
Sent: 19/09/2021 1:04:02 PM
Subject: Submission to Council re: 189 Riverview Road - DA2021/1522- from JOHN SHEEHAN
Attachments: 189 RIVERVIEW ROAD DA.doc;

Dear Sir/Madam,

Please attached my submission regarding DA2021/1522.

I request confirmation of receipt of this email and attachment

PROFESSOR JOHN SHEEHAN AM

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LFAPF FRICS MPIA(Fellow) MRTPI
3 Shore Brace,
CLAREVILLE NSW
2107

19 September 2021

Development Assessment Officer ,
NORTHERN BEACHES COUNCIL
Email: council@northernbeaches.nsw.gov.au

Dear Sir/Madam,

RE: Development Application No.2021/1522 for No.189 Riverview Road, Clareville (Avalon Beach).

Thank you for the opportunity to respond to the public notification of receipt by Northern Beaches Council (NBC) of the abovementioned Development Application DA2021/1522. I provide below a number of responses to the Application:

1. The proposed development is located in Stokes Point, an area which contains a remnant Spotted Gum Forest determined as an endangered ecological community (EEC) in the Sydney Basin Bioregion in late 1998 by the (then) NSW Scientific Committee under *Part 3 of Schedule 1 Threatened Species Act 1995* (now *Biodiversity Conservation Act 2016*). Pittwater Council subsequently wrote to private landowners in Stokes Point (and others) advising on May 2001 of the determination of an EEC with the particular “responsibility to care for and maintain” resting with landowners such as the owner of No.189 Riverview Road. Hence, consideration of this development application by Council is not possible given s.7.16 (2) *Biodiversity Conservation Act 2016* requires that:

*The consent authority **must refuse to grant consent** under Part 4 of the Environmental Planning and Assessment Act 1979, in the case of an application for development consent to which this Division applies (other than for State significant development), if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values.*

2. The proposed residence allegedly necessitates the removal of sixteen canopy trees described in Council’s Landscape Referral Response of 10 September as “from the the Pittwater Spotted Gum Forest, Endangered Ecological Community EEC”¹. In addition, other trees on the adjoining private properties are adversely impacted² notably a canopy tree immediately to the south which is impacted within the respective TPZ by 29.24%.

¹ Northern Beaches Council (2021) “Landscape Referral Response” DA2021/1522, (10 September), 1 (Officer Comments, para.3)

² Northern Beaches Council, 2 , para.2 (Tree 23).

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3. Further, two trees on the road reserve in front of No.189 Riverview Road are impacted by the proposed development. Importantly, the road reserve were vested³ in Pittwater Council (now Northern Beaches Council) pursuant to *s.16 Roads Act 1993*, and the two trees will be impacted in their respective Tree Protection Zone (TPZ) 23.4% and 22.23%, and crucially their respective Structural Root Zone (SRZ) are “impacted as well.”⁴ Council has a further heightened responsibility to care for and maintain such trees beyond those of private property holders within the EEC.

4. As a former Acting Commissioner of the Land and Environment Court of NSW, I am acutely aware of the responsibilities of Council as consent authority in this Development Application, notably the responsibilities resting with Council pursuant to the previously mentioned *Biodiversity Conservation Act 2016*. As mentioned above, Council has **no** discretion under the above legislation to approve the application given the Landscape Referral Response clearly indicates:

*the proposed development is likely to have serious and irreversible impacts on biodiversity values.*⁵

I trust that the above response is of assistance to Council in assessing the application for consent to the residential development set out in DA2021/1522. On the basis of what I have advised above, the application is fatally flawed and should be returned to the applicant for redesign, or if not withdrawn, then refused.

Yours sincerely



PROFESSOR JOHN SHEEHAN AM

(former Deputy Director, Asia-Pacific Centre for Complex Real Property Rights, University of Technology, Sydney (UTS); Adjunct Professor, Faculty of Society and Design, Bond University)

³ Vested in Council, July 2007

⁴ Northern Beaches Council, 2 , para.2 (Trees 4 & 5).

⁵ *s.7.16 (2) Biodiversity Conservation Act 2016*.