
Sent: 8/04/2020 12:57:08 PM
Subject: FW: Submission to DA2020/0147 on behalf of owners of 23 Loch Street, Freshwater
Attachments: Objection Letter - 23 Loch Street, Freshwater.pdf;

Dear Sir/Madam,

Please see below objection letter relating to **DA2020/0147** submitted on behalf of the owners of 23 Loch Street, Freshwater.

Should you wish to discuss, please do not hesitate to contact me.

Kind regards,

Stephanie Wu
Town Planner



A National Town Planning Consultancy

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From: Stephanie Wu
Sent: Friday, 3 April 2020 1:01 PM
To: Anne-Marie Young <Anne-Marie.Young@northernbeaches.nsw.gov.au>
Cc: Darren Holland <darren@aventusgroup.com.au>; Tania Holland <tania.holland@live.com.au>; Bruce Stafford <bruce@staffordarchitecture.com.au>; Andrew Cowan <acowan@willowtp.com.au>
Subject: Submission to DA2020/0147 on behalf of owners of 23 Loch Street, Freshwater

Hi Anne-Marie Young,

I am writing on behalf of the owners of 23 Loch Street, Freshwater to submit an objection letter to **DA2020/0147** regarding the proposed consolidation and resubdivision at 2 Wyadra Avenue, Freshwater and 14-16 Ellen Street, Curl Curl.

Attached is the objection letter prepared for 23 Loch Street, Freshwater. A supporting letter has also been prepared by Mills Oakley to accompany the objection and is provided as an appendix to the objection letter.

Should you wish to discuss, please do not hesitate to contact me.

Kind regards,

Stephanie Wu
Town Planner



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The General Manager
 Northern Beaches Council
 725 Pittwater Road
 Dee Why NSW 2099

Attention: Anne-Marie Young

SUBMISSION TO DEVELOPMENT APPLICATION (DA2020/0147)

PROPOSED CONSOLIDATION OF THREE LOTS INTO ONE LOT AND RESUBDIVISION INTO THREE TORRENS TITLE LOTS AT 2 WYADRA AVENUE AND 14-16 ELLEN STREET, CURL CURL

Dear Anne-Marie,

This objection letter is submitted on behalf of the owners of 23 Loch Street, Freshwater (Darren and Tania Holland) in relation to Development Application **DA2020/0147** for the consolidation of three lots into one lot and resubdivision into three Torrens title lots at 2 Wyadra Avenue (Lot 102 DP 1224100) and 14-16 Ellen Street, Curl Curl (Lot 10 DP14040 and Lot 101 DP1224100).

23 Loch Street adjoins the western boundary of subject development site and will be severely impacted given the irregular pattern and proximity of the proposed subdivision.

In its existing state, 23 Loch Street contains a single detached dwelling that affords an uninterrupted view corridor to the east to Curl Curl Beach, the Pacific Ocean and the South Curl Curl Rockpool. These views are considered iconic and warrant preservation.

DA2017/1203 was approved by Northern Beaches Council on 8 August 2018 for "*Demolition Works and construction of a dwelling*". **Figures 1 and 2** depict the section and lower level floor plan of the building envelope as approved under **DA2017/1203**.

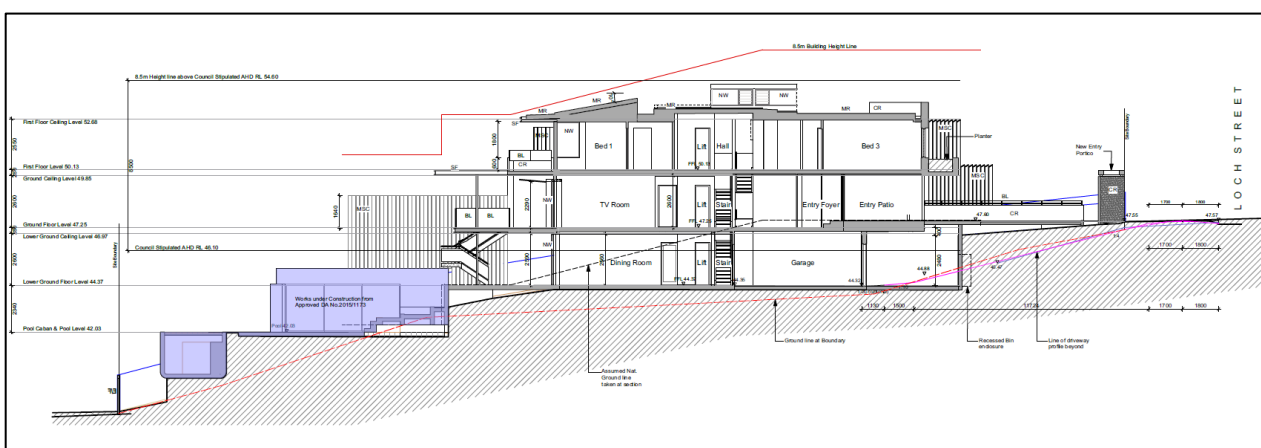


Figure 1 Section approved under DA2017/1203 (Playoust Churcher Architects 2017)

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Consolidation of Three Lots into One Lot and Resubdivision into Three Torrens Title Lots
2 Wyadra Avenue and 14-16 Ellen Street, Curl Curl

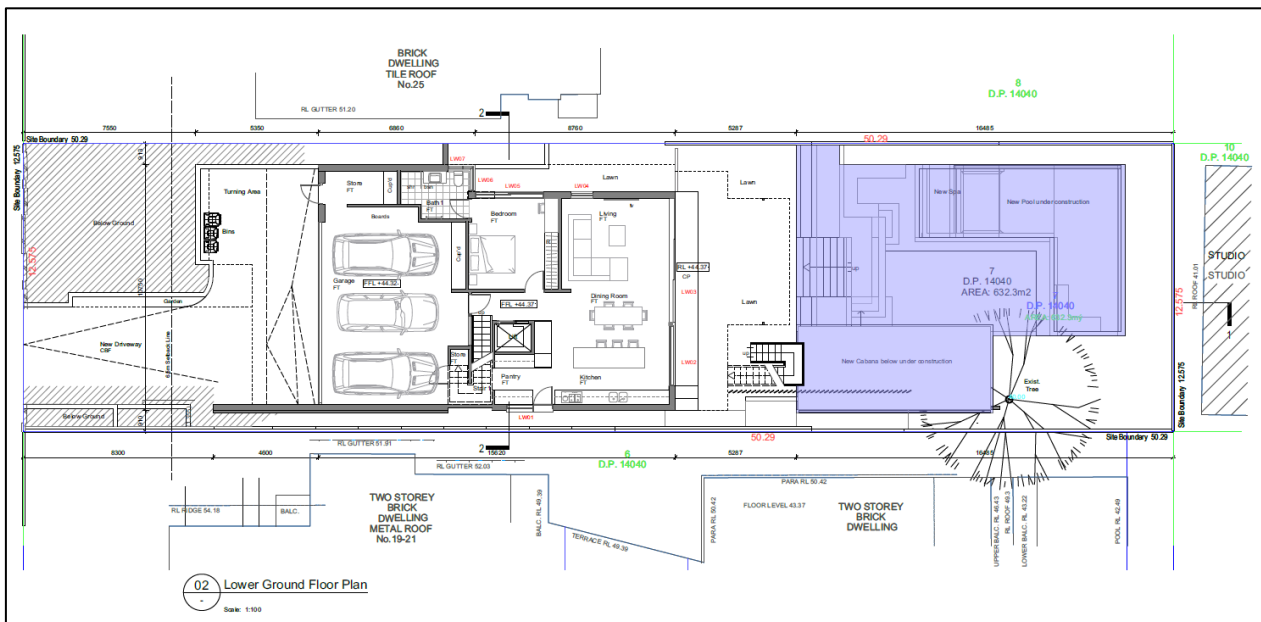


Figure 2 Lower Ground Floor Plan Living Area approved under DA2017/1203 (Playoust Churcher Architects 2017)

Overall, the indicative dwelling at 2 Wyadra Avenue facilitated by the proposed subdivision will undermine the view corridor to the iconic view of Curl Curl Beach currently afforded by 23 Loch Street. Future residential development at the site will also pose detrimental impacts on the overall residential amenity of the dwelling as currently built as well as the built form as approved under **DA2017/1203**.

In addition, concerns are also raised over the overbearing structure of the indicative dwelling given its location in a highly constrained area, its excessive bulk and scale and the associated severe visual impacts on 23 Loch Street.

Accordingly, it is considered that the proposal (**DA2020/0147**) warrants a refusal on the basis that the proposal will adversely impact on the overall amenity of 23 Loch Street and involves non-compliances with various planning controls and objectives of the relevant planning instruments as detailed in this letter.

Enclosed is a supporting letter prepared by Mills Oakley (**Appendix 1**) to accompany this objection letter for 23-25 Loch Street.

The issues relevant to this proposal as they relate to the property at 23 Loch Street, Freshwater are discussed below.

1. Irregular subdivision pattern

The proposed development involving a three-lot Torrens title subdivision would result in the creation of a large and irregular allotment in a highly constrained and visible area, which is incompatible with the existing scale and patterns of residential development in the locality.

Should approval be granted to the subject Development Application, the proposed development would provide a platform for future residential development on Proposed Lot 202 (2 Wyadra Avenue) which will impose adverse impacts relating to view loss, amenity, privacy and solar access.

Despite the numerical compliance with the minimum lot size control under the *Warringah Local Environmental Plan 2011* (WLEP2011), the proposed subdivision is considered to be inconsistent with the objectives of Clause 4.1 Minimum subdivision lot size of WLEP2011. Specifically, Subclauses (a), (d) and (g) prescribe the following objectives of Clause 4.1:

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- (a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,*
- (d) to achieve low intensity of land use in localities of environmental significance,*
- (g) to retain and protect existing significant natural landscape features,*

The proposed development is not considered to align with the abovementioned objectives as the proposed subdivision pattern will undermine the residential character of the area by creating allotments that are inconsistent with the pattern, size and configuration of existing lots in the Curl Curl and Freshwater localities. Through subdividing the existing site into an irregular configuration, the proposal will result in significant intensification of the site in which the proposed subdivision will be inconsistent with the R2 Low Density Residential zoning. Further, land subdivision of a highly constrained site with a steep topography and natural rock outcrop will result in disruption to the existing natural landform as well as the significant landscape features of the natural and coastal environment. This is further discussed in Section 2 of this letter.

As such, the proposal is inconsistent with the desired subdivision pattern of the locality. If approval is to be granted to the proposed subdivision, the proposal will ultimately create a precedent for irregular and incompatible subdivision patterns for future residential development, which will impact on the overall residential character and amenity of residential uses in the Northern Beaches LGA.

2. Disturbance to natural landform

The proposed subdivision will result in significant disruption to the natural landform of the site and locality generally. As shown on the conceptual Architectural Plans prepared by Peter Stutchbury Architecture, the proposal will result in an allotment situated on steep sloping land with ridge tops and an existing rock shelf where future residential development may be facilitated.

Given the constraints of the land, any future dwelling house at 2 Wyadra Avenue will require bulk excavation and fill to create a suitable platform for the construction, which is likely to result in disruption to the distinct natural landform and environmental features of the locality. Additionally, while the site is identified as being located on flanking slopes 5° to 25° (Area B) and with slopes > 25° (Area C) in WLEP2011, excavation and earthworks on the site will result in adverse impacts on the site as well as 23 Loch Street relating to amenity, land stability and increased stormwater runoff. Therefore, the site preparation works required to facilitate future residential development are substantial and are deemed inconsistent with the objectives of Clause 6.4 Development on sloping land under WLEP2011.

Further, it is noted that proposed Lot 202 at 2 Wyadra Avenue has historically been vacant due to the identified site constraints, indicating the allotment being unsuitable for residential development. Hence, it is considered that the allotment should remain in its current state in order to preserve the natural landform of the site as well as the amenity of the surrounding residential properties.

3. View loss caused by future dwelling at 2 Wyadra Avenue

The proposal involving a three-lot subdivision to facilitate a future two-storey dwelling will result in adverse visual impacts and view loss to the existing dwellings at 23 Loch Street, Freshwater. Given the steep topography and rock outcrops situated on the site, the future dwelling will be constructed on a ridge line and a highly elevated platform that is in close proximity to 23 Loch Street, which will impose adverse viewing and visual impacts relating to privacy, amenity and solar access.

In order to evaluate the viewing impacts of the future residential dwelling, the principles of *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 have been considered as follows:

The first step requires the assessment of views that the proposal will affect and establishes a value system for assessing different kinds of views. It suggests that:

- *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.*

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- *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)*

Comment: Views afforded from 23 Loch Street and surrounding properties consist predominately of views of Curl Curl Beach and headland which are considered to be iconic. At present, the view corridor is unobstructed as there are no dwellings or ancillary site structures which impede the corridor. The indicative dwelling at 2 Wyadra Avenue will be located so as to significantly obstruct the view corridor as it will be elevated and sited only approximately 922mm from the western boundary which is the common boundary with 23 Loch Street

The second step is to consider how reasonable it is to expect to retain the views. It acknowledges the following:

- *Protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries.*
- *Views enjoyed from a standing or sitting position is also relevant as sitting views are more difficult to protect than standing views.*
- *The expectation to retain side views and sitting views are often unrealistic.*

Comment: Retention of the views afforded is considered reasonable in the circumstances. Views afforded are obtained when sitting and standing across the rear boundary of 23 Loch Street. It is noted that both standing and sitting views of the pool area and the living area on lower ground level will be disrupted by the building envelope of the indicative dwelling. Particularly, the living area on lower ground level is the principal living area and key view area for the dwelling, which affords views to the iconic Curl Curl Beach and the South Curl Curl Rockpool. Further, the view of ground level will also be obscured by the proposed building envelope. **Figure 3** depicts the view corridor afforded by the pool area towards Curl Curl Beach and the South Curl Curl Rockpool.



Figure 3 View towards Curl Curl Beach and South Curl Curl Rockpool from Pool Area of 23 Loch Street (Holland 2020)

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It is noted that the proposed building envelope will adversely obstruct the currently uninterrupted view corridor of the living area and pool area in 23 Loch Street, which will result in significant view loss to Curl Curl Beach, the ocean baths and northern headland. The impact derived from the subject proposal will result in opportunity for a substantial variation to the existing setting as the future dwelling will be located where the land has been traditionally undisturbed.

The third step is to assess the extent of the impact, and should consider that 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). Whilst the impact may be assessed quantitatively it is more useful to assess the view loss qualitatively as:

- *Negligible*
- *Minor*
- *Moderate*
- *Severe*
- *Devastating.*

Comment: The extent of the view loss is severe. As the future dwelling on the proposed allotment will be located in a currently undisturbed elevated area and will adjoin the existing dwelling at 23 Loch Street to the west, the view corridor to the east will be obstructed. As addressed previously, the view corridor of the living area on ground and lower ground level of the building envelope approved under **DA2017/1203** will be obstructed by the indicative dwelling, which will result in detrimental impacts regarding view loss as views from living areas are highly valued given that residents tend to spend most time in the living area. The setback of the indicative dwelling to the rear boundary (being 922mm) results in the dwelling being elevated and the sight lines to the east significantly impaired, particularly of the Curl Curl beach area and ocean baths.

In this respect, the proposed subdivision and future dwelling will impede the reasonable sharing of view, which is inconsistent with the objectives of D7 Views in the Warringah Development Control Plan 2011 (WDCP2011).

The fourth step is to assess the reasonableness of the proposal that is causing the impact and the following factors should be considered:

- *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.*

Comment: The loss of views afforded is unreasonable as the scale of development is incompatible with the zone objectives of the subject site and surrounding land. A 922mm setback from the western boundary is deemed insufficient to retain a sense of openness of the rear yard and to preserve the amenity and privacy between 23 Loch Street and the future dwelling at the site, thus fails to maintain a reasonable level of residential amenity. Should an increased setback be provided (in excess of 4m) and the height of the dwelling lowered to be single storey, the extent of view loss will be substantially reduced.

The Statement of Environmental Effects prepared by Longitude Planning Pty Ltd noted the setback from the western boundary is to be treated as a side boundary. Given the close proximity of the future dwelling from 23-25 Loch Street, the future dwelling will result in visual dominance as the proposed setback is insufficient to minimise the bulk and scale of the future dwelling. Further, as stated previously, the western setback is insufficient to facilitate reasonable sharing of views and hence will disrupt the view corridor of the existing dwelling at 23 Loch Street. Based on the above, the proposed setback exhibits inconsistency with the objectives of B5 Side Boundary Setback despite the numerical compliance with the side boundary setback.

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In addition, where approval is granted to the **DA2020/0147**, the subdivision of the site will create a platform for development that is highly undesirable and will establish a dangerous precedent for irregular subdivision patterns that are incompatible with the residential character of the Curl Curl and Freshwater localities.

Due to the non-compliances with various planning controls prescribed by WDCP2011, the loss of view imposed by the proposed indicative dwelling is unacceptable.

4. Visual impacts and bulk and scale

The proposed subdivision and future construction of a two-storey dwelling house will present visual dominance at the site as any built form will result in overlooking into the eastern elevation of the existing dwellings at 23 Loch Street. The height and bulk will present as an overbearing structure that is exacerbated as a result of the steep sloping topography. Specifically, the living area on lower ground and ground level of the dwelling at 23 Loch Street is oriented towards the east and affords the view to Curl Curl Beach which will be directly impacted. **Figure 4** illustrates the existing view corridor to the east from the pool area of 23 Loch Street, where the roof of the existing secondary dwelling is almost on the same level of the pool area.



Figure 4 Existing secondary dwelling located on the same level with the pool area (Holland 2020)

Additionally, as illustrated on the conceptual Architectural Plans, the roof of the indicative building envelope exhibits an RL of 43.34, which is even higher than the existing secondary dwelling with an RL at the ridge of 41.170. Therefore, it is evident that the indicative dwelling will adversely undermine the currently undisrupted view corridor and impose severe visual impact on 23 Loch Street regarding direct overlooking, solar access and amenity.

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Furthermore, the conceptual Architectural Plans only provided a view corridor analysis for 25 Loch Street and failed to consider the impacts of view loss and privacy for 23 Loch Street. It should also be noted that the ground and lower ground level which include the living area and pool house are missing from the East Elevation on the Architectural Plans, indicating that the potential visual and viewing impacts of the future dwelling have not been carefully considered to maintain the privacy and amenity of the adjoining dwellings.

It is noted that no site visits to 23 Loch Street have been undertaken by the architects from Peter Stutchbury Architecture to assess the view impacts arising from the indicative dwelling.

In addition, the east elevation exhibits a maximum building height of approximately 9m, which represents an exceedance of the maximum building height limit of 8.5m prescribed by WLEP2011, which further exacerbates the impact of the proposed bulk and built form and impose further visual impact on 23-25 Loch Street.

5. Landscaped open space

The Architectural Plans have not provided an explicit calculation of the proposed landscaped open space (LOS) for the indicative dwelling. The Plans noted that the indicative dwelling will provide a "proposed impermeable area" of 394m². However neither the Architectural Plans nor the SEE provided an explanation as to what "impermeable area" represents and what is counted as "impermeable" in the calculation.

The SEE stated that the site will provide an indicative LOS of 292m², which is calculated by subtracting the "proposed impermeable area" from the site area. Again, it is unclear whether the calculation has been undertaken in accordance with the definition of LOS in WDCP2011.

It is noted that the site is subject to a minimum LOS provision of 40% of the site area, which is equivalent to 274.4m² in accordance with the requirement of D1 Landscaped Open Space and Bushland Setting in WDCP2011.

It is unclear whether the indicative dwelling will comply with the LOS requirement of WDCP2011.

6. Unlawfully erected structure – granny flat

A search on Council's website for applications relevant to the development site has not indicated any form of approval on the existing granny flat currently situated at 14 Ellen Street, which is used as a secondary dwelling. As such, the existing structure without a development approval is deemed an unlawful structure.

This existing structure is located on the common boundary with 23 Loch Street and disrupts the view corridor towards the east. This structure provides suitable evidence that any new built form on the proposed allotment would in fact have an overbearing impact on the residential amenity of 23 Loch Street and therefore, development for any purpose on the site should not be supported.

7. Requests

In light of the above, should the subject Development Application **DA2020/0147** for subdivision be approved, it is requested that the following be incorporated into the conditions of consent:

- A. A restriction placed on the Title as to the building envelope that is permitted along with a height limit of one storey.
- B. Any future dwelling must be subject to a separate Development Application and that:
 - o Height poles are to be erected now to assess the impact of any building in terms of building height
 - o A 3D Model of the proposed dwelling is to be provided.

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The above requests are made to ensure future dwellings on the development site is undertaken in accordance with the objectives and requirements of the relevant planning instruments and that the overall residential amenity of 23 Loch Street is preserved.

Conclusion

Based on the matters discussed above, it is recommended Council refuse the proposal. Notwithstanding, the requests made in Section 7A should be implemented in the conditions of consent should **DA2020/0147** be approved for the subdivision. Given the sensitive nature of the land and surrounds, the future development of a dwelling house at 2 Wyadra Avenue will not be in the public interest and will not accord with the objectives of WLEP2011 or the objects of the *Environmental Planning & Assessment Act 1979*.

Where future development applications are made for the indicative dwelling, further detailed investigation and amendments to the dwelling house are required to ensure that the proposed development will not undermine the public interest and that the proposal can satisfactorily address the provisions of the relevant planning instruments.

Yours faithfully,



Andrew Cowan
Director
Willowtree Planning Pty Ltd
ACN 146 035 707

Enclosed:

- **Appendix 1: Supporting letter prepared by Mills Oakley**

Letter of Objection to DA2020/0147

Consolidation of Three Lots into One Lot and Resubdivision into Three Torrens Title Lots
2 Wyadra Avenue and 14-16 Ellen Street, Curl Curl

Appendix 1 Supporting letter prepared by Mills Oakley

29 March 2020

Your ref:
Our ref: CYCS/AJWS/3440446

Ms Rebecca Englund
Principal Planner
Northern Beaches Council
725 Pittwater Road
Dee Why NSW 2099

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Dear Ms Englund

Submission to DA2020/14 – Development Application for Re-subdivision

We refer to DA2020/14 for the consolidation of 3 lots into one lot and resubdivision into three torrens title lots (**the Development Application**) at 2 Wyadra Ave, Freshwater, 14 Ellen Street and 16 Ellen Street, Curl Curl (**the Site**).

We act for the owners of both 23 and 25 Loch St, Freshwater and make this submission regarding the Development Application on their behalf. Both 23 and 25 Loch St currently share their rear boundaries with 2 Wyadra Ave. 14 and 16 Ellen Street sit below 2 Wyadra due to the slope of the land.

The proposed consolidation and resubdivision in the Development Application has three main elements, namely:

- Shifting the boundary between 14 Ellen St and 2 Wyadra to increase the width and area of 2 Wyadra. This would also involve a right of carriageway (ROW) along the boundary of 14 Ellen St in favour of 2 Wyadra to allow pedestrian access;
- An adjustment to the boundary between 2 Wyadra and 16 Ellen by adding a small area of land to 16 Ellen St; and
- A boundary adjustment between 14 and 16 Ellen Streets to achieve minimum lot size for both parcels of land.

Although all of the elements of the Development Application are linked, the most significant element is increasing the size of the parcel of land at 2 Wyadra by adding land from what is currently 14 Ellen St. The Development Application seeks to increase the area of 2 Wyadra Ave by 127.1 sq m, which is a large amount in the context of land zoned R2 residential. The resubdivision is particularly problematic due to the topography of the land. As 2 Wyadra sits along the ridge line and is a battle-axe property, any increase in the area of the land which would facilitate a larger development on this lot would be highly likely to severely impact the amenity of our client's properties. Allowing such a large, enclosed parcel of land on a ridge line through the resubdivision is inconsistent with the relevant objectives in the *Warringah Local Environmental Plan 2011 (WLEP)* and would create an unusual and undesirable precedent.

Our client objects to the Development Applications for a number of reasons which we outline below.

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Nature of the Subdivision

1. As outlined above, the Development Application creates a large rear battleaxe lot along the ridgeline at 2 Wyadra Ave. The creation of such a large lot on the ridgeline would be inconsistent with the surrounding environment and would create an undesirable precedent for subdivision.
2. Furthermore, **this resubdivision is inconsistent with the objectives of both the R2 Low Density Residential zone and clause 4.1 regarding to minimum lot size in the LEP.**
3. One of only three objectives of the R2 zone in the WLEP 2011 is *'To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah'*.
4. To allow a large, land-locked battle axe block along the ridgeline which could then be developed with a large residential dwelling is clearly not consistent with the landscaped setting and in harmony with the natural environment of Warringah. There are no other large battle axe blocks along the ridgeline in this area. **Any large dwelling built on the resubdivided land would be a dominant and prominent feature which would clearly be visible on the ridgeline. In our view, such a development is clearly not in harmony with the natural environment of Warringah.**
5. Furthermore, the development application is also inconsistent with the objectives of clause 4.1 on minimum subdivision size. The first objective of clause 4.1 is *'to protect the residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality'*.
6. In our view, this large landlocked parcel on the ridgeline is not consistent with the pattern, size and configuration of existing lots in the location. There are few other lots of this configuration, and to create such a large lot in this configuration would draw attention to the lot and make a feature of the lot. Any development on this lot would be a prominent feature in the local area as it would stand out due to its location and non-conformity with the existing pattern of residential developments.
7. **As the Development Application is inconsistent with key objectives of both the R2 zone and the minimum subdivision lot size, Council should not grant consent to the development application as it stands.** At the very least, the Northern Beaches Council (Council) should impose conditions requiring the registration on title of restrictions relating to the height of any building which may be constructed on the Site in the future (we deal with this in more detail below).

View Loss

8. Although the Development Application is for a resubdivision, the purpose of this subdivision is plainly to facilitate the construction of a large new residential dwelling on 2 Wyandra Ave. This is acknowledged in the Statement of Environmental Effects and other documents submitted with the Development Application.
9. The construction of such a dwelling would have significant impacts on the amenity of both 23 and 25 Loch St and would result in substantial view loss, particularly from 23 Loch St.
10. As you would know, the NSW Land and Environment Court has adopted a number of planning principles which are of relevance in determining whether a development application should be approved. This includes a planning principle on view sharing.
11. The principles to be applied in relation to view sharing can be found in *Tenacity Consulting v Warringah* [2004] NSWLEC 140. There are four main steps:

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- a) **Assessment of views** – water views are more highly valued than land views and whole views are valued more highly than partial views (i.e. water views in which the interface between land and water is visible is more valuable than one in which it is obscured). If the proposed resubdivision goes ahead and a new dwelling is built on 2 Wyadra, our client stands to lose their unobstructed water views. **Our client currently has views of both Curl Curl beach, the ocean pool as well as the ocean. They have both water views and whole views which are the type of views which should be protected most.** These views of the beach, ocean pool and the ocean can be seen at Figure 1 below.



Figure 1: Views from 23 Loch St to beach, ocean pool and ocean

- b) Consider what part of the property the views are obtained from, as sitting views and side views cannot always be expected to be maintained. **Our client has views from the living areas of both 23 and 25 Loch St directly to Curl Curl beach and the ocean. These are not side views but are direct views from key living areas of both houses which would be lost if a large dwelling, as envisaged by the proposed subdivision, was to be constructed.**
- c) Assess the extent of the impact. In our view the **view loss impact would be severe.** Furthermore, **the view loss would be from the living areas. Applying Tenacity, view loss from living areas is more significant than view loss from other areas.**
- d) Assess the reasonableness of the proposal. In this case the proposal is technically compliant (in terms of the subdivision) but the nature of the subdivision (being a large, landlocked parcel on a ridgeline) is unusual and any development of a large dwelling on

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the ridge line would be unreasonable.

12. **When the principles of view sharing in *Tenacity* are applied, it is clear that our client's views should be protected.** The proposed resubdivision would directly impact on the ability to protect those views.

Condition limiting height

13. Due to the significant impact which any future development of 2 Wyadra would have on our client's property, if Council is minded to approve the DA, **we urge Council to place a condition on any consent for subdivision which limits the height of any building on 2 Wyadra Ave.** This ought to be achieved by imposing a condition requiring the registration on title of a restriction on height. That restriction should be in favour of the Council, so that it is not able to be evaded by the operation of cl.1.9A of the WLEP 2011 (see sub-clause 3 in particular which states that "*This clause does not affect the rights or interests of any public authority under any registered instrument*").
14. Whilst a consent authority would not of a matter of course place such a condition on a subdivision application, the Courts have held that such a condition is appropriate in certain circumstances,
15. In *Parrot v Kiama [2004] NSWLEC 77*, Senior Commissioner Roseth set out the circumstances in which a subdivision application should include information on the building to be built on the resulting allotments. **The Senior Commission found that 'a subdivision application should provide constraints on future buildings when the proposed allotments are smaller than usual, or environmentally sensitive or where significant impacts on neighbours is likely and needs careful design to minimise them'.** In this case the impact of the subdivision would otherwise have a significant impact on the neighbouring properties at 23 and 25 Loch St, and therefore needs careful design consideration now to minimise them.
16. In accordance with the Planning Principle outlined in *Parrot v Kiama*, if Council does approve the Development Application it should, at a minimum, impose a condition limiting the height of any future development on 2 Wyadra. If a new dwelling was built to the maximum permissible height of 8.5 metres, our clients would lose almost all of the views from their approved lower ground level living areas from 23 Loch St. The height of any future dwellings at 2 Wyadra should be limited to one storey.

Summary

In our opinion, the proposed resubdivision is an unusual proposal which would result in an unusually large lot in an odd configuration, which is not consistent with other lots in the area nor sympathetic to the natural environment. As the new, larger lot at 2 Wyadra is in such a prominent position on the ridge line, any large dwelling to be built on the lot would be a prominent feature in the area which would draw the eye due to its location and orientation. Such a development is inconsistent with a number of objectives in the WLEP 2011 and would also establish an undesirable precedent in Council's LGA. Furthermore, future development of the subdivided lot would have unacceptable impacts on view loss from our client's properties. The principles of view sharing outlined in *Tenacity* do not support the development which is likely to arise from the subdivision.

We urge Council to refuse the above Development Application. If Council does choose to approve the Application, it is appropriate for Council to include a condition which restricts the height of any building which may be constructed at 2 Wyadra in the future.

If you have any questions or require further information, please do not hesitate to contact Anthony Whealy at awhealy@millsOakley.com.au or direct line 8035 7848, or Clare Collett at ccollett@millsOakley.com.au or on direct line 9121 9027.

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Yours sincerely



Anthony Whealy
Partner
Accredited Specialist — Local Government and Planning

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