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Subject: DA2022/0742 78 CHISHOLM AVENUE AVALON BEACH NSW 2107
WRITTEN SUBMISSION: LETTER OF OBJECTION SUBMISSION: LEITH &
WHITE

Attachments: LEITH & WHITE WS .pdf;

SUBMISSION: LEITH & WHITE

a written submission by way of objection

Dr. Dean Vincent Leith & Mr Paul Napier White
80 Chisholm Avenue
AVALON BEACH
NSW 2107

6 June 2022

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RE: DA2022/0742 78 CHISHOLM AVENUE AVALON BEACH NSW 2107
WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: LEITH & WHITE

Dear Sir,

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

We are being assisted by a very senior experienced consultant in the preparation of this Written Submission.

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

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A. EXECUTIVE SUMMARY

The design of the dwelling does not ensure that the existing high levels of amenity to our property is retained.

The proposal is considered to be inappropriate within the streetscape.

The subject site is zoned C4 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.

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

- View loss
- Solar Loss
- Visual Privacy
- Excessive Bulk & Scale

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

- Building Height 12.6m v 8.5m [48% non-compliance]
- Side Setback 1.4m v 2.5m [78% non-compliance]
- Building Envelope South 9.0m Height requires a 5.5m setback v 1.5m proposed [366% non-compliance]
- Building Envelope North 7.0m Height requires a 3.5m setback v 1.0m proposed [350% non-compliance]

The existing dwelling at the First-Floor level is already built to the maximum LEP and DCP built form controls.

Both neighbour's dwellings are built within the maximum LEP and DCP built form controls, or have very minor non-compliance.

The proposed development adds non-complaint development to the existing compliant upper level, that increases the HOB to 12.6m.

The proposed roof is at RL 86.8, sits immediately under the extrapolated EGL at RL 74.2, being the level between RL 73.33 [survey] and 75.23 [survey].

The proposed development adds non-complaint development to the upper level at both side boundaries. The existing dwelling is generally already complaint reaching towards maximum controls, whilst the proposal builds into the side setback and outside of the building envelope zones.

It is the non-compliant additions at the upper level that directly cause our amenity loss.

The proposed development represents an unreasonably large dwelling house design, for which there are design alternatives to achieve a reasonable development outcome on the site without having such impacts.

The proposed development does not satisfy the objectives of the zone or contribute to a scale that is consistent with the desired character of the locality and the scale of surrounding development.

A compliant building design would reduce the amenity impacts identified.

We agree with Roseth SC in NSWLEC *Pafbum v North Sydney Council*:

"People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime."

The '*legitimate expectation*' that we had as a neighbour was for a development that would not result in very poor amenity outcomes caused directly from the non-compliance to building envelope controls.

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 poor impact on the amenity of our property, and the urban design outcomes within the streetscape, and this is caused by the DA being non-compliant to controls.

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

It does seem unreasonable that the Applicants wish to remove our amenity to improve their own, and is proposing non-compliant outcomes that would seriously adversely affect our amenity.

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, does not succeed on merit and is not worthy of the granting of development consent.

We ask Council to seek modifications to this DA as the proposed development does not comply with the planning regime, by non-compliance to development standards, and this non-compliance leads directly to our amenity loss.

If any Amended Plan Submission is made by the Applicant, and re-notification is waived by Council, we ask Council to inform us immediately by email of those amended plans, so that we can inspect those drawings on the Council website.



VIEW FROM REAR OF PROPERTY

Our dwelling is in the foreground, will suffer adverse amenity outcomes caused by the proposed development's substantial non-compliance to LEP and DCP envelope controls. The existing dwelling on the subject site has already 'maxed out' the envelope controls at the upper level. This proposal adds unacceptable built form to that 'maxed out' envelope, causing us severe amenity harm. Building Height 12.6m v 8.5m [48% non-compliance]; Side Setback 1.4m v 2.5m [78% non-compliance]; Building Envelope South 9.0m Height requires a 5.5m setback v 1.5m proposed [366% non-compliance]

B. FACTS

1. THE PROPOSAL

The development application seeks approval for alterations and additions to an existing dwelling.

2. THE SITE

The site is legally identified as Lot 2 in Deposited Plan 25969, and is commonly referred to as 78 Chisholm Avenue, Avalon Beach. The site is irregular in shape, with a 6.095m wide frontage to Chisholm Avenue to the east, a maximum depth of 47.585m and a total area of 745.6m².

3. THE LOCALITY

The existing character of the local area, including the immediate visual catchment (generally within 150 metres of the site) is of a well-established neighbourhood, made up of a heterogeneous mix of dwelling types within domestic landscaped settings.

Our property shares a common boundary with the subject site.

4. STATUTORY CONTROLS

The following Environmental Planning Instruments and Development Control Plans are relevant to the assessment of this application:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- Pittwater Local Environmental Plan 2014 [referred to as LEP in this Submission]
- Pittwater 21 Development Control Plan [referred to as DCP in this Submission]

C. CONTENTIONS THAT THE APPLICATION BE REFUSED

1. CONTRARY TO AIMS OF LEP

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the aims under the LEP. We are concerned on these aims:

(1) This Plan aims to make local environmental planning provisions for land in Pittwater in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.

(2) The particular aims of this Plan are as follows—

(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

2. CONTRARY TO ZONE OBJECTIVES

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the objectives of the zone of the LEP

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.*

3. CHARACTER

The proposed development should be refused as it is inconsistent with the character of the local area contrary to the provisions of the LEP and DCP.

The proposal does not achieve the desired character of the locality.

The proposed development should be refused due to its excessive bulk and scale and impacts on the character of the locality, adjoining properties and the surrounding environment.

The form and massing of the proposal does not appropriately respond to the low-density character of the surrounding locality.

The form and massing of development is also inconsistent with the provisions of the LEP and DCP which prescribe that new development should complement the predominant building form in the locality.

The proposed development is non-compliant to:

- Building Height 12.6m v 8.5m [48% non-compliance]
- Side Setback 1.4m v 2.5m [78% non-compliance]
- Building Envelope South 9.0m Height requires a 5.5m setback v 1.5m proposed [366% non-compliance]
- Building Envelope North 7.0m Height requires a 3.5m setback v 1.0m proposed [350% non-compliance]

The proposed development is outside the envelope controls.

The proposed development is higher and larger than the immediate neighbours.

The bulk and scale of the development is inconsistent with existing development in the visual catchment.

The level of stepping proposed in the development is inadequate to sufficiently integrate with the landform.

The bulk of the building and materials and choice of finishes will further emphasise the single mass.

The proposal is not of a height and scale that seeks to achieve the desired future character, does not maintain or enhance local amenity, does not maintain the general dominance of landscape over built form, and does not satisfactorily minimise the adverse effects of bulk and scale of buildings. The proposal is excessive in height, bulk and scale; and does not have adequate regard for the maintenance of existing residential amenity.

The proposal would not be appropriate to the environmental constraints of the site and would not maintain the existing level of residential amenity. The proposal would not recognise, protect, or enhance the natural or visual environment qualities of the locality. The proposal would not protect or conserve the existing landform in order to maintain the landscaped amenity of the locality.

The proposal would not be of a height and scale which is in keeping with the context of the locality, and would not maintain a general dominance of landscape over built form. The proposal would not maintain or enhance local amenity or minimise the adverse effect on bulk and scale.

The external finish to the roof must have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours must not be permitted.

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

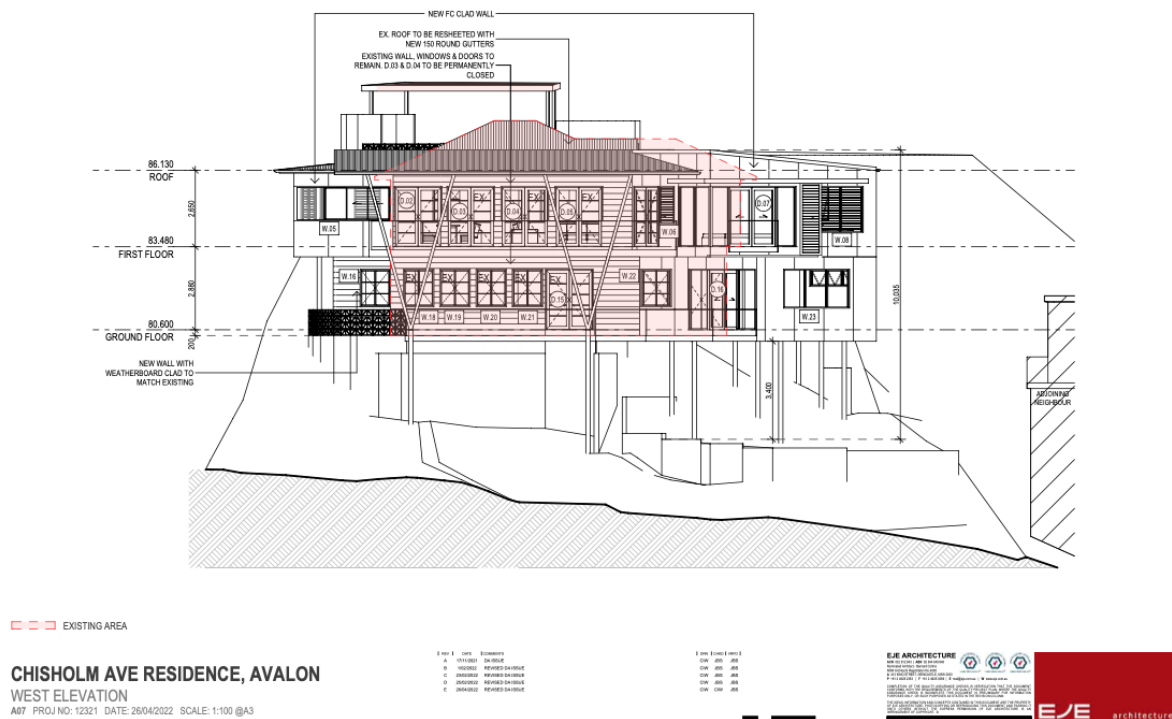
"whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site's visual catchment".

The non-compliant elements of the proposed development, particularly caused from non-compliant standards and controls would have most observers finding *'the proposed development offensive, jarring or unsympathetic'*.



VIEW FROM REAR OF PROPERTY

Our dwelling is to the right. We will suffer adverse amenity outcomes caused by the proposed development's substantial non-compliance to LEP and DCP envelope controls. The existing dwelling on the subject site has already 'maxed out' the envelope controls at the upper level. This proposal adds unacceptable built form to that 'maxed out' envelope, causing us severe amenity harm. Building Height 12.6m v 8.5m [48% non-compliance]; Side Setback 1.4m v 2.5m [78% non-compliance]; Building Envelope South 9.0m Height requires a 5.5m setback v 1.5m proposed [366% non-compliance] Building Envelope North 7.0m Height requires a 3.5m setback v 1.0m proposed [350% non-compliance]. The character of the proposed development does not respect the character of our dwelling – it simply will be 'swamped' by an aggressive and unsympathetic built form. The proposal is offensive, jarring and unsympathetic in the context of the immediate area.



The elevation clearly shows the existing compliant dwelling, and the proposed extensions at the upper level that are non-compliant. The relationship to our property to the right of this drawing, clearly show the unacceptable character outcomes, of a substantial 12.6m non-compliant development set against our compliant envelope.

4. EXCESSIVE BUILDING HEIGHT

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to comply with the building height development standard under the LEP.

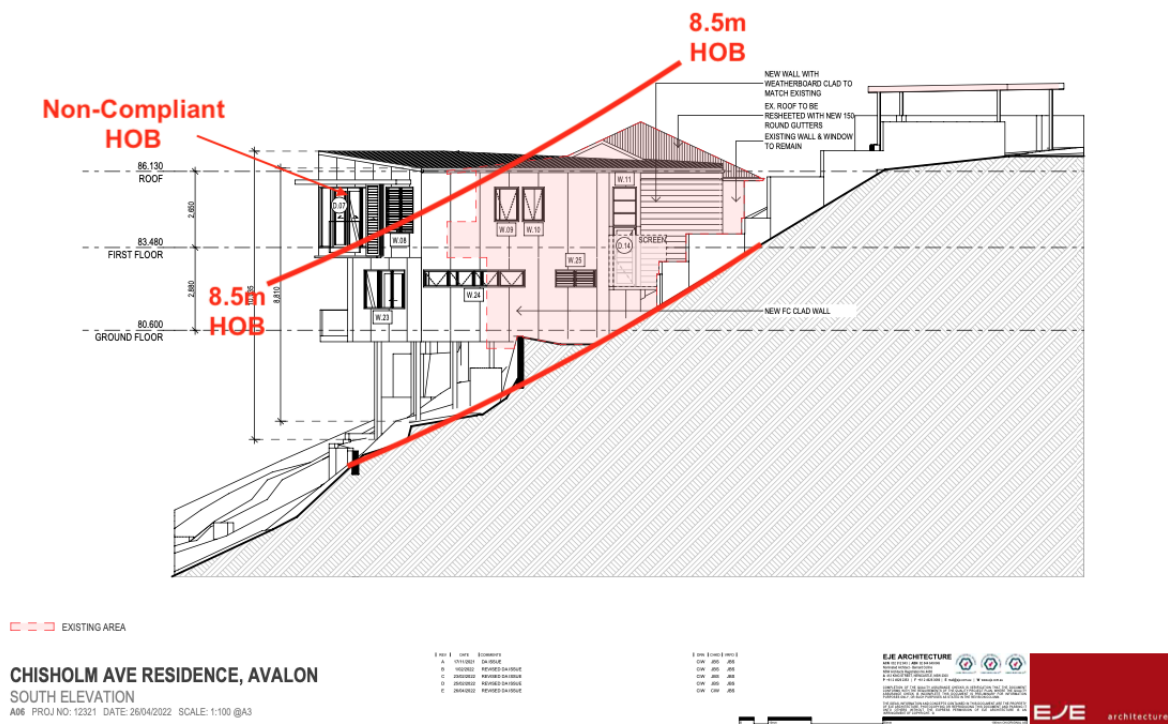
The proposed development should be refused due to its excessive height and failure to comply with the *Height of Buildings* set out in the LEP which permits a maximum height of 8.5 metres.

The proposal is inconsistent with the objectives of the Height of Buildings development standard pursuant to LEP.

The adverse impacts of the proposed development, including on the amenity of neighbouring property and public property, are directly attributable to the exceedance of the height of buildings development standard.

The proposal is inconsistent with the LEP as there is a public benefit in maintaining the Height of Buildings development standard in this particular case.

The proposed portion of the building above the maximum height of 8.5m is not 'minor'. The building does not adequately step down the slope.

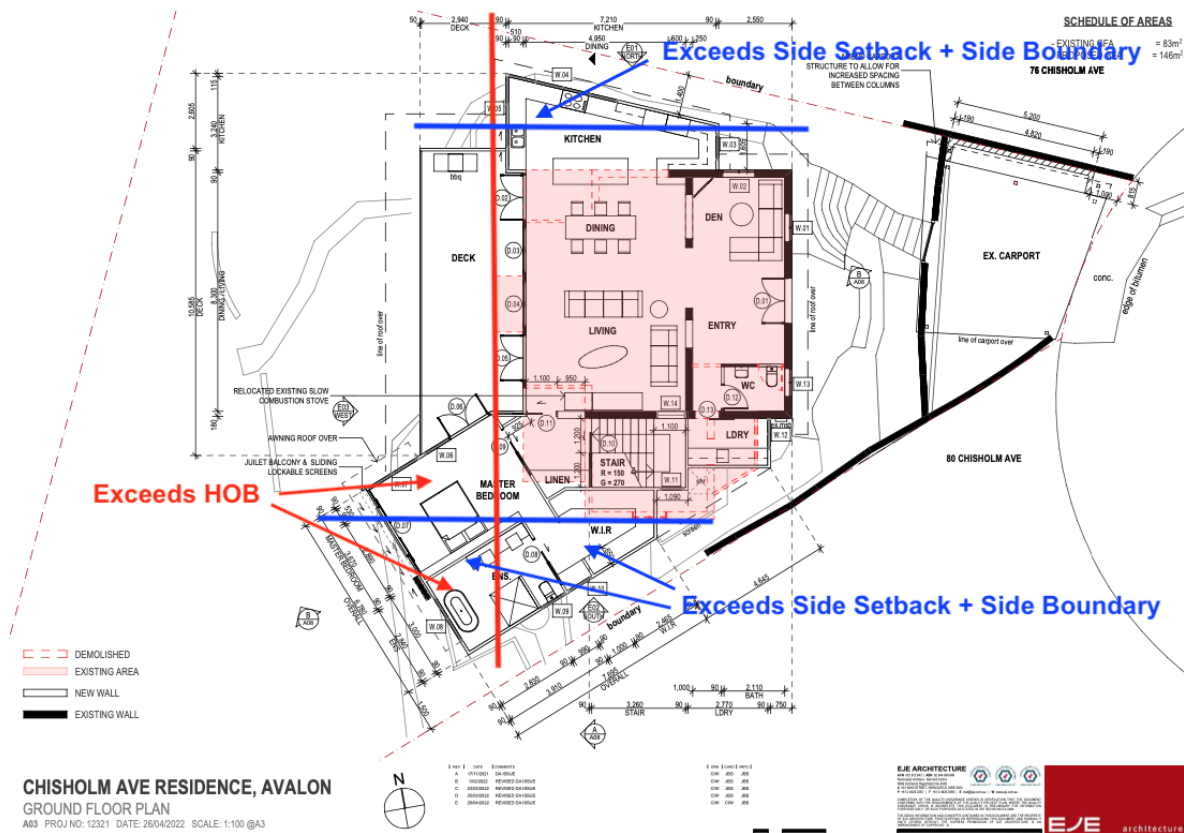


We contend that the proposal fails to adequately demonstrate that compliance with each standard is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening each of the standards. Variation of the development standards is not in the public interest because the proposed development is not consistent with the objectives of each development standard nor the objectives of the zone. The proposed development has not sought adequate variations to development standards. The proposal is excessive in bulk and scale, and is inconsistent with the desired future character of the area resulting in adverse impacts on the streetscape. The proposal results in an unacceptable dominance of built form over landscape. The proposal fails to minimise the adverse effects of bulk and scale resulting in adverse amenity impacts.

The proposed development should be refused due to its excessive visual impact and impacts on the character of the locality, adjoining properties and the surrounding environment.

The form and massing of the proposal does not appropriately respond to the low-density character of the surrounding locality

The form and massing of development is also inconsistent with the provisions of the DCP which prescribe that new development should complement the predominant building form in the locality.



The proposal would not recognise or protect the natural or visual environment of the area, or maintain a dominance of landscape over built form. The proposal has not been designed to minimise the visual impact on the surrounding environment.

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."

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



VIEW FROM REAR OF PROPERTY

Our dwelling is in the background. We will suffer adverse amenity outcomes caused by the proposed development's substantial non-compliance to LEP and DCP envelope controls. The existing dwelling on the subject site has already 'maxed out' the envelope controls at the upper level. This proposal adds unacceptable built form to that 'maxed out' envelope, causing us severe amenity harm. Proposed Building Height 12.6m v 8.5m [48% non-compliance]

5. SETBACKS

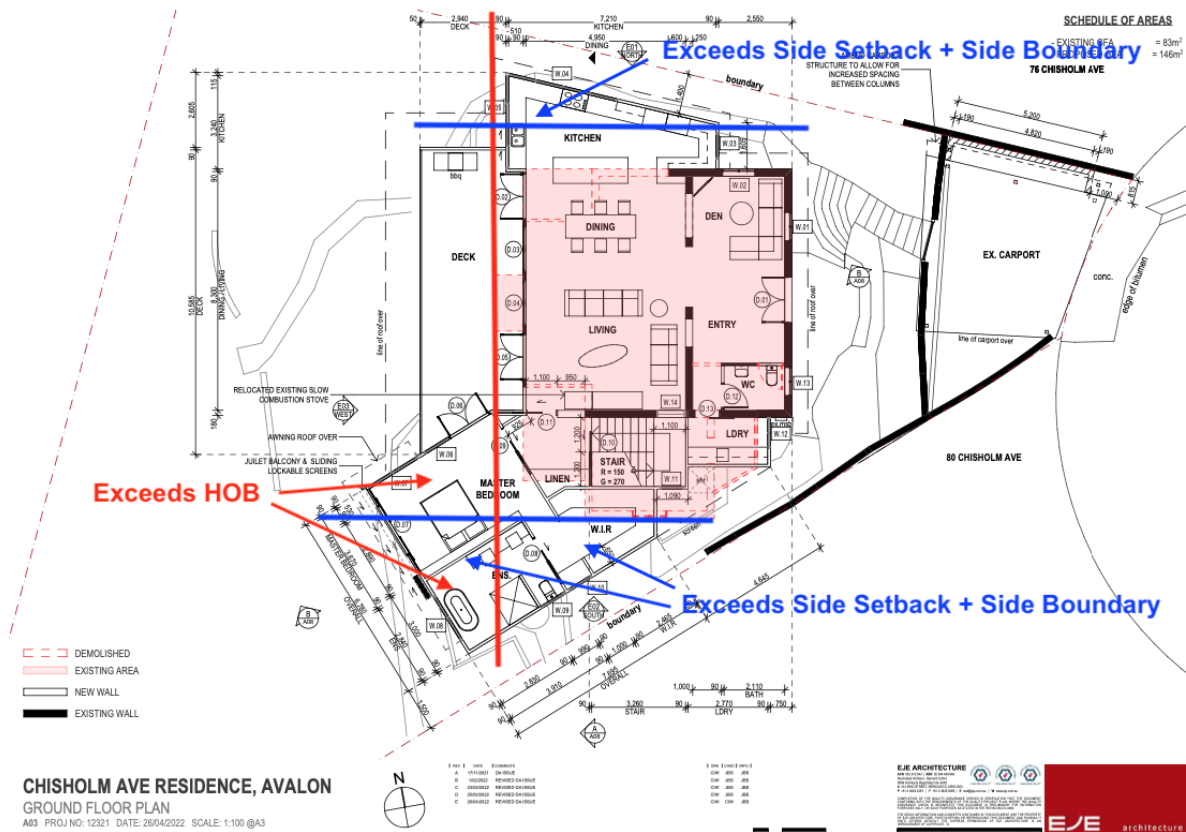
The proposed development should be refused as it is significantly non-compliant with setback of the DCP.

- Side Setback
- Side Boundary Envelope

The proposed development does not provide appropriate setbacks. This leads to inconsistency with the character of the area and unreasonable privacy impacts.

The proposal will result in an unsatisfactory scale of built form that will be disproportionate and unsuitable to the dimensions of the site and neighbouring residential development.

The height and bulk of the development will result in unreasonable impacts upon the amenity of neighbouring properties with regard to visual dominance.



The excessive built form of the proposal results in a development where the building mass becomes visually dominant and imposing, particularly when viewed from the visual catchment of neighbouring properties

The cumulative effect of the non-compliances with setback and other development standard result in an over development of the site with the site being not suitable for the scale and bulk of the proposal.



VIEW FROM SIDE OF PROPERTY

The view taken from above our property looking at the subject site. Our dwelling is in the foreground. We will suffer adverse amenity outcomes caused by the proposed development's substantial non-compliance to LEP and DCP envelope controls. The existing dwelling on the subject site has already 'maxed out' the envelope controls at the upper level. This proposal adds unacceptable built form to that 'maxed out' envelope, causing us severe amenity harm. Note that the upper floor addition does not accord with the side envelope controls, and considering the excessive heights, a compliant envelope would require a setback of 5.5m. The proposed development offers only 1.4m. This is unacceptable. Building Height 12.6m v 8.5m [48% non-compliance]; Side Setback 1.4m v 2.5m [78% non-compliance]; Building Envelope South 9.0m Height requires a 5.5m setback v 1.5m proposed [366% non-compliance]

6. STORMWATER

We are concerned that the proposed OSD is undersized, and the proposed spreader will deliver excessive stormwater to flood our property and the property below.

We consider that a Stormwater Pump-Out Facility should be installed, with positive covenant for the maintenance of the stormwater pump-out facility, with certification of the stormwater disposal, and stormwater treatment to AS standards.

7. TRAFFIC MANAGEMENT PLAN

There is no consideration as to suitable traffic management plan.

8. BUILDING MATERIAL STORAGE & WASTE

There is no consideration as to suitable location for building material storage or waste storage on the subject site.

9. BUSHFIRE

We are concerned that the Bushfire Report has under forecast the distance to the Forest canopy. The canopy from the major threat of the Cat 1 Bushfire Vegetation connects directly to the subject site, such that a bushfire firestorm coming up the steep hill, has highly inflammable material to burn right to the boundary of the subject site. We contend that the site should be BAL FZ. We ask Council to refer the matter to NSWRFs for review.

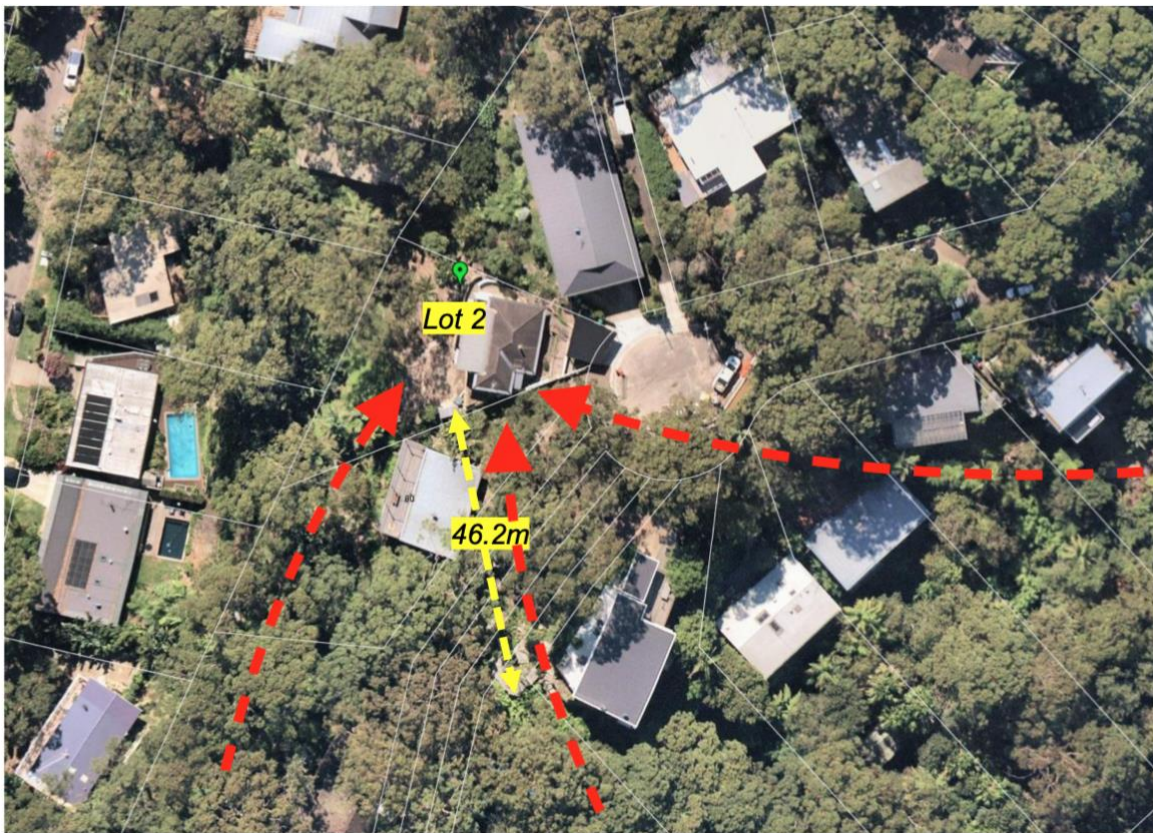


Photo 2 is a closer view of the vegetation in the area.

A bushfire firestorm coming up the steep hill, has highly inflammable material to burn right to the boundary of the subject site, delivering potential heat loads beyond the BAL 40 control. We contend that the site should be BAL FZ. We contend that there is not a 46.2m separation from the threat, as the interlocking canopy and undergrowth connects from the Cat 1 threat to the boundary of the subject site, and into canopy within the subject site

10. IMPACTS UPON ADJOINING PROPERTIES: VIEW LOSS

The proposed development when considered against the DCP and the NSW Land and Environment Court Planning Principle in *Rose Bay Marina Pty Limited v Woollahra Municipal Council*, in respect to 'Impact on Public Domain Views'

A planning principle for public domain views

Introduction

39 *Tenacity Consulting v Warringah* [2004] NSWLEC 140; (2004) 134 LGERA 23, sets out the planning principle for considering the acceptability of the impact of a proposed development on the views enjoyed from private property in the vicinity of the development. This planning principle was adopted through the collegiate process that has been described on the Court's website for the derivation of such principles.

40 In these proceedings, we discerned the potential for developing a planning principle setting out a process for assessing the acceptability of the impact of private developments on views from the public domain in the vicinity of the development.

41 To this end, we identified the potential for such a planning principle to the advocates for the parties and sought submissions from them about such matters of general principle. These submissions were in addition to their submissions on the specific matters subject of the present proceedings. As we have developed such a planning principle through the broad collegiate basis earlier noted, we express our appreciation for the assistance we received from all three parties on this point. The planning principle set out below, of course, is that of the Court rather than that of any or all of those parties.

42 The framework for a planning principle concerning impacts on views enjoyed from the public domain is broadly consistent with (but not identical to) the matters raised for consideration in *Tenacity*. The process must account for reasonable development expectations as well as the enjoyment of members of the public of outlooks from public places.

43 The steps for determining the acceptability of the impact on views from the public domain are in two stages - the first factual followed by a second, analytical process.

Identification stage

44 The first step of this stage is to identify the nature and scope of the existing views from the public domain. This identification should encompass (but is not limited to): the nature and extent of any existing obstruction of the view; relevant compositional elements of the view (such as is it static or dynamic and, if dynamic, the nature and frequency of changes to the view); what might not be in the view - such as the absence of human structures in the outlook across a natural area (such as the view from Kanangra Walls); is the change permanent or temporary; or what might be the curtilages of important elements within the view.

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

46 The third step is to identify the extent of the obstruction at each relevant location.

Unlike *Tenacity* (which adopts the proposition that sitting views are more difficult to protect than standing views), the impact on appreciation of a public domain view should not be subject to any eye height constraint. A public domain view is one that is for the enjoyment of the whole population, old or young and whether able-bodied or less mobile. It is not appropriate to adopt some statistically derived normative eye height for the assessment of such views (such as the conventionally adopted 1.6m eye height for the assessment of overlooking privacy impacts). Indeed, some views (such as that from Mrs Macquarie's Chair toward the Opera House and Harbour Bridge) may well be ones likely to be enjoyed frequently from a seated position.

47 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.

48 The final step to be identified is whether or not there is any document that identifies the importance of the view to be assessed.

This will encompass specific acknowledgment of the importance of a view (for example, by international, national, state or local heritage recognition) or where the relevant planning regime promotes or specifically requires the retention or protection of public domain views.

49 However, the absence of such provisions does not exclude a broad public interest consideration of impacts on public domain views.

We contend that the analysis of the impact suggests that the proposed development fails to meet the principals of the control.

The view is from the public domain and is regularly used as a walking track in the area.

The view lost are iconic views of Pittwater, and water/land interfaces.

The loss is caused directly by the non-compliant components of the design including:

- Building Height 12.6m v 8.5m [48% non-compliance]
- Side Setback 1.4m v 2.5m [78% non-compliance]
- Building Envelope South 9.0m Height requires a 5.5m setback v 1.5m proposed [366% non-compliance]
- Building Envelope North 7.0m Height requires a 3.5m setback v 1.0m proposed [350% non-compliance]

The proposed development will result in unacceptable additional view impacts. The view impact is moderate when considered against the *Rose Bay Marina* planning principle. The view impact could reasonably be avoided by a more considered design that retains the amenity of the proposal, whilst limiting the impact upon the public domain.

The built form proposed blocks scenic, iconic or highly valued items or whole views as defined in *Rose Bay Marina* terms.

The proposed development has not considered the strategic placement of canopy trees to avoid further view loss impacts upon existing view corridors.

The Applicant has not provided an adequate View Impact Analysis which details the extent to which existing water views from the public domain, are obstructed under the current proposal.

The existing documentation accompanying the application is insufficient to undertake a detailed analysis of the proposal against the relevant DCP and NSWLEC guidelines.



Subject Site to the right. View loss caused by non-compliant envelope. Height poles required.



Subject Site to the right. View loss caused by non-compliant envelope. Height poles required.



Subject Site to the left. View loss caused by non-compliant envelope. Height poles required.

The proposal may also cause potential view loss of the water views from other neighbours who have not been notified of this DA.

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 the greater than moderate, in relation to the views from the highly used zones in the public domain. The view is from a location from which it would be reasonable to expect that the existing view, particularly of the view that could be retained especially in the context of a development that does not comply with outcomes and controls. The public domain visual catchment is an arc from which views will be affected as a result of the construction of the proposed development. Having applied the tests in the planning principle we conclude that a loss greater than moderate from the public domain. The non-compliance with planning outcomes and controls of the proposed development will contribute to this loss. Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

The proposed development cannot be supported on visual impacts grounds. The proposal incorporates a significant departure from controls, which helps contain building envelope. Additionally, the siting of the proposed development and its distribution of bulk does not assist in achieving view sharing objectives. Where the diminishing of public views can be attributed to a non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. Our assessment finds that view sharing objectives have not been satisfied.

In this instance, the proposal is not considered to achieve compliance with this control.

There are architectural solutions that maintains the view, by proposing development that maintains our view, and we identify the precise amendments necessary to overcome this loss.

These issues warrant refusal of the DA.

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. Height Poles required for all trees. The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

In conclusion, as the dwelling proposed will impact views from the public domain, the erection of height poles is required to allow an accurate assessment of view impact. The height poles should provide a delineation to identify any elements of the proposed built form that breaches the envelope controls of height and setbacks.

We contend that the proposed development when considered against the DCP and the NSW Land and Environment Court Planning Principle will result in an unacceptable view impact and will not achieve appropriate view sharing from the public domain.

We contend that the proposal is contrary to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that it does not satisfy the view sharing controls of the DCP.

11. IMPACTS UPON ADJOINING PROPERTIES: PRIVACY

The proposed development should be refused as it will have unacceptable impacts upon the amenity of our property, specifically with regard to visual privacy.

The proposed development will result in unacceptable overlooking of the adjoining dwelling and associated private open space, resulting in inconsistency with the provisions of the DCP and the objectives of the DCP.

The Applicant has not provided an adequate Privacy Impact Analysis which details the extent to which privacy at our property will be adversely impacted by the proposal.

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 sufficient screening devices being provided, considering the proposed windows are directly opposite our windows.

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 and decks 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 better protected. We ask Council to consider the most appropriate privacy screening measures to be imposed on windows and decks facing our property, including landscaping

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 privacy devices 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: Additional landscaping may assist in addition to privacy devices.

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.

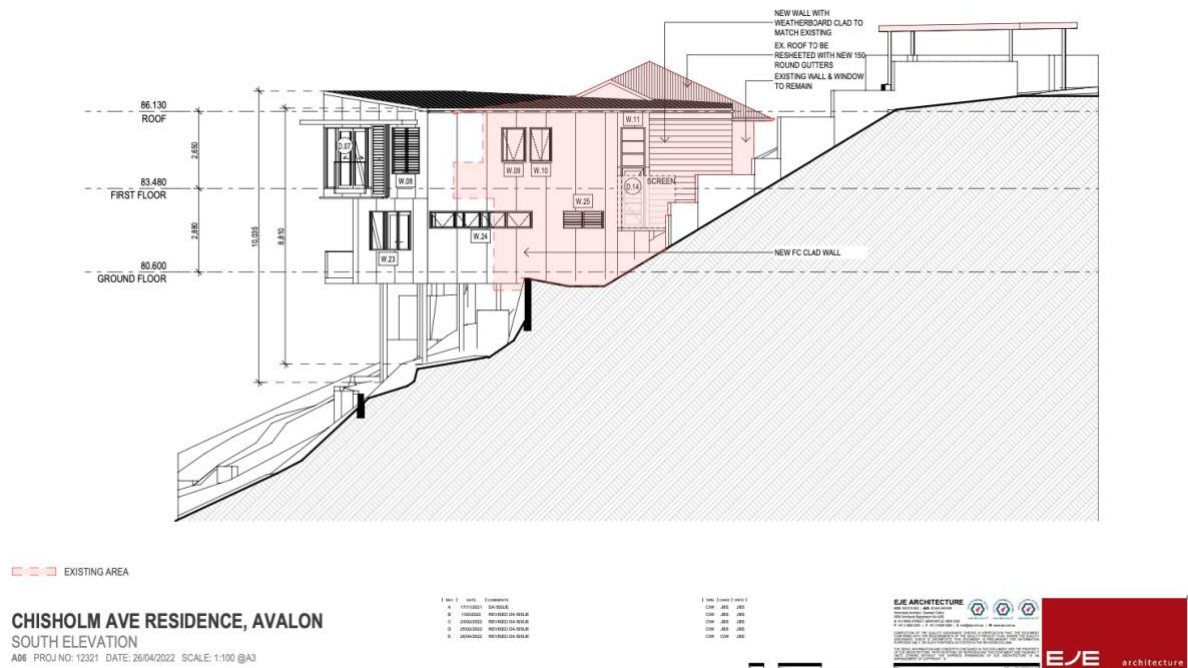
Response: The area is not undergoing change that would warrant privacy impact such as the one presented.

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.

In the context of the above principles, the application can be considered to violate the reasonable expectation that the habitable rooms and private open space at

our property will remain private. It is therefore reasonably anticipated that the application does not comply with the DCP.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control.



Windows required 1.6m high sills. Decks facing the southern boundary require 1.8m high privacy screens.

12. IMPACTS UPON ADJOINING PROPERTIES: OVERSHADOWING

The proposed development should be refused as it will have unacceptable impacts upon the amenity of adjoining properties, specifically with regard to overshadowing.

The proposed development will result in unreasonable overshadowing of the windows of our property and the private open space of our property, resulting in non-compliance with the provisions of DCP.

A variation to the DCP is not supported as the objectives of the clause are not achieved.

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 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 follows:

- *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 highly controlled. Building envelope controls have been exceeded.

- *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. The amount of sunlight that will be lost will only be able to be fully considered once solar elevational drawings are submitted. 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 envelope control, 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 22.5° 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.*

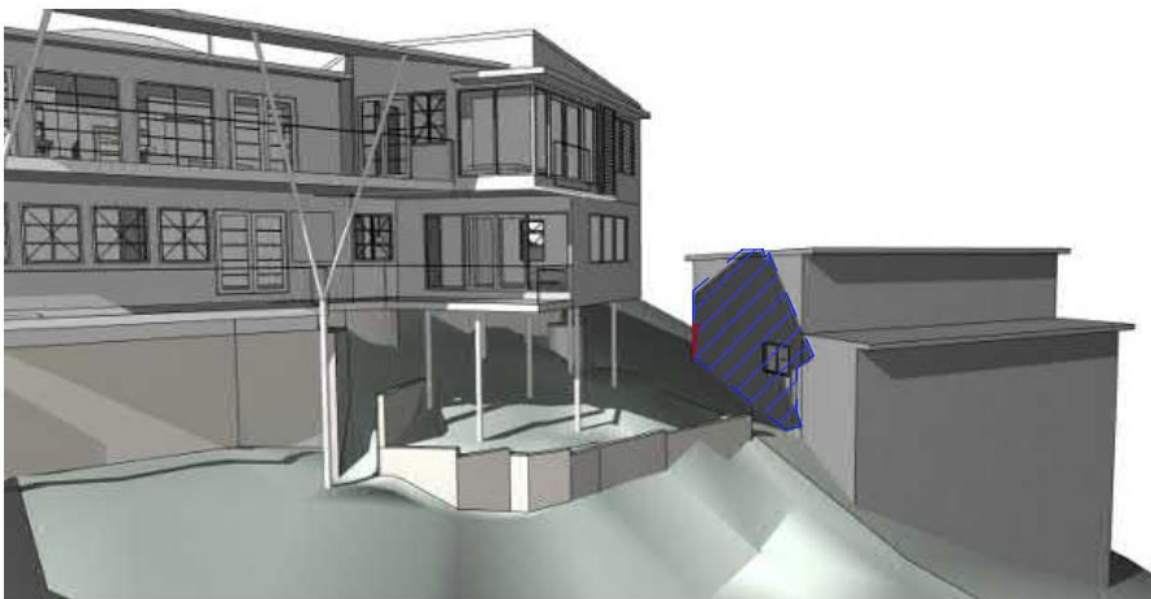
There is no major overshadowing as a result of vegetation

- *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 LEP and DCP controls have not altered for many years.

The assessment of the development against the planning principal 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 envelope control, 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 elsewhere in this Written Submission.

We object to solar loss to our private open space, and to our windows that allow mid-winter solar access into highly used room by non-compliant development controls.



PROPOSED JUNE 21ST 12PM

The loss of our winter sun to our north facing window to our Study/Bedroom is unacceptable. The loss of winter sun is directly caused by the extension of the existing compliant dwelling on the subject site, to the substantial non-compliant envelope, in HOB and Building Separation controls. We would have no sun to this window until well into the winter afternoon. It is the morning winter sun that gives us significant amenity. The proposed non-compliant development removes that morning sun. We are also concerned that the proposed development will remove winter sun to our deck during the winter morning.

13. PUBLIC INTEREST

The proposal is contrary to the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*. The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest.

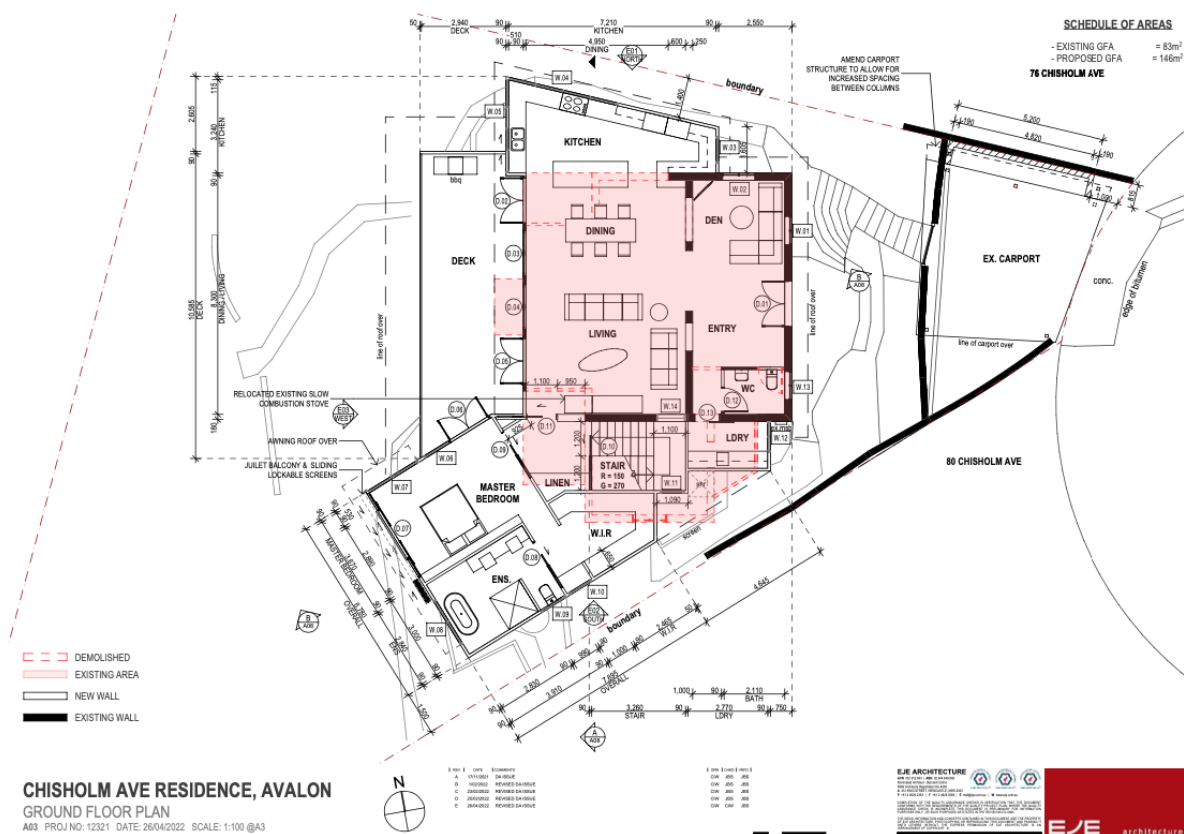
D. CONTENTIONS THAT MAY BE RESOLVED BY AMENDED PLANS

A compliant building design would reduce the amenity impacts identified.

Reduce the proposed development as follow:

- Delete all new built form at the First Floor over HOB & Side Boundary controls
- Reduce the Building Height to 8.5m, to any new built form
- Increase Side Setback to DCP controls, of 2.5m to the southern boundary
- Increase Boundary Envelope Setback to DCP controls, such that the proposed building setbacks further beyond the side setback 2.5m, once a 6.0m wall height is achieved, on a 1:1 basis.
- Reposition the proposed Master Bedroom to Ground Floor, and additional accommodation to a new Lower Ground Floor if required
- Reduce proposed Kitchen to maintain compliance to HOB & Side Boundary controls
- Privacy Windows: New Windows to have 1.6 high sills, or the glass is to be fitted with obscured glazing, with Privacy Screens to be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or all the glass is to be fitted with obscured glazing
- Privacy Decks: 1.8m privacy screens to all decks facing our property, shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

- Landscaping. To maintain view sharing, the proposed trees and plants over 6m in height shall be deleted in the landscape plan. An amended Landscape Plan prepared by a qualified landscape designer to a scale of 1:100 and conditions of this Consent shall be submitted to Council's satisfaction with the Construction Certificate. The plan shall show: a north point; existing and proposed finished ground levels; the location of all existing and proposed landscape features; proposed streetscape works adjacent to the property boundary; existing trees to be retained, removed or transplanted (including species and dimensions); and tree protection zones for trees (on or near the property) that are to be retained and are liable to impacts from the proposed development. Predominantly locally indigenous plant species shall be specified in the Plant Schedule. All plantings shall be of local species not to exceed 6m in height. Details must be submitted with the Construction Certificate application, and shall be to the satisfaction of the Principal Certifying Authority (PCA), to maintain view sharing. Tree planting shall be located to minimise impacts on view loss.
- Roof & Wall Colours: The external finish to the roof and walls must have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours must not be permitted.



The existing dwelling has already 'maxed out' the envelope controls on the subject site. The extension to the south housing the Master Bedroom Suite is non-compliant to Height, Side Setback and Side Boundary Envelope controls. This zone requires to be deleted. The Kitchen to the northern boundary also is non-compliant. Both elements cause amenity loss. Both elements remove the iconic views from the public domain.

E. CONTENTIONS THAT RELATE TO INSUFFICIENT INFORMATION

View Impact Analysis

The Applicant has not provided an adequate View Impact Analysis which details the extent to which existing water views from the public domain are obstructed under the current proposal, from the proposed built form and the proposed trees, to accord with DCP controls and NSWLEC planning principles

We ask Council that after amended plans are submitted to reduce the building envelope below building height, wall height, and all envelope controls, 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. Height Poles required for all trees. The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

Privacy Impact Analysis

The Applicant has not provided an adequate Privacy Impact Analysis, to accord with DCP controls and NSWLEC planning principles.

Solar Access Diagrams

The Applicant has not provided adequate Solar Access Diagrams, at one hourly intervals, in plan and elevation of our property, to assess the loss of solar access at mid-winter, to accord with DCP controls and NSWLEC planning principles

We believe that further assessment of the shadow impacts through the production of elevational shadow diagrams or a "View from the Sun" assessment are critical in order to understand the potential future impacts and necessary for Council's reasonable assessment.

Visual Bulk Analysis

The Applicant has not provided adequate montages from our property to assess the visual bulk assessment from the proposed non-compliant envelope.

F. REASONS FOR REFUSAL

We ask Council to refuse the DA as the proposal is contrary to the Environmental Planning and Assessment Act:

Council is not satisfied that under clause 4.6 of the LEP seeking to justify a contravention of the development standard that the development will be in the public interest because it is inconsistent with the objectives of the standard and the

objectives for development within the zone in which the development is proposed to be carried out.

PITTWATER LEP

- 1.2 Aims of Plans
The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the aims (2a), (2b), (2g), (2i) and (2j) under the LEP.
- 2.3 Zone Objectives
The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the objectives of the C4 zone of the LEP as it fails to provide for the housing needs of the community within a low-density residential environment.
- 4.3 Height of Buildings
The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to comply with the building height development standard under the LEP
- 4.6 Exceptions to Development Standards
Council is not satisfied that under clause 4.6 of the LEP seeking to justify a contravention of the development standard that the development will be in the public interest because it is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
The written requests submitted pursuant to clause 4.6 of the LEP fails to justify contravention

PITTWATER DCP

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy objectives and planning controls of DCP:

- A4.5 Avalon Beach Locality
- B3.6 Bushfire Hazard
- B5.15 Water Management
- B6 Transport & Traffic Management
- B8 Construction & Demolition: Excavation & Landfill
- B8 Construction & Demolition: Construction Traffic Management Plan
- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- D1.1 Character as viewed from a public place
- D1.5 Building Colours & Materials
- D1.9 Side and Rear Building Line
- D1.11 Building Envelope
- D1.20 Scenic protection

The proposal has not been adequately or consistently identified in colour throughout the plans, sections and elevations, or identified within the Statement of Environmental Effects. The plans and documentation are misleading as they do not clearly portray the true extent of works proposed. This may have resulted in an inaccurate representation of the cost of works and consequently insufficient DA fees paid.

The proposal is contrary to Section 4.15(1)(a) (iv) of the *Environmental Planning and Assessment Act 1979* in that there is insufficient information has been submitted to enable the assessment of the application. The plans include inaccuracies and inconsistencies and insufficient information has been provided in order to enable a detailed assessment.

The proposal is contrary to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that it will have i) an adverse impact through its bulk, scale and siting on the built environment, (ii) through its potential use, adverse social impact in the locality and (iii) through lack of landscape provision, including there being no indigenous tree plantings, adverse impact on the natural environment.

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* in that this area of the site is unsuitable for a development of such excessive bulk and scale.

The proposals are unsuitably located on the site pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

The proposal does not satisfy Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not adequately address the amenity of neighbours

The proposal is contrary to the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*. The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest.

G. CONCLUSION

The proposed dwelling is not consistent with the intent of the LEP standards and DCP controls as they are reasonably applied to the proposal.

The variations to LEP standards and DCP controls are considered unreasonable in this instance. The cumulative effect on these non-compliances cause considerable amenity loss to our property.

The development will not sit well within the streetscape with non-compliance to LEP standards and DCP controls causing considerable concern. In this regard, the proposal is considered excessive in bulk and scale and would be consider jarring when viewed from the public domain.

It is considered that the proposal is inappropriate on merit and unless amended plans are submitted, this DA must be refused for the following reasons:

- The application has not adequately considered and does not satisfy the various relevant planning controls applicable to the site and the proposed development.
- The proposed dwelling is incompatible with the existing streetscape and development in the local area generally.
- The proposed dwelling will have an unsatisfactory impact on the environmental quality of the land and the amenity of surrounding properties.
- The site is assessed as unsuitable for the proposal, having regard to the relevant land use and planning requirements.

It is considered that the public interest is not served.

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 of which would result in adverse impacts on our property.

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

Yours faithfully,

Dr. Dean Vincent Leith & Mr Paul Napier White
80 Chisholm Avenue
AVALON BEACH
NSW 2107