

26 August 2021

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

By e-mail: catriona.shirley@northernbeaches.nsw.gov.au

Attention: Catriona Shirley

Dear Catriona,

**Submission raising objection to Development Application DA2021/1229
Alterations and Additions to a Dwelling House
7 Pavilion Street, Queenscliff**

I write regarding the above Development Application to raise objection to DA2021/1229 on behalf my client's Ms Fiona Seaton and Mr Michael Vanderfield, owners of 2B Pavilion Street, Queenscliff. 2B Pavilion Street is sited directly opposite the subject site on the opposite side of Pavilion Street. The subject site sits between my client's property and the ocean.

The Development Application seeks consent for a new privacy screen which is not a vertical structure but projects out at an angle, increasing the built form and thereby accentuating the view loss that would arise. The proposed development would have a detrimental impact on my clients for the reasons set out below and discussed in greater detail in this submission.

Summary of objection

- Non-compliant development contrary to Warringah DCP 2011, B5 – Side Boundary setbacks; D7 -Views and D9 – Building Bulk.
- Highly valued view loss – A loss of highly valued views as per the four part view loss assessment established by the Land & Environment Court – *Tenacity consulting v Warringah [2004] NSWLEC 140* contrary to D7 of the DCP.
- Impact on amenity of neighbouring occupiers – cumulative impact of the above.

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- Visual impact when viewed from the streetscene

Site details

The subject site is located at 7 Pavilion Street, Queenscliff. The site, as outlined in the SEE, is 910.4sqm. The site is located to the east of Pavilion Street and directly opposite my client's property. The subject site is positioned on the edge of the coastal cliff and forms the visual boundary between the ocean at Freshwater Beach, streetscene and properties located on the opposite side of Pavilion Street (including my client's property). The dwelling house is sited slightly back from the cliff edge and behind the swimming pool ancillary to the dwelling. The side boundary of the dwelling house is set back off the southern boundary allowing view access between the subject site and adjacent apartment building at 5 Pavilion Street.

Importantly, the view between the buildings is the only full ocean view remaining further to the extension and increase in height of the dwelling at 7 Pavilion Street which had a severe impact on my client's ocean views.

Character of the area and streetscene

Pavilion Street runs along the cliff top overlooking Freshwater Beach to the north. Residential accommodation is perched on top of the cliff top between the ocean and streetscene and important views are obtained between the existing built form. The surrounding residential environment is predominantly made up of detached single and two storey dwellings fronting the streetscene and apartment buildings, including no. 5 Pavilion Street.

Proposed development

Development Application DA2021/1229 seeks consent for the construction of a privacy screen at 7 Pavilion Street, Queenscliff.

In preparing this submission, I have considered the impacts of the proposed development as detailed in the submitted plans prepared by Peter Formosa dated 12 May 2021, Statement of Environmental Effects (SEE) prepared by Nolan Planning dated May 2021 and accompanying reports.

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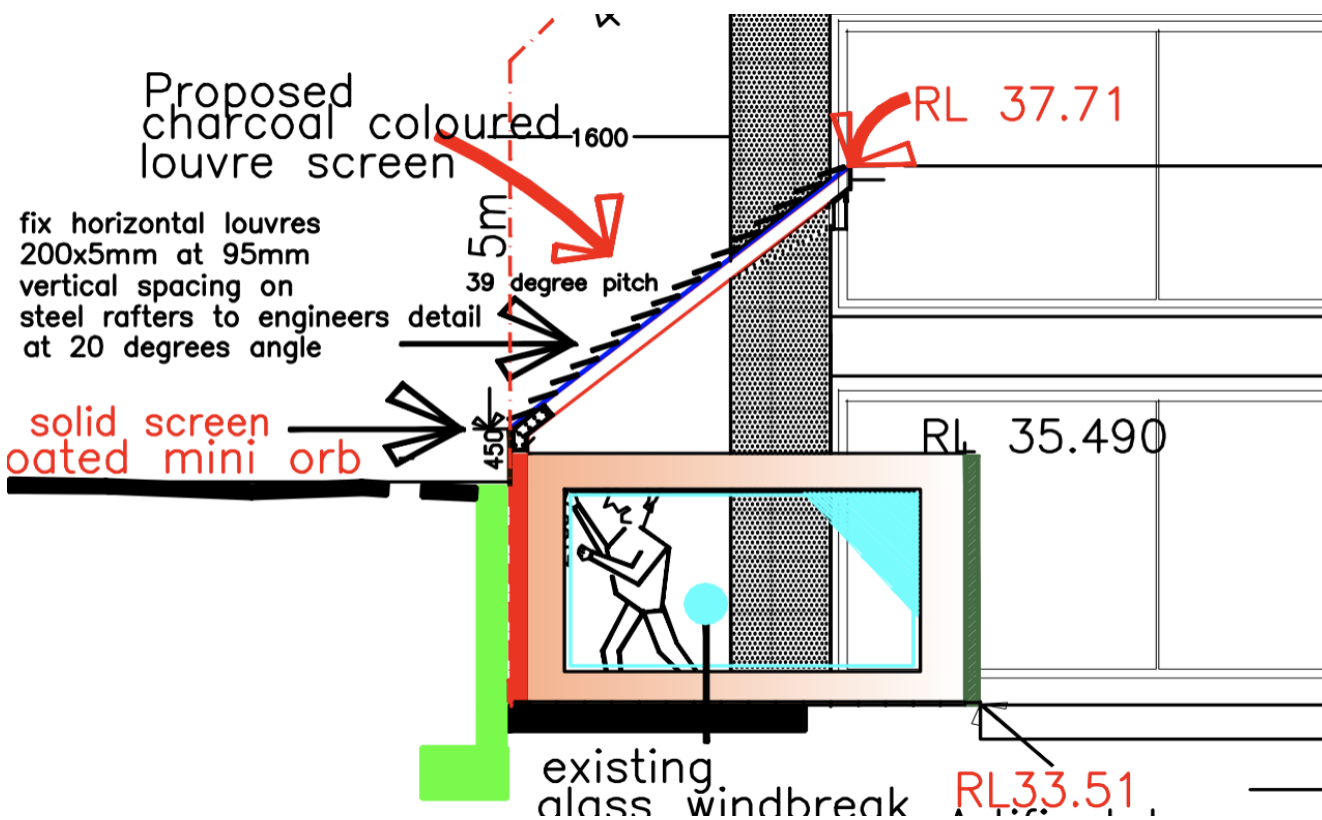
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It is my interpretation of the submitted plans and information provided that the proposed privacy screen is not a simple vertical structure with minimal built form. The proposed screen will project initially to a height of 2.15 metres from ground level as it abuts the existing southern boundary and then extend a further 2.06 metres at an angle of 39 degrees to reach an overall height of 4.2 metres.

Figure 1: Extract from submitted DA plans showing proposed privacy screen



Source: Extract from submitted Plans prepared by Peter Formosa – Sheet 3 – DWG No 2107 A

By virtue of the overall height and projecting roof form, the impact of the proposed development would be far greater than a simple vertical screen.

Should amended plans be submitted to try to overcome concerns raised in this submission letter, then I request the opportunity for my clients to submit an additional submission accordingly.

Relevant legislation and Planning Controls

In preparing this submission, I have carefully considered the following legislation and planning controls

Environmental Planning & Assessment Act 1979 (The Act)
Environmental Planning and Assessment Regulation 2000 (The Regulations)
Coastal Management Act 2016 (CM Act)
State Environmental Planning Policy (Coastal Management), 2018
State Environmental Planning Policy Exempt and Complying Development
Warringah Local Environmental Plan 2011(LEP)
Warringah Development Control Plan 2011 (DCP)

Coastal Management Act (CM Act), 2016 and associated SEPP (Coastal Management), 2018

The subject site is located in a Coastal Environment Area, as specified in Clause 8 of the CM Act 2016.

SEPP exempt and complying development

State Environmental Planning Policy Exempt & Complying Development, Subdivision 31 Privacy Screens sets out specified development and development standards for privacy screens not attached to a boundary fence or retaining wall. Although not applicable for this DA, it should be noted that a suitable level of privacy may be achieved via compliance with Subdivision 31 of SEPP exempt and comply development and, by virtue of the development standards, would not have such a detrimental impact on my client's view loss.

Local Environmental Plan (LEP)

Land use zone: The subject site is zoned R2 Low Density Residential under the LEP.

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The zone objectives are as follows:

- *To provide for the housing needs of the community within a low density residential environment;*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents;*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment: The proposed development is permissible within the zone.

Clause 5.10 – Heritage Conservation

The SEE accompanying the subject DA acknowledges that the rear of the site is a Heritage Conservation Area. A Heritage Impact Statement has not been submitted with this application.

Development Control Plan (DCP)

DCP Control B5 - Side Boundary Setbacks

The proposed development is non-compliant with DCP control B5 Side boundary Setbacks.

Objectives

To provide opportunities for deep soil landscape areas.

- *To ensure that development does not become visually dominant.*
- *To ensure that the scale and bulk of buildings is minimised.*
- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*
- *To provide reasonable sharing of views to and from public and private properties.*

Comment: The DCP map side boundary setback requirements for the subject site are 0.9 metres. The proposed development abuts the southern side boundary and has no side setback. By virtue of the height and design of the proposed, the privacy screen and projecting louvres would be visually intrusive when viewed from the streetscene and detrimentally impact on the

sharing of views both from the public domain and from my client's property at 2B Pavilion Street. The proposed development fails to comply with the requirements and objectives of DCP Control B5.

DCP Control D7 -Views

The proposed development is non-compliant with DCP Control D7 as it fails to allow for the reasonable sharing of views.

The SEE makes reference to the Pre lodgement meeting and actions required. A view analysis was required and has been included in the SEE. However, the view analysis prepared does not include an assessment of the impact on my client's property. In the absence of this analysis, I have provided a view analysis in this submission in accordance with the planning principles established by the Land & Environment Court (L&EC) in *Tenacity v Warringah Council*.

Objectives

- *To allow for the reasonable sharing of views.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To ensure existing canopy trees have priority over views.*

Requirements

1. *Development shall provide for the reasonable sharing of views.*

Comment: My clients currently enjoy ocean views between the side boundaries of no. 5 and no. 7 Pavilion Street. The ocean views have already been impacted upon given the increase in height at the subject site under DA2018/0612. The retained views still enjoyed are now limited to the views obtained in the gaps between the built form and the extent of the impact is increased as a result.

Tenacity consulting v Warringah [2004] NSWLEC 140 is the view loss assessment established by the Land & Environmental Court. In applying this test, the following assessment is relevant.

First step: Assessment of views to be affected.

'Water views are valued more highly than land views... Whole views are valued more highly than partial views, e.g., a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.'

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View 1: View from Main Bedroom – whole water views are now limited to the gap between buildings



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The views to be affected are land and water views.

The views to be affected are partially water views in which the interface between land and water is visible.

The views to be affected by the proposed development are assessed as highly valuable given that they are the only whole water views remaining and enjoyed by my clients.

Second step: From what part of the property the view are obtained

[T]he 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 views to be affected are from the front boundary where views should be protected.

Third step: Assess the extent of the impact.

*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)...
... It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

View 2: View from front verandah which is the principle outdoor living area



The view from the front verandah is enjoyed from both a standing position and sitting position and is therefore, highly valued.

View loss is considered severe as the proposed development would impact on the only whole water view corridor retained and enjoyed by my clients further to the view loss permitted under DA2018/0612.

Fourth step: Assess the reasonableness of the proposal that is causing the impact

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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 proposed development fails to comply with the Warringah DCP 2011, B5 – Side Boundary Setbacks and by virtue of this, D7 -Views and D9 Building Bulk.

In light of the above, the proposed development would have a severe impact on highly valued views caused by an unreasonable proposal arising due to non-compliance with the stated DCP controls.

D9 – Building Bulk

Objectives

- To encourage good design and innovative architecture to improve the urban environment.*
- To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Requirements

- 1. Side and rear setbacks are to be progressively increased as wall height increases.*
- 2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*
- 3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:
 The amount of fill is not to exceed one metre in depth.
 Fill is not to spread beyond the footprint of the building.
 *Excavation of the landform is to be minimised.**
- 4. Building height and scale needs to relate to topography and site conditions.*
- 5. Orientate development to address the street.*
- 6. Use colour, materials and surface treatment to reduce building bulk.*
- 7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.*
- 8. Articulate walls to reduce building mass.*

Comment: As previously outlined in this submission, the proposed development does not comply with the side setback requirements of the DCP and does not allow for any side setback.

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The proposed development would appear as an obscure and incongruous structure, out of character in the immediate environment. My virtue of this, the built form would present a significant visual impact when viewed from my client's property and from the public domain.

Impact on the streetscene

View 3: View from the public domain



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Comment: For the reason discussed, the proposed development would have a detrimental impact on the streetscene and obstruct views from the public domain. The photo above in View 3 includes the view between no 7 and no 5 Pavilion Street. The gap between buildings provides for important view aspects from the public domain to the ocean and should be preserved.

Impact on amenity of neighbouring occupiers

The proposed development would clearly have a materially significant impact on neighbouring amenity. The Development Application fails to comply with the DCP controls referred to in this submission. The impact on neighbouring amenity is a result of a built form that would look out of place in its setting and create an unacceptable view loss for my clients.

Conclusion

This submission sets out my client's concerns regarding the proposed development under Development Application DA2021/1229.

The proposed development would have a materially detrimental impact on the amenity of neighbouring occupiers (my client) in terms of view lost and restrict views from the public domain. Further to this, the proposed development would appear as an incongruous structure in the surrounding environment.

This Development Application is non-compliant with the Warringah DCP 2011, B3 – Side Boundary Envelope; D7 -Views and D9 -Building Bulk.

I thank you in advance for your consideration of the concerns raised in this submission.

Kind regards,

Karen Buckingham *on behalf of Ms Fiona Seaton and Mr Michael Vanderfield*
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