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**Sent:** 14/05/2021 12:56:52 PM

**Subject:** 6 Mitchell Road Palm Beach 2108 DA 2021/1596 WRITTEN SUBMISSION:  
LETTER OF OBJECTION Submission: Thomas

**Attachments:** Thomas 11may21.docx;

SUBMISSION: THOMAS  
a written submission by way of objection to DA 2020/1596

David Andrew Thomas & Elizabeth Helen Thomas  
5 Mitchell Road  
Palm Beach  
NSW 2108

14 May 2021

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)

Dear Chief Executive Officer,

Re:  
6 Mitchell Road Palm Beach 2108  
DA 2021/1596

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

This document is a written submission by way of objection to DA 2020/1596 lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

We refer to amended plans submitted.

Nothing within the amended plans resolves the concerns we have raised within our letter of **10 February 2021**. That objection, therefore, remains unchanged.

The extent of the changes as advised by Council on 12 May 2021 are:

- Modifications to the Bible Garden Plan now illustrating stair access from the Bible Garden to the Garage Roof Landscape Terrace
- Modified North Elevation illustrating Stair Access from the Bible Garden to the Garage Roof Landscape Terrace, and
- Modifications to the Garage and Entry incorporating Civil Engineering and modifications to accommodate Stairs from Bible Garden to the Garage Roof Landscape Terrace.

We ask for Height Poles to be erected to define the full extent of the terrace, including poles to define the balustrading and visitors standing on the terrace, so we can assess the impact.

The Executive Summary within our earlier submission summarises our concerns. We attach that once again:

## **SECTION 1: EXECUTIVE SUMMARY**

This Written Submission asks Council to request that the Applicant submits Amended Plans to resolve the matters raised within this Submission, and failing a comprehensive set of amendments undertaken by the Applicant as identified within this Submission, to ask the Applicant to withdraw the DA, or if that is not forthcoming, to **REFUSE** this DA.

The bulk and design of the proposed works are not compatible with neighbouring development and will be a negative contribution to the scenic amenity of the area when viewed from surrounding viewpoints, particularly our property.

The development is of poor design quality which does not respond appropriately to the constraints of the site. The proposed development fails to maintain appropriate levels of amenity to the adjoining and nearby residential properties.

The multiple areas of non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. The proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

The proposed development is a clear case of overdevelopment.

- **Building Height 10.62m v 8.5m 25% non-compliance [73.60 roof v 62.98 survey]**
- **Landscape Area c.20% of site area proposed v 60% control 300% non-compliance**
- **Front Setback Zero v 6.5M >1000% non-compliance**
- **Rear Setback 1.2m v 6.5m >540% non-compliance**
- **Side Setback & Building Envelope fails control**

## **Main Concerns**

The non-compliance to standards leads directly to our amenity loss.

Our main concerns are:

- Prohibited Development
- Construction & Demolition
- Landscaping

- View Sharing
- Solar Access
- Visual Privacy
- Acoustic Privacy
- Character as viewed from a public place
- Front building line
- Side and rear building line
- Building envelope
- Landscaped Area - Environmentally Sensitive Land
- Construction, retaining walls, terracing and under-croft areas
- Scenic Protection Category One Areas

We want to emphasise the fact that we take no pleasure in objecting to our neighbour's DA.

The Applicant has had no prior adequate discussion with us regarding to this DA.

We are objecting because the proposed DA has a very poor impact on the amenity of our property and this is caused by the DA being non-compliant to multiple controls.

It does seem very unreasonable that this proposed development will remove our amenity to improve the amenity of the proposal, and is proposing a catalogue of non-compliant outcomes that would poorly affect our amenity

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 substantially amended due to the development proposed that is prohibited development, non-compliant Building Height, Landscape Area, Front Building Line Side And Rear Building Line and Building Envelope

We 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 we ask Council to refuse the DA or condition the consent.

We are concerned to the non-compliance to LEP & DCP:

## **Pittwater Local Environmental Plan 2014**

### 1.2 Aims of Plan

#### Part 2 Permitted or prohibited development

- Zone RE1 Public Recreation
- Zone E4 Environmental Living
- 88B Instrument – Terms of Easements and Restrictions

4.3 Height of buildings

4.6 Exceptions to development standards

5.10 Heritage conservation

## **Pittwater 21 Development Control Plan**

A1.7 Considerations before consent is granted

A4.12 Palm Beach Locality

B4.22 Preservation of Trees and Bushland Vegetation

B8 Site Works Management

B8.6 Construction and Demolition - Traffic Management Plan

- Dilapidation Report
- Demolition and Construction Traffic Management Plan
- On Street Work Zones and Permits
- Kerbside Parking Restrictions
- Tower Crane

C1.1 Landscaping

C1.3 View Sharing

C1.4 Solar Access

C1.5 Visual Privacy

C1.6 Acoustic Privacy

D12 Palm Beach Locality

D12.1 Character as viewed from a public place

D12.2 Scenic Protection

D12.5 Front building line

D12.6 Side and rear building line

D12.8 Building envelope

D12.10 Landscaped Area - Environmentally Sensitive Land

D12.13 Construction, Retaining walls, terracing and undercroft areas

D12.14 Scenic Protection Category One Areas

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

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

Our major concerns are:

1. the dwelling proposed is prohibited development in a RE1 Zone;
2. the non-compliant Building Height, Landscape Area, Front Building Line, Side and Rear Building Line and Building Envelope;

3. any adequate or proper consideration to consider a Construction Management Plan, including a Traffic Management Plan, including the consideration that 'On Street Work Zones and Permits' will not be allowed in the street, and 'Kerbside Parking Restrictions' would need to in place for the entire length of Mitchell Road. We are concerned that a Tower Crane will be used in air rights above our property and over The Bible Gardens. We ask Council to ensure that the Applicant presents a detailed Construction Management Plan, to fully articulate these matters prior to Consent, and that these documents form part of any future consent.

We are concerned that the proposed development will take away our amenity during the demolition and construction phase due to the incomplete consideration of these matters.

The proposed development will remove views, particularly from our main living deck looking down towards the beach/water interface, to the views to the north-east, and the public views from the Bible Gardens. We are concerned to privacy and solar loss implications caused directly from the non-compliant envelope.

In this Written Submission we ask Council to request the Applicant to submit Amended Plans to bring the proposed development back into a more generally compliant including:

1. Submit a detailed Demolition & Construction Management Plan, based upon no on-street work zones and permits, kerbside parking restrictions to entire length of Mitchell Road, removal of the tower crane, agreement to a very detailed written and photographic dilapidation report on our property and surrounding properties
2. Remove all built form from the Zone RE1 Public Recreation, revert to soft landscaping only
3. Decrease building footprint to ensure a 60% site coverage of soft open space to accord strictly with DCP D12.10
4. Reduce Building Heights to be strictly under 8.5m to LEP definition
5. Front and Rear Setbacks to be fully compliant to 6.5m controls with deep soil planting to screen proposed development, but only to the proposed wall height, and to have ongoing conditions to maintain wall height planting by bi-annual pruning
6. Side Building line & Building Envelope to be fully compliant with deep soil planting to screen proposed development, but only to the proposed wall height, and to have ongoing conditions to maintain wall height planting by bi-annual pruning

We agree with Roseth SC in NSWLEC Pafbum v North Sydney Council:

***"People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime."***

The '*legitimate expectation*' that we had as a neighbour was for a development that would not propose building on the Zone RE1 Public Recreation land

The '*legitimate expectation*' that we had as a neighbour was for a development that would be fully compliant development, that would not propose a dwelling on what is prohibited development on a RE1 zone, would present compliant Building Height, Landscape Area, Front Building Line, Side And Rear Building Line and Building Envelope and other non-compliances, to avoid leading to poor amenity outcomes.

The '*legitimate expectation*' that we had as a neighbour was that we would not have to suffer any amenity loss from a non-compliant envelope.

The '*legitimate expectation*' that we had as a neighbour was for a development that integrates with the landscape character of the locality, and an expectation that the proposal would support landscape planting of a size that is capable of softening the built form. Our expectation was that the proposed development would not propose tall new trees into our viewing corridor to the water or our solar access corridor.

The '*legitimate expectation*' that we had as a neighbour was for the bulk and scale of the proposed development would be in accordance with the locality, and landscape that would enhance the built form through planting to mitigate the impacts of the building bulk and scale, particularly along the boundaries.

The '*legitimate expectation*' that we had as a neighbour was for a detailed Construction Management Plan be submitted as part of the DA, to properly assess the development, particularly considering the limited site access, the absence of any on street parking, the tight turning circles, and the very difficult, and steep terrain.

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, the subject of this Submission does not succeed on merit and is not worthy of the granting of development consent.

We ask Council to refuse this DA as the proposed development does not comply with the *planning regime*, by multiple non-compliance to development standards, and this non-compliance leads directly to our amenity loss.

Yours faithfully,

**David Andrew Thomas & Elizabeth Helen Thomas**  
**5 Mitchell Road**  
**Palm Beach**  
**NSW 2108**