

29 March 2022

Northern Beaches Council

725 Pittwater Road
Dee Why NSW 2099

Subject **Development Application DA2021/2149 at 2 Tourmaline St, Narrabeen**

Attention: **Anne-Marie Young**

Dear Anne-Marie,

Thank you for your email identifying issues raised in 3 submissions received and forwarding the comments from Councils Landscape Officer.

Please find below responses to each of the issues raised including the issues regarding the existing tree:

1. Required offset from the tree

The proposed plans have been amended to increase the offset between the existing tree and the proposed dwelling. The northern external wall of the dwelling has been altered to reduce the footprint of the dwelling by increasing the setback from the existing timber retaining wall (planter) to 700mm, this represents a distance of 2.4 meters off the tree to the dwelling.

2. Stairs located on the north eastern corner of the deck.

The proposed plans have been amended and the external stairs relocated south away from the existing tree, the external stairs have been relocated to the position that they were previously approved in the DA2018/1290 dated 8 February 2019.

3. Stairs servicing the front entrance of the site located to the west of the tree

The proposed plans have been amended by moving the stairs west 4.0 meters away from the existing tree as recommended by the Arborist Report.

4. Retaining wall on the northern side of the tree

The proposed plans have been amended by deleting the proposed masonry block retaining wall on the northern side of the tree and maintaining the treated pine sleeper retaining wall with a low timber boundary fence along the northern boundary.

5. Eastern Lawn Levels

The proposed plans have been amended by increasing the eastern lawn level to AHD 8.0 as recommended by the Arborist.

6. Work near the existing tree

As recommended in the Arborist report any work in the vicinity of the existing tree will be supervised by a suitably qualified Arborist, including any excavation work within this general area. All work will be by hand with no heavy machinery being used.

7. Northern Setback

The proposed setback to the north of the site off Tourmaline Street is 0.62 meters, basically the setback from the front boundary to the garage. This setback is identical to the setback provided and approved in the previous DA 2018/1290.

This setback is consistent with the previous dwelling house and cannot be altered as the development requires 2 off street car spaces. To increase the setback would eliminate the garage and even possibly the bedrooms on the ground floor.

We ask Council to consider this and support this setback per the previous Development Approval.

8. Western Setback

The proposed western setback is 1.040 meters. This setback complies with Council DCP setback control of 0.9 meters. This setback is identical to the setback provided and approved in the previous DA 2018/1290. The setback can be seen by the part wall still standing.

9. Natural Ground Line (NGL)

The natural ground line has been shown on the proposed elevations, this NGL has been taken by extrapolating the ground levels found on the footpath outside the site given the existing dwelling has been demolished and the site has undergone excavation works. This position has been taken based on the decision of Commissioner O'Neill in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 ('Bettar').

This information was provided by Pierre Le Bas of Turnbull Planning, and is included below:

The leading authority on determining "ground level (existing)" on land that is excavated, is the decision of Commissioner O'Neill in Bettar v Council of the City of Sydney [2014] NSWLEC 1070 ('Bettar').

In Bettar, consent was sought for a four and five storey residential flat building on a site where an existing building already occupied the entire site, meaning there was no longer any 'ground' for determining the existing ground level. In addition, there was an existing part-basement excavated into one part of the site. The respondent Councils argument focused on the existing building and took the approach that the 'ground level (existing)' should be calculated using the ground floor

*level of the existing building, and then reducing it to the basement level in the part of the site where the existing basement was located. **The Commissioner held that once the existing building is demolished, the ground levels of that prior building would no longer be relevant as a starting point for measuring the height of a building, and that it would be an outcome that surrounding properties (with differing ground floor levels) could have completely different height limits arising from the same development standard.** The Commissioner held at [40] that this would result ‘in an absurd height plane with a large and distinct full storey dip in it as it moves across the site and crosses the basement of the existing building, which relates only to a building that is to be demolished and has no relationship to the context of the site.’*

*The Commissioner preferred the Applicants view on this issue which was for the existing ground level of the site to be determined **by extrapolating the ground levels found on the footpath** (outside the site) across the entire site to measure the vertical distance to the highest point of the building. The Commissioner’s reasoning for this, at paragraph [41], was that the ‘level of the footpath at the boundary bears a relationship to the context and the overall topography that includes the site, and remains relevant once the existing building is demolished. This is known as the extrapolation method for determining ‘ground level (existing)’.*

Thus based on the extrapolation method, the NGL has been taken to be RL 9.68 from the north-western corner to RL 9.3 from the north-eastern corner of the proposed dwelling. Therefore the proposed ridge height complies with the relevant development standard in the Councils LEP.

The proposed ridge height has been lowered by some 130mm than was approved in the previous DA 2018/1290.

10. Side Boundary Envelope

The proposed elevations show the NGL and two of the elevations also show the Side Boundary Envelope control, a 45 deg line has been provided at a height of 4.0meters from the NGL and shows the intersection to the building.

The southern side shows that the Side Boundary Envelope control intersects the building at the gutter and slightly at the eave. Councils DCP states that in R2 zonings *Fascias, gutters, downpipes, eaves (up to 0.675 metres from the boundary), masonry*

chimneys, flues, pipes or other services infrastructure may encroach beyond the side boundary envelope.

Thus the side boundary envelope is largely compliant with Councils DCP.

The western side shows that the Side Boundary Envelope control intersects the building at the eave. Councils DCP states that in R2 zonings *Fascias, gutters, downpipes, eaves (up to 0.675 metres from the boundary), masonry chimneys, flues, pipes or other services infrastructure may encroach beyond the side boundary envelope.*

Thus the side boundary envelope is largely compliant with Councils DCP.

11. Overshadowing

The overshadowing proposed is virtually identical to the previous approved DA 2018/1290, the mass and scale of the proposed dwelling has changed slightly in that the height and foot prints have been reduced.

The shadow diagrams for the proposed dwelling show an 81% shadow cast at 9am to the POS of No. 171, 47% shadow cast at 12pm to the POS of No. 171 and 46% shadow cast at 3pm to the POS of No. 171.

What this represents is for 6 hours on the 21st of June, there is less than 50% shadow cast, and the POS to No. 171 has a minimum of 6 hours of sunlight, thus it is compliant to Councils DCP.

Additional to this the existing masonry fence between the subject site and No. 171 contributes towards the overshadowing to the POS of No. 171. Recently the owner of No. 171 has possibly unlawfully installed a 800mm (aprox.) extension to the masonry fence height, thus increasing the over shadowing onto his property. Please refer to photo below.



12. Privacy Impact

We note Councils comments regarding the obscure privacy screen to the southern side of the rear first floor deck, thus the proposed plans have been amended to increase the obscure privacy screen to 1.7 meters and the screen will also be fixed.

Should you require any other information please do not hesitate to contact me.

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Yours Faithfully



Michael Di Ramio

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DESIGN