
Sent: 2/10/2020 1:29:45 PM

Subject: 13 Pacific Road Palm Beach NSW 2107 DA 2020/1136 WRITTEN
SUBMISSION: LETTER OF OBJECTION Submission: Casey

Attachments: Submission Casey FINAL 021020.pdf;

SUBMISSION: CASEY
a written submission by way of objection to DA 2020/1136

Mr & Mrs Vernon & Donna Casey

11 Pacific Road
Palm Beach
NSW 2108

2 October 2020

Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
Dee Why
NSW 2099

Northern Beaches Council
council@northernbeaches.nsw.gov.au

Dear Chief Executive Officer,

Re:
13 Pacific Road Palm Beach NSW 2107
DA 2020/1136

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission: Casey

This document is a written submission by way of objection to DA 2020/0442
lodged under Section 4.15 of the EPAA 1979 [the EPA Act]

The DA seeks development consent for the carrying out of certain development, namely:

Demolition of existing building and associated structures, construction of a new dwelling

Cost of Work: \$1.3m.

Council must challenge the cost of this development

We have been assisted by an experienced professional in presenting this Written Submission.

We are greatly concerned that the Applicant has failed to properly notify the DA by erecting the Notification Sign. As at 1 October 2020, it has still failed to be erected. The DA is currently invalid in this respect.

The subject site is zoned Zone E4 Environmental Living under the LEP, and there is no reason, unique or otherwise why a fully compliant solution to LEP and DCP controls cannot be designed on the site.

Executive Summary

This Written Submission addresses our objection to the above development.

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

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

If the DA was fully compliant to all controls our amenity loss would be more reasonable.

It does seem unreasonable that the Applicant wishes to remove our amenity to improve his own, and is proposing a catalogue of non-compliant outcomes that would seriously adversely affect our amenity.

Our main concerns are:

- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.6 Acoustic Privacy
- C1.1 Landscaping

Our amenity losses are directly attributable to non-compliance of the main PLEP and PDCC controls:

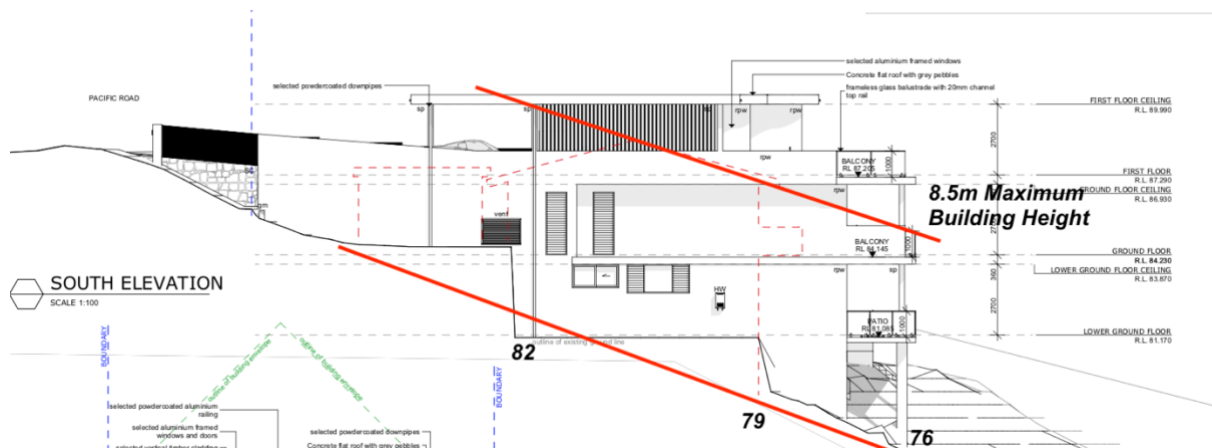
4.3 Height of Buildings:

- The south east corner of the proposed first floor shows a proposed balustrade height at RL 88.21. The survey shows the land at RL 76.92. The building height at this location is 11.29m, exceeding controls by 2.79m, a **33% non-compliance**.

- The south east corner of the proposed roof top of gutter shows a proposed height at RL 90.35. The survey shows the land at RL 78.97. The building height at this location is 11.38m, exceeding controls by 2.88m, a **34% non-compliance**.

Unfortunately, all representations of the 8.5m and 10.0m maximum building height both in section and in axonometric on the Applicants drawings are hopelessly false and misleading.

The ground level [existing] levels presented along the southern boundary do not accord with the Applicants Registered Surveyors plan. They are false and misleading.



In this respect Council must ask the Applicant to withdraw this DA, or face an immediate REFUSAL.

Both neighbouring dwellings, and the existing dwelling on the subject site, carefully respect the 8.5m maximum building height.

The proposed development is considered to be inconsistent with the outcomes, controls and objectives of the relevant legislation, plans and policies.

The height, bulk and scale of the proposal is inconsistent with the desired future character of the E4 zone, has adverse impacts in terms of view loss, fails to maintain the general dominance of landscape over built form, and does not maintain the existing residential amenity of the area. For these reasons, the proposal does not satisfy the aims of the LEP or the objectives of the Zone E4 Environmental Living.

The applicant's Clause 4.6 variation request to the building height standard, is not accepted as it fails to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, or that the proposed development will be in the public interest.

The Applicant has provided insufficient information for a view loss analysis to be undertaken consistent with the NSW LEC Tenacity Planning Principles. The view analysis provided with the DA documentation is based on inadequate site analysis information and suggests that the ocean views from the neighbouring properties on the southern side are not of significant importance, which is

inaccurate and misleading. The proposal will result in severe loss of existing water views. The proposal does not comply with the maximum Height of Buildings with the impact of these non-compliances resulting in unacceptable view loss impacts.

The proposal is not of an appropriate bulk and scale when compared to surrounding dwellings and dominates the neighbouring dwellings. This is particularly so when considering presentation of the site to the north, where the fall in the land and resulting change in level exacerbate the building bulk and associated visual impact of the proposal.

The DA scheme submitted requires to be substantially amended due to the non-compliant building height and other issues. 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

The overall combined effect caused by the non-compliant Height of Building lead to a considerable unreasonable visual bulk and a very poor character as viewed from a public place. The subject site falls within a scenic protection category one area, and we contend that the overdevelopment of the site fails to meet the outcomes.

We are concerned on the proposed development building over the east/west easement.

We are concerned to the non-compliance of the LEP:

PLEP 2014

- 1.2 Aims
- 2.3 Zone Objectives Zone E4 Environmental Living
- 4.3 Height of Buildings
- 4.6 Exceptions to Development Standards

P21DCP

- A4.12 Palm Beach Locality
- B3.1 Land Slip
- B6.1 Access Driveways
- B6.2 Internal Driveways
- B6.3 Off-Street Vehicle Parking Requirements
- C1.1 Landscaping
- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy

- C1.6 Acoustic Privacy
- C1.25 Plant, Equipment Boxes and lift Over-Run
- D Locality Specific Development Controls
- D12 Palm Beach Locality
- D12.1 Character as viewed from a public place
- D12.5 Front Building Line
- D12.6 Side and Rear Building line
- D 12.8 Building Envelope
- D12.11 Fences
- D12.14 Scenic Protection Category One Areas

CHARACTERISTICS OF MY PROPERTY

Key aspects of our property are as follows:

Our property shares a common boundary with the subject property.

The subject site lies to the north of our property.

We enjoy good levels of privacy, daylight access, and water views over the subject site's rear boundaries.

Our property generally accords with 8.5m maximum building, and LEP and DCP development standards.

Our property is shown on the attached map 'red starred'. The subject site is shown 'edged in red and flagged'.



MATTERS OF CONCERN

We are concerned that these impacts will negatively impact the level of amenity currently enjoyed.

The following aspects of the proposal are of concern:

- The extent of the proposed building envelopes
- The siting and extent of the proposed dwelling without having sufficient consideration for maintaining amenity

We provide further details of these matters below and request Council's close consideration of these in the assessment of the application.

We are concerned that the SEE has failed to properly address our amenity concerns, and is suggesting that the DA accords with LEP & DCP outcomes and controls when it clearly it does not.

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

The subject site is of a large size, and there is no reason, unique or otherwise why a fully complaint solution to all outcomes and controls cannot be designed on the site.

This letter of objection will detail our concerns, and our amenity losses that have arisen as a direct result of the non-compliance to outcomes and controls.

SITE DESCRIPTION

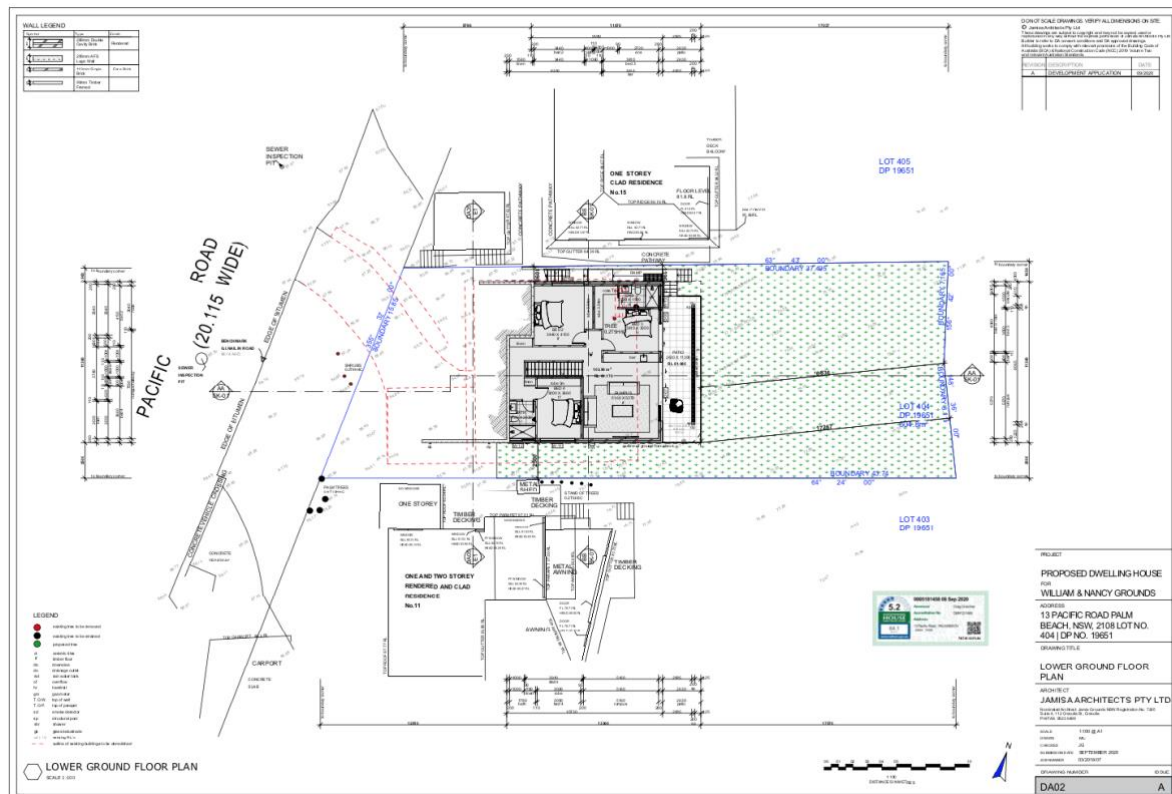
The site is described within the Applicant's SEE.

- 604.8sqm
- Irregular rectangle shape
- East/West orientation
- 37m/43m x 15m approximate size
- 16.9m fall to the east
- 1.8m cross fall to north
- Existing Dwelling at 8.5m maximum height control
- Neighbour Dwellings at 8.5m maximum height control
- Three Adjoining Owners

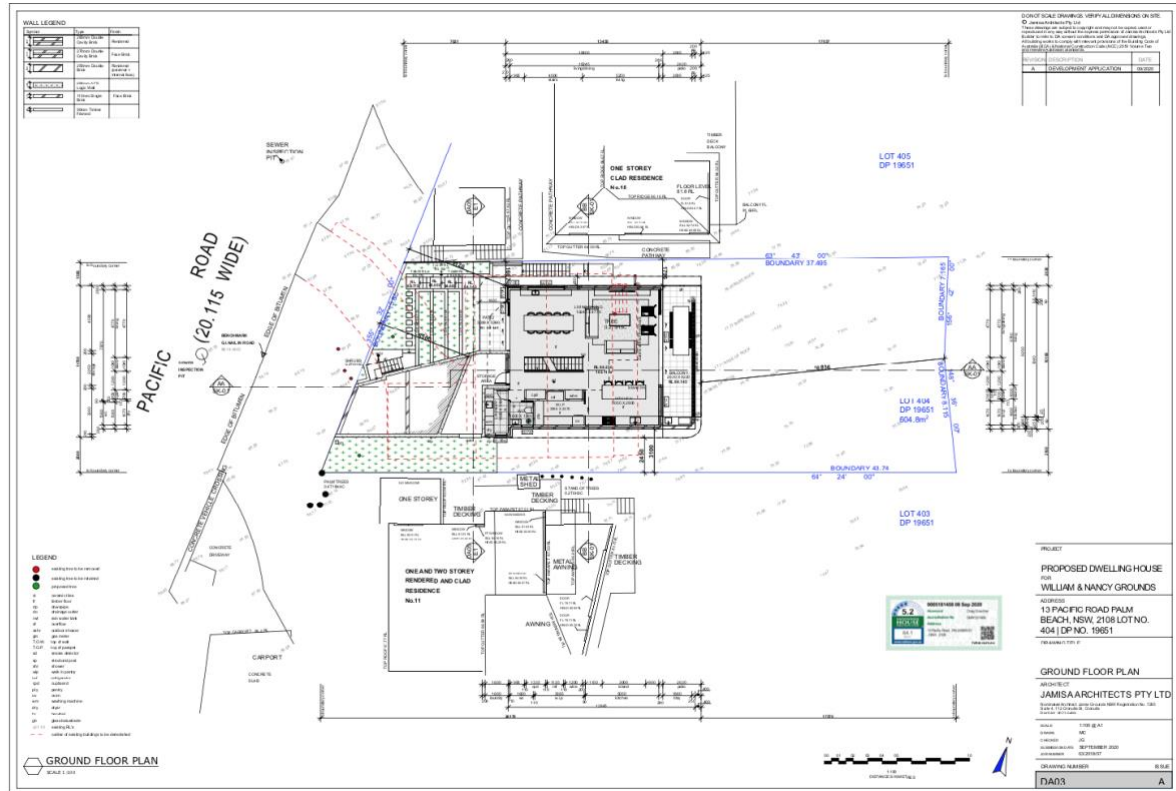
PROPOSED DEVELOPMENT

The site is described within the Applicant's SEE.

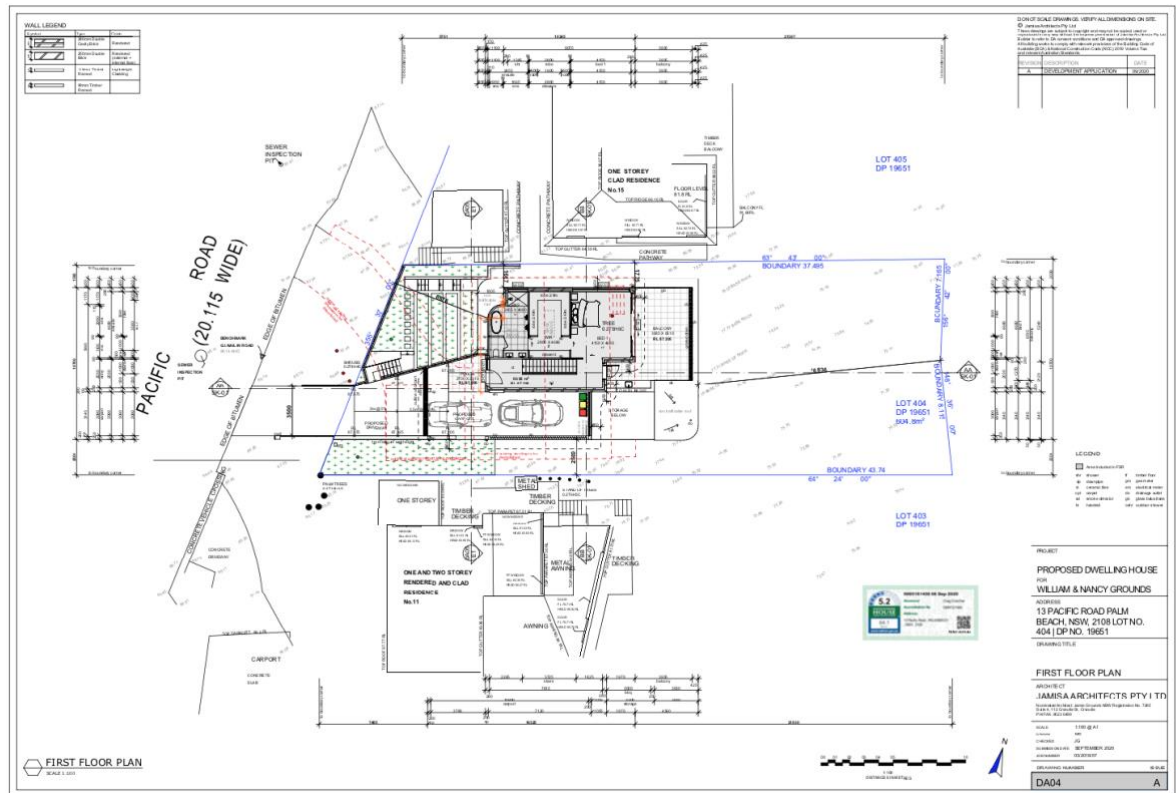
The proposed floor plans are attached for ease of reference.



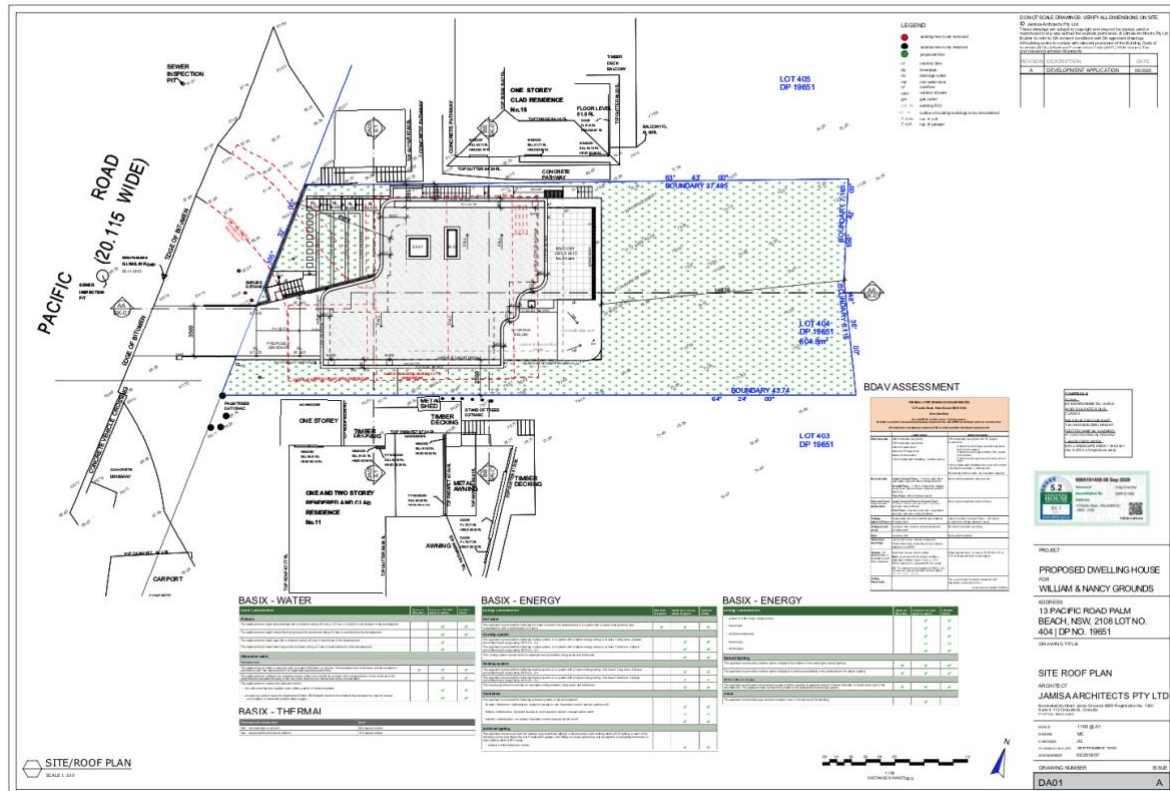
LOWER GROUND FLOOR



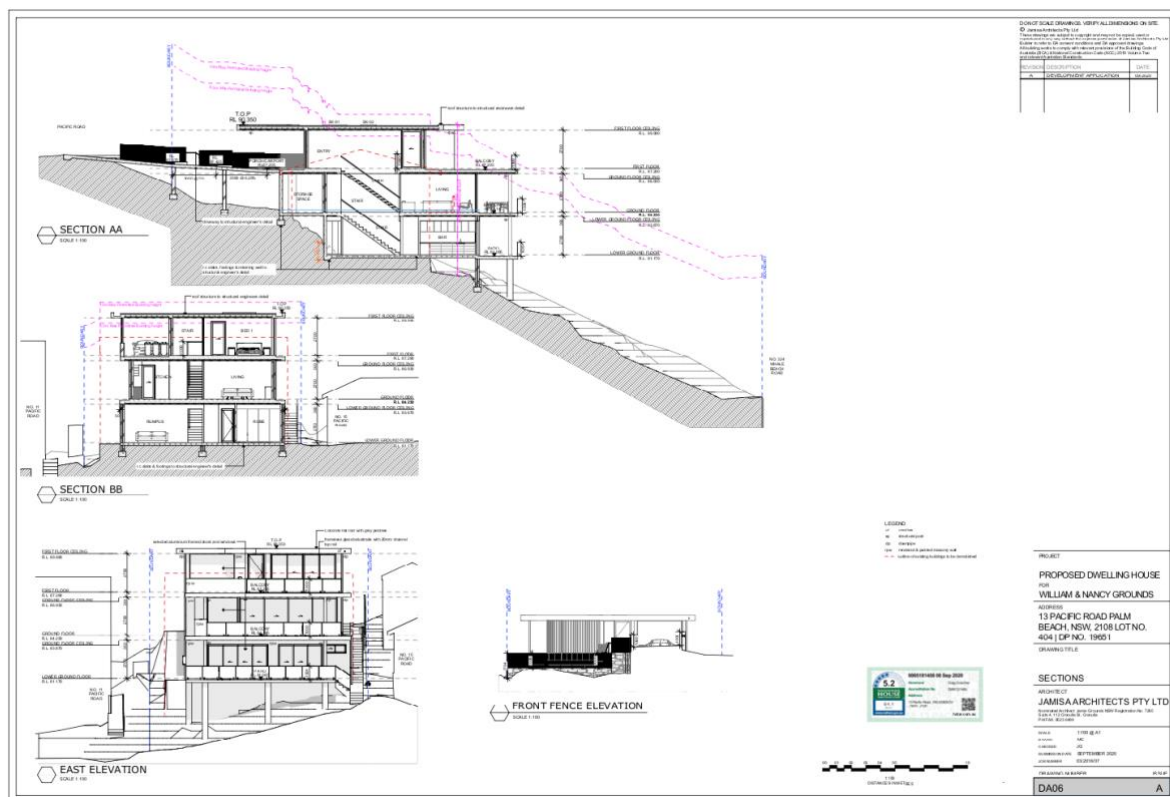
GROUND FLOOR PLAN



FIRST FLOOR PLAN



SITE ROOF PLAN



SECTIONS

MISLEADING INFORMATION & OUTSTANDING INFORMATION

INCORRECT GROUND LEVEL [EXISTING]

Unfortunately, the Applicant has not represented the ground level [existing] levels as shown on the Applicant's Registered Surveyor's plan along the southern boundary.

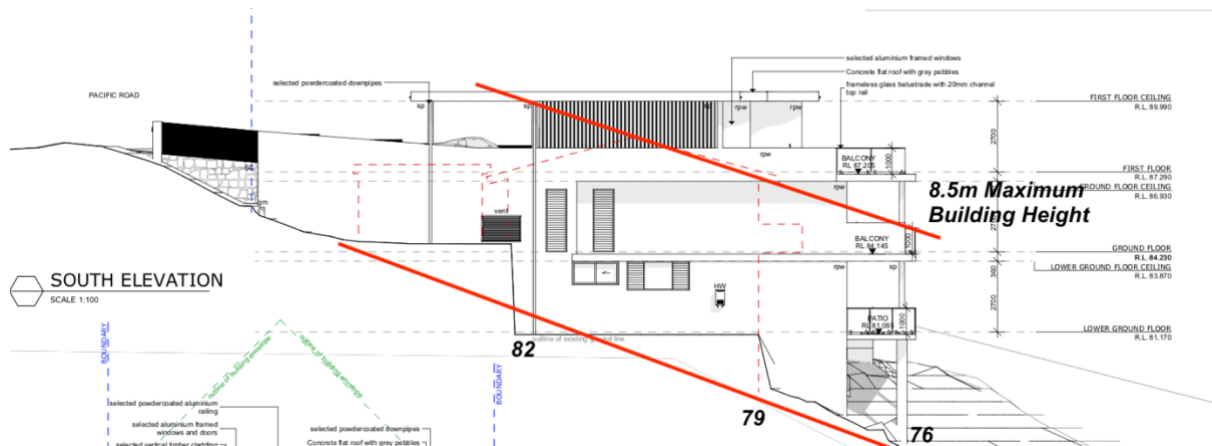
The southern elevation does not have any ground level [existing] shown.

It is clear that the *ground level [existing]* proceeds up the southern boundary, along survey marks 75.85, 76.92, 77.44, 78.82, 79.30, 79.98, 80.24, 80.72, 81.88, 81.99, 83.14, 84.41, however the Applicant has not decided to show any of the levels, and has actually shown false and misleading lines to indicate ground level [existing].

Council has grounds to REFUSE the DA on misleading information.

At the very least, the Applicant must correct the Southern Elevation, and insert the above levels on the Southern Elevation, and project a 8.5m Building Height control line on the South Elevation.

If the DA relies upon incorrect information, such as false and misleading drawings, then we reserve our position on the validity of any future approval, and we reserve our right to challenge the validity at any time.



ENVIRONMENTAL PLANNING INSTRUMENTS LEP & DCP

The following matters are relevant to the development under the LEP 2012:

Provision	Compliance	Consideration
1.2 Aims of Plan	No	The proposal does not comply with the aims of the plan.
2.3 Zone Objectives Zone E4 Environmental Living	No	The proposal is defined as a dwelling house and is permissible with consent in the E4 Environmental Living zone. The proposal does not satisfy the zone objectives.
4.3 Height of Buildings	No	A maximum height of 8.5m is permitted. A height at 11.38m is proposed.
4.6 Exceptions to development standards	See discussion	The application is accompanied by written requests pursuant to Clause 4.6 to vary the height of building development standards.

CLAUSE 1.2 AIMS OF PLAN

In these proposals the local amenity and environmental outcomes would be challenged by non-compliance.

We contend that the proposed development does adversely affect the character or amenity of the area or its existing permanent residential population by view loss, and other amenity losses.

We contend that the DA fails the aims of this control as follows:

1.2 Aims of Plan

- (a) to promote development in Pittwater that is economically, environmentally and socially sustainable,*
- (b) to ensure development is consistent with the desired character of Pittwater's localities,*
- (g) to protect and enhance Pittwater's natural environment and recreation areas,*

- (i) to minimise risks to the community in areas subject to environmental hazards including climate change,*
- (j) to protect and promote the health and well-being of current and future residents of Pittwater.*

The requirements under this clause clearly have not been met.

The proposal exceeds the maximum height in the relevant clauses of the LEP. The proposal therefore is of a larger building envelope than what is provided for by the existing controls and presents excessive bulk and scale onto surrounding properties in a manner which is not consistent with the desired future character of the locality. The application has also not demonstrated how private views are to be maintained or enhanced, especially those views currently enjoyed by residents to the south of the site.

ZONE E4 ENVIRONMENTAL LIVING

Objectives of zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The proposed development does not provide for the housing needs of the community within a low density residential environment. The proposed building height is more typically associated with a higher density residential environment, not the low density residential environment.

The proposal does not retain the single dwelling character of this environmentally sensitive residential area of Palm Beach

The proposal does not maintain a general dominance of landscape over built form.

The proposal does not achieve adequate landscaping or landform retention.

The proposed development would result in a built form that would have a number of adverse amenity impacts on surrounding properties.

The site is of sufficient size to accommodate a single dwelling house.

The proposed development is of a height and scale that is not compatible with the desired future character of the area. The proposed development is excessive in height and scale and is too bulky on the street frontage.

The proposed development does not maintain or enhance local amenity. The proposal results in the loss of private views from an adjoining property.

The proposed bulk and scale of the development has not been minimised.

The proposal has failed to provide adequate side setbacks or side envelope and is not appropriately setback from the street which result in built form dominance, poor streetscape outcome and view loss.

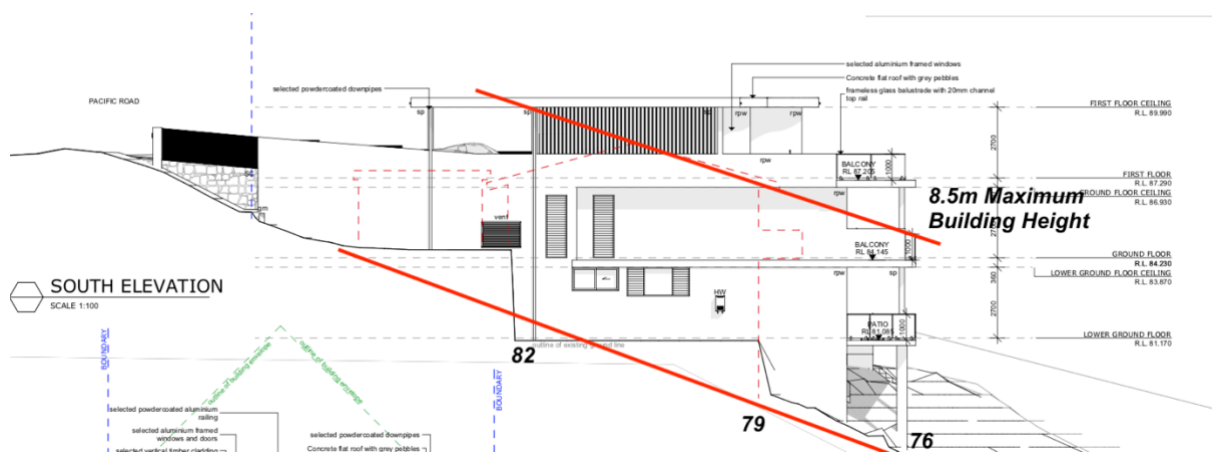
4.3 HEIGHT OF BUILDINGS

(1) The objectives of this clause are as follows:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (c) to minimise any overshadowing of neighbouring properties,
- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The south east corner of the proposed first floor shows a proposed balustrade height at RL 88.21. The survey shows the land at RL 76.92. The building height at this location is 11.29m, exceeding controls by 2.79m, a 33% non-compliance.

The south east corner of the proposed roof top of gutter shows a proposed height at RL 90.35. The survey shows the land at RL 78.97. The building height at this location is 11.38m, exceeding controls by 2.88m, a 34% non-compliance.



SOUTH ELEVATION: Proposed Development grossly exceeds controls

The total disregard to the heights of neighbour's dwellings at below 8.5m maximum building height, shows complete contempt to the compliance to development standards.

The extent of the non-compliance runs the complete elevational width of the proposed dwelling, and exceeds the control by over 2.88m.

The objectives of this clause have not been met:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment: The height and scale of the proposed development is not consistent with the desired character of the locality, with both neighbours dwelling maintaining strict compliance with the 8.5m development standard.

(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment: The height and scale of the proposed development is not consistent with the desired character of the locality, with both neighbours dwelling maintaining strict compliance with the 8.5m development standard.

(c) to minimise any overshadowing of neighbouring properties,

The excessive additional height of 2.88m casts considerable additional shadow. We refer to that matter later in this Submission.

(d) to allow for the reasonable sharing of views

The excessive height represented by the above envelope description, takes Tenacity Views from our residence in a devastating manner. We refer to that matter later in this Submission.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

The excessive additional height of 2.88m, and the failure of the building to step down the slope to follow the topography is a major failure of the proposed development

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The visual impacts of this proposed development on the natural environment of this highly visible area of Palm Beach creates a jarring effect to the landscape.

On these matters alone the DA must be REFUSED.

4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

Based upon the failure to accord with any of the objectives of Objectives of Heights of Buildings, the Clause 4.6 Application must fail.

(1) The objectives of this clause are as follows:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Clause 4.6(4)(a)(i) assessment:

The written request fails to adequately address the matters contained in Clause 4.6(3)(a) and (b) as follows:

- The height of the building is in excess of 8.5m, and rises to 11.38m
- There are insufficient environmental planning grounds to justify contravening the height of buildings development standard nor has it been established as reasonable or unnecessary;
- The assessment does not agree with the applicant's statement that excavation is limited and is an appropriate response to the topography of the site. The assessment finds that the proposal involves excessive cut and fill which is not appropriate for the site or its surrounds;
- The bulk and scale of the proposed development is out of character with the area;
- The proposed development would result in adverse amenity impacts for the surrounding area;
- The proposed development results in a dominance of built form over landscape; and
- The proposal results in view loss for an adjoining property

Clause 4.6(4)(a)(ii) assessment:

Clause 4.6(4)(a)(ii) requires the consent authority to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone in which the development is proposed to be carried out.

The proposed development is considered against the objectives of the height of buildings development standard, as described below:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*
- (i) to share public and private views:*

Consideration:

The proposal does not share private views. Through height departure the proposal does not achieve satisfactory private view sharing.

The proposed dwelling is poorly designed so as to not minimise its visual impact.

The proposal is excessive in height, and includes a departure from the heights of buildings development standards;

The proposed new dwelling is poorly designed and is not compatible with the desired future character of the area in terms of building height and roof form;

The proposal would have an adverse impact on its surrounds.

The proposed dwelling has not been skilfully designed to minimise adverse bulk and scale impacts;

The proposal has not minimised the adverse effects of bulk and scale;

The proposal does not provide adequate spatial relief to adjoining properties;

The proposal results in a dominance of built form over landscape; and

The proposal includes substantial departures from the building envelope development standards which contribute to excessive bulk.

Statement as to satisfaction:

The assessment of any request for variation against the objectives of the development standard finds that the objectives of the development standard are not satisfied.

The proposed development is considered against the objectives of the Zone E4 Environmental Living Zone, as described below:

Objectives of zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The proposed development does not provide for the housing needs of the community within a low density residential environment. The proposed building height is more typically associated with a higher density residential environment, not the low density residential environment.

The proposal does not retain the single dwelling character of this environmentally sensitive residential area of Palm Beach

The proposal does not maintain a general dominance of landscape over built form. The landscaped area is well below the minimum required landscaped area for the site. The proposed development would result in a built form that would have a number of adverse amenity impacts on surrounding properties.

The site is of sufficient size to accommodate a single dwelling house. The proposal, however, does not achieve adequate landscaping or landform retention.

The proposed development is of a height and scale that is not compatible with the desired future character of the area. The proposed development is excessive in height and scale and is too bulky on the street frontage.

The proposed development does not maintain or enhance local amenity. The proposal results in the loss of private views from an adjoining property.

The proposed bulk and scale of the development has not been minimised. The proposal has failed to provide adequate side setbacks and is not appropriately setback from the street which result in built form dominance, poor streetscape outcome and view loss.

Statement as to satisfaction:

The assessment of this request for variation against the objectives of the zone finds that the objectives of the zone are not satisfied.

Clause 4.6(4)(b) assessment:

The concurrence of the Secretary has been obtained (Planning Circular PS 18003 dated 21 February 2018).

PITTWATER DEVELOPMENT CONTROL PLAN 2014

The following matters are relevant to the development under **PDCP 2014**:

Provision	Compliance with Control	Compliance with Objectives
A4.12 Palm Beach Locality	No	No
B3.1 Land Slip	No	No
B6.1 Access Driveways	No	No
B6.2 Internal Driveways	No	No
B6.3 Off-Street Vehicle Parking Requirements	No	No
C1.1 Landscaping	No	No
C1.3 View Sharing	No	No
C1.4 Solar Access	No	No
C1.5 Visual Privacy	No	No
C1.6 Acoustic Privacy	No	No
C1.25 Plant, Equipment Boxes and lift Over-Run	No	No
D Locality Specific Development Controls		
D12 Palm Beach Locality		
D12.1 Character as viewed from a public place	No	No
D12.5 Front Building Line	No	No
D12.6 Side and Rear Building line	No	No
D 12.8 Building Envelope	No	No
D12.11 Fences	No	No
D12.14 Scenic Protection Category One Areas	No	No

A4.12 PALM BEACH LOCALITY

Desired Character

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. 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, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

The proposed development fails every paragraph of the Desired Character of Palm Beach, as described above, namely:

- *maximum of two storeys in any one place in a landscaped setting,*
- *integrated with the landform and landscape.*
- *future development will maintain a building height limit below the tree canopy*
- *minimise bulk and scale*
- *ensuring that future development respects the horizontal massing of the existing built form.*
- *existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation*
- *a balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land.*

B3.1 LAND SLIP

The development must not adversely affect or be adversely affected by geotechnical processes nor must it increase the level of risk for any people, assets and infrastructure in the vicinity due to geotechnical hazards.

We are concerned that excessive vibration will cause our property harm.

B6.1 ACCESS DRIVEWAYS

Safe and convenient access.

Adverse visual impact of driveways is reduced.

Pedestrian safety.

An effective road drainage system.

Maximise the retention of trees and native vegetation in the road reserve.

We are concerned to the height of the access driveway, and ask Council to consider increasing driveway grades to reduce the impact.

B6.2 INTERNAL DRIVEWAYS

Safe and convenient access.

Reduce visual impact of driveways.

Pedestrian safety.

An effective road drainage system.

Maximise the retention of trees and native vegetation.

Reduce contaminate run-off from driveways.

We are concerned that the driveways proposed require a reversing onto the public highway on a very dangerous and blind corner.

B6.3 OFF-STREET VEHICLE PARKING REQUIREMENTS

On steeply sloping sites, car parking solutions may need to be negotiated for each individual site. The range of possible car parking solutions is the provision of suspended or rooftop car parking to provide direct access from the road

We are concerned that the driveways proposed require a reversing onto the public highway on a very dangerous and blind corner, and therefore ask for a three-point turn configuration, or a mechanical turning circle.

C1.1 LANDSCAPING

A built form softened and complemented by landscaping. (En)

Landscaping reflects the scale and form of development. (En)

Retention of canopy trees by encouraging the use of pier and beam footings. (En)

Development results in retention of existing native vegetation. (En)

Landscaping results in the long-term retention of Pittwater's locally native tree canopy. (En)

Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species (En)

Landscaping enhances habitat and amenity value. (En, S)

Landscaping results in reduced risk of landslip. (En, Ec)

Landscaping results in low watering requirement. (En)

The proposal does not maintain a general dominance of landscape over built form. The landscaped area is well below the minimum required landscaped area for the site. The proposed development would result in a built form that would have a number of adverse amenity impacts on surrounding properties.

In **Tenacity**, [Tenacity Consulting v Warringah Council 2004], NSW LEC considered Views. Tenacity suggest that Council should consider:

“A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.”

The development breaches multiple planning controls and is unreasonable.

The impact on views arises as a result of non-compliance with one or more planning controls, and the severe impact is considered unreasonable.

Application of Tenacity planning principle

We have only been able to consider the impact of the proposal on the outward private domain views from our property, by visual assessment.

A preliminary analysis and assessment in relation to the planning principle of Roseth SC of the Land and Environment Court of New South Wales in *Tenacity Consulting v Warringah [2004] NSWLEC 140 - Principles of view sharing: the impact on neighbours (Tenacity)* is made, however we have no confidence that the assessment is accurate due to the absence of height poles.

The steps in Tenacity are sequential and conditional in some cases, meaning that proceeding to further steps may not be required if the conditions for satisfying the preceding threshold is not met.

Step 1 Views to be affected

The first step quoted from the judgement in *Tenacity* is as follows:

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Prior to undertaking Step 1 however, an initial threshold in Tenacity is whether a proposed development takes away part of the view and enjoys it for its own benefit and would therefore seek to share the view. In our opinion the threshold test to proceed to Step 1, we provide the following analysis;

An arc of view to the north to north-east is available when standing at a central location on the elevated decks, living spaces, and other highly used study zones on our property.

The composition of the arc is constrained to the north to north-east either side of the subject site, by built forms and landscape.

The central part of the composition includes the subject site.

Views include scenic and valued features as defined in *Tenacity*.

The proposed development will take away views for its own benefit.

The view from our living zones and decks towards the water view, and the land-water interface.

The existing view is a 'moving landscape', rather than just a 'scenic outlook', given the activity on the water. The extent of view loss is severe, and the features lost are considered to be valued as identified in Step 1 of *Tenacity*.



VIEW FROM THE LIVING ROOM DECK



VIEW FROM THE LIVING ROOM



VIEW FROM THE BEDROOM



VIEW TO THE NORTH: HEADLAND VIEW WILL BE LOST FROM NON-COMPLIANT ENVELOPE

Step 2: From where are views available?

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The views in all cases are available across the ocean boundary of the subject site at angles to the north to north-east from standing [1.4m] and seated [1.2m] positions.

An arc of view to the north to north-east is available when standing at a central location on the elevated decks, living spaces, and other highly used zones on our property:

In this respect we make two points:

- We have no readily obtainable mechanism to reinstate the impacted views from our living zones if the development as proposed proceeds; and
- All of the properties in the locality rely on views over adjacent buildings for their outlook, aspect and views towards the water view

Step 3: Extent of impact

The next step in the principle is to assess the extent of impact, considering the whole of the property and the locations from which the view loss occurs.

Step 3 as quoted is:

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Step 3 also contains a threshold test. If the extent of impact is negligible or minor for example, there may be no justification for proceeding to Step 4, because the threshold for proceeding to considering the reasonableness of the proposed development may not be met. In that case the reasonableness question in Step 4 does not need to be asked and the planning principle has no more work to do.

We consider the extent of view loss in relation to our living room zones to be severe using the qualitative scale adopted in *Tenacity*.

The view lost includes water views and land-water interface. As we rate the extent of view loss as severe in our opinion the threshold to proceed to Step 4 of *Tenacity* is met.

Step 4: Reasonableness

The planning principle states that consideration should be given to the causes of the visual impact and whether they are reasonable in the circumstances.

Step 4 is quoted below:

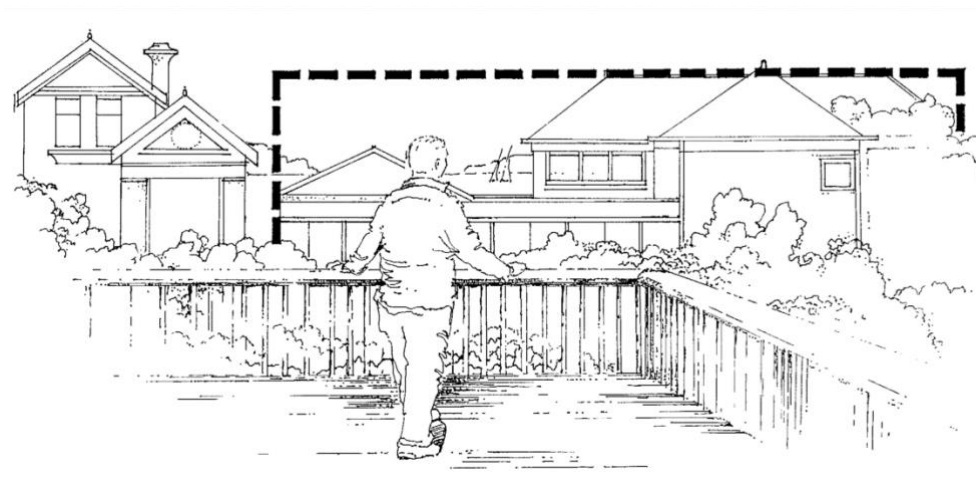
The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the

answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

As the proposed development does not comply with outcomes and controls, that are the most relevant to visual impacts, greater weight would be attributed to the effects caused.

In our opinion the extent of view loss considered to be severe, in relation to the views from our living rooms and living room deck of our dwelling, particularly to the north to north-east. The view is from a location from which it would be reasonable to expect that the existing view, particularly of the water could be retained especially in the context of a development that does not comply with outcomes and controls.

Once Templates are erected, we can provide additional commentary.



Where there is a potential view loss, Council could require a maximum building height of less than 8.5m for part of the building.

The private domain visual catchment is an arc to the north to north-east from which views will be affected as a result of the construction of the proposed development.

The proposed development will create view loss in relation to our property.

The views most affected are from living areas and associated terraces and include very high scenic and highly valued features as defined in Tenacity.

Having applied the tests in the Tenacity planning principle and without a montage or height poles erected that can be relied upon, we conclude that we would be exposed to a severe view loss.

The significant non-compliance with planning outcomes and controls of the proposed development cause this loss.

- LEP 4.3 Heights of Buildings

Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

The applicant should have informed the design by a complete view loss consideration that would have clearly identified that any development into the viewing corridor by non-compliant development would be problematic.

There may be architectural solutions that maintains our view, by proposing development that maintains our view by reducing building height under 8.5m, but this needs careful consideration by the Applicant, along with templates to fully test the design outcome.

The proposed development cannot be supported on visual impacts grounds.

Height poles/ templates

We ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant 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

The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings, including the roof ridge heights.

PUBLIC DOMAIN STREET VIEW LOSS

We are concerned that the proposed non-compliant dwelling will take unreasonable amount of ocean view from the street.

The SEE has failed to complete a Rose Bay Marina Assessment, or even addressed this issue.

We ask Council to consider the matter under *Rose Bay Marina* Pty Limited v Woollahra Municipal Council & Anr [2013] **NSWLEC** 1046.

The planning principle for public domain views adopted in *Rose Bay Marina* involves a two-stage inquiry: the first factual, followed by a second, analytical.

Stage 1 – Investigation

The first stage involves several steps. Initially, the task is to identify the nature and scope of the existing views from the public domain, which should include considerations relating to:

- the nature and extent of any existing obstruction of the view;
- relevant elements of the view;
- what might not be in the view;
- whether the change permanent or temporary;
- what might be the curtilages of important elements within the view.

The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed.

The third step is to identify the extent of the obstruction at each relevant location. In this regard, the Court said that the impact on appreciation of a public domain view should not be subject to any eye height constraint.

The fourth step is to identify the intensity of public use of those locations where that enjoyment will be obscured, in whole or in part, by the proposed private development.

The final step is to inquire whether or not there is any document that identifies the importance of the view to be assessed (such as heritage recognition) or where the applicable planning regime promotes or specifically requires the retention or protection of public domain views. The Court made it clear, however, that the absence of such provisions does not exclude a broad public interest consideration of impacts on public domain views.



VIEW FROM THE STREET. Proposed development extends the non-compliant envelope to completely block this view.

Comment:

The permanent loss of the ocean view and the land/water interface view through this zone is unwelcomed.

The loss of view would extend from the carriageway frontage by people on foot or in motor vehicles.

The street is used for foot traffic.

The various planning control documents all refer to maintaining views from public zones. Many NBC documents refer to the public views, including the LEP and DCP.

Stage 2 – Analysis

The second stage is the analysis of impacts. The Court said the analysis required of a particular development proposal's public domain view impact is both quantitative as well as qualitative, but '*this*

is not a process of mathematical precision requiring an inevitable conclusion based on some fit in a matrix'.

Planning controls or policies for the maintenance or protection of public domain views can create a presumption against the approval of a development with an adverse impact on a public domain view. This being so, the document must be properly considered and the legal status of the document is relevant in this regard.

In the absence of such planning controls or policies, the Court said '*the fundamental quantitative question is whether the view that will remain after the development (if permitted) is still sufficient to understand and appreciate the nature of and attractive or significant elements within the presently unobstructed or partially obstructed view.*' Interestingly in this regard, the Court said that sometimes it may be essential to preserve partially obstructed views from further obstruction whereas in other cases this may be '*mere tokenism*'.

The qualitative evaluation requires an assessment of the aesthetic and other elements of the view, and the outcome of this process '*will necessarily be subjective*'. The framework for how the assessment is undertaken must be clearly articulated including clearly setting out the factors/considerations to be taken into account and the weight attached to them.

- a high value is to be placed on '*iconic views*'
- a completely unobstructed view has value
- whether any significance attached to the view is likely to be altered, and if so, who or what organisation has attributed that significance and why they have done so
- whether the present view is regarded as desirable and whether the change makes it less so and why
- whether any change to whether the view is a static or dynamic one should be regarded as positive or negative and why
- if the view attracts the public to specific locations, why and how that attraction is likely to be impacted
- whether any present obstruction of the view is so extensive as to render preservation of the existing view merely tokenistic
- on the other hand, if the present obstruction of the view is extensive, whether the remainder warrants preservation
- does the insertion of some new element into the view by the proposed development alter the nature of the present view?

Comment:

The view is a high value.

It is an unobstructed view, above the current roof forms, which has added value.

NBC LEP & DCP both refer to the preservation of views from public spaces.

The present view is highly regarded as desirable and the change makes it less so, as it would place a major impediment in the centre of the view.

The view is a dynamic one as there are passing water traffic, and it is of a water/land interface.

Removal of the view might make the walk less appealing. There is obstruction of the view further down the street, and this is one area where the view is available. The obstruction of the view would be extensive, so as not to render preservation of the existing view merely tokenistic.

The view warrants preservation.

The insertion of a non-compliant element into the view by the proposed development alters the nature of the present view, as it becomes disjointed and less dramatic.

Finally, the Court said that *'a sufficiently adverse conclusion on the impact on views from the public domain may be determinative of an application. However, it may also be merely one of a number of factors in the broader assessment process for the proposal.'*

The street view loss is similar to our own view loss, but taking a more expansive view loss to the north along the water/land interface.

The removal of the non-compliant envelope, would resolve the public domain view impact.

A compliant dwelling would limit the water view loss and increase the street view to the ocean.

C1.4 SOLAR ACCESS

Outcomes

Residential development is sited and designed to maximise solar access during mid-winter. (En)

A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)

Reduce usage and/dependence for artificial lighting. (En)

Controls

The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).

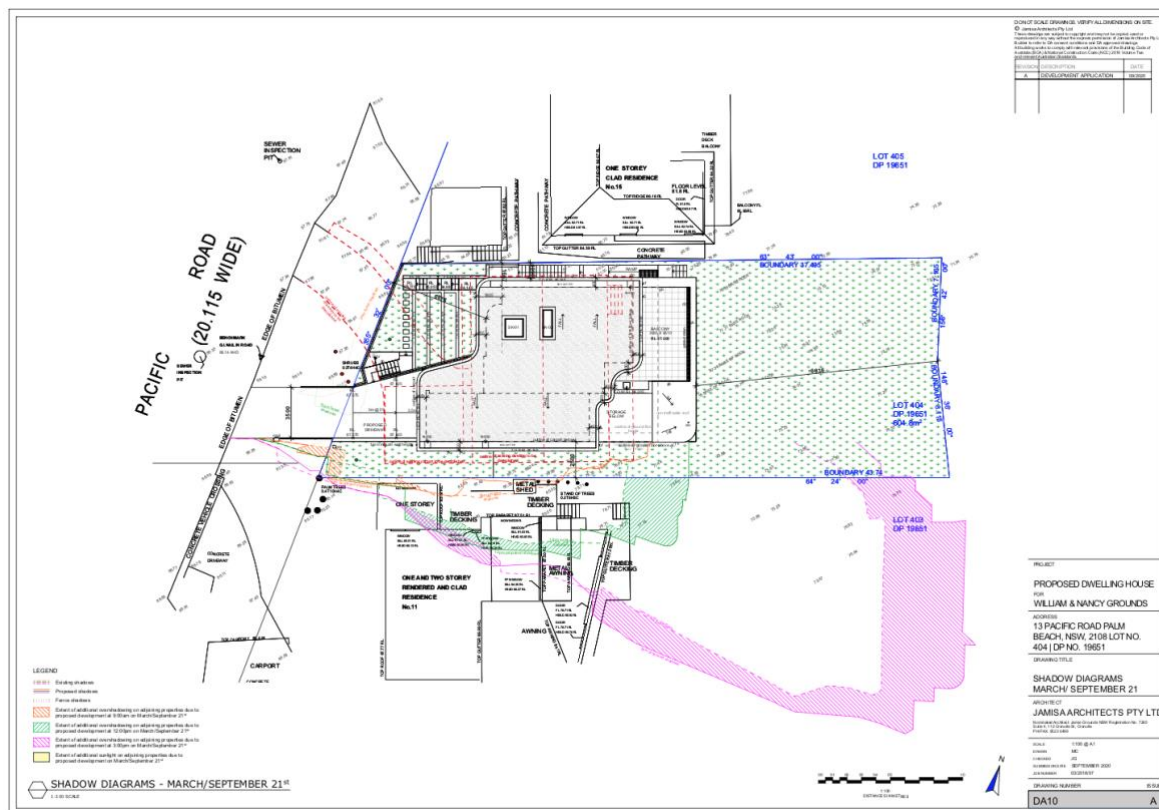
Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid winter.

Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.

The proposal must demonstrate that appropriate solar access is achieved through the application of the Land and Environment Court planning principle for solar access.



SHADOW DIAGRAMS 21 JUNE



SHADOW DIAGRAMS MARCH/SEPTEMBER

In **The Benevolent Society v Waverley Council [2010] NSWLEC 1082** the LEC consolidated and revised planning principle on solar access is now in the following terms:

“Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal’s design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.”

We contend that the overshadowing arises out of poor design. The design does not respect building height, and side envelope controls, and must be considered ‘poor design’.

The Applicant has not submitted hourly solar diagrams to fully assess the solar loss. We ask Council to obtain these diagrams.

The loss of sunlight is directly attributable to the non-compliant envelope.

The planning principle **The Benevolent Society v Waverley Council [2010] NSWLEC 1082** is used to assess overshadowing for development application. An assessment against the planning principle is provided as followed:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that*

are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.

The density of the area is low density, E4 Environmental Living

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

The solar diagrams are not complete, but what has been provided shows that the proposed development will overshadow the adjoining dwellings. This overshadowing will occur from 9am until 3pm. The amount of sunlight that will be lost will only be able to be fully considered once solar elevational drawings are submitted, however it appears the loss is total from 9am to 3pm. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

The proposed development has been designed without considering the amenity of the neighbouring properties. It is considered that a more skilful design, with a compliant building height, could have been adopted that would have reduced the impact on the neighbouring properties. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *To be assessed as being in sunlight, the sun should strike a vertical surface at a horizontal angle of 22.5o or more. (This is because sunlight at extremely oblique angles has little effect.) For a window, door or glass wall to be assessed as being in sunlight, half of its area should be in sunlight. For private open space to be assessed as being in sunlight, either half its area or a useable strip adjoining the living area should be in sunlight, depending on the size of the space. The amount of sunlight on private open space should be measured at ground level.*

This can only be fully assessed once elevational solar drawings at hourly intervals are submitted. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

There is no major overshadowing as a result of vegetation

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

The area is not currently undergoing change.

The assessment of the development against the planning principle results in the development not complying with the solar access controls and therefore amended plans should be requested to reduce

the overshadowing impact on the adjoining neighbour. It is suggested that a more skilful design of the development, with a compliant building height, would result in less impact in regard to solar access. It is requested that Council seek amended plans for the development to reduce the impact of the development, and these matters are addressed latter in this Written Submission.

The windows in question are our north to north-west facing windows, that provide winter sunshine and daylight into our dwelling, into our highly used Study. What has been submitted gives the very clear indication that the outcome is not in accordance with controls.



Our northern side windows will loose winter sunshine from the non-compliant envelope



Our northern side windows will lose winter sunshine from the non-compliant envelope

C1.5 VISUAL PRIVACY

Outcomes

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)

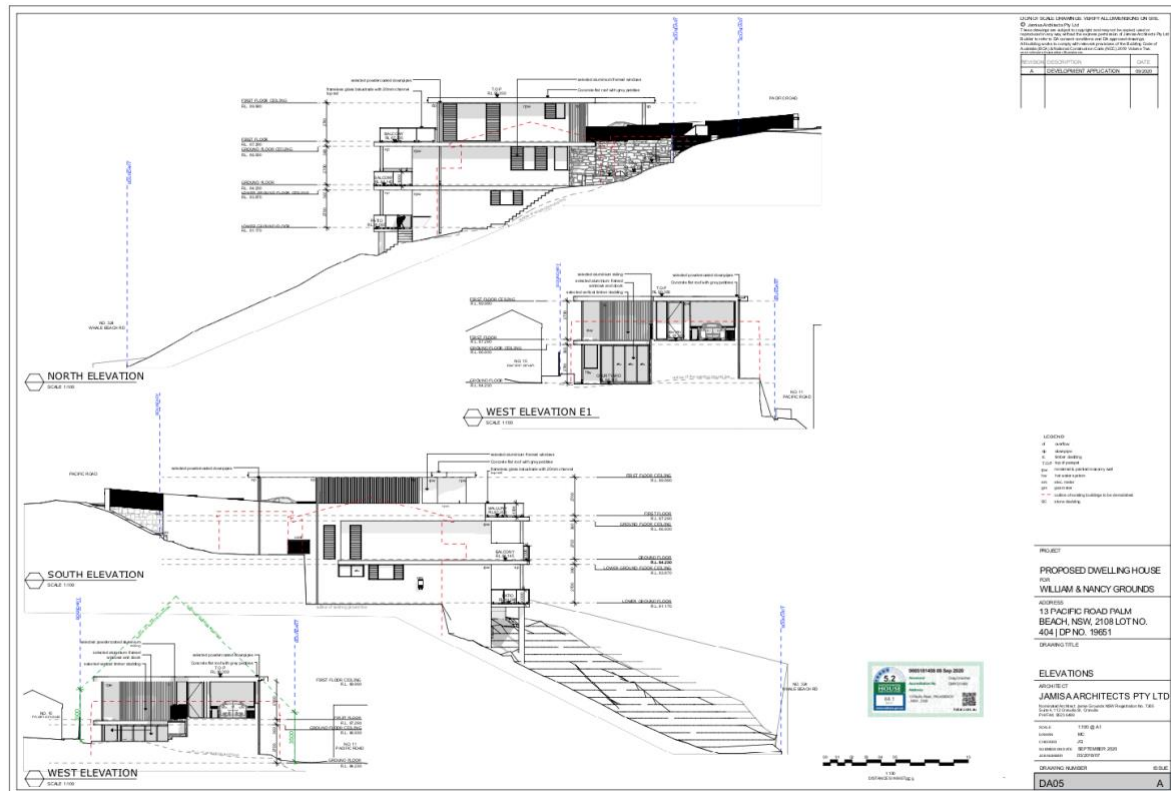
A sense of territory and safety is provided for residents. (S)

Controls

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.



ELEVATIONS: South Elevation faces our property

The dwelling's design does not adequately preserve the privacy of the neighbouring properties located to the rear and side of the site.

The terraces and floor plates above the wall and overall height controls do not assist with achieving the privacy objectives

There are a number of windows and decks that have a direct sight line to windows and decks on our property.

We are concerned to the glazed surfaces facing our property. We ask for these to be completely removed and replaced by windows with 1.6m high sills used in other locations of the proposed development, with privacy screens added.

An assessment of the privacy impact against the planning principle Meriton v Sydney City Council [2004] NSWLEC 313 follows:

Principle 1: The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.

Response: The development is located in a low-density area.

Principle 2: Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)

Response: The proposed development result in a privacy impact with the proposed windows facing neighbours without any screening devices being provided.

Principle 3: The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.

Response: The windows in question are windows of the main circulation zones and living areas, it is considered that the living areas will result in an unacceptable privacy breach. The proposed windows facing the rear private open spaces for the neighbouring dwelling and will result in an unacceptable level of privacy impact.

Principle 4: 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.

Response: The proposed development is a new development and the proposed windows have been designed without any consideration to the privacy of the neighbouring property.

Principle 5: Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.

Response: It is considered that the private open space of the neighbouring dwellings could be protected through the provision of highlight windows and the provision of privacy screens.

Principle 6: Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.

Response: As mentioned above, the use of highlight windows and privacy screens would reduce the impact of the dwelling.

Principle 7: 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.

Response: The landscaping should ensure no loss of water view.

Principle 8: In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.

Response: The area is not undergoing change that would warrant privacy impact such as the one presented.

Comment: As the development is considered to result in an unacceptable privacy impact due to the design, it is requested that the proposed development be redesigned to reduce amenity impact on the neighbouring properties.

C1.6 ACOUSTIC PRIVACY

Outcomes

Noise is substantially contained within each dwelling and noise from any communal or private open space areas are limited. (S)

Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or private open space areas (S)

Controls

Noise-sensitive rooms, such as bedrooms, should be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like.

Noise generating plants including pool/spa motors, air conditioning units and the like shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Developments must comply in all respects with the Protection of the Environment Operations Act 1997, and other relevant legislation.

We are concerned regarding noise from AC plant, heating/cooling plant, and any pool plant

C1.25 PLANT, EQUIPMENT BOXES AND LIFT OVER-RUN

Outcomes

To achieve the desired future character of the Locality.

The bulk and scale of the built form is minimised. (En, S)

Equitable preservation of views and vistas to and/or from public/private places. (S)

To achieve reduction in visual clutter. (En, S)

The appropriate location and design of noise generating equipment.

Controls

Where provided, plant and equipment boxes, air conditioning units and lift over-runs are to be integrated internally into the design fabric of the built form of the building. Council does not encourage air conditioning units on the roof of residential flat buildings and multi dwelling housing. The location of air conditioning units shall be indicated on development assessment plans for approval at the time of Development Application lodgement.

Locate and design all noise generating equipment such as mechanical plant rooms, mechanical equipment, air conditioning units, mechanical ventilation from car parks, driveway entry shutters, garbage collection areas or similar to protect the acoustic privacy of workers, residents and neighbours.

We are concerned regarding the location of AC plant, heating/cooling plant, and any future pool plant. This plant cannot be in the southern setback zone.

D LOCALITY SPECIFIC DEVELOPMENT CONTROLS

D12 PALM BEACH LOCALITY

D12.1 CHARACTER AS VIEWED FROM A PUBLIC PLACE

Outcomes

To achieve the desired future character of the Locality.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)

To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.

The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)

High quality buildings designed and built for the natural context and any natural hazards. (En, S)

Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)

To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.

To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.

To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)

Controls

Buildings which front the street must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality. Blank street frontage facades without windows shall not be permitted.

Walls without articulation shall not have a length greater than 8 metres to any street frontage.

Any building facade to a public place must incorporate at least two of the following design features:

- i. entry feature or portico;*
- ii. awnings or other features over windows;*
- iii. verandahs, balconies or window box treatment to any first floor element;*
- iv. recessing or projecting architectural elements;*
- v. open, deep verandahs; or*
- vi. verandahs, pergolas or similar features above garage doors.*

The bulk and scale of buildings must be minimised.

Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place. Parking structures should be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser.

Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.

Television antennas, satellite dishes and other telecommunications equipment must be minimised and screened as far as possible from public view.

General service facilities must be located underground.

Attempts should be made to conceal all electrical cabling and the like. No conduit or sanitary plumbing is allowed on facades of buildings visible from a public space.

Our particular concerns are:

- To achieve the desired future character of the Locality.
- To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)
- To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.
- The visual impact of the built form is secondary to landscaping and vegetation (En, S, Ec)
- High quality buildings designed and built for the natural context and any natural hazards. (En, S)
- Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)
- To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.

- To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.
- To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)
- The bulk and scale of buildings must be minimised.
- Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.

D12.5 FRONT BUILDING LINE

Outcomes

Achieve the desired future character of the Locality.

Equitable preservation of views and vistas to and/or from public/private places. (S)

The amenity of residential development adjoining a main road is maintained. (S)

Vegetation is retained and enhanced to visually reduce the built form. (En)

Vehicle manoeuvring in a forward direction is facilitated. (S)

To preserve and enhance the rural and bushland character of the locality. (En, S)

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

To encourage attractive street frontages and improve pedestrian amenity.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.

Controls

The minimum front building line shall be in accordance with the following table:

6.5 or established building line, whichever is the greater

Our particular concerns are:

- Achieve the desired future character of the Locality.
- Equitable preservation of views and vistas to and/or from public/private places. (S)
- Vegetation is retained and enhanced to visually reduce the built form. (En)
- Vehicle manoeuvring in a forward direction is facilitated. (S)
- To preserve and enhance the rural and bushland character of the locality. (En, S)
- To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.
- To encourage attractive street frontages and improve pedestrian amenity.
- To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.

- The minimum front building line shall be in accordance with 6.5m or established building line, whichever is the greater

D12.6 SIDE AND REAR BUILDING LINE

Outcomes

To achieve the desired future character of the Locality. (S)

The bulk and scale of the built form is minimised. (En, S)

Equitable preservation of views and vistas to and/or from public/private places. (S)

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)

Flexibility in the siting of buildings and access. (En, S)

Vegetation is retained and enhanced to visually reduce the built form. (En)

To ensure a landscaped buffer between commercial and residential zones is established.

Controls

The minimum side and rear building line for built structures including pools and parking structures, other than driveways, fences and retaining walls, shall be in accordance with the following table:

2.5 to at least one side; 1.0 for other side

We are concerned that although the side setback of 2.5m is provided, the non-compliance to Building Envelope results in the outcomes not being achieved.

D 12.8 BUILDING ENVELOPE

Outcomes

To achieve the desired future character of the Locality. (S)

To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.

To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

The bulk and scale of the built form is minimised. (En, S)

Equitable preservation of views and vistas to and/or from public/private places. (S)

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties. (En, S)

Vegetation is retained and enhanced to visually reduce the built form. (En)

Controls

Buildings are to be sited within the following envelope:

Planes are to be projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height

Our particular concerns are:

- To achieve the desired future character of the Locality. (S)
- To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.
- To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.
- The bulk and scale of the built form is minimised. (En, S)
- Equitable preservation of views and vistas to and/or from public/private places. (S)
- To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties. (En, S)
- Vegetation is retained and enhanced to visually reduce the built form. (En)
- Buildings are to be sited within the following envelope: Planes are to be projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height

D12.11 FENCES

Outcomes

To achieve the desired future character of the Locality. (S)

To ensure fences compliment and conserve the visual character of the street and neighbourhood

To define the boundaries and edges between public and private land and between areas of different function.

To contribute positively to the public domain.

An open streetscape that allows casual surveillance of the street. (S)

Fences, where provided, are suitably screened from view from a public place. (S)

Safe sight distances and clear view of the street (including to and from driveways) for motorists and pedestrians. (S)

To ensure heritage significance is protected and enhanced. (S)

To ensure an open view to and from the waterway is maintained. (S)

An area of private open space is provided for properties that front the Pittwater Waterway. (S)

Controls

a. Front fences and side fences (within the front building setback)

Front fences and side fences (within the front building setback) shall:

- *not exceed a maximum height of 1 metre above existing ground level,*
- *be compatible with the streetscape character, and*
- *not obstruct views available from the road.*

Fences are to be constructed of open, see-through, dark-coloured materials.

Landscaping is to screen the fence on the road side. Such landscaping is to be trimmed to ensure clear view of pedestrians and vehicles travelling along the roadway, for vehicles and pedestrians exiting the site.

Our particular concerns are:

- To achieve the desired future character of the Locality. (S)
- To ensure fences compliment and conserve the visual character of the street and neighbourhood
- To define the boundaries and edges between public and private land and between areas of different function.
- To contribute positively to the public domain.
- An open streetscape that allows casual surveillance of the street. (S)
- Fences, where provided, are suitably screened from view from a public place. (S)
- Safe sight distances and clear view of the street (including to and from driveways) for motorists and pedestrians. (S)
- To ensure an open view to and from the waterway is maintained. (S)
- Front fences and side fences (within the front building setback) shall not exceed a maximum height of 1 metre above existing ground level, be compatible with the streetscape character, and not obstruct views available from the road.
- Fences are to be constructed of open, see-through, dark-coloured materials.
- Landscaping is to screen the fence on the road side.

D12.14 SCENIC PROTECTION CATEGORY ONE AREAS

Outcomes

To achieve the desired future character of the Locality.

To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront.(En,S).

Maintenance and enhancement of the tree canopy.(En,S)

Colours and materials recede into a well vegetated natural environment.(En,S)

To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component (En, S)

To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.

Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

Controls

Screen planting shall be located between structures and boundaries facing waterways.

Canopy trees are required between dwellings and boundaries facing waterways and waterfront reserves.

Development is to minimise the impact on existing significant vegetation.

The applicant shall demonstrate the retention and regeneration of existing native vegetation outside of the immediate area required to carry out the development.

The development is to incorporate measures for planting and maintenance of native vegetation within those areas which are already cleared, and which are not required to be cleared to allow for the development.

The siting, building form, orientation and scale of the development shall not compromise the visual integrity of the site by removal of canopy trees along ridges and upper slopes.

The development must incorporate the use of unobtrusive and non-reflective materials and the colours of exterior surfaces shall help blend structures into the natural environment.

Applicants are to demonstrate that proposed colours and materials will be dark and earthy.

Comment: The proposed development has not been designed to minimise visual impacts in the scenic protection area. The landscaped provision results in an unacceptable dominance of built form. The proposed development is excessive in bulk and scale resulting in adverse impact on the streetscape and on the visual amenity of the surrounding environment.

NSW LEC PLANNING PRINCIPLES

We bring to the attention of Council numerous **NSW LEC Planning Principles** that have relevance to this DA.

In **Tenacity**, [**Tenacity Consulting v Warringah Council 2004**], NSW LEC considered Views. Tenacity suggest that Council should consider:

“A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.”

Commentary:

The development breaches multiple planning controls and is unreasonable.

The impact on views arises as a result of non-compliance with one or more planning controls, and the severe impact is considered unreasonable.

In **Veloshin**, [**Veloshin v Randwick Council 2007**], NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”

Commentary:

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

In **Davies**, [**Davies v Penrith City Council 2013**], NSW LEC considered General Impact. Davies suggest that Council should consider:

“Would it require the loss of reasonable development potential to avoid the impact?”

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?”

Commentary:

The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal.

In **Veloshin, [Veloshin v Randwick Council 2007]**, NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”

Commentary:

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

In **Project Venture Developments v Pittwater Council (2005) NSW LEC 191**, NSW LEC considered character:

“whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site’s visual catchment”

Commentary:

The non-compliant elements of the proposed development, particularly caused from the non-compliant front setbacks, the excess height, and the 5m boundary walls, would have most observers finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context’*

AMENDED PLANS: PROPOSED CONDITIONS OF CONSENT TO ANY APPROVAL:

We ask that Council request that the Applicant submit Amended Plans to resolve these matters in full, prior to determination.

These conditions would preferably all be dealt with under resubmission of Amended Plans, or by a withdrawal of this DA and a submission of a new DA.

We present them for Council's consideration.

- The proposed development is not to exceed 8.5m maximum building height above the survey levels along the southern boundary. These Registered Surveyors survey marks are to be accurately positioned on the elevation;
- The southern side setback to increase to 3m at all levels, due to the non-compliant D 12.8 Building Envelope
- All windows in the southern elevation to have 1.6m high sills;
- All privacy screens to all decks must be solid and be 1.6m high, and positioned below the 8.5m maximum building height above the survey levels along the southern boundary;
- Landscape to be designed in the southern setback zone to fully screen 8.5m high proposed development

ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

Applicable regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia and *Home Building Act 1989*, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection may be addressed by appropriate consent conditions in the event of an approval.

LIKELY IMPACTS OF THE DEVELOPMENT

This assessment has found that the proposal will have a detrimental impact on the natural and built environments pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.

SUITABILITY OF THE SITE

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

PUBLIC INTEREST

The proposal is not in the public interest because it results in a development of excessive bulk and scale which has adverse amenity impacts on adjoining properties and the broader locality.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, Council's LEP & DCP and other relevant policies.

The applicant's written requests pursuant to clause 4.6 of Council's LEP does not adequately address the matters required to be demonstrated in subclause 4.6(3). The assessment of the written requests has found that the proposed development will not be in the public interest as defined by clause 4.6 of the LEP because it is not consistent with the objectives of the particular standards and the objectives for development within the zone in which the development is proposed to be carried out.

The application must be recommended for refusal.

The proposed development does not satisfy the relevant objectives of the LEP and the relevant outcomes and controls contained in the DCP as they are reasonably applied to an application proposing a new dwelling.

If the Applicant does not give Council immediate confirmation that the above matters will be rectified by resubmission of Amended Plans based upon our consideration of a more skilful design, and corrects all incorrect information on the DA drawings, then Council has no other option than to **REFUSE** this DA for the reasons stated in this Written Submission

The outcome is a building that causes poor amenity outcomes and other amenity loss concerns due to non-compliance to multiple residential outcomes and controls.

The development does not satisfy the objectives of the standard and will present poor residential amenity consequences.

The identified non-compliances have not been appropriately justified having regard to the associated objectives, outcomes and controls.

The subject site is of a large size, and there is no reason, unique or otherwise, why a fully compliant solution cannot be designed on the site, to avoid amenity loss.

Having given due consideration to the relevant considerations pursuant to 4.15 of the *Environmental Planning & Assessment Act 1979* (as amended) it has not been demonstrated that the proposed development is appropriate for approval.

This application results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

In consideration of the proposal and the merit consideration of the development, the proposal is not considered to be consistent with the objectives, outcomes and controls of the DCP and objectives, aims, outcomes and controls of the LEP.

The resultant development is not considered to be an appropriate outcome for the site as it fails the balance between the development of the site and the retention of significant natural features and the maintenance of a reasonable level of amenity for adjoining properties.

The processes and assessments have not been satisfactorily addressed.

The DA scheme submitted requires to be amended, and 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 simply issue a refusal.

We expect that the final determination will be carried out by the LPP, due to the numerous excessive non-compliances to outcomes and controls, if not refused earlier for the reasons stated within this Submission.

We request these matters be closely considered in the assessment of the proposed development.

We expect that on such a sensitive site, the Applicant should be charged by Council to deliver a totally compliant scheme to LEP and DCP outcomes and controls.

There is no excuse that neighbours amenity must suffer due to non-compliance to the controls.

We contend that the Development Application is not in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, LEP and DCP and other relevant policies.

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, LEP & DCP and other relevant policies.

We will welcome the opportunity to further expand on any of the issues once Amended Plans are submitted, and once templates and height poles are erected based upon the reductions identified within this Submission.

If this does not occur the Development Application should be REFUSED by Council.

Yours faithfully,

Mr & Mrs Vernon & Donna Casey

**11 Pacific Road
Palm Beach
NSW 2108**

Appendix A Conditions of Consent

Compliance with other Departments, Authority or Service Requirement

Prescribed Conditions

General Requirements

Approved Land Use

Nothing in this consent shall authorise the use of the site as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, as defined within the LEP. Any variation to the approved land use and/occupancy beyond the scope of the above definition will require the submission to Council of a new DA.

Conditions to be satisfied prior to the issue of the CC

Amendments to the approved plans [**see attached list above in main body of Submission*]

All windows facing neighbours to have obscured glazing

All privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.

Pre-commencement Dilapidation Report

Compliance with standards [demolition]

Compliance with standards

Boundary Identification Survey

Structural Adequacy & Excavation Work

Geotechnical Report Recommendations to be incorporated into designs and structural plans

Engineering Assessment

Engineers Certification of Plans, including all retaining walls

Compliance with Ecologists Recommendations pre construction

Tanking of Basement Level

Installation & Maintenance of Sediment & Erosion Control

Demolition Traffic Management Plan

Construction Traffic Management Plan

Waste Management Plan
Waste & Recycling Requirements
Public Domain Plan
Soil and Water Management Program

Shoring of Council's Road Reserve
Vehicle Crossing Application
Pedestrian sight distance at property boundary
Location of security gate and intercom system
Minimum driveway width
Access driveway
Allocation of parking spaces

On-site Stormwater Detention Details
Stormwater Disposal
Sydney Water
Water Quality Management

External finishes to Roof
Colours & Materials

New Landscaping Plan
Project Arborist
Tree Protection
Tree Trunk, Root and Branch Protection
Root Mapping
Tree Removal within the Road Reserve
On slab landscape planting and associated works

Mechanical plant location
AC Condenser Units

Design Impact on processes and public/private amenity
No excavation within 1m of boundary
Protection of Neighbours assets

Pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the boundary

Plant room and equipment for operational conditions - Noise and vibrations

Noise from all plant rooms including roof top mechanical plant room, mechanical ventilation for car parks, extraction units and exhaust fans, air condition units and any motors of other equipment

associated with the building must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open.

Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

Conditions that must be addressed prior to any commencement

Pre-Construction Dilapidation Report
Installation and maintenance of sediment and erosion control

Pedestrian Sight Distance at Property Boundary
Demolition and Construction Traffic Management Plan
On Street Work Zones and Permits
Kerbside Parking Restrictions

Project Arborist
Tree Removal
Tree Removal in the road reserve
Tree Trunk, Branch, and Root Protection
Tree protection
Tree and vegetation removal from property

Conditions to be complied with during demolition and building works

Road Reserve
Removing, handling and disposing of asbestos
Demolition works – Asbestos

Property Boundary levels
Survey Certificate

Implementation of Demolition Traffic Management Plan
Implementation of Construction Traffic Management Plan
Traffic Control during Road Works
Vehicle Crossings
Footpath Construction

Geotechnical issues
Detailed Site Investigation, Remedial Action Plan & Validation
Installation and maintenance of sediment controls
Building materials

Rock Breaking

Protection of adjoining property

Vibration at 2.5mm/sec with a halt at 2.0mm/sec

No excavation within 3m of boundary

Ecologists Recommendations during construction

Waste Management during development

Waste/Recycling Requirements

Tree Protection – Arborist Supervision of Works

Tree and vegetation protection

Tree Condition

Native vegetation protection

Protection of rock and sites of significance

Aboriginal heritage

Protection of Sites of Significance

Notification of Inspections

Conditions which must be complied with prior to the issue of the OC

Post Construction Dilapidation Report

Certification of Structures

Geotechnical Certificate

Environmental Reports Certification

Landscape Completion Certification

Certification of Civil Works & Works as executed data on council land

Fire Safety Matters

Retaining Wall

Required Planting

Positive Covenant and Restriction as to User for On-site stormwater disposal structures

Positive Covenant for the maintenance of stormwater pump out facilities

Contamination Remediation, Validation and Site Audit Statement

Reinstating the damaged road reserve during construction

Condition of retained vegetation

Stormwater disposal

Works as executed drawings - stormwater

Installation of solid fuel burning heaters:

Certification of solid fuel burning heaters

Required Tree Planting

Required Planting

Acoustic treatment of pool filter

Noise Nuisance from plant

Lighting Nuisance

Swimming pool requirements

Garbage and Recycling Facilities

House number Building Number

Waste Management Confirmation

Waste and Recycling Facilities Certificate of Compliance

Waste/Recycling Compliance Documentation

Positive Covenant for Waste Services

Authorisation of legal documentation required for waste services

Privacy Screens

Reinstatement of Kerbs

Control of noise, odour and vibrations from equipment within plant rooms and ventilation systems connected with the building to ensure noise and vibration from this equipment does not impact on the health and well-being of persons living within the complex and other surrounding premises.

Noise and vibrations. Noise from all plant must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open. Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

Mechanical Ventilation certification: Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668: the use of mechanical ventilation.

Ongoing Conditions that must be complied with at all times

Approved Land Use

Maintenance of solid fuel heater

Operation of solid fuel heaters
Landscape maintenance
Landscaping adjoining vehicular access
Maintenance of stormwater treatment measures
Retention of Natural Features
No additional trees or scrub planting in viewing or solar access corridors of neighbours
Environmental and Priority Weed Control
Control of weeds
No planting environmental weeds
Maintain fauna access and landscaping provisions
Compliance with ecologists recommendation
Works to cease if heritage item found
Dead or injured wildlife
Noise
Noise Nuisance from plant
Swimming pool filter, pump and AC units [noise]
Outdoor lighting
Lighting Nuisance
Plant room and equipment for operational conditions - Noise and vibrations
Loading and Unloading vehicles