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**Sent:** 23/09/2021 2:58:57 PM

**Subject:** DA2021/1522 - 189 Riverview Road - on behalf of Ms Lenthall of 187 Riverview Road, Avalon

**Attachments:** Submission letter - 189 Riverview Road, Avalon - DA20211522- on behalf of Ms Vanessa Lenthall.pdf;

Karen Buckingham

BA(Hons) Planning; MSc Spatial Planning; MPIA

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20 September 2021

The Chief Executive Office  
Northern Beaches Council  
725 Pittwater Road  
Dee Why NSW 2099

By e-mail: [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

FAO: Adam Mitchell

Dear Adam

**Submission with regard to Development Application DA2021/1522  
Demolition works and construction of a dwelling house  
189 Riverview Road, Avalon**

I write regarding the above Development Application DA2021/1522 (subject DA) on behalf of Ms Vanessa Lenthall the owner of 187 Riverview Road, Avalon (my client).

This submission is prepared further to the assessment of the plans, reports and Statement of Environmental Effects (SEE) submitted as part of the subject DA against the relevant EPIs and Planning Controls and with the benefit of a site visit to assess the impact of the proposed development on my client.

The Development Application seeks consent for demolition works and construction of a dwelling house at 189 Riverview Road, Avalon (subject site). My client's property sits immediately to the south of the subject site. I have reviewed the impacts on my client to arise by virtue of the proposed development against the relevant planning controls as set out overleaf and discussed in greater detail in this submission.

My client has a good relationship with the owners of the subject site and wishes to retain a good relationship. However, the applicant has chosen the DA approach as the mechanism to first present the plans to my client. My client has retained me to provide an impartial analysis of the compliance of this proposal and the associated impacts on my client's amenity. This submission outlines concerns with the details of the proposed development and its impacts on her amenity as opposed to objecting to the principle of a new built form on the site.

My client welcomes Council to conduct a site visit to review the proposed development from my client's property. To fully assess the impact of this proposal it is considered appropriate that height poles be erected on site.

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## Summary of submission

- Non-compliant development contrary to Pittwater LEP 2014, Clause (Cl) 4.3 Height of Buildings, Cl 7.2 Earthworks, Cl 7.8 Limited development on foreshore area and Pittwater DCP 2014 Controls, B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community (EEC), C1.3, Views, C 1.4 Solar Access, D1 Avalon Beach Locality, D1.8 Front Building Line and D4.8 Building Envelope.
- Overbearing and non-compliant height, scale and mass contrary to Clause 4.3 of the LEP and D4.8 (Building Envelope) of the DCP.
- Overshadowing impact and loss of solar access contrary to DCP control C1.4
- Moderate loss of highly valued views which should not be permitted as per the four part view loss assessment established by the Land & Environment Court – *Tenacity consulting v Warringah [2004] NSWLEC 140* and contrary to DCP Control C1.4
- Impact on safety by virtue of the impact on the tree protection zone of tree no. 23 (as shown on submitted plans)
- Impact on amenity of neighbouring occupiers – cumulative impact of the above.
- Impact on the surrounding environment – Endangered Ecological Community spotted gum forest with impacts on the trees on my client’s property, Pittwater waterway and foreshore,
- Impact on the visual amenity and the natural environment when viewed from Pittwater Waterway contrary to the outcomes the Pittwater LEP Cl 7.8 and DCP control D1.

## Additional information that should be provided:

- Clause 4.6 variation request
- Height poles

## Site details and character of the area

The subject site is located on the western side of Riverview Road, Avalon. The submitted plans and Statement of Environmental Effects (SEE), state the site is 1071m, has an east facing frontage of approx. 18.29 metres to Riverview Road and a similar west facing boundary to Pittwater foreshore. The southern side boundary abuts my client’s property, at 187 Riverview Road.

The site is situated on a sloping site with the land falling away to the west towards the foreshore. The site is within Hazard H1 of Council’s Landslip Risk Map for gradients of between 5-25 degrees. The is also located within a Spotted Gum Forest Ecological Endangered Community (EEC).

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The site and surrounding properties currently enjoy expansive views of the Pittwater Waterway to the west and to the north west. Views extend to the western foreshore. The views, as discussed in the view loss assessment contained within this submission, are enjoyed from the principle living spaces of my client's property and principle outdoor balcony.

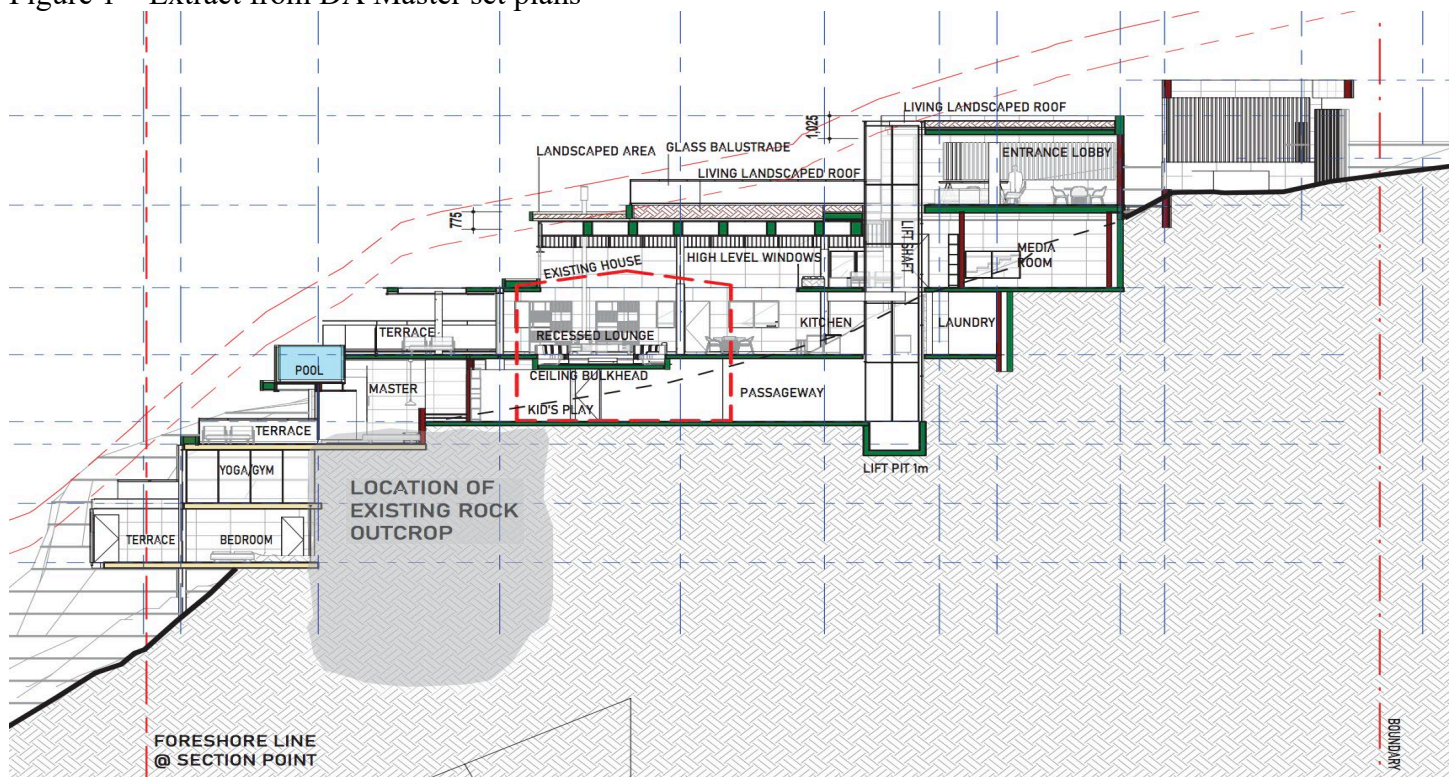
Surrounding development is predominantly made up of detached dwellings which are set back in to the landscape and are designed to form part of the landscape rather than detract from it. An important aspect of the surrounding environment is the view of the site when viewed from the Pittwater Waterway.

### Proposed development

Development Application DA2021/1522 seeks consent for demolition works and construction of a dwelling house at 189 Riverview Road, Avalon.

A detached older style 2 storey dwelling currently occupies the site and this is proposed to be demolished to make way for the proposed development. The scale of the proposed development compared to the existing dwelling house is shown in Figure 1 below. The impacts of the height, bulk, scale and massing of the proposed development are set out in this submission letter.

Figure 1 – Extract from DA Master set plans



In preparing this submission, I have considered the impacts of the proposed development as detailed in the submitted plans prepared by Durie Design and accompanying reports.

Should amended plans be submitted to try to overcome concerns raised in this submission letter, then my client requests the opportunity to submit an additional submission accordingly.

### **Relevant legislation and Planning Controls**

In preparing this submission, I have carefully considered the following legislation and planning controls

*Environmental Planning & Assessment Act 1979 (The Act)*

*Environmental Planning and Assessment Regulation 2000 (The Regulations)*

*Coastal Management Act 2016 (CM Act)*

*State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX)*

*State Environmental Planning Policy (Coastal Management), 2018*

*Pittwater Local Environmental Plan 2014 (LEP)*

*Pittwater Development Control Plan 2014 (DCP)*

### **Coastal Management Act (CM Act), 2016 and associated SEPP (Coastal Management), 2018**

The subject site is located in a Coastal Environment Area and Coastal Use area, as specified in Clause 8 of the CM Act 2016.

#### ***13 Development on land within the coastal environment area***

- (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*
- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) coastal environmental values and natural coastal processes,*
  - (c) the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) Aboriginal cultural heritage, practices and places,*
  - (g) the use of the surf zone.*

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- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
  - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (3) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).*

**Comments:** The proposed development, by virtue of the ecological impact that will arise, is contrary to I3 (1) (a) of the CM Act. The proposed development would have an impact on the tree protection zone of tree number 23 which is located on my client's property. Development consent should not be granted in accordance with I3 (2) of SEPP (Coastal Management) unless amended plans overcome the impacts identified.

#### **14 Development on land within the coastal use area**

- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*
- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following—*
    - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
    - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
    - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
    - (iv) *Aboriginal cultural heritage, practices and places,*
    - (v) *cultural and built environment heritage, and*
  - (b) *is satisfied that—*
    - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
    - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
    - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
    - (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*
- (2) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).*

**Comments:** The proposed development will dominate the landscape when viewed from the Pittwater waterway and would have a significantly adverse impact on the visual amenity and scenic qualities currently enjoyed contrary to I4 (1) (a) (ii) and (iii). Development consent should not be granted in accordance with I4 (b) of SEPP (Coastal Management) unless amended plans overcome the impacts identified.

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## Local Environmental Plan (LEP)

**Land use zone:** The subject site is zoned E4 Environmental Living under the LEP.

The zone objectives are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

**Comment:** The proposed development would result in the removal of 17 native canopy trees from a Spotted Gum Forest EEC and would appear as an incongruous structure that dominates the landscape, when viewed from the Pittwater Waterway. The residential development proposed is not of a scale integrated with the landform and landscape contrary to the objectives of the zone.

**Clause 4.3 Height of Buildings:** The subject site is limited to an 8.5 maximum height limit as specified under Clause 4.3 of the LEP.

The objectives of Cl. 4.3 are:

### **4.3 Height of buildings**

(1) *The objectives of this clause are as follows—*

- to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
  - to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
  - to minimise any overshadowing of neighbouring properties,*
  - to allow for the reasonable sharing of views,*
  - to encourage buildings that are designed to respond sensitively to the natural topography,*
  - to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*

...

*(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the [Height of Buildings Map](#) may exceed a height of 8.5 metres, but not be more than 10.0 metres if—*

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the [Height of Buildings Map](#) is minor, and*
- (b) the objectives of this clause are achieved, and*
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

**Comments:** The proposed development does not comply with the 8.5 metre height limit as specified under Cl. 4.3 (1) and (2) of the LEP. A 10m height plane has been applied with reference to Cl. 4.3 (2D). However, as outlined in this submission, the objectives of this clause are not achieved given the height and scale of the proposed and:

- The impact of overshadowing of neighbouring properties (my client's property to the south of the site)
- The impact on view loss to arise from my client's property
- The impact on the natural topography on the site
- The adverse visual impact on the natural environment as viewed from the Pittwater Waterway and National Park beyond.

A clause 4.6 variation request has not been submitted with this development application. Given that the proposed development cannot rely on Cl 4.3 (2D) a Cl. 4.6 variation should be submitted.

### **Clause 7.7 Geotechnical hazards**

The subject site is located within Area H1 on the Landslip Risk Map. A Geotechnical report has been submitted with the Development Application and risks to neighbouring property should be assessed as part of this application.

### **Clause 7.8 Limited development on foreshore area**

Although the subject site does not include development on the foreshore area, it is considered that the proposed built form would have a significantly detrimental impact on views currently enjoyed from the Pittwater Waterway. In light of this, the proposed development would be contrary to Cl. 7.8 (3) (b).

*(3) Development consent must not be granted under this clause unless the consent authority is satisfied that—*

- (a) the development will contribute to achieving the objectives for the zone in which the land is located, and*
- (b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*

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## Development Control Plan (DCP)

### Non-compliant development

#### DCP Control C1.3 -Views

The proposed development is non-compliant with DCP Control C1.3 if it fails to allow for the reasonable sharing of views through the Land and Environment Court's planning principles for view sharing.

**Comment:** My client's property (187 Riverview Road), currently enjoys wide sweeping views of Pittwater to the Western Foreshore. The views are obtained from the kitchen are orientated towards the north where the views will be most affected. Views impacted are also from the dining room, living room and main terrace. As previously request, height poles should be erected on site to enable my client and Council to fully assess the impacts of the proposed development with regard to view loss.

The SEE accompanying this Development Application does not find that the proposed would have any impact on view sharing by virtue of the building lines and height. However, in assessing the principles of view sharing in, *Tenacity consulting v Warringah [2004] NSWLEC 140* four step assessment processes, the view loss is to my client is considered to amount to a moderate impact on highly valued views. In applying this test, the following assessment is relevant.

#### **View analysis - *First step: Assessment of views to be affected.***

*'Water views are valued more highly than land views... Whole views are valued more highly than partial views, e.g., a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.'*

**View 1: Existing views from the kitchen of Pittwater**



Source: Site photo

- The views to be affected are assessed as highly valued water views.
- The views to be affected are whole water views in which the interface between land and water is visible.
- Height poles have not been erected to assist with this assessment and are requested, however, water views of Pittwater will undoubtedly be lost from the kitchen area, dining room and balcony.

***Second step: From what part of the property the views are obtained***

*[T]he 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.*

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**View 1: Existing views from the kitchen of Pittwater**



Source: Site photo

- Views affected are from the kitchen window where the view is enjoyed from a standing position and is therefore, highly valued.
- Views are also affected from the dining room, living room and balcony. The views from the balcony are often enjoyed from a standing position

***Third step: Assess the extent of the impact.***

*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)... It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

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- Views affected are from the kitchen, living areas and balcony are highly valued.
- View loss is considered moderate to the living areas and balcony but moderate – severe from the kitchen given the orientation.

***Fourth step: 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.*

If the proposed development fails to comply with the Pittwater LEP 2014, Cl 4.3 Height of Buildings, Cl 7.2 Earthworks, Cl 7.6 Biodiversity, Cl 7.8 Limited development on foreshore area and Pittwater DCP 2014, B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community (EEC), C1.3, Views, C 1.4 Solar Access, D1 Avalon Beach Locality, D1.8 Front Building Line and D4.8 Building Envelope then, the moderate impact should be considered unreasonable given the level of non-compliance with both the stated LEP and DCP controls.

**DCP Control 1.4 Solar Access**

***Outcomes***

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

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

*Reduce usage and/dependence for artificial lighting. (En)*

***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.*

**Comments:** The proposed development has a significantly detrimental impact on the solar access to my client's property. As shown on the shadowing diagrams submitted, the proposed development would create an overshadowing impact on my client's property from 10am onwards at mid winter to windows serving the principal living areas of the adjoining dwelling (187 Riverview Road).

Furthermore, the west facing roof of client's property has solar collections. DCP Control 1.4 requires that solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8am and 4 pm mid-winter. Given the level of overshadowing to occur, it would appear that solar access to the solar collectors would be impacted.

The solar impact is largely a result of siting the proposed development to the south of the site and in close proximity to my client's property. Should the proposed development be sited closer to the northern boundary, this would assist in addressing the solar impacts to arise.

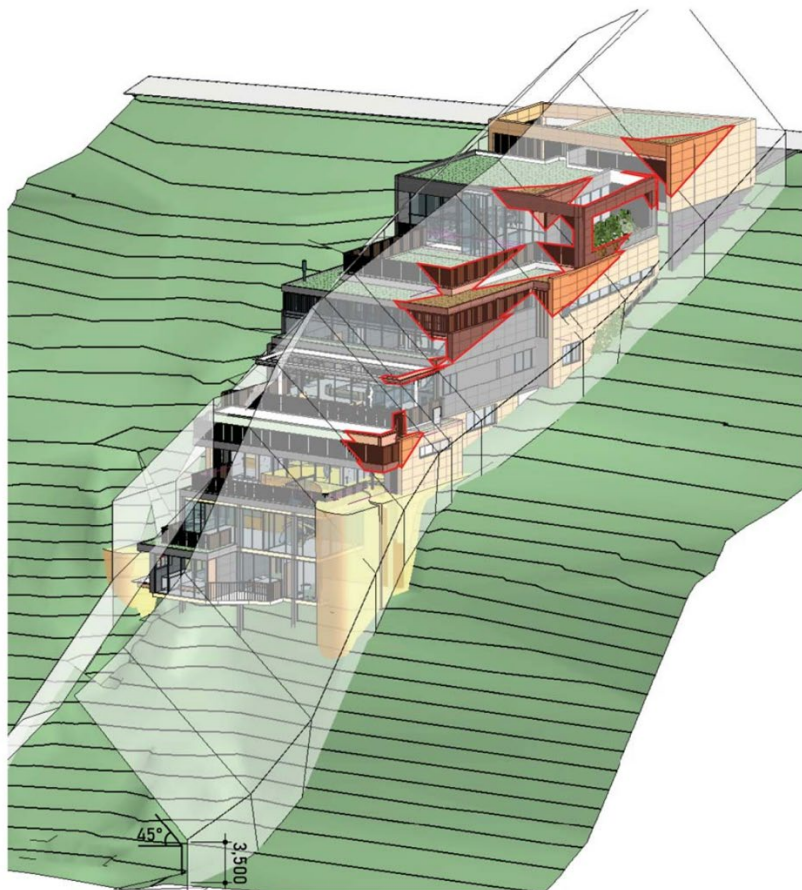
The proposed development fails to comply with DCP Control 1.4.

#### **DCP Control D1– Avalon Beach Locality**

The proposed development is non-compliant with DCP control as it fails to, '*maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component*'. The proposed development would completely dominate the landscape.

## DCP Control D4.8 Building Envelope

Figure 2 – Extract of building envelope at southern boundary



SOUTHERN ENVELOPE SETBACK SHOWN AT 3.5m HEIGHT AT 45°

**Comment:** The Development Application does not comply with DCP Control D4.8 Building Envelope. The proposed development exceeds the building envelope control along almost the entire southern boundary of the site and results in view loss and solar access implications for my client. This is acknowledged in the SEE and justification put forward. Non-compliance on merit should not be considered given the stated impacts to arise from the proposed development on neighbouring amenity or the surrounding environment. Should the

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development be set back from the southern boundary of the site, this would assist with addressing some of these concerns.

### **Impact on amenity of neighbouring occupiers**

The proposed development would clearly have a materially significant impact on neighbouring amenity. The Development Application fails to comply with either the LEP Height of Buildings control or DCP controls referred to in this submission. The impact on neighbouring amenity is a result of the over development of the site, which would be overbearing by virtue of its height, bulk and scale and would create an unacceptable level of overshadowing and view loss.

### **Impact on the character of the area**

The proposed development would have a harmful impact on the surrounding natural environment in its current proposed form.

### **Conclusion**

This submission sets out my client's (no.187 Riverview Road) concerns regarding the proposed development under Development Application DA2021/1522.

The proposed development would have a materially detrimental outcome on the amenity of neighbouring occupiers (my client) and the surrounding environment.

This Development Application is non-compliant with the Pittwater LEP 2014, C14.3 Height of Buildings, C1 7.2 Earthworks, C1 7.6 Biodiversity, C1 7.8 Limited development on foreshore area and Pittwater DCP 2014, B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community (EEC), C1.3, Views, C 1.4 Solar Access, D1 Avalon Beach Locality, D1.8 Front Building Line and D4.8 Building Envelope.

It is respectfully requested that the proposed development be amended to address the concerns outlined in this submission. Should amended plans be submitted to address concerns expressed, my client requests that she be given an opportunity to comment accordingly.

I thank you in advance for your consideration of the concerns raised in this submission.

Kind regards,

Karen Buckingham *on behalf of Ms Vanessa Lenthall*  
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