

17th January 2022

The General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Attention: Mr Adam Croft – Planner

Dear Mr Croft,

**Development Application DA2021/1341
Issues response/ Supplementary Statement of Environmental Effects
Amended plans and clause 4.6 variation request – Height of buildings
Demolition and construction of multi dwelling housing
3 Brookvale Avenue, Brookvale**

Reference is made to Council's correspondence of 25th October 2021 pertaining to the above application and our subsequent meeting of 24th November at which time the issues were discussed in detail. This submission represents a highly considered and wholistic response to the issues raised and is to be read in conjunction with the following amended documentation:

- Architectural plans A01(A) to A14(A) prepared by Barry Rush and Associates,
- Landscape plans L_01(D) and L_2(B) prepared by Wallman Partners,
- Arborist report, dated January 2022, prepared by Growing My Way Tree Consultants,
- Stormwater Management Plans C1(B) – C9(B), Q1(B) and Q2(B) prepared by Acor Consultants,
- Traffic Impact Assessment, dated December 2021, prepared Apex Engineers,
- Constraints and consolidation analysis Plan A13(A) pertaining to No. 1 Brookvale Avenue prepared Barry Rush and Associates,
- Valuation and Report for No. 5 Brookvale Avenue prepared by John Fawcett & Associates, and
- Purchase letter of offer for No. 5 Brookvale Avenue prepared by Raine and Horne.

The amended plans provide for the following built form changes:

- The flipping of the basement design and driveway location to provide increased setbacks to the trees located adjacent to the eastern boundary to enable their retention with additional deep soil landscaping also provided to the front and rear of the property,
- The retention of trees T3, T4, T5, T6 and T10,
- The introduction of a vehicular passing bay adjacent to the frontage of the property with an associated increase in the front setback of townhouses 1 and 2 and enhanced private open space,
- The provision of an increased setback to the rear boundary to ensure strict compliance with the 6 metre setback control,
- The relocation and reconfiguration of the pedestrian access pathway/ramp at the front of the property to ensure compliance with Council's waste management policy as it relates to access gradients,
- Floor plan amendments to reflect the amended setbacks and basement/ driveway design,
- A reduction in wall heights through a stepping of the face brickwork parapets in response to topography, and
- A general increase in the quantum and quality of landscaping on the site.

The acceptability of the amendments in relation to tree impacts, stormwater management, landscaping and traffic/parking are addressed in detail in the accompanying reports with the clause 4.6 variation request in relation to building height amended to reflect the proposed amendments. The amended clause 4.6 variation request is at Attachment 1.

The following section of this submission will detail the response to the various issues raised.

1. Height of buildings

Response: As requested, the sectional plans and elevations have been amended to ensure that the nominated ground level (existing) is consistent with available survey information. The clause 4.6 variation request has been amended a copy of which is at Attachment 1.

We rely on this document to demonstrate that strict compliance is unreasonable and unnecessary given the developments ability to satisfy the objectives of the zone and the height of building standard with sufficient environmental planning grounds to justify the variation sought. The clause 4.6 variation request is well-founded.

2. Site amalgamation

Response: This submission is accompanied by a valuation and report for No. 5 Brookvale Avenue and a formal offer posted to the owner via registered mail. Although no written response has been received to date, we are advised that the offer was verbally declined through Raine and Horne Real Estate.

In relation to the amalgamation of the site with No. 1 Brookvale Avenue we refer to the constraints and consolidation analysis Plan A13(A) prepared Barry Rush and Associates. This plan identifies the location of the existing 375mm diameter Council stormwater pipe and adjacent sewer main which traverse the western edge of the adjoining property which, when coupled with the identified 10.5 metre diameter Tree Protection Zone (TPZ) associated with the existing Angophora located in the north-western corner of this adjoining property, effectively sterilise the portion of the adjoining site located to the west of the existing dwelling thus preventing any consolidation in terms of basement design and geometry and above ground built form outcomes.

That is, the consolidation of this adjoining property into the development site provides no planning or design improvements or efficiencies. Under such circumstances it is considered unreasonable to require a formal offer for purchase to be made for this adjoining site noting that it can be developed in isolation for the purpose of multi dwelling housing in the form of 3 townhouses as nominated on this accompanied plan.

3. Number of storeys

Response: We note that whilst the DCP storeys control derogates from the 8.5 metre height of buildings development standard that the building generally maintains a 2/3 storey stepped building form on a sloping site. The objectives of the control are:

- The building is not to visually dominate its surrounds
- Minimise visual impact
- Equitable sharing of views
- Amenity of adjoining dwellings
- Innovative roof design
- To complement the building height control

These objectives are consistent with those applicable to the clause 4.3 WLEP height of building standard and to that extent we rely on the accompanying clause 4.6 variation request prepared in support of the overall building height proposed. While the development proposes smaller constrained 3rd storey elements, they do not give rise to any inappropriate or jarring streetscape or unacceptable amenity impacts nor defeat the objectives associated with the storeys control. Strict compliance is unreasonable and unnecessary under the circumstances.

4. Side boundary envelope

Response: The plans have been amended to reduce the extent of building envelope breach with the solid face brickwork parapet adjusted in height to respond to the topographical characteristics of the site. The side boundary envelope breaching elements are appropriately described as minor with the breaching elements not giving rise to any unacceptable streetscape or residential amenity impacts in terms of privacy, solar access or views.

We have formed the considered opinion that the boundary setbacks and wall heights proposed are reasonable and appropriate given the topography of the site and the acceptability of residential amenity outcomes and landscape opportunities afforded on the site. The side boundary setbacks and associated wall heights maintain an appropriate spatial relationship with the adjoining development and provide opportunity for landscaping which will minimise the impact of the development when viewed from neighbouring properties. The development potential of adjoining properties is not compromised.

The inability to consolidate with adjoining properties together with the topography of the site makes strict compliance with the control difficult to achieve whilst realising the reasonable development potential of the land. Accordingly, strict compliance has been found to be both unreasonable and unnecessary under the circumstances having regard to the section 4.15 consideration which require Council to apply DCP provisions with a degree of flexibility having regard to the associated objectives.

5. Side boundary setbacks

Response: The proposed side boundary setbacks are considered to be contextually appropriate given the townhouse building topology which locates all principal living and private open space areas at ground floor level where they will not give rise to any inappropriate or jarring residential amenity impacts in terms of visual or acoustic privacy. The proposed setbacks do not compromise the ability to provide appropriately for perimeter landscaping with visual relief achieved to adjoining properties given the pavilion style townhouse building topology proposed which provides for a centralised landscaped courtyard area.

Accordingly, strict compliance has been found to be both unreasonable and unnecessary under the circumstances having regard to the section 4.15 consideration which require Council to apply DCP provisions with a degree of flexibility having regard to the associated objectives.

6. Rear boundary setbacks

Response: The plans have been amended to achieve a minimum 6 metre rear boundary setback in strict accordance with the control.

7. Landscaped open space

Response: The landscaped area of the site has been increased as a consequence of the amendments made to the basement and access arrangements with Architectural plan A04(A) confirming a landscaped area, as defined, of 233.6 m² or 33% of the site area with additional on slab landscaping of 38 m² bringing the total area of the site capable of being landscaped to 271 m² or 38.47% of the site area. The landscape quantum and quality proposed is considered acceptable given the inability to consolidate with adjoining properties and the requirement to provide appropriately for off-street carparking which has been achieved through the provision of a compact and efficient basement design. We consider the landscaped open space outcome on the site to be acceptable under the circumstances.

8. Design

Response: The plans have been amended to address the concerns raised in relation to building height, bulk and scale with the areas of private open space also increased with all private open space areas a minimum of 30m² as detailed on the accompanying plans.

The landscape plans have been amended to reflect the increased landscape opportunity around the perimeter of the site with the amended scheme reflecting good contextually appropriate design.

9. Development Engineer

Response: The accompanying stormwater management plans have been updated to ensure compliance with clause 9.3.2.6 of Council's Water Management for Development Policy and clause C4 Stormwater of Warringah DCP.

10. Water Management

Response: Concerns raised in relation to the incorporation of appropriate water filtration measures are addressed on the accompanying stormwater management plans prepared by Acor Consultants.

11. Traffic Engineer

Response: The basement and driveway have been flipped and a passing bay introduced adjacent to the property frontage to address the concerns raised in relation to pedestrian and vehicular safety. The acceptability of this amended arrangement as detailed in the accompanying Traffic Impact Assessment prepared by Apex Engineers.

12. Landscape Officer

Response: As previously indicated, the basement and driveway location have been flipped to ensure the retention of all trees located on No. 1 Brookvale Avenue with the acceptability of the amended proposal having regard to the retention of trees detailed in the accompanying arborist report.

The landscape plans have been amended to nominate additional perimeter deep soil landscaping with the species selected ensuring that the building will be appropriately screened and softened and sit within a landscaped setting.

13. Waste Officer

Response: The bin storage area has been relocated to the eastern boundary of the property where it is readily accessed from Brookvale Avenue via a pathway having a maximum gradient of 1:8 in accordance with Council's waste management policy.

We consider the accompanying amended documentation comprehensively addresses the concerns raised. Having given due consideration to the matters pursuant to Section 4.15(1) of the Environmental Planning and assessment Act, 1979 as amended, it is considered that there are no matters which would prevent Council from granting consent to this proposal in this instance.

Please not hesitate to contact me to discuss any aspect of this submission.

Yours faithfully

Boston Blyth Fleming Town Planners



Greg Boston

B Urb & Reg Plan (UNE) MPIA
B Env Hlth (UWS)
Director

**Amended clause 4.6 variation request – Height of buildings
Proposed multi dwelling housing
3 Brookvale Avenue, Brookvale**

This clause 4.6 variation request has been prepared in support of a building height variation pertaining to an application proposing the demolition the existing site structures and the construction of multi dwelling housing containing 4 townhouses with basement level parking. The scope of works is depicted on the following architectural drawings prepared by Barry Rush and Associates Pty Limited:

A01A	LOCATION DIAGRAM
A02A	SITE ANALYSIS PLAN
A03A	BASEMENT FLOOR PLAN
A04A	GROUND FLOOR PLAN
A05A	FIRST FLOOR PLAN
A06A	MEZZANINE FLOOR PLAN
A07A	ROOF PLAN
A08A	ELEVATIONS
A09A	SECTIONS
A10A	SHADOW DIAGRAMS
A11A	SHADOW DIAGRAMS
A12A	EXTERNAL COLOUR SCHEDULE
A13A	PLAN SHOWING RE-DEVELOPMENT OF ADJOINING LOTS
A14A	DEMOLITION PLAN

Pursuant to the height of buildings map, the site has a maximum building height limit of 8.5 metres.

The objectives of this control are as follows:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

It has been determined that the front and rear pavilion roof forms breach the height standard by a maximum of 255mm (3%) as depicted in Figures 1 and 2 below.

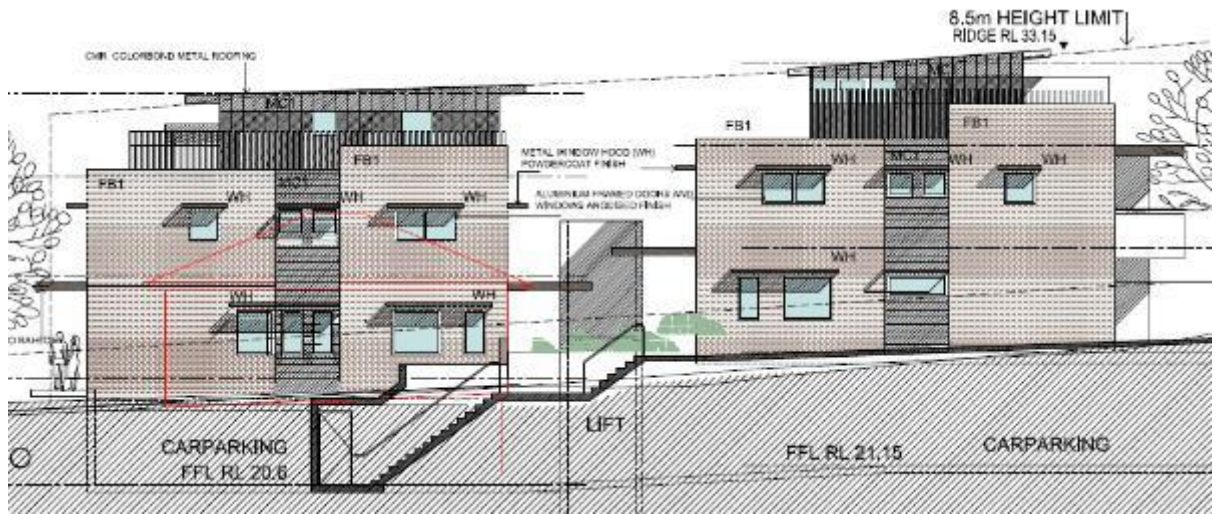


Figure 1 – Eastern elevation plan extract showing minor 255mm breaches of the front and rear pavilion roof forms

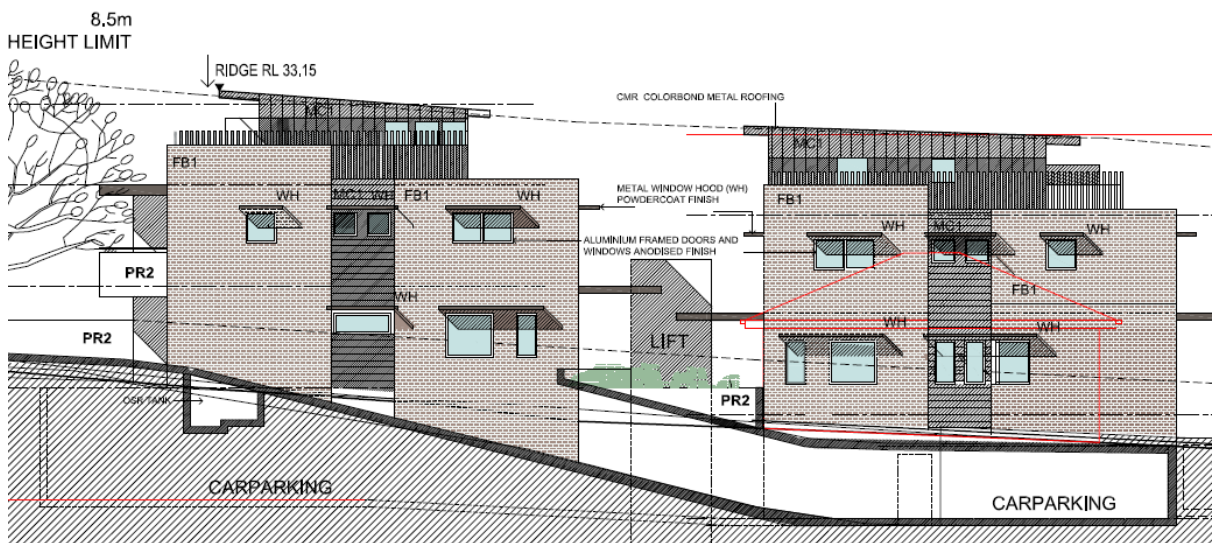


Figure 2 – Western elevation plan extract showing minor 255mm breaches of the front and rear pavilion roof forms

I note that the areas of non-compliance are limited to the small areas of roof form.

Clause 4.6 of WLEP 2011 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This Clause applies to the Clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(4) states consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

- (b) *the concurrence of the Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
(b) *the public benefit of maintaining the development standard, and*
(c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Clause 4.6 Claim for Variation

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Consistency with zone objectives

The Warringah Local Environmental Plan (LEP) 2011 applies to the subject site and this development proposal. The subject site is located within the R3 Medium Density Residential zone. The stated objectives of the zone are as follows:

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

Response: The development provides for the housing needs of the community within a medium density residential environment notwithstanding the minor building height non-compliance proposed. This objective is achieved.

- *To provide a variety of housing types within a medium density residential environment.*

Response: The development provides for a townhouse building topology which adds to the varieties of housing types within the established medium density residential environment. This objective is achieved notwithstanding the minor building height variation proposed.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Response: Not applicable.

- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Response: The minor building height non-compliances do not prevent the attainment of appropriate landscape outcomes or a building height which is unable to be appropriately softened and screened by landscaping. This objective is achieved notwithstanding the minor building height non-compliances proposed.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Response: The minor building height breaching elements will not give rise to a building form which will be perceived as inappropriate or jarring in a streetscape context. This objective is achieved notwithstanding the minor building height non-compliances proposed.

The consent authority can be satisfied that the proposal is consistent with the zone objectives as outlined.

Assessment against objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment: The consideration of building compatibility is dealt with in the Planning Principle established by the Land and Environment Court of New South Wales in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191. At paragraph 23 of the judgment Roseth SC provided the following commentary in relation to compatibility in an urban design context:

- 22 *There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.*

The question is whether the building height breaching elements contribute to the height and scale of the development to the extent that the resultant building forms will be incompatible with the height and scale of surrounding and nearby development. That is, will the non-compliant building height breaching elements result in a built form which is incapable of coexisting in harmony with surrounding and nearby development to the extent that it will appear inappropriate and jarring in a streetscape and urban design context.

In this regard, I note that the building height breaching elements are minor in nature and limited to small areas of roof form. The development reflects the height and scale of development anticipated on the land and on surrounding and nearby sites within the same R3 Medium Density Residential zone. Notwithstanding the minor building height breaching elements proposed, the development is compatible with the height and scale of surrounding and nearby development.

In this regard, I have formed the considered opinion that the non-compliant building elements, including their associated height, bulk and scale, are consistent with the height and scale anticipated on the land and that of surrounding and nearby development including the 2 and 3 storey residential flat development to the south of the site.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape and urban context. In this regard, it can be reasonably concluded that the development is compatible with the height and scale of surrounding and nearby development notwithstanding the minor building height breaching elements proposed. This objective is achieved.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment: Having undertaken a detailed site and context analysis and identified available view lines over the site I have formed the considered opinion that the height of the development, and in particular the non-compliant roof elements, will not give rise to unacceptable or unanticipated visual, view, privacy or solar access impacts with appropriate spatial separation maintained to adjoining properties. Notwithstanding the non-compliant building height elements, I am satisfied that the development has been designed to minimise visual impact, disruption of views, loss of privacy and loss of solar access and accordingly this objective is achieved.

- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

Comment: The non-compliant building height elements will not be readily discernible as viewed from the street or coastal foreshore area. The proposal achieves this objective notwithstanding the minor building height breaching elements.

- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Comment: The non-compliant building height elements, which are limited to small areas are roof form, will not be visually prominent as viewed from the street or any public area. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant portions of the building, offensive, jarring or unsympathetic in a streetscape context.

The non-compliant components of the development, as they relate to building height, demonstrate consistency with objectives of the zone and the building height standard objectives. Adopting the first option in *Wehbe* strict compliance with the building height standard has been demonstrated to be is unreasonable and unnecessary

Sufficient Environmental Planning Grounds

In my opinion, there are sufficient environmental planning grounds to justify the variation namely the topography of the site which makes strict compliance with the building height standard difficult to achieve whilst maintaining appropriate amenity to the development in terms of roof design, ceiling heights and maintaining an appropriate relationship between the proposed ground level floor plates and ground level (existing).

While strict compliance could be achieved by reducing ceiling heights, or by reducing the height of the building relative to existing ground levels, such outcome would require additional excavation, or reduce the amenity of the development, in circumstances where the minor building height breaching elements will not give rise to unacceptable adverse environmental consequences.

The building is of appropriate design quality and represents the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

In accordance with Clause 4.6(5) the contravention of the development standard does not raise any matter of significance for State or Regional environmental planning with the public benefit maintained through compliance with the zone and building height objectives as outlined.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- a) that the site specific and contextually responsive development is consistent with the zone objectives, and
- b) that the site specific and contextually responsive development is consistent with the objectives of the building height standard, and
- c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the design quality of the development, and the developments ability to comply with the zone and building height standard objectives that approval would not be antipathetic to the public interest, and
- f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such we have formed the considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Please not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

Boston Blyth Fleming



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

Annexure 1 Shadow diagrams



