
From: [REDACTED]
Sent: 23/11/2023 12:46:54 PM
To: Council Northernbeaches Mailbox
Cc: Natasha Cook
Subject: TRIMMED: DA 2023 / 83 24 CABARITA ROAD AVALON WRITTEN
SUBMISSION: LETTER OF OBJECTION SUBMISSION: TULLOCH
Attachments: CABARITA WS NOV AMENDED REV D WS.pdf;

Kind regards,

Bill Tulloch BSc[Arch]BArch[Hons1]UNSW RIBA Assoc RAIA
[REDACTED]

SUBMISSION

a written submission by way of objection

Bill Tulloch BSc [Arch] BArch [Hons1] UNSW RIBA RAIA

prepared for

Dr Natasha Cook, 26 Cabarita Road Avalon

23 NOVEMBER, 2023

Northern Beaches Council
PO Box 82
Manly
NSW 1655

council@northernbeaches.nsw.gov.au

RE: DA 2023 / 83
24 CABARITA ROAD AVALON
WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: TULLOCH

Dear Sir,

This document is a written submission by way of objection lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

I have been instructed by my clients to prepare an objection to this DA.

I have been engaged by my clients to critically review the plans and documentation prepared in support of the above development application and to provide advice in relation to policy compliance and potential residential amenity impacts.

Having considered the subject property and its surrounds and the details of the development application currently before Council, I am of the opinion that the proposal, in its present form, does not warrant support. In addition, I am of the view that amendments would need to be made to the development proposal before Council was in a position to determine the development application by way of approval.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, my clients ask Council to REFUSE this DA.

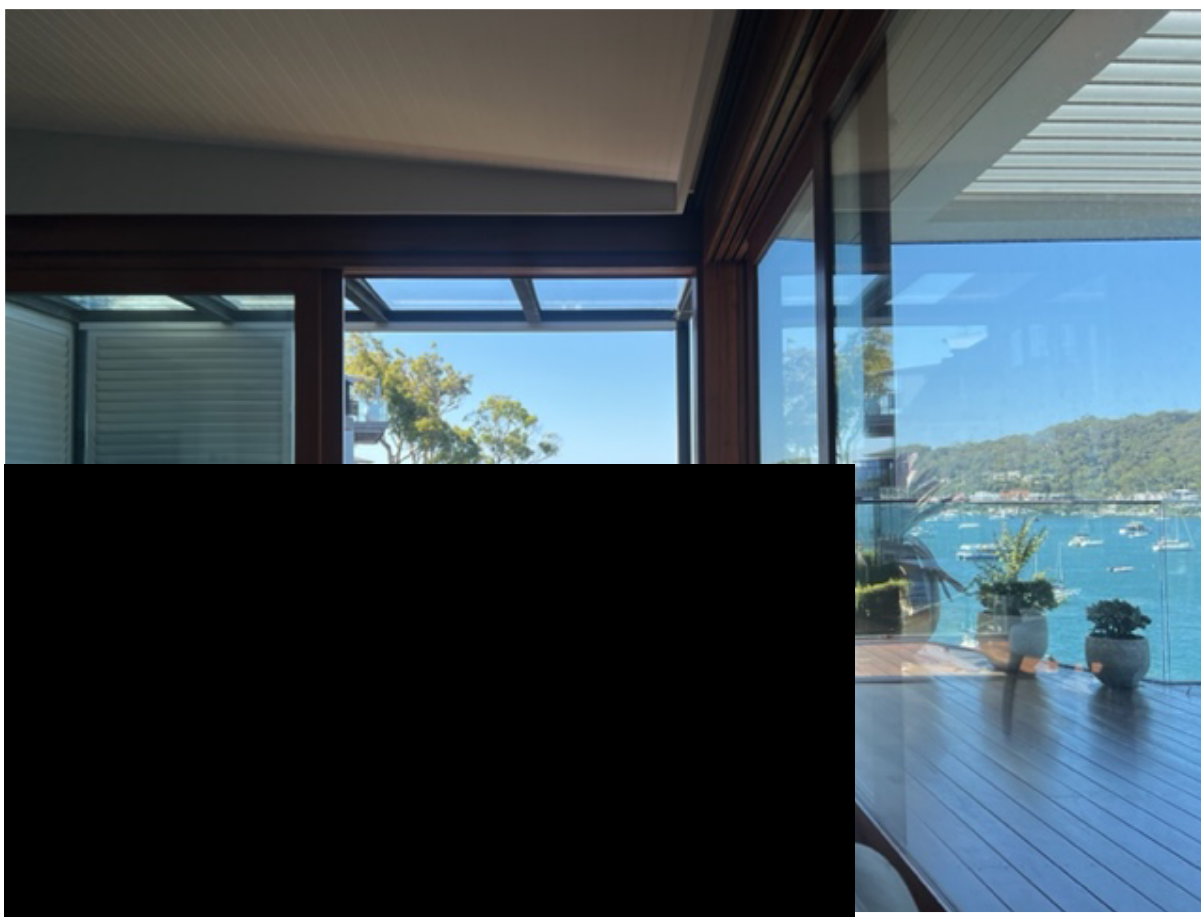
I refer to Amended Plans submitted, Revision D.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts that result in adverse impacts on my clients' property.

- Adverse View Loss Impacts
- Adverse Solar Loss Impacts
- Adverse Visual Privacy Impacts
- Adverse Visual Impact Impacts



Severe View Loss



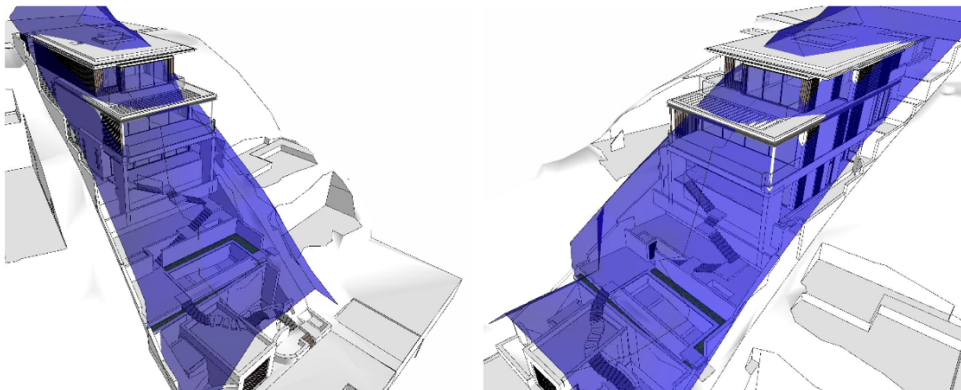
Severe View Loss

The proposed development fails to meet Council's planning controls, the objectives and the merit assessment provisions relating to:

- Building Height: Proposed 10.5m v Control 8.5m [23.5% non-compliance]
Council will note that a spot level at RL 13.74 sits under the roof detail at RL 24.25 at the north-west corner. The HOB is therefore 10.5m. The Wall Height in this zone is 10.25m. No Clause 4.6 has been submitted for HOB.
- Wall Height: Proposed 10.25m v Control 7.2m [42% non-compliance]
- Landscape Area: insufficient deep soil zones
- Number of Storey: Proposed Three v Control Two [50% non-compliance]
- Southern Side Setback: Proposed 1m v 2.5m Control [x2.5x non-compliance]
- Southern Side Boundary Envelope @ RL 24 and RL 21 Wall Height @ 9m wall height. Control 5.5m setback Proposed 2.5m setback. 3.0m non-compliance
- Unacceptable Works within Foreshore: retaining walls, inclinators and the lowest landing, pool plant, building plant and rainwater tanks,
- Inclinators. <2m from boundary
- Southern Boundary Fences. Proposed 3m v Control 1.8m
- Front Fences. Proposed 1.6m v Control 1.0m
- Garage. >50% of plot width

- Excessive built form in southern 2.5m side setback zone
- Excessive excavation in southern 2.5m side setback zone
- Excessive fill in southern 2.5m side setback zone
- Excessive retaining walls in southern 2.5m side setback zone
- Failure to protect TPZ & SRZ of Neighbours Trees
- Excessive Excavation

The revision D Amended Plans do little to resolve these matters.



revisions	notes	project	title	job no.	MACA	dep no.
1	Revised building envelope analysis	MacDiarmid House	Building Envelope	1000	1000	DA19
2	Revised building envelope analysis	1000	Analysis	1000	1000	1000
3	Revised building envelope analysis	1000	Analysis	1000	1000	1000
4	Revised building envelope analysis	1000	Analysis	1000	1000	1000
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100	Revised building envelope analysis	1000	Analysis	1000	1000	1000

The non-compliant elements are clearly causing a severe view loss, afternoon solar loss, and unacceptable visual bulk.

One of the major concerns for my client is view loss.

I contend the following:

1. The proposed development is non-compliant to height, wall height, and setback controls. The non-compliant elements contribute to the view loss.
2. The applicant has failed to undertake any view impact analysis associated with my clients' property.
3. I contend that the proposal is inconsistent with the Land and Environment Court Planning Principle contained in Tenacity Consulting v Warringah Council and in particular the "fourth step" regarding the reasonableness of the proposal in circumstances where impacts arise from a development that breaches planning controls; and secondly whether a more skilful design could reduce the impact on views of neighbours.

I contend that further amendments are required:

1. Level 4 Deck. Reduce structure to ensure built form does not exceed 8.5m HOB and other envelope controls. Roof over the deck to be reduced to a 1m eaves. Full height Privacy Screen deleted. Replace with 1m high obscured glass balustrade facing the southern boundary. Reason: reduce view loss, increase solar access, reduce non-compliant bulk
2. Level 5. Reduce to ensure built form does not exceed 8.5m HOB and other envelope controls. Reason: reduce view loss, increase solar access, reduce non-compliant bulk
3. Reduce built form further to avoid severe view loss, particularly the non-compliant elements in the viewing corridor
4. To maintain view sharing, the proposed trees and plants over 3m in height shall be deleted in the landscape plan to the east of the proposed dwelling.
5. All windows facing south to have 1.65m high sills with obscured glass, measured from the internal FFL, or the window is to be fixed and non-opening and fitted with obscured glazing to 1.65m height above internal FFL. Privacy Screens to be shall be of fixed panels or battens or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Reason. Privacy
6. Decrease excavation, with no excavation or fill in 2.5m southern side setback zone. No retaining walls within 2.5m side setback zone
7. Reduce pool to a maximum 1m above EGL
8. Southern Dividing Fence. Not to exceed 1.8m high above EGL. Reason. Non-compliant fence height causing amenity loss.

My client asks for a complete set of Conditions to be included within any consent, including, but not limited to, the following:

Conditions which must be satisfied prior to the demolition of any building or construction

- Acoustic Certification of Mechanical Plant and Equipment
- Arborists Documentation and Compliance Checklist
- BASIX Commitments
- Checking Construction Certificate Plans – Protecting Assets Owned by Sydney Water
- Construction Certificate Required Prior to Any Demolition
- Electric vehicle circuitry and electric vehicle charging point requirements
- Engineer Certification
- Establishment of Tree Protection Zone (TPZ) Fence
- Geotechnical and Hydrogeological Design, Certification and Monitoring
- Ground Anchors
- Identification of Hazardous Material

- Light and Ventilation
- No Underpinning works
- Noise Control - Acoustic Protection of adjoining residential units-Operation of Air Conditioning Plant
- Noise Control - Swimming pool/spa pool pumps and associated equipment
- Parking Facilities
- Payment of Long Service Levy, Security, Contributions and Fees
- Professional Engineering Details
- Public Road Assets Prior to Any Work/Demolition
- Road and Public Domain Works
- Soil and Water Management Plan – Submission and Approval
- Stormwater Management Plan
- Swimming and Spa Pools – Backwash
- Swimming and Spa Pools – Child Resistant Barriers
- Tree Management Plan
- Ventilation - Internal Sanitary Rooms
- Utility Services Generally
- Waste Storage – Per Single Dwelling

Conditions which must be satisfied prior to the commencement of any development work

- Adjoining Buildings Founded on Loose Foundation Materials
- Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)
- Compliance with Building Code of Australia and insurance requirements under the
- Dilapidation Reports for Existing Buildings
- Erosion and Sediment Controls – Installation
- Establishment of Boundary Location, Building Location and Datum
- Home Building Act 1989
- Notification of Home Building Act 1989 requirements
- Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection
- Site Signs
- Toilet Facilities
- Works (Construction) Zone – Approval and Implementation

Conditions which must be satisfied during any development work

- Asbestos Removal Signage
- Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum
- Classification of Hazardous Waste
- Compliance with Australian Standard for Demolition
- Compliance with BCA and Insurance Requirements under the Home Building Act 1989

- Compliance with Council's Specification for Roadworks, Drainage and
- Compliance with Geotechnical / Hydrogeological Monitoring Program
- Miscellaneous Works, Road Works and, Work within the Road and Footway
- Critical Stage Inspections
- Disposal of Site Water During Construction
- Disposal of Asbestos and Hazardous Waste
- Dust Mitigation
- Erosion and Sediment Controls – Maintenance
- Footings in the vicinity of trees
- Hand excavation within tree root zones
- Hours of Work –Amenity of the Neighbourhood
- Installation of stormwater pipes and pits in the vicinity of trees
- Level changes in the vicinity of trees
- Notification of Asbestos Removal
- Maintenance of Environmental Controls
- Placement and Use of Skip Bins
- Prohibition of Burning
- Public Footpaths – Safety, Access and Maintenance
- Replacement/Supplementary trees which must be planted
- Requirement to Notify about New Evidence
- Site Cranes
- Site Waste Minimisation and Management – Construction
- Site Waste Minimisation and Management – Demolition
- Support of Adjoining Land and Buildings
- Tree Preservation
- Vibration Monitoring

Conditions which must be satisfied prior to any occupation or use of the building
(Part 6 of the Act and Part 8 Division 3 of the Regulation)

- Amenity Landscaping
- Certification of Electric Vehicle Charging System
- Commissioning and Certification of Public Infrastructure Works
- Commissioning and Certification of Systems and Works
- Occupation Certificate (section 6.9 of the Act)
- Letter Box
- Swimming and Spa Pools – Permanent Child Resistant Barriers and other Matters
- Swimming Pool Fencing

Conditions which must be satisfied prior to the issue of the Occupation Certificate for the whole of the building

- Fulfillment of BASIX Commitments – clause 154B of the Regulation
- Landscaping
- Positive Covenant and Works-As-Executed Certification of Stormwater Systems
- Removal of Ancillary Works and Structures
- Road Works (including footpaths)

Conditions which must be satisfied during the ongoing use of the development

- Maintenance of BASIX Commitments
- Noise Control
- Noise from mechanical plant and equipment, including swimming pool plant
- Ongoing Maintenance of the Onsite Stormwater Detention (OSD) System, Rain Garden and Rainwater Tank
- Outdoor Lighting – Residential
- Outdoor Lighting – Roof Terraces
- Swimming and Spa Pools – Maintenance

Advising

- Asbestos Removal, Repair or Disturbance
- Builder's Licences and Owner-builders Permits
- Building Standards - Guide to Standards and Tolerances
- Commonwealth Disability Discrimination Act 1992
- Criminal Offences – Breach of Development Consent and Environmental Laws
- Dial Before You Dig
- Dilapidation Report
- Dividing Fences
- Lead Paint
- NSW Police Service and Road Closures
- Pruning or Removing a Tree Growing on Private Property
- Pruning or Removing a Tree Growing on Private Property
- Recycling of Demolition and Building Material
- Release of Security
- Roads Act 1993 Application
- SafeWork NSW Requirements
- Workcover requirements

CONCLUSION

The proposed development does not follow the outcomes and controls contained within the adopted legislative framework.

Having given due consideration to the matters pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended, it is considered that there are multiple matters which would prevent Council from granting consent to this proposal in this instance.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts all of which would result in adverse impacts on my clients' property. Primarily,

- The development compromises amenity impacts on neighbours
- The development compromises private views and solar loss
- The development does not minimise visual impact

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the DCP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the EPAA1979

The proposed development does not satisfy the appropriate controls. Furthermore, the proposal would result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community, and is therefore not in the public interest. The proposal therefore must be refused.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have not been satisfactorily addressed.

We ask that if Council in their assessment of this application reveals unsupported issues, which prevent Council from supporting the proposal in its current form, and writes to the applicant describing these matters, we ask for that letter to be forwarded to us.

My clients trust that Council will support my clients' submission and direct the proponent to modify the DA plans, as outlined above. My clients ask Council Officers to inspect the development site from my clients' property so that Council can fully assess the DA.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, my clients' ask Council to REFUSE this DA.

Yours faithfully,

Bill Tulloch

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