

---

**Sent:** 2/03/2020 7:40:33 AM  
**Subject:** Re: 26 Ralston Road, Palm Beach, NSW 2108 DA 2020/0096 WRITTEN SUBMISSION: LETTER OF OBJECTION Submission: Plank  
**Attachments:** 020220 Submission Plank 0096.docx;

**David Plank**  
**Owner of 8 Ebor Rd,**  
**Palm Beach**  
**NSW 2108**  
**Postal address:**  
**27 Middle Harbour Rd**  
**Lindfield**  
**NSW 2070**  
**2 March 2020**

**Chief Executive Officer**  
**Northern Beaches Council**  
**725 Pittwater Road**  
**Dee Why**  
**NSW 2099**

**Northern Beaches Council**  
[council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

cc.

**The Commissioner, NSWRFSS**

Section 79BA Referral [refer to B3.2 Bushfire Hazards within Written Submission, page 16]

[Jo-Anne.Robson@rfs.nsw.gov.au](mailto:Jo-Anne.Robson@rfs.nsw.gov.au)

**Dear Chief Executive Officer,**

**Re:**

**26 Ralston Road, Palm Beach, NSW 2108**

**DA 2020/0096**

**WRITTEN SUBMISSION: LETTER OF OBJECTION**

**Submission: Plank**

Please find attached a Written Submission by way of objection to **DA 2020/0092** lodged under Section 4.15 of the EPAA 1979 [the EPA Act]

Yours faithfully,

**David Plank**

**Owner of 8 Ebor Rd,**

**Palm Beach**

**NSW 2108**

**Postal address:**

**27 Middle Harbour Rd**

**Lindfield**

**NSW 2070**

**David Plank**

**Owner of 8 Ebor Rd,  
Palm Beach  
NSW 2108**

**Postal address:  
27 Middle Harbour Rd  
Lindfield  
NSW 2070**

**2 March 2020**

**Chief Executive Officer  
Northern Beaches Council  
725 Pittwater Road  
Dee Why  
NSW 2099**

**Northern Beaches Council**  
[council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

**cc.**

**The Commissioner, NSWRFSS**

Section 79BA Referral [refer to B3.2 Bushfire Hazards within Written  
Submission, page 16]

[Jo-Anne.Robson@rfs.nsw.gov.au](mailto:Jo-Anne.Robson@rfs.nsw.gov.au)

**Dear Chief Executive Officer,**

**Re:**

**26 Ralston Road, Palm Beach, NSW 2108  
DA 2020/0096**

**WRITTEN SUBMISSION: LETTER OF OBJECTION  
Submission: Plank**

This document is a submission by way of objection to **DA 2020/0092**

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:

*“Demolition of existing house and Driveway, construction of two new dwellings [lot 4 & lot 5], construction of two garages and terraces, construction of two plunge pools, new landscape works”*

*\$4.355m Cost of Work*

The subject site lies to the north of my property.

I enjoy water views over the subject sites rear and front boundary.

The subject site also lies adjacent to a very high fire risk zone. The subject site is mapped as designated bush fire prone land by Northern Beaches Council and is located close to bush fire prone (hazardous) vegetation.

I have a major concern that the Applicant has not properly assessed these two issues.

The Applicant has falsely stated within the SEE that:

*“The proposed development will have no impact to views or view sharing of any significant features such as water bodies, ocean or beaches.”*

The Applicant has falsely stated within the Bush Fire Assessment Report that:

*“The proposed development complies with the aim and objectives of PBP 2006 section 4.3.2 for infill development.”*

Both statements are false and misleading.

The Applicant has failed to inform the design within the site analysis of these vital issues that affect site layout and envelope control.

I have major concerns relating to:

- View Loss
- Bush Fire Risk
- Privacy
- Overshadowing
- Visual Bulk

I have major concerns to non-compliance to outcomes and controls.

Prior to the submission of the DA by the Applicant, the Applicant did not have any prior consultation with me.

This Written Submission will address the following matters:

1. Introduction
2. Site Description
3. Proposed Development
4. Misleading Information & Outstanding information
5. Statutory Planning Framework
6. Statement of Environment Effects Rebuttal
7. NSW LEC Planning Principles
8. Proposed Conditions of Consent to any Approval
9. Conclusion

## Introduction

I write to submit my Written Submission to object to the above DA.

I have major concerns relating to:

- **View Loss.** The Applicant has failed to identify within the Site Analysis that I enjoy a water view. A Tenacity Assessment has not been undertaken by the Applicant
- **Bush Fire Risk.** I am concerned that the Applicant has not properly considered the aim and objectives of Planning for Bushfire Protection [PBP] 2006 section 4.3.2 for Infill Development, has not properly considered of the extent of the BAL FZ zone, and to the detail concept design to accord with PBP 2006
- **Privacy.** I am very concerned on the poor acoustic and visual outcomes by the proposed Roof Decks facing my property.
- **Overshadowing.** I am concerned that no survey of my property has occurred to fully consider the impact of the non-compliant envelope.
- **Visual Bulk.** I am concerned that the non-compliant envelope will present excessive visual bulk to my property.

The proposed development is considered to be inconsistent with the outcomes, controls and objectives of the relevant legislation, plans and policies.

The DA scheme submitted requires to be amended, and I ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, then I ask Council to either heavily condition any approval, or simply issue a refusal.

I am concerned to the non-compliance of the PLEP:

Clause 1.2 Aims of Plan

I am concerned to the non-compliance of the PDCP:

B3.2 Bushfire Hazards

C1.3 View Sharing

C1.4 Solar Access

C1.5 Visual Privacy

C1.6 Acoustic Privacy

D12.6 Rear Building Line

D12.8 Building Envelope

D12.10 Landscape Area

The non-compliance to PLEP and PDCP outcomes and controls forms the basis of my objection.

My loss of amenity will suffer from these non-compliances to outcomes and controls.

## **Characteristics of my Property**

Key aspects of my property are as follows:

My property forms a common boundary with the subject property.

The subject site lies to the north of my property.

I enjoy water views over the subject sites rear and front boundary.

There is an arc of view available when standing at a central location on the elevated living room and entertainment decks.

The composition of the arc is constrained to the west and east either side of the subject site, by other dwellings.

The central part of the composition includes the subject site and the existing dwelling that currently occupy the site.

Views include scenic and valued features as defined in Tenacity.

The subject site also lies on a common boundary to a very high fire risk zone. The subject site is mapped as designated bush fire prone land by Northern Beaches Council and is located close to bush fire prone (hazardous) vegetation.

My property enjoys good privacy between my property and the subject site.

My property enjoys good solar access between my property and the subject site.

## **Matters of Concern**

The proposal will result in poor outcomes relating to:

- View Loss
- Bush Fire Risk
- Privacy
- Overshadowing
- Visual Bulk

I am concerned that these impacts will negatively impact the level of amenity currently enjoyed.

The following aspects of the proposal are of concern:

- The extent of the proposed building envelopes
- The siting and extent of the proposed dwelling without having sufficient consideration for maintaining view corridors, protecting privacy, maximising solar access, and visual bulk caused by non-compliant envelope.
- Bush fire risk, relating to NSW RFS PBP Specific Objectives for Infill, and non-compliance to PDCP B3.2 Bushfire Hazards

I provide further details of these matters below and request Council's close consideration of these in the assessment of the application.

I am concerned that the SEE has failed to properly address my amenity concerns, is suggesting that the DA accords with LEP & DCP outcomes and controls when it clearly it does not.

The non-compliance to LEP and DCP outcomes and controls forms the basis of my objection.

The subject site is of significant size, and there is no reason, unique or otherwise why a fully compliant solution to all outcomes and controls cannot be designed on the site.

I am being advised by a highly experienced consultant to assist me in this matter.

This letter of objection will detail my concerns, and my amenity losses that have arisen as a direct result of the non-compliance to outcomes and controls.

## **Site Description**

The Applicant's SEE does not describe the subject site or our property.

The subject site is generally rectangular in shape, very large, with a combined area of 1498sqm.

The site falls from the south-east at RL 103.4 to RL 98.3 to the north-west.

The western boundary has a fall of 1m over the 46m boundary.

The southern boundary has a fall of 4m over the 30.5m boundary.

The existing dwelling on the subject site rises to a ridge at RL 106.6

Our property lies on land at the higher levels, with an elevated position over the subject site, with views to the north over the ridge of the existing dwelling at RL 106.6.

## **Proposed Development**

The proposed development is partially described within the Applicant's SEE.

Council should note:

- The Applicant's Site Analysis has not taken been informed by View Analysis and Bush Fire design considerations.
- The proposed development proposes development into viewing corridors to water views.
- The proposed development proposes development into zones to the rear of the site not in accordance with the aim and objectives of PBP 2006 section 4.3.2 for Specific Objectives for Infill development
- The proposed development proposes roof top decks causing privacy issues.
- The proposed development proposes non-compliant development causing visual bulk and excessive overshadowing.

## **Misleading Information & Outstanding information**

### **Existing Ground Levels**

I bring to the attention of Council that the Applicant has not surveyed our property to properly assess view sharing, solar loss, and privacy loss.

The existing ground levels that have been surveyed are not located onto existing DA drawings.

This is contrary to submission standards and requires amendment by amended plans.

### **Height Poles/ Templates**

I ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor.

The Height Poles will need to define:

- All Roof Forms
- Extent of all Decks
- Extent of Privacy Screens

The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

I require these height poles to fully determine view loss.

### **Statement of Environmental Effects**

The Applicant has not provided a full SEE in accordance with Council controls.

The SEE has failed to adequately address:

- View Loss
- Bush Fire Risk

- Privacy
- Overshadowing
- Visual Bulk

The SEE, as submitted, cannot be relied upon.

### **Site Analysis**

Site Analysis has not been properly addressed contrary to DCP controls.

- View Loss
- Bush Fire Risk
- Privacy
- Overshadowing
- Visual Bulk

### **Site Plan**

The site plan does not adequately dimension every proposed built form to the common boundary, and requires full dimensions to ensure future compliance.

Existing Ground Levels must be shown under the proposed high points

This is contrary to DCP controls.

### **Floor Plans**

The floor plans and roof plans do not adequately dimension every proposed built form to the common boundary, and requires full dimensions to ensure future compliance.

Existing Ground Levels must be shown under proposed high points

This is contrary to DCP controls.

### **Elevations & Sections**

There are roof forms that do not have RL levels, to accurately record what is being proposed.

All drawings require full dimensions and levels on every extremity to ensure future compliance.

Existing Ground Levels must be shown under proposed high points

This is contrary to DCP controls.

## **Statutory Planning Framework**

The statutory planning framework is not generally described within the Applicant's SEE.

I do not intend to repeat every clause from Council's LEP & DCP outcomes and controls, but wish to emphasis the main non-compliances to the planning outcomes and controls, and identify the amenity losses that are directly attributable to that non-compliance to outcomes and controls.

As NSW LEC Planning Principles state:

*How much of the impact is due to the non-complying elements of the proposal?*

*Are the impacts consistent with impacts that may be reasonably expected under the controls?*

I am concerned to the non-compliance of the PLEP outcomes and controls:

Clause 1.2 Aims of Plan

I am concerned to the non-compliance of the PDCP outcomes and controls:

B3.2 Bushfire Hazards  
C1.3 View Sharing  
C1.4 Solar Access  
C1.5 Visual Privacy  
C1.6 Acoustic Privacy  
D12.6 Rear Building Line  
D12.8 Building Envelope  
D12.10 Landscape Area

The amenity view loss is directly attributable to the non-compliance to outcomes and controls.

The subject site is sizable, at nearly 1500sqm, and the proposal is for a new build, and there is no reason, unique or otherwise why a fully complaint solution to outcomes and controls cannot be designed on the site.

## **PLEP**

### **Principal Development Standards:**

#### **Clause 1.2 Aims of Plan**

In these proposals the local amenity and environmental outcomes would be challenged by non-compliance.

I contend that the proposed development does adversely affect the character or amenity of the area or its existing permanent residential population by view loss, and other amenity losses.

I contend that the DA fails the major objectives of this control as follows:

#### **1.2 Aims of Plan**

- 1) This Plan aims to make local environmental planning provisions for land in Pittwater in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.
- (2) The particular aims of this Plan are as follows
  - (a) to promote development in Pittwater that is economically, environmentally and socially sustainable,
  - (b) to ensure development is consistent with the desired character of Pittwater's localities,
  - (g) to protect and enhance Pittwater's natural environment and recreation areas,
    - (i) to minimise risks to the community in areas subject to environmental hazards including climate change,
  - (j) to protect and promote the health and well-being of current and future residents of Pittwater.

The requirements under this clause clearly have not been met.

## **MDCP**

**The main concerns:**

**B3.2 Bushfire Hazards**

**C1.3 View Sharing**

**C1.4 Solar Access**

**C1.5 Visual Privacy**

**C1.6 Acoustic Privacy**

**D12.6 Rear Building Line**

**D12.8 Building Envelope**

**D12.10 Landscape Area**

## **B3.2 Bushfire Hazards**

The clause states:

### **Outcomes**

*Protection of people. (S)*

*Protection of the natural environment. (En)*

*Protection of private and public infrastructure and assets. (Ec)*

### **Controls**

*All development is to be designed and constructed so as to manage risk due to the effects of bushfire throughout the life of the development.*

*Development land to which this control applies must comply with the requirements of:*

- *Planning for Bushfire Protection (2006)*
- *Australian Standard AS 3959:2009 - Construction of a building in a bushfire-prone area*

### **Variations**

*If the provisions of Planning for Bushfire Protection (2006) and/or AS 3959:2009 - Construction of a building in a bushfire-prone area cannot be incorporated in the development, the proponent must demonstrate that the dwelling will withstand the impact of bushfire.”*

## Commentary:

I ask Council to refer the DA to the Commissioner of the RFS for advice under section 79BA of the EP&A Act as the proposed residential dwelling (i.e. infill) does not comply with the “acceptable solutions” within section 4.3 of PBP 2006 or meet performance requirements.

Three main issues for the RFS to consider:

- The aim and objectives of PBP 2006 section 4.3.2 for infill development has not been met;
- The design of the property to accord with Australian Standard AS 3959:2009 - *Construction of a building in a bushfire-prone area*, and particularly the extent of the BAL FZ construction zone
- The design of the property to accord with Planning for Bushfire Protection (2006)

### The aim and objectives of PBP 2006 section 4.3.2 for infill development

I contend that the applicant’s comment is false:

*“While the proposed development does not meet the minimum APZ for residential development, it complies with the aim and objectives of PBP 2006 section 4.3.2 for infill development”.*

I contend that the proposed development fails to meet the 4.3.2 Specific Objectives for Infill.

NSW RFS should consider whether the proposed development should be refused, or what alternate conditions of consent might be appropriate.

Proposals for infill development are to:

Objective 1

*“ensure that the bush fire risk to adjoining lands is not increased”*

I contend that the bushfire risk to our land will be increased, due to non-compliance to Objective 3, 4, 5 and 6

### Objective 3

*“provide better bush fire protection, on a re-development site, than the existing situation. This should not result in new works being exposed to greater risk than an existing building;*

I contend that as the proposed development is positioned closer to the hazard, and therefore new works are being exposed to greater risk.

### Objective 4

*“ensure that the footprint of the proposed building does not extend towards the hazard beyond existing building lines on neighbouring land;”*

I contend that the footprint of the proposed building does extend towards the hazard beyond existing building lines on neighbouring land. The rear alignment should follow approximately a rear setback dimension of 11.5m for #28 Ralston to 19.9m for #26 Ralston, and accord with the survey set out. The proposed rear setback is only 4.5m to the concrete eaves detail.

### Objective 5

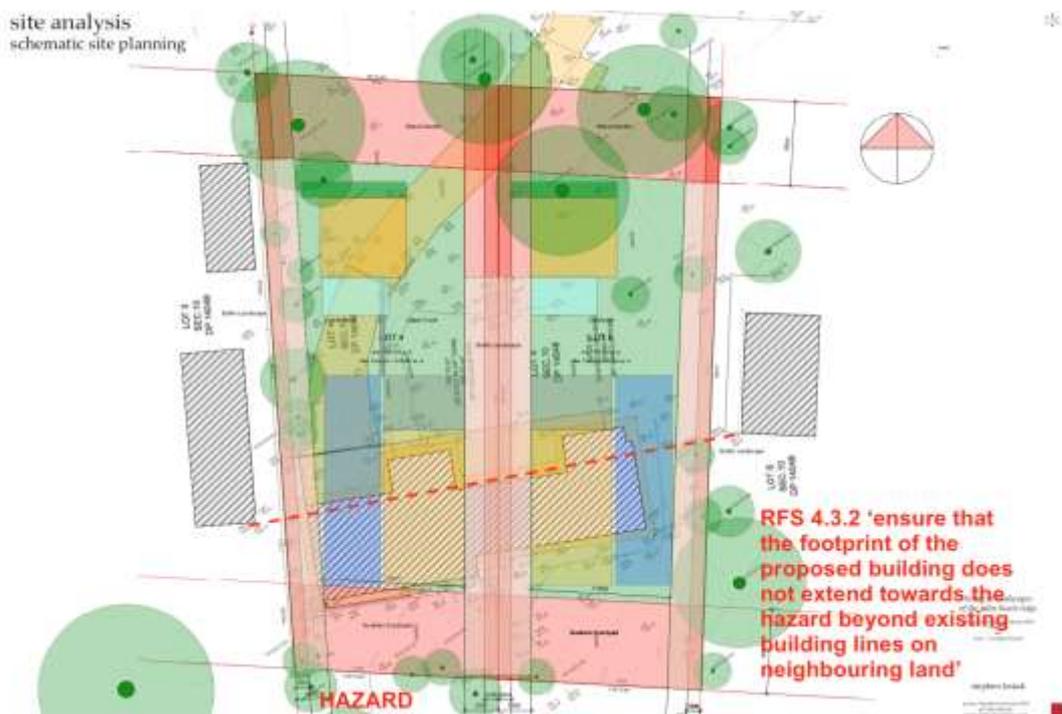
*“not result in an increased bush fire management and maintenance responsibility on adjoining land owners unless they have agreed to the development;”*

I contend that the above failures to met Objectives will result in increased bush fire management to my property, as the non-compliant outcomes will force additional risk onto my property.

### Objective 6

*“ensure building design and construction enhance the chances of occupant and building survival.”*

The non-compliance with the above Objectives, and the poor architectural response to PBP, gives considerable grounds for concern.



The design of the property to accord with Australian Standard AS 3959:2009 - Construction of a building in a bushfire-prone area

NSW RFS should consider whether BAL 40 should fall to one elevation opposite the hazard. All other areas to be BAL FZ.

NSW RFS should consider whether enhanced standards beyond BAL FZ should be imposed.

The design of the property to accord with Planning for Bushfire Protection (2006)

NSW RFS should consider whether the design, in total non-compliance to all siting and design principles, is unacceptable, and a refusal recommended, or a schedule of matters that require radical amendment.

*The performance of a building should be enhanced through the following siting and design principles:*

- *reducing the bulk of a building (height and width) facing a bush fire hazard;*
- *simplifying the design of buildings to reduce the numbers of re-entrant corners;*
- *providing more simplified rooflines;*
- *Reduction in the area of exposure may be important for critical elements such as windows, doors, roofs and wall claddings;*
- *Intricate forms of design can trap debris and influence wind turbulence;*
- *Re-entrant corners may aid the architectural interest of the building but readily accumulate debris and some roof designs are unnecessarily complicated;*
- *For two storey buildings, the use of gutters on the upper story makes debris removal more difficult. Many people are hospitalised as the result of falling off roofs whilst attempting last minute maintenance in awkward areas or to higher gutters in the face of an impending bush fire;*
- *The use of box gutters, flat roofs and variations in the angle of the roof should be avoided;*
- *Some design features can enhance the protection of a building, including limiting glazing on exposed facades and barriers, eg courtyard or fenced off area for gardens, BBQ areas and the like, can be incorporated into building design;*
- *glazing is one element of a building that is highly susceptible to the impacts of radiant heat and flying debris;*
- *In addition, a large proportion of radiant heat can pass through a window and heat internal furnishings such as carpets, curtains or furniture;*

I ask Council to refer the DA to the Commissioner of the RFS for advice under this section

### **C1.3 View Sharing**

The clause states:

#### ***Outcomes***

*A reasonable sharing of views amongst dwellings.*

#### ***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 application of 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.*

#### **Commentary:**

No assessment has been made, and no consideration of this vital matter within the site analysis.

There is no reasonable sharing of views amongst dwellings.

The new development is to not designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The proposal has not demonstrated that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.

My comments are as follows.

**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 severe to devastating impact is considered unreasonable.

### **Application of Tenacity planning principle**

I have only been able to consider the impact of the proposal on the outward private domain views from my property, by visual assessment.

A preliminary analysis and assessment in relation to the planning principle of Roseth SC of the Land and Environment Court of New South Wales in *Tenacity Consulting v Warringah [2004] NSWLEC 140 - Principles of view sharing: the impact on neighbours (Tenacity)* is made, however I have no confidence that the assessment is accurate due to the previous commentary.

The steps in Tenacity are sequential and conditional in some cases, meaning that proceeding to further steps may not be required if the conditions for satisfying the preceding threshold is not met.

### **Step 1 Views to be affected**

The first step quoted from the judgement in *Tenacity* is as follows:

*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Prior to undertaking Step 1 however, an initial threshold in Tenacity is whether a proposed development takes away part of the view and enjoys it for its own benefit and would therefore seek to share the view. In my opinion the threshold test to proceed to Step 1, I provide the following analysis;

An arc of view to the north is available when standing at a central location on the elevated decks, living spaces, and other highly used zones on my property.

The composition of the arc is constrained to the west and east either side of the subject site, by built forms.

The central part of the composition includes the subject site and parts of both buildings and roof forms that currently occupy the site.

Views include scenic and valued features as defined in *Tenacity*.

The proposed development will take away views for its own benefit.

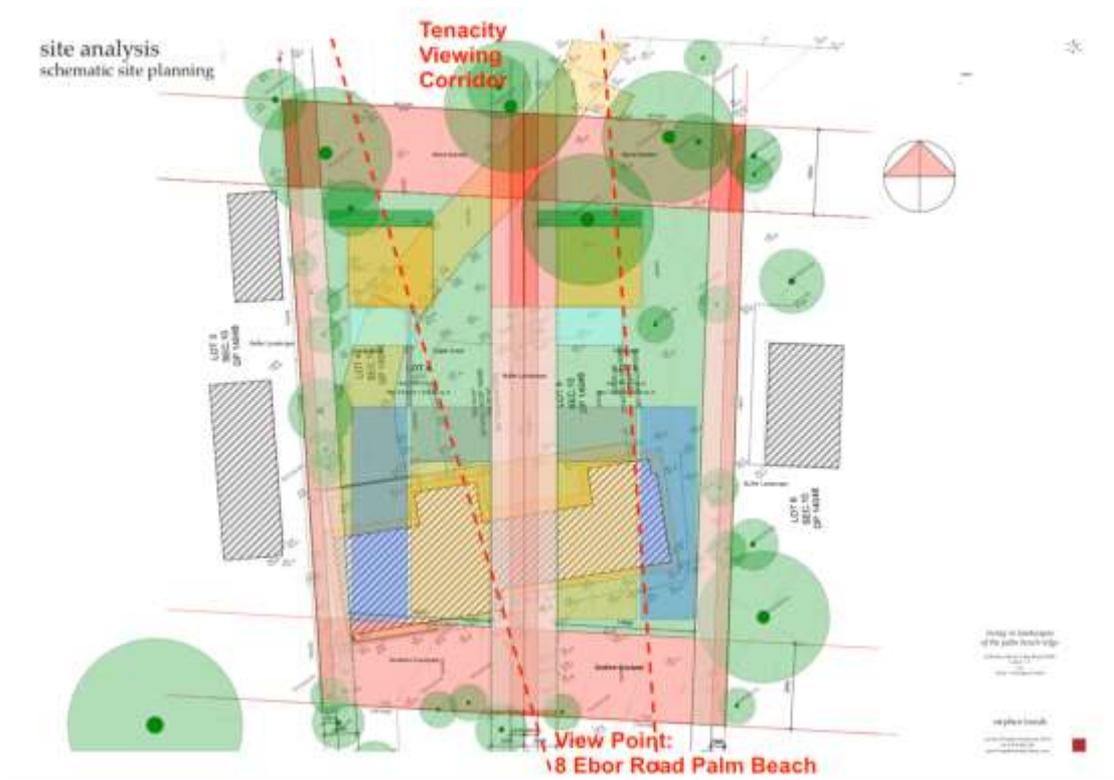
The view from my windows and deck towards the water view, and the land-water interface will be lost.

The existing view is a 'moving landscape', rather than just a 'scenic outlook', given the activity on the water.

The extent of view loss is severe to devastating, and the features lost are considered to be valued as identified in Step 1 of *Tenacity*.



**View Point from 8 Ebor Road Palm Beach**



**Approximate Tenacity Viewing Corridor from 8 Ebor Road Palm Beach**

## **Step 2: From where are views available?**

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

*The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

The views in all cases are available across the front and rear boundary of the subject site at angles to the south, from standing and seated positions.

A wide arc of view to the north is available when standing at a central location on the elevated decks, living spaces, and other highly used zones on my property.

In this respect I make two points:

- I have no readily obtainable mechanism to reinstate the impacted views from my living zones if the development as proposed proceeds; and
- All of the properties in the locality rely on views over adjacent buildings for their outlook, aspect and views towards the water view

## **Step 3: Extent of impact**

The next step in the principle is to assess the extent of impact, considering the whole of the property and the locations from which the view loss occurs.

Step 3 as quoted is:

*The third step is to assess the extent of the impact. This should be done for*

*the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

Step 3 also contains a threshold test. If the extent of impact is negligible or minor for example, there may be no justification for proceeding to Step 4, because the threshold for proceeding to considering the reasonableness of the proposed development may not be met. In that case the reasonableness question in Step 4 does not need to be asked and the planning principle has no more work to do.

I consider the extent of view loss in relation to my living room loss severe to devastating using the qualitative scale adopted in *Tenacity*.

The view lost includes water views and land-water interface. As I rate the extent of view loss as severe to devastating in my opinion the threshold to proceed to Step 4 of *Tenacity* is met.



#### **Step 4: Reasonableness**

The planning principle states that consideration should be given to the causes of the visual impact and whether they are reasonable in the circumstances.

Step 4 is quoted below:

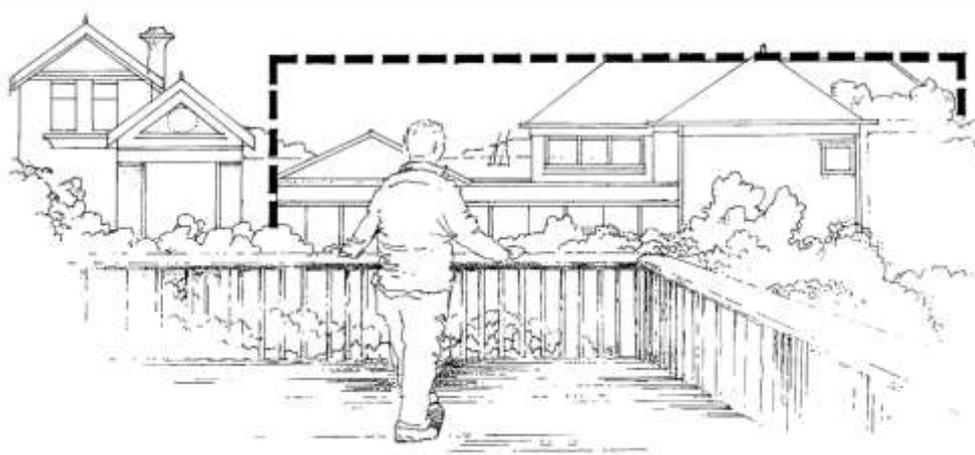
*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. 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. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

As the proposed development does not comply with outcomes and controls, that are the most relevant to visual impacts, greater weight would be attributed to the effects caused.

In my opinion the extent of view loss considered to be severe to devastating, in relation to the views from my living rooms and living room deck of my dwelling, particularly to the north.

The view is from a location from which it would be reasonable to expect that the existing view, particularly of the water could be retained especially in the context of a development that does not comply with outcomes and controls.

Once Templates are erected, I can provide additional commentary.



***Where there is a potential view loss, Council should require a maximum building height of less than 8.5m for part of the building.***

The private domain visual catchment is an arc to the north from which views will be affected as a result of the construction of the proposed development.

The proposed development will create view loss in relation to my property.

The views most affected are from living areas and associated terraces and include very high scenic and highly valued features as defined in Tenacity.

Having applied the tests in the Tenacity planning principle and without a montage that can be relied upon, I conclude that I would be exposed to severe to devastating view loss.

The significant non-compliance with planning outcomes and controls of the proposed development cause this loss.

Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

The applicant should have informed the design by a complete view loss consideration that would have clearly identified that any development over the existing ridge level would be problematic. There may be architectural solutions that maintain my view, by proposing development above the existing ridge line in some part of the large site, but this needs careful consideration by the Applicant, along with templates to fully test the design outcome.

The proposed development cannot be supported on visual impacts grounds.

## **C1.4 Solar Access**

The clause states:

### **Outcomes**

*Residential development is sited and designed to maximise solar access during mid-winter.*

*A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development.*

### **Controls**

*The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.*

*Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).*

*Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid winter.*

*Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.*

*The proposal must demonstrate that appropriate solar access is achieved through the application of the Land and Environment Court planning principle for solar access.*

### **Variations**

#### General

*Where the following constraints apply to a site, reasonable solar access to the*

*main private open space and to windows to the principal living area will be assessed on a merit basis:*

- *where the orientation or shape of a lot precludes northerly orientation (20° west to 30° east of north),*
- *where there is adverse slope or topography,*
- *where there is existing vegetation, obstruction, development or fences that overshadow, or*
- *where other controls have priority, e.g. heritage and landscaping considerations.*

*Subject to a merit assessment, consent may be granted where a proposal does not comply with the standard, provided the resulting development is consistent with the general principles of the development control, the desired future character of the locality and any relevant State Environmental Planning Policy.*

### **Commentary:**

Overshadowing is a concern as my property lies to the south of the subject site, and to the non-compliant envelope.

Until the Applicant completes a measured survey by the Registered Surveyor of my property, and completes a solar access study at hourly intervals, the full extent of the solar loss is unknown.

The proposed residential development is not sited and designed to maximise solar access during mid-winter. The building envelope facing my property is non-compliant to rear setback and other envelope controls, and therefore has not been maximised during mid-winter.

### **C1.5 Visual Privacy**

The clause states:

#### **Outcomes**

*Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*

*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.*

*Direct views of private open space or any habitable room window within 9m can be restricted (see diagram below) by:*

- *vegetation/landscaping*
- *a window sill height 1.7 metres above floor level, or*
- *offset windows*
- *fixed translucent glazing in any part below 1.7 metres above floor level, or*
- *solid translucent screens or perforated panels or trellises which have a maximum of 25% openings, and which are:*
  - *permanent and fixed;*
  - *made of durable materials; and*
  - *designed and painted or coloured to blend in with the dwelling.*

**Commentary:**

My concern is to the Roof Decks from both acoustic and visual privacy. These decks need to be deleted.

There is a direct line of sight from the proposed roof decks to my property.

The acoustic concern would always be a significant issue, irrespective of what height any privacy screen is erected on these two roof decks.

These two roof decks will need to be deleted, and replaced by roofs that are totally non-accessible.

My concern also is to the extent of the south facing glazed areas in close proximity to my private open spaces and habitable rooms and decks. These windows need to be substantially reduced in size and required privacy screens.

The size of these windows also has concerns under PBP bushfire controls.

Habitable rooms and outdoor living areas of dwellings has not optimised visual privacy through good design.

### **C1.6 Acoustic Privacy**

The clause states:

#### **Outcomes**

*Noise is substantially contained within each dwelling and noise from any communal or private open space areas are limited. (S)*

*Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or private open space areas (S)*

#### **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.*

*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.*

*Developments must comply in all respects with the Protection of the Environment Operations Act 1997, and other relevant legislation.*

#### **Commentary:**

My concern is to the Roof Decks, and the potential of noisy party decks facing our private open space, bedrooms, and living spaces, irrespective of the privacy screen height.

These decks need to be deleted.

Noise has not been substantially contained within each dwelling and noise from any communal or private open space areas has not been limited.

## **D12.6 Rear Building Line**

The clause states:

### **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 places.*

*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.*

### **Controls**

*The minimum side and rear building line for built structures including pools and parking structures, other than driveways, fences and retaining walls, shall be in accordance with the following table: 6.5m*

### **Commentary:**

The 6.5m control has also not been followed as the substantial roof structure is within 4.5m of the rear boundary.

*The bulk and scale of the built form has not been minimised.*

*Equitable preservation of views and vistas to and/or from public/private places has not been maintained.*

View sharing through complimentary siting of buildings, responsive design and well-positioned landscaping has not been properly considered.

A reasonable level of privacy, amenity and solar access has not provided and maintained to my residential property

The PBP 2006 issue that limits alignment to accord with neighbours houses facing the hazard is one precise control that has not been followed.

## **D12.8 Building Envelope**

The clause states:

### **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 neighbouring properties.*

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

### **Controls**

*Buildings are to be sited within the following envelope:*

*3.5m + 45 degrees*

### **Commentary:**

Strict control must be followed, and to include the heavy concrete roof structures within the envelope.

The bulk and scale of the built form is not minimised.

Equitable preservation of views and vistas from my residence has not been maintained.

A reasonable level of privacy, amenity and solar access is not provided and maintained to my neighbouring property.

### **D12.10 Landscape Area**

The clause states:

#### **Outcomes**

*Achieve the desired future character of the Locality.*

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

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

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

*Conservation of natural vegetation and biodiversity.*

*Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*

*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.*

#### **Controls**

*The total landscaped area on land zoned R2 Low Density Residential or E4 Environmental Living shall be 60% of the site area.*

*The use of porous materials and finishes is encouraged where appropriate.*

**Commentary:**

The total landscaped area on land zoned E4 Environmental Living must be 60% of the site area. On a large site c.1500sqm, there is no excuse not to accord with this important control at c.900sqm.

## **Statement of Environment Effects Rebuttal**

There are numerous non-factual matters stated within the Applicant's SEE.

The SEE does not meet NBC standards for completeness.

The SEE has failed to identify any environmental planning ground, unique or otherwise, that justifies the contravention of non-compliance to outcomes and controls.

The SEE fails to address the major non-compliances within PLEP

Clause 1.2 Aims of Plan

The SEE fails to address the major non-compliances of PDCP:

B3.2 Bushfire Hazards

C1.3 View Sharing

C1.4 Solar Access

C1.5 Visual Privacy

C1.6 Acoustic Privacy

D12.6 Rear Building Line

D12.8 Building Envelope

D12.10 Landscape Area

The SEE fails to consider the poor amenity outcomes particularly from view loss.

The SEE cannot be relied upon.

## **NSW LEC Planning Principles**

I bring to the attention of Council numerous **NSW LEC Planning Principles** that have relevance to this DA.

**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.”*

### **Commentary:**

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 severe to devastating impact is considered unreasonable.

**In Meriton, [Meriton v Sydney City Council 2004]**, NSW LEC considered Privacy. Meriton suggest that Council should consider:

*“When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.”*

### **Commentary:**

The freedom of neighbour’s property from being overlooked simply has not been properly and fully considered.

**In Davies, [Davies v Penrith City Council 2013]**, NSW LEC considered General Impact. Davies suggest that Council should consider:

*“Would it require the loss of reasonable development potential to avoid the impact?”*

*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?"*

**Commentary:**

The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal.

In **Veloshin, [Veloshin v Randwick Council 2007]**, NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

*"Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified."*

**Commentary:**

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

The proposals are non-compliant in multiple areas, and the Applicant has not quantified the difference between the impacts of a complying and a non-complying development.

## **Proposed Conditions of Consent to any Approval**

I ask Council to impose the following conditions to any consent.

I ask that Council request that the Applicant submit Amended Plans to resolve these matters in full, prior to determination.

### **Massing Envelope Reductions**

[These conditions would preferably all be dealt with under resubmission of Amended Plans. I present them for Council's consideration]

- A. Roofs not to exceed RL 106.60, at alignment with existing dwelling ridge line, and slope down from that location in alignment with the viewing corridor slope from neighbours viewpoints, so as to maintain view
- B. Reduce the footprint of the proposed building so that it does not extend towards the hazard beyond existing building lines on neighbouring land, align the proposed development not to exceed the southern alignment of #28 Ralston at c. 11.5m and #24 Ralston at c. 19.9m, and according with the survey.
- C. Delete Lighting & Ventilation Lanterns
- D. Delete Roof Top Decks
- E. Oversized Concrete Eaves not to extend into DCP side setback, rear setback or envelope zones
- F. All built form not to extend into DCP front, side, rear setback or envelope zones
- G. Glazing facing south towards the hazard to be significantly reduced in size, and to have privacy screens, and bush fire shutters
- H. Increase landscape zones to 60% of site area
- I. Design to accord with PBP 2006:
  - reduce the bulk of a building (height and width) facing the bush fire hazard;
  - simplifying the design of buildings to reduce the numbers of re-entrant corners;
  - provide more simplified rooflines;

- reduction in the area of exposure for critical elements such as windows, doors, roofs and wall claddings;
- avoid the intricate forms of design that trap debris and influence wind turbulence;
- remove re-entrant corners that readily accumulate debris. Roof designs are unnecessarily complicated;
- the use of gutters on the upper story makes debris removal more difficult.
- the use of box gutters, flat roofs and variations in the angle of the roof should be avoided;
- some design features can enhance the protection of a building: limit glazing on exposed facades

Height Poles to be erected to assess view loss, once these amended plans submitted.

Reason:

- View Loss
- Privacy
- Overshadowing
- Bush Fire Risk
- Visual Bulk

## **Conclusion**

The proposed development does not satisfy the relevant objectives of the LEP and the relevant outcomes and controls contained in the DCP as they are reasonably applied to an application proposing a new dwelling.

The outcome is a building that causes poor amenity outcomes including view loss and other concerns due to non-compliance to multiple residential outcomes and controls.

The development does not satisfy the objectives of the standard and will present poor residential amenity consequences.

The identified non-compliances have not been appropriately justified having regard to the associated objectives, outcomes and controls.

The subject site is of considerable size, and there is no reason, unique or otherwise, why a fully compliant solution cannot be designed on the site, to avoid amenity loss.

The identified non-compliances to outcomes and controls have not been appropriately justified having regard to the associated objectives.

Having given due consideration to the relevant considerations pursuant to 4.15 of the Environmental Planning & Assessment Act 1979 (as amended) it has not been demonstrated that the proposed development is appropriate for approval.

This application results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

In consideration of the proposal and the merit consideration of the development, the proposal is not considered to be consistent with the objectives, outcomes and controls of the DCP and objectives, aims, outcomes and controls of the LEP.

The resultant development is not considered to be an appropriate outcome for the site as it fails the balance between the development of the site and the retention of significant natural features and the maintenance of a reasonable level of amenity for adjoining properties.

The proposed development does not satisfy the appropriate outcomes and

controls.

The processes and assessments have not been satisfactorily addressed.

The DA scheme submitted requires to be amended, and I ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, then I ask Council to either heavily condition any approval, or simply issue a refusal.

I expect that the final determination will be carried out by the LPP, due to the numerous excessive non-compliances to outcomes and controls, if not refused earlier.

I request these matters be closely considered in the assessment of the proposed development.

I expect that on such a large site, the Applicant should be charged by Council to deliver a totally compliant scheme to LEP and DCP outcomes and controls.

There is no excuse that neighbours amenity must suffer due to non-compliance to the controls.

I contend that the Development Application is not in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, MLEP and MDCP and other relevant policies.

I contend that the Development Application should be refused for the following reasons:

- A. The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that it does not meet Clause 1.2 of PLEP which contains the **Aims of the Plan**, namely
- (a) to promote development in Pittwater that is economically, environmentally and socially sustainable,
  - (b) to ensure development is consistent with the desired character of Pittwater's localities,
  - (g) to protect and enhance Pittwater's natural environment and recreation areas,
  - (i) to minimise risks to the community in areas subject to environmental hazards including climate change,
  - (j) to protect and promote the health and well-being of current and future residents of Pittwater.

B. The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that it does not meet the objectives of the **E4**

C. The proposal is contrary to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that it does not satisfy **PDCP**:

B3.2 Bushfire Hazards

C1.3 View Sharing

C1.4 Solar Access

C1.5 Visual Privacy

C1.6 Acoustic Privacy

D12.6 Rear Building Line

D12.8 Building Envelope

D12.10 Landscape Area

D. The proposal will have a detrimental impact on both the natural and built environments pursuant to **Section 4.15(1)(b)** of the *Environmental Planning and Assessment Act 1979*.

E. The site is not suitable for the proposal pursuant to **Section 4.15(1)(c)** of the *Environmental Planning and Assessment Act 1979*.

F. The proposal is not in the public interest pursuant to **Section 4.15(1)(e)** of the *Environmental Planning and Assessment Act 1979*.

For the reasons set out above the Development Application should be refused by Council.

I will welcome the opportunity to further expand on any of the issues above once templates and height poles are erected.

Yours faithfully,

**David Plank**

**Owner of 8 Ebor Rd,  
Palm Beach  
NSW 2108**

**Postal address:  
27 Middle Harbour Rd  
Lindfield  
NSW 2070**