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**Sent:** 25/05/2022 7:59:54 PM

**Subject:** RE: DA 2022 0084 73 MARINE PARADE AVALON BEACH NSW 2107  
WRITTEN SUBMISSION: LETTER OF OBJECTION #2 SUBMISSION:  
FARRELL & MINITER

**Attachments:** Farrell & Minter 200522 WS.docx;

SUBMISSION: FARRELL & MINITER

a written submission by way of objection

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20 May 2022

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RE: DA 2022 0084 73 MARINE PARADE AVALON BEACH NSW 2107  
WRITTEN SUBMISSION: LETTER OF OBJECTION #2  
SUBMISSION: FARRELL & MINITER

Dear Sir,

This document is a written submission by way of objection lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

We refer to Amended Plans submitted by the Applicant:

- GT Architect Drawings, Revision B, dated 9 May 2022
- Andrew Davies Landscape Designer, Revision C, dated 12 May 2022

Unfortunately, the Applicant has not addressed our concerns within this set of Amended Plans. Our Submission of 16 February 2022 remains the basis of our objection.

Our concerns remain:

1. **Impacts Upon Adjoining Properties: Excessive Excavation**, with no consideration of the structural stability of neighbouring property over St Michael's Cave
2. **Impacts Upon Adjoining Properties: View Loss**, with no consideration of view loss analysis from any neighbouring property
3. **Impacts Upon Adjoining Properties: Privacy**, with excessive glazing facing side boundaries, and decks without any privacy devices deployed
4. **Impacts Upon Adjoining Properties: Overshadowing**, with solar loss not being minimalised due to non-compliant built form outside the side envelope controls, and excessive eaves
5. **Impacts Upon Adjoining Properties: Excessive Bulk & Scale**, due to non-compliant built form outside the side envelope controls, and excessive eaves
6. **Impacts Upon Adjoining Properties: Landscaping**, lack of clarity between arborist report and landscape plans
7. **Side Boundary Envelope**: excessive built form in zones that exceed the control

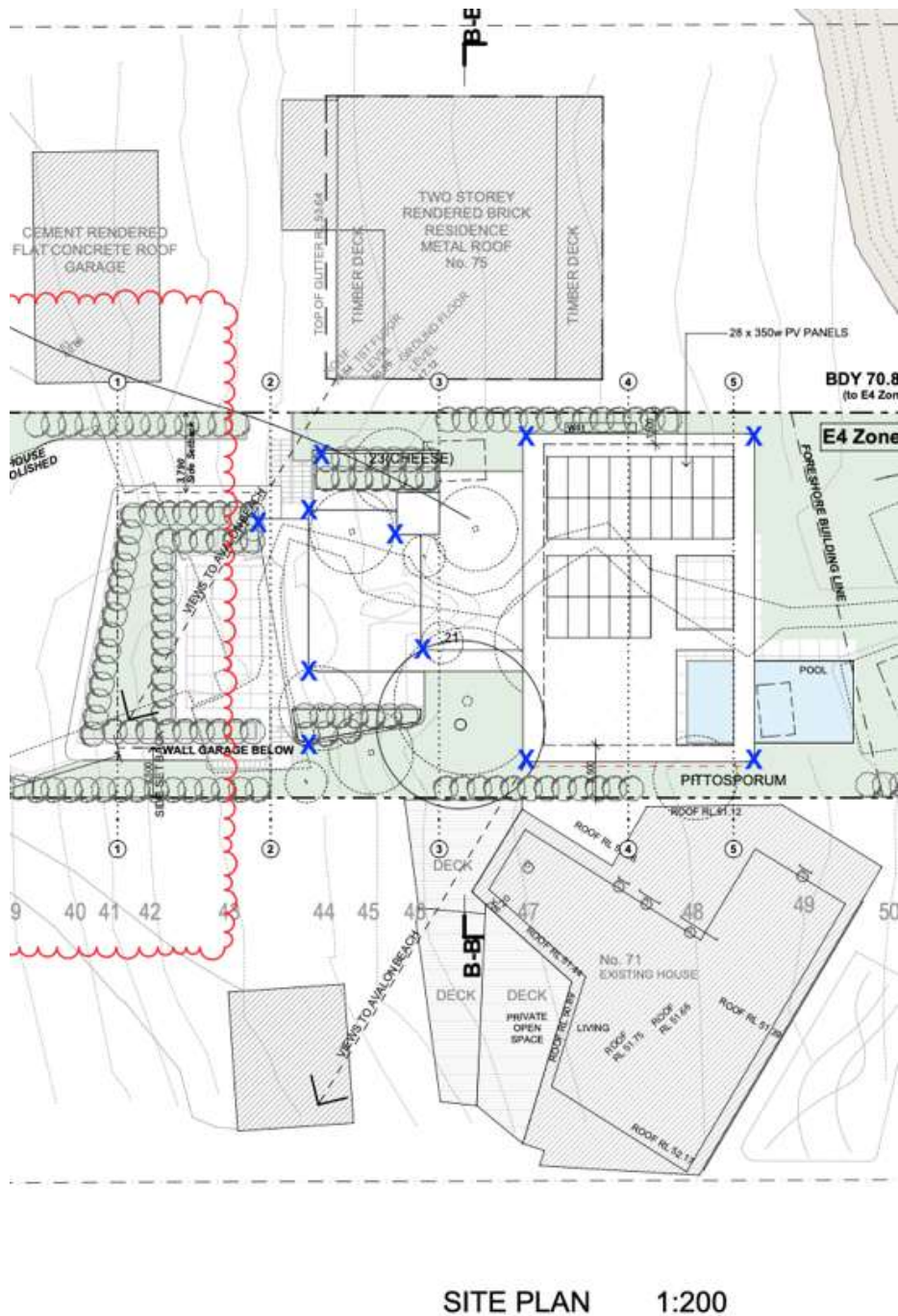
## **CONTENTIONS THAT WARRANT THE REFUSAL OF THE APPLICATION**

1. **Impacts Upon Adjoining Properties: Excessive Excavation**, with no consideration of the structural stability of neighbouring property over, and adjacent to, St Michael's Cave

Our Submission of 16 February 2022 raised these matters in great detail. It would appear that the Applicant has not carried out any assessment to the location of the unstable St Michael's Cave, nor to risks associated with a massive excavation into bedrock positioned only potentially meters away. Council's assets are also at risk.

2. **Impacts Upon Adjoining Properties: View Loss**, with no consideration of view loss analysis from any neighbouring property.

We ask for Height Poles to be erected, at the following locations, identified by the eleven blue crosses in the following Roof Plan diagram. The height poles that have been erected do not define the envelope of the roof forms that are proposed.



The siting of parts of the proposed development cause view loss.

The Applicant has not erected sufficient height poles to assess the matter.

Council will recall the refusal of DA 2021 0571, and the recent dismissal of the appeal at NSWLEC.

We contend that if view loss arises across side boundaries, it is incumbent on the Applicant to seek alternative siting of the built form to avoid that view loss.

We attach details of the case.

## **FURLONG V NORTHERN BEACHES COUNCIL [2022] NSWLEC 1208**

We refer to a dismissal of a Class 1 Appeal by NSWLEC Commissioner Dr Peter Walsh on a nearby site in Dee Why on view loss grounds. We refer to Furlong v Northern Beaches Council [2022] NSWLEC 1208. [NBC DA 2021/0571, 55 Wheeler Parade Dee Why]

We raise the dismissal by NSWLEC of the Applicant's appeal. The case in question had many similarities to this DA.

NBC DDP refused this DA on 24 November 2021, with Panel members Rod Piggott, Rebecca Englund, Tony Collier and Liza Cordoba, following a Refusal Recommendation of NBC Development Assessment Manager, by the NBC Responsible Officer Jordan Davies, a very senior NBC Planning Officer, that Council as the consent authority refuses Development Consent to DA2021/0517 for Alterations and additions to a dwelling house on land at Lot B DP 338618, 55 Wheeler Parade Dee Why subject to the conditions that were outlined in the Assessment Report.

The assessment of DA 2020/0517 involved a consideration of a view loss arising from a proposed development that presented a generally compliant envelope to LEP and DCP controls.

The DDP agreed with the recommendation and refused this DA.

The Assessment Report found that:

*" A view assessment is undertaken later in this assessment report and the proposal is found to result in an unsatisfactory view sharing outcome and the application is recommended for refusal for this reason"*

The Assessment Report found that in respect to a compliant envelope:

*" the question to be answered is whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact upon views of neighbours."*

*The Assessment Report within the Tenacity Assessment concluded:*

*"the view impact looking south-east is considered both severe and devastating from the respective rooms given the significant proportion of the views which are impacted. The aspect looking south and south- east are considered whole, prominent coastal views which are certainly worthy of consideration and at least partial protection. The proposal to remove the vast majority of these views is considered overall to be a severe view impact."*

The DA was recommended for refusal, and DDP refused the DA in full support of the NBC Responsible Officer Assessment Report.

The severity of the view loss that was considered unacceptable by the DDP was clearly stated by the DDP. This level of view loss was considered as 'severe' by the assessing officers and the DDP.

The Applicant appealed this decision.

On 22 April 2022, the appeal on *Furlong v Northern Beaches Council* [2022] NSWLEC 1208, was dismissed by the NSWLEC Commissioner Dr Peter Walsh. The decision summarised the issues:

60 Council took me to the findings of Robson J in *Wenli Wang v North Sydney Council* [2018] NSWLEC 122 ('Wenli Wang').

I reproduce pars [70]-[71] below:

*"70 Applying the fourth step of Tenacity, I repeat that the proposed development complies with the development standards in the LEP and is therefore more reasonable than a development which would have breached them. However, I do also note that there is evidence in the form of the Colville plan that a similar amount of floor space could be provided by a design which reduces the effect on the view from the surrounding properties.*

*71 I consider there is force in the submission of Council that the applicant has taken a circular approach to the fourth step of Tenacity which presupposes a right to the level of amenity achieved by the proposed development. Whilst it is true that a redevelopment similar to that provided in the Colville plan would not provide the same amenity as the proposed development, it would provide a very high level of amenity and enjoy impressive views."*

*61 In the matter before me, I am more inclined to the kind of conclusion expressed at [71] in Wenli Wang. While the proposed development, accommodating the alternative designs suggested by Council (either shifting the master bedroom westwards some 3.5m or sliding the master bedroom to the south to bring about the same view availability effect – see [43]), may not provide the same amenity outcomes as would be the case without such changes, the proposal would still enjoy a very high level of amenity, including in regard to the panoramic views available to the south, especially from living areas. The master bedroom would still enjoy superior views.*

*62 The proposal would bring about a severe view loss impact on 51A Wheeler Parade when there are reasonable design alternatives which would moderate this impact significantly. The proposal does not pay sufficient regard to cl D7 of WDCP which requires view sharing. The proposal before the Court does warrant the grant of consent in the circumstances.*

The key issues in this case considered that the proposed development would bring about a severe view loss impact, across a side boundary, from a Study/Bedroom to a water view. NSWLEC concluded that when there was a reasonable design alternative which would moderate this impact significantly, and the Applicant choose not to take that design choice, then the proposed development is

unreasonable. The proposal did not pay sufficient regard to cl D7 of WDCP which requires view sharing.

We contend the same issues may arise within this DA.

**3. Impacts Upon Adjoining Properties: Privacy**, with excessive glazing facing side boundaries, and decks without any privacy devices deployed

We ask for all glazed windows, doors, and decks to be screened for privacy facing side boundaries.

**4. Impacts Upon Adjoining Properties: Overshadowing**, with solar loss not being minimalised due to non-compliant built form outside the side envelope controls, and excessive eaves.

We ask for the proposed development to be reduced to comply with the side envelope controls. The eaves are excessive and need to be substantially reduced.

**5. Impacts Upon Adjoining Properties: Excessive Bulk & Scale**, due to non-compliant built form outside the side envelope controls, and excessive eaves

We ask for the proposed development to be reduced to comply with the side envelope controls. The eaves are excessive and need to be substantially reduced.

**6. Impacts Upon Adjoining Properties: Landscaping**, lack of clarity between arborist report and landscape plans

**7. Side Boundary Envelope**: excessive built form in zones that exceed the control

**CONTENTIONS THAT MAY BE RESOLVED BY AMENDED PLANS: DESIGN ALTERNATIVES**

A compliant building design would reduce the amenity impacts identified.

Reduce the proposed development as follow:

1. Excavation: Delete all excavation and all fill. Reason: Geotechnical Risks Undefined, Excessive Excavation, Excessive Fill, non-compliance to SEPP, LEP & DCP controls.
2. Side Boundary Envelope: 3.5m side setback to the proposed kitchen wall. Reason: Visual Bulk, Building Envelope non-compliance

3. Side Boundary Envelope: 3.5m side setback to pool deck wall and roof above. Reason: Visual Bulk, Overshadowing, Building Envelope non-compliance
4. Chimney: Delete chimney to pool deck. Reason: Smoke Nuisance, Visual Bulk, Overshadowing, Building Envelope non-compliance
5. View Loss: Reposition envelope to avoid neighbours view loss: make amendments to achieve *a more skilful design to provide the applicant with the same development potential and amenity and reduce the impact upon views of neighbours*. Reason: View Loss
6. Overdevelopment: Reduce Master Bedroom Deck to a maximum of 3.0m in depth, increasing green roof zone. Reason: Overdevelopment, Visual Bulk
7. Overdevelopment: Reduce Living Room Deck to a maximum of 3.6m in depth, increasing green roof zone. Reason: Overdevelopment, Visual Bulk
8. Eaves: Reduce eaves to 0.5m in all locations. Reason: Overdevelopment, Visual Bulk.
9. Privacy: Increase sills to all windows facing the side boundaries to a minimum 1.7m above FFL at each floor level [W2, W3, W4, W5, W6, W7, W11, W12, W14, W15, W16, W17, W19, W20, W22, W24, W28, W29, W31, W36]. Obscured glass to all bathrooms. Privacy screens to all glass facing side boundaries. Reason: Privacy
10. Privacy: 1.7m privacy screens to all decks and balconies at all levels facing the side boundaries. 1.7m privacy screens to the proposed pool facing the side boundary. Privacy screens shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Reason: Privacy
11. Landscape: The design to be modified to retain existing mature native trees of importance, that are in good condition.
12. Landscape: Retain all existing native trees in good condition, irrespective of size, in the 3.5m side setback zones adjacent neighbour's dwellings.
13. Provide additional new semi mature native canopy trees [400 lit pot size] to replace the trees removed
14. Landscape: Arborist Tree 19: 8m high Port Jackson Fig has a TPZ of 5.67m, and a SRZ of 2.65m. The crown has a diameter of 8m. The proposed development has 4m deep excavation proposed only 1.7m from the trunk, cutting through a large portion of the TPZ, and the SRZ. Delete excavation in the TPZ. The Port Jackson Fig must have no built form within 6m of the trunk, to allow for the existing 4m radius of the crown, plus a 2m clearance for future growth of the crown.
15. Landscape: Green Roof [north and south] to have on slab dense planting to 1.8m high above deck level, and these species to be immediately replaced if the landscape in the green roof zone fails
16. Landscape: Privacy landscaping to the height of the proposed wall heights along each side boundary. Privacy planting to 1.8m height along southern side of the proposed pool. Create 1m deep soil planting zones in side setback zones to support privacy planting, and create 1m deep soil zones to support all proposed landscape. Reason: Inadequate landscape provision.
17. Swimming Pool. The pool to be positioned central to the width of the site, to ensure that privacy impacts are reduced to either neighbour. Remove pool from extending beyond the Foreshore Building Line. Reason: Privacy, overdevelopment, FBL intrusion



18. Colours: The external finish to the roof and all external wall and slab edges, must have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours must not be permitted. Reason: To accord with DCP, Glare.

## **CONTENTIONS THAT RELATE TO A LACK OF INFORMATION**

### Geotechnical

The Applicant has not provided adequate protection to our property from excessive excavation and potential land slip and damage to our property, and to the cliff face and St Michael's Cave, including excessive vibration limits, lack of full-time monitoring of the vibration, incomplete dilapidation report recommendations, incomplete attenuation methods of excavation, exclusion of excavation and fill in the setback zone, exclusion of anchors under our property, and incomplete consideration of battering in the setback zone.

### View Impact Analysis

The Applicant has not provided an adequate View Impact Analysis which details the extent to which existing water views from our property are obstructed under the current proposal, from the proposed built form and the proposed trees, to accord with DCP controls and NSWLEC planning principles

We ask Council that after amended plans are submitted to reduce the building envelope to all envelope controls, to request that the Applicant position 'Height Poles/Templates' to define the 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, and all items on the roof, Extent of all Decks, Extent of Privacy Screens. Height Poles required for all trees. The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

### Privacy Impact Analysis

The Applicant has not provided an adequate Privacy Impact Analysis, to accord with DCP controls and NSWLEC planning principles.

### Solar Access Diagrams

The Applicant has not provided adequate Solar Access Diagrams, at one hourly intervals, in plan and elevation of our property, to assess the loss of solar access at mid-winter, to accord with DCP controls and NSWLEC planning principles

### Visual Bulk Analysis

The Applicant has not provided adequate montages from our property to assess the visual bulk assessment from the proposed non-compliant envelope.

#### Incomplete Drawings

- All plans, sections, and elevations have incomplete levels and dimensions to adequately control and set-out the proposed development to site boundaries.
- Grids 1 to 5 have not been provided with an offset dimension to the front boundary.
- Side Setbacks to all wall surfaces have not been shown.
- Eave projection dimensions have not been shown.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts of which would result in adverse impacts on our property.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, we ask Council to REFUSE this DA.

Yours faithfully,

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