
Sent: 17/06/2021 11:45:41 AM

Subject: 13 Iluka Road Palm Beach NSW 2108 DA 2021/0197 WRITTEN
SUBMISSION: LETTER OF OBJECTION #2 Submission: Dennison-Quirk

Attachments: iluka 150621.docx;

SUBMISSION: DENNISON – QUIRK
a written submission by way of objection to DA 2021/0197

Diana Dennison & Philip Quirk
3 Woorak Road
Palm Beach
NSW 2108

16 June 2021

Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
Dee Why
NSW 2099

Northern Beaches Council
council@northernbeaches.nsw.gov.au

cc: Adam Mitchell, NBC Planner

Dear Chief Executive Officer,

Re:
13 Iluka Road Palm Beach NSW 2108
DA 2021/0197

WRITTEN SUBMISSION: LETTER OF OBJECTION #2
Submission: Dennison-Quirk

This document is a written submission by way of objection to DA 2021/0197
lodged under Section 4.15 of the EPAA 1979 [the EPA Act]

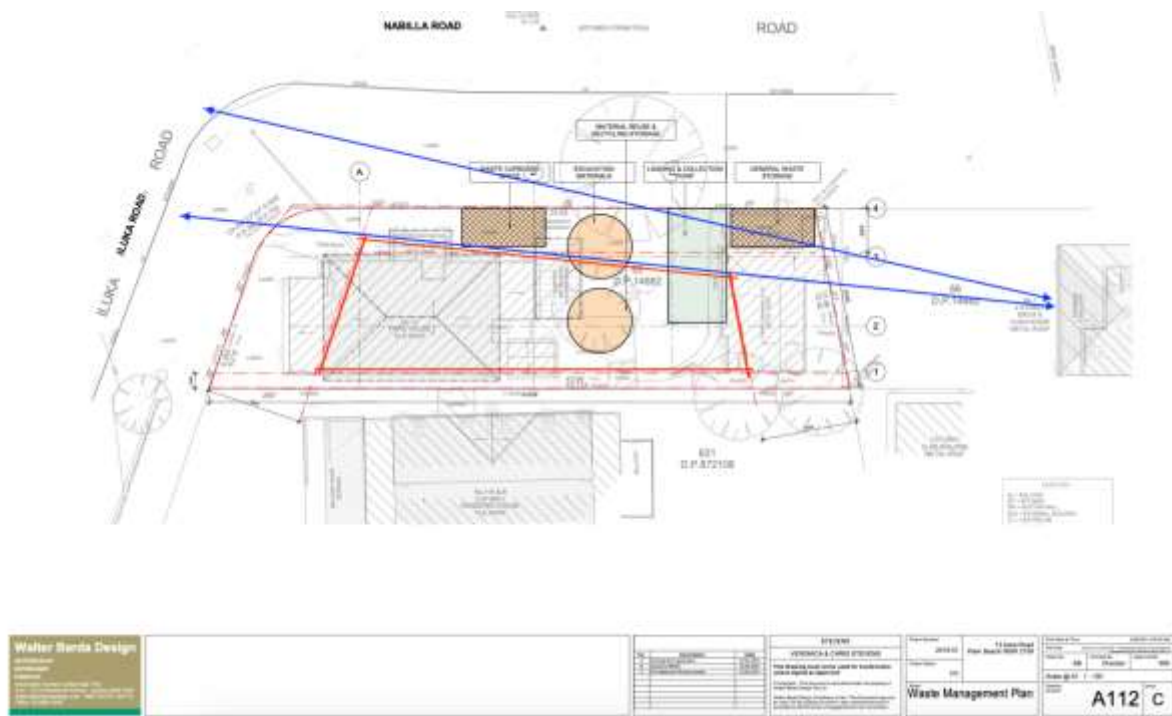
We refer to the amended plan submission, notified on 9 June 2021.

We refer to our submission dated 19 April 2021 that we attach for ease of reference.

Our main concerns are:

- **View Loss: Devastating loss of water view to Pittwater**
- **Privacy**
- **Unreasonable Bulk & Scale**

A proper site analysis on view loss would have defined a zone where built form could be considered to ensure that the water view was shared. We attach a marked-up analysis that shows the area in red, that a two-storey development could be considered that would protect that view. This identifies a considerable zone that is open for the Applicant to develop within, without causing a devastating view loss outcome.



We are concerned that the updated SEE contains false and misleading statements regarding our view loss, suggesting that the view is to be maintained, when clearly it will not. We had requested height poles in our earlier submission, to be erected due to the non-compliant development in the street setback zone, however the Applicant has chosen not to erect height poles, as clearly the height poles would confirm our devastating water view loss.

We do not intend providing commentary to a document that clearly is so biased towards causing maximum residential amenity harm to neighbours by non-compliant development, and is so out of reasoning considering NSWLEC and DDP decisions made in 2021, other than to say the amended SEE cannot be relied upon.

Council will be aware of a recent 2021 NSWLEC Appeal that was dismissed by a very senior Commissioner on a view loss consideration: DA 2019/0380, 72 Carrington Parade, Curl Curl: Der Sarkissian v Northern Beaches Council [2021] NSWLEC 1041

We raise the refusal by Council of the DA, and the subsequent dismissal by NSWLEC of the Applicant's appeal. The case in question had many similarities to this DA. Although no two DA are ever the same, we ask Council to consider these matters.

Council's Planning Officer was exemplary in this matter, not only defending an unreasonable DA with a recommendation for refusal that would cause a severe view loss to neighbours, but also presenting the case at NSWLEC, that ultimately had the Court dismiss the Applicant's Appeal by a very senior NSWLEC Commissioner. The key issues:

- 72 Carrington Parade, Curl Curl is a corner block, as is the subject site at 13 Iluka Road Palm Beach.
- The main view loss concern was to a neighbour immediately behind 72 Carrington Parade, Curl Curl. We are in the same position immediately behind the subject site.
- The view loss in both situations involved side setback controls.
- The view loss at Curl Curl was severe – here at Palm Beach our loss would be devastating, we would have no water view at all from our living spaces

The key matters within the Commissioner's Conclusion:

- *the determinative issue in this case is view loss*
- *the proposal would significantly change the amenity enjoyed for the worse.*
- *both policy controls and view sharing principles suggest the proposal goes too far.*
- *proposal attempts to achieves too much on a constrained site.*
- *a reasonable development at the upper level in regard to view sharing and setback policy,*
- *with good design, there is scope for this to occur while also providing for reasonable floor space on this level.*

It is clear that the view loss, on this DA in Palm Beach, occurs through a poor consideration on side setback controls to Nabilla Road. The proposed built form that contains a zero setback for the proposed garage, and a 1.5m setback for the main structural elements of the proposed dwelling causes that view loss.

Our commentary on this DA in Palm Beach is very similar to Commissioner Walsh in *Der Sarkissian v Northern Beaches Council* [2021] NSWLEC 1041

- the determining issue in this case is view loss – in our case a devastating water view loss
- the proposal would significantly change the amenity enjoyed for the worse.
- policy controls of setback and view sharing principles suggest the proposal goes too far.
- proposal attempts to achieves too much on a constrained site.
- a reasonable development at the upper level in regard to view sharing and setback policy, would share the view
- with good design, there is scope for view sharing to occur while also providing for reasonable floor space on both levels

We bring to Council's attention the fundamental outcomes and controls stated within PDCP on setback and view sharing:

D12.5 Front Building Line

The clause states:

Outcomes

Equitable preservation of views and vistas to and/or from public/private places.

The proposed development simply does not accord.

C 1.3 View Sharing

The clause states:

Outcomes

A reasonable sharing of views amongst dwellings.

Controls

All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The proposal must demonstrate that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.

Where a view may be obstructed, built structures within the setback areas are to maximise visual access through the structure e.g. by the provision of an open structure or transparent building materials.

The proposed development simply does not accord with the outcomes or controls. The merit considerations are very poorly presented.

We also bring to the attention of Council other DA refused by Council on view loss grounds DA 2020/1338 [DDP] and DA 2020/1323 [DDP] that also considered view loss across side boundaries to some extent. View loss reached only 'moderate' on the Manly DA, however a refusal was the outcome. The views from the neighbours property were over side boundaries, and were not solely a front to rear consideration. Again, these considerations are never totally the same, but these decisions clearly show that the SEE arguments cannot simply be relied upon.

We state that there is ample area for a two-storey development on the subject site, as defined by the above site analysis, showing a considerable zone for built form over two levels. With good design, there is scope for view sharing to occur while also providing for reasonable floor space on both levels.

We refer to our previous submission on this matter.

Privacy

We are concerned that elevated windows in the proposed upper level will look immediately and directly into our private open space and our main living spaces. We ask for the windows to have 1.6m high sills.

Unreasonable Bulk & Scale

The Amended Plan submission still presents an unacceptable bulk and scale relationship to our property and to the streetscape.

The 7.5m wall heights facing our property are excessive. The proposed development is promoting 4.8m high ceiling zones in a Granny Flat! We contend that the roof level over the Granny Flat be reduced to RL 8.00 to reduce bulk and scale to neighbours.

We are also very concerned of the excessive built form in our water viewing corridor, and more generally any built form elements in those corridors and all built forms including roof structures beyond Grid 3 to the north.

We are very concerned to the roof level decks, and ask the roof deck and the stair, be deleted for privacy and visual bulk grounds. No roof heights are stated on drawings.

We are very concerned to the calculations in respect to landscape areas, and ask Council to check compliance to these matters. The Roof Plan shows a built form of c.300sqm, leaving a non-built upon zone of c.192sqm, leaving a landscaped area of only 40% of the site.

Conclusion

We ask Council to seek amended plans from the Applicant to resolve these matters.

We note the Landscape Officer is unsupportive of the DA.

If amended plans are not forth coming to resolve all these matters, we ask Council to REFUSE the DA on the following grounds.

Reasons for Refusal

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is **inconsistent with the aims of the plan** of the Local Environmental Plan.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is **inconsistent with the provisions of the R2 Zone** of the Local Environmental Plan.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of **Clause C1.3 View Sharing** of the Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Development Control Plan:
 - **A4.12 Palm Beach Locality**
 - **B4.22 Preservation of Trees**
 - **C1.1 Landscaping**
 - **C1.5 Visual Privacy**
 - **C1.6 Acoustic Privacy**
 - **D12 Palm Beach Locality**
 - **D12.1 Character as viewed from a public place**
 - **D12.5 Front Building Line**
 - **D12.6 Side and Rear Building line**
 - **D12.8 Building Envelope**
 - **D12.9 Landscaped Area**
 - **D12.14 Scenic Protection Category One Areas**
5. The proposal is contrary to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that the proposal has a **detrimental impact** on both the natural and built environments in the locality of the development.
6. The development is **not suitable** for the site pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
7. The proposal is not in the **public interest** pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* because it results in a development that breaches development standards and controls. The proposed development would result in a development that is of excessive bulk and scale which results in adverse impact on the streetscape, adjoining properties and the broader locality.

Yours faithfully,

Diana Dennison & Philip Quirk
3 Woorak Road
Palm Beach
NSW 2108

S U B M I S S I O N : D E N N I S O N – Q U I R K
a written submission by way of objection to DA 2021/0197

Diana Dennison & Philip Quirk
3 Woorak Road
Palm Beach
NSW 2108

19 April 2021

Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
Dee Why
NSW 2099

Northern Beaches Council
council@northernbeaches.nsw.gov.au

cc: Adam Mitchell, NBC Planner

Dear Chief Executive Officer,

Re:
13 Iluka Road Palm Beach NSW 2108
DA 2021/0197

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission: Dennison-Quirk

This document is a written submission by way of objection to DA 2021/0197
lodged under Section 4.15 of the EPAA 1979 [the EPA Act]

The DA seeks development consent for the carrying out of certain development, namely:

The proposed two-storey dwelling residence will involve the demolition of the existing dwelling, and the construction of the new dwelling residence with outdoor pool, balconies, and addition above garage and 2 level granny flat connected internally with the new house.

Cost of Work: \$1.7m.

The subject site is zoned Zone R2 under the LEP, and there is no reason, unique or otherwise why a fully compliant solution to LEP and DCP controls cannot be designed on the site.

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Section 6: Misleading Information & Outstanding Information

Section 7: Statutory Planning Framework

- Local Environmental Plan
- Development Control Plan
- Section 4.14 [1] of EPAA 1979
- NSW LEC Planning Principles

Section 8: Amended Plans

Section 9: Conclusion

Appendix

EXECUTIVE SUMMARY

This Written Submission asks Council to request that the Applicant submits Amended Plans to resolve the matters raised within this Submission, to undertake a redesign, and failing a comprehensive set of amendments undertaken by the Applicant as identified within this Submission, to ask the Applicant to withdraw the DA, or if that is not forthcoming, to **REFUSE** this DA.

We are being assisted by a very senior experienced consultant assisting us in the preparation of this Written Submission.

The bulk and design of the proposed works are not compatible with neighbouring development and will be a negative contribution to the scenic amenity of the area when viewed from surrounding viewpoints, particularly our property.

The proposed development is a clear case of overdevelopment:

- D12.5 Front Building Line, 4.0m control to Nabilla Road, 4.0m control v zero [garage]; decks [zero]; building [1.6m] [>1000% non-compliance]

- D12.6 Rear Building line, 6.5m control v 4.0m to [#3 Woorak Road](#) [62% non-compliance]
- D12.8 Building Envelope, fails control
- D12.9 Landscape Area, fails control
- D12.11 Fence to Nabilla Road, 1.0m control v 2.1m proposed [210% non-compliance]

This Written Submission addresses our objection to the above development.

We want to emphasise the fact that we take no pleasure in objecting to our neighbour's DA.

We are objecting because the proposed DA has a very poor impact on the amenity of our property, and the urban design particularly in Palm Beach, and this is caused by the DA being non-compliant to multiple controls.

If the DA was fully compliant to all controls our amenity loss would be more reasonable.

It does seem unreasonable that the Applicant wishes to remove our amenity to improve his own, and is proposing a catalogue of non-compliant outcomes that would seriously adversely affect our amenity.

Our main concerns are:

- **C1.3 View Sharing – Devastating loss of view to Pittwater**
- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.1 Landscaping
- [D12.1 Character as viewed from a public place](#)

Our amenity losses are directly attributable to non-compliance of the main PLEP and PDCP controls.

In **Tenacity**, [Tenacity Consulting v Warringah Council 2004], NSW LEC considered Views. Tenacity suggest that Council should consider:

“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.”

The development breaches multiple planning controls and is unreasonable.

The impact on views arises as a result of non-compliance with one or more planning controls, and the devastating impact is considered unreasonable.

In **Project Venture Developments v Pittwater Council** (2005) NSW LEC 191, NSW LEC considered **character**:

“whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site’s visual catchment”

The non-compliant elements of the proposed development, particularly caused from the non-compliant setbacks, the ‘three-storey’ structure, the massive wall with an oversized ‘bullet opening’ to Iluka Road, and the ‘black box’ concept, would have most observers finding ‘the proposed development offensive, jarring or unsympathetic in a streetscape context’.

We agree with Roseth SC in NSWLEC **Pafbum** v North Sydney Council:

“People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.”

The ‘legitimate expectation’ that we had as a neighbour was for a development that would not result in outcomes of significant non-compliance to envelope controls.

The ‘legitimate expectation’ that we had as a neighbour was for a development that would not result in very poor amenity outcomes caused directly from the significant non-compliance to envelope controls, including a 100% view loss of Pittwater.

The ‘legitimate expectation’ that we had as a neighbour was for a development that integrates with the landscape character of the locality, and an expectation that the proposal would support landscape planting of a size that is capable of softening the built form.

The ‘legitimate expectation’ that we had as a neighbour was for a development that responds to the character of the architecture of the locality, with an architectural character and building colours that respond to the surrounding neighbourhood

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, the subject of this Submission does not succeed on merit and is not worthy of the granting of development consent.

We ask Council to refuse this DA as the proposed development does not comply with the *planning regime*, by multiple non-compliance to development standards and controls, and this non-compliance leads directly to our amenity loss.

In this Written Submission we ask Council to request the Applicant to submit Amended Plans to bring the proposed development back into a more generally compliant envelope including:

1. No built form in the 4.0m front setback zone to Nabilla Road. Delete garages, decks, pools and all built form in 4.0m street setback zone – revert to deep soil planting

-
- Site plan for Lot 62, D.P. 14682, showing a new dwelling to be contained within an envelope. The plan includes setbacks: 4.0m Prevailing Street Setback, 6.5m Street Setback, 6.5m Rear Setback, and 1.0m side setback. It also shows existing structures like a concrete patio with metal roof and a paved house with tile roof, and various setbacks and dimensions.

The height, bulk and scale of the proposal is inconsistent with the desired future character of the R2 zone, has adverse impacts in terms of view loss, fails to maintain the general dominance of landscape over built form, and does not maintain the existing residential amenity of the area. For these reasons, the proposal does not satisfy the aims of the LEP or the objectives of the Zone R2.

The overall combined effect caused by the non-compliant Building Envelope and Front, Side and Rear Setbacks lead to a considerable unreasonable visual bulk and a very poor character as viewed from a public place. The subject site falls within a scenic protection category one area, and we contend that the overdevelopment of the site fails to meet the outcomes.

PLEP 2014

- 1.2 Aims of Plan
- Zone Objectives Zone R2

P21DCP

- C1.3 View Sharing
- A4.12 Palm Beach Locality
- B4.22 Preservation of Trees
- C1.1 Landscaping
- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.6 Acoustic Privacy
- C1.25 Plant, Equipment Boxes and lift Over-Run
- D12 Palm Beach Locality
- D12.1 Character as viewed from a public place
- D12.3 Building colours and materials
- D12.5 Front Building Line
- D12.6 Side and Rear Building line
- D12.8 Building Envelope
- D12.9 Landscaped Area
- D12.11 Fences
- D12.14 Scenic Protection Category One Areas

The proposed development is considered to be inconsistent with the outcomes, controls and objectives of the relevant legislation, plans and policies.

The height, bulk and scale of the proposal is inconsistent with the desired future character of the R2 zone, has adverse impacts in terms of view loss, solar loss, and privacy loss, fails to maintain the general dominance of landscape over built form, and does not maintain the existing residential amenity of the area. For these reasons, the proposal does not satisfy the aims of the LEP or the objectives of the Zone R2.

The proposal is not of an appropriate bulk and scale when compared to surrounding dwellings and dominates the neighbouring dwellings.

The overall combined effect caused by the non-compliant Building Envelope and Front, Side and Rear Setbacks lead to a considerable unreasonable visual bulk and a very poor character as viewed from a public place. The subject site falls within a scenic protection category one area, and we contend that the overdevelopment of the site fails to meet the outcomes.

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, the subject of this Submission does not succeed on merit and is not worthy of the granting of development consent.

We ask Council to refuse this DA as the proposed development does not comply with the *planning regime*, by multiple non-compliance to development standards and controls, and this non-compliance leads directly to our amenity loss.

CHARACTERISTICS OF OUR PROPERTY

Key aspects of our property are as follows:

Our property shares a common boundary with the subject property.

We enjoy good levels of view sharing, privacy, and daylight access over the subject site's boundaries.



Our property shown with a 'red star', and the subject site 'red flagged'

MATTERS OF CONCERN

We are concerned that these impacts will negatively impact the level of amenity currently enjoyed.

The following aspects of the proposal are of concern:

- The extent of the proposed building envelopes
- The siting and extent of the proposed dwelling without having sufficient consideration for maintaining amenity

We provide further details of these matters below and request Council's close consideration of these in the assessment of the application.

We are concerned that the SEE has failed to properly address our amenity concerns, and is suggesting that the DA accords with LEP & DCP outcomes and controls when it clearly it does not.

The non-compliance to LEP and DCP outcomes and controls forms the basis of our objection.

The subject site is of a reasonable size, and there is no reason, unique or otherwise why a fully complaint solution to all outcomes and controls cannot be designed on the site.

This letter of objection will detail our concerns, and our amenity losses that have arisen as a direct result of the non-compliance to outcomes and controls.

SITE DESCRIPTION

The site is described within the Applicant's SEE.

The location of the site is 13 Iluka Road, Palm Beach 2108 (Lot 62 DP14684) and is zoned R2 Low Density Residential. The site has an area of 492.7m²

PROPOSED DEVELOPMENT

The site is described within the Applicant's SEE.

The proposed two-storey dwelling residence will involve:

- *The demolition of the existing dwelling.*
- *Construction of the new dwelling residence with outdoor pool, balconies, and addition above garage and 2 level granny flat connected internally with the new house.*

OUTSTANDING INFORMATION

Height Poles

We ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor.

The Height Poles will need to define:

- All Roof Forms, and all items on the roof
- Extent of all Decks, Balustrades, Privacy Screens

The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

Overshadowing Diagrams

The Applicant is required to submit hourly solar access diagrams on our windows to assess compliance, caused by non-compliant envelope

We object to any additional overshadowing caused by the non-compliant envelope compared with a compliant envelope, particularly in the winter hours.

Incomplete drawings

We note that the garage roof is not shown on the roof plan.

Setbacks to the boundary are not adequately dimensioned including the dimensions to Nabilla Road boundary and the rear boundary to 3 Woorak Road of all structures, decks and roof forms.

The survey drawing is required to be 'ghosted' into each plan drawing to clearly show the existing street setback of the wall zones of the existing building. The sectional profile of the existing dwelling is required to be 'ghosted' into each elevation and sectional drawing.

ENVIRONMENTAL PLANNING INSTRUMENTS LEP & DCP

The following matters are relevant to the development under the LEP 2012:

Provision	Compliance	Consideration
1.2 Aims of Plan	No	The proposal does not comply with the aims of the plan.

Zone Objectives Zone R2	No	The proposal is defined as a dwelling house and is permissible with consent in the R2 zone. The proposal does not satisfy the zone objectives.
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CLAUSE 1.2 AIMS OF PLAN

In these proposals the local amenity and environmental outcomes would be challenged by non-compliance.

We contend that the proposed development does adversely affect the character or amenity of the area or its existing permanent residential population by view loss, and other amenity losses.

We contend that the DA fails the aims of this control as follows:

1.2 Aims of Plan

- (a) to promote development in Pittwater that is economically, environmentally and socially sustainable,*
- (b) to ensure development is consistent with the desired character of Pittwater's localities,*
- (g) to protect and enhance Pittwater's natural environment and recreation areas,*
- (i) to minimise risks to the community in areas subject to environmental hazards including climate change,*
- (j) to protect and promote the health and well-being of current and future residents of Pittwater.*

The requirements under this clause clearly have not been met.

The proposal exceeds all setback controls and fails to achieve the landscape area. The proposal therefore is of a larger building envelope than what is provided for by the existing controls and presents excessive bulk and scale onto surrounding properties in a manner which is not consistent with the desired future character of the locality.

ZONE R2 LOW DENSITY RESIDENTIAL

Objectives of zone

The development of and use of the land for residential purposes within the R2 Low Density Residential is consistent with the zone objectives, which are noted over as:

- To provide for the housing needs of the community within a low density residential environment.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.

It is considered that the proposed construction of alterations and additions to an existing dwelling will not be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be inconsistent with and will not complement the existing detached style housing within the locality.
- The proposed development does not respect the scale and form of other new development in the vicinity and therefore does not complement the locality.
- The proposal provides for the construction of a new building, which will have any significant or adverse impact on the neighbouring properties.
- The setbacks are not compatible with the existing surrounding development.
- The proposal does have any unreasonable impact on Pittwater views, and non-compliant setback to restrict for views for the surrounding properties to be retained.
- The proposal does not provide for the housing needs of the community within a low density residential environment. The proposed three storey building height is more typically associated with a higher density residential environment, not the low density residential environment.
- The proposal does not retain the single dwelling character of this environmentally sensitive residential area
- The proposal does not maintain a general dominance of landscape over built form.
- The proposal does not achieve adequate landscaping.
- The proposed development would result in a built form that would have a number of adverse amenity impacts on surrounding properties.
- The proposed development is of a height and scale that is not compatible with the desired future character of the area. The proposed development is excessive in height and scale and is too bulky on the street frontage.
- The proposed development does not maintain or enhance local amenity. The proposal results in the loss of private views from an adjoining property.
- The proposed bulk and scale of the development has not been minimised.
- The proposal has failed to provide adequate side setbacks or side envelope and is not appropriately setback from the street which result in built form dominance, poor streetscape outcome and view loss.

PITTWATER DEVELOPMENT CONTROL PLAN 2014

The following matters are relevant to the development under PDCP 2014:

Provision	Compliance with Control	Compliance with Objectives
A4.12 Palm Beach Locality	No	No
B4.22 Preservation of Trees	No	No
C1.1 Landscaping	No	No
C1.3 View Sharing	No	No
C1.4 Solar Access	No	No
C1.5 Visual Privacy	No	No
C1.6 Acoustic Privacy	No	No
C1.25 Plant, Equipment Boxes and lift Over-Run	No	No
D12 Palm Beach Locality	No	No
D12.1 Character as viewed from a public place	No	No
D12.3 Building colours and materials	No	No
D12.5 Front Building Line	No	No
D12.6 Side and Rear Building line	No	No
D12.8 Building Envelope	No	No
D12.9 Landscaped Area	No	No
D12.11 Fences	No	No
D12.14 Scenic Protection Category One Areas	No	No

A4.12 Palm Beach Locality

The DCP states:

Desired Character

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

We contend that the three-storey component does not accord with this clause, and requires to be deleted.

B4.22 Preservation of Trees

We are concerned to the destruction of street trees

C1.1 Landscaping

We are concerned to the under-provision of the 60% requirement.

We are concerned that landscape is proposed to be positioned within our Pittwater viewing corridor.

C1.3 View Sharing

This is one of major concerns as the proposed non-compliant development will remove 100% of our Pittwater view – it will be a **devastating loss**.

We bring to the attention of Council a recent refusal by NBC DDP on 24 March 2021, following a Refusal Recommendation of NBC Development Assessment Manager, by NBC Reporting Manager Anna Williams, a very senior and highly experienced NBC Planning Officer, and the NBC Responsible Officer Rebecca Englund, a very senior NBC Planning Officer, that Council as the consent authority refuses Development Consent to DA2020/1338 for Alterations and additions to a dwelling house on land at Lot 63 DP 8075, 55 Bower Street, Manly, subject to the conditions that were outlined in the Assessment Report.

The assessment of DA2020/1338 involved a consideration of a view loss arising from a proposed development that presented a non-compliant envelope to LEP and DCP controls.

The DDP agreed with the recommendation and refused this DA.

The DDP Panel that refused this DA were three of the most senior DDP members: Peter Robinson Executive Manager Development Assessment, Lashta Haidari Manager Development Assessment, and Liza Cordoba Manager Strategic & Place Planning

The Assessment Report found that:

‘the impact associated with the non-compliant built form, specifically the proposed upper floor, is unreasonable and the objectives of the relevant standards and controls are not achieved.’

The Assessment Report within the Tenacity Assessment concluded:

Whilst the level of impact is categorised as moderate at worst, the impact would be reduced with a compliant or near compliant design.

There is also a question as to whether a more skilful design could reduce the level of impact for adjoining properties.....that a more skilful design could lessen the impact.

The proposal is also considered to be inconsistent with the requirements of this control, which require views between buildings to be maximised, in addition to those objectives that seeks to provide for view sharing between properties and to maximise disruption and loss of views.”

The DA was recommended for refusal, and DDP refused the DA in full support of the NBC Reporting Manager and NBC Responsible Officer Assessment Report.

We contend that this DA Refusal by the DDP sets a benchmark of the custom and practice of Council in consideration of all view loss concerns.

The severity of the view loss that was considered unacceptable by the DDP. This level of view loss was considered as *'moderate'* by the assessing officers and the DDP. The photographs are shown from page 156 of the DDP Agenda, 24 March 2021.

In this DA the view loss across our boundary will be a 100% View Loss to Pittwater – a **devastating outcome**.

The Applicant has not even considered the matter.

We contend that the proposed development does not satisfy view loss consideration under the controls.

We contend that the non-compliance to controls causes the view loss:

- D12.5 Front Building Line, Nabilla Road, 4.0m control v zero [garage]; decks [zero]; building [1.6m] [>1000% non-compliance]
- D12.6 Rear Building line, 6.5m control v 4.0m to #3 Woorak Road [62% non-compliance]

No View Loss Analysis has been prepared by the Applicant.

There is no reasonable sharing of views amongst dwellings.

The new development is not designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The proposal has not demonstrated that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.

Our comments are as follows.

In *Tenacity*, [*Tenacity Consulting v Warringah Council* 2004], NSW LEC considered Views. *Tenacity* suggest that Council should consider:

"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."

The development breaches multiple planning controls and is unreasonable.

The impact on views arises as a result of non-compliance with one or more planning controls, and the devastating impact is considered unreasonable.

Application of Tenacity planning principle

We are concerned that no adequate consideration of view impact from our property.

The views lost are views to Pittwater

A preliminary analysis and assessment in relation to the planning principle of Roseth SC of the Land and Environment Court of New South Wales in *Tenacity Consulting v Warringah* [2004] NSWLEC 140 - *Principles of view sharing: the impact on neighbours (Tenacity)* is made, however we have no confidence that the assessment is accurate due to the absence of height poles.

The steps in Tenacity are sequential and conditional in some cases, meaning that proceeding to further steps may not be required if the conditions for satisfying the preceding threshold is not met.

Step 1 Views to be affected

The first step quoted from the judgement in *Tenacity* is as follows:

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Prior to undertaking Step 1 however, an initial threshold in Tenacity is whether a proposed development takes away part of the view and enjoys it for its own benefit and would therefore seek to share the view. In our opinion the threshold test to proceed to Step 1, we provide the following analysis;

An arc of view to the west is available when standing at a central location on the elevated decks, living spaces, and other highly used zones on our property.

The composition of the arc is constrained to the west, to the northern side of the existing dwelling on the subject site, over rear and street boundaries, by built forms and landscape.

The central part of the composition includes the subject site.

Views include scenic and valued features as defined in Tenacity.

The proposed development will take away views for its own benefit.

The view from our living zones and decks towards the water view, and the land-water interface.

The existing view is a 'moving landscape', rather than just a 'scenic outlook', given the activity on the water. The extent of view loss is **devastating**, and the features lost are considered to be valued as identified in Step 1 of *Tenacity*.

Step 2: From where are views available?

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The views in all cases are available across the boundary of the subject site at angles to the west, from standing [1.4m] and seated [1.2m] positions.

An arc of view to the west is available when standing at a central location on the elevated decks, living spaces, and other highly used zones on our property. In this respect we make two points:

- We have no readily obtainable mechanism to reinstate the impacted views from our living zones if the development as proposed proceeds; and
- All of the properties in the locality rely on views over adjacent buildings for their outlook, aspect and views towards the water view

We attach a series of photographs from our highly used Living Room and Entertainment Decks.



The view to Pittwater that ill be totally lost – a devastating outcome caused by non-compliant development



The view is through and over the nearby park

We contend that the proposed development must be reduced in massing so as to maintain our view of the harbour.

Step 3: Extent of impact

The next step in the principle is to assess the extent of impact, considering the whole of the property and the locations from which the view loss occurs.

Step 3 as quoted is:

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Step 3 also contains a threshold test. If the extent of impact is negligible or minor for example, there may be no justification for proceeding to Step 4, because the threshold for proceeding to considering the reasonableness of the proposed development may not be met. In that case the reasonableness question in Step 4 does not need to be asked and the planning principle has no more work to do.

We consider the extent of view loss in relation to our living room zones to be **devastating** using the qualitative scale adopted in *Tenacity*.

The view lost includes water views and land-water interface. As we rate the extent of view loss as **devastating** in our opinion the threshold to proceed to Step 4 of *Tenacity* is met.

Step 4: Reasonableness

The planning principle states that consideration should be given to the causes of the visual impact and whether they are reasonable in the circumstances.

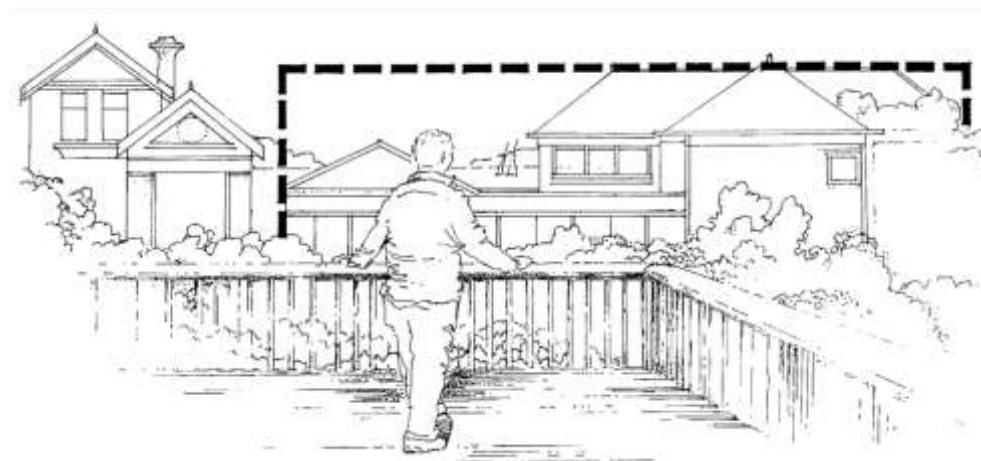
Step 4 is quoted below:

The fourth step is to assess the reasonableness of the proposal that is causing the impact. 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. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

As the proposed development does not comply with outcomes and controls, that are the most relevant to visual impacts, greater weight would be attributed to the effects caused.

In our opinion the extent of view loss considered to be **devastating**, in relation to the views from our living rooms and living room deck of our dwelling, particularly to the west. The view is from a location from which it would be reasonable to expect that the existing view, particularly of the water could be retained especially in the context of a development that does not comply with outcomes and controls.

Once Templates are erected, we can provide additional commentary.



Where there is a potential view loss, Council must require full compliance to all built form controls, and even further reductions to those controls to ensure the views are maintained

The private domain visual catchment is an arc to the west from which views will be affected as a result of the construction of the proposed development.

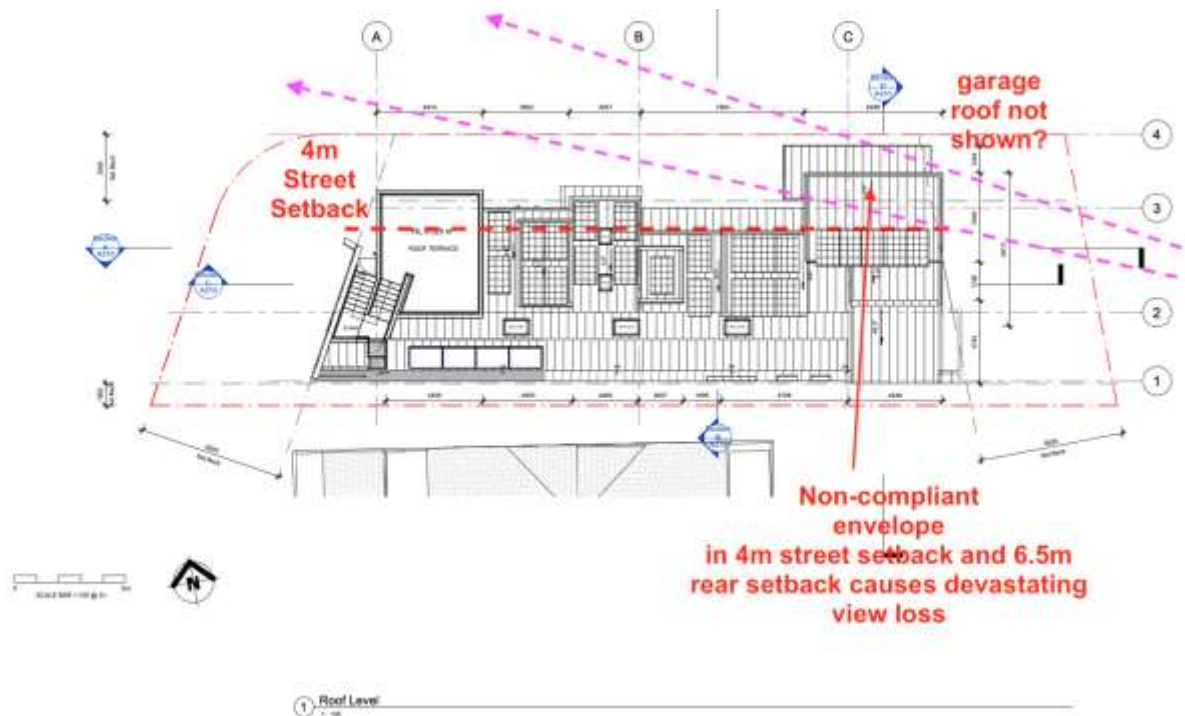
The proposed development will create view loss in relation to our property.

The views most affected are from living areas and associated terraces and include very high scenic and highly valued features as defined in Tenacity.

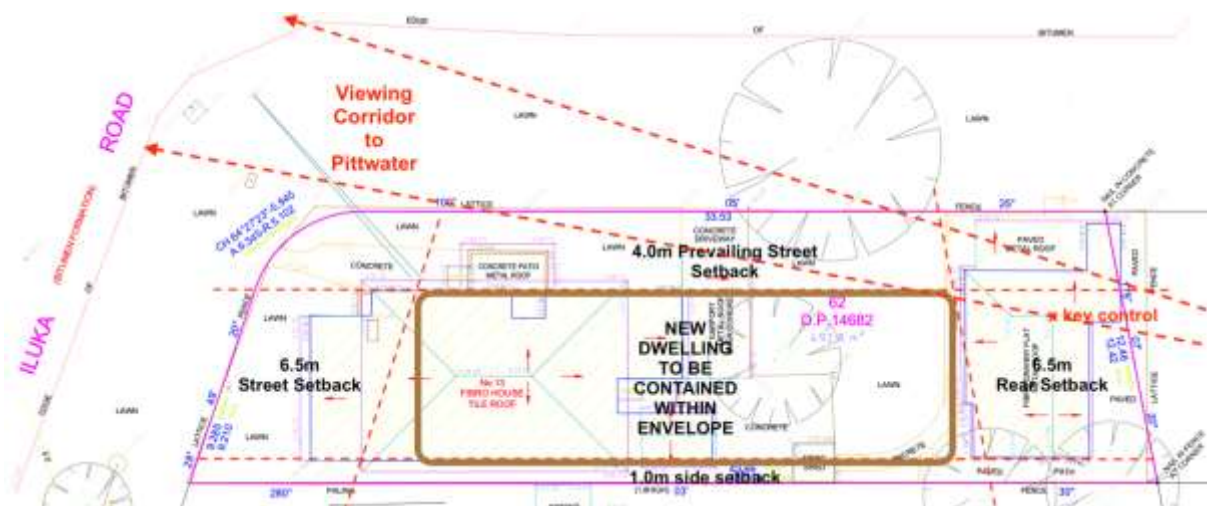
Having applied the tests in the Tenacity planning principle and without height poles erected, we conclude that we would be exposed to a devastating view loss.

The non-compliance with planning outcomes and controls of the proposed development causes this loss.

- Building Envelope
- Setbacks



The 'key control' to avoid the devastating view loss is located on the attached marked up survey drawing. The northern end of the roof of the existing Granny Flat is the location from which the view is lost in an arc from the west to the north-west. A compliant 6.5m rear setback, coupled with a compliant 4.0m prevailing street setback, being the existing main dwelling on the subject site, would maintain the view. Any proposed development would need to be tested by a 'height pole' at the 'key control', and preferably prior to any redesign commencing to better inform the design outcome.



Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

As noted by his Honour, Justice Moore of the Court in *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 (Rebel), *“the concept of sharing of views does not mean, for the reasons earlier explained, the creation of expansive and attractive views for a new development at the expense of removal of portion of a pleasant outlook from an existing development. This cannot be regarded as “sharing” for the purposes of justifying the permitting of a non-compliant development when the impact of a compliant development would significantly moderate the impact on a potentially affected view”*.

The same unreasonable scenario in Rebel applies to the current DA. The proposed breaching dwelling will take away views from our property (and possibly other adjoining properties) to the considerable benefit of the future occupants of the proposed dwelling. This scenario is not consistent with the principle of View Sharing enunciated by his Honour, Justice Moore in Rebel. The adverse View Loss from our property is one of the negative environmental consequences of the proposed development

The proposed development cannot be supported on visual impacts grounds.

There is no reason why our view of Pittwater cannot be maintained in full.

Height Poles/ Templates

We ask Council to request that the Applicant position ‘Height Poles/Templates’ to define the non-compliant building envelope, and to have these poles properly measured by the Applicant’s Registered Surveyor.

The Height Poles will need to define:

- All Roof Forms, and all items on the roof
- Extent of all Decks
- Extent of Privacy Screens
- All proposed Trees & Landscape

C1.4 Solar Access

We are concerned to the loss of sunlight caused by the non-compliant elements of the proposed built form, principally the non-compliant street and rear setbacks and the three storey component of the proposal. It is the loss of winter sun from these non-compliant zones that form the basis of our objection on solar loss. We contend that these elements arise out of ‘poor design’, and we now present a Benevolent Assessment of those matters.

In *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 the LEC consolidated and revised planning principle on solar access is now in the following terms:

“Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal’s design may be demonstrated by a more sensitive design that

achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.”

We contend that the overshadowing arises out of poor design. The design does not comply with setback controls, and must be considered ‘poor design’.

The Applicant has not submitted hourly solar diagrams to fully assess the solar loss. We ask Council to obtain these diagrams.

The loss of sunlight is directly attributable to the non-compliant envelope.

The planning principle *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 is used to assess overshadowing for development application. An assessment against the planning principle is provided as followed:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

The density of the area is low density, R2

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

The solar diagrams are not complete, but what has been provided shows that the proposed development will overshadow the adjoining dwellings. The amount of sunlight that will be lost will only be able to be fully considered once solar elevational drawings are submitted. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal’s design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

The proposed development has been designed without considering the amenity of the neighbouring properties. It is considered that a more skilful design, with a compliant setback, could have been adopted that would have reduced the impact on the neighbouring properties. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *To be assessed as being in sunlight, the sun should strike a vertical surface at a horizontal angle of 22.5o or more. (This is because sunlight at extremely oblique angles has little effect.) For a window, door or glass wall to be assessed as being in sunlight, half of its area should be in sunlight. For private open space to be assessed as being in sunlight, either half its area or a useable strip adjoining the*

living area should be in sunlight, depending on the size of the space. The amount of sunlight on private open space should be measured at ground level.

This can only be fully assessed once elevational solar drawings at hourly intervals are submitted. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

There is minor overshadowing as a result of vegetation

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

The area is not currently undergoing change.

The assessment of the development against the planning principle results in the development not complying with the solar access controls and therefore amended plans should be requested to reduce the overshadowing impact on the adjoining neighbour. It is suggested that a more skilful design of the development, with a compliant setback and complaint side boundary envelope would result in less impact in regard to solar access.

The windows in question are our west facing windows, that provide winter sunshine and daylight into our dwelling, into our highly used rooms. We are concerned of loss of sun to our external private open space. What has been submitted gives the very clear indication that the outcome is not in accordance with controls.

C1.5 Visual Privacy

We are concerned to the loss of privacy from the raised three storey building facing our property, and the raised windows and decks that will be positioned higher than a two-storey configuration would consider. There are insufficient privacy screens to decks and windows.

An assessment of the privacy impact against the planning principle *Meriton v Sydney City Council* [2004] NSWLEC 313 follows:

Principle 1: The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.

Response: The development is located in a low-density area.

Principle 2: Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)

Response: The proposed development result in a privacy impact with the proposed windows facing neighbours without any screening devices being provided.

Principle 3: The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.

Response: The windows in question are windows of the main circulation zones and living areas, it is considered that the living areas will result in an unacceptable privacy breach. The proposed windows facing the rear private open spaces for the neighbouring dwelling and will result in an unacceptable level of privacy impact.

Principle 4: Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.

Response: The proposed development is a new development and the proposed windows have been designed without any consideration to the privacy of the neighbouring property.

Principle 5: 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.

Response: It is considered that the private open space of the neighbouring dwellings could be protected through the provision of highlight windows and the provision of privacy screens.

Principle 6: 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 privacy screens, while sometimes being the only solution, is less desirable.

Response: As mentioned above, the use of highlight windows and privacy screens would reduce the impact of the dwelling.

Principle 7: 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.

Response: The landscaping is the only method offered by the Applicant

Principle 8: In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.

Response: The area is not undergoing change that would warrant privacy impact such as the one presented.

Comment: As the development is considered to result in an unacceptable privacy impact due to the design, it is requested that the proposed development be redesigned to reduce amenity impact on the neighbouring properties.

C1.6 Acoustic Privacy

We are concerned about the acoustic privacy from noise being emitted from raised decks that will be positioned higher than a normal two storey configuration.

C1.25 Plant, Equipment Boxes and lift Over-Run

We are concerned that plant could be positioned in the setback zone facing our property, as no location is provided by the applicant

D12 Palm Beach Locality

D12.1 Character as viewed from a public place

We contend that the proposed development does not achieve the outcomes or the controls to accord with this clause.

The excessive height, lack of setback, garages built on the boundary and in the front setback zone, all contribute to the lack of success addressing the outcomes and controls. The architectural style is not in keeping with the area.

Outcomes

To achieve the desired future character of the Locality.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)

To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.

The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)

High quality buildings designed and built for the natural context and any natural hazards. (En, S)

Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)

To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.

To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.

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)

Controls

Buildings which front the street must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality. Blank street frontage facades without windows shall not be permitted.

Walls without articulation shall not have a length greater than 8 metres to any street frontage.

Any building facade to a public place must incorporate at least two of the following design features: entry feature or portico;

awnings or other features over windows;

verandahs, balconies or window box treatment to any first floor element;

recessing or projecting architectural elements;

open, deep verandahs; or

verandahs, pergolas or similar features above garage doors.

The bulk and scale of buildings must be minimised.

Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place. Parking structures should be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser.

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.

Television antennas, satellite dishes and other telecommunications equipment must be minimised and screened as far as possible from public view.

General service facilities must be located underground.

Attempts should be made to conceal all electrical cabling and the like. No conduit or sanitary plumbing is allowed on facades of buildings visible from a public space.

We are concerned that the proposed development fails to meet the control, particularly:

- The bulk and scale of buildings must be minimised.
- Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place. Parking structures must be located behind the front building line, preferably set back further than the primary building
- 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.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

We attach a series of photos from the surrounding streetscape to better define the character of the area. The style is generally two storey pavilion style residences, with softer muted tones. The surrounding houses are generally respectful of setback controls, and height controls. All houses are two storey as a maximum.





D12.3 Building colours and materials

The DCP states:

Outcomes

Achieve the desired future character of the Locality.

The development enhances the visual quality and identity of the streetscape. (S)

To provide attractive building facades which establish identity and contribute to the streetscape.

To ensure building colours and materials compliments and enhances the visual character its location with the natural landscapes of Pittwater.

The colours and materials of the development harmonise with the natural environment. (En, S)

The visual prominence of the development is minimised. (S)

Damage to existing native vegetation and habitat is minimised. (En)

We contend that the external colour of black is not in keeping with the mid-earthly tones of the neighbourhood.

The photographs in the previous section clearly shows the colour range within the area.

D12.5 Front Building Line

The DCP states:

Outcomes

Achieve the desired future character of the Locality.

Equitable preservation of views and vistas to and/or from public/private places. (S)

The amenity of residential development adjoining a main road is maintained. (S)

Vegetation is retained and enhanced to visually reduce the built form. (En)

Vehicle manoeuvring in a forward direction is facilitated. (S)

To preserve and enhance the rural and bushland character of the locality. (En, S)

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

To encourage attractive street frontages and improve pedestrian amenity.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.

Controls

The minimum front building line shall be 6.5m or established building line, whichever is the greater

We contend that the **minimum established building line** in Nabilla Road is **the existing setback of the existing building at c.4.0m.**

We contend that the proposed development exceeds the front setback control, in proposing built structures including the dwelling and pool in the front setback zone.

The proposed development fails to achieve the outcomes particularly:

- Achieve the desired future character of the Locality.
- Equitable preservation of views and vistas to and/or from public/private places. (S)
- The amenity of residential development adjoining a main road is maintained. (S)
- Vegetation is retained and enhanced to visually reduce the built form. (En)
- To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.

D12.6 Side and Rear Building line

The DCP states:

Outcomes

To achieve the desired future character of the Locality. (S)

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)

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)

Flexibility in the siting of buildings and access. (En, S)

Vegetation is retained and enhanced to visually reduce the built form. (En)

To ensure a landscaped buffer between commercial and residential zones is established.

Controls

The minimum side and rear building line for built structures including pools and parking structures, other than driveways, fences and retaining walls, shall be in accordance with the following table: 2.5 to at least one side; 1.0 for other side; 6.5 (rear)

We contend that the rear setback facing #3 Woorak Road is non-compliant, and must be a clear 6.5m.

We contend that the pool must be setback at least 4.0m from Nabilla street frontage

The following outcomes are not achieved:

- To achieve the desired future character of the Locality. (S)
- 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)

- To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.
- To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)
- Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)

D12.8 Building Envelope

The DCP states:

Outcomes

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 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)

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties. (En, S)

Vegetation is retained and enhanced to visually reduce the built form. (En)

Controls

*Buildings are to be sited within the following envelope of **3.5m & 45 degrees** from the boundary*

We contend that the proposed development fails to maintain an appropriate envelope within the control.

The following outcomes are not achieved:

Outcomes

- 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 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)
- 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)

D12.9 Landscaped Area

We are concerned that the 60% control has not been met.

D12.11 Fences

The DCP states:

Controls

a. Front fences and side fences (within the front building setback)

Front fences and side fences (within the front building setback) shall:

- not exceed a maximum height of 1 metre above existing ground level,
- be compatible with the streetscape character, and
- not obstruct views available from the road.

Fences are to be constructed of open, see-through, dark-coloured materials.

We contend the proposed development fails this control.

D12.14 Scenic Protection Category One Areas

The DCP states:

Outcomes

To achieve the desired future character of the Locality.

To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront.(En,S).

Maintenance and enhancement of the tree canopy.(En,S)

Colours and materials recede into a well vegetated natural environment.(En,S)

To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component (En, S)

To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.

Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

The following outcomes are not achieved:

- To achieve the desired future character of the Locality.
- To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront. (En,S).
- Maintenance and enhancement of the tree canopy. (En,S)
- Colours and materials recede into a well vegetated natural environment. (En,S)
- To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component. (En, S)
- To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.
- To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.
- To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.
- Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve

NSW LEC PLANNING PRINCIPLES

We bring to the attention of Council numerous NSW LEC Planning Principles that have relevance to this DA.

In **Tenacity**, [Tenacity Consulting v Warringah Council 2004], NSW LEC considered Views. Tenacity suggest that Council should consider:

“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.”

Commentary:

The development breaches multiple planning controls and is unreasonable.

The impact on views arises as a result of non-compliance with one or more planning controls, and the impact is considered unreasonable.

In **Veloshin**, [Veloshin v Randwick Council 2007], NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”

Commentary:

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

In **Davies**, [Davies v Penrith City Council 2013], NSW LEC considered General Impact. Davies suggest that Council should consider:

“Would it require the loss of reasonable development potential to avoid the impact?”

Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?

Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?”

Commentary:

The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal.

In **Veloshin**, [Veloshin v Randwick Council 2007], NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”

Commentary:

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

In **Project Venture** Developments v Pittwater Council (2005) NSW LEC 191, NSW LEC considered character:

ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

Applicable regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia and *Home Building Act 1989*, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection may be addressed by appropriate consent conditions in the event of an approval.

LIKELY IMPACTS OF THE DEVELOPMENT

This assessment has found that the proposal will have a detrimental impact on the natural and built environments pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.

SUITABILITY OF THE SITE

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

PUBLIC INTEREST

The proposal is not in the public interest because it results in a development of excessive bulk and scale which has adverse amenity impacts on adjoining properties and the broader locality.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, Council's LEP & DCP and other relevant policies.

The application must be recommended for refusal.

The proposed development does not satisfy the relevant objectives of the LEP and the relevant outcomes and controls contained in the DCP as they are reasonably applied to an application proposing a new dwelling.

If the Applicant does not give Council immediate confirmation that the above matters will be rectified by resubmission of Amended Plans based upon our consideration of a more skilful design, and corrects all incorrect information on the DA drawings, then Council has no other option than to REFUSE this DA for the reasons stated in this Written Submission

The outcome is a building that causes poor amenity outcomes and other amenity loss concerns due to non-compliance to multiple residential outcomes and controls.

The development does not satisfy the objectives of the standard and will present poor residential amenity consequences.

The identified non-compliances have not been appropriately justified having regard to the associated objectives, outcomes and controls.

The subject site is of a large size, and there is no reason, unique or otherwise, why a fully compliant solution cannot be designed on the site, to avoid amenity loss.

Having given due consideration to the relevant considerations pursuant to 4.15 of the Environmental Planning & Assessment Act 1979 (as amended) it has not been demonstrated that the proposed development is appropriate for approval.

This application results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

In consideration of the proposal and the merit consideration of the development, the proposal is not considered to be consistent with the objectives, outcomes and controls of the DCP and objectives, aims, outcomes and controls of the LEP.

The resultant development is not considered to be an appropriate outcome for the site as it fails the balance between the development of the site and the retention of significant natural features and the maintenance of a reasonable level of amenity for adjoining properties.

The processes and assessments have not been satisfactorily addressed.

We expect that the final determination will be carried out by the LPP, due to the numerous excessive non-compliances to outcomes and controls, if not refused earlier for the reasons stated within this Submission.

We request these matters be closely considered in the assessment of the proposed development.

We expect that on such a sensitive site, the Applicant should be charged by Council to deliver a totally compliant scheme to LEP and DCP outcomes and controls.

There is no excuse that neighbours amenity must suffer due to non-compliance to the controls.

We contend that the Development Application is not in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, LEP and DCP and other relevant policies.

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, LEP & DCP and other relevant policies.

In assessing the impact of a development proposal upon a neighbouring property, what was said by Roseth SC in *Pafbum v North Sydney Council* [2005] NSWLEC 444 (16 August 2005), at [19]-[24], is extremely helpful:

19 Several judgments of this Court have dealt with the principles to be applied to the assessment of impacts on neighbouring properties. Tenacity Consulting v Warringah [2004] NSWLEC 140 dealt with the assessment of views loss; Parsonage v Ku-ring-gai Council [2004] NSWLEC 347 dealt with the assessment of overshadowing; while Meriton v Sydney City Council [2004] NSWLEC 313 and Super Studio v Waverley Council [2004] NSWLEC 91 dealt with the assessment of overlooking.

20 Five common themes run through the above principles. The first theme is that change in impact may be as important as the magnitude of impact.

21 The second theme is that in assessing an impact, one should balance the magnitude of the impact with the necessity and reasonableness of the proposal that creates it.

22 The third theme is that in assessing an impact one should take into consideration the vulnerability of the property receiving the impact.

23 The fourth theme is that the skill with which a proposal has been designed is relevant to the assessments of its impacts. Even a small impact should be avoided if a more skilful design can reduce or eliminate it.

24 The fifth theme is that an impact that arises from a proposal that fails to comply with planning controls is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.

In the case of the present development proposal:

1. the magnitude of impact upon the amenity, use and enjoyment by us of our property is certainly not insignificant, in that:
 - the view loss, visual and acoustic privacy, solar loss, and visual bulk impacts from the proposed development into our property well above controls,
 - The extent of the proposed building envelopes
 - The siting and extent of the proposed dwelling without having sufficient consideration for maintaining amenity, with non-compliant Front Setbacks, and Rear Setbacks and other issues.
 - taking amenity from neighbours
2. our property is vulnerable, being directly adjacent to the subject site;
3. the lack of attention in the design of the development proposal as regards the impacts of the proposed development on our property in terms of view loss, visual privacy, acoustic privacy, visual bulk, and loss of winter sun, is relevant to the assessments of those impacts,

such that even a small impact should be avoided if a more skilful design can reduce or eliminate it;

4. the fact that the proposal fails to comply with a number of important planning controls is much more difficult to justify than would otherwise be the case with a complying proposal; and
5. the proposal involves non-compliance with a number of principal planning control and this is an indicator of overdevelopment of the site.

In summary, we have, as Roseth SC pointed out in Pafbum, a legitimate expectation that the development to take place on the subject property *'will comply with the planning regime'* in the present circumstances.

We contend that the Development Application should be refused on the following grounds.

Reasons for Refusal

8. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is **inconsistent with the aims of the plan** of the Local Environmental Plan.
9. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is **inconsistent with the provisions of the R2 Zone** of the Local Environmental Plan.
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of **Clause C1.3 View Sharing**
11. of the Development Control Plan.
12. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of:
 - **A4.12 Palm Beach Locality**
 - **B4.22 Preservation of Trees**
 - **C1.1 Landscaping**
 - **C1.4 Solar Access**
 - **C1.5 Visual Privacy**
 - **C1.6 Acoustic Privacy**
 - **C1.25 Plant, Equipment Boxes and lift Over-Run**
 - **D12 Palm Beach Locality**
 - **D12.1 Character as viewed from a public place**
 - **D12.3 Building colours and materials**
 - **D12.5 Front Building Line**
 - **D12.6 Side and Rear Building line**
 - **D12.8 Building Envelope**
 - **D12.9 Landscaped Area**
 - **D12.11 Fences**

- **D12.14 Scenic Protection Category One Areas**

of the Development Control Plan.

13. The proposal is contrary to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that the proposal has a **detrimental impact** on both the natural and built environments in the locality of the development.
14. The development is **not suitable** for the site pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
15. The proposal is not in the **public interest** pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* because it results in a development that breaches development standards and controls. The proposed development would result in a development that is of excessive bulk and scale which results in adverse impact on the streetscape, adjoining properties and the broader locality.

The Development Application should be **REFUSED** by Council.

Yours faithfully,

Diana Dennison & Philip Quirk
3 Woorak Road
Palm Beach
NSW 2108

Appendix A Conditions of Consent

Compliance with other Departments, Authority or Service Requirement

Prescribed Conditions

General Requirements

Approved Land Use

Nothing in this consent shall authorise the use of the site as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, as defined within the LEP. Any variation to the approved land use and/occupancy beyond the scope of the above definition will require the submission to Council of a new DA.

Conditions to be satisfied prior to the issue of the CC

Amendments to the approved plans [**see attached list above in main body of Submission*]

All windows facing neighbours to have obscured glazing

All privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.

Pre-commencement Dilapidation Report

Compliance with standards [demolition]

Compliance with standards

Boundary Identification Survey

Structural Adequacy & Excavation Work

Geotechnical Report Recommendations to be incorporated into designs and structural plans

Engineering Assessment

Engineers Certification of Plans, including all retaining walls

Compliance with Ecologists Recommendations pre construction

Tanking of Basement Level

Installation & Maintenance of Sediment & Erosion Control

Demolition Traffic Management Plan

Construction Traffic Management Plan

Waste Management Plan

Waste & Recycling Requirements

Public Domain Plan

Soil and Water Management Program

Shoring of Council's Road Reserve

Vehicle Crossing Application

Pedestrian sight distance at property boundary

Location of security gate and intercom system

Minimum driveway width

Access driveway

Allocation of parking spaces

On-site Stormwater Detention Details

Stormwater Disposal

Sydney Water

Water Quality Management

External finishes to Roof
Colours & Materials

New Landscaping Plan
Project Arborist
Tree Protection
Tree Trunk, Root and Branch Protection
Root Mapping
Tree Removal within the Road Reserve
On slab landscape planting and associated works

Mechanical plant location
AC Condenser Units

Design Impact on processes and public/private amenity
No excavation within 1m of boundary
Protection of Neighbours assets

Pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the boundary

Plant room and equipment for operational conditions - Noise and vibrations

Noise from all plant rooms including roof top mechanical plant room, mechanical ventilation for car parks, extraction units and exhaust fans, air condition units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open.

Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

Conditions that must be addressed prior to any commencement

Pre-Construction Dilapidation Report
Installation and maintenance of sediment and erosion control

Pedestrian Sight Distance at Property Boundary
Demolition and Construction Traffic Management Plan
On Street Work Zones and Permits
Kerbside Parking Restrictions

Project Arborist
Tree Removal
Tree Removal in the road reserve
Tree Trunk, Branch, and Root Protection
Tree protection
Tree and vegetation removal from property

Conditions to be complied with during demolition and building works

Road Reserve
Removing, handling and disposing of asbestos
Demolition works – Asbestos

Property Boundary levels
Survey Certificate

Implementation of Demolition Traffic Management Plan
Implementation of Construction Traffic Management Plan
Traffic Control during Road Works
Vehicle Crossings
Footpath Construction

Geotechnical issues
Detailed Site Investigation, Remedial Action Plan & Validation
Installation and maintenance of sediment controls
Building materials
Rock Breaking
Protection of adjoining property
Vibration at 2.5mm/sec with a halt at 2.0mm/sec
No excavation within 3m of boundary

Ecologists Recommendations during construction
Waste Management during development
Waste/Recycling Requirements

Tree Protection – Arborist Supervision of Works
Tree and vegetation protection
Tree Condition
Native vegetation protection
Protection of rock and sites of significance
Aboriginal heritage

Protection of Sites of Significance
Notification of Inspections

Conditions which must be complied with prior to the issue of the OC

Post Construction Dilapidation Report

Certification of Structures
Geotechnical Certificate
Environmental Reports Certification
Landscape Completion Certification
Certification of Civil Works & Works as executed data on council land
Fire Safety Matters
Retaining Wall

Required Planting

Positive Covenant and Restriction as to User for On-site stormwater disposal structures
Positive Covenant for the maintenance of stormwater pump out facilities

Contamination Remediation, Validation and Site Audit Statement
Reinstating the damaged road reserve during construction

Condition of retained vegetation
Stormwater disposal
Works as executed drawings - stormwater

Installation of solid fuel burning heaters:

Certification of solid fuel burning heaters

Required Tree Planting
Required Planting

Acoustic treatment of pool filter
Noise Nuisance from plant

Lighting Nuisance

Swimming pool requirements
Garbage and Recycling Facilities
House number Building Number

Waste Management Confirmation

Waste and Recycling Facilities Certificate of Compliance

Waste/Recycling Compliance Documentation

Positive Covenant for Waste Services

Authorisation of legal documentation required for waste services

Privacy Screens

Reinstatement of Kerbs

Control of noise, odour and vibrations from equipment within plant rooms and ventilation systems connected with the building to ensure noise and vibration from this equipment does not impact on the health and well-being of persons living within the complex and other surrounding premises.

Noise and vibrations. Noise from all plant must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open. Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

Mechanical Ventilation certification: Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668: the use of mechanical ventilation.

Ongoing Conditions that must be complied with at all times

Approved Land Use

Maintenance of solid fuel heater

Operation of solid fuel heaters

Landscape maintenance

Landscaping adjoining vehicular access

Maintenance of stormwater treatment measures

Retention of Natural Features

No additional trees or scrub planting in viewing or solar access corridors of neighbours

Environmental and Priority Weed Control

Control of weeds

No planting environmental weeds

Maintain fauna access and landscaping provisions

Compliance with ecologists recommendation

Works to cease if heritage item found

Dead or injured wildlife

Noise

Noise Nuisance from plant

Swimming pool filter, pump and AC units [noise]

Outdoor lighting

Lighting Nuisance

Plant room and equipment for operational conditions - Noise and vibrations

Loading and Unloading vehicles

END