

9 July 2025



Four Towns Pty Ltd  
PO Box 361  
BALGOWLAH NSW 2093

**Attention – Mathew Quattroville**

Dear Mathew,

**Development Application No: DA2025/0599 for Demolition works and construction of a dual occupancy (attached) including strata subdivision at 35 Moore Road FRESHWATER**

Assessment of your application has been undertaken, which has revealed matters that prevent Council from supporting the proposal.

These matters are addressed, as follows:

- **Insufficient information**

The following information/documentation is required to complete the assessment of the application:

1. **Written request to vary a development standard**

Clause 35B of the *Environmental Planning and Assessment Regulation 2021* (the Regulation) provides that development that contravenes a development standard must be accompanied by a document that sets out the grounds on which the applicant seeks to demonstrate that:

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

The submitted architectural plans indicate a variation to the development standard set out by Clause 4.3 Height of Buildings of the *Warringah Local Environmental Plan 2011* (WLEP 2011).

In accordance with the most recent caselaw via the NSW Land and Environment Court (*Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582), building height is calculated from the existing ground level, whether disturbed (excavated or filled) or undisturbed.

The ground level of the subject site has been historically disturbed for the purpose of the existing development.



The proposed privacy screen to the south-eastern elevation of the second floor terrace of proposed Lot 1 is measured to be a maximum of 8.8 metres above the disturbed existing ground level on the subject site. This equates to a breach of the 8.5 metre height of buildings development standard by 300 millimetres (3.53%), per the calculation method set by Merman detailed above.

Any variation to the height of buildings development standard must be accompanied by a written request to vary the standard, per the requirements of Clause 4.6 Exceptions to Development Standards of the WLEP 2011, and Clause 35B of the Regulation, adequately justifying the variation.

Please contact me to discuss this non-compliance as to whether the design could be adjusted to negate the variation.

## **2. Details of fireplaces**

The submitted architectural plans indicate a fireplace for each dwelling. No detail is provided in the Statement of Environmental Effects or on plans as to whether it is to be a gas or solid-fuel-burning fireplace.

Should a gas fireplace be proposed, specification on plans is required.

Should a solid-fuel-burning fireplace be proposed, specifications on the plans are required. Further, the following information is required, per Council's Development Application & Modification Lodgement Requirements:

- *Details from an appropriately qualified person that the proposed heater meets the emission control requirements of AS 4013.2014.*
- *Specifications from the installer of the appliance indicating compliance with AS/NZS 2918:2018 and the Building Code of Australia.*
- *Plans demonstrating that the flue pipe will extend not less than 4.6 metres above the top of the floor protector.*
- *Elevation and section plans demonstrating either:*
  - *If the flue is 3 metres or less in horizontal distance from the highest point of the roof, the top of the flue is at least 600 millimetres above highest point of the roof, or*
  - *If the flue is over 3 metres in horizontal distance from the highest point of the roof, the height of the flue is at least 1 metre above the roof penetration.*

- **Planning Issues**

The following is a list of the planning issues and concerns identified in the assessment that cannot be supported:

### **Warringah Development Control Plan 2011 (WDCP)**

## **3. B7 Front Boundary Setbacks**



The proposed development includes a breach to the front boundary setback, being a minimum of 5.2 metres from the front boundary, where a minimum of 6.5 metres is required. The breach is not supported, with reference to the following objectives of Part B7:

- *To create a sense of openness.*
- *To protect and enhance the visual quality of streetscapes and public spaces.*

#### **4. D1 Landscaped Open Space and Bushland Setting**

The proposed development includes 36.73% of the site (141.5m<sup>2</sup>) as landscaped open space, where 40% (154m<sup>2</sup>) is required. The variation to the control is not supported, with reference to the following objectives of Part D1:

- *To enable planting to maintain and enhance the streetscape.*
- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

- **Other issues**

##### **Landscape Officer Referral**

Council's Landscape Officer has reviewed the development application and is supportive, subject to conditions of consent. One recommended condition is as follows:

##### ***Amended Landscape Plans***

*Amended Landscape Plans shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following additional details:*

- a) Documented co-ordination of the stormwater plans to indicate the above ground OSD basin within the front setbacks,*
- b) Within the OSD basin area planting shall consist of one locally native tree (clear trunked) and lawn to each Lot, and shrub planting shall be limited to outside of the OSD basin along the side boundaries,*
- c) Tree planting within the front setback shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; generally selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; to achieve at least 6.0 metres height at maturity; and shall be located at least 3.0 metres from buildings or more; and located within a prepared bed within lawn,*
- d) Mass planting shall be installed at minimum 1metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.*



*Certification shall be submitted to the Certifier that these amendments have been documented.*

*Reason: Landscape amenity.*

You may wish to address the requirements of this condition with amended plans, should you pursue Option 1 detailed below.

- **Objector's concerns**

You are encouraged to review the submissions that have been lodged in relation to the application and consider any design solutions that may resolve relevant concerns.

Submissions that are available online in accordance with the Northern Beaches Community Participation Plan can be viewed on Council's website at the following link, using the application number as a reference:

<https://eservices.northernbeaches.nsw.gov.au/ePlanning/live/Public/XC.Track/SearchApplication.aspx>

### **Options available to the Applicant**

Council is providing you with two (2) options to progress your application:

1. Prepare and submit further supporting information/amendments to address the above issues. Please carefully read the below advice if you choose this option.
2. Request that the current proposal proceed to determination in its current form, which may result in refusal of the application.

Please advise of your selected option by responding **within 7 days of the date of this letter** by email sent to [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au) marked to the attention of the assessment officer. Should Council not receive your response by this date, Council will determine the application in its current form.

#### **Submitting further information/amendments**

Council will offer **one** opportunity to provide feedback on conceptual amendments addressing the issues raised in this letter. We strongly request that you contact the assessment officer directly for a 'without prejudice' discussion on your proposed resolution of the issues and the submission requirements **before** lodging any documentation on the NSW Planning Portal.

Conceptual amendments must be provided to Council for feedback **within 14 days of the date of this letter**. If conceptual amendments are deemed sufficient, we will then provide you with a timeframe upon which an amended application is to be lodged on the NSW Planning Portal (generally 14 days).

Please ensure that the amended/additional information submitted on the NSW Planning Portal is a genuine attempt to resolve the issues as Council will generally not seek any



further information/amendments after that point. Council will proceed to assess and determine the application based on the submitted information without further consultation. Whilst we will provide feedback on your conceptual amendments in good faith, this cannot guarantee the approval of the amended application.

As part of any amended application, it may be necessary to update your supporting documentation (e.g., BASIX certificate, bushfire report, geotechnical report, etc.). Failure to do so may affect Council's ability to determine the application favourably.

Please ensure that any amendments are accompanied by a summary/schedule of amendments cover sheet.

Council reserves its right under section 37 of the *Environmental Planning and Assessment Regulations 2021* not to accept any information/amendment if it is not considered to be a genuine attempt to resolve the issues. In which case, Council will inform you that the changes have not been accepted and the application will proceed to be determined.

This process has been established to ensure an efficient and responsible level of service which meets the requirements of the Department of Planning and Environment's *23A Guidelines on withdrawal of Development Applications 2023*, Ministerial Orders *Statement of Expectations 2021* and the *Development Assessment Best Practice Guide 2017*.

As per the requirements of section 36 of the *Environmental Planning and Assessment Regulation 2021*, you are advised that this application was accepted on 28 May 2025 and 42 days in the assessment period have now elapsed.

This letter will be released on Council's webpage as part of the application's documentation.

Should you wish to discuss any issues raised in this letter, please contact Claire Ryan on 1300 434 434 during business hours Monday to Friday.

Yours faithfully

Claire Ryan  
Principal Planner