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**Sent:** 1/02/2022 9:51:36 AM  
**Subject:** FAO: Julie Edwards - Objection letter - DA2021/2547 - 1 Norma Road, Palm Beach  
**Attachments:** Objection letter - 1 Norma Road - DA20212547.pdf;

Dear Julie,

Please find attached objection letter regarding the above DA prepared and submitted on behalf of Jan and Alastair Provan of 75 Bynya Road, Palm Beach.

Please could you confirm receipt by return e-mail.

Kind regards,

Karen Buckingham  
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1 February 2022

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

By e-mail: [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

FAO: Julie Edwards

Dear Julie

**Submission with regard to Development Application DA2021/2547  
New –Alterations and additions to residential development – construction of a swimming  
pool  
1 Norma Road, Palm Beach, NSW**

I write regarding the above Development Application DA2021/2547 (subject DA) to make a submission on behalf of Jan and Alastair Provan (my clients).

This submission is prepared further to the assessment of the plans, reports and Statement of Environmental Effects (SEE) submitted as part of the subject DA against the relevant EPIs and Planning Controls and with the benefit of a site visit to assess the impact of the proposed development on my client.

The subject DA seeks consent for alterations and additions to residential development, including construction of a swimming pool at 1 Norma Road, Palm Beach, NSW (subject site). My client's property sits to the of south of the subject site at 75 Bynya Road, Palm Beach.

I have reviewed submitted DA plans and reports and considered the impacts on my clients to arise by virtue of the proposed development against the relevant planning controls.

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A summary of the impacts and non-compliance of the subject DA as determined from the information submitted is set out below.

### Summary of submission

- Proposed development is non-compliant development contrary to Pittwater DCP 2014 Controls, A4.12 Palm Beach Locality; B3.2 Bushfire Hazard; B4.22 Preservation of Trees and Bushland Vegetation; C1.5 Visual Privacy; C1.6 Acoustic Privacy; D12.1 Character as viewed from a public place; D12.2 Scenic Protection; D12.6 Side building line; D12.8 Building Envelope and D12.10 Landscaped Area 1.
- Loss of visual privacy by virtue of the proposed elevated deck and swimming pool looking directly towards my client's private open space area to the rear, master bedroom, bathroom and rear balcony at close proximity contrary to DCP Control C1.5 – Visual Privacy.
- Loss of acoustic privacy by virtue of proximity of the proposed pool equipment from my client's bedroom window and rear balcony. The proposed location of plant would result in unacceptable noise levels, contrary to DCP Control C1.6 – Acoustic Privacy.
- Overbearing impact of proposed elevated swimming pool and pool equipment /store extending to some 6.8 metres from ground level to the top of the swimming pool enclosure at the eastern elevation. The visual impact of the proposed development would appear as an incongruous structure and out of character in the surrounding environment due to non-compliance DCP Controls D12.6 Side building line and D12.8 Building Envelope.
- Impact on amenity of neighbouring occupiers – cumulative impact of the above.
- Reduction in landscaped area in the C4 Environmental Living Zone and Landscaped Area 1 resulting in 16.5% less landscaped area than the required 60% minimum standards required by the stated DCP Control,
- Impact on the visual amenity and the natural environment when viewed from Whale Beach and Whale Beach Road contrary to DCP control A4.12.

On the information submitted, it is recommended that the subject DA be refused for the reasons summarised above and provided in greater detail in this submission.

Should Council consider supporting the proposed development contrary to the concerns set out in this submission, it is requested that recommended amendments are applied as set out on page 19.

Should additional information or amended plans be submitted, my clients requests the opportunity to provide further comments.

### **Site details and character of the area**

The subject site is located on the south eastern side of Norma Road, Palm Beach. The boundary identification survey shows the site area as 957.5 sqm. The southern boundary of the subject site is in close proximity to my client's property at 75 Bynya Road, Palm Beach, although the exact distance is difficult to determine given that the boundary identification survey does not include my client's property. A revised boundary identification survey to include my client's property should be submitted to enable a more accurate assessment of the distance from the proposed development.

The site is situated on a steeply sloping site as it falls in an easterly direction from Norma Road to Morella Reserve. The site is included within the Pittwater Geotechnical Hazard Map and listed as Geotech Hazard H1 and within a Bushfire Prone Area.

Surrounding development is predominantly made up of detached dwellings which generally complement the low density and natural environment. An important aspect of the surrounding environment is the trees, natural environment and views of the natural escarpment when viewed from Whale Beach. The dominance of the natural environment is reflected in the desired future character of the locality within the DCP. Examples of more intrusive development on the natural environment should not justify the further intensification of built form.

**Figure 1 – Aerial photo of location of subject – white area depicts subject site. My client's site is in close proximity to the subject site and shown via the red arrows below**



Source: Extract from subject DA Statement of Environment Effects via the Northern Beaches Council website – DA tracker

### **Proposed development**

Development Application DA2021/2547 seeks consent for alterations and additions to a residential development and construction of a swimming pool at 1 Norma Road, Palm Beach which includes the following as per the submitted Statement of Environmental Effects:

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- Swimming pool to rear – at RL 101.25
- Swimming pool and spa - at RL 101.25
- Amenities and pool equipment storage room below –at RL 96.65
- Deck area to west at RL 101.3

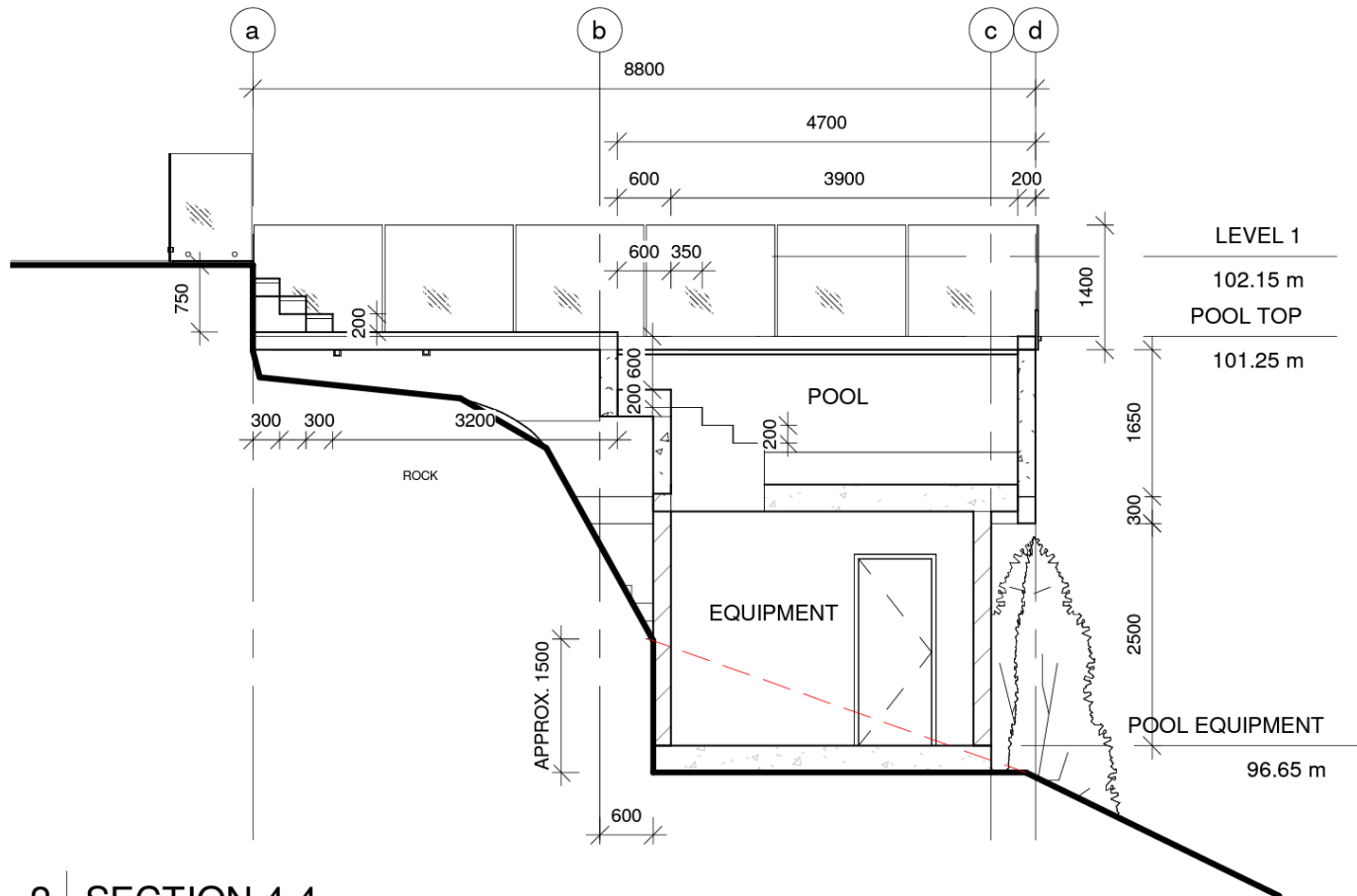
### **Garden areas**

- Access stair to northern side
- Retaining walls as shown
- Landscape planting as shown

In summary, the dimension shown above result in a total built form of some 6.8 metres high including the 5.6 metre high concrete swimming pool and pool equipment / pool storage room from existing ground floor level to finished swimming pool and spa level and additional 1.2 to 1.4 metre glass pool fence, as shown in the extracted plan in figure 2.

Landscaping to the eastern and southern boundaries is proposed to screen and mitigate the harm to arise from the built form, although the allocated site area for the proposed landscaping is limited.

**Figure 2 – Height of the proposed development from existing ground floor level**



**2 SECTION 4-4**

A106 1 : 100

Source: Extract from submitted DA plans



## **Impacts and non-compliance of proposed development**

### **Relevant legislation and Planning Controls**

In preparing this submission, I have carefully considered the following legislation and planning controls:

*Environmental Planning & Assessment Act 1979 (The Act)*  
*Environmental Planning and Assessment Regulation 2000 (The Regulations)*  
*Coastal Management Act 2016 (CM Act)*  
*State Environmental Planning Policy (Coastal Management), 2018(CM SEPP)*  
*Pittwater Local Environmental Plan 2014(LEP)*  
*Pittwater Development Control Plan 2014 (DCP)*

### **Coastal Management Act (CM Act), 2016 and associated SEPP (Coastal Management), 2018**

The subject site is located in a Coastal Environment Area and Coastal Use Area, as specified in Clause 8 and 9 of the CM Act 2016 and Clauses 13 and 14 of the CM SEPP.

The proposed development, as expanded upon in this submission, would result in a significantly harmful impact on the visual amenity and scenic qualities of this coastal use area contrary to the Clause 14 (iii) of the CM SEPP.

### **Local Environmental Plan (LEP)**

**Land use zone:** The subject site is zoned C4 Environmental Living under the LEP. There are concerns with the scale of the development and the lack of integration with the landform as set out in this submission.

### **Clause 7.6 Biodiversity**

The subject site is located within the Pittwater Biodiversity Map. Cl.7.6 (4) (a) requires that development consent must not be granted unless the consent authority is satisfied that the



development is designed, sited and will be managed to avoid any significant adverse environmental impacts.

The subject site is adjacent to the Morella Reserve and the proposed development will reduce significantly the existing landscaped area on site, as further discussed under DCP Control D12.10.

### **Clause 7.7 Geotechnical hazards (and DCP Control B3.1)**

The subject site is located within Area H1 on the Landslip Risk Map. A Geotechnical Report has been submitted with the Development Application and risks to neighbouring property should be fully assessed as part of this application.

### **Development Control Plan (DCP) - Non-compliant development and amenity impacts**

#### **DCP Control B3.2 Bushfire Hazard**

The subject site is located within bushfire prone land. A Bushfire Assessment Report has been submitted and the subject DA should assess the details of this report accordingly. However, the submitted plans include the proposed use of timber decking. In accordance with the requirements for planning for Bushfire Protection, appropriate materials, not including timber are required. Bushfire Assessment is not my area of expertise and it is requested that Council fully assess the Bushfire risks associated with the proposed development.

#### **DCP Control C1.5 - 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)*

##### ***Controls***

*Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).*

*Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.*

*Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.*

**Comment:** DCP Control C1.5 seeks to optimise visual privacy through good design and create a sense of territory and safety. The stated control seeks to ensure that neighbouring dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices.

The proposed elevated swimming pool and deck are located to look directly towards my client's private open space area and rear balcony, master bedroom and en-suite bathroom. The proposed development is of a height which would facilitate direct overlooking at a close proximity. The boundary identification survey does not include details to determine exact distance, but it is my opinion that the approx. distance from the proposed balconies to the principle outdoor and indoor living space may be less than 9 metres. The site photo in figure 3 includes the timber frame erected which assists to determine the height and scale of the proposed development and proximity from my client's rear balcony.

**Figure 3 –Site photo annotated to show location of proposed development as per timber frame erected**



Source: Author's site photo

The proposed development has incorporated landscaping to screen the built form and provide visual privacy, as set out under the justification for visual privacy in the Statement of Environmental Effects. However, as discussed further in this submission, the use of landscaping to protect privacy is not an accepted planning principle in accordance with case law *Super Studio v Waverly* [2004] NSWLEC 91. This is because, as stated, ‘*the effectiveness of landscaping as a privacy screen depends on continued maintenance, good climatic conditions*

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*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.'*

It is the physical built form and proposed siting of the development which should be amended to reduce the impact of the proposed development or the subject DA should be refused given that it is contrary to DCP Control C1.5, as well as the other stated controls.

Furthermore, the landscaping proposed is limited to less than one metre in depth along the south western boundary by virtue of the non-compliant side setbacks, which limits the opportunity for successful planting. The landscaping would need to grow to a height of more than 7 metres to effectively screen the proposed development and use.

## **DCP Control C1.6 – Acoustic Privacy**

### ***Controls***

*Noise-sensitive rooms, such as bedrooms, should be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like.*

*Walls and/or ceilings of dwellings that are attached to another dwelling/s shall have a noise transmission rating in accordance with Part F (5) of the Building Code of Australia. (Walls and ceilings of attached dwellings must also comply with the fire rating provisions of the Building Code of Australia).*

*Noise generating plants including pool/spa motors, air conditioning units and the like shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.*

**Comment:** The proposed development includes an elevated swimming pool, deck and pool equipment in close proximity to my client's master bedroom and principal outdoor balcony. The noise arising from the proposed siting of the new dwelling would result in unacceptable levels of noise and have an impact on my client's acoustic privacy contrary to DCP Control C1.6.

## DCP D12.6 - Control Side and rear building line

### **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.*

**Comment:** The proposed development is non-compliant with the side boundary setbacks of DCP Control D12.6, and the resulting impact to the non-compliant setback to the south western boundary is particularly harmful to my client's amenity.

The resulting impact of pulling back from the side building line would reduce the overbearing impact on my client to a certain extent.

However, it is the side and rear set back together with the elevated height of the proposed development which presents the greatest impact on neighbouring amenity and the visual amenity of the surrounding environment. Although the rear set back is numerically compliant, the design of the elevated swimming pool fails to integrate with the topography of the landscape and results in a development that is overbearing in height, bulk and scale, failing to achieve the desired future character of the locality. Furthermore, the close proximity of the proposed swimming pool and associated non-compliant setbacks result in an unreasonable impact on privacy contrary to the outcomes of this control.

To address this impact, it is recommended that the proposed development is pulled down and back off the rear/ eastern boundary and side/ south western boundary. From an assessment of the submitted plans, it would appear that there is scope within the building design to reduce the size of the proposed deck and pull back the swimming pool to achieve an improved outcome to



address the compliance of the stated controls, as annotated in figure 4. An amended siting of the proposed pool, as suggested, would further address the non-compliant building envelope.

However, it is acknowledged that the suggested amendments would still not fully address the visual impact and privacy of the proposed development, just reduce the level of harm.

## **DCP Control D12.8 - Building envelope**

### ***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)*

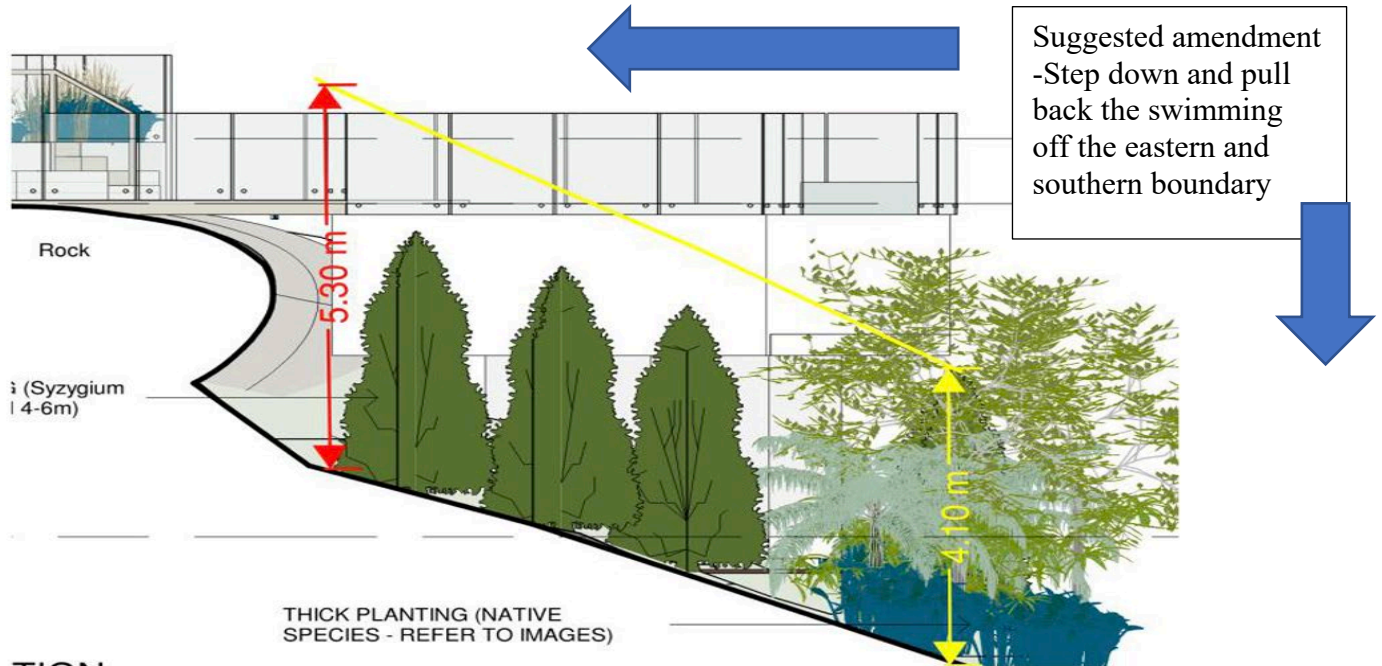
*Vegetation is retained and enhanced to visually reduce the built form. (En)*

**Comment:** From my assessment of the plans, the proposed development would not comply with DCP Control D12.8.

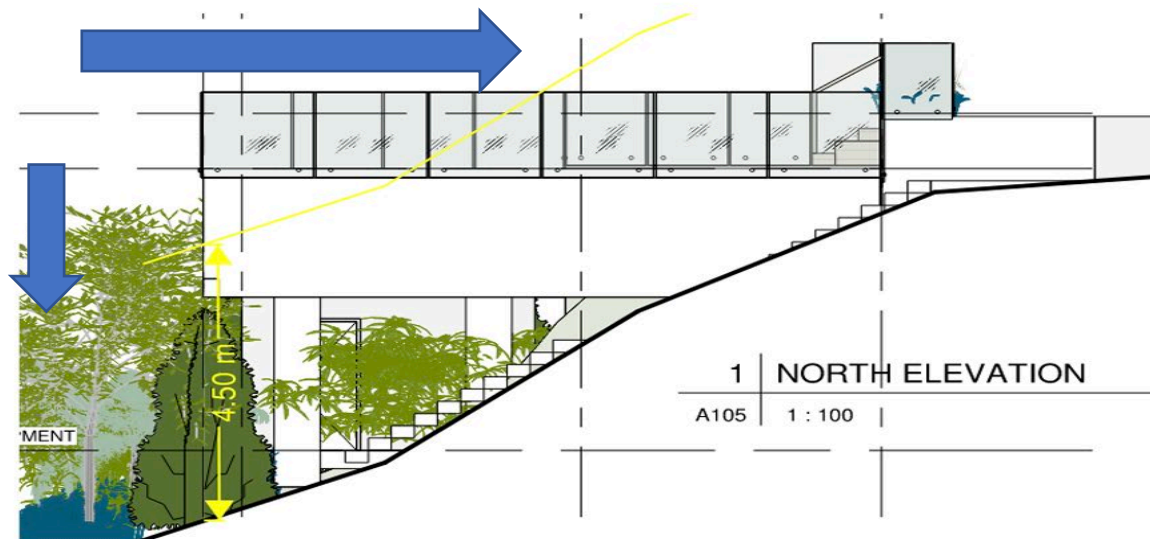
The impact to arise from the non-compliance with the side setback and building envelope is the overbearing impact of the proposed development given the height, bulk and scale, the loss of privacy and visual impact already addressed in this submission.

As shown in figure 4, the building envelope presents an unacceptable level of non-compliance to the rear of the swimming pool. As outlined above, there is scope within the design of the proposed development to step down and back the proposed swimming pool as annotated on the extracted plans and reduce the size of the proposed deck.

**Figure 4 – Non-compliant Building Envelope and annotated suggested amendments**



**Figure 8 – south-eastern elevation side boundary envelope exception**



**Figure 9 – north-western elevation side boundary envelope exception**



## Impact on amenity of neighbouring occupiers

The proposed development would clearly have a materially significant impact on neighbouring amenity. The Development Application fails to comply with the DCP controls referred to in this submission. The impact on neighbouring amenity by virtue of the bulk and scale of the proposed development which fails to integrate with the topography of the site. The level of non-compliance would create an unacceptable overbearing impact, visual impact and loss of privacy. It is recommended that the proposed development be refused given the objections raised. Should Council be minded approving the proposed development, contrary to the concerns set out in this objection, then amendments and conditions are requested to mitigate against the harm discussed.

The Statement of Environmental Effects does reference pre lodgement neighbour consultation. Unfortunately, my clients were consulted during this process and were not notified of the submitted DA by the applicant's, owner or Council.

## Use of landscaping to mitigate against impact on neighbouring amenity

As already discussed under DCP Control C1.5 Visual Privacy, it is established case law as per Planning Principal *Super Studio v Waverly [2004] NSWLEC 91* that landscaping should not be given significant weight in mitigating against the harm of a proposed built form to protect against visual privacy. *Super Studio v Waverly [2004] NSWLEC 91* found 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 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.'

Although the above planning principle is with regard to visual privacy, the same consideration can be said for the use of landscaping to mitigate against visual amenity and harm on the surrounding natural environment. This is particularly relevant in this case, given the location of the proposed development adjacent to the Morella Reserve, in an area of Scenic Protection and publicly visible from Whale Beach.

## Visual impact on natural environment and desired character of the Palm Beach Locality

DCP Control A4.12 sets out the context and desired character of the Palm Beach Locality, to which new development should accord.

### ***A4.12 Palm Beach Locality***

#### *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....*

*Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards...*

*A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.*

**Comment:** The proposed concrete swimming pool structure, concrete supports and pool equipment storage room will be readily visible from Whale Beach. Figure 5 shows the existing dwelling house set up on the escarpment, adjacent to Morella Reserve. The proposed elevated concrete pool structure would be readily visible from Whale Beach and Whale Beach Road and would appear as an incongruous built structure in its setting. As outlined above, the proposed landscaping is not a suitable approach to mitigate against the level of visual harm to arise by virtue of the proposed development.

**Figure 5 - Site photo of existing dwelling house as viewed from Whale Beach**



Source: Own site photo

## **DCP Control Scenic Protection – General**

### ***Outcomes***

*Achieve the desired future character of the Locality.*

*Bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment.*

### ***Controls***

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

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**Comment:** As previously discussed, the proposed development fails achieve the desired future character of the locality and will be seen as a visually prominent built form in an otherwise bushland setting immediately adjacent to Morella Reserve. The proposed development, when constructed, will be a highly visible built form and seen as out of character in the bushland landscape when viewed from Whale Beach, Whale Beach Road, including the Whale Beach Headland (junction with Norma Road) and from surrounding development.

### **DCP Control 12.10 Landscaped Area – Environmentally Sensitive Land**

The proposed development results in a total landscaped area of 43.5%, failing to achieve the required minimum of 60% total landscaped area on site. The proposed development further fails to achieve the following outcomes of the stated control given the bulk, scale, visual and privacy impacts.

*Achieve the desired future character of the Locality.*

*The bulk and scale of the built form is minimised.*

*A reasonable level of amenity ...is provided and maintained.*

*Vegetation is retained and enhanced to visually reduce the built form.*

*Conservation of natural vegetation and biodiversity.*

...

*To preserve and enhance the rural and bushland character of the area.*

*Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.*

### **Recommendations**

- Refuse the proposed development given the objections raised in this submission.
- Should Council be minded approving the proposed development, contrary to the objections raised in this submission, it is recommended that amended plans be submitted to:
  - Step down and pull back the rear and side elevations of the proposed elevated swimming pool by approx. 2 metres to the rear and 0.5 metres to the south western boundary,



reducing the height and size of the proposed to achieve an improved outcome and address the compliance of the stated controls.

- It is requested that Council provide my client with the opportunity to provide a submission on additional and / or amended plans.

## Conclusion

This submission sets out my client's concerns regarding the proposed development under Development Application DA2021/2547 and recommendations/requests.

The proposed development would have a materially detrimental impact on the amenity of neighbouring occupiers and the surrounding environment (my clients).

This Development Application is non-compliant with Pittwater DCP 2014 Controls, A4.12 Palm Beach Locality; B3.2 Bushfire Hazard; B4.22 Preservation of Trees and Bushland Vegetation; C1.5 Visual Privacy; C1.6 Acoustic Privacy; D12.1 Character as viewed from a public place; D12.2 Scenic Protection; D12.6 Side building line; D12.8 Building Envelope and D12.10 Landscaped Area 1.

It is respectfully requested that the proposed development be refused to address the concerns outlined in this submission or amended accordingly to mitigate against the harm expressed.

Should additional and or amended plans be submitted to address concerns expressed, my clients request that they be given an opportunity to comment accordingly and that the recommended conditions be attached to any consent.

I thank you in advance for your consideration of the concerns raised in this submission.

Kind regards,

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