is inconsistent with the objectives of the standard in any event due to significant amenity loss.

Development Consent cannot be granted as no adequate Clause 4.6 has been submitted addressing the non-compliant Height of Buildings, contrary to PLEP controls.

There is no Tenacity Assessment, and proper consideration of the effect on overshadowing or privacy.

Council may consider they cannot continue considering the DA, and if the Applicant does not withdraw, they may have no other option than to immediately refuse the DA.

The Council should immediately consider refusing the DA, and perhaps is precluded from proceeding any further with its assessment and consideration of the DA.

Council may consider in light of Clause 4.6 application based upon false and misleading building heights, and other misleading information, to reject the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.

I contend that the DA fails the major objectives of this control as follows:

4.6 Exceptions to development standards

The Clause 4.6 Exceptions to Development Standards request that has been submitted for non-compliant Height of Buildings, is based upon false and misleading information. Even if it were to be corrected it would fail to satisfy the following clauses:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Planning Secretary has been obtained.*

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

This is contrary to LEP controls.

I contend that the DA fails the major objectives of this control as follows:

4.3 Height of buildings

(1) The objectives of this clause are as follows

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

The requirements under this clause clearly have not been met, and I am particularly concerned that a reasonable sharing of views, overshadowing and privacy has not been achieved.

7.2 Earthworks

I ask Council to ensure that appropriate conditions are included within any consent to protect my property.

7.7 Geotechnical Hazards

I ask Council to ensure that appropriate conditions are included within any consent to protect my property.

Pittwater 21 DCP

A summary of the main issues are:

- D4.3 Bilgola Locality
- B3.1 Land Slip
- B3.4 Coastline [Bluff] Hazard
- B4.5 Flora & Fauna Enhancement Category 2 Land
- B5.8 Stormwater Management
- B5.10 Stormwater Discharge
- B6.2 Internal Driveways
- B6.3 Off-Street Vehicle Parking Requirements
- B8.1 Construction and Demolition: Excavation & landfill
- C1.1 Landscaping
- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.6 Acoustic Privacy
- C1.23 Eaves
- C1.25 Plant
- D3.1 Character as viewed from a public place

- D3.3 Building Colours and Materials
- D3.6 Front Building Line
- D3.9 Building Envelope
- 3.11 Landscape Area - Environmentally Sensitive Land
- D3.12 Fences
- D3.13 Construction, Retaining Walls, Terracing & Undercroft Areas
- D3.15 Scenic Protection Category One Areas

Detailed Assessment

My main issues are View Sharing, Overshadowing and Privacy so I will address those issues first.

C1.3 View Sharing

The clause states:

Outcomes

A reasonable sharing of views amongst dwellings.

Controls

All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The proposal must demonstrate that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.

Where a view may be obstructed, built structures within the setback areas are to maximise visual access through the structure e.g. by the provision of an open structure or transparent building materials.

Commentary:

No assessment has been made, and no consideration of this vital matter within the site analysis.

There is no reasonable sharing of views amongst dwellings.

The proposal is to not designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The proposal has not demonstrated that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.

Height Poles are urgently required due to the non-compliant envelope proposals. The view loss exceeds 'moderate' on the Tenacity scale.

My comments are as follows.

In **Tenacity**, [**Tenacity Consulting v Warringah Council 2004**], NSW LEC considered Views. Tenacity suggest that Council should consider:

“A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.”

The development breaches multiple planning controls and is unreasonable.

The impact on views arises as a result of non-compliance with one or more planning controls, and the greater than moderate impact is considered unreasonable.

Application of Tenacity Planning Principle

I have only been able to consider the impact of the proposal on the outward private domain views from my property, by visual assessment. There are no height poles erected, so my assessment is limited by their absence.

A preliminary analysis and assessment in relation to the planning principle of Roseth SC of the Land and Environment Court of New South Wales in *Tenacity Consulting v Warringah [2004]* NSWLEC 140 - *Principles of view sharing: the impact on neighbours (Tenacity)* is made, however I have no confidence that the assessment is fully accurate due to the previous commentary on the absence of height poles.

The steps in Tenacity are sequential and conditional in some cases, meaning that proceeding to further steps may not be required if the conditions for satisfying the preceding threshold is not met.

Step 1 Views to be affected

The first step quoted from the judgement in *Tenacity* is as follows:

The first step is the assessment of views to be affected. Water views are valued more highly

than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Prior to undertaking Step 1 however, an initial threshold in Tenacity is whether a proposed development takes away part of the view and enjoys it for its own benefit and would therefore seek to share the view. In my opinion the threshold test to proceed to Step 1, I provide the following analysis;

I use the orientation to the rear of the site as 'south', although the actual orientation is more to the 'south east'. For ease of reference however I use this orientation as a 'job south' to ease the description. The survey drawing does not provide the actual bearing of the side boundaries, to aid in this matter.

An arc of view to the south is available when standing at a central location in the Living Room and the adjacent main entertainment deck. Both are highly used zones on my property.

The composition of the arc is constrained to the west and east either side of the subject site, by built forms.

The eastern part of the composition includes the subject site and the buildings and roof forms that currently occupy the site on the subject site frame the view.

I stress to Council that the landscaped headland and water interface view is of significantly high value. The overall composition of the total view is significantly enhanced by the lush vegetation of the headland, and the view is substantially enhanced by the landscaped headland and ocean interface. The loss of that view from my living room would be devastating to me. Although I have significant ocean view, it is the headland/ocean interface view that I enjoy the most. I ask Council to consider this matter very closely, and spend the time considering this matter wisely, as I strongly hope that the headland/ocean interface view can be maintained.

This view obviously includes scenic and valued features as defined in Tenacity.

The proposed development will take away views for its own benefit.

The view from my living room windows and paved terrace deck towards the water view, and the land-water interface will be lost.

The existing view is a 'moving landscape', rather than just a 'scenic outlook', given the activity on the water. There are regularly schools of fish and marine life which are active along the water interface. When the photographs for this submission were taken, a close look at the photographs show the massive bait fish column along the water/headland interface, with

other larger fish in the mix. Divers are present along the edge, and beach water craft regularly move around the water edge. The changing floral bursts of colour across the headland throughout the seasons bring particular enjoyment. This is a very special environment that I have enjoyed for over 30 years. A minor adjustment of the proposed envelope will protect those views.

The extent of view loss is moderate or greater, and the features lost are considered to be valued as identified in Step 1 of *Tenacity*.



Views to be affected: Land/Water looking interface from Living Room [Standing]



Views to be affected: Land/Water looking interface from Living Room [Seated]

Step 2: From where are views available?

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The views in all cases are available across the boundary of the subject site at angles to the east, from standing and seated positions.

A wide arc of view to the south is available when standing at a central location on the living spaces, entertainment decks, and other highly used zones on my property.

In this respect I make two points:

- I have no readily obtainable mechanism to reinstate the impacted views from my existing living zones if the development as proposed proceeds; and
- All of the properties in the locality rely on views over adjacent buildings side boundaries for their outlook, aspect and views towards the headland and water interface view

Step 3: Extent of impact

The next step in the principle is to assess the extent of impact, considering the whole of the property and the locations from which the view loss occurs.

Step 3 as quoted is:

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Step 3 also contains a threshold test. If the extent of impact is negligible or minor for example, there may be no justification for proceeding to Step 4, because the threshold for proceeding to considering the reasonableness of the proposed development may not be met. In that case the reasonableness question in Step 4 does not need to be asked and the planning principle has no more work to do.

I consider the extent of view loss in relation to my living room loss to be greater than moderate using the qualitative scale adopted in *Tenacity*.

The view lost includes water views and land-water interface. As I rate the extent of view loss as greater than moderate in my opinion the threshold to proceed to Step 4 of *Tenacity* is met.



Approximate Loss of View: Height Poles must be erected.

Step 4: Reasonableness

The planning principle states that consideration should be given to the causes of the visual impact and whether they are reasonable in the circumstances.

Step 4 is quoted below:

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

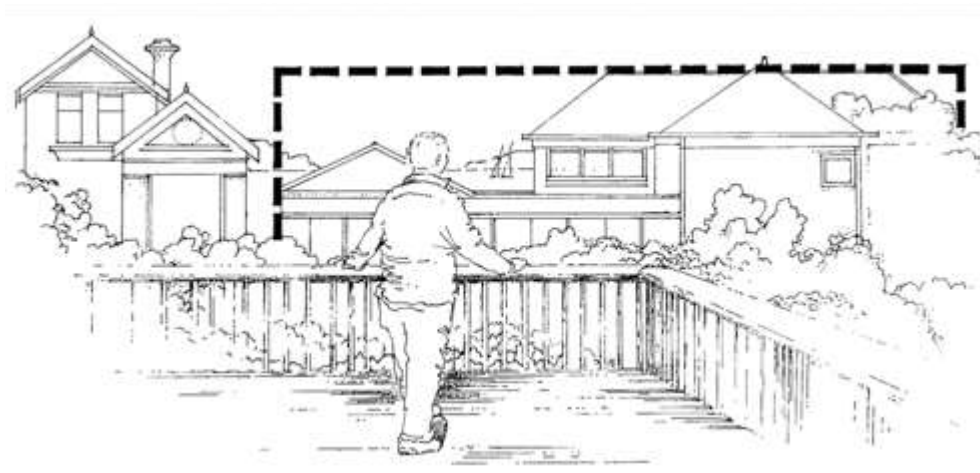
As the proposed development does not comply with outcomes and controls, that are the

most relevant to visual impacts, greater weight would be attributed to the effects caused.

In my opinion the extent of view loss considered to be greater than moderate, in relation to the views from my living rooms and living room deck of my dwelling, particularly to the east towards the headland/water face view.

The view is from a location from which it would be reasonable to expect that the existing view, particularly of the headland/water interface could be retained especially in the context of a development that does not comply with outcomes and controls.

Once Templates are erected, I can provide additional commentary.



Where there is a potential view loss, Council should require a maximum building height of less than 8m for part of the building, and should consider other modifications to the design to achieve view sharing.

The private domain visual catchment is an arc to the east from which views will be affected as a result of the construction of the proposed development.

The proposed development will create view loss in relation to my property.

The views most affected are from living areas and associated terraces and include very high scenic and highly valued features as defined in Tenacity.

Having applied the tests in the Tenacity planning principle and without a montage that can be relied upon, or height poles erected, I conclude that I would be exposed to greater than moderate view loss.

The significant non-compliance with planning outcomes and controls of the proposed development cause this loss.

Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

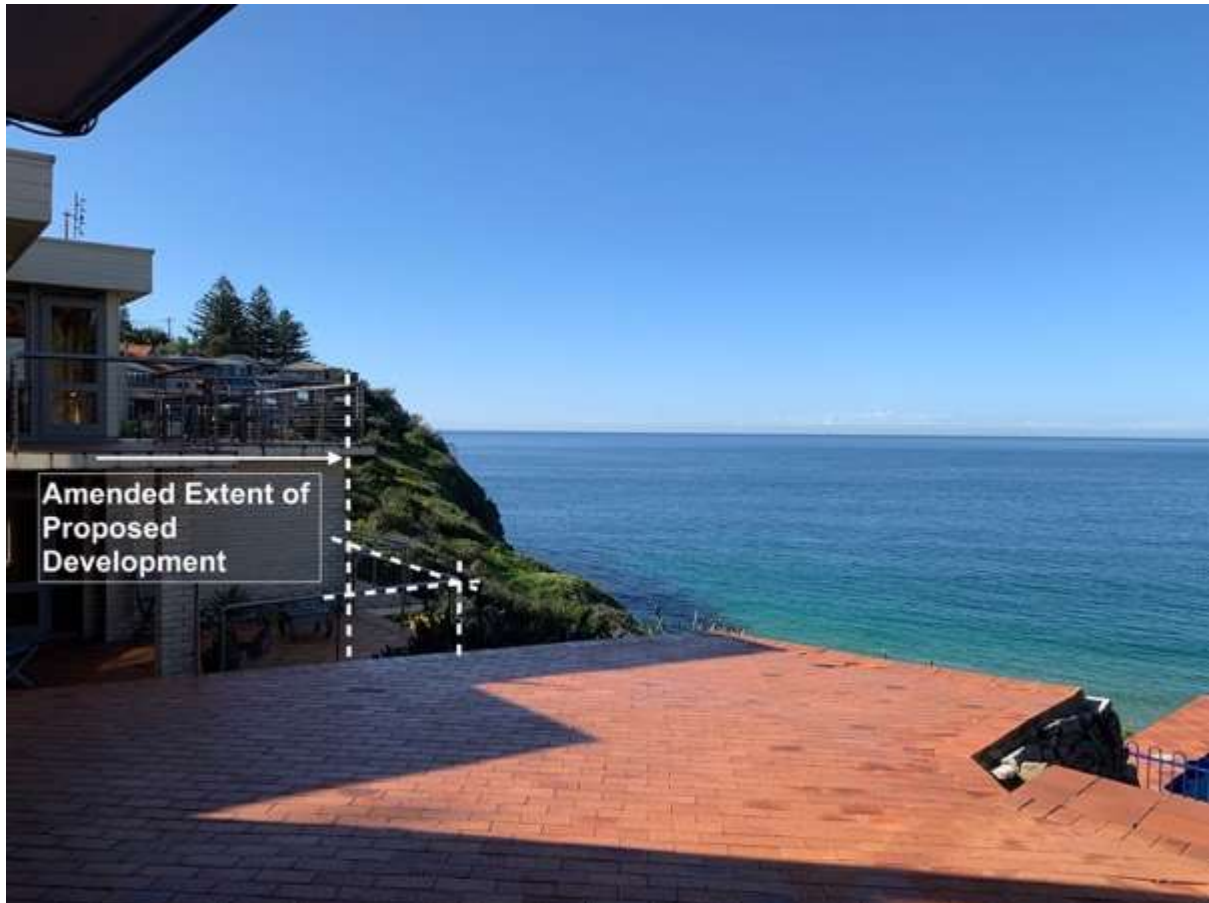
The applicant should have informed the design by a complete view loss consideration that would have clearly identified that any development extending to the south on the subject site would remove my sensational and highly regarded headland/water interface view-

There may be architectural solutions that maintain my view, by proposing development does not exceed past the alignment of the existing brickwork on the attached photograph. This would be a modest amendment, but would be highly appreciated and more reasonable, as it would maintain my headland/water face view.

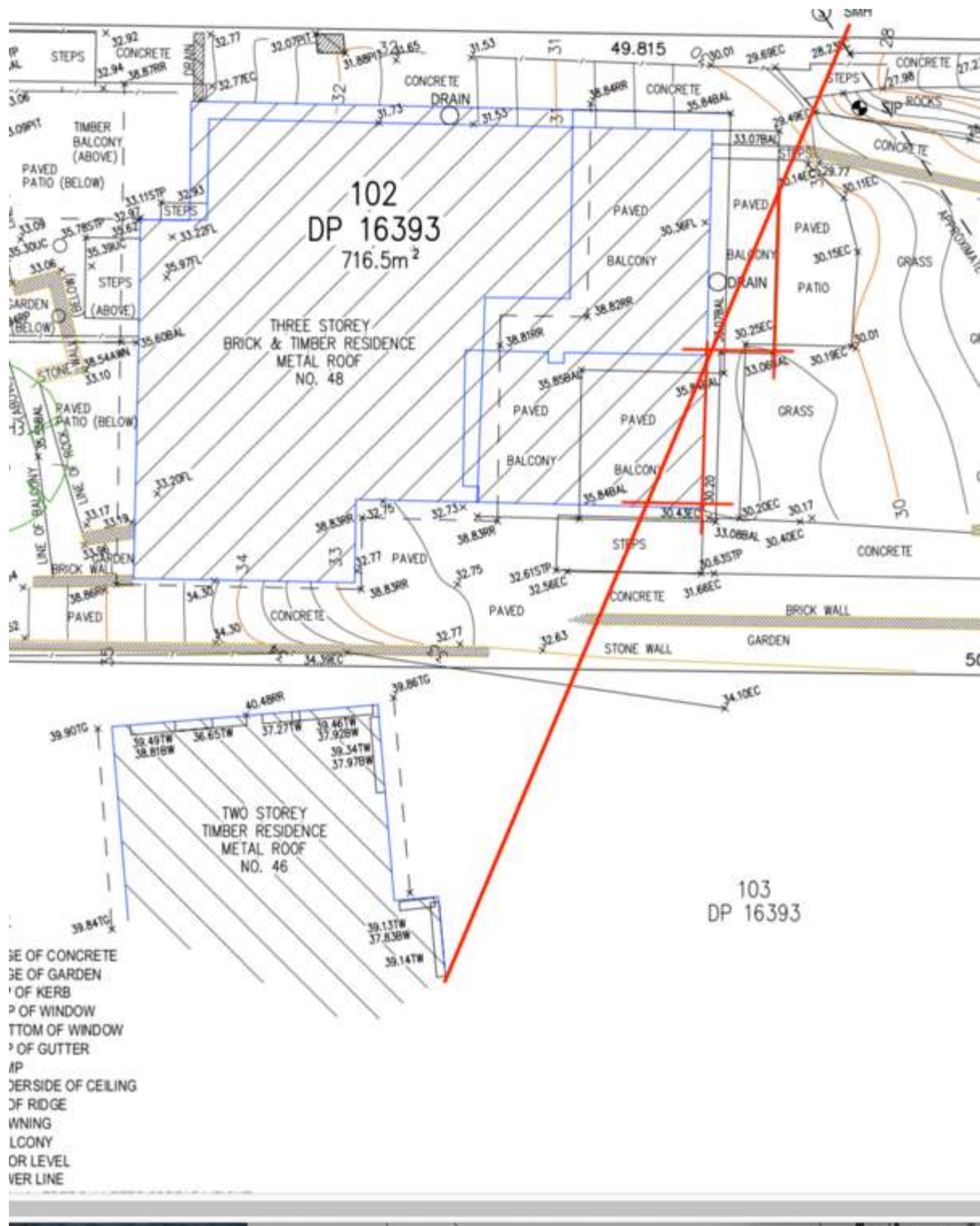
At this juncture, the proposed development cannot be supported on view loss grounds.

I do hope the Applicant will accept this modest amendment to resolve this issue, by submission of amended plans, so that I can remove my objection on this issue.

I have proposed conditions for Council to consider later in this Submission to give effect to this outcome.



Proposed amended extent of proposed development: reduce the building envelope to be contained within the enclosure as marked. Headland & Ocean interface view to be maintained. A reasonable outcome would be to arrive at a massing model that does not extend beyond the viewing alignment of the brickwork wall at the Bedroom Level, and for that vertical alignment not to be exceeded at the Entry Level. This would require a modest adjustment to the layout. There may be other design opportunity to increase the envelope along this alignment, such that from my Living Room windows it could not be seen. I offer this as an added opportunity for the Applicant to perhaps slightly increase the envelope in zones that would not affect my headland view.



View Loss Analysis: Proposed development must be reduced to ensure that the view available to the ocean side of the existing dwelling is maintained. Existing decks and balustrade to be retained at Bedroom Level as existing.



View Loss Analysis: Proposed development must be reduced to ensure that the view available to the ocean side of the existing dwelling is maintained.

Public Domain Street View Loss

I am concerned that the proposed non-compliant garage will take unreasonable amount of ocean view from the street.

The SEE has failed to complete a Rose Bay Marina Assessment, or even addressed this issue.

I ask Council to consider the matter under **Rose Bay Marina** Pty Limited v Woollahra Municipal Council & Anr [2013] NSWLEC 1046.

The planning principle for public domain views adopted in *Rose Bay Marina* involves a two-stage inquiry: the first factual, followed by a second, analytical.

Stage 1 – Investigation

The first stage involves several steps. Initially, the task is to identify the nature and scope of the existing views from the public domain, which should include considerations relating to:

- the nature and extent of any existing obstruction of the view;
- relevant elements of the view;
- what might not be in the view;
- whether the change permanent or temporary;
- what might be the curtilages of important elements within the view.

The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed.

The third step is to identify the extent of the obstruction at each relevant location. In this regard, the Court said that the impact on appreciation of a public domain view should not be subject to any eye height constraint.

The fourth step is to identify the intensity of public use of those locations where that enjoyment will be obscured, in whole or in part, by the proposed private development.

The final step is to inquire whether or not there is any document that identifies the importance of the view to be assessed (such as heritage recognition) or where the applicable planning regime promotes or specifically requires the retention or protection of public domain views. The Court made it clear, however, that the absence of such provisions does not exclude a broad public interest consideration of impacts on public domain views.

Comment:

The permanent loss of the ocean view through this zone is unwelcomed. The loss of view would extend for over 25m of the road and footpath frontage. The street is used heavily for foot traffic, as the walk along the Bilgola Headland to Bilgola Beach is regularly used, with many other people from Avalon Beach to Bilgola Beach and the shopping centre. The various planning control documents all refer to maintaining views from public zones. Many NBC documents refer to the public views, including the LEP and DCP.

Stage 2 – Analysis

The second stage is the analysis of impacts. The Court said the analysis required of a particular development proposal's public domain view impact is both quantitative as well as qualitative, but *'this is not a process of mathematical precision requiring an inevitable conclusion based on some fit in a matrix'*.

Planning controls or policies for the maintenance or protection of public domain views can create a presumption against the approval of a development with an adverse impact on a public domain view. This being so, the document must be properly considered and the legal status of the document is relevant in this regard.

In the absence of such planning controls or policies, the Court said *'the fundamental quantitative question is whether the view that will remain after the development (if permitted) is still sufficient to understand and appreciate the nature of and attractive or significant elements within the presently unobstructed or partially obstructed view.'* Interestingly in this regard, the Court said that sometimes it may be essential to preserve partially obstructed views from further obstruction whereas in other cases this may be *'mere tokenism'*.

The qualitative evaluation requires an assessment of the aesthetic and other elements of the view, and the outcome of this process *'will necessarily be subjective'*. The framework for how the assessment is undertaken must be clearly articulated including clearly setting out the factors/considerations to be taken into account and the weight attached to them.

- a high value is to be placed on *'iconic views'*
- a completely unobstructed view has value
- whether any significance attached to the view is likely to be altered, and if so, who or what organisation has attributed that significance and why they have done so
- whether the present view is regarded as desirable and whether the change makes it less so and why
- whether any change to whether the view is a static or dynamic one should be regarded as positive or negative and why
- if the view attracts the public to specific locations, why and how that attraction is likely to be impacted
- whether any present obstruction of the view is so extensive as to render preservation of the existing view merely tokenistic
- on the other hand, if the present obstruction of the view is extensive, whether the remainder warrants preservation
- does the insertion of some new element into the view by the proposed development alter the nature of the present view?

Comment:

The view is a high value, and an ‘*iconic view*’ of a large sweep of the Northern Beaches coastline. It is a completely unobstructed view, above the roof forms, which has added value. NBC LEP & DCP both refer to the preservation of views from public spaces. The present view is highly regarded as desirable and the change makes it less so, as it would place a major impediment in the centre of the view. The view is a dynamic one as there are passing water traffic and the annual migration of whales that can be spotted from this walk. Pods of dolphins are regularly observed. People complete the Bilgola Headland walk for the ocean view quality so undoubtedly the view attracts the public to this specific location. Removal of the view might make the walk less appealing. There is obstruction of the view further down the street, and this is one area where the view is available. The obstruction of the view is extensive, so as not to render preservation of the existing view merely tokenistic. The view warrants preservation. The insertion of a new garage element into the view by the proposed development alters the nature of the present view, as it becomes disjointed and less dramatic.

Finally, the Court said that ‘*a sufficiently adverse conclusion on the impact on views from the public domain may be determinative of an application. However, it may also be merely one of a number of factors in the broader assessment process for the proposal.*’

The garage is non-compliant to front setback controls. The dwelling is non-compliant to building height and envelope controls.



A compliant garage positioned further down the site, would not create the public domain view impact. There are other design alternatives available to the Applicant, to achieve a better public domain view outcome.

A compliant dwelling would limit the ocean view loss and increase the street view to the iconic coastline view.

C1.4 Solar Access

The clause states:

Outcomes

Residential development is sited and designed to maximise solar access during mid-winter.

A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development.

Controls

The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).

Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid winter.

Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.

The proposal must demonstrate that appropriate solar access is achieved through the application of the Land and Environment Court planning principle for solar access.

Commentary:

Overshadowing is a major concern as my property lies to the south of the subject site, and to the non-compliant envelope.

Until the Applicant completes a measured survey of all windows by the Registered Surveyor of my property, and completes a solar access study at hourly intervals, the full extent of the solar loss is unknown.

I bring the following matters to Council attention.

The 9am Winter Solar Diagram is incomplete.

The diagram does not show any additional shadow to the south of my property facing the ocean.

The additional bulk in excess of the existing envelope will inevitable create additional overshadowing to my north/east and north/west facing windows.

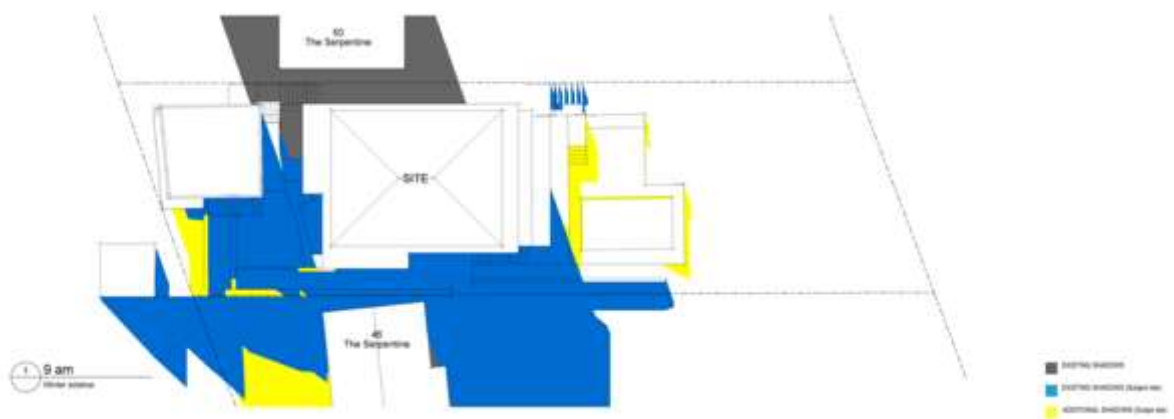
The additional non-compliant envelope would inevitably overshadow my private open space, but this is not shown.

Also, my neighbour at #44 might also be affected. The windows of #44 have not been surveyed.

Council will note that the new non-compliant garage will overshadow my main open space facing the street, and will undoubtedly overshadow the windows.

A detailed elevational study at one hour intervals is urgently required.

It is clear that overshadowing occurs, but the full extent is unknown due to incomplete survey, and incomplete hourly elevational study.



9am Winter Sun Diagram by Applicant

The Noon Winter Solar Diagram is incomplete.

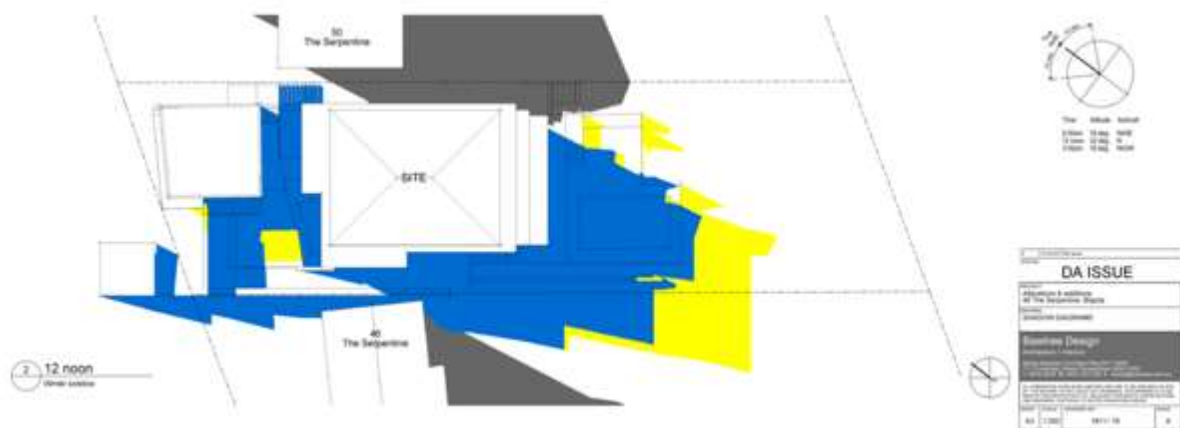
My windows facing the development, up to noon, will be overshadowed.

The additional bulk in excess of the existing envelope will inevitable create additional overshadowing to north/east and north/west facing windows.

I strongly query whether the author of these diagrams has recorded the fall of the site correctly, as I suggest the additional shadow will be significantly deeper across my property. Council must query this matter with the Applicant.

Elevational study at 1 hour intervals is urgently required.

It is clear that overshadowing occurs, but the full extent is unknown due to incomplete survey, and incomplete hourly elevational study.

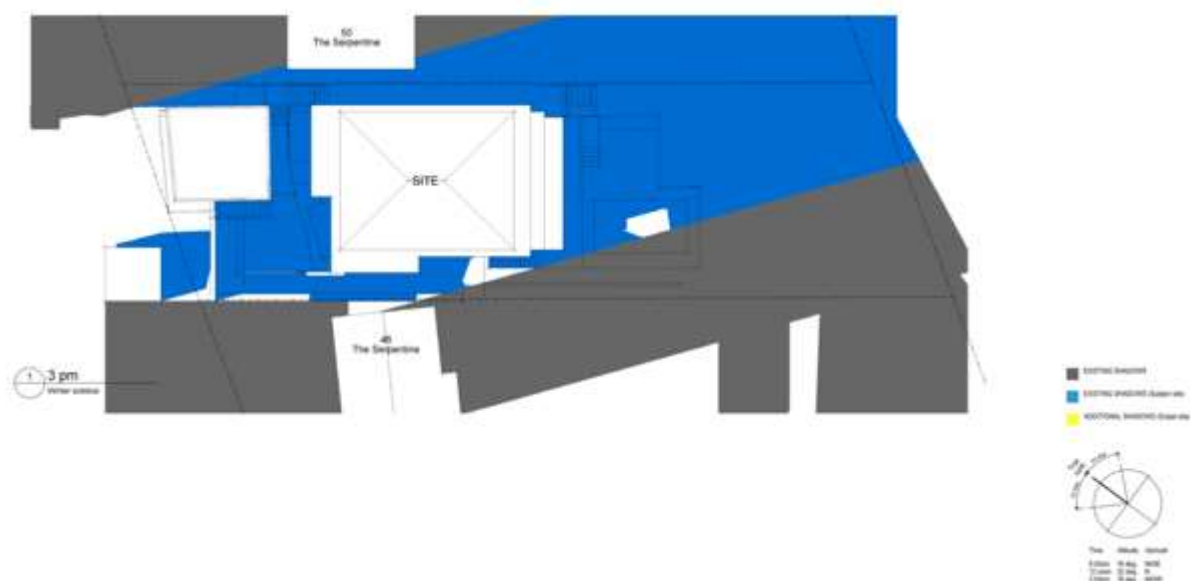


Noon Winter Sun Diagram by Applicant

The 3pm Winter Solar Diagram shows that the solar angle from the proposed development leaves my property.

The diagram shows that there would be no solar access to my windows or ocean fronted private open space at 3pm.

The additional bulk in excess of the existing envelope will inevitable create additional overshadowing to north/east and north/west facing windows from noon to 3pm, and would create overshadowing to my south east facing private open space.



3pm Winter Sun Diagram by Applicant

The proposed residential development is not sited and designed to maximise solar access.

The building envelope facing my property is non-compliant to envelope controls, and therefore has not been maximised during mid-winter.

The Applicant has failed to identify by means of hourly sun diagrams that:

1. *main private open space of any adjoining dwellings receives a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.*
2. *windows to the principal living area of adjoining dwellings, receives a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).*

3. *Solar collectors for hot water or electricity receives at least 6 hours of sunshine between 8.00am and 4.00pm during mid-winter*
4. *Maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.*

Until the Applicant provides a full overshadowing study at hourly intervals to all windows in elevation, and separately in plan to my ocean side brick paved private open space in front of my living room, the Council cannot rely upon these solar access drawings, nor concur with the SEE statements which appear not to have considered these matters in the slightest.

The advice I have received is that my main paved open space in front of my living room, my main private open space, will be heavily overshadowed in winter by these non-compliant proposals, and is highly unlikely to achieve a minimum of 3 hours between 9am and 3pm.

This is directly caused by non-compliant building envelope and building height.

My windows to the street and the side boundary will highly likely be non-compliant to controls caused by the non-compliant envelope.

My front garden area would be heavily overshadowed in the morning caused by non-compliant envelope in the front setback zone.

This is unreasonable.

C1.5 Visual Privacy

The clause states:

Outcomes

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.

A sense of territory and safety is provided for residents. (S)

Controls

Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

Direct views of private open space or any habitable room window within 9m can be restricted (see diagram below) by:

- *vegetation/landscaping*
- *a window sill height 1.7 metres above floor level, or*
- *offset windows*
- *fixed translucent glazing in any part below 1.7 metres above floor level, or*
- *solid translucent screens or perforated panels or trellises which have a maximum of 25% openings, and which are permanent and fixed; made of durable materials; and designed and painted or coloured to blend in with the dwelling.*

Commentary:

My concern is to the windows and decks facing my property.

There is a direct line of sight from the proposed new windows and roof decks to my property.

The acoustic concern would always be a significant issue, irrespective of what height any privacy screen is erected on these two roof decks.

The extent of two new roof decks will need to be further setback, and replaced by roofs that are totally non-accessible.

My concern also is to the extent of the west facing glazed areas in close proximity to my private open spaces and habitable rooms.

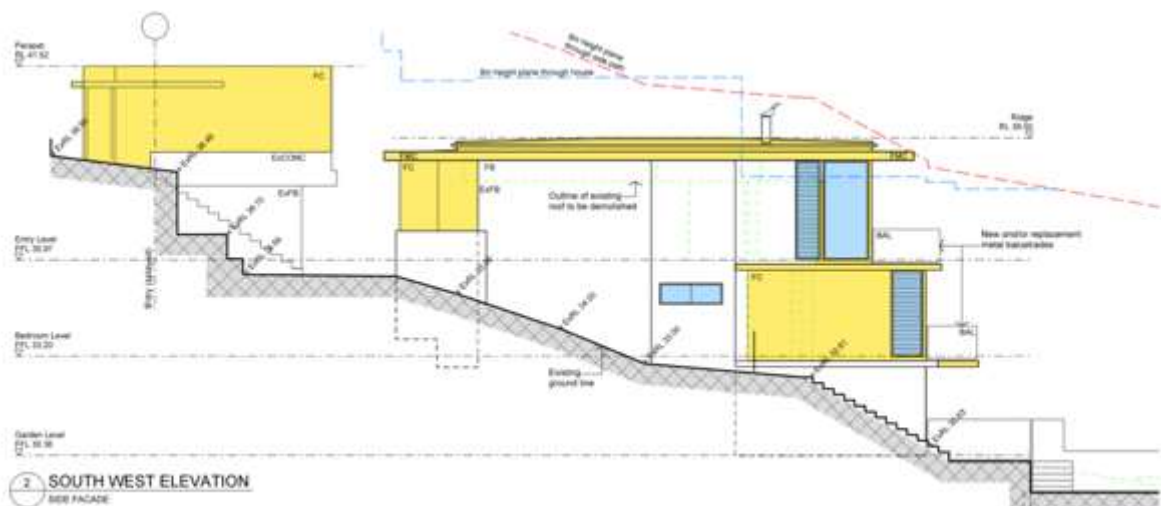
All windows directly facing my property need to be deleted or substantially reduced in size and require privacy screens.

Habitable rooms and outdoor living areas of dwellings has not optimised visual privacy through good design.

This is unreasonable.



Large windows are proposed facing my living, kitchen, bedroom, and private open space. These windows need complete deletion, or sills to 1.7m high, with privacy screens.



Proposed New Windows to the South West Elevation need to be fully deleted, as there is a direct line of sight to my private open space, my living room, and kitchen windows only a few metres away. This will present not only visual privacy concerns, but also acoustic privacy concerns.

Delete any extension to the south-east at Entry Level. Reduce Bedroom Level to ensure there is non view loss to Simmons Residence. Substantially reduce the garage, and reposition further down the slope, with a compliant front setback, to ensure no street view loss

C1.6 Acoustic Privacy

The clause states:

Outcomes

Noise is substantially contained within each dwelling and noise from any communal or private open space areas are limited. (S)

Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or private open space areas (S)

Controls

Noise-sensitive rooms, such as bedrooms, should be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like.

Noise generating plants including pool/spa motors, air conditioning units and the like shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Developments must comply in all respects with the Protection of the Environment Operations Act 1997, and other relevant legislation.

Commentary:

My concern is to the Roof Decks, and the potential of noisy party decks facing our private open space, bedrooms, and living spaces, irrespective of the privacy screen height.

These decks need to be further setback.

Windows facing my private open space will transmit acoustic concerns, particularly with the dwelling being used as an Airbnb. Excessive noise will be emitted in close proximity to my private open space, living room, and kitchen. The windows need to be deleted.

The Pool Plant must be centrally positioned on the site, and not on our boundary as shown.

No AC plant or any other plant is to be located along my boundary. We ask council to condition this outcome.

Noise has not been substantially contained within each dwelling and noise from any communal or private open space areas has not been limited.

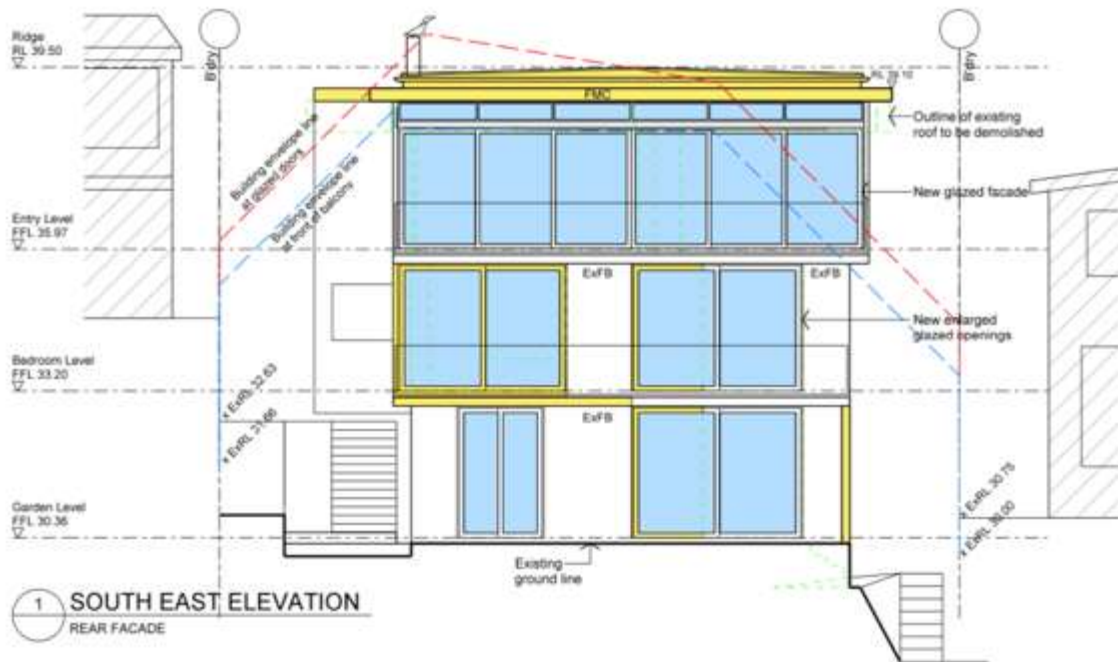
The SEE has failed to address any of these matters.

This is unreasonable.

D3.9 Building Envelope

The 3.5m/45 degree building envelope is not maintained.

It is outside the control envelope.



Envelope represented in blue shows major non-compliance to control. Increased Setback to the Entry Level is required. Maximum building height not shown. The proposed three-storey component to the south-east is above maximum building height. Delete any further extension at the Upper Level to the south-east.

The outcomes are not achieved, particularly views, privacy, solar and visual bulk.

The bulk and scale of the built form is minimised.

Equitable preservation of views and vistas to and/or from public/private places.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.

The proposed development is considered not to achieve the outcomes of the Pittwater DCP and the outcomes regards building envelope.

The proposals cannot be supported on merit in this particular circumstance based upon the above assessment.

This is unreasonable.

Other matters

On the other matters that I have raised, I ask Council to consider these comments:

D4.3 Bilgola Locality

The DCP states:

The Bilgola Beach Area:

Is a visual catchment that is environmentally significant and extremely susceptible to degradation. Its unique local and regional significance requires protection and preservation, and further investigation for listing as an environmental protection and/or conservation area. Strict development controls will apply to this area (including a reduced building height limit to 8m) to ensure that its unique qualities are preserved through development that is sensitive to the area's characteristics. A Visual Protection Area (as identified in Bilgola Locality Map 3) contains particular controls to minimise the impact of development that is visible from public places. The beach, valley and headlands represent a quiet uncrowded environment with no formal commercial activity. Its unique natural, unspoilt, non-commercial character makes it attractive to local residents and visitors alike and reflects the relaxed beach lifestyle. The local topography and natural features, notably the beachfront, headlands and stands of cabbage tree palms in the valley demand different sets of constraints on building design.

I am concerned that the proposal, wilfully exceeds the 8m control, and this issue must be addressed as I have referred to within this Submission. Storey Heights at the Entry level are excessive. Eaves are excessive.

The Clause clearly states:

Strict development controls will apply to this area (including a reduced building height limit to 8m) to ensure that its unique qualities are preserved through development that is sensitive to the area's characteristics.

Much is made of the Visual Protection Area, particularly the headlands, and I ask Council to consider this matter when considering the Tenacity Assessment that I have completed within this Submission.

B3.1 Land Slip

Council will need to condition the Geotech Report in any approval.

B3.4 Coastline [Bluff] Hazard

Council will need to condition the revised Geotech Report in any approval.

I note the Council's NEU concern and issues to the outstanding report on this Hazard.

B4.5 Flora & Fauna Enhancement Category 2 Land

I am concerned that the development should comply fully with the 60% provision, considering the Cat 2 land.

B5.8 Stormwater Management

Council will need to condition this matter

B5.10 Stormwater Discharge

Council will need to condition this matter

B6.2 Internal Driveways

Council will need to condition this matter

B6.3 Off-Street Vehicle Parking Requirements

Council will need to condition this matter

B8.1 Construction and Demolition: Excavation & landfill

Contrary to the SEE statement, excavation will be required for the pool. Council must obtain a revised Geotech Report dealing with this matter.

C1.1 Landscaping

I am concerned that the development should comply fully with the 60% provision, by reducing the external works to the ocean side.

C1.23 Eaves

The excessive eaves is causing solar loss to my property. There is no requirement to protect the ocean side windows from sun due to their south-easterly orientation. I request these eaves to be reduced to 450mm, and the level lowered, as mentioned elsewhere.

C1.25 Plant

I request that Council condition that the pool plant be located centrally away from my boundary. Could Council condition that no AC plant or any other plan be positioned along my boundary.

D3.1 Character as viewed from a public place

I contend that the proposed development fails as it takes away very valuable views, and therefore does not preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.

D3.3 Building Colours and Materials

Could Council make a specific condition on colours. Dark earthy tones must be included.

D3.6 Front Building Line

The non-compliance is directly leading to overshadowing on my property, and public domain view loss. It is unreasonable.

D3.9 Building Envelope

The non-compliant building envelope causes unreasonable view loss, solar loss, and privacy loss.

3.11 Landscape Area - Environmentally Sensitive Land

I am concerned that the development should comply fully with the 60% provision, by reducing the external works to the ocean side.

D3.12 Fences

To aid privacy, I would like Council to condition the Applicant to erect boundary fences.

D3.13 Construction, Retaining Walls, Terracing & Undercroft Areas

Structural adequacy conditions will need to be included.

D3.15 Scenic Protection Category One Areas

The proposed development has not been designed to encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping. I refer to my Tenacity Assessment.

Statement of Environment Effects Rebuttal

There are numerous non-factual matters stated within the Applicant's SEE.

The SEE does not meet NBC standards for completeness.

The SEE has failed to identify any environmental planning ground, unique or otherwise, that justifies the contravention of non-compliance to outcomes and controls.

The SEE fails to properly address the major non-compliances of PDCP:

- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.6 Acoustic Privacy

The SEE fails to consider the poor amenity outcomes.

The attached Clause 4.6 has also failed to address any of these matters.

The SEE and the Clause 4.6 cannot be relied upon.

NSW LEC Planning Principles

I bring to the attention of Council numerous **NSW LEC Planning Principles** that have relevance to this DA.

In **Tenacity**, [**Tenacity Consulting v Warringah Council 2004**], NSW LEC considered Views. Tenacity suggest that Council should consider:

“A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.”

Commentary:

The development breaches multiple planning controls and is unreasonable.

The impact on views arises as a result of non-compliance with one or more planning controls, and the severe to devastating impact is considered unreasonable.

In **Meriton**, [**Meriton v Sydney City Council 2004**], NSW LEC considered Privacy. Meriton suggest that Council should consider:

“When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.”

Commentary:

The freedom of neighbour’s property from being overlooked simply has not been properly and fully considered.

In **Davies**, [**Davies v Penrith City Council 2013**], NSW LEC considered General Impact. Davies suggest that Council should consider:

“Would it require the loss of reasonable development potential to avoid the impact?”

Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?

Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?"

Commentary:

The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal.

In **Veloshin, [Veloshin v Randwick Council 2007]**, NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

"Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified."

Commentary:

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

The proposals are non-compliant in multiple areas, and the Applicant has not quantified the difference between the impacts of a complying and a non-complying development.

Proposed Conditions of Consent to any Approval

I ask Council to impose the following conditions to any consent.

I ask that Council request that the Applicant submit Amended Plans to resolve these matters in full, prior to determination.

The massing envelope reductions conditions would preferably all be dealt with under resubmission of Amended Plans. I present them for Council's consideration.

Massing Envelope Reductions

A. Entry Level @ 35.97:

The south-easterly extension at this level is to be deleted. The roof height already exceeds the 8m maximum building height control.

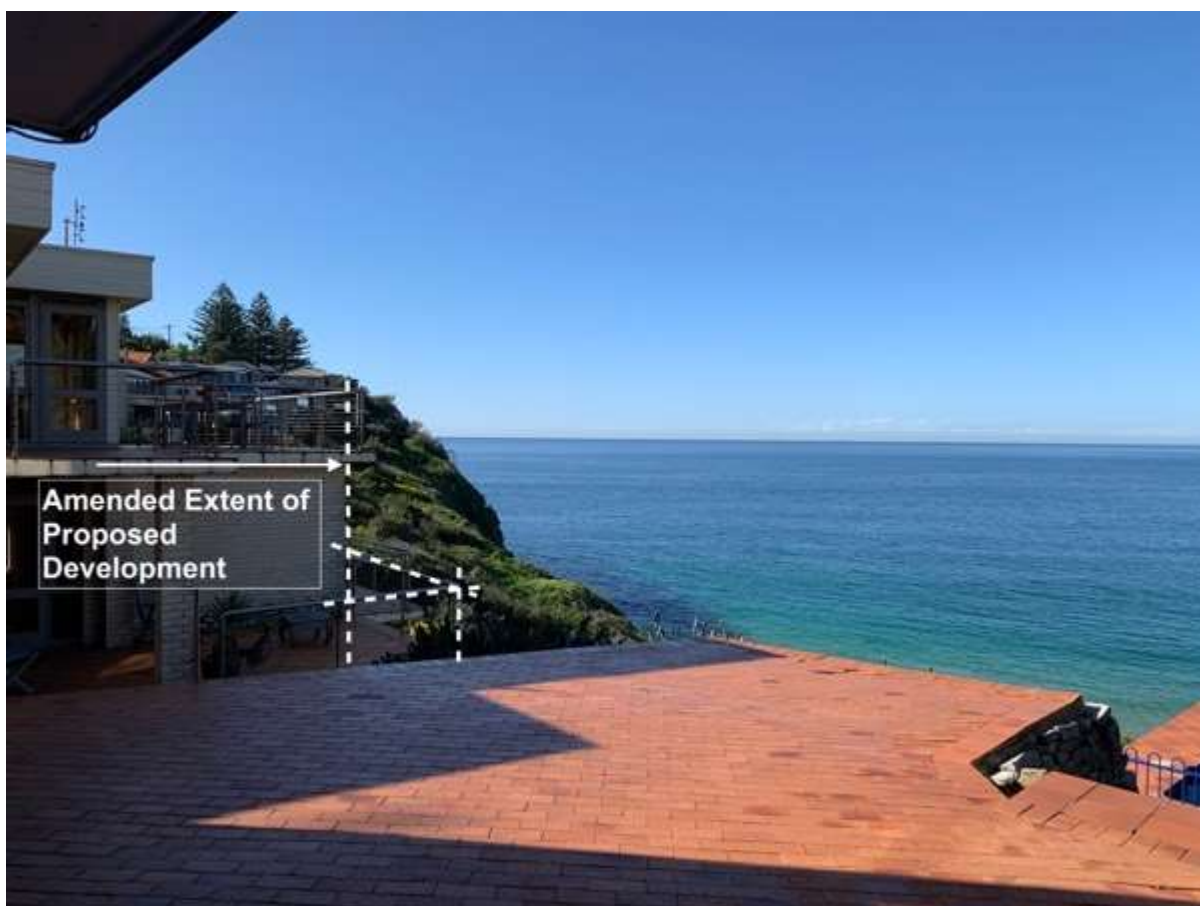
B. Bedroom Level @ 33.20:

South-East Extension towards the ocean to be reduced so that the overall bulk does not extend to the south beyond a viewpoint from the middle of the living room windows at 46 The Serpentine to the existing brickwork wall on the subject site to the south at the Bedroom Level.

Reduce Bedroom on the western elevation by 3m, and maintain a reduced 3m deck in the current location, with a balustrade in the same location as existing

C. Roof @ RL 39.5

The existing roof alignment and profile to a height at the south-east at RL 38.84 to RL 38.81, shall not be extended to the south-east, as the roof height already exceeds the 8m maximum building height control.



Main Vertical Line: Maximum extension of existing dwelling. Balustrades to Bedroom Level to remain in current position. [refer to Condition A, B, & C above]

D. Garage

Reduce roof to 2.4m above existing slab level, to achieve 2.1m ceiling height. Garage walls to be deleted to create car port, all to allow sun penetration to neighbours, and improved public street view to ocean. Council to consider deleting the garage due to public domain view loss.

E. Boundary Fence

New boundary fence to be constructed to assist in privacy matters, not to exceed 1.8m height above ground level [existing]. Planting along subject site western boundary not to exceed 1m height, and trimmed back to ensure the mature height is always 0.8m below top of fence.

F. Windows facing 46 The Serpentine

All windows on the proposed South West Elevation to be deleted, or, alternatively with 1.7m high sills plus full privacy screens.

G. New Decks facing 46 The Serpentine

No further increase of any new deck at Entry Level & Bedroom Level facing the south west boundary.

H. Landscaping

Increase to 60%, by reduction of the size of the Pool and Deck facing the ocean.

All planting along #46 Boundary not to exceed 1m height above existing ground level, and pruned every 6m months to this 1m maximum height.

I ask Council to impose the following conditions on any approval:

- I. Stormwater Disposal
- J. Geotechnical Report Recommendations incorporated within design and structural engineering plans
- K. Boundary Identification Survey
- L. Structural Adequacy & Excavation work
- M. Soil & Water Management Program
- N. Compliance with Standards
- O. Tree protection
- P. Road Reserve
- Q. Removing, Handling and Disposing of Asbestos
- R. Survey Certificate
- S. Protection of Adjoining Property: Excavation
- T. Landscape Completion Certificate
- U. Stormwater Disposal
- V. Certification of Structures
- W. Geotechnical Certification prior to Occupational Certificate
- X. Dilapidation Survey of Neighbours Property prior to Construction Certificate
- Y. Post Construction Dilapidation Survey of Neighbours Property prior to Occupational Certificate
- Z. Swimming Pool Requirements
- AA. Noise Nuisance controls from plant
- BB. Lighting Nuisance from internal and external light sources. No external lighting facing neighbours property.
- CC. Vibration to be below 2.5mm/sec on boundary, on excavation
- DD. No excavation within 1m of neighbours boundary
- EE. Retaining wall structures near boundary to be fully designed and certified by structural engineer
- FF. Glare and Reflection

Conclusion

In consideration of the proposal and the merit consideration of the development, I contend that the proposals are considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the EPAA 1979

The design of the proposals and the poor amenity outcomes render the proposal inappropriate and unsuitable for the site and the location.

The Applicant has not adequately addressed the view loss, solar loss and privacy loss issues of neighbour's amenity.

The built form of the development does not provide an outcome that is compatible with the area, and is incompatible with neighbour's amenity.

The bulk and scale of the building is beyond PLEP and PDCP controls, and is not consistent with a site responsive design on sloping land on a low side of the street.

The design is not consistent with the desired future character for the locality and exhibits non-compliances with building height controls, front setback controls, and building envelope controls. These non-compliances lead directly to neighbour's amenity loss.

I contend that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

I ask Council, that unless the Applicant addresses these matters completely within an Amended Plan resubmission, then Council must **REFUSE** Development Consent to Development Application for the reasons outlined as follows:

Section 4.15[1] [a][i] Provisions of any Environmental Planning Instrument, the development is inconsistent with PLEP 2014

- 1.2 Aims
- 2.3 Zone Objectives
- 2. Zone 4 Environmental Living
- 4.3 Height of Buildings

- 4.6 Exceptions to Development Standards

Section 4.15[1] [a][iii] Provisions of any DCP, the development is inconsistent with PDCP,

- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.6 Acoustic Privacy
- D4.8 Building Envelope

Section 4.15[1] [b][i] Likely Impacts of the development. The proposal will have a detrimental impact on both the natural and built environments pursuant to Section 4.15(1)(b)(i) of the *Environmental Planning and Assessment Act 1979*.

The site is not suitable for the proposal pursuant to **Section 4.15(1)(c)** of the *Environmental Planning and Assessment Act 1979*.

The site is not suitable for the proposal pursuant to **Section 4.15(1)(d)** of the *Environmental Planning and Assessment Act 1979*.

The proposal is not in the public interest pursuant to **Section 4.15(1)(e)** of the *Environmental Planning and Assessment Act 1979*.

For the reasons set out above the Development Application should be refused by Council.

I will welcome the opportunity to further expand on any of the issues above once templates and height poles are erected.

As the proposed development contravenes a development standard imposed by an environmental planning instrument by more than 10% [building height >13%] and non-numerical development standards [landscape >30%, building envelope, front setback >90%], I ask for confirmation that the **NBLPP** will determine this DA.

I request these matters be closely considered in the assessment of the proposed development.

I expect that on such a large site, the Applicant should be charged by Council to deliver a totally compliant scheme to PLEP and PDCP controls. There is no excuse that neighbours amenity must suffer due to non-compliance to the controls. All I seek is a fully compliant development to Council's controls, and for the envelope controls to be drawn accurately based upon the boundary survey levels and other survey marks across the site.

It is clear from the SEE, that Council made it very clear to the Applicant, pre submission, that neighbours view loss should be properly considered. Unfortunately, this did not take place in the site analysis, and did not inform the design process. The Applicant did not visit my property to assess view loss, nor any of his Advisors. The SEE has stated in numerous sections of the document that view loss has been considered: unfortunately, the reverse is true, and no one from the Applicant or his Advisors has even bothered to set foot on my property to assess the issue.

A modest adjustment to the proposed development, as identified within my proposed Massing Envelope Reductions within this Submission, would generally resolve my view loss, privacy loss and solar loss. There might be ongoing minor non-compliance after these amendments, but as long as my main amenity issues are satisfactorily resolved I would consider that outcome as a more reasonable outcome under the controls.

I do hope Council will appreciate that not only am I presenting the problems, but I am also presenting the solutions to those problems.

I am being more than reasonable and helpful to try to reach a compromised solution that resolves my amenity, but allows the Applicant to achieve most of what he wishes to gain from the development, all in a reasonable way.

It is very unfortunate that the Applicant chose not to have any discussions with me prior to submission, to avoid this objection. Council strongly recommends for pre-consultation with neighbours should occur, but on this occasion this was not the case, and I am left to respond as best that I can in the circumstances.

I do hope the Applicant submits Amended Plans to resolve these matters, erects Height Poles, submits revised and complete overshadowing drawings, and other matters identified within this Submission. If this does not occur, I ask Council to **REFUSE** this DA.

Yours faithfully,

David A Simmons

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