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**From:** Helen Monks  
**Sent:** 24/01/2024 3:14:46 PM  
**To:** Council Northernbeaches Mailbox  
**Cc:** Stephanie Gelder  
**Subject:** TRIMMED: DA 2023/1832 submission  
**Attachments:** NBC submissn v2 24jan24.pdf;

Please find attached a submission in relation to DA 2023/1832, Lovett Bay

Regards

Dr Helen Monks

Director, town planner

CEnvP no. 256

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Highlight Consulting acknowledges the traditional custodians of land and waterways in the Central Coast region: the Guringai, Darkinjung and Dharug people, paying respect to elders past, present and emerging.



Regional Town Planning Services

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Chief Executive Officer  
Northern Beaches Council  
725 Pittwater Road  
DEE WHY NSW 2099  
by email: [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

24 January 2024

Dear Madam/Sir

**5 PORTIONS DP 590990, LOVETT BAY  
DA 2023/1832  
SUBMISSION AGAINST THE PROPOSAL**

Acting for an adjacent landowner who owns the land known as 3 Portions Lovett Bay and dwelling immediately to the south/downhill of the development site, we are writing to raise a number of concerns with the proposed 2 storey dwelling with 3 storey detached studio tower on vacant land at 5 Portions, Lovett Bay.

**Background to application**

The proposal has multiple applicants which demonstrates that this is proposed to be a multi-generational household. The OSSM report has sized the sewage management system for 8 people in a 4 bedroom house (with only 1 kitchen), which may or may not fit the number of proposed occupants in coming years (given that any Consent has to address a proposal as "in perpetuity"). To assess potential for the OSSM to be or become inadequate, the plans describe the following:

Main building:

- 4 bedrooms
- Living
- Mezzanine family room
- Sunroom

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- Study/library

Studio tower:

- 3 studios

That is, additional to 4 bedrooms (and bathrooms/toilet/storage area), 7 further generous-sized shared rooms are proposed. This proposal cannot be considered as a "single household" for effluent disposal purposes. The O.S.S.M. has therefore been sized for a household of 8 people, although as a multi-generational household now (currently living next door) another generation is expected to be added shortly according to local anecdotes.

An AHIMS search reveals no recorded Aboriginal heritage within 50m of the subject site.

Pittwater LEP lists the only heritage sites in Lovett Bay as both being on the development site:

Lovett Bay	Stone retaining wall	Site of former causeway (northern side)	Adjacent to Lots 2 and 3, DP 584315; Lots 4 and 5, DP 590990; Lot 6, DP 545717	Local	2270049
Lovett Bay	Road remnants	Portions 4 and 5	On parts of Lots 4 and 5, DP 590990	Local	2270050

They therefore constitute a major impediment to development on the site, particularly the "road remnants" which cross the entire building footprints.

However, the SEE (p. 19) states:

The remnant features within the site will not be disturbed and views of the stone features will be maintained.

The heritage items are understood to be:

- Heritage Item 2270049 (Stone Retaining Wall). This is down at the waterfront and is visible as about 5 mostly submerged rocks in a line about 1.5m behind the waterfront seawall.
- Heritage Item 2270050 (Road Remnants): The road remnants are not readily visible but it is assumed to be the fire trail that runs above the property. The proposed dwelling is located below the fire trail area at an RL of approximately RL 17-18m, with the fire trail uphill of the dwelling location by at least another 15-20m in vertical height and around 45-50 m measured horizontally.

The State Heritage Inventory lists the former road's significance as follows:

The Road Remnants are associated with the first development works at Lovett Bay. They are aesthetically distinctive as having been constructed during a very early phase of development in Pittwater.

The condition and/or archaeological potential is:

Physical condition is good, allowing for remnant nature of the item.

Management recommendation:

A Heritage Impact Statement should be prepared prior to any major works being undertaken.

[HMS - ViewItem \(nsw.gov.au\)](https://hms.nsw.gov.au/ViewItem?item=2270050) item 2270050

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The SEE claim that item 2270050 is not readily visible is incorrect, as we are advised that the 3 retaining walls as well as the road (with its cut and fill in between the walls) form the item (as confirmed by the applicants' photographs; also our Plates 3, 4). Further, there is no fire trail that "runs above the property", it is a steep heavily forested slope (Plates). Various routes for the Towlers Bay Management Trail are shown in the applicants' documents – all to the east or north-east of this site, none connecting to the site, and none "above the property". The description of an existing fire trail "uphill of the dwelling location ... 45-50m" has not been checked, but appears significantly incorrect from online mapping and anecdotes from 2 neighbours (also Plates 5, 6, 7). Even from off-site, the heritage item is visible (Plates).

The SEE incorrectly states that the heritage items will not be disturbed, however, the road and 3 retaining walls around **and under** the 2 structures will have to be disturbed for the house and OSSM construction. The application does not appear to affect the foreshore heritage item.

Siting the studio tower on top of the heritage-listed wall is contrary to all heritage protection principles. Omitting the relevant parts of the retaining walls from building plans is simply misleading.

The geotech report suggests that collected stormwater might be disposed of immediately downhill of the OSSM, however that would lead to a permanently sodden area immediately above another residential property. The area would also be permanently overshadowed due to the hill to the north, as well as the dwelling, negatively affecting/ reducing evaporation from both sets of trenches. The OSSM trenches being laid between 2 heritage structures with no protection for their footings is simply unacceptable: where is the impact analysis? Finally, at about 1m setback, the OSSM's "septic tank" appears to be too close to both the house and studio (NSW government, *OSSM For Single Households*).

Raking the tower's roof to be higher on the downhill, southern side and lower on the uphill, northern side is poor practice – from a design perspective, it should be parallel to the slope, which might also slightly reduce off-site overshadowing. It would also give more solar access from the north.

### **Missing information**

- (a) The site contains 2 listed heritage/archaeological items, however no heritage impact report accompanies the DA. The DCP requires one, as does the State Heritage Inventory's management recommendation. Table 2 below shows some of the anticipated impacts which need a professional heritage assessment.
- (b) Plan LB1 does not show the eastern ends of the 3 heritage-listed retaining walls (Plates 3, 4). This matters because the proposed studio tower is placed onto one or more! (The survey shows much longer retaining walls, but the facts are ignored in the design.)

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- (c) Any assumption that construction materials might be brought to the site via the Towlers Bay Management Trail through Kuringai Chase National Park is incorrect. No written agreement with NPWS has been lodged with the DA. Further, the trail is closed hundreds of metres to the north-east of the site, at its turning area, by a landslip, fallen trees and heavy vegetation (Plates 4, 6, 8, SEE Figure 14). The SEE (p.4) concedes this point.
- (d) Disposal of stormwater off-site is briefly mentioned in the geotechnical report (a bizarre inclusion). There are no watercourses in the vicinity, nor is there a "Council stormwater system", therefore **collected** stormwater must be disposed off down the battle-axe handle to Lovett Bay. Further, nutrient controls and possibly velocity controls will be needed prior to discharge into the bay, to protect both the foreshore and the marine environment. A complete stormwater management plan is required.

According to the plans, stormwater is proposed to be collected at multiple points off the 2 buildings, as well as collected in a stormwater drain uphill of the house. However, discharges from 3 tanks' overflows and from a "gully" (east end) are not described. The geotech report (S6.5) refers to the exit of the drain, but that recommendation is not incorporated into the plans therefore not into the DA proposal itself. That still leaves the overflows from 3 tanks to be disposed of without off-site impact. The geotech report is inconclusive about whether or not on-site trenches below the EMA can be fitted on-site, however, such discharge of collected waters just above 2 others' property boundaries where seepage from the subject site (pre-development) is a continual problem (whence growth of ferns) is unacceptable.

The recommended "careful consideration" has not been undertaken, nor is any Standard relating to collected stormwater referred to in the proposal.

The property owner is not permitted to discharge overflows of **collected** waters onto other properties: given the inconsistencies, what is proposed? Is it approvable? (the 3 suggestions – gully, unregulated tank overflows, possible boundary trenches – are not approvable). Two downhill neighbours DO NOT WANT SUCH COLLECTED STORMWATER DIRECTED ONTO THEIR PROPERTIES, and are not required (in law) to accept it.

Due to landslide risk, the geotechnical report (6.1) recommends that water not be discharged onto the slope. That contradicts the proposal. Permanent lubrication of a slope with a well-known, active landslip hazard by installation of OSSM trenches and possibly stormwater overflow trenches immediately above neighbouring boundaries would be irresponsible and contrary to geotechnical best practice.

The fact that there are already 3 retaining walls demonstrates that the land is unstable, even without the buildings' weight, effluent disposal and redirected stormwater that are proposed.

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Equally, retaining walls are to be engineered, recommended treatment of the 2 existing, heritage-listed retaining walls (S6.4) completely ignores and contradicts their heritage status. A heritage report as well as a structural engineering report for the walls is required, separate from correlation between those 2 aspects and the OSSM proposal: none of which is supplied. Even with the application having chosen to ignore these interrelated aspects of those walls, the three aspects do not appear to be able to be feasibly integrated, leading to refusal of the proposal in its current form.

Details of the proposed carriage of rainwater from gutters on the downhill side of each building **uphill** to 3 rainwater tanks are not given. Details of that carriage do not correlate with the bushfire report requirements as to piping.

- (e) The submitted bushfire report requirements (12.1 4.) cannot all be met. In addition, for a household sized in the OSSM report at 8 people, can the following be sustained (given lack of a water main, and significant difficult in topping up tanks from an external source) – 26,000 + 26,000 + 10,000 litre tanks less 20,000 litres for RFS purposes, leaving only 35,000 litres for 8 people? Does the application **commit** to fulfilling this report’s requirements? It cannot and does not appear to. The SEE only refers to Flame Zone. Given the Category 1 rating of the whole property and fairly recent loss of a house in this exact location, a commitment to integrate the bushfire hazard assessment with the recommended protective measures matters, for this property as well as for its neighbours. The application is deficient in this respect.
- (f) No integration is given to the landscape plan proposal and the bushfire report, as the whole property is Category 1/ Flame Zone, with IAPZ management required, yet new plantings are proposed which introduce additional hazards.
- (g) How will construction materials reach the building site? Does any structure to assist in moving them from the foreshore up to the site need its own approval? If so, an application is required.
- (h) No tree removal is declared, however a second Jacaranda (just uphill of the Illawarra Flame Tree) shown as 0.4 10H 16S on the survey does appear to require removal for the detached tower. It is photographed in SEE Figure 10.
- (i) The diameter of the Illawarra Flame Tree does not appear to be accurately described (Plates 2, 5, 8). LB1 shows it as being too close (both trunk and canopy) to the house, yet the plans rely on that tree to provide scale to the 2 buildings as well as some visual masking of the house. More information is required in order to make an assessment, as such a significant tree is nominated to be retained.
- (j) No dimension for the unarticulated length of the house façade appears to be provided: LB1 only gives window widths, not the wall length. It appears to exceed 25m, which is not permitted by Council.
- (k) Plan LB1 shows a terrace being partly built over, and presumably the terrace also affecting the footings of, the stone retaining wall. In addition, the road itself is to be entirely built over. Where is the design detail that conforms with heritage protection requirements? Where is the impact assessment? This proposal demonstrates poor heritage practice, as well as potentially structural problems.

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- (l) Plans LB1 and LB4 1/2 also show a staircase which does not reference the impact on the heritage retaining wall. It should.
- (m) DCP excerpt – heritage:

### **Information to be included in the Statement of Environmental Effects**

The Statement of Environmental Effects must contain sufficient information so that any impact on the heritage item or area can be fully assessed.

Applicants must demonstrate and address the likely effect of the proposed development on the heritage significance of the heritage item or area, and on its setting, when lodging a development application for consent to carry out development on land in its vicinity.

Where is the professional heritage impact assessment?

- (n) Despite proposed tree removal, no arborist report accompanies the application. It should.
- (o) Despite all the non-compliant aspects of the application, not one appeal under LEP Cl 4.5 nor under the DCP accompanies the application.

### **Inconsistent information**

- (a) Specialist reports submitted with the application reference a range of different plans, as demonstrated by the dates. What applies? What is Council being asked to approve? How much certainty does Council have about what it is actually assessing? We suggest there is significant uncertainty about the proposal at the date of lodgement.
- (b) The SEE refers to proposed maximum building heights which are different from the submitted plans.
- (c) The plans are unclear in part: what do various numbers relate to? Are groups of numbers (eg height) internally consistent?
- (d) Similarly, landscaping along the downhill boundary to 2 highly affected properties is inconsistently described in the architectural plans – on one (LB1), unspecified plantings extend from the existing but deciduous Crepe Myrtle towards the studio, on another (LB4 2/2) they do not extend beyond the corner of 3 Portions' boundary with the subject site. What is proposed? What is the impact? The height of plants can have a significant impact off-site/ downhill.
- (e) The SEE states that adjacent properties are unaffected by the proposal from an overshadowing perspective. The application's solar access diagrams (eg 3pm mid winter) demonstrate that is an incorrect claim: adjacent properties **are** affected by the proposal. The impact is unnecessary as well as undesirable.
- (f) Broadcrest Consulting claims that the site is fairly dry, with no ferns present. Plates 1, 2 and 5 demonstrate that the slope is covered with self-sown ferns. The south-facing hillside has constant seepage and springs according to residents. Adjacent residential properties which are low in the Bay's catchment have both underground and above-ground stormwater drains to capture and divert stormwater around the houses (Plates 6 and 8).
- (g) The application states that the construction cost is \$852,500, however the proponents have reported that the build cost will be about \$8-17,000/sq m, which

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- significantly multiplies the declared construction cost. Where does the truth lie, given the difficult access and complex build?
- (h) The plans show that the battle-axe handle is a "r-o-w" (right of way), however it is not: that strip of land is shown on all public mapping as being owned by the subject site, which is an L shape.
  - (i) Various boundaries and (proposed/ existing) structures are shown differently in different documents.
  - (j) "Existing" infrastructure on site: a site inspection would confirm that some of the claimed existing infrastructure is not there. For example, LB4 2/2 shows an "existing" dish drain, which is not shown on the survey, nor in SEE Figures 7 and 8. The geotechnical report (S6.5) also refers to a new drain. In some instances, approval may therefore be required for a new installation to current standards.
  - (k) The cottage on 4 Portions (in essentially the same ownership as the proposal's lot; Plate 1) has been built over the boundary with the subject site (plan LB1). That fact is shown inconsistently across the set of DA documents. What effect does that have on an assessment on the subject site (eg in relation to separation for acoustic privacy, visual privacy, fire protection or any other matters)?
  - (l) The effluent management area would be overshadowed almost permanently by the house, however best practice is for EMAs to be in full sunlight to assist with evaporation. That is particularly important on a south-facing, damp slope.
  - (m) The application includes a "detached studio": in fact it is for 3 detached studios in 1 building with external staircase + toilet. The external staircase means that each level in the building is discrete, whereas an internal staircase would have linked the spaces. This is clearly a 3 storey building with separate spaces on each level.
  - (n) APZ requirements (bushfire report, s13) contradict the proposal, as the proposed boundary planting does not constitute an IAPZ as defined.
  - (o) The requirements of the bushfire report (s14.9) contradict the proposal. They cannot be met on this site.
  - (p) Where deciduous trees are proposed for landscape purposes (eg existing Crepe Myrtle (Plates 1 and 2), existing Magnolia (not an evergreen *M. grandiflora*), existing Illawarra Flame Tree (Plates 2,3,5,8), existing Jacarandas), their effectiveness in achieving the desired Council outcomes must be assessed as reduced by say >75% for say 50% of the year, while they are bare. A more finessed assessment of the positive impact of landscaping (for environmental, scenic, privacy protection, aesthetics, etc. purposes) is therefore required, but is not supplied in the application nor in Council's internal response.
  - (q) At 12pm in mid-winter, an adjacent property's only private outdoor space is affected by loss of solar access, as the applicants' diagram shows, however the text says that no property is affected (which is simply incorrect). No assessment of off-site impact is provided – a deficiency.
  - (r) SEE Figures 8, 9, 12 show 3 retaining walls.

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## 1. BURRA CHARTER – PRACTICE NOTE, ARCHAEOLOGICAL PRACTICE

A professional heritage impact assessment would assess the proposal in accordance with the Burra Charter, NSW Heritage Act and other provisions. It is noted, however, that given that the 3 retaining walls also encompass the former road itself. A site inspection would show which walls are uphill of the road and which are downhill, but the road “surface” itself (photographed in the SEE) is part of the “fabric” of the heritage item. The Burra Charter has a practice note which refers to fabric in an inclusive way:

*The Burra Charter defines fabric broadly. It includes archaeological features and deposits (Article 1.3).*

**Guidance:** The *Burra Charter* defines *fabric* to mean ‘all the physical material of the place’. This includes archaeological features and deposits.

Often, conservation actions at a place will need to respond to, and make allowance for, the in situ retention of archaeological fabric at that place.

That is, the whole width of the road, with its cut and fill, and its associated structures comprise the heritage item, and all are to be handled protectively under the various statutory and non-statutory requirements. The applicants have failed to do this.

## 2. LAND AND ENVIRONMENT COURT PLANNING PRINCIPLES

### Privacy

The whole private outdoor space on 3 Portions would lose its privacy with this proposal: from both levels of the proposed house and its long verandah in winter when the Crepe Myrtle and a Magnolia to its west lose their leaves; from the studio tower due to its multiple storeys. Plates 1, 2 and 3 illustrate the proposed lines of sight.

Two privacy principles apply, one articulated in *Meriton vs Sydney City Council* (2004) and the other regarding use of landscaping to provide privacy in *Super Studio vs Waverley Council* (2004).

From *Meriton*:

45 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.

... (in 46)

- Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.
- Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and

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privacy screens, while sometimes being the only solution, is less desirable. Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.

Four elements are to be assessed: density, use, separation and design.

At Lovett Bay, density is very low, so expectations of privacy protection are much higher than say between unit buildings. The use of spaces on these sites is as private outdoor living areas (Portions 3 and 5; Plates 4, 7, 8), which are adjacent to private indoor living areas (both Portions). Both types of space usage are more highly protected by the Court than other areas such as laundries or bathrooms. As the cover of an OSSM is to be grassed to assist with evaporation, that area is here considered an additional private outdoor space for the proponent. Minimum separation between the lower retaining wall (Plates 2, 5) and the neighbour's courtyard is therefore about 9m, but only about 4m to the vegetable garden area. Having windows from 2 storey and 3 storey structures overlooking both downhill neighbours is poor design, given that there is significant doubt about introduction of additional plantings in relation to bushfire hazard at the boundaries. The Planning Principle discounts landscaping as a means of achieving privacy protection – contrary to this proposal. A more compact design (eg less width across the land), without the upper storeys, would have much less impact on neighbours' privacy.

On balance, the only aspect of privacy protection that can be assumed is a 9m separation, but the other 3 aspects fail the test. In an intended low density area with large lots, 9m is manifestly insufficient.

In relation to Super Studio (which was an urban matter, not one in a bushfire risk area), the Court found:

5 Several planning principles are relevant to the determination of this appeal. The first is that the acceptability of an impact depends not only on the extent of the impact but also on reasonableness of, and necessity for, the development that causes it. For example, the privacy impact of a second-storey side window in an area of two-storey buildings should be accorded a higher threshold of acceptability than the impact of a second-storey balcony in a house that already has three other balconies. Applying this principle to the present case, I note that the approved proposal already has three outdoor areas. The surrounding houses do not have roof terraces, so a roof terrace would be a new element in the area. This does not mean that it is inappropriate, only that its impact should be assessed with heightened sensitivity. A roof terrace would be acceptable only if its impact were minor or negligible.

6 The second principle is that where proposed landscaping is the main safeguard against overlooking, it should be given minor weight. The effectiveness of landscaping as a privacy screen depends on continued

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maintenance, good climatic conditions and good luck. While it is theoretically possible for a council to compel an applicant to maintain landscaping to achieve the height and density proposed in an application, in practice this rarely happens.

This third principle relates to roof terraces, which is inapplicable here.

Taking the first principle, the studio tower's impact on others' privacy is not reasonable, nor is its height necessary. Privacy loss is demonstrated by LB4 2/2 where 3 storeys of views into and across 3 Portions' private outdoor space and vegetable garden are marked, from the studio tower. The house has many other "flexible" spaces for house residents, without the privacy impacts of the tower. The tower's impact is too high, leading to an assessment that it must be markedly reduced for privacy reasons.

Overlooking from the house's upper storey could be mitigated by various means, including higher sills, an opaque section of window glazing, or deletion of that storey altogether. A second storey on such a long house, under a curved roof, introduces a new element to this neighbourhood, bringing it into significant question under this Planning Principle.

The second principle minimizes reliance on landscaping for privacy protection, reinforcing the approach in the Meriton matter. For this Lovett Bay proposal, it is the ONLY privacy protection. As a result, the proposal is assessed as not achieving privacy protection for 2 neighbours, as the latter's privacy loss is very significant and not reliably mitigated by an inconsistent proposal.

## Views

Two Planning Principles relate to view impacts: (general) Tenacity vs Warringah Council (2004); (impact on public domain views/ view sharing) Rose Bay Marina P/L vs Woollahra Council (2013).

Cls. 26-29 (Tenacity) refers to the nature of the view loss (favouring iconic views and whole views over partial views), part of the property from which views will be lost (favouring front and rear boundary views over side boundary views; favouring standing position view loss over sitting), location of the view loss (whole of property assessment; favouring living areas over less used rooms).

It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Then, reasonableness of the proposal causing the view loss:

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.

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These properties benefit from the National Park's bushland and its wildlife. Whilst not iconic, views uphill to the NP (all Plates) will largely be lost due to the height and width of the house and height of the studio tower. For 2 downhill neighbours, the loss is from across their rear boundaries, from both standing and sitting positions. The loss is from their private outdoor living spaces (Plates 7, 8) as well as from at least 1 living room. Therefore the view loss to the NP is assessed as severe. Given the many non-compliances of the proposal, the extent of view loss up to the NP is considered unreasonable.

Cls. 39-59 (Rose Bay Marina P/L) refers to the nature of view loss **from** public places, whereas Council's DCP refers also to view loss **to** public places. The latter instance is what applies here, in relation to lost views due to the house and the tower uphill to an EEC/ Kuringai Chase National Park. As a result, the Rose Bay Marina matter provides guidance only. Cl. 42 states in part: "The process must account for reasonable development expectations as well as the enjoyment of members of the public of outlooks from public places."

First, identify:

- "the nature and extent of any existing obstruction of the view;
- relevant compositional elements of the view (such as is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);
- what might not be in the view - such as the absence of human structures in the outlook across a natural area (such as the view from Kanangra Walls);
- is the change permanent or temporary; or
- what might be the curtilages of important elements within the view."

Then identify public areas from which the view may be lost. In this case, the National Park is steep, although an overgrown, blocked fire trail also ran across the slope above 3 Portions in the past (Plates 4, 6, 7). (Its legal status as a management trail is not known.) On that basis, although views would be lost from the public domain, they are barely accessible. All Plates show views uphill to the National Park which are proposed to be lost both through the 2 structures and through boundary plantings.

Third, what is the extent of the view loss from the National Park (ignoring *Tenacity's* distinction between a seated vs standing position)? In this instance it would be 100% down to the bay as well as down to waterfront residences, and the same uphill to the National Park, due to the structures as well as the plantings.

Fourth, what is the intensity of public use of the public locations? In this instance, it is very low in the National Park.

Distinguish between the LEP's and DCP's "preservation of views" vs "minimization of impact" upon views. "Preservation" is the DCP term – a higher standard than minimisation.

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The present views uphill are fairly unhindered as the subject site is vacant land (all Plates, all documents). The proposal introduces 2 very large new built elements into the uphill view to a public place.

Views into the National Park include Spotted Gums (one of 2 key species in the EEC), Cabbage Tree Palms (Plates 6, 7, 8), boulders, ferns, ridgelines and a gully to the west (Plate 1). These views enclose the residential slopes below, demonstrating a sense of place above Lovett Bay.

On balance, can the view be considered "reframed" (in a positive way) or partially retained, and to what extent? In this case, the blockage by plantings as well as by two large buildings adjacent to each other and on top of a heritage item does not reframe the view or partially retain it: **others' views are intended to be lost.**

### 3. SEPP (RESILIENCE AND HAZARDS)

Although the requirements for a "coastal environment" site are partially met, those for a "coastal use" site are not (cl. 2.11 1): overshadowing, safe public foreshore access, cultural and built heritage, visual amenity.

Public access to the foreshore has been limited by existing, long term debris from the proponents at the waterfront, which augurs badly for deposition of building materials in the waterfront reserve. This aspect (past, present, possibly future) is contrary to the coastal environment requirement (cl. 2.10 1(e)). Further, no professional design has been submitted for disposal of collected stormwater, which would take into account the hydrological conditions of any discharge point at the bay/near the foreshore. As a coastal environment site, this is required (cl. 2.10 1(a)).

### 4. PITTWATER LEP 2014

Zone: C3 Environmental Management

Zone objectives:

#### 1 Objectives of zone

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that 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 and not visually prominent.
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.
- To ensure the continued viability of ecological communities and threatened species.

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Dual occupancy is prohibited.

**TABLE 1  
ISSUES, REQUIREMENTS, OBJECTIVES AND EXTENT OF COMPLIANCE/NON-COMPLIANCE**

<b>ISSUE</b>	<b>REQUIREMENT/REF.</b>	<b>COMPLIANCE?</b>
objective 1	protect, manage, restore areas with special ... cultural values	no
2	...no adverse effect on those values	no
3	... low density and scale, not visually prominent	no
4	...retains and enhances ...vegetation ...	no (cf. stormwater disposal)

Justification of the non-compliance claims above is found throughout this submission.

## **5. PITTWATER 21 DEVELOPMENT CONTROL PLAN**

The locally-common landslips and constant seepage from ridges above constitute natural hazards.

### **DCP Excerpts**

B.5.13

#### **Outcomes**

Protection of waterways and improved riparian health (En)  
Stormwater and creek flows are safely managed. (S)  
Appropriate setback between waterways and development (En)

#### **Controls**

Any waterfront land (as defined in the Water Management Act 2000) on the property shall be retained in their natural state to: carry stormwater/flood flows, maintain aquifers, retain stability, and provide habitat functions.

Natural or artificially modified water courses cannot be diverted onto adjoining lands, filled, channelised and/or dammed.

Waterfront land in a degraded state, should be restored and rehabilitated.

Development within waterfront land shall incorporate appropriately sized riparian corridor zones into the design based on Controlled Activities on Waterfront Land: Guideline for outlet structures on waterfront land (NSW Office of Water, July 2012).

Development adjoining waterfront land is to be landscaped with local native plants.

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Council encourages the replacement of a piped stormwater system where appropriate with a restored watercourse with appropriate flow carrying capacity, wherever feasible.

The piping or artificial channelling of natural watercourses and drainage channels is not permitted.

A Water Management Plan with supporting documentation is to be submitted demonstrating the feasibility of the proposed watercourse works within the site.

Structures Over and Adjacent to Easements, Piped Drainage System or Natural Watercourses  
No encroachments or low lying overhangs of the development are permitted over natural water courses. Structural support elements are not permitted within the cross sectional area of a natural watercourse. Structural support elements adjacent to a natural water course located on the development site or on adjacent lands must be founded on a stable foundation to the depth directed by a geotechnical engineer.

## **B5.15 Stormwater**

### **Applies to Land**

All land in the Pittwater LGA not including Warriewood Valley land release area

### **Objectives**

- Improve the quality of water discharged to our natural areas to protect and improve the ecological and recreational condition of our beaches, waterways, riparian areas and bushland;
- Minimise the risk to public health and safety;
- Reduce the risk to life and property from any flooding and groundwater damage;
- Integrate Water Sensitive Urban Design measures in new developments to address stormwater and floodplain management issues, maximise liveability and reduce the impacts of climate change.
- Mimic natural stormwater flows by minimising impervious areas, reusing rainwater and stormwater and providing treatment measures that replicate the natural water cycle
- Reduce the consumption of potable water by encouraging water efficiency, the reuse of water and use of alternative water sources
- Protect Council's stormwater drainage assets during development works and to ensure Council's drainage rights are not compromised by development activities.
- 

### **Requirements**

Stormwater runoff must not cause downstream flooding and must have minimal environmental impact on any receiving stormwater infrastructure, watercourse, stream, lagoon, lake and waterway or the like.

The stormwater drainage systems for all developments are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

### **DCP excerpt: Heritage**

### **Land to which this control applies**

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Land on which a heritage item, heritage conservation area or archaeological site is located, and that is listed in Schedule 5 and shown on the Heritage Maps in the Pittwater Local Environmental Plan 2014 excluding items in the Warriewood Valley Locality.

### **Uses to which this control applies**

All Uses

### **Outcomes**

Conservation of the environmental heritage of Pittwater in accordance with the principles contained in the Burra Charter.

Enhancement of the identified heritage values and significant character of the heritage conservation areas and encourage design that responds appropriately to their character.

Development that is respectful of environmental heritage, undertaken in a manner that is sympathetic to, and does not detract unnecessarily from, any identified heritage significance.

Recording of identified cultural heritage throughout the development process.

### **Controls**

#### Heritage Items or Archaeological Sites

Any development application involving work likely to impact the heritage significance of a heritage item or archaeological site is to be accompanied by a Heritage Impact Statement, prepared by an appropriately qualified heritage professional. Guidance on preparing a Heritage Impact Statement (Statement of Heritage Impact) is available at NSW Office of Environment & Heritage in the NSW Heritage Manual or superseding publication.

Alterations and additions to buildings and structures, and new development of sites containing a heritage item or archaeological site are to be designed to respect and complement the heritage significance in terms of the building envelope, proportions, materials, colours and finishes, and building alignment.

Development on land containing a heritage item or archaeological site is to minimise the impact on the setting of the item or site by providing an adequate buffer zone where appropriate, and maintaining and respecting significant views to and from the heritage item or archaeological site.

... (fencing, gates: not proposed)

Original face brick or stone surfaces are not to be painted nor rendered.

... (garages: not proposed)

... (existing buildings: none)

Alterations and additions to heritage items should not necessarily attempt to replicate the architectural or decorative detail of the original but be sympathetic and compatible so as to maintain a distinction between old and new in a subtle manner. Alterations and additions should complement a heritage item's existing period style and character. Reconstruction or reinstatement of the original details and finishes is encouraged.

... (roofing materials: irrelevant)

The materials, finishes and colours used in alterations and additions should complement the heritage item. Modern materials can be used if their proportions and details are harmonious within the surrounding heritage context or with the heritage item.

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Colour schemes for heritage buildings should generally be compatible with the particular architectural style and period of the building.

If work associated with a development approval is likely to adversely impact the heritage item, Council requires an archival recording of a heritage item to be prepared by an appropriately qualified heritage professional.

...

## **B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites**

### **Land to which this control applies**

Land within the vicinity of a heritage item, heritage conservation area or archaeological site that is listed in Schedule 5 and shown on the Heritage Maps in the Pittwater Local Environmental Plan 2014 excluding items in the Warriewood Valley Locality.

### **Uses to which this control applies**

All Uses

### **Outcomes**

Conservation of the environmental heritage of Pittwater LGA in accordance with the principles contained in the Burra Charter.

Enhancement of the identified heritage values and significant character of the heritage conservation areas and encourage contemporary design that responds appropriately to their character.

Development respectful of environmental heritage, undertaken in a manner that is sympathetic to, and does not detract from, any heritage significance.

### **Controls**

Any development application involving work likely to impact the heritage significance of a heritage item, heritage conservation area, archaeological site or potential archaeological site is to be accompanied by a Statement of Heritage Impact prepared by an appropriately qualified heritage professional. Guidance on preparing a Heritage Impact Statement (Statement of Heritage Impact) is available at NSW Office of Environment & Heritage in the NSW Heritage Manual or superseding publication.

Developments in the vicinity of a heritage item, heritage conservation area, archaeological site or potential archaeological site are to be designed to respect and complement the heritage significance in terms of the building envelope, proportions, materials, colours and finishes, and building alignment.

Developments in the vicinity of a heritage item, heritage conservation area, archaeological site or potential archaeological site are to minimise the impact on the heritage significance by providing an adequate buffer zone, and maintaining and respecting significant views to and from the heritage item, heritage conservation area, archaeological site or potential archaeological site.

### **Variations**

Nil

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## DCP Selected Excerpts that apply to the subject site and to its neighbours

### c.15 Visual Privacy

#### Outcomes

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

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

### c.16

#### Acoustic privacy

#### 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)

### c.17

#### Private outdoor space

#### Outcomes

Dwellings are provided with a private, usable and well-located area of private open space for the use and enjoyment of the occupants. (S)

Private open space is integrated with, and directly accessible from, the living areas of dwellings. (S)

Private open space receives sufficient solar access and privacy. (En, S)

**TABLE 2  
ISSUES, REQUIREMENTS, OBJECTIVES AND EXTENT OF COMPLIANCE/NON-COMPLIANCE**

ISSUE	REQUIREMENT /REF.	COMMENTS	COMPLIANCE?
applicant's obligations	DCP A 1.6 The applicant has an obligation to demonstrate to the community that their development is well designed, comprehensive and consistent with the community's vision.	not achieved	no
community and its plan	A2 fundamental acknowledgment of the interconnection between environmental, social, and	not demonstrated	no

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	economic issues		
heritage	Burra Charter: protect heritage items; provide buffers to development from heritage items	3 retaining walls will be impacted heavily by the proximity of the house and its footings; by insertion of trenches between them; by effluent disposal between them which will change the moisture content and chemical composition of the walls' footings; by construction of the detached tower <b>on top of</b> the north-eastern end of one retaining wall; the "fabric" of the heritage site (which includes the road itself, with cut and fill) will be <b>completely covered</b> by the house with no retention of any heritage features or value	no no no no no
<p><b>Outcomes</b> Conservation of the environmental heritage of Pittwater in accordance with the principles contained in the Burra Charter. Enhancement of the identified heritage values and significant character of the heritage conservation areas and encourage design that responds appropriately to their character. Development that is respectful of environmental heritage, undertaken in a manner that is sympathetic to, and does not detract unnecessarily from,</p>	B1.1 Heritage	<p>no impact assessment</p> <p>obliteration of some and medium-term destruction of other heritage values: inappropriate design on very compromised site</p> <p>ignored</p>	no no no

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<p>any identified heritage significance. Recording of identified cultural heritage throughout the development process.</p>		not proposed	no
<p><b>Controls</b> <u>Heritage Items or Archaeological Sites</u></p> <p>Any development application involving work likely to impact the heritage significance of a heritage item or archaeological site is to be accompanied by a Heritage Impact Statement, prepared by an appropriately qualified heritage professional. ...</p>		ignored	no
<p>Alterations and additions to buildings and structures, and new development of sites containing a heritage item or archaeological site are to be designed to respect and complement the heritage significance in terms of the building envelope, proportions, materials, colours and finishes, and building alignment.</p>		essentially destructive rather than complementary	no
<p>Development on land containing a heritage item or archaeological site is to minimise the impact on the setting of the item or site by providing an</p>		essentially destructive impact: road and retaining walls; no buffers	no

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<p>adequate buffer zone where appropriate, and maintaining and respecting significant views to and from the heritage item or archaeological site.</p> <p>...</p> <p>...</p> <p>Original face brick or stone surfaces are not to be painted nor rendered.</p> <p>...</p> <p>The scale and form of any alterations and additions are not to dominate the existing building, ...</p> <p>Alterations and additions to heritage items should not necessarily attempt to replicate the architectural or decorative detail of the original but be sympathetic and compatible so as to maintain a distinction between old and new in a subtle manner. Alterations and additions should complement a heritage item's existing period style and character. Reconstruction or reinstatement of the original details and finishes is encouraged.</p> <p>...</p> <p>The materials, finishes and colours</p>		<p>no details in proposal</p> <p>essentially destructive impact: road and retaining walls: complete domination by house and studio tower, including removal of eastern end of heritage wall</p> <p>heritage impact assessment to discuss</p> <p>heritage impact assessment to discuss</p>	<p>not known</p> <p>no</p> <p>not known</p> <p>not known</p>
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<p>used in alterations and additions should complement the heritage item. ...</p> <p>Colour schemes for heritage buildings should generally be compatible with the particular architectural style and period of the building.</p> <p>If work associated with a development approval is likely to adversely impact the heritage item, Council requires an archival recording of a heritage item to be prepared by an appropriately qualified heritage professional.</p>		<p>heritage impact assessment to discuss</p> <p>heritage impact assessment to discuss</p>	<p>not known</p>
<p>To achieve the desired future character of the Locality.</p> <p>To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)</p> <p>To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.</p> <p>The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas</p>	<p>D8 Lower Western Foreshores...: Outcomes</p>	<p>Local character for residences is essentially 1-2 storey buildings with square/rectangular shapes, articulation of facades and simple roof forms. Neither long, narrow, unarticulated dwellings with a curved roof, nor 3 storey towers are found in Lovett Bay.</p> <p>essential but unresolved clash between bushfire hazard (Category 1/ FZ) and proposed plantings</p>	<p>no</p> <p>no</p> <p>no</p>

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<p>and the like, is softened by landscaping and vegetation. (En, S, Ec)</p> <p>High quality buildings designed and built for the natural context and any natural hazards. (En, S)</p> <p>Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)</p> <p>To preserve and enhance district and local views which reinforce and protect Pittwater's natural context.</p> <p>To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, ...</p> <p>To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)</p>		<p>?</p> <p>massive width; 3 storey tower</p> <p>3 storey square tower</p> <p>see LEC PP views' assessment</p> <p>both buildings are out of context</p> <p>both buildings' form (but not colour or materials) contrast strongly with public domain elements</p>	<p>not known</p> <p>no</p> <p>no</p> <p>no</p> <p>no</p> <p>no</p>
<p>Buildings which front the street, and are not obscured by vegetation or topographical features, must have a street presence</p>	<p>D8: controls</p>	<p>for Council to assess</p>	

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<p>appropriate to predominantly pedestrian traffic. Buildings should incorporate design elements ...that are compatible with any design themes for the locality. Blank street frontage facades without windows shall not be permitted.</p> <p>...</p> <p>Any building facade to a public place ...</p> <p>The bulk and scale of buildings must be minimised. Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.</p> <p>...</p>		<p>for Council to assess</p> <p>not proposed</p> <p>for Council to assess</p> <p>they are maximized (number of buildings, bulk, scale)</p> <p>unresolved conflict between proposed privacy plantings, plantings to minimize bulk, view loss from applicants' property due to proposed plantings, Flame Zone: buildings appear dominant over vegetation</p>	<p>yes</p> <p>no</p> <p>no</p> <p>no</p>
enhance bushland character	D8.5	the only plantings (citrus) are exotic plants, not natives	not compliant
Equitable preservation of views and vistas to and/or from public/private places. (S)	D8.5	view uphill from 2 adjacent properties to National Park almost completely blocked by 2 buildings uphill	not compliant
To achieve the desired future character of the Locality. (S) To enhance the existing streetscapes and promote a building scale and density that is below	D8.8 building envelope: outcomes	<p>a very wide curved roof building + a 3 storey square tower are inconsistent</p> <p>studio tower is inconsistent</p>	<p>non-compliant</p> <p>non-compliant</p>

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<p>the height of the trees of the natural environment. To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment. The bulk and scale of the built form is minimised. (En, S) Equitable preservation of views and vistas to and/or from public/private places. (S)</p> <p>To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S) Vegetation is retained and enhanced to visually reduce the built form. (En)</p>	<p>)</p> <p>)</p>	<p>the 2 contrasting built forms (one very wide, sinuous roof; one square and very tall) are insensitive to the natural environment</p> <p>bulk and scale are maximized (see description above of contents of 2 buildings)</p> <p>view uphill from private properties to public National Park almost completely blocked privacy of 2 downhill residential properties (their only private outdoor spaces with winter sun) lost while plantings near house grow, lost if studio is left unscreened (as proposed), then solar access is lost with proposed tall plantings</p>	<p>non-compliant</p> <p>non-compliant</p> <p>non-compliant</p> <p>non-compliant</p>
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## 6. OTHER

The tower's footprint shall be relocated in accordance with heritage protection principles, or the tower deleted if it cannot accommodate FZ as well as the heritage fabric. As there are bushfire hazard and other implications of a relocated footprint, the application shall be amended with all such aspects also addressed, prior to any DA determination.

Existing debris has been left by the proponent on the waterfront for many years, despite agreeing to its removal. This constitutes a loss of an acceptable view on the waterfront for others, from private and public places. It is also a safety hazard, apparently on public land. That debris should be removed promptly, prior to determination of this DA. Equally, while transfer of building materials to the site will require use of the public

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foreshore, no materials should be left there during construction: they should all be immediately transferred to the nominated area uphill of the proposed dwelling.

### **On-site Sewage Management for Single Households (OEH)**

The proposal is inconsistent with the State requirements for on-site sewage management, as this is not a single household – it is a multiple household. It is noted that the OSSM report sizes the system for 8 people.

Does the EMA meet the standards of AS 1547 for the land application area? It appears undersize for an 8 person household, and is much too close to (a) the house, (b) the studio tower, and (c) the downhill/ front boundary. The consultant's report does not justify the inadequate setback distances on- and off-site. Nor does the report detail the effects on the heritage fabric of the discharge that will occur within the heritage item's footprint. How will that discharge affect the foundations as well as the structural integrity of all components within the heritage item? The volume of liquid as well as its chemical composition matter.

### **Some additional recommended matters as proposal amendments, for formal commitment by the applicants**

- 6.1 A Heritage Impact Assessment is to be submitted as required at State and Council levels, to accompany the DA.
- 6.2 A formal Water Cycle Management Plan (incorporating WSUD principles) is to be submitted to accompany the DA.
- 6.3 Construction access through adjacent private and public land from the north-east is not permitted.
- 6.4 Construction materials (whether incoming or waste) shall not be stored in the public waterfront reserve of Lovett Bay, whether in front of the subject site or in front of adjacent properties.
- 6.5 A privacy screen shall be erected at the western end of the house deck to protect the privacy of the adjacent cottage.
- 6.6 New native plantings shall also be installed along the 2 boundaries with Portions 3 and 6 to provide privacy but not so as to increase bushfire risk.
- 6.7 By plant selection and/or by pruning, plantings along all downhill boundaries shall not exceed 3m, so as to protect solar access to downhill properties while maintaining privacy and view for the subject site.
- 6.8 The studio footprint shall be relocated away from the heritage item plus a professionally-assessed buffer to it.
- 6.9 Due to significant impacts, character inconsistent with what is desired locally, and many alternative studio/ living spaces in the house, the detached studio tower shall be limited to a relocated footprint but with only 1 storey.
- 6.10 Dual occupancy is and shall remain prohibited on this lot.
- 6.11 An arborist's report for tree removal assessment shall be submitted to accompany the DA.

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- 6.12 The OSSM (tank and EMA) shall be relocated much further away from the house, studio and all neighbouring boundaries.
- 6.13 Stormwater shall only be discharged after its collection into pipes on site and within the "handle" to the bay, with appropriate nutrient and velocity controls on the system prior to discharge.
- 6.14 Heritage, water cycle (including sewage management and stormwater management), landscaping, privacy and view loss, and bushfire hazard shall be addressed in an amended SEE via a holistic assessment, with upgraded analysis of impacts on and off site.

## 7. SUMMARY

The proposal is internally inconsistent, and some details about how the project will proceed are missing. Therefore those matters which require approval cannot be assessed fully, as complete information has not been provided by the applicants.

Building various structures on top of a heritage item from the early 1800s as proposed is completely unacceptable from a cultural perspective as well as being non-compliant, particularly given the lack of heritage impact assessment.

The zone and SEE seek low density development, however this is medium density development on a small area of a large site: nevertheless NOT low density.

The proposal is overdevelopment of a highly constrained part of the site, with significant difficulties to achieve completed buildings. A smaller building which better addresses its infrastructure needs as well as the bushfire hazard and better responds to its sensitive environment is preferable. The heritage structures need to be professionally assessed, with impacts avoided in accordance with the Burra Charter.

It is possible that due to the multiple constraints of the property (including slope, vegetation, bushfire hazard, heritage, access, privacy, view protection, all planning controls), it is not feasible for the property to be developed for a residence at this time.

As a result of the inconsistencies in what is described as "proposed" in different documents, incorrect claims, absence of LEP or DCP appeals, and particularly inadequate heritage protection and non-compliant effluent and stormwater disposal, the application in its current form should be refused, or a request made for withdrawal to enable significant amendments that upgrade the proposal.

Yours faithfully

Dr Helen Monks  
Director, Town Planner

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