

MACA2.2-240412/MC/rv  
12 April 2024

Thomas Prosser  
1 Park Street,  
Mona Vale  
NSW 2103 Australia

Dear Thomas,

**24 Cabarita Road, Avalon–DA2023/0083 Section 4.55 Application**

We refer to the DA 2023/0083 with approval granted on the 19<sup>th</sup> December 2023 for our clients Bruce and Elizabeth MacDiarmid for their new home at 24 Cabarita Road, Avalon.

We are seeking to modify consent conditions under a Section 4.55 application. In support of the application please find attached the following:

1. Amended Drawings DA07 Level 4 plan (rev D) by Corben Architects
2. Amended DA11- South Elevation (rev D) by Corben Architects
3. Statement of Modifications below
4. Statement of Environmental Effects by Boston Blyth Fleming dated 12<sup>th</sup> April 2024.

We confirm that no works have commenced on the subject site as a Construction Certificate has not and cannot be obtained without approval.

Please do not hesitate to contact the undersigned on 02 9904 1844 or by email [mc@corben.com.au](mailto:mc@corben.com.au) should you have any queries or require further information.

Yours faithfully,



Mark Clark,  
Director

### Statement of Modifications

We are seeking the following amendments to Condition 17(a), (b) & (d). These conditions amend the design to improve the northern views and amenity from No 26. These views are across the side boundary of our client's property. We submit these conditions are unnecessary since the view is readily available across the property, without amending the design, because the building footprint of No 26 extends in front of the building alignment of No 24.

*17(a) The proposed species of trees and plants are to be amended to ensure there are no species that have a mature height of more than 3 metres.*

This condition is onerous and the implications have not been considered.

This has been imposed to protect views across our client's property from any vantage point within the neighbour's property without consideration of the site conditions, the topography & the broader context, including the neighbour's home No 22 Cabarita Road that spans over 4 stories.

The site is currently devoid of any trees and has only lawn and ground covers. No 26 includes several large trees that help to integrate the home with the landscape. On No 22 the home occupies the foreshore area with no vegetation on the foreshore and a few trees & shrubs behind. We refer you to the *image 1*-view from the waterfront.



**image 1**- view from left to right of Nos. 26, 24 & 22 Cabarita Road

This condition imposes a limited plant selection. As there are no 'trees' that would be under 3m in height at maturity, it permits only small to medium sized shrubs.

This condition is inconsistent with the Objectives for C4 Environmental Living Zone:

- to provide for residential development of a low density and scale integrated with the landform and landscape
- to encourage development that retains and enhances foreshore vegetation and wildlife corridors



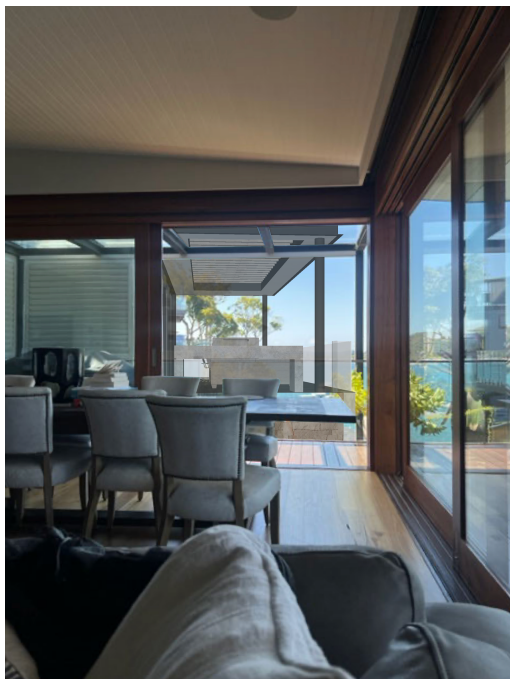
It applies to any new trees on the site, including the trees within the front garden. The current landscape plan provides for 2 Banksia trees in the front garden to screen part of the home from the street. These trees will have no impact on the views from No 26 Cabarita Road, however, these trees are not permitted if this condition remains.

The rear garden landscape design provided 5 canopy trees (Banksia or *Cyathea cooperii*- (a fern)) and 3 screen trees (*Eliocarpus eumindii*). The proposed canopy trees are located on a lower ground level within the rear garden and provide partial screening of the neighbours home at No 22 Cabarita Road.

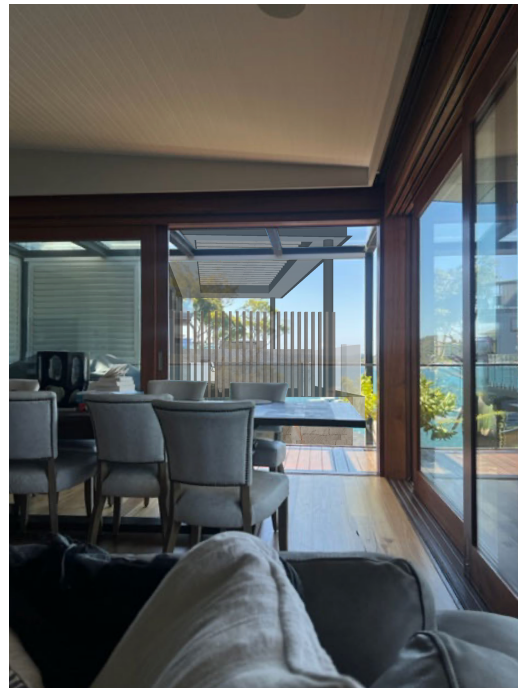
The condition is contrary to the planning control objectives, it limits the opportunity to integrate the new home with a landscape setting, improve the quality of the landscape on site or to screen views towards adjoining buildings. We request this condition be removed.

*17(b) The proposed privacy screen at the southern elevation Terrace 2 (level 4) is to be deleted*

The proposed privacy screen filters the view across our client's terrace. There is a BBQ on the southern end that would be screened by this privacy screen. We refer to *image 2* below that shows the BBQ bench obstructs part of the view when there is no privacy screen. Compare this with *image 3* below showing a 1.6m high privacy screen.



**Image 2-** No Privacy Screen



**Image 3-** With Privacy Screen

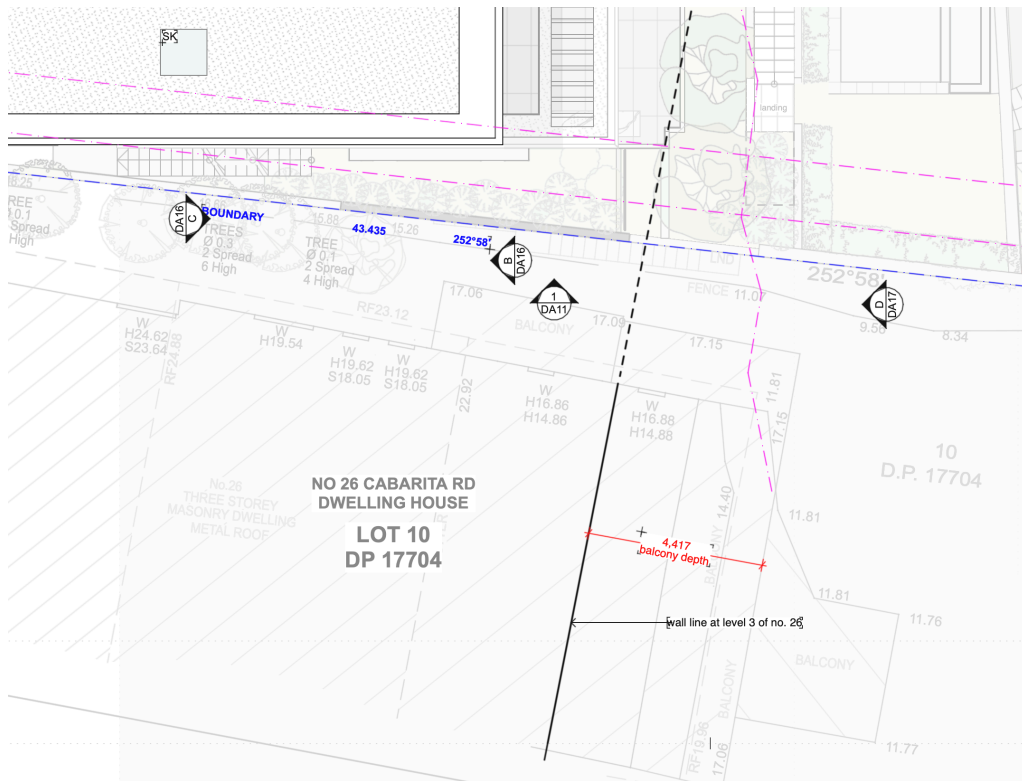
The screen doesn't block the water views, but it will screen our clients direct view into the neighbours' property when they use their BBQ or on the terrace. It provides the neighbours with privacy and improves the amenity for both No. 24 and No 26.

Further, if the screen is removed it will allow the neighbours to look deeply into our clients internal living areas from both their internal living area and their external living space. This increases the opportunity for overlooking from No 26 and creates a serious imposition on our clients due to the loss of privacy and amenity they will suffer, creating an inequitable and unfair position.

## CORBEN ARCHITECTS

The views towards Lion Island, obtained across the subject property, are available from their large, covered terrace. The alignment of the eastern edge of this terrace extends 4.4m past the eastern edge of the Terrace at No 24. It affords clear sight lines from a large part of their outdoor living area.

We refer to *Image 4- Part Site Plan* below and *Image 5- view from their covered terrace*. (source realestate.com.)



**Image 4-** Part Site Plan No 26 Level 3



**Image 5-** View from Terrace No 26 to Lion Island



The views obtained are across a side boundary and are not as highly protected as views over a rear boundary. It should be noted No 26 has the benefit of privacy screens on both the northern side and southern side of the terrace. Refer to image 6 below.



**Image 6-** View of No 26 Cabarita Road showing privacy screens to northern and southern elevations.  
Source: realestate.com.

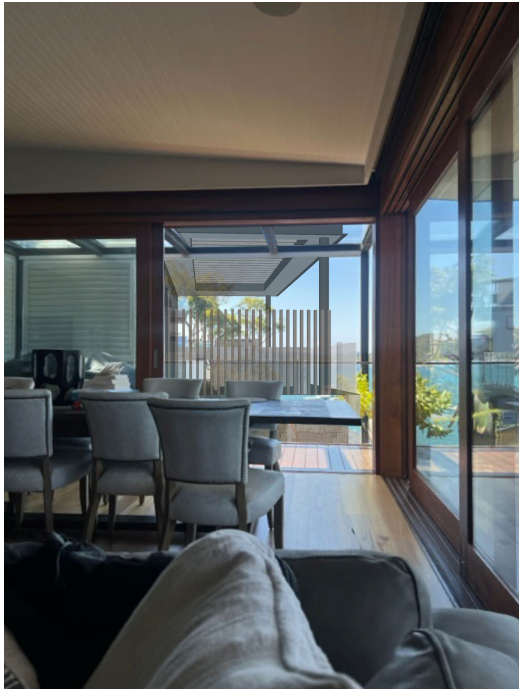
The proposed privacy screen provides greater amenity to no 26, as without this screen whenever our clients use their terrace, they are highly visible. Further, the neighbours are directly overlooked whenever the BBQ is used. Our client's privacy is dependent on the use of the neighbors sliding privacy screen on their northern elevation. This reduces the amenity of the terrace.

We request the privacy screen be permitted but conditioned to be a maximum 1.6m in height above Terrace 2 floor level to afford a degree of screening from being over-looked by No 26 and from overlooking No. 26, recognizing that, due to the unequal alignment of their building and covered terrace, their views across the side boundary are retained & will be protected.

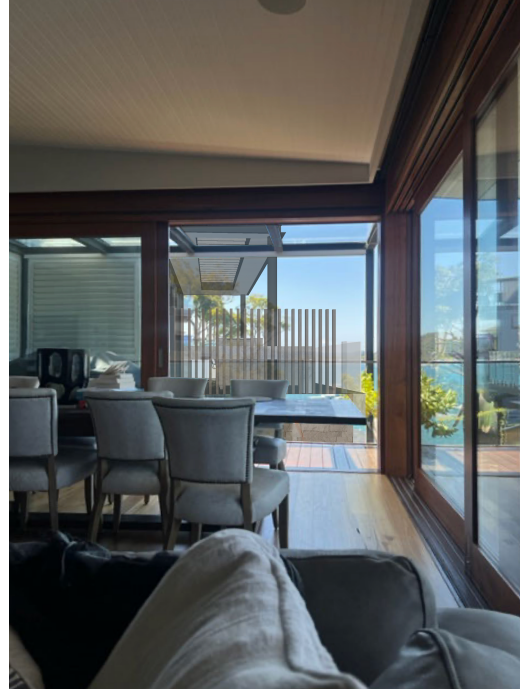
*17(d) Reduce the depth of the eaves above Terrace 2 (Level 4) to 2m*

The level of the living room and outdoor terrace at No. 26 Cabarita Road is RL 17.150 and the floor level of the Terrace 3 is RL 17.500, only 350mm higher. We refer to the site survey.

The 4 metre roof overhang proposed provides no adverse impact on the neighbours view across our client's property. We refer to the attached images 7 & 8 below showing the view to the north comparing the 4m cover with the 2m eaves cover.



**Image 7-** 4 metre eaves cover



**Image 8-** 2 metre eaves cover

The proposed roof 4m cover provides the terrace with greater weather protection throughout the year. It should be noted No 26 has a similarly sized cover to their terrace (see Image 6 above). Whereas, a 2m eaves cover provides limited cover to the Terrace and will require the addition of umbrellas to provide shade in the middle of the day.

We believe the new conditions have been imposed without careful consideration of the site conditions and particularly, the views obtained across the property from several vantage points within No 26. The condition is unjustified as it provides no benefit to the neighbours but imposes an unnecessary imposition on our clients and affects the amenity of their home. We request that this condition be removed.