

Ref: 016/2022

8 August 2022

General Manager  
Northern Beaches Council  
PO Box 82  
MANLY NSW 1655

Attention: Ms Brittany Harrison

Dear Sir / Madam

**YOUR REFERENCE: DA2021/1808**  
**PREMISES: 9 CHERYL CRESCENT, NEWPORT**

1. As you are aware, we act for Mr Brendan Doyle and Mrs Tracey Doyle, the owners of 11 Cheryl Crescent, Newport ("our Clients").
2. Our Clients have instructed us to lodge the following submission objecting to the amended plans (renotified to them on 27 July 2022) in relation to development application DA2021/1808 ("the DA").
3. Our Clients object to the amended plans for the following reasons.
4. **Boundary setbacks** – The non-compliant boundary setbacks have not been addressed by the amended plans. We remind Council that the DCP provides that one side setback must be of at least 2.5m, and the other side setback must be of at least 1.0m.

D10.8 Side and rear building line

Outcomes

To achieve the desired future character of the Locality  
The bulk and scale of the built form is minimised  
Equitable preservation of views and vistas to and/or from public/private spaces  
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  
Substantial landscaping, a mature tree canopy and an attractive streetscape  
Flexibility in the siting of buildings and access  
Vegetation is retained and enhanced to visually reduce the built form

...

Controls

Side & Rear Building Line Setback (metres)

2.5 to at least one side; 1.0m for the other side.  
6.5 rear

Pursuant to section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, Council is required to consider the controls in its DCP. The amended plans neither achieve the outcomes nor comply with the controls of clause D10.8 of the DCP. Prior to its determination, the proposal requires further revision to provide a more satisfactory design outcome in compliance with Council's setback controls.

5. **Acoustic privacy** – We note that the first-floor study and gym have been deleted and replaced by Bedroom 3 (which is missing a wardrobe), and that the previously proposed bathroom has swapped places with the stair. These internal amendments do not address the physical proximity of the first floor to our Client's front balcony, which is their main living and entertaining area. This area is in close proximity to the proposed first floor Bedroom 3 being a distance of 1.579m, with the northern wall extending for a length of 10.6m. Our Clients do not want any concerns of being overheard from their balcony by inhabitants of those proposed rooms. The DA cannot be lawfully determined until the Applicant has appropriately considered the acoustic privacy of our Clients' balcony in relation to the proposed development.

C1.6 Acoustic Privacy

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Information to be included in the Statement of Environmental Effects

- An analysis outlining how the proposal achieves an acceptable level of acoustic privacy for residents and users and protects the acoustic privacy of any adjoining development.

6. **View loss** – The proposed first floor wall along the northern boundary has been reduced in length and now has a roofed void at the western end (where Bedroom 2 was previously located). The first floor plans (DA6 dated 20 July 2022) shows skylights 3 and 4 in the roof from above this void. It is unclear why the roof form is required to remain over this void, and it is unclear why the roof form would require skylights to the void. It appears that Bedroom 5 on the Ground Floor (DA5 dated 20 July 2022) also has skylights, which raises further questions as to the necessity of the roof form over the void on the first floor. Bedroom 5 would clearly receive more light if the roof form over the void was removed. The void does not address our Client's view loss and the roof form unnecessarily adds to the bulk of the building. The wall will still present as a dominating feature over our Clients' property. The proposed wall will obstruct our Clients' existing bushland views over Pittwater and iconic city skyline views to the south and south-west from their front verandah. This is contrary to the view sharing principles in **Tenacity Consulting v Warringah Council [2004] NSWLEC 140 (Tenacity)** and clause C1.3 of the DCP which provides:

### **C1.3 View sharing**

#### **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 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.

#### **Information to be shown on the Development Drawings**

- Clearly show the view lines from the property, adjoining properties and public domain areas on floor plans and elevations

#### **Information to be included in the Statement of Environmental Effects**

- An assessment of the views available from the property, and views from other properties and public domain areas which may be affected by the proposal
- An analysis of any view loss and explanation of the design features and location of the proposed structure in terms of how the proposal seeks to achieve equitable view sharing and view retention.
- An explanation of the proposal's compliance with the Land and Environment Court's Planning Principles for view sharing.

#### **Technical Reports and Supporting Information**

- Where there is the potential for view loss to adjoining developments ... an assessment of the view loss, supported by a clearly documented photographic analysis shall be provided.
- It may also be appropriate that height poles be erected to demonstrate the impact of the finished development on view lines.
- Where height poles are erected, a statement by a Registered Surveyor should be provided certifying the height and location of the poles in relation to the proposed structures.

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Applicants are advised to consult with the possible affected parties where view sharing is an issue with a view to obtaining consensus in the earliest stages of the development process.

The amended plans do not address the above requirements or the following:

- (a) View lines have not been shown on the floor plans or elevations.
- (b) A view impact assessment has not been completed.
- (c) The proposed design has not been analysed in terms of equitable view sharing and view retention.

- (d) An explanation of the proposal's compliance with the Land and Environment Court's Planning Principles for view sharing has not been provided.
- (e) The amended plans do not address our Clients' views to the south and south-west, of the iconic Sydney city skyline. Prior to the determination of the DA, Council's requirements (as outlined above) must first be addressed.

Further to the above, clause D10.18 of the DCP provides the following:

**D10.18 Scenic Protection Category One Areas**

Outcomes:

To preserve and enhance district and local views which reinforce and protect 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.

Controls

The development must incorporate the use of unobtrusive and non-reflective materials and the colours of exterior surfaces shall help blend structures into the natural environment.

Applicants are to demonstrate that proposed colours and materials will be dark and earthy.

The Land and Environment Court's principles for view sharing, as held in *Tenacity* provide that iconic views from a standing position at the front boundary are more highly valued than other views and should be maintained. The method for determining the reasonableness of view sharing at paragraphs 25-29 concludes as follows:

Paragraph 29:

"A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arise 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."

In its current form, the proposal is non-compliant with Council's controls, causes unreasonable view loss to our Clients and is otherwise incomplete. It cannot be lawfully determined.

7. **Colours** – The amended plans have not addressed the colour scheme, which remains contrary to Council's controls. As noted at paragraph 6 above, clause D10.18 of the DCP requires a dark and earthy colour scheme.

This is further and more specifically articulated in clause D10.4 of the DCP, as set out (in part) below:

#### **D10.4 Building colours and materials**

##### **Outcomes**

Achieve the desired future character of the Locality  
 The development enhances the visual quality and identity of the streetscape  
 To provide attractive building facades which establish identity and contribute to the streetscape  
 To ensure building colours and materials compliments the visual character of its location with the natural landscapes of Pittwater  
 The colours and materials of the development harmonise with the natural environment.  
 The visual prominence of the development is minimised  
 The use of materials with low embodied energy is encouraged  
 ...

##### **Controls**

External colours and materials shall be dark and earthy tones [including black, dark grey, dark green, dark brown, mid grey, green, brown, or dark blue]

White, light-coloured, red or orange roofs and walls are not permitted [including white, light blue, red, orange, light grey, or beige]

As previously noted, the proposed development is visible from Newport beach, Pittwater and the adjacent Cheryl Reserve. The white and light tones will create undesirable glare and reflection. The DA requires revision to ensure compliance with the appropriate colour scheme pursuant to Council's controls.

8. **Building Envelope** – The amended plans do not address clause D10.11 of the DCP. The north and east elevations (DA8 and DA10) still clearly show that the first floor has not been appropriately set back in accordance with Council's controls.

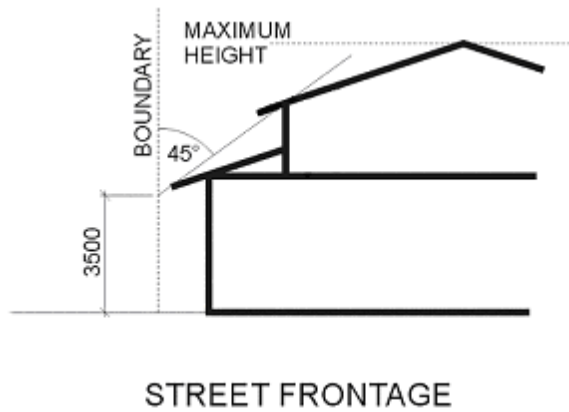
#### **D10.11 Building Envelope**

##### **Outcomes**

To achieve the desired future character of the locality.  
 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.  
 Equitable preservation of views and vistas to and/or from public/private places.  
 To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.  
 ...

##### **Controls**

Buildings are to be sited within the following envelope:



Planes are to be projected at 45 degrees from a height of 3.5 metres above ground level (existing) at side boundaries to the maximum building height.

Information to be included in the Statement of Environmental Effects

A statement indicating compliance with the building envelope control. Should a variation be sort, please provide a justification relating to the outcomes of the control and desired future character.

The Applicant has not addressed the detrimental impacts of this non-compliance to the amenity of our Clients' property, including bulk and scale (discussed at paragraph 4 above), acoustic privacy (paragraph 5 above) or view loss (paragraph 6 above). These amenity impacts need to be addressed through compliance with Council's building envelope controls before the application can be determined.

9. **Landscaping** – The amended plans do not address the landscaping concerns previously raised. The proposed landscaping does not appropriately reflect the scale and form of the proposed development. The amended plans have not addressed Council's controls that provide for two canopy trees in the front setback.

#### **C1.1 Landscaping**

##### **Outcomes**

A built form softened and complimented by landscaping.  
Landscaping reflects the scale and form of a development.

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Landscaping enhances habitat and amenity value.  
Landscaping results in reduced risk of landslip.

...

##### **Controls**

At least two canopy trees in the front yard and one canopy tree in the rear yard is to be provided on site... Where there are no canopy trees the trees to be planted are to be of sufficient scale to immediately add to the tree canopy of Pittwater and soften the built form.

10. **Land stability** – The amended plans do not address land stability issues raised in our prior submission. These issues need to be addressed by Council prior to the determination of the DA.
11. **Access requirements** – Detail of how materials will be delivered to the Development Site have not been provided. A traffic report would assist Council in addressing this issue, and the DA should not be determined until this information is provided.
12. **Solar panels** – The amended plans have not addressed the issue of the solar panels raised in our earlier submission.
13. Having regard to the above matters, it is clear that the DA remains unworthy, and unable to be, approved. We are instructed that should the Council grant consent despite the shortcomings identified above, our Clients will consider commencing judicial review proceedings in the Land and Environment Court on the basis of the Council's error in exercising its statutory duties by failing to consider relevant matters in a reasonable and objective manner.
14. Please contact us if you have any questions in relation to this letter.

Yours faithfully

**Apex Planning and Environment Law**



**Grant Christmas**

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