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**Sent:** 5/06/2019 4:58:01 PM  
**Subject:** RE: Submission to DA2019/0391 - 25 Loch Street Freshwater  
**Attachments:** Submission to Northern Beaches Council re DA for 25 Loch Street Freshwater.pdf;

Hi Rebecca,

Further to our previous submission, please find attached some additional supporting advice prepared by Mills Oakley in relation to the development at 25 Loch Street Freshwater.

At your convenience, we would like to meet on site (at 23 Loch) to discuss further.

Regards,

**Andrew Cowan**  
**Director**

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**From:** Andrew Cowan

**Sent:** Friday, 24 May 2019 3:41 PM

**To:** Rebecca Englund <[Rebecca.Englund@northernbeaches.nsw.gov.au](mailto:Rebecca.Englund@northernbeaches.nsw.gov.au)>

**Cc:** Darren Holland <[darren@aventusgroup.com.au](mailto:darren@aventusgroup.com.au)>; Tania Holland <[tania.holland@live.com.au](mailto:tania.holland@live.com.au)>

**Subject:** Submission to DA2019/0391 -25 Loch Street Freshwater

Good Afternoon Rebecca,

Please find attached the submission on behalf of 23 Loch Street Freshwater to DA2019/0391.

As discussed yesterday, following your review of this submission, we would appreciate the opportunity to meet on site to discuss the proposal further.

Should you wish to discuss, please contact me on 0413 555 638.

Regards,

**Andrew Cowan**  
**Director**

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5 June 2019

Your ref:  
Our ref: CYCS/AJWS/3183672

Ms Rebecca Englund  
Principal Planner  
Northern Beaches Council  
725 Pittwater Road  
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**By email:**  
**[Rebecca.Englund@northernbeaches.nsw.gov.au](mailto:Rebecca.Englund@northernbeaches.nsw.gov.au)**  
**v.au**

Dear Ms Englund

#### **Submission to DA2019/0391 – 25 Loch Street, Freshwater**

We refer to DA2019/0391 for the demolition of an existing dwelling and construction of a new three storey dwelling at 25 Loch Street, Freshwater (**the Development Application**). We act for the owners of 23 Loch Street, which is the neighbouring property immediately adjacent to 25 Loch Street (**the Site**).

As you would be aware, our client has previously lodged a submission in relation to the Development Consent and this was provided to the Northern Beaches Council (**Council**) on 24 May 2019 (see submission from Willow Tree Planning dated 24 May 2019). The purpose of this letter is to re-iterate our client's concerns with the proposed development and to outline why consent should not be granted, at least for the development in its current form.

#### **Background**

On 16 April 2019, development application DA2019/391 was submitted to Council. The application is for the demolition an existing residential dwelling and the construction of a large new dwelling house and swimming pool (**Proposed Development**). A Statement of Environmental Effects (**SEE**) was submitted along with the development application.

The SEE indicates that the Proposed Development does not comply with the *Warringah Development Control Plan 2011* (**Warringah DCP**) in a number of aspects. The areas of non-compliance include the following:

- Building envelope - The Proposed Development breaches the side boundary envelope in a number of places (roof, wall near pool, balustrade near pool, privacy wall and louvres near BBQ area);
- Orientation – The orientation of the dwelling is not towards the street; and
- Native Vegetation - The Proposed Development involves the clearing of more than 100m2 of mapped native vegetation.

However, as outlined in the submission prepared by Willow Tree Planning, it appears that there are in fact a number of other of instances of non-compliance with the Warringah DCP as well as non-

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compliance with the *Warringah Local Environmental Plan 2011 (WLEP 2011)*. These instances of non-compliance have not been identified in the SEE but include:

- Building height - Building height exceeds the 8.5m height limit prescribed under clause 4.3 of the WLEP 2011 (architectural plans do not correspond to ground levels on survey);
- Wall height - Some of the mid-level and upper level floors do not comply with the requirement in the Warringah DCP that walls are not to exceed 7.2m in height as measured vertically from ground level (existing) to the underside of the ceiling on the uppermost floor of the building);
- Privacy - The Proposed Development does not comply with the privacy controls in the Warringah DCP at D8; and
- Glare and reflection - The Proposed Development does not comply with the glare and reflection controls in the Warringah DCP at D12 as there is excessive light spill.

Furthermore, the Proposed Development, if approved as is, would be inconsistent with the rest of the houses in Loch Street due to its bulk, size and overbearing nature.

For further detail regarding the instances of non-compliance outlined above, we refer you to the letter from Willow Tree Planning dated 24 May 2019. Below we consider the Proposed Development in the context of recent case law and the planning principles identified by the NSW Land and Environment Court.

## NSW Planning Principles

### *Planning Principles*

1. Planning principles have been identified by the Land and Environment Court and are used as a guide as to what development the court will find is desirable and permissible. These planning principles can also be used by a consent authority when determining whether a proposed development should be approved.
2. There are a large number of planning principles on various aspects of development which are listed on the NSW Land and Environment Court website and have been outlined in detail in case law. Relevantly, there are planning principles which relate to:
  - a) Privacy – see *Meriton v Sydney City Council* [2004] NSWLEC 91;
  - b) Height, bulk and scale – see *Veloshin v Randwick Council* [2007] NSWLEC 428; and
  - c) General impact on neighbouring properties – see *Davies v Penrith City Council* [2013] NSWLEC 141

### *Privacy*

3. As you know, D8 of the Warringah DCP relates to privacy and states that building layout should be designed to optimise privacy for both occupants of the development and occupants of adjoining properties. As the Warringah DCP does not contain qualitative standards in relation to privacy controls it is appropriate to apply the privacy planning principles.
4. In *Meriton v Sydney City Council*, the Court outlined the following relevant privacy planning principles:
  - The ease with which privacy can be protected is inversely proportional to the density of a development so that for low densities, there is a reasonable

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expectation that a dwelling and some of its private open space will remain private;

- 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. 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 windows that exceed any numerical standard;
- The use of space determines the importance of its privacy. Privacy of living areas is more important than privacy of bedrooms but overlooking from a living area is more objectionable than overlooking from a bedroom;
- 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 not additional cost has a reduced impact on privacy;
- Where the whole or most of private open space cannot be protected from overlooking, the part adjoining the living area should be given the highest level of protection;
- Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as louvres and planter boxes. The use of obscure glass and privacy screens is less desirable; and
- Landscaping should not be relied on as the sole protection against overlooking.

5. We urge the Council to consider the Development Application in light of the above accepted planning principles in relation to privacy. In particular, we note that this a development in a R2 low density residential zone so it is particularly important that privacy is protected. We refer Council to the images provided by Willow Tree Planning which show the Proposed Development will overlook 23 Loch Street and result in a significant loss of privacy. In particular, we note concerns that the Proposed Development will overlook 23 Loch Street from the new main deck and BBQ area and that this is inconsistent with the privacy principle that overlooking from living areas is less acceptable that overlooking from bedroom areas.
6. Importantly, it seems that many of the privacy issues relating to the Proposed Development are a result of poor design and could be rectified by an alternative design for the new dwelling at 25 Loch Street (or at least changing the placement of windows, a redesign of balconies which overlook 23 Loch Street and a reduction in bulk).

### ***Height, Bulk and Scale***

7. Our client has significant concerns with the height, bulk and scale of the Proposed Development. The Proposed Development is a three storey development which will be significantly higher than the neighbouring residential dwelling and is built up to or beyond the building envelope on all sides. We note that even residents of an apartment block across the road from the Site have objected to the height, bulk and scale of the development.
8. The planning principles to be applied in relation to height and bulk as outlined in *Veloshin v Randwick Council* are as follows:
  - The appropriateness of a proposal's height and bulk is most usefully assessed against planning controls such as maximum height, floor space ratio, site coverage and setbacks. A question to be asked is whether the impacts are consistent with impacts that may be reasonably expected under these controls;

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- Where planning controls are aimed at preserving the existing character of an area, an additional question to be asked is whether the area has a predominant existing character and whether the planning controls are likely to maintain this character; and
  - Where there is an absence of planning controls related to bulk and character, the question is whether the proposal looks appropriate in its context.
9. In relation to height, bulk and scale, we note that it appears that Council has some incomplete information in this regard due to inconsistencies in between plans, drawings and surveys and we urge Council to ensure that it has accurate information before making a decision regarding the development application. Without accurate information, Council will not be properly informed as to the Proposed Development's compliance with the WLEP 2011 and the Warringah DCP and will not be able to make an accurate assessment of the Development Application. We reiterate our client's request that height poles be erected to comprehensively define the extent of the new building and pool.
10. At this stage it is unclear to what extent the Proposed Development complies with planning controls. However, what is clear from the plans provided with the Development Application is that the new dwelling will be a significant residential dwelling for Loch Street in terms of size and bulk. The Proposed Development is of a much bigger scale and bulk than any of the neighbouring properties and would be inappropriate in the context of Loch Street.

#### ***Impact on Neighbouring Properties***

11. The Proposed Development has a significant and undesirable impact on neighbouring properties, in particular 23 Loch Street.
12. In *Davies v Penrith City Council*, the following questions were found to be relevant to the assessment of the impact on neighbouring properties and applied as planning principles:
- How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?
  - How reasonable is the proposal causing impact?
  - How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?
  - Does the impact arise out of poor design? 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?
13. Our client's home will be significantly impacted in terms of sunlight and loss of privacy due to the Proposed Development. Such significant impacts are unnecessary and could be avoided with better design of the new dwelling at 25 Loch Street. Furthermore, if the Proposed Development complied more fully with all of the controls in the Warringah DCP and the WLEP 2011 (so that height was reduced and the development was fully within the building envelope), some of these impacts would be reduced.
14. For the reasons outlined above, it seems unreasonable to cause such significant impacts on neighbouring properties when many of the impacts arise out of poor design.

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## Summary

In our opinion, the Proposed Development has unacceptable and avoidable impacts on neighbouring properties and is not in a form which the Council should grant consent. There appear to be inaccuracies and inconsistencies in plans and surveys provided which means that Council is not furnished with accurate information upon which to make its decision. Even if all information provided is accurate, the Proposed Development is clearly overbearing, out of context with the street scape, does not fully comply with planning laws and has impacts on neighbouring properties which could be rectified with better design.

In our opinion, the large number of issues and inconsistency with planning principles indicate that the Proposed Development is not one for which consent should be given. The Proposed Development must be viewed as a whole and fact that there are issues relating to height, bulk, scale, streetscape, privacy and light spill suggests that the impacts of the Proposed Development can not be managed by conditions of consent.

We note that one of the aims of the WLEP 2011 is to protect and enhance residential use and amenity of existing residential environments and to promote development that is compatible with neighbouring development in terms of bulk, scale and appearance. The Warringah DCP also contains an objective to ensure that development responds to the characteristics of a site and the qualities of the surrounding neighbourhood. The Proposed Development does not appear to be consistent with the aims of either the WLEP 2011 or the Warringah DCP.

If proper consideration is given to the Warringah DCP, the WLEP 2011 and the various planning principles enunciated by the NSW Land and Environment Court, the correct approach would be to refuse consent for the Proposed Development. We ask Council to consider the issues raised above when determining the Development Application.

Our client is also willing to assist Council in defending any appeal, having regard to these submissions.

If you have any questions or require further information, please do not hesitate to contact Anthony Whealy at [awhealy@millsoakley.com.au](mailto:awhealy@millsoakley.com.au) or direct line 8035 7848, or Clare Collett at [ccollett@millsoakley.com.au](mailto:ccollett@millsoakley.com.au) or on direct line 9121 9027.

Yours sincerely



Anthony Whealy  
**Partner**  
Accredited Specialist — Local Government and Planning

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