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Sent: 30/09/2021 10:08 PM
To: "Council Northernbeaches Mailbox"
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Cc: "Naito, Kazuma" [REDACTED]
Subject: fao Rebecca Englund - planning - Application Number: REV2021/0034
Attachments: 229 WBR DA letter no. 2.docx

Good evening

As discussed, I attach my letter objecting to the above application.

If you have any queries you can reach me on this email address or [REDACTED]

Warm regards

Catherine Naito

229 Whale Beach Road
Whale Beach
NSW 2107

30 September 2021

The General Manager
Northern Beaches Council
By email: council@northernbeaches.nsw.gov.au
Cc: Rebecca Englund

Dear Sir/Madam

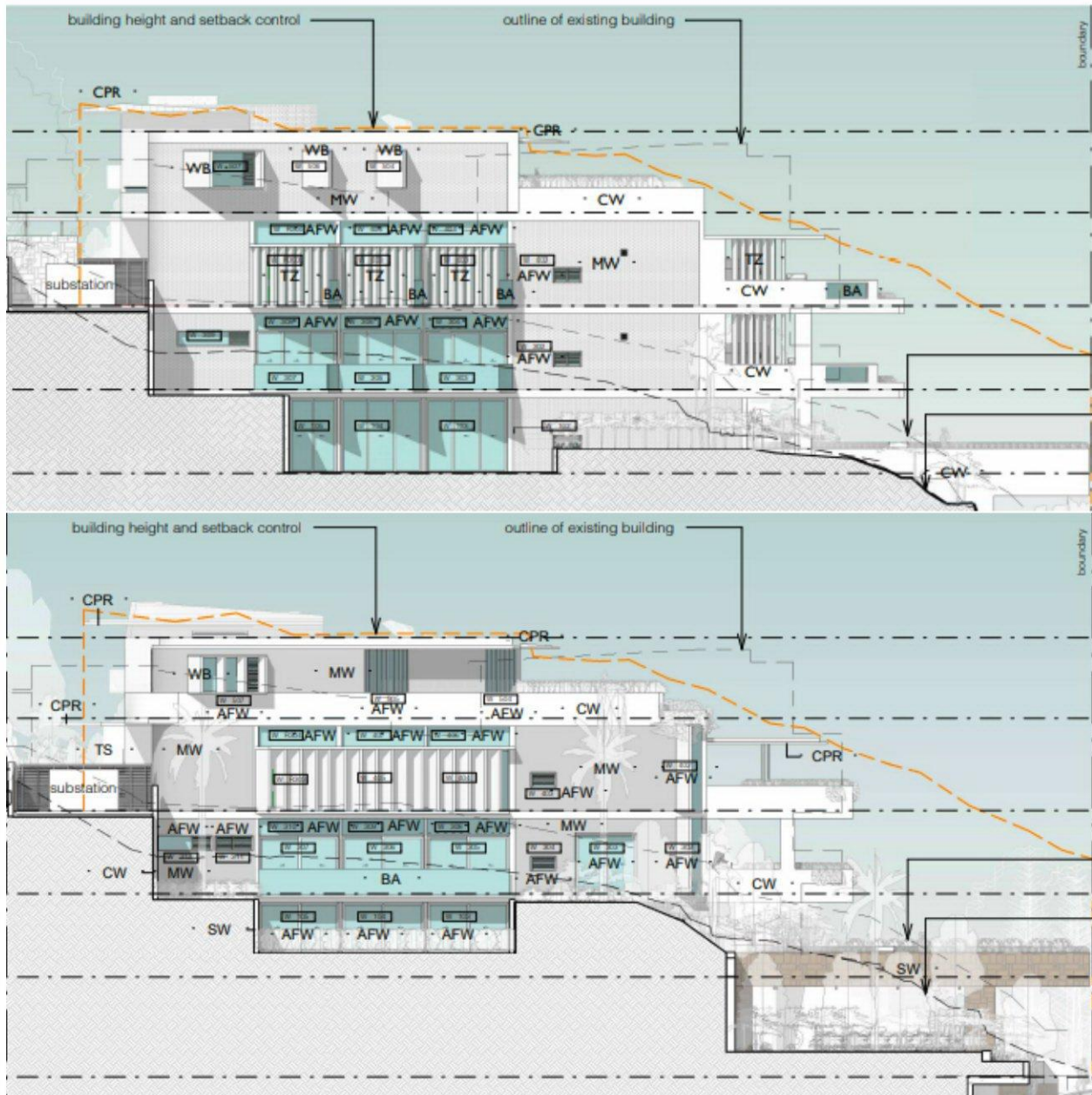
Re: DA 2020/0442 – Revised Development Application for DA2020/0442 submitted for Section 8.2 Review

I am writing on behalf of myself and my husband, the owners and occupiers of 229 Whale Beach Road, which adjoins the entire southern boundary of the site at 231 Whale Beach Road - the subject of the Revised Development Application for DA 2020/0442 (the "*Revised Application*"). This letter is a written submission objecting to the Revised Application.

When the plans for the demolition and construction at 231 Whale Beach Road (the "*Original Proposal*") were submitted in May 2020, in a letter dated 4 June 2020 I set out our main reasons for objecting to the Original Proposal. The Original Proposal was refused and the Revised Application submitted, at which point we were dismayed to find that the building in the Revised Application is substantially the same as the Original Proposal and there has been no significant change to the bulk, scale, form and configuration and our concerns have not been addressed. The similarities are demonstrated by comparing the South Elevations – see below.

We will be faced with a sheer vertical wall over 4 floors of apartments and retail space hard against our entire boundary. This includes 9 double bedrooms, each with floor to ceiling double glass doors, living spaces each with multiple windows, a retail space with floor to ceiling glass doors, 4 large terraces, each with space to entertain 20 or more guests with barbecues directly overlooking us and in the case of the top floor, a spa. There is also a terrace on level one that will start only 80cm away from our boundary. Any one of these would have an extremely detrimental effect on our privacy, amenity and enjoyment of our house and garden and would cause a nuisance, both visual and acoustic, but the cumulative effect is completely unreasonable.

The Original Proposal (above) and the Revised Proposal (below)



Rather than repeat our original objections (which have not been addressed) in detail, we have attached our letter of 4 June 2020 to this letter as “Appendix A”. In summary our main concerns are as follows:

Loss of Privacy and Amenity

At present there are two small balconies, angled away from us, whereas the Revised Application has four very large terraces, including a spa, three of which will look directly into our balcony, living room, dining area, kitchen, private outdoor space and even our master bedroom. The apartments proposed are much larger than the current apartments, and there will naturally be an associated increase in population and activity, both in the rooms against our house and on the terraces. The Revised Application makes no attempt to angle the balconies away from our house, so as to reduce the impact of increased density and intensity of occupation, but rather exacerbates the problems caused by the change in the way in which the building is used.

In addition, the south elevation (DA10) shows **nine** bedrooms, with floor-to-ceiling, wide windows and glass doors, that will now be hard against our border including an outdoor terrace area at level 1 that is less than 1m from our shared boundary. Again, no significant attempt has been made to reduce the impact of the development on our house, which is actually worse because we are now overlooked by more windows and doors, including a retail space.

Like the Proposed Development, the Revised Development involves extending and changing the use of every floor of the current buildings which will result in a huge invasion of our privacy and have materially detrimental effects to our amenity and enjoyment of our house.

Norfolk Island Hibiscus

We have a mature Norfolk Island Hibiscus tree on our property, between the northern side of our house and the southern boundary of 231 Whale Beach Road. This is not only our most important tree for us, but it is important in the whole local area. It is the only mature tree in the immediate vicinity, providing scenic beauty, rich biodiversity and acting as a green buffer between the buildings when viewed from all angles. This tree provides year-round screening and is essential to our privacy, and will only become more so following any redevelopment. It also provides extensive greenery that will assist in mitigating the bulk and scale of any development. We are extremely worried that excavations necessary for the Proposed Development will have an unacceptably negative impact on the health and vigour of this tree and destabilize the roots to the extent that the tree becomes hazardous and could even fall, resulting in significant property damage and risk to life. If damaged, this tree is irreplaceable.

Council Perspective : impact not permitted

The AIA reports of April 2020 and June 2021 both observe that *“A high to significant level of encroachment is calculated within the notional TPZ for the tree; it is possible the tree will experience a decline in health”*.

Accordingly, we were deeply grateful to read in the Landscape Referral Response dated 24 August 2020 that *“Council does not permit any impact to existing trees within adjoining properties, regardless of species or horticultural value, unless adjoining owner's consent is obtained for consideration by Council.”* However, the Landscape Referral Response of 17

September 2021 seems to contradict this, allowing for multiple ways in which the trees may be impacted if approved by the Project Arborist.

We request that Council revisits the issue of the tree and how it can be protected.

- Applicant's Actions : consistently disregarding the wellbeing of our tree; highest ACA TPR impact again

Although Council's statement was encouraging, we were stunned to read the Arborist's letter on 07 October 2020 saying that "[previous works] affected an estimated 37% of the tree's TPZ and yet it has remained healthy and vigorous some since those works occurred."

It is spurious to argue that just because the tree has apparently not suffered any decline by the previous damage to its roots, it is therefore acceptable to cut away even more. We were neither informed of this work before or after it was completed. This 37% reduction of the Tree Protection Zone (TPR) represented the Australian Consulting Arboriculturists highest level of impact on the TPR as displayed in the Applicant's original AIA :

Table 2: Guideline to the rating of impacts on trees to be retained.

Based on discussions with executive members of the Institute of Australian Consulting Arboriculturists.

| IMPACT LEVEL RATING | |
|---------------------|--|
| O | 0 – 0.9% of root zone impacted – no impact of significance |
| L | 1 to 10% of root zone impacted – low (minor) level of impact |
| L - M | >10 to 15% of root zone impacted – low (minor) to moderate level of impact |
| M | >15 to 20% of root zone impacted – moderate level of impact |
| M – H | >20 to 25% of root zone impacted – moderate to high level of impact |
| H | >25 to 35% of root zone impacted – high level of impact |
| S | >35% of root zone impacted – significant level of impact |

We have articulated to the Applicant that this tree was critical to us on more than one occasion, but the Applicant has ignored our concerns and we were appalled to note in the Revised Application that the Applicant has made **zero** changes to their original plan to push for the highest level of impact on our tree of 37% (see below) in addition to the 37% that has already been affected. This indicates that, if the current plan is approved, over 60% of the tree's root system will ultimately be affected by the Applicant's work without our consent.

Table 3: Estimated encroachments into the SRZ and TPZ of trees proposed for retention.

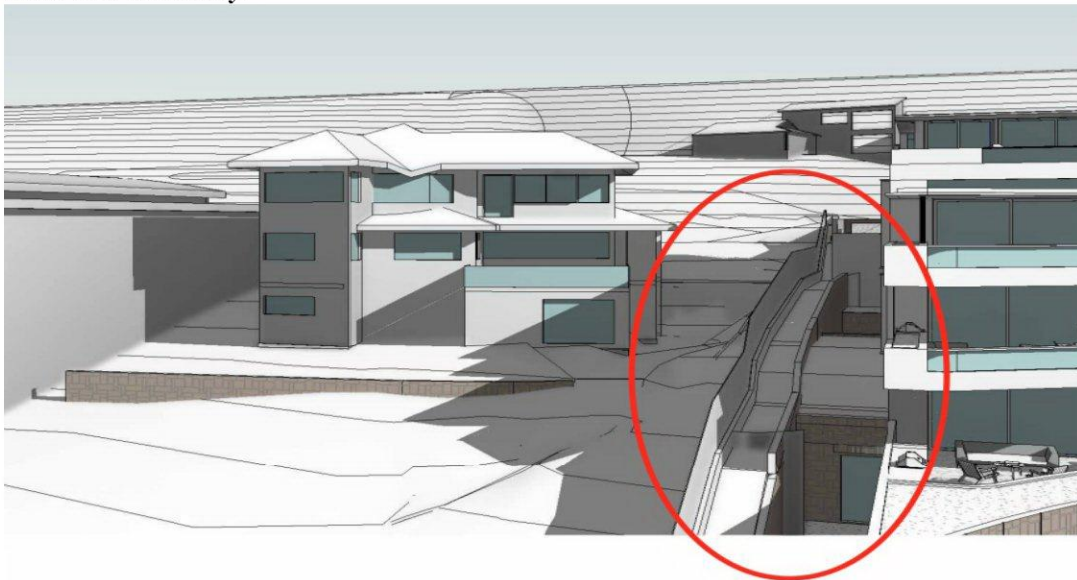
| Tree No. | Tree | Tree located on site | SRZ affected | TPZ area (m ²) | TPZ encroachment (approx. m ²) | TPZ encroachment (approx. %) | ILR |
|----------|------------------------------|----------------------|--------------|----------------------------|--|------------------------------|-----|
| 1 | Weeping Fig | × | likely | 150.0 | 54.5* | 36.3* | S* |
| 4 | Norfolk Island Hibiscus | × | unlikely | 222.0 | 83* | 37* | S* |
| 5 | Giant White Bird of Paradise | × | × | 50.2 | 18 | 36 | S |
| 6 | African Olive | × | × | 55.0 | 8.2 | <15 | L-M |

* These figures are based on the *notional* SRZ and TPZ's offsets of the trees as calculated under AS4970 and do not necessarily reflect the actual root zones of the trees. Existing at or below ground structures, site topography and soil hydrology will influence the presence, spread and direction of tree root growth. * Further explanation provided.

We note that the revised AIA indicates that footings required for the overland flow path may damage the roots of the tree whereas the previous AIA stated that the excavation would **not** result in cutting or damaging roots. Accordingly it seems that the Revised Application is worse for the health of the tree.

The original AIA stated that “The proposed excavation parallel to the south boundary will include approximately 17.6% further encroachment and non-woody root loss” but this language has been removed from the revised AIA. We are questioning why this language has been removed and would be grateful if Council would consider this.

This image from the Revised Application highlights the 1.8m fence, the overland flow path, stone walls and other planned excavation works. While there may be a 4 metre setback in parts of the Southern elevation, the overland flow path and stone courtyards are only 1.1 metre away from our boundary.



Neighbour - Shadow study 1200noon

The July 2021 AIA report notes the impact on our most important tree's Tree Protection Zone in order to facilitate a car park and stone courtyard. We reject the Applicant's view that the cost/benefit analysis to impact our tree to create more car park space is justified. The requirement for more carparking spaces is a result of trying to build something that is too big for the site, not the fault of the tree.

We would also respectfully ask the Council to challenge the viability and sustainability of any planting on our boundary, let alone planting that provides screening when the space has a 1.8m fence to the south, a 12m tall building to the north and is only 4m wide at its widest point but is less than 1m wide at the narrowest point. This is a critical point given the bulk and scale of this building in its current form. The ability to soften the shape and form of this southern elevation by planting is implausible. This is another reason why protecting the health of our tree at its current level is critical.

We also note that the Applicant is pushing to remove 40-50% of the existing crown of our tree.

We are convinced that the result of all of the above will be to kill our tree if not immediately, then in the near future.

As mentioned previously, we ask council to investigate carefully the impact the Revised Development will have on the tree with a suitably qualified independent arborist and would expect compliance with the relevant Australian standards in this instance.

We would like to understand the consequences if our tree is damaged, as a mature tree of this nature, on this site, is irreplaceable.

View Loss

We currently enjoy superb views to the north including over the iconic Whale Beach Wedge. There is no reason why the Revised Application could not have been brought back slightly, to stay within the existing eastern extremity of the current building so that the new building could enjoy these magnificent views without impacting ours. Like the Proposed Development, the Revised Application seeks to maximise their views over the 4 storeys at the expense of our views.

As mentioned in our previous letter, some of the view impact studies do not analyse the view from the parts of the rooms/balcony that are actually used. We discussed this specifically with the Applicant so we are disappointed that this has not been addressed in the Revised Application.

As mentioned in our earlier letter, we request council will do their own independent, onsite view loss investigation to assess the impacts of the view loss from the most relevant viewpoints within the interior of our home.

Bulk and Scale

The Revised Development will be substantially bigger than the existing buildings in terms of mass, is not at all in keeping with the rest of Whale Beach and will seriously detract from the locality, especially when viewed from the beach side. Although the Revised Application moves the building slightly away from our boundary it is still an enormous structure that is excessive and overbearing on our home and indeed the surrounding area generally.

The original photomontage (DA22 of the Proposed Development) has been replaced with a photograph of the existing building from Surf Road and a view of the Revised Application from a completely different part of Surf Road (DA22) (below). As well as the two views being from different positions, they are looking down towards the beach rather than looking back from the beach, which is the more relevant view for most people enjoying Whale Beach.



This is misleading and the original DA22 (below) more accurately represents the true bulk and scale.



Surf Road

We remain concerned about the adequacy of Surf Road for the Revised Development. We feel that the narrow entrance to the car park together with the time that will be involved in retrieving cars from the car stacker will result in cars backing up onto Surf Road and also at the top on Whale Beach Road, causing an unacceptable hazard.

We do not understand how the council land (currently used by the Surf Live Saving Club) has been annexed as part of the driveway entrance and would be grateful if this could be explained.

Substation

We are very anxious about the presence of an electrical substation so close to the western end of our garden. The wall for the substation appears to be less than one metre away and will result in an unacceptable level of noise. We did request that it be moved but were told there was nowhere else to put it which, on a block this size, seems improbable.

Shade

The sheer size of the Proposed Application will result in us losing sunlight in the afternoon from the outdoor area on the western side of our house, which we use most afternoons. The shadow diagrams provided do not analyse this aspect of the shade thrown over our western garden, although we did request that this be produced.

Conclusion

The Revised Application has not done anything to address the concerns set out in our previous letter. The changes made to the Proposed Development are mainly cosmetic and even where they purport to improve things from our perspective, they do not actually do so. As such, the Revised Application, like the Proposed Development will result in significant adverse impacts to our property but also to the local area generally with its sheer bulk and scale.

We had hoped that there would be an extensive redesign of the Proposed Development to make it more compatible with the local area as well as addressing our specific concerns, but the Revised Application is substantially the same building, marginally reduced by removing the central walkway. To be clear, we are not against redevelopment *per se* and would be fully supportive of a different design that is smaller in bulk and scale which will not impact our tree and help achieve the biodiversity, privacy and landscape outcomes that are coveted by the community, the council and us.

As such we believe that the Council should not approve the development in its current form and we ask that Council visits 229 Whale Beach Road so as to establish the true impacts on our tree, privacy, view loss as well as the sheer bulk and scale of the Revised Application.

Yours faithfully

Catherine Naito