
Sent: 14/01/2022 1:14:35 PM
Subject: Development application DA2021/2232; 1851 Pittwater Road, Bayview
Attachments: Northern Beaches Council ltr.14.1.22.pdf;

The General Manager
Northern Beaches Council

Dear Sir

Re: Development application DA2021/2232; 1851 Pittwater Road, Bayview

Please find attached our letter dated 14 January 2022.

Regards

Patrick O'Brien | Director

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Our Ref: POB
Your Ref: DA2021/2232

14 January 2022

The General Manager
Northern Beaches Council

By email: council@northernbeaches.nsw.gov.au

Dear Sir

**RE: DEVELOPMENT APPLICATION DA2021/2232
1851 PITTWATER ROAD, BAYVIEW**

We act for the owner and occupier of a property located in Vista Avenue, Bayview. Our client objects to the grant of development consent for development application DA2021/2232.

The property the subject of the application has no vehicular access to Pittwater Road. All vehicles must enter and leave the property via a driveway leading from the property to the cul-de-sac in Vista Avenue.

It is stated on page 19 of the statement of environmental effects prepared by Ingham Planning Pty Ltd lodged with the application, that:

"The proposed variation is located on the southern side of the site adjacent to the driveway that accesses three other properties and is well removed from the nearest neighbour." (sic)

That statement is false. The property the subject of the application is the only property which uses the driveway for vehicular or other access.

The driveway is in close proximity to properties which adjoin to the north and the south (neither of which use the driveway for access) and is in immediate proximity to a public footpath.

The driveway (which is constructed from bricks laid directly on the ground), is in poor condition and located immediately adjacent to a concrete footpath which provides public access for pedestrians walking from Vista Avenue to Pittwater Road. Photographs of the driveway and adjoining concrete footpath are attached.

The attached photographs establish that the footpath adjoining the driveway is substantially obstructed in part by vegetation growing across the footpath. Pedestrians are required to divert from the footpath and walk on the adjacent grassed area and the driveway in order to navigate around the vegetation which is growing over and across the footpath.

A significant part of the driveway is not located within the boundaries of the property. The attached aerial photograph obtained from the NSW government SIX maps website ¹ depicts the boundaries of the property and adjoining land and establishes that the entire bifurcated part of the driveway is located on land which is not owned by the applicant for development.

The plan of survey prepared by Project Surveyors dated 11 August 2020 lodged with the development application also identifies the proximity of the driveway to the adjoining public footpath and establishes that the driveway is substantially constructed on land which does not form part of the property.

The owner of the land which does not form part of the property and on which a substantial portion of the driveway has been constructed has not been identified in the application. The consent of that owner to the making of the development application is required,² failing which Council has no power to grant development consent.³

However, even if the relevant owner's consent was obtained, consent to the application should not be granted for the following reasons.

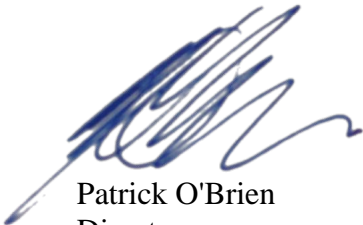
As the applicant is proposing to retain the driveway, compliance with the controls set out in Parts B6.1 and B6.2 of Pittwater 21 Development Control Plan must be demonstrated.

No documentation has been lodged with the application establishing that in accordance with the access driveway control, compliance with Australian Standard *AS/NZS 2890.1-2004 – Part 1 Off Street Parking* and Australian Standard *AS/NZS 2890.2-2002 – Part 2 Off Street Commercial Vehicle Facilities* will be achieved.

The pedestrian footpath located immediately adjacent to the driveway is predominantly used by residents of Vista Avenue and Kamilaroi Road to obtain access to Pittwater Road. Adults and children use the footpath on a daily basis for the purpose of walking to and from the bus stops located on Pittwater Road or to walk to Pittwater High School, to the park and cafe located at Winnererremy Bay or to nearby Rowland Reserve.

There already exists the potential for pedestrian/vehicle conflict given that pedestrians cannot traverse the footpath without walking onto the driveway or adjacent grassed area because access along the pathway is obstructed by overhanging vegetation. If approved, the proposal will increase the propensity for such conflict.

Yours faithfully
O'BRIEN LEGAL



Patrick O'Brien
Director

¹ <https://maps.six.nsw.gov.au/>

² Clause 49(1)(a) of the *Environmental Planning and Assessment Regulation 2000*.

³ *Rose Bay Marina Pty Ltd v Minister for Urban Affairs and Planning* [2002] NSWLEC 123; (2002) 122 LGERA 255.



Photo 1: Crossover from Vista Avenue depicting brick driveway to the subject property and adjoining concrete public footpath obstructed by overhanging vegetation.



Photo 2: Crossover from Vista Avenue depicting brick driveway to the subject property and adjoining concrete public footpath obstructed by overhanging vegetation.



Photo 3: Brick driveway to the subject property and adjoining concrete public footpath obstructed by overhanging vegetation.



Photo 4: Brick driveway to the subject property and adjoining concrete public footpath obstructed by overhanging vegetation.

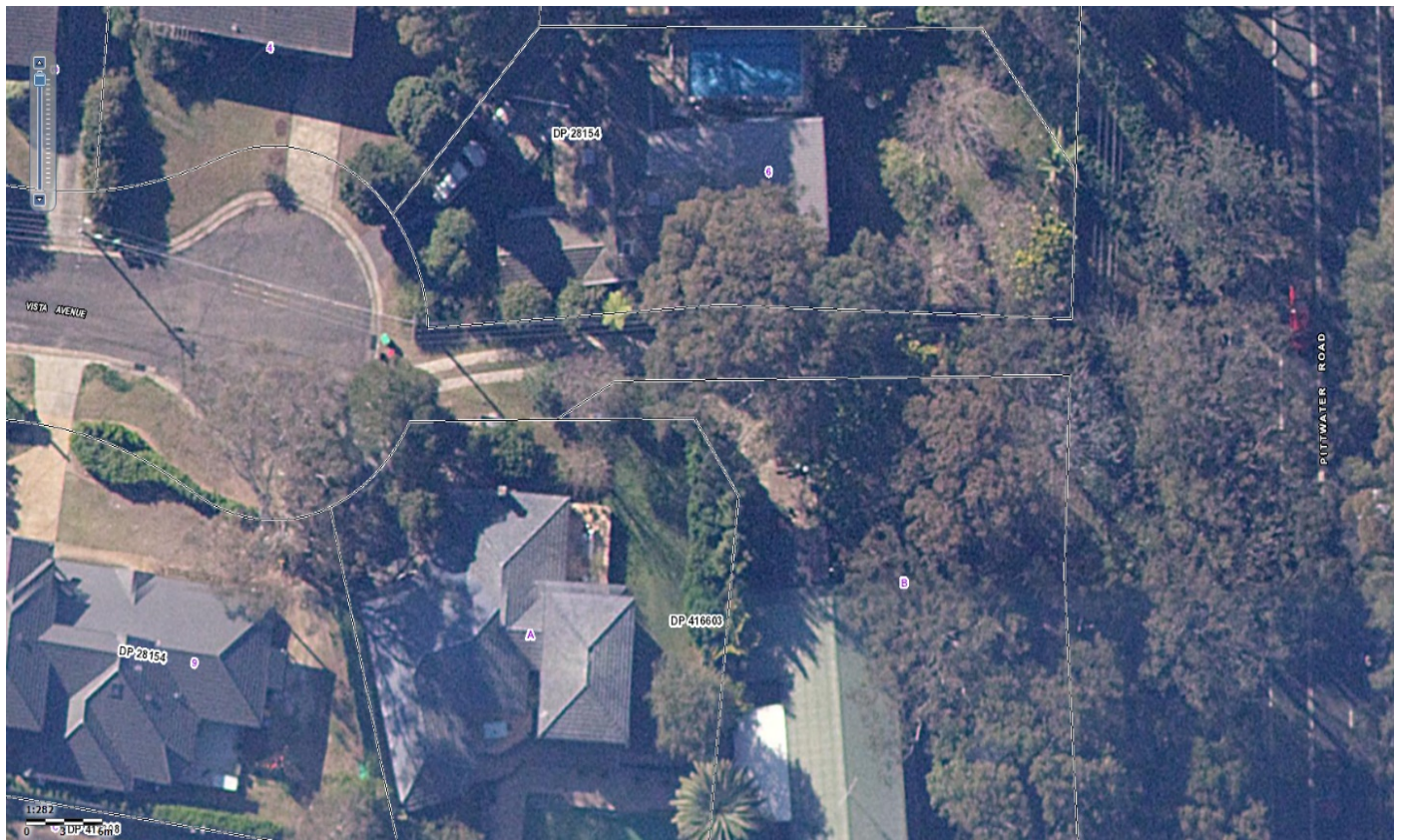


Photo 5: SIX Maps aerial photograph depicting brick driveway located on land other than the property the subject of the development application.