
Sent: 9/11/2021 12:08:31 PM
Subject: DA 2021/0981 31 Marine Parade Avalon Beach
Attachments: 31 MARINE PARADE AVALON BEACH SUBMISSION RE NEW DA.pdf;

Please find attached a submission on behalf of the owner of 33 Marine Parade Avalon Beach following a site attendance by Mr Thomas Prosser.

Could you please forward the attached letter to Mr Prosser for his consideration.

Kind regards

LANCE DOYLE

B.AppSc (UWS), M.Plan (UTS), RPIA, EPLA

REGISTERED PLANNER

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9th November 2021

The General Manager

Northern Beaches Council

By email

ATTN Mr Thomas Prosser

Re- Demolition works and construction of dwelling house,

31 Marine Parade Avalon Beach

DA2021/0981

Dear Sir,

I am writing to you on behalf of the owner of 33 Marine Parade, following your site visit on Monday 25th of October to view the height poles placed on 31 Marine Parade to illustrate the location and configuration of the proposal.

As you are aware, Council adopts the principles set out in *Tenacity v Warringah* to undertake an assessment of the impact of a proposal upon the views available across a site from, primarily, living areas of potentially impacted properties.

Tenacity incorporates a number of principles, one of which is the principle whereby the extent of view impact is tempered by the degree of compliance or non-compliance with a planning control or a development standard prescribed under councils criteria for assessing proposals of this type.

Whilst there is little doubt that the proposal will have a material impact upon the views available from the living areas of 33 Marine Parade, these impacts are exacerbated by the fact that the proposal is substantially non-compliant with the controls for site cover and associated landscaped area as prescribed within the Locality Statement for Avalon Beach.

In this respect, the provisions of the Pittwater DCP, part D1 .14 are specific in their application to the subject site which is subject to controls invoked by the E4 Environmental Living Zone and the E2 Environmental Conservation Zone which invokes the following provision –

On lots where there is a split zoning and part of the lot is zoned RE1 Public Recreation, E2 Environmental Conservation or SP2 Infrastructure, the calculation for total landscaped area will be based only on that area not zoned RE1 Public Recreation, E2 Environmental Conservation or SP2 Infrastructure. It will not be based on the site area of the whole lot.

I note the survey submitted with the development application describes the site as having an area of 1347 m². This is correct as the entirety of the subject site encompasses an area of this magnitude.

The proposal however, as evidenced in Drawing DA-001, Revision B and the submitted Statement of Environmental Effects (page 33) has calculated the landscaped area at 959.94 m² including the E2 Environmental Conservation zone area which is entirely contrary to the provisions of the DCP.

The available site area that can be considered as a basis to calculate site cover and the landscaped area is, by my estimate approximately 850 m², maximum.

The proposal, by virtue of this apparent breach of the site cover controls invokes the non-compliance provisions of *Tenacity* and requires a substantial reduction in the amount of built form proposed on the subject site which, it should be noted, can only be in the E4 Environmental Living zone.

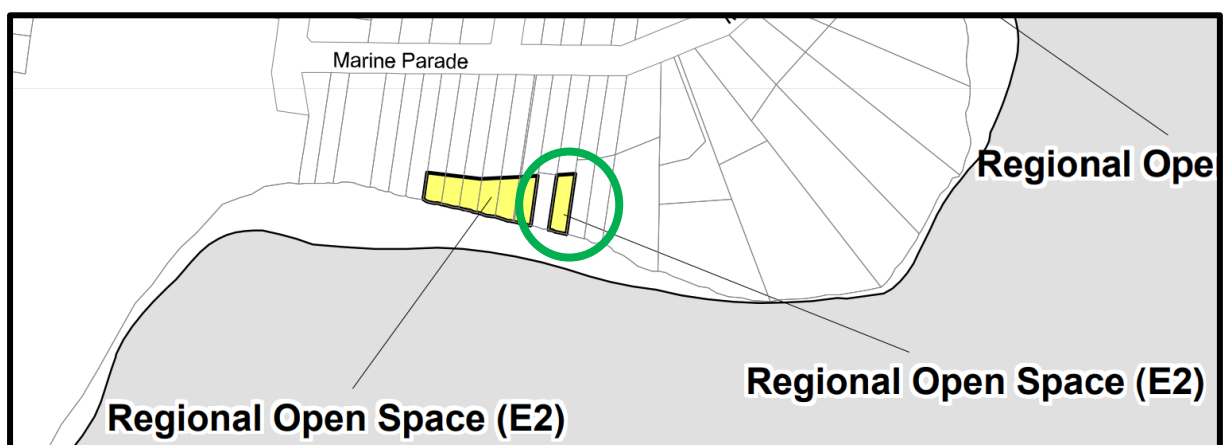
The proposal requires significant amendments due to the magnitude of this non-compliance.

I also draw Councils attention to my earlier submission in response to the previous DA for the site which raised the following concerns-

The proposal is subject to the provisions of Clause 5.1A of PLEP 2014 which state that –

*Development consent **must not be granted** to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 2 of that table.*

Column 2 of that Clause restricts development on that part of the subject site, Zoned E2, to Recreation Areas, not fenced private open space. This provision is not a development standard, it is a prohibition.



EXTRACT FROM PLEP 2014 MAPS WITH SUBJECT SITE CIRCLED

The proposed works within the E2 zone include fencing and the removal of access stairs which will quarantine this part of the site for sole use of residents.

The existing path should remain and the fences deleted from the proposal.

The proposal requires the above amendments to give effect to this LEP Clause to enable the sites acquisition as Regional Open Space as set out within the PLEP 2014 and associated Land Preservation Acquisition Maps.

The proposal seeks to alienate the subject E2 zoned area from the public and does not satisfy the definition of Recreation Area under the PLEP 2014 as public access is denied.

Proposed Fence

The component of the subject site that is zoned E2, Environmental Conservation is identified as land that is reserved for future acquisition as Regional Open Space.

This component of the subject site currently contains a constructed set of steps across the subject site to allow residents of the locality along with visitors, to access the site frontage in a safe manner as the existing steps are set back from the cliff face.

As advised above, a fence within the E2 zone is a prohibited use as this will erode the use of this part of the subject site as a Recreation Area, the only use permissible on this part of the site.

Foreshore Building Line

Further to the above paragraphs regarding the fencing of that part of the subject site which will prevent public access, the following clause (7.8) of PLEP 2014 is particularly relevant for Councils consideration during the assessment of the subject Development Application.

(4) In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

(a) continuous public access to and along the foreshore through or adjacent to the proposed development,

(b) public access to link with existing or proposed open space,

(c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,

(d) public access to be located above mean high water mark,

(e) the reinforcing of the foreshore character and respect for existing environmental conditions.

In summary, the retention of public access which has been available across the subject site for many decades, is critical and is able to be achieved by Council giving due regard to the above clause of the applicable planning instrument and the E2 zone objectives and removing any impediments to public access within and across the E2 Zone.

Landscaping

I have viewed the submitted landscape plan accompanying the development application and I note that potentially, several tree species are proposed within the E2 zone which have the potential to impinge upon the views from 33 Marine Parade.

It is requested that any tree species to be planted forward of the FSBL be of a species that will not exceed a height of 4 metres.

Boundary location

As can be seen from the survey submitted with the Development Application documentation, the common boundary between 31 and 33 Marine Parade is located in close proximity to the adjacent wall of 33. At the present time, the location of the fence allows the owner of 33 access between the front and the rear of the site along with access to the subfloor area however should boundary fencing be erected on the boundary alignment, this access will be denied. Although this matter is not strictly a matter for Council, my client would like to discuss this matter with the applicant to achieve a reasonable outcome to provide access to the front and rear of the site and the subfloor area until such time as the construction works on No.33 are commenced by demolition of the existing structure.

Roof heights and Reflective roof material

My client is concerned over the height of the proposed roof structure as the proposal will impinge upon the view corridor across the subject site from the current dwelling and the proposed dwelling under DA consent N0080/15, currently under construction.

The roof height can be reduced by the lowering of the roof pitch to retain the view corridor across the subject site from the living areas of No.33.

The roof material being metal and potential reflection from this roof being located towards the west of the living areas of No.33 is a significant concern and it is requested that the subject proposal be conditioned to require the lowest reflectivity index available for this material to preserve the amenity of the western areas of my clients dwelling.

Chimney

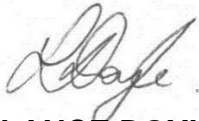
Concern is raised over the proposed chimney and the potential for smoke to be discharged from the use of the fireplace within the dwelling. This issue requires attention by way of a suitable condition of consent to ensure that no discharge emanates from the chimney that results in undesirable smoke or odour.

Thank you for attending my clients site at 33 Marine Parade to gain an understanding of the proposal and its impacts upon the existing view corridor across the subject site and also to view the area set aside in councils LEP for acquisition as Regional Open Space and as such cannot be fenced to deny access as fences are prohibited in the E2 zone and also forward of the Foreshore Building Line.

I understand that due to the number of submissions, this matter will be determined by the Northern Beaches Local Planning Panel however could you please advise if this is correct or not so that I am able to advise my client.

Thank you for the opportunity to provide this submission.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Lance Doyle', with a stylized flourish at the end.

LANCE DOYLE

Registered Planner

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