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**Sent:** 2/09/2020 4:42:11 PM  
**Subject:** FW: DA 2020/0816 23-33 BASSETT STREET MONA VALE - bur.bas37m  
**Attachments:** bur.bas37m4\_submission\_TGNNPLB\_310820.pdf;

Hi All,

Not sure if this has come through to Admin yet, but Turnbull Planning has sent through a couple of emails along the lines of below in relation to errors in the submission.

Can you please replace the submission if it hasn't been done already?

Thanks,  
Adam

**Adam Croft**  
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Development Assessment  
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northernbeaches.nsw.gov.au



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**From:** Tia Gao <tia@turnbullplanning.com.au>  
**Sent:** Wednesday, 2 September 2020 10:40 AM  
**To:** Lillian Warnes <Lillian.Warnes@northernbeaches.nsw.gov.au>  
**Cc:** Adam Croft <adam.croft@northernbeaches.nsw.gov.au>; Turnbull Line Staff <turnbulllinestaff@turnbullplanning.com.au>  
**Subject:** DA 2020/0816 23-33 BASSETT STREET MONA VALE - bur.bas37m

Good morning Lilian and Adam

I trust you are well.

I called in the hopes to speak with you, but it seems it wasn't possible, so I thought it might be best to follow up with an email.

Recently, our company submitted a submission letter to the DA 2020/0816, 23-33 Bassett St Mona Vale. We act on behalf of a group of residents (**12 residents**) living in the vicinity of 23-33 Bassett Street Mona Vale. There are two issues if you can help us to solve, it would be much appreciated.

1. **Attached** please see our correct vision of the submission letter, could you please take down the version containing typos, and upload the correct version?
2. I received a few of acknowledgement letters from Northern Beaches Council yesterday, we believe we should receive 12 acknowledgement letters, could you please check it for us? FYI please see the 12

residents list:

**Stephen Shane Latham** – acknowledgement letter received

**Keithley & Jo Burn** – acknowledgement letter received

Stephen Hart

Trevor & Kathleen Swadling

**Giles & Mellise Dossett** – acknowledgement letter received

Vivienne Lewis

**Greg & Jenelle Stocken** – acknowledgement letter received

Sarah Twybill

Steve Nance

Crispin & Alison Gardner

**Lee & Catherine Aitken** – acknowledgement letter received

**Vanessa & David Hawkes** – acknowledgement letter received

Thanks for your attention and I look forward to hearing from you.

Thank you,  
Kind Regards,

**Tia Gao**

BA (UTM), M Plan (UNSW)

**Town Planner**



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25 August 2020

Chief Executive Officer  
Northern Beaches Council  
725 Pittwater Road  
**DEE WHY NSW 2099**

BY EMAIL AND POST

Dear Chief Executive Officer

**DEVELOPMENT APPLICATION DA 2020/0816  
23-33 BASSETT STREET MONA VALE  
PROPOSED RESIDENTIAL CARE FACILITY UNDER SEPP HOUSING  
FOR SENIORS**

We are consultant town planners and we act on behalf of a group of residents living in the vicinity of 23-33 Bassett Street Mona Vale, referred to in this submission as the 'Mona Vale Community Group' (our 'client' or 'clients').

We have been retained by our clients to make planning comments regarding the merit, compliance and consistency with planning objectives of the subject application, in terms of the relevant planning controls, both at local and State level.

**Purpose Of This Document**

This document is a submission by way of objection to Development Application 2020/0816 (the 'development application') relation to Nos 23 - 33 Bassett Street Mona Vale (the 'subject property').

**Background and Introduction**

The council is currently considering a development application in respect of the subject property. The development application seeks consent for demolition of an existing residential care facility and erection in its place of a seniors housing development - residential care facility (the 'proposed development' or 'proposal').

## **Site Location and Description**

The subject property is located on the southern side of Bassett Street in Mona Vale.

The subject property comprises two allotments:

- No 23 Bassett Street (Lot 38 in DP 7236) which is a single storey cottage;
- 25 – 33 Bassett Street (Lot 2 in DP 748426) which comprises a single storey cottage and the existing development occupied by the Mona Vale Nursing Home.

The subject property is some 6503sqm in total area.

The property has a length of frontage of around 107.0m and a depth of around 61.0m.

The property is relatively level however has a slight cross slope running down from the north west corner to the south east corner and varying between RL4.18 and RL3.87.

The site is surrounded by low scale residential development consisting of one and two storey dwelling houses.

## **Schedule of Annexures**

**Annexure 1** provides a location plan showing the subject site and surrounding properties including cadastre.

**Annexure 2** shows the spatial location of our client's dwellings (marked in blue). Note that our clients generally occupy properties directly to the east and extending towards Mona Vale Beach and also west of the subject, across Bassett Street to the north of the subject and two other properties both of which back on to the subject (in Heath Street).

**Annexure 3** provides a palette of photographs showing street frontage, streetscape in Bassett Street and the current relationship of the existing nursing home building with adjoining dwellings on the east and west.

**Annexure 4** provides the names and addresses of our clients as well as relevant issues of concern to those particular clients, categorised as follows:

1. Overall density and overdevelopment;
2. Streetscape and height;
3. Parking and traffic;
4. Noise;

5. Flood;
6. Overshadowing;
7. Privacy;
8. Substation (electricity kiosk);
9. Pathway to Barrenjoey Road;
10. Driveway damage potential to west of site;
11. Construction noise and disruption;
12. Construction and excavation damage.

**Annexure 5** is an Extract from the Land Zoning Map from the *Pittwater Local Environmental Plan 2014* (PLEP).

**Annexure 6** is an Extract from the Height of Building Map from the PLEP.

**Annexure 7** is a Flood Hazard Map from the *Pittwater 21 Development Control Plan* (PDCP).

**Annexure 8** is a Landscaped Area Map from the PDCP showing that the site is located in Area 3 and requiring 50% landscaped area in the R2 Low Density Residential Zone.

## **The Development Proposal**

The development involves demolition of the existing nursing home (a former conference and convention centre) and erection of a new development on the land, and additionally covering the area now occupied by two dwelling houses to the east.

The proposal increases the frontage of the facility from around 70m to 95m. The density of the facility is also proposed to increase from 63 beds to 118 beds and to provide basement parking and site landscaping.

The development will provide parking via a driveway on the eastern boundary that will access a basement level including bays for 39 vehicles and as well staff facilities.

Ground and first floor levels will provide accommodation and ancillary facilities. Setbacks are varied, but notably will be reduced on the western and southern sides of the development. Setbacks will also be reduced as regards the front boundary compared to the current arrangement.

Landscaping is proposed to be provided in the intervening spaces between the building and boundaries. The building will read as two storeys generally, however there is subterranean habitable space towards the northern frontage.

## **Nature of Submission**

Having considered the subject property and its surrounds and the details of the proposed demolition and rebuilding currently before Council, we are of the view that the proposal, in its present form, does not warrant support and that the development application should be either refused or substantially modified in order to address the issues that have been detailed hereunder.

This submission constitutes an objection to the development application as lodged.

The objection details the various ways the proposal lacks finesse and reasonable consideration for the amenity of the various surrounding residents and the ways it fails in public interest terms.

## **Statutory and PDCP Provisions**

The relevant environmental planning instruments upon which this assessment is based are *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (SEPP Housing for Seniors) and the *Pittwater Local Environmental Plan 2014* (PLEP). The relevant subordinate document is the *Pittwater 21 Development Control Plan* (PDCP).

## **Issues**

The objection is 'issues based', per details in the following paragraphs.

### ***Zoning, Scenic Quality and Architectural Character***

The property is zoned Residential R2 Low Density (see **Annexure 5**) under the *Pittwater Local Environmental Plan 2014*. The zone objectives are as follows:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.

Whilst the existing development now existing is clearly inconsistent with the current zone objectives due to its development history, and despite the fact that the new scheme is to a great extent based upon the SEPP Housing for Seniors regime of planning controls (given that it involves a dramatic increase in density over a significantly extended footprint), the applicant is in our opinion, obliged to pay more than lip service to the relevant zone objectives.

The Statement of Environmental Effects (Boston Blyth Fleming, June 2020 at 15) states that the *development is consistent with relevant zone objectives and that the 'height and scale of the development is responsive to context, compatible with adjoining development and will not result in ..... jarring residential amenity or streetscape impacts'*. With respect this statement does not represent an honest summary of consistency with zone objectives. Firstly the development will have a frontage that is 40% longer (from around 76m to 95m), secondly the density of the proposal is virtually double that represented by the current development iteration and lastly it has reduced setbacks as regards street frontage and other boundaries.

Whilst the zone objectives recognise the appropriateness of other landuses, such as seniors housing, such landuses should be of low intensity and scale. Clearly this is not reflected by the current development proposal. The proposal will, in our submission, result in both a 'jarring streetscape impact' caused by the radical change in scale from the common boundaries modest cottages and this will result in a severe reduction in residential amenity. In our opinion not enough has been done to reduce the amenity impacts that will occur on the boundaries of the subject property.

The site is within the Mona Vale Locality and the desired character under PDCP is as follows:

The Mona Vale locality will contain a mix of residential, retail, commercial, industrial, recreational, community, and educational land uses.

Existing residential areas will remain primarily low-density with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancies will be located on the valley floor and lower slopes that has less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities.

.....

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance.

Development will be designed to be safe from hazards.



.....

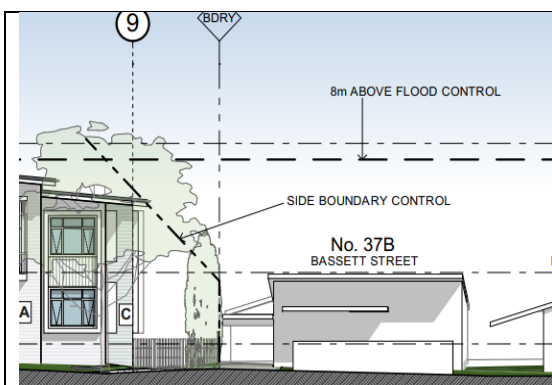
A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

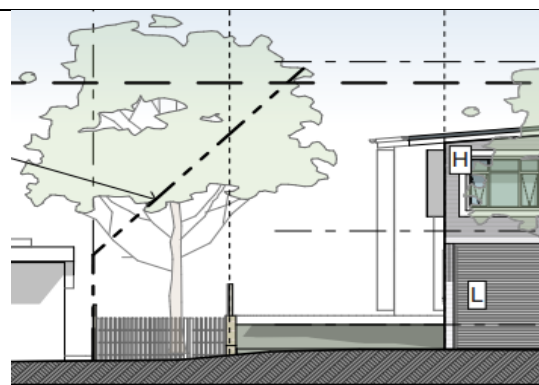
Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. Improved public transport, pedestrian accessibility and amenity, carparking and an efficient surrounding local network will support the commercial centre, moving people in and out of the locality in the most efficient manner. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

In our view the development fails to integrate itself properly into the objects of the desired future character for Mona Vale, as stated above. The above statement reflects the objectives sought to be achieved for that part of the Mona Vale Locality contained within the R2 Low Density zone under the PLEP.

This site is not in a medium density residential zone nor is the property located in a mixed use commercial type environment. The fact that the site is zoned for 'low density residential' purposes should be instructive to the applicant as far as the development proposal is concerned. This is especially the case where low density residential extant development is to be replaced by a high density facility (over the eastern part of the land). We contend that the architect has failed to take into account the reasonable expectations of adjoining land owners and occupiers in this regard. Figures 1 and 2 below show the relationship between the proposal and adjoining development to the east and west (source Gartner Trovato Architects). In our opinion the separation between the built elements in Figure 1 is not acceptable.



**Figure 1-** North elevation showing west boundary of site and relationship with adjoining cottage style development



**Figure 2-** North elevation showing east boundary of site and relationship with adjoining cottage style development

## **Bulk and Scale**

We note that the proposed floor space ratio (FSR), which is set at 0.95:1 means that in this case, given the restricted height, a very squat disproportionately lengthy built form of around 95m will result. Further however, the building is excessively bulky and is not satisfactorily relieved and articulated when viewed from the street frontage and both the east and western boundaries. From the south, the significant setback means that the bulk and scale will be a far less critical issue, in terms of the public domain or amenity.

In our view the building should be broken into at least two built elements crossways, so that some respect can be paid to the built form of existing cottages in other parts of this streetscape (with their narrow frontages), the relevant low density zone and the PDCP character statement suggesting that vegetation should be integrated with development. In this case the reduced street setbacks will not allow for sufficient planting to soften this bulky and very lengthy facade.

Below is an extract from the drawings by Gartner Trovato Architects, showing the length of proposed building (around 95m total), when viewed from Bassett Street. The long, unarticulated length of this facade, is completely uncharacteristic of adjoining and nearby development. As Council will be aware the existing building is at odds with the nearby building character. When this bulk is extended for a further distance along Bassett Street, a significant change in the dominant character of the southern side of Bassett Street will result. In our minds this is particularly undesirable.



We are of the opinion that the proposal fails to meet the controls set-out in PDCP C1.21 'Seniors Housing' which touches on bulk and scale, cumulative impact and local area character. This is despite compliance with the relevant height control (refer **Annexure 6** - height control under PLEP).

The controls from this clause provide that seniors housing developed in accordance with SEPP Housing for Seniors, should be in keeping with development in the surrounding area in regard to bulk, building height, scale and character, and inter alia, not result in such an accumulation of seniors housing developments so as to create a dominant 'residential flat building' appearance in the neighbourhood. We are of the opinion that without modifications, the development will fail to be consistent with the relevant provisions in the PDCP.

## **Privacy and Setbacks**

The proximity of long sections of built form close to the western boundary of the property is not acceptable, particularly given the fenestration that is proposed to be provided on the upper accommodation level, along this boundary. The setback is proposed to be reduced from that which currently exists, and it is virtually certain that privacy issues will arise. This long western facade without privacy devices, provides a poor planning outcome.

We note that the proposed new driveway will be located close to the eastern boundary of the subject site. There is potential for impacts to dwellings on the eastern side of the development as regards aural privacy and Council is requested to insist on an acoustic report prior to further consideration of the application, to ensure that this will not result in impacts to aural amenity. One suggestion is that access be provided more towards the middle of the Bassett Street frontage and further away from vulnerable dwelling houses.

As Council will likely be aware, the rule of thumb relating to ameliorating visual privacy impacts in terms of distance between built elements is around 12.0m under the DoPIE *Apartment Design Guide* (ADG), the principles of which can readily be applied here. In this case the separation distance is only half of that, at around 6.0m.

The presentation of this element of the building will be contrary to PDCP Section C1.5 ('Visual Privacy'). The PDCP C1.5 controls relevantly state:

- Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).
- Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.
- Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

In our opinion development should also seek to ensure the impact of development on visual privacy is minimised and that high standards of visual privacy for occupants on sites adjoining proposed developments, is maintained.

It is clear that the new development pays little regard to the above objectives and given that this is a low density residential environment, it is trite to

suggest that a 'high standard of visual privacy' will no longer exist as regards this common boundary location.

We submit that the proposal does not take into account our clients reasonable expectation of an appropriate level of visual privacy. The design also fails to take account of the aural privacy issues that are likely to occur, given the close proximity of our clients private open space, adjacent to the common side boundary.

We note that there is currently a tall privacy hedge to ensure that visual privacy is maintained between the dual occupancy to the west of the site and the existing residential care facility (see photograph at **Annexure 3** – Photo 4).

To sum up, the new building:

- Reduces setbacks ( to between 4.0m – 5.225m);
- Provides for a lengthier unrelieved facade along the western boundary than is existing;
- Fails to provide sufficient landscaping; and
- Incorporates glazing from numerous living areas at the upper floor level, not obscured and with no screening devices provided.



**Figure 3** – West elevation of proposed development

Council will be aware of the well-established general planning principle relating to privacy set out in *Meriton v Sydney City Council* [2004] NSWLEC 313. In that decision Roseth SC, stated (at [45]-[46]):

When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space. ...

... Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.

... Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight. ...

It is clear from *Meriton v Sydney City Council* and subsequent cases in which the planning principle has been fairly consistently applied that separation rather than landscaping is the main safeguard in the protection of privacy.

In *Davis v Penrith City Council* [2013] NSWLEC 1141 Moore SC confirmed, at [121], the following as the criteria for assessing impact on neighbouring properties:

How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?

How reasonable is the proposal causing the impact?

How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?

Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?

Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?

In this case, our firm view is that the impacts arise because of the poor design of the scheme and the objective of increasing floorspace without proper regard to neighbour amenity.

As Dickson C pointed out in *Rose & Sanchez v Woollahra Municipal Council* [2016] NSWLEC 1348 (19 August 2016) at [78]:

In applying these criteria *Meriton v Sydney City Council* [2004] NSWLEC 313 at [45] clarifies the scope of visual privacy in the context of residential design as: the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.

That is the heart of the matter—namely, the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.

In *Vescio v Manly Council* [2012] NSWLEC 1098 (24 April 2012) the Court, in assessing impacts on visual privacy, had regard to the fact that overlooking would be from a bedroom where people tended to spend less waking time, which was a factor to be considered in assessing impacts on visual privacy. Accordingly, the learned Commissioners (Pearson C and O'Neill C) did not consider that the impacts on privacy were such as to require the deletion of those windows or any screening.

Now, the present matter is easily distinguishable on its facts, in that the privacy issue relates to direct overlooking from living areas across to areas of private open space.

In short, we submit that the development should be modified to deal with the significant issue of both aural and visual privacy.

### ***Traffic and Parking***

We have reviewed the report by Terraffix Pty Limited, and the author has suggested that an increase of 12 cars per hour based on the RMS calculations is to be expected as regards the development proposal.

Whilst we respect the figures provided by the consultant, it appears that with a doubling in density of the development, a doubling in staff numbers and a minor only increase in parking provision, parking and traffic impacts in this dormitory area may prove unacceptable. Further information is needed to support the contentions outlined in the aforementioned report.

### ***Construction Management Plan***

We note the applicant has not prepared a 'construction management plan' (CMP) as part of the DA package. We request that Council insist that such a plan be lodged for assessment before a determination of the development application is made.

We note the construction process will greatly impact the parking availability in Bassett Street, and will probably cause traffic conflict due to the 'one way' road design. Areas need to be set aside for materials storage and vehicle management whilst the construction takes place, given the size of the development. Waste removal vehicles should only be permitted during restricted hours due to the dormitory nature of the precinct.

### ***Proposed Electricity Kiosk - Electromagnetic Radiation***

We object to the proposed location of the electricity kiosk due to potential adverse health impact impacts on both residents of the development and nearby neighbours.

Although details are not supplied in the application, the power generation capacity would need to increase given the increase electricity demand, thus transmitting increased levels of electrical and magnetic fields. While electric fields might well dissipate quickly with distance, the magnetic field which cannot be shielded from the existing sub-station (kiosk) is already in excess of prudent safety limits according to information supplied to us, by one of our clients.



The recommended limit from the *Australasian Association of Building Biologists* is <0.5mg in a bedroom and <2mg where there is prolonged exposure. Any prolonged exposure to a higher intensity of electromagnetic fields (EMF) is well recognised in the literature to cause, amongst other things health impacts such as depression and cancer. As such, we seek assurance, at the very least, that the EMF's emanating from the sub-station are no greater than the existing situation and ideally of lower intensity for residential occupants on site and in the immediate vicinity of the property.

Please see below extract from submitted plans, showing location of proposed substation.



**Figure 4** – Extract from site plan showing proposed location of electricity kiosk

As seen in the above image, the proposed new location for the existing substation is in close proximity, to the adjoining property to the west. The subject site, has an area of 6502sqm, and an alternative location for this substation, can easily be found, which will not provide any adverse EMF to the occupants and surrounding neighbours.

If Council is minded to grant consent to the development we request that Council impose a condition of consent to relocate the electricity kiosk, further along the street frontage to the east, perhaps 20m. The kiosk can be located in the front setback area with landscaped screening surrounding.

### ***Landscaped Area***

We note that the application does not comply with the requirements identified by SEPP Housing for Seniors as regards 'landscaped area'. In this

case the development should provide 2950 sqm of landscaped area. The development has a shortfall of landscaped area amounting to 166 sqm. As a proportion of site area (6503 sqm), landscaped area is 43%.

In specific terms the non-compliance may be used as a reason for refusal of this development application. Clause 48(c) of SEPP Housing for Seniors provides as follows:

(c) landscaped area: if a minimum of 25 square metres of landscaped area per residential care facility bed is provided,

As indicated in earlier paragraphs of this document, there are unsatisfactory aspects of this development as regards, inter alia, bulk and scale and setbacks. Our view is that the applicant should be required to amend the design such that it complies with the landscaped area provision. This is a fundamental planning standard that is intended to protect local communities from overdevelopment. In the present circumstances increased landscape area would allow for satisfactory breaking up of bulk and increased boundary setbacks, where impacts to neighbours are at their greatest.

We note the local control for landscaped area is 50% of site area (see **Annexure 8**) and the scheme fails also to comply with this control.

### ***Bunding for Driveway***

We note that because of the need for 'bunding' on the main driveway (refer Section c) on Sheet 8 of the architectural drawings (at RL 5.00), there is the potential for impacts to be caused to adjoining properties in terms of car headlights during the evening period. We would be grateful if you would request that the applicant provide a solution to this potential impact.

### ***Shadowing***

In our opinion the development is satisfactory as regards shadowing impact. This is due to the significant boundary setback from the rear boundary (up to 15m).

We note that the shadow impact of the development during the mid-winter solstice (particularly at 9.00am on that day), at its perimeter, is likely to be almost totally subsumed by boundary fences at the rear of the site. We would be grateful if the impact of boundary fences on shadow, could be shown in the shadow diagrams to confirm this, prior to determination of any development application.

### ***Excavation – Dilapidation Reports***

We request that Council incorporate, if minded to grant consent, a condition of consent, which provides that the applicant prepare Pre and Post



dilapidation reports on all the immediately surrounding privately owned properties.

As regards the issue of excavation, the following suggestions have been made by a member of the Mona Vale Community Group, in terms of method, given the existence of sand in the soil profile:

1. Contiguous or secant piles for shoring mandatory – do not allow sheet piling or other vibratory pile installation;
2. Max pile deflection 10mm;
3. CFA piles or equivalent for foundations;
4. Max vibration for both piling and excavation limited to 3mm/sec measured at site boundary; and
5. Monitoring to be set up and supervised by independent party with appropriate immediate warning facilities.

### **Flood Risk**

We request that Council carefully consider the Flood Risk Management Plan prepared by Acor Consulting (refer **Annexure 7** for Extract from Flood Hazard Map).

### **CONCLUSION**

In assessing the impact of a development proposal upon a neighbouring property, that which was said by Roseth SC in *Pafburn v North Sydney Council* [2005] NSWLEC 444 (16 August 2005), at [19]-[24], is, in our respectful submission, extremely helpful:

19 Several judgments of this Court have dealt with the principles to be applied to the assessment of impacts on neighbouring properties. *Tenacity Consulting v Warringah* [2004] NSWLEC 140 dealt with the assessment of views loss; *Parsonage v Ku-ring-gai Council* [2004] NSWLEC 347 dealt with the assessment of overshadowing; while *Meriton v Sydney City Council* [2004] NSWLEC 313 and *Super Studio v Waverley Council* [2004] NSWLEC 91 dealt with the assessment of overlooking.

20 Five common themes run through the above principles. The first theme is that change in impact may be as important as the magnitude of impact. ...

21 The second theme is that in assessing an impact, one should balance the magnitude of the impact with the necessity and reasonableness of the proposal that creates it. ...

22 The third theme is that in assessing an impact one should take into consideration the vulnerability of the property receiving the impact. ...

23 The fourth theme is that the skill with which a proposal has been

designed is relevant to the assessments of its impacts. Even a small impact should be avoided if a more skilful design can reduce or eliminate it.

24 The fifth theme is that an impact that arises from a proposal that fails to comply with planning controls is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.

In the case of the proposed development and based on *Pafburn*, we conclude as follows:

- the development enjoys some aspect that are meritorious and there is a demonstrated need for additional seniors living on the Northern beaches, given our current aging population. This notwithstanding, the negative aspects of the proposal in terms of impacts, outweigh the public benefit that will be provided. These negative aspects are demonstrated by significant flaws in the design of the current scheme;
- the development as proposed is 'tipped over the cliff of acceptability' by its bulk and scale. Already, the existing nursing home is inconsistent with the character of this low density residential neighbourhood. The increase in density (to 0.95:1) and length of the building frontage to close to 100m, combined with non-compliance with the landscaped area requirement, will result in a development that is even further inconsistent with the character attributes of the location.
- the non-compliance with landscaped area is instructive as regards an argument that the development represents at an inappropriate scale and with inappropriate bulk.
- whilst the proposal will satisfy certain aims of the SEPP Housing for Seniors it fails to exhibit good design and has a squat appearance with unnecessarily lengthy, unrelieved facades.
- the neighbours referred to in this submission to the west are very much vulnerable to adverse privacy impacts and are indeed impacted in terms of privacy, given the separation distance from the building in a westerly direction. As regards the neighbours to the east, the proximity of the driveway gives rise to potential for aural privacy impacts that are not addressed in an acoustic report. The applicant should be requested to provide an acoustic impact report. Perhaps the driveway entrance should be located further west along the street frontage. Given the landscaped area non-compliance these potential impacts are not able to be justified and further separation from the common boundary here is required as regards both the driveway on the east side and the building setback on the west side;

- setting the building closer to the western side boundary shows contempt for, and a disregard of, the legitimate expectations and entitlements of our clients that directly abut the existing development;
- the scheme is inconsistent with the relevant zone objectives as has been shown and does not provide a low density residential environment;
- the reduced setback to the street will result in the development dominating the public domain; and
- the proposal is not consistent with SEPP Housing For Seniors in its current form.

In short, in light of all of the above, our client has, as Roseth SC pointed out in *Pafburn*, a legitimate expectation that the development to take place on the subject property 'will comply with the planning regime'. In this case the development does not comply as regards landscaping by a significant amount, and this indicates 'overdevelopment'. Another indicia referred to in this submission that indicates overdevelopment is the overall length of the front facade and the squat bulking appearance, when viewed from the public domain.

We respectfully submit that, having regard to the likely impacts of the proposal upon the peaceful enjoyment by our client of their respective properties, the significant changes that are required to the scheme to render it acceptable, and the potential impacts to the public domain, the only appropriate course of action for Council as consent authority, is to request withdrawal, or failing that to refuse consent to the development application in its current form.

Mona Vale Community Group reserves all of its rights and entitlements.

Yours faithfully,

**TURNBULL PLANNING INTERNATIONAL PTY LIMITED**



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**Director & Legal Counsel**

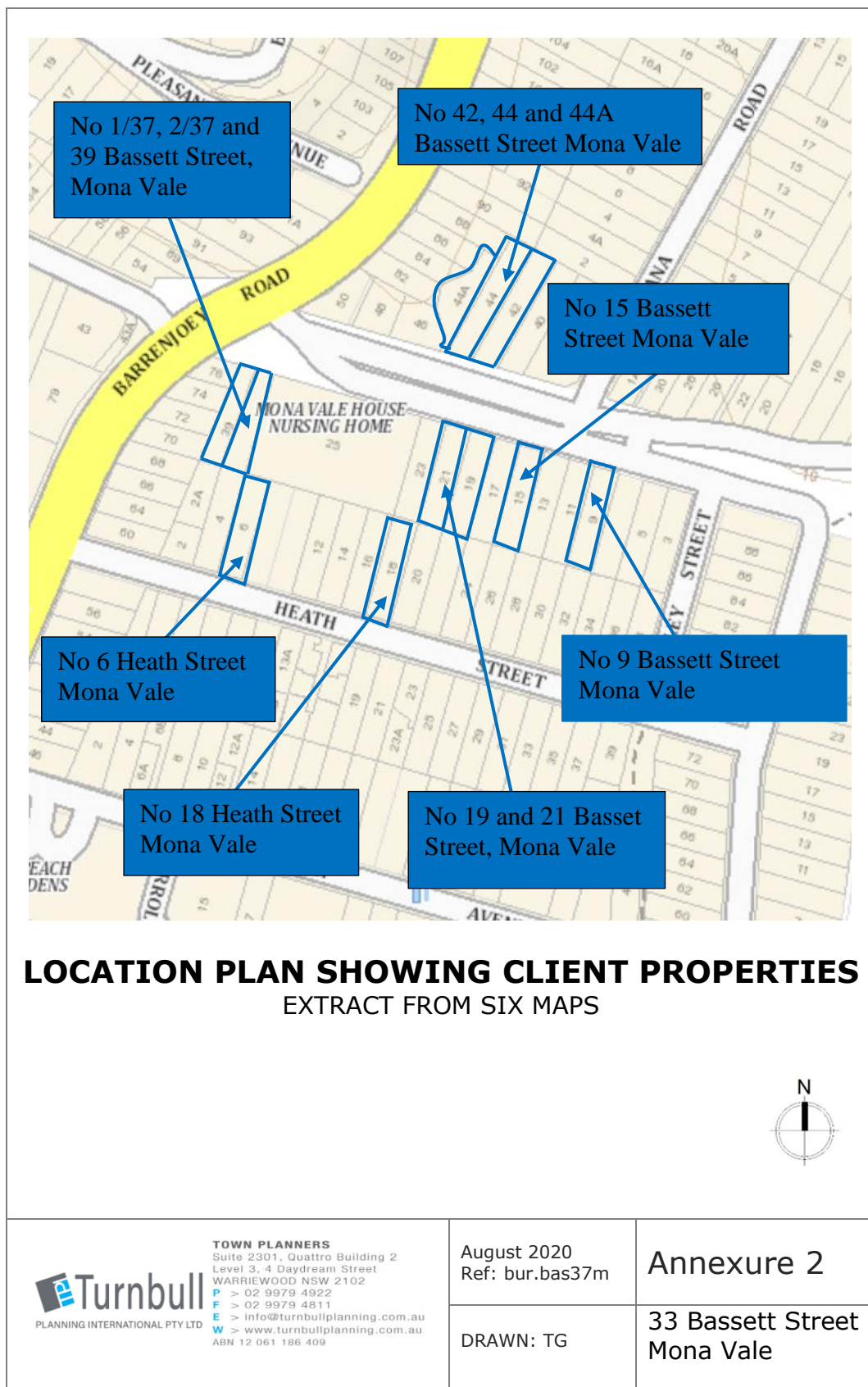
pierre@turnbullplanning.com.au

bur.bas37m2\_submission\_TGNNPLB\_280820

## ANNEXURE 1



## ANNEXURE 2





### ANNEXURE 3 PALETTE OF PHOTOGRAPHS



Photograph 1 - Showing Bassett Street Frontage of Subject



Photograph 2 - Showing Bassett Street Streetscape



### ANNEXURE 3 (CONTINUED)



Photograph 3 – Showing current Relationship of Nursing Home with dwelling house next door to the east



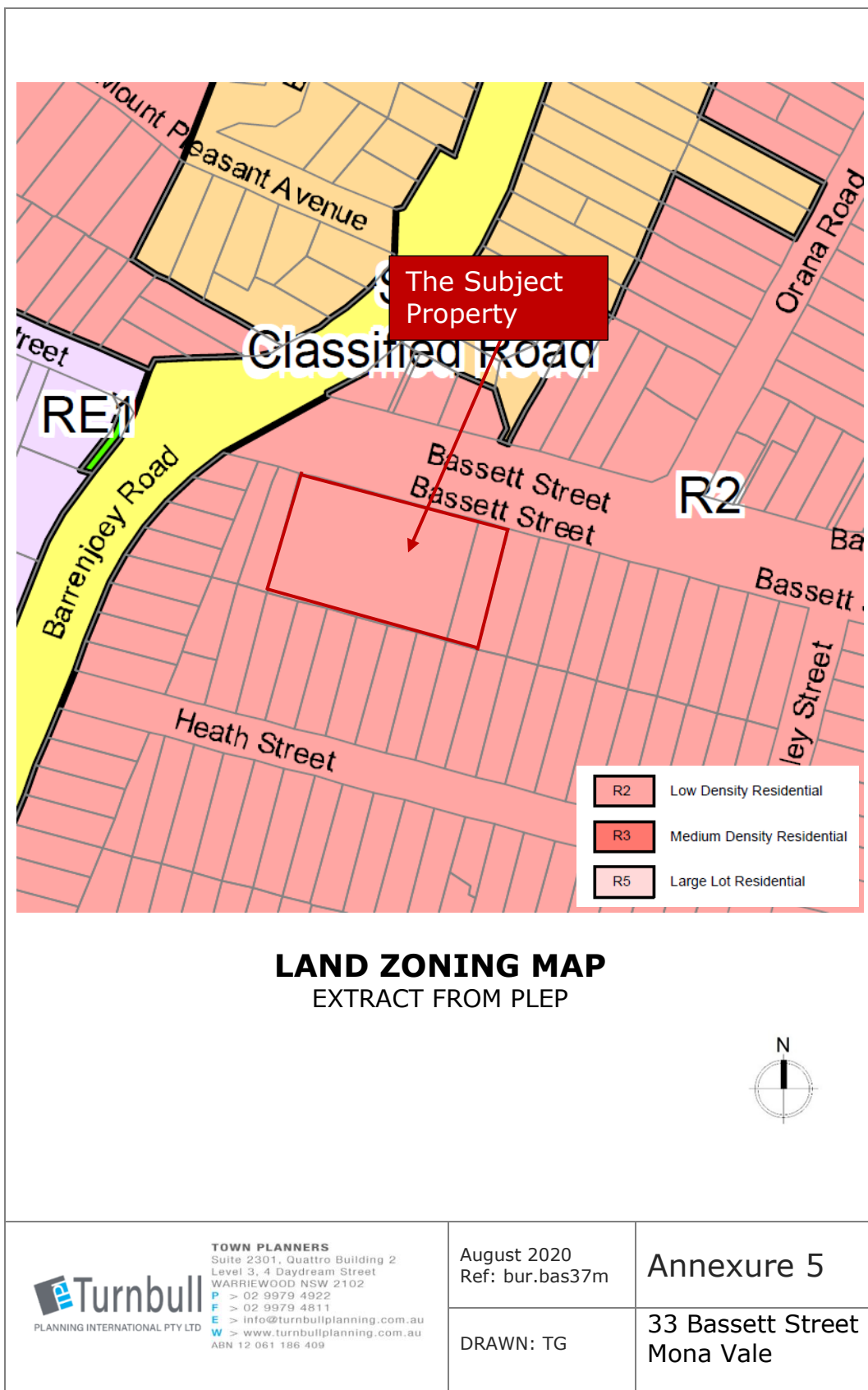
Photograph 4 - Showing current Relationship of Nursing Home with dwellings (2 dwellings in tandem arrangement) next door to the west

## ANNEXURE 4

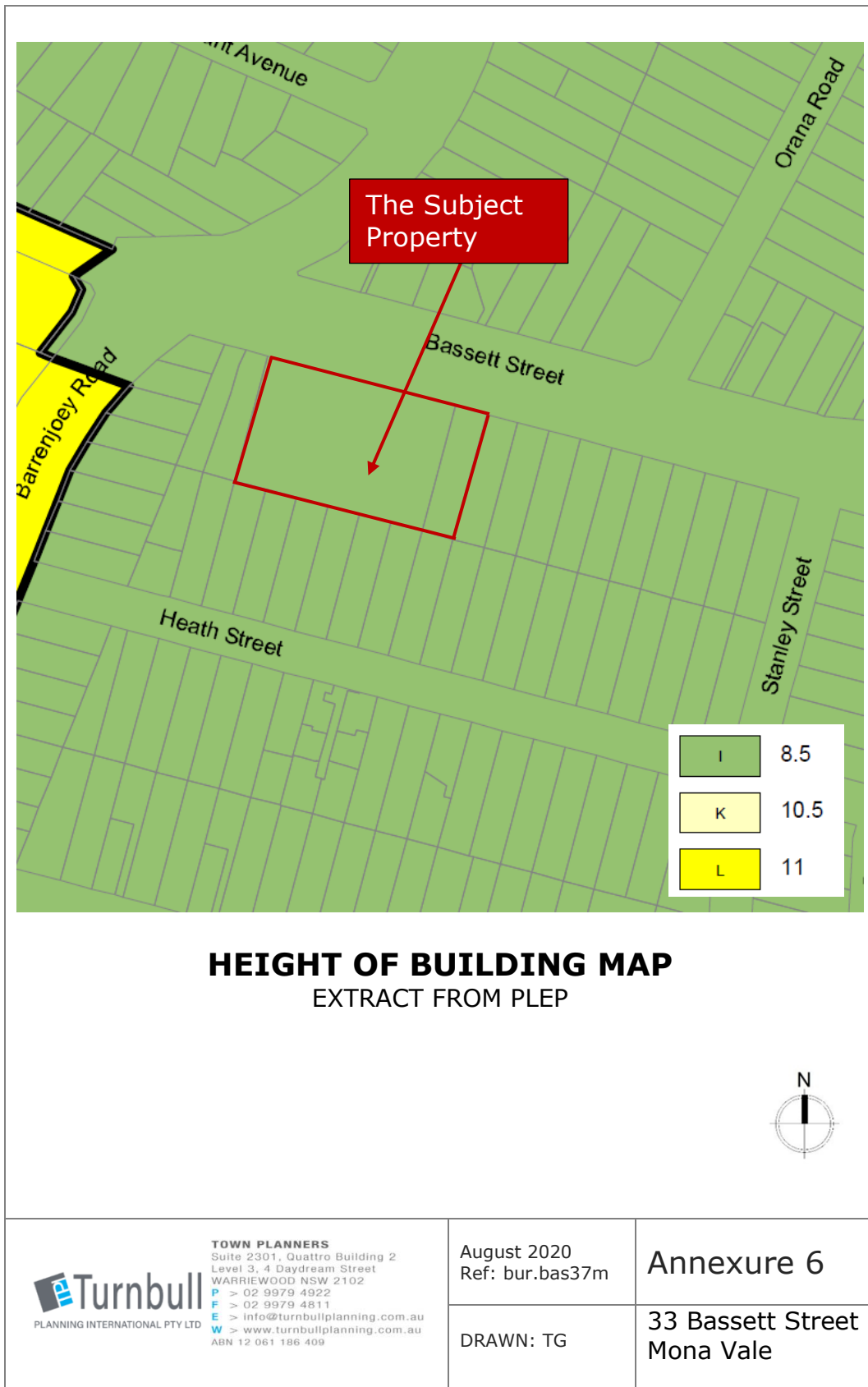
Name	Address	Contact No.	Main Issues											
			Density/ Over development	Streetscape/ Height of development	Parking & Traffic	Noise	Flood	Overshadow ing	Privacy	Substation	Pathway to Barrenjoe y Rd	Damage to Driveway west of development	Constructio n - General (Dust/Nois e/etc)	Construction - Excavation Damage
Steve Latham	1/37 Bassett St	413008622	x	x	x	x	x		x	x	x		x	x
Keithley & Jo Burn	2/37 Bassett St	404157159		x	x	x	x	x	x	x	x		x	
Stephen Hart	9 Bassett St	stephen.hart 2@microfocu s.com												
Trevor & Kathleen Swadling	15 Bassett St	488232911	x	x	x		x	x	x					
Giles & Mellisa Dossett	19 Bassett St	410441806		x	x	x	x	x	x				x	
Vivienne Lewis	21 Bassett St	405174918												
Greg & Jenelle Stocken	39 Bassett St	411549563		x	x		x			x	x	x	x	
Sarah Twybill	42 Bassett St	437498600		x	x	x							x	x
Steve Nance	44 Bassett St	418231699	x		x		x							
Crispin & Alison Gardner	44A Bassett St	416215095	x	x	x	x	x	x		x				
Lee & Catherine Altken	6 Heath St	lee.altken@b tinternet.com												
Vanessa & David Hawkes	18 Heath St	411989427	x	x	x			x	x					x



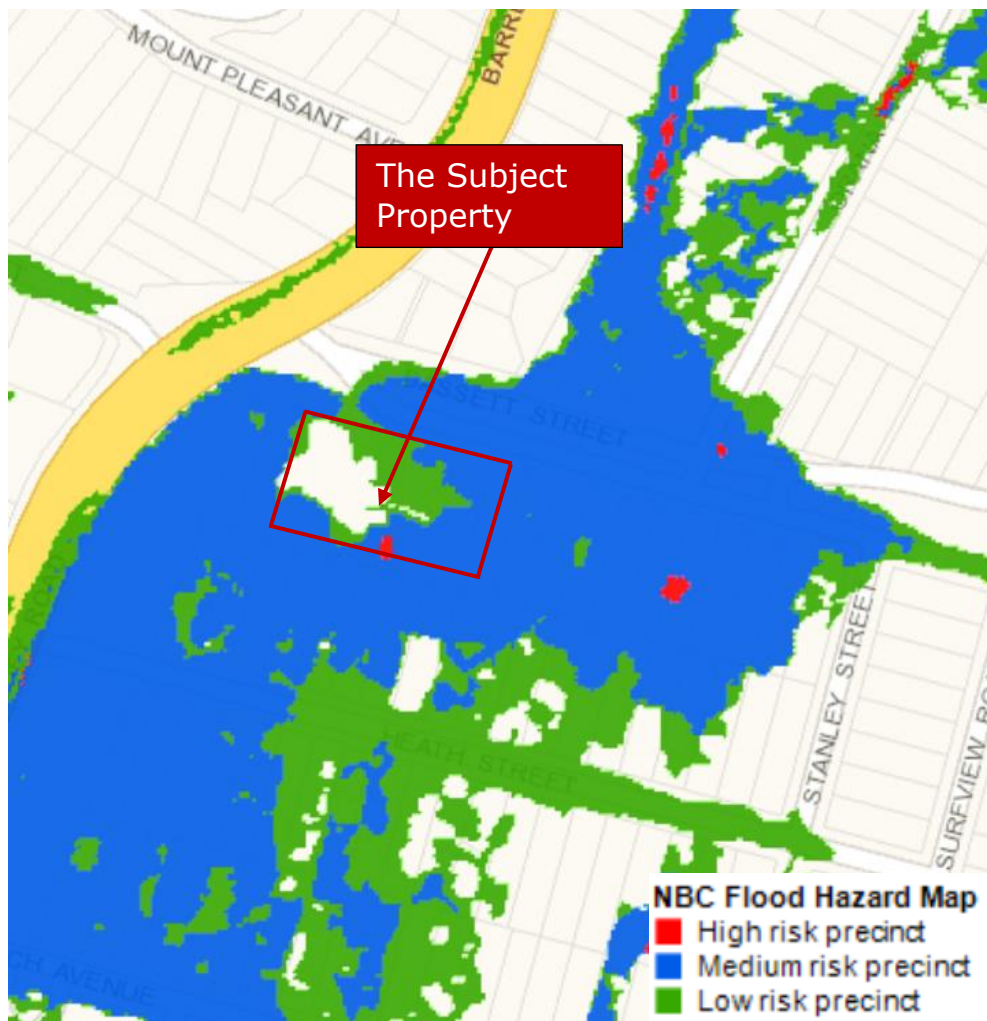
## ANNEXURE 5



## ANNEXURE 6



## ANNEXURE 7



### FLOOD HAZARD MAP

EXTRACT FROM PLEP



**TOWN PLANNERS**  
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 Level 3, 4 Daydream Street  
 WARRIEWOOD NSW 2102  
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 ABN 12 061 186 409

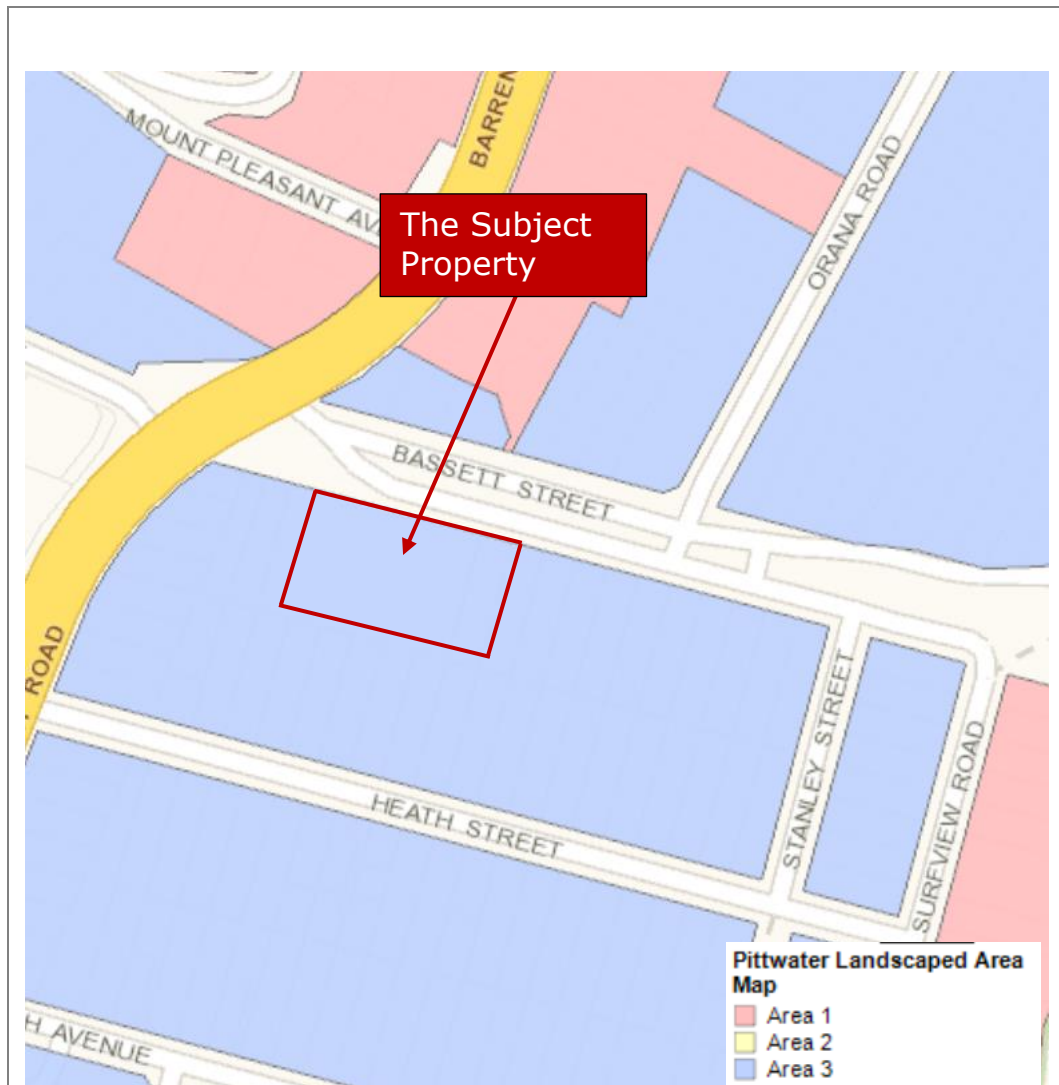
August 2020  
 Ref: bur.bas37m

Annexure 7

DRAWN: TG

33 Bassett Street  
 Mona Vale

## ANNEXURE 8



## LANDSCAPED AREA MAP

EXTRACT FROM PDCP



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August 2020  
 Ref: bur.bas37m

### Annexure 8

DRAWN: TG

33 Bassett Street  
 Mona Vale