
Sent: 23/09/2021 7:13:47 AM
Subject: Online Submission

23/09/2021

MS Kylie Herbst
174 Riverview RD
AVALON BEACH NSW 2107
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RE: DA2021/1522 - 189 Riverview Road AVALON BEACH NSW 2107

Extract from the Executive Summary - please publish on portal

S U B M I S S I O N: H E R B S T
a written submission by way of objection to DA 2021/1522

Chris Zonca & Kylie Herbst
174 Riverview Road
Avalon Beach
NSW 2107

13 September 2021
Chief Executive Officer and DA Officer Adam Mitchell
Northern Beaches Council
725 Pittwater Road
Dee Why
NSW 2099

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

Dear Chief Executive Officer and DA Officer,

Re:
189 Riverview Road Avalon Beach NSW 2107
DA 2021/1522

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission: Herbst

This document is a written submission by way of objection 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 demolition of the existing dwelling and the construction of a new dwelling
Cost of Work: \$3m.

The subject site is zoned Zone E4 Environmental Living 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. The proposed development will cause a devastating view loss from our

property. Equitable preservation of views has not been achieved.

We bring to Council's attention that the site advertising sign has not been displayed on the subject site as at the date of this letter, and therefore we request that the notification period be extended to 14 days from the date that it is posted on site.

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SECTION 1: EXECUTIVE SUMMARY

This Written Submission asks Council to request that the Applicant submits Amended Plans to resolve the matters raised within this Submission, 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.

The proposed development will cause a devastating view loss from our property. Equitable preservation of views has not been achieved.

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

If any Amended Plan Submission is made by the Applicant, and re-notification is waived by Council, we ask Council to inform us immediately of those amended plans, so that we can inspect those drawings on Council website.

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:

- 4.3 Height of Buildings
- D1.8 Front Building Line
- D1.11 Building Envelope
- D1.14 Landscaped Area - Environmentally Sensitive Land

Although FSR is not a PLEP standard, Council should note that, if measured, the proposed development would be 0.65:1.

Salanitro-Chafei v Ashfield Council[2005] NSWLEC 366 at 23-28 considered character and FSR, and Commissioner Roseth concluded:

The upper level of density that is compatible with the character of typical single-dwelling areas is around 0.5:1. Higher densities tend to produce urban rather than suburban character. This is not to say that a building with a higher FSR than 0.5:1 is necessarily inappropriate in a suburban area; only that once 0.5:1 is exceeded, it requires high levels of design skill to make a building fit into its surroundings.

We contend that the same conclusions can be reached as Roseth SC in Salanitro-Chafei, with this DA:

"The proposed building has a FSR significantly in excess of 0.5:1. This is one of the explanations why it appears so incongruous in its surroundings."

A proposed development built on the front boundary creating devastating view loss, and a built form over 21m high, equating to a seven-storey building facing Pittwater, can only be described as incongruous in its surrounding.

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 front setbacks, the excess height, envelope control, and site coverage, would have most observers finding 'the proposed development offensive, jarring or unsympathetic in a streetscape context'

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 the catchment area, 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.

We are greatly concerned to the devastating view loss to the west from our highly used living, dining, kitchen and entertainment decks. The loss of view is caused by proposed development in the front setback zone, built form beyond maximum building heights, proposed development into the side boundary envelope zones, proposed new landscape in our water viewing corridor, and non-compliance to landscape area.

The water view is our main view across the subject sites front and rear boundary.

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.

We ask for no built form in the front setback zone, and for the existing vehicle access to be retained, with garaging and entry to occur at the level of the base of the existing ramp at RL 29.5, and the top of any roof structure not to above RL 31.5, with fully compliant front setback, side boundary envelope, and for the western extension of the top floor to be within 8.5m height controls.

Our main concerns are:

- C1.3 View Sharing
- D1.1 Character as viewed from a public place

The Applicant states within the SEE:

"The desire to achieve a view sharing outcome with the site specific design"

Unfortunately, the reverse is true. By making design choices that present a virtual 'sight-screen' to the front boundary, the Applicant has produced a design that achieves a devastating view loss. That outcome is totally unreasonable and unacceptable.

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

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. D1.8 Front Building Line. We ask for no built form in the front setback zone, and for the existing vehicle access to be retained, with garaging and entry to occur at the level of the base of the existing ramp at RL 29.5.

2. 4.3 Height of Buildings. Top of landscaped roof to be RL 32.5. Re-adjust heights to be more generally at or under 8.5m

3. D1.11 Building Envelope. Increase side setbacks in areas where there is excessive non-compliance.

4. D1.14 Landscaped Area - Environmentally Sensitive Land. Increase Landscape Area to 60%, by increase of Landscape Area in Front Setback Zone. Maintain landscape species in Front Setback Zone to a mature height below RL 32.5.

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 E4 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 E4 Environmental Living.

The merit assessments fail to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, or that the proposed development will be in the public interest.

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-compliances 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 environmental sensitive land and we contend that the overdevelopment of the site fails to meet the outcomes.

We are concerned to the non-compliance of the LEP:

PLEP 2014

- 1.2 Aims of Plan
- 2.3 Zone Objectives Zone E4 Environmental Living
- 4.3 Height of Buildings
- 7.6 Biodiversity protection

P21DCP

- A4.1 Avalon Beach Locality
- B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community
- B4.22 Preservation of Trees and Bushland Vegetation
- C1.1 Landscaping
- C1.3 View Sharing
- D1 Avalon Beach Locality
- D1.1 Character as viewed from a public place
- D1.8 Front Building Line
- D 1.11 Building Envelope
- D1.14 Landscaped Area - Environmentally Sensitive Land
- D1.20 Scenic Protection Category One Areas