
From: BT
Sent: 18/02/2022 7:26:26 AM
To: Council Northernbeaches Mailbox
Cc: Garry & Susan Farrell; Avalon- Paul Minter
Subject: TRIMMED: DA 2022 0084 73 MARINE PARADE AVALON BEACH
NSW 2107 WRITTEN SUBMISSION: LETTER OF OBJECTION
FARRELL & MINITER
Attachments: 73 Marine.docx;

SUBMISSION: FARRELL & MINITER

a written submission by way of objection

Garry and Susan Farrell [Courcheval Pty Limited]
71 Marine Parade
Avalon
NSW 2107

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16 February 2022

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RE: DA 2022 0084 73 MARINE PARADE AVALON BEACH NSW 2107
WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: FARRELL & MINITER

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.

This is a joint submission by the two neighbouring owners to the north and to the south of the subject site.

We ask Council to view this Submission as two objections, as our amenity losses are different.

The construction cost figure is significantly undervalued. The construction cost would be in the \$3m to \$4m range, considering the extensive excavation to 7m deep, the extensive area of internal built form over four levels, extensive deck areas, passenger lift, stonework, extensive glazing, landscape, and the extensive pool zone.

We ask that this DA is determined by the DDP under discretion or the NBLPP considering the contentious matters raised within this submission, the local significance, the potential risk of damage to Council assets, and the considerable life-threatening issues raised within this 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.

The Content of this Submission is as follows:

EXECUTIVE SUMMARY

FACTS

1. The Proposal
2. The Site
3. The Locality & Our Property
4. The Controls

CONTENTIONS THAT WARRANT THE REFUSAL OF THE APPLICATION

1. Character
2. Impacts Upon Adjoining Properties: Excessive Excavation
3. Impacts Upon Adjoining Properties: View Loss
4. Impacts Upon Adjoining Properties: Privacy
5. Impacts Upon Adjoining Properties: Overshadowing
6. Impacts Upon Adjoining Properties: Excessive Bulk & Scale
7. Impacts Upon Adjoining Properties: Landscaping
8. Side Boundary Envelope
9. Contentions that may be resolved by amended plans
10. Contentions that relate to a lack of information
11. Reasons For Refusal

CONCLUSION

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 E2 Environmental Conservation and 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.

- Impacts Upon Adjoining Properties: Excessive Excavation
- Impacts Upon Adjoining Properties: View Loss
- Impacts Upon Adjoining Properties: Privacy
- Impacts Upon Adjoining Properties: Overshadowing
- Impacts Upon Adjoining Properties: Excessive Bulk & Scale
- Impacts Upon Adjoining Properties: Landscaping

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

- SEPP Coastal Management 2018
- LEP Clause 7.2 Earthworks
- LEP Clause 7.7 Geotechnical Hazards
- DCP B3.1 Landslip Hazard
- DCP B3.4 Coastline [Bluff] Hazard
- DCP B8.1 Construction and Demolition – Excavation & Landfill
- DCP B4.22 Preservation of Trees & Bushland
- DCP C1.1 Landscaping
- DCP C1.3 View Sharing
- DCP C1.4 Solar Access
- DCP C1.5 Visual Privacy
- DCP D1.11 Building Envelope

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.

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 Applicant wishes to remove our amenity to improve his 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, the subject of this Submission, 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.

FACTS

1. THE PROPOSAL

The development application seeks approval for a new dwelling to replace the existing dwelling, add a granny flat above a garage and a swimming pool.

2. THE SITE

The location of the proposal is 73 Marine Parade, Avalon which currently contains a single dwelling on Lot 114, DP 8394. The site has two zonings, E4 to the land fronting the roadway and E2 to the portion of the land from the cliff face to the ocean front rock shelf with the boundary as the High-Water Mark to the Pacific Ocean.

The total site area is 1,878m² on title. The usable area of the E4 zone is 1,260m². The latter area is used for all calculations relating to LEP and DCP controls.

The site is regular in shape. The frontage has a width of 19.405m and long side boundaries of 103.63m and 102.11m.

The site slopes steeply up from the road from RL 33 to RL 50 at the highest point of the land adjoining the cliff face. The average slope under the proposed building footprint is 22.8%, reaching 30% in some locations.

The cliff profiles in the vicinity of the subject property are composed of massive sandstone and interbedded siltstone/sandstone beds with slope angles of about 80°. Undercutting in the sandstone units has been found to have produced local overhangs and slope angles as low as 45° in the interbedded units. Cliff formation has been seen to be primarily controlled by jointing, with undercutting in the less resistant interlaminated beds and toppling of large blocks of sandstone which line the cliff base.

St Michaels Cave, immediately to the north of the subject site, has been formed from weathering of a vertical dolerite dyke and along a horizontal siltstone bed below the present cave floor level. The cave extends about 110m into the cliff face, with a height of up to 15m and width of up to 10m. It is understood that rocks regularly fall from the roof of the cave (Morcombe, 2017). Dwellings are positioned above the Cave.

The consideration on the cliff stability and the stability of St Michaels' Cave has not been carried out by the Applicant.



NSW Gov Six Maps extract marked up to show: Significant Rock Falls to the rock platform from the subject site. Erosion of Cliff Edge to St Michael's Cave. Extent of 110m Cave under adjoining properties, roadway, footpath zones and Council land.

3. THE LOCALITY & OUR PROPERTY

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. THE 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.
- SEPPs
- LEP
- DCP

CONTENTIONS THAT WARRANT THE REFUSAL OF THE APPLICATION

1. 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 outside the envelope controls.

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

The proposal is not of a 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 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 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 building 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, as proposed, 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 proposed development would have most observers finding *‘the proposed development offensive, jarring or unsympathetic’*.

2. IMPACTS UPON ADJOINING PROPERTIES: EXCESSIVE EXCAVATION

The proposed development involves excessive and inappropriate excavation.

We contend that the proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*:

- SEPP Coastal Management 2018
- LEP Clause 7.2 Earthworks
- LEP Clause 7.7 Geotechnical Hazards
- DCP B3.1 Landslip Hazard
- DCP B3.4 Coastline [Bluff] Hazard
- DCP B8.1 Construction and Demolition – Excavation & Landfill

Although the Applicant has provided the Horton Coastal Engineering, Coastal Engineering Advice dated 10 January 2022, along with White Geotechnical Report dated 14 January 2022, we are very concerned on a number of matters.

INSPECTION

There is a distinct lack of a specific site inspection of the Cliff Face, St Michael's Cave, and the Rock Platform.

It appears that the last site inspection was four years ago in 2018 by Horton Coastal Engineering, and that did not include St Michael's Cave.

We are uncertain whether White Geotechnical Engineering has carried out any inspection of the Cliff Face, St Michael's Cave, and the Rock Platform, as the White Geotechnical Written Report is silent on the matter. We are uncertain if White Geotechnical Engineering have relevant experience in assessing 50m high coastal cliff faces and 110m deep caves under adjoining sites, to give adequate assessment on these matters.

We ask that a joint inspection is carried out by a suitably qualified geotechnical engineer and Horton Coastal Engineering to assess the risks associated with failure of the Cliff Face and St Michael's Cave.

THE RISK

On page 9 of the Horton Report, the advice states:

Coffey & Partners (1987) noted that the cliff profiles in the vicinity of the subject property (from Avalon Beach to Careel Head) were composed of massive sandstone and interbedded siltstone/sandstone beds with slope angles of about 80°. Undercutting in the sandstone units was found to have produced local overhangs and slope angles as low as 45° in the interbedded units. Cliff formation was seen to be primarily controlled by jointing, with undercutting in the less resistant interlaminated beds and toppling of large blocks of sandstone which line the cliff base.

St Michaels Cave, evident in Figure 2, Figure 3 and Figure 4, was described by Coffey & Partners (1987) as having formed from weathering of a vertical dolerite dyke and along a horizontal siltstone bed below the present cave floor level. At that time, the cave extended about 110m into the cliff face, with a height of up to 15m and width of up to 10m. It is understood that rocks regularly fall from the roof of the cave (Morcombe, 2017). It does not appear that the cave has affected cliff stability at the subject property, but this is a matter for the geotechnical engineer to assess.

We are very concerned that the Horton Report clearly identifies that the Cliff Face and St Michael's Cave have been subject to regular rock falls. Geotechnical instability has been raised.

Significant rock falls from the subject site to the rock platform are evident from aerial photography. Significant erosion of the cliff edge and significant rock falls to the rock platform adjacent St Michael's Cave is also evident from aerial photography.

ACTIONS BY THE APPLICANT'S ENGINEERING CONSULTANTS

The Geotechnical Engineer and the Coastal Engineer have failed to carry out a joint inspection to assess the risks associated with failure of the Cliff Face and St Michael's Cave, and in particular, the potential failure planes related to geotechnical issues such as the joint spacing and the effect of the dyke at St Michaels Cave and surrounding cavity formation in their stability assessment.

Geotechnical Modelling to investigate the effects of the proposed excavation processes on St Michael's Cave and the Cliff Wall has not occurred.

The proposed excavation has not been limited, considering the substantial risks.

CONSEQUENCES OF NOT ADDRESSING THE HAZARD

The consequences of a failure of the 50m high Ocean Cliff Edge and/or St Michael's Cave are potentially life-threatening.

Dwellings are positioned immediately above St Michael's Cave.

Dwellings are positioned along the cliff edge.

Public access to the rock platform is available.

We are very concerned that excessive vibration from proposed rock excavation that is 7m deep, has not been adequately assessed, nor has the design limited excessive excavation considering the life-threatening risks.

INCOMPLETE ASSESSMENT

The Horton Report states in the conclusion on page 15:

The geotechnical engineer should consider these estimated rates in conjunction with an understanding of the particular nature of the cliff materials east of the subject property, their resistance to erosion, and potential failure planes related to geotechnical issues such as the joint spacing. The geotechnical engineer should also specifically consider the effect of the dyke at St Michaels Cave and surrounding cavity formation in their stability assessment.

This has not occurred.

Until the joint inspection occurs, and both Reports are updated, we contend that Council does not have before them reports that they can rely upon to satisfy SEPP Coastal Management 2018, Clause 7.2 Earthworks, Clause 7.7 Geotechnical Hazards, B3.1 Landslip Hazard, B3.4 Coastline [Bluff] Hazard, and B8.1 Construction and Demolition – Excavation & Landfill

We contend that the proposed excavation is excessive and inappropriate, considering the considerable risks that have not been addressed within the DA.

The Geotechnical Report addresses weathering aspects of the cliff under Hazard 4 on page 6 of the Report.

The Geotechnical Report does not address:

- The potential failure planes related to geotechnical issues such as the joint spacing in the cliff face; or
- the effect of the dyke at St Michaels Cave and surrounding cavity formation.

Geotechnical Modelling to investigate the effects of the proposed excavation processes on St Michael's Cave and the Cliff Wall has not occurred.

We are very concerned that the Geotechnical Report has not addressed either matter, despite the Horton Report clearly identifying that the Cliff Face and St Michael's Cave have been subject to regular rock falls.

OUR CONCERN

Our concern is that this vibration hazard caused by 7m deep excavation through bedrock, could cause the cliff edge to fail bringing down dwellings that are positioned close to the edge. The cliff edge is already unstable, and the Geotechnical Engineer is suggesting a 5mm/sec vibration level is acceptable.

Our concern is that this vibration hazard caused by 7m deep excavation through bedrock, could cause St Michael's Cave to fail bringing down dwellings that are positioned above the Cave, or damaging parts of the Cave structure at the entrance to the Cave where dwelling are in close proximity.

Our concern extends to the potential harm to road assets, as well as properties to the west of Marine Parade, at the western extent of the Cave.

These matters simply have been ignored by the Geotechnical Report.

We contend that if there are naturally occurring rock falls from the 50m high rock face, from the roof of St Michael's Cave, and from the cliff edge around the entrance of St Michael's Cave, without any vibration caused by construction activity, then what rock falls can be expected from excavating to 7m deep in the bedrock that is reasonably adjacent to these hazard zones, when the Geotechnical Engineer is suggesting 5mm/sec vibration is acceptable at the Cliff Edge?

The extended excavation time frame to excavate the site to 7m in depth through bedrock as proposed, extends the risk.

The major concern is that it would appear that the Geotechnical Report has not addressed these matters.

The Geotechnical Report seems to have little idea where St Michael's Cave actually is positioned in relation to the 7m deep excavation.

The lack of attention to these matters is unacceptable.

The excavation is over 7m deep at the proposed lift pit at Grid 3. Council must note that the White Geotechnical Report under-forecasts the depth of the excavation – the Report states the excavation is 5m deep.



ALTERNATIVE DESIGN SOLUTIONS

Council will note that there are alternative design solutions to eliminate the excavation of the site.

- Garage Plan: There is no need to excavate to create a zone for a garage. The garage could be positioned to the west of Grid 1, in the zone currently occupied by the existing dwelling. The Entry to the dwelling could use the proposed southern external stair that rises to the Mid-Level Plan, adjacent the retained Fig Tree, or position a new internal stair from the garage level to the Mid-Level Plan at existing grades. The rainwater tank could be positioned at grade. Delete excavation at this level.
- Lower-Level Plan. Tanks in this zone must be elevated above the existing rock surfaces. Delete excavation at this level
- Mid-Level Plan: Bedrooms 3 & 4, Bathroom must rise to RL 47.4 to avoid excavation, and the Laundry must rise to RL 47.8 to avoid excavation, as the storey height is excessive in this zone. Tanks in this zone must be elevated above the existing rock surfaces. Delete excavation at this level
- Upper-Level Plan: Pool: the proposed pool could be repositioned to the west to avoid any excavation. Delete excavation at this level

ACTIONS REQUIRED

Considering the considerable risks, we contend that, as a minimum:

- A joint inspection must occur by the Geotechnical Engineer and Horton Coastal Engineering to assess the potential risks associated with failure of the Cliff Face and St Michael's Cave, and in particular to identify potential failure planes related to geotechnical issues such as the joint spacing and the effect of the dyke at St Michaels Cave and surrounding cavity formation in their stability assessment.
- The extent of excavation must be significantly reduced or fully eliminated;
- Complete a 3D survey of St Michael's Cave, using terrestrial LiDAR, FARO FOCUS, HORTA, GPR or other automated methods.
- Complete a thorough close visual inspection of the 50m high Cliff Wall, for a 100m length of cliff wall either side of the subject site, and carry out other geotechnical investigations as appropriate. Prepare a detailed geotechnical report
- Complete a detailed Geotechnical Modelling to investigate the effects of the proposed excavation processes on St Michael's Cave and the Cliff Wall
- Review vibration levels, attenuation methods, excavation techniques, and extensive monitoring to eliminate the risk
- Vibration levels to 5mm/sec as proposed by the Geotechnical Engineer, is totally inappropriate considering the unassessed geotechnical risks. We contend that a 'stop work' on site at a significantly lower level must be considered at the cliff edge and at the boundary to the property;
- Full time monitoring must be positioned on either neighbour's dwellings, as well as on the Cliff Face in a number of locations on neighbour's properties and the subject site, and within St Michael's Cave, with recorded video monitoring of the Cliff Face and St Michael's Cave.
- Attenuation methods to reduce the vibration risk to a much lower level must be considered.
- Double attenuation cuts, 2m deep, to be used along all edges facing the cliff edge, the Cave, and the side boundary.
- No rock breaking with hammers.
- Saw cutting only to be used, with chemical CO2 Crackers.
- Dilapidation Reports on both neighbour's properties must be completed.
- No rock anchors will be allowed under our property.
- No fill to be used.

GROUNDS FOR REFUSAL

The proposed development presents unacceptable excavation and fill, and incomplete assessment.

We contend that the proposal is contrary to the *Environmental Planning and Assessment Act 1979*

- SEPP Coastal Management 2018
- Clause 7.2 Earthworks
- Clause 7.7 Geotechnical Hazards
- B3.1 Landslip Hazard
- B3.4 Coastline [Bluff] Hazard
- B8.1 Construction and Demolition – Excavation & Landfill

We contend that these matters give grounds for refusal.

We attach image extracts from the Horton Report that are relevant:



Figure 2: Zoomed aerial view of subject property as of April 2016



Figure 3: Oblique aerial view of subject property (lot across), looking NW, on 13 April 2020



Figure 4: View of cliff face and rock platform at subject property on 7 April 2018, looking NW, with approximate lot boundary depicted, and St Michael's Cove visible in background at "A"



Figure 5: View of cliff face and rock platform at subject property on 7 April 2018, looking SW, with approximate lot boundary depicted

3. IMPACTS UPON ADJOINING PROPERTIES: VIEW LOSS

The proposed development when considered against the DCP and the NSW Land and Environment Court Planning Principle in *Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC* will result in an unacceptable view impact and will not achieve appropriate view sharing.

The proposed development will result in unacceptable additional view impacts. The view impact is moderate when considered against the *Tenacity* 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 neighbouring property.

The proposed development will unreasonably obstruct views enjoyed by our property from highly used rooms and from entertainment decks, resulting in inconsistency with the requirements and objectives of the DCP.

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 our property, and other impacted dwellings, 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.

DER SARKISSIAN V NORTHERN BEACHES COUNCIL [2021] NSWLEC 1041

We refer to a dismissal of a Class 1 Appeal by NSWLEC Commissioner Dr Peter Walsh on a nearby site in Curl Curl on view loss grounds. We refer to Der Sarkissian v Northern Beaches Council [2021] NSWLEC 1041. [NBC DA 2019/0380, 72 Carrington Parade, Curl Curl]

We raise the dismissal by NSWLEC of the Applicant's appeal. The case in question had many similarities to this DA.

- The main view loss concern was to a neighbour immediately behind 72 Carrington Parade, Curl Curl.
- The view loss involved side setback controls.
- The view loss at Curl Curl was severe – our loss would be also be the severe: we would have significant loss of land/water interface from our living spaces

The key matters within the Commissioner's Conclusion:

- the determinative issue in this case is view loss
- the proposal would significantly change the amenity enjoyed for the worse.
- both policy controls and view sharing principles suggest the proposal goes too far.
- proposal attempts to achieves too much on a constrained site.
- a reasonable development at the upper level in regard to view sharing and setback policy,
- with good design, there is scope for this to occur while also providing for reasonable floor space on this level.

It is clear that the view loss, on this DA, occurs through a poor consideration on wall height, building height and side boundary envelope controls.

Our commentary on this DA is very similar to Commissioner Walsh in Der Sarkissian v Northern Beaches Council [2021] NSWLEC 1041

- the determining issue in this case is view loss – in our case a water and water/land interface view loss
- the proposal would significantly change the amenity enjoyed for the worse.
- policy controls and view sharing principles suggest the proposal goes too far.
- proposal attempts to achieve too much on a constrained site.
- a reasonable development at the upper level in regard to view sharing would share the view
- with good design, there is scope for view sharing to occur while also providing for reasonable floor space on all levels

We contend that there is no reasonable sharing of views amongst dwellings.

The new development is not designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The proposal has not demonstrated that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.

We also refer to two recent DA that were refused by NBC DDP:

DA 2020/1338 55 BOWER STREET, MANLY

We bring to the attention of Council a recent refusal by NBC DDP on 24 March 2021, following a Refusal Recommendation of NBC Development Assessment Manager, by NBC Reporting Manager Anna Williams, a very senior and highly experienced NBC Planning Officer, and the NBC Responsible Officer Rebecca Englund, a very senior NBC Planning Officer, that Council as the consent authority refuses Development Consent to DA2020/1338 for Alterations and additions to a dwelling house on land at Lot 63 DP 8075, 55 Bower Street, Manly, subject to the conditions that were outlined in the Assessment Report.

The assessment of DA 2020/1338 involved a consideration of a view loss arising from a proposed development that presented a non-compliant envelope to LEP and DCP controls.

The DDP agreed with the recommendation and refused this DA.

The DDP Panel that refused this DA were three of the most senior DDP members: Peter Robinson Executive Manager Development Assessment, Lashta Haidari Manager Development Assessment, and Liza Cordoba Manager Strategic & Place Planning

The Assessment Report found that:

'the impact associated with the non-compliant built form, specifically the proposed upper floor, is unreasonable and the objectives of the relevant standards and controls are not achieved.'

The Assessment Report within the Tenacity Assessment concluded:

Whilst the level of impact is categorised as moderate at worst, the impact would be reduced with a compliant or near compliant design.

There is also a question as to whether a more skilful design could reduce the level of impact for adjoining properties.....that a more skilful design could lessen the impact.

The proposal is also considered to be inconsistent with the requirements of this control, which require views between buildings to be maximised, in addition to those objectives that seeks to provide for view sharing between properties and to maximise disruption and loss of views."

The DA was recommended for refusal, and DDP refused the DA in full support of the NBC Reporting Manager and NBC Responsible Officer Assessment Report.

The severity of the view loss that was considered unacceptable by the DDP was clearly stated by the DDP. This level of view loss was considered as 'moderate' by the assessing officers and the DDP. The photographs are shown from page 156 of the DDP Agenda, 24 March 2021.

We contend our view loss is of a severity equal or worse than this view loss.

In Q4 2021, a S82A DA has been submitted, with Amended Plans, presenting a 'more skilful design' solution to maintain an important view to Freshwater Beach.

DA 2021/0517 55 WHEELER PARADE DEE WHY

We bring to the attention of Council a recent refusal by NBC DDP on 24 November 2021, with Panel members Rod Piggott, Rebecca Englund, Tony Collier and Liza Cordoba, following a Refusal Recommendation of NBC Development Assessment Manager, by the NBC Responsible Officer Jordan Davies, a very senior NBC Planning Officer, that Council as the consent authority refuses Development Consent to DA2021/0517 for Alterations and additions to a dwelling house on land at Lot B DP 338618, 55 Wheeler Parade Dee Why subject to the conditions that were outlined in the Assessment Report.

The assessment of DA 2020/0517 involved a consideration of a view loss arising from a proposed development.

The DDP agreed with the recommendation and refused this DA.

The Assessment Report found that:

" A view assessment is undertaken later in this assessment report and the proposal is found to result in an unsatisfactory view sharing outcome and the application is recommended for refusal for this reason"

The Assessment Report found that in respect to a compliant envelope:

" the question to be answered is whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact upon views of neighbours."

The Assessment Report within the Tenacity Assessment concluded:

"the view impact looking south-east is considered both severe and devastating from the respective rooms given the significant proportion of the views which are impacted. The aspect looking south and south- east are considered whole, prominent coastal views which are certainly worthy of consideration and at least partial protection. The proposal to remove the vast majority of these views is considered overall to be a severe view impact."

The DA was recommended for refusal, and DDP refused the DA in full support of the NBC Responsible Officer Assessment Report.

The severity of the view loss that was considered unacceptable by the DDP was clearly stated by the DDP. This level of view loss was considered as 'severe' by the assessing officers and the DDP.

We contend our view loss is of a similar severity.

TENACITY CONSULTING V WARRINGAH COUNCIL 2004

In *Tenacity*, [*Tenacity Consulting v Warringah Council 2004*], NSW LEC considered Views. *Tenacity* suggest that Council should consider:

“ the question to be answered is whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact upon views of neighbours.”

APPLICATION OF TENACITY PLANNING PRINCIPLE

We have not been fully able to consider the impact of the proposal on the outward private domain views from our property.

Height poles or montage view loss analysis has not been provided by the Applicant.

We ask for Height Poles to be erected.

An assessment in relation to the planning principle of Roseth SC of the Land and Environment Court of New South Wales in *Tenacity Consulting v Warringah [2004]* NSWLEC 140 - Principles of view sharing: the impact on neighbours (*Tenacity*) is made.

The steps in *Tenacity* are sequential and conditional in some cases, meaning that proceeding to further steps may not be required if the conditions for satisfying the preceding threshold is not met.

Step 1 Views to be affected

The first step quoted from the judgement in *Tenacity* is as follows:

The first step is the assessment of views to be affected. 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. 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.

An arc of view is available when standing at a central location in the highly used zones on our property.

The composition of the arc is constrained over the subject site boundaries, by built forms and landscape. The central part of the composition includes the subject site. Views include scenic and valued features as defined in *Tenacity*. The proposed development will take away views for its own benefit. The view is from our highly used rooms towards the view. The extent of view loss exceeds moderate and the features lost are considered to be valued as identified in Step 1 of *Tenacity*.

Step 2: From where are views available?

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

The second step is to consider from what part of the property the views are obtained. For example, the 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 expectation to retain side views and sitting views is often unrealistic.

The views in all cases are available across the boundary of the subject site, from standing and seated positions. An arc of view is available when standing at highly used zones on our property.

In this respect we make two points: We have no readily obtainable mechanism to reinstate the impacted views from our high used zones if the development as proposed proceeds; and all of the properties in the locality rely on views over adjacent buildings for their outlook, aspect and views towards the view.

Step 3: Extent of impact

The next step in the principle is to assess the extent of impact and the locations from which the view loss occurs.

Step 3 as quoted is:

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. 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). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

As we rate the extent of view loss is above moderate in our opinion the threshold to proceed to Step 4 of Tenacity is met.

Step 4: Reasonableness

The planning principle states that consideration should be given to the causes of the visual impact and whether they are reasonable in the circumstances.

Step 4 is quoted below:

The fourth step is to assess the reasonableness of the proposal that is causing the impact. 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.

In our opinion the extent of view loss considered to be the greater than moderate, in relation to the views from our highly used zones of our dwelling. 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 private domain visual catchment is an arc from which views will be affected as a result of the construction of the proposed development. The proposed development will create view loss in relation to our property. The views most affected are from our highly used zones and include very high scenic and highly valued features as defined in Tenacity. Having applied the tests in the Tenacity planning principle we conclude that we would be exposed to a loss greater than moderate from the highly used rooms. 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 siting of the proposed development and its distribution of bulk does not assist in achieving view sharing objectives. Our assessment finds that view sharing objectives have not been satisfied.

There are architectural solutions that maintains our view, by proposing development that maintains our view.

As noted by his Honour, Justice Moore of the Court in *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 (Rebel),

“the concept of sharing of views does not mean, for the reasons earlier explained, the creation of expansive and attractive views for a new development at the expense of removal of portion of a pleasant outlook from an existing development. This cannot be regarded as “sharing” for the purposes of justifying the permitting of a non-compliant development when the impact of a compliant development would significantly moderate the impact on a potentially affected view”.

The same unreasonable scenario in Rebel applies to the current DA. The proposed dwelling will take away views from our property to the considerable benefit of the future occupants of the proposed dwelling. This scenario is not consistent with the principle of View Sharing enunciated by his Honour, Justice Moore in Rebel. The adverse View Loss from our property is one of the negative environmental consequences of the proposed development. The proposed development cannot be supported on visual impacts grounds.

These issues warrant refusal of the DA.

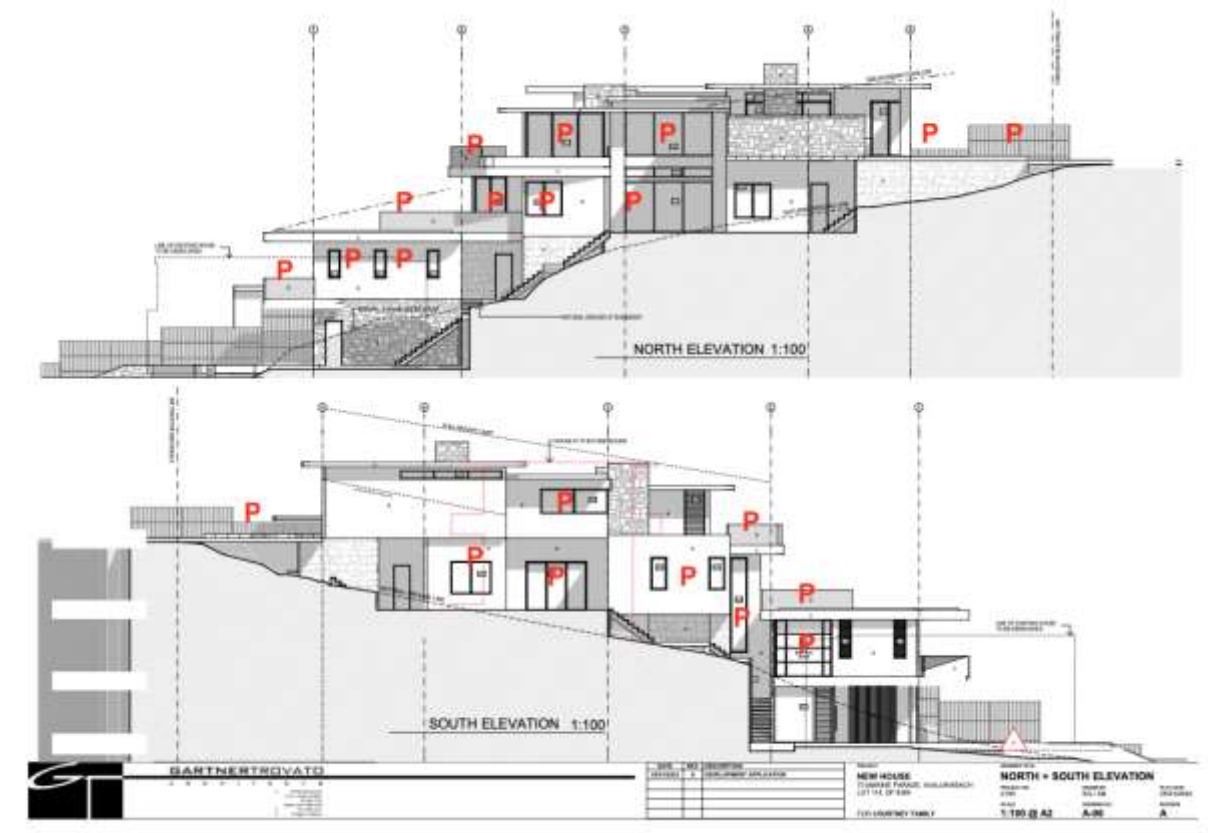
Height Poles: We ask Council that after amended plans are submitted to reduce the building envelope to all envelope controls, to request that the Applicant position 'Height Poles/Templates' to define the building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor. 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.

4. 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.



Poor Privacy Outcomes [P]; Windows & Decks overlooking Neighbours

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.

5. 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.

Our solar panels will also be heavily overshadowed in winter.

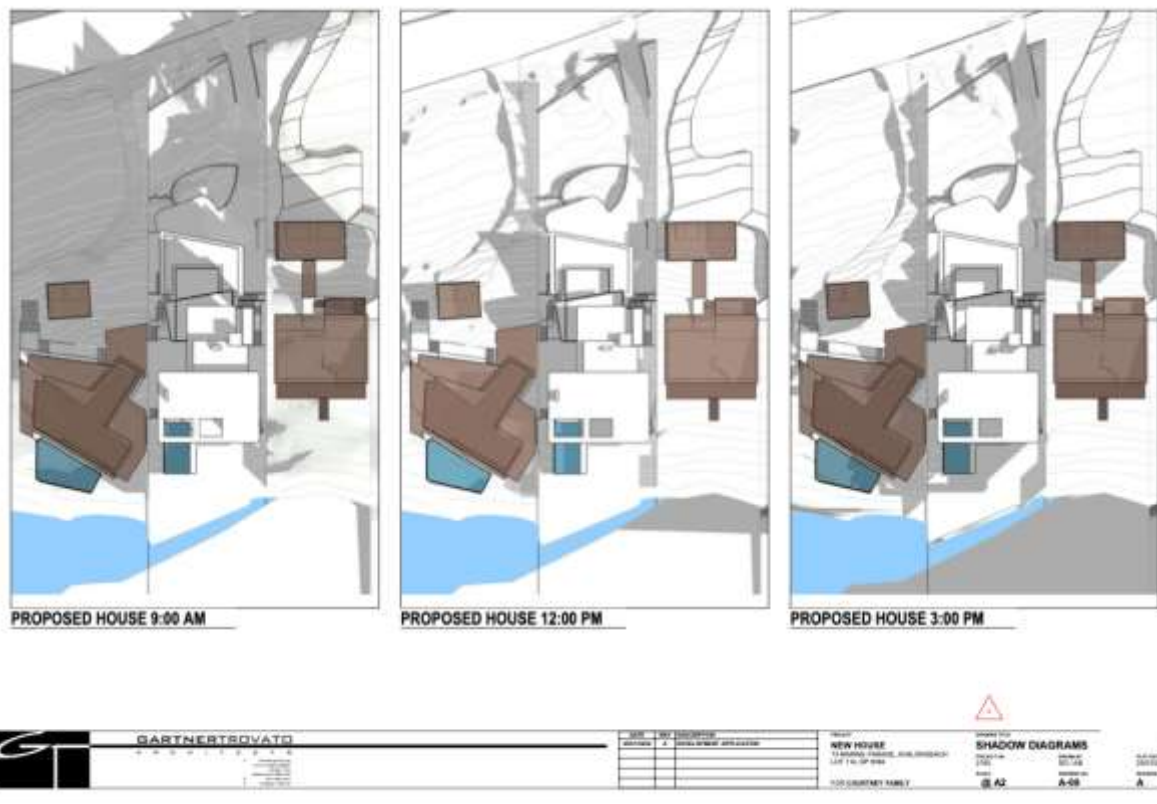
A variation to the DCP is not supported as the objectives of the clause are not achieved.

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.



Diagrams show complete overshadowing of neighbour to the south from 9am to 3pm Winter, including north facing windows and north facing private open spaces, and solar collectors. Non-compliant building envelope on the southern boundary is contributing to this loss.

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

6. IMPACTS UPON ADJOINING PROPERTIES: EXCESSIVE BULK & SCALE

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.”

Commentary:

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

7. IMPACTS UPON ADJOINING PROPERTIES: LANDSCAPING

The landscape component of the proposal must not be supported due to the significant impacts of proposed works on existing trees and vegetation, and the poor provision of new canopy trees.

Fourteen (14) trees are proposed to be removed including seven, mature native trees of importance, in good condition, to 14m in height:

- Tree 5 Broad Leaf Paperbark 14m
- Tree 6 Broad Leaf Paperbark 14m
- Tree 8 Broad Leaf Paperbark 14m
- Tree 7 Coastal Banksia 12m
- Tree 23 Cheese Tree 8m
- Tree 27 Cheese Tree 7m
- Tree 25 Tallowwood Gum 9m

We ask for the design to be modified to retain these existing mature native trees of importance, that are in good condition. An alternative building design and site layout must be sought, exploring the retention of key native trees.

In addition to the seven trees listed above, we also ask for the following trees be retained as they add considerable amenity:

- Tree 18 Gum Tree 8m
- Tree 24 Rainforest Tree 8m
- Tree 26 Cocos Palm 10m

In addition to the ten trees listed above, we also ask for the following trees be relocated to the front garden or retained as they add considerable amenity:

- Tree 16 Cocos Palm
- Tree 17 Canary Isle Date Palm
- Tree 21 Bangalow Palm

Trees 16, 17, 18, 23, 24, 25, and 26 provide significant amenity to neighbours in their current locations.

There are trees along the boundaries that provide additional amenity, and we ask for those trees to be preserved. These trees are not shown on the Arborists Report, but are shown on the Architect's DA drawings.

Only four (4) canopy trees are proposed to replace the fourteen (14) trees removed.

The only tree that is proposed to be retained in the upper section of the site, beyond the front setback zone, and the FPL, is the Port Jackson Fig.

- Tree 19: Port Jackson Fig has a TPZ of 5.67m, and a SRZ of 2.65m. The crown is 8m. The proposed development has 4m deep excavation proposed only 1.7m from the trunk, cutting through a large portion of the TPZ, and the SRZ.

To preserve this important tree, there should be less than 10% encroachment into the TPZ and no encroachment into the SRZ. The proposed development also must provide for a full clearance of the existing crown that is 8m in diameter, and 8m in height – the height of the proposed dwelling in this zone is 8m. Currently, built form is proposed within the canopy structure of the existing tree. The proposed development must also provide for a clearance of 2m from the canopy to allow a

zone for the canopy to increase, and to provide an adequate drip zone under the canopy.

Any encroachment into the TPZ of existing trees by greater than 10%, or any encroachment into the SRZ, is deemed to be major, and therefore requires a tree root investigation in accordance with AS4970-2009.

We contend that the proposed retained trees have not had adequate tree root investigation in accordance with AS4970-2009. The proposed works will have a significant impact on the retained tree, with the potential to negatively impact the health and vitality of these existing tree long term.

Should the plans be approved with the current layout, trees within 2m on the proposed works may all be removed without approval under the tree removal provisions.

The proposed two Banksia at NE corner at Upper Level are planted too close to the proposed building.

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

No canopy trees can be positioned in the water viewing corridors of neighbours.

The proposed development does not provide sufficient landscaping, including 6m high privacy planting facing our property. The proposed development does not provide an adequate setback area which would permit the planting of appropriate vegetation which could offer visual screening.

The proposed development involves tree removal and lack of integration of landscaped features.

The built form is not softened by landscaping, and does not provide adequate tree replacement to soften the built form.

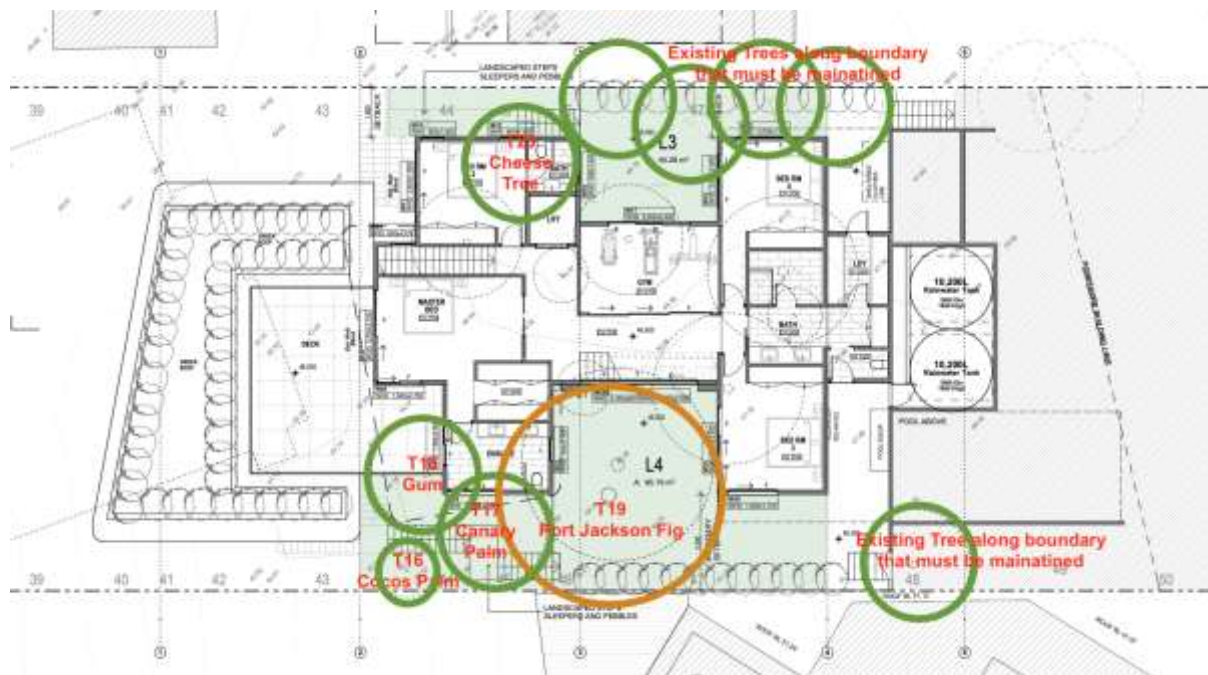
The landscaped area as shown in the Landscape Plans proposes tree planting in areas considered to inadequately provide spatial dimensions, with insufficient soil depth, to support long term tree growth.

The landscape component of the proposal is unacceptable due to the significant impacts of proposed works on trees to be retained, as well as insufficient canopy trees proposed to compensate the removal of significant trees within the site.

The landscape scheme, based on the architectural design layout, does not provide adequate landscape areas of deep soil that are not restricted by building proximity, to meet the requirements of the DCP.

There are significant impacts of proposed works on trees to be retained, as well as insufficient canopy trees proposed to compensate the removal of significant trees within the site.

Excavation works and the proximity of existing trees to proposed building and structures will place ongoing issues with the arboricultural preservation of existing trees in the long term.



All 10 existing trees along side boundaries must be fully retained and preserved. The large native trees in the front setback zone must also be fully retained.

8. SETBACK: SIDE BOUNDARY ENVELOPE

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

The development application proposes major non-compliances with the side boundary envelope on both sides, being outside the envelope on either side,

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 adjacent properties

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

The non-compliance to the north eastern corner is unacceptable. We ask for a 3.5m setback to the proposed kitchen wall. This non-compliance leads to considerable visual bulk to the east facing verandah and private open space to the neighbour to the north.



The non-compliance to side boundary envelope to the south wall zones and chimney at the Upper Level is unacceptable. Delete Chimney due to smoke nuisance. Set the wall zone and roof back to 3.5m. This non-compliance leads to considerable visual bulk and solar loss to the dwelling and private open space to the neighbour to the south.



9. CONTENTIONS THAT MAY BE RESOLVED BY AMENDED PLANS: DESIGN ALTERNATIVES

A compliant building design would reduce the amenity impacts identified.

Reduce the proposed development as follow:

1. Excavation: Delete all excavation and all fill. Reason: Geotechnical Risks Undefined, Excessive Excavation, Excessive Fill, non-compliance to SEPP, LEP & DCP controls.
2. Side Boundary Envelope: 3.5m side setback to the proposed kitchen wall. Reason: Visual Bulk, Building Envelope non-compliance
3. Side Boundary Envelope: 3.5m side setback to pool deck wall and roof above. Reason: Visual Bulk, Overshadowing, Building Envelope non-compliance
4. Chimney: Delete chimney to pool deck. Reason: Smoke Nuisance, Visual Bulk, Overshadowing, Building Envelope non-compliance
5. View Loss: Reposition envelope to avoid neighbours view loss: make amendments to achieve *a more skilful design to provide the applicant with the same development potential and amenity and reduce the impact upon views of neighbours*. Reason: View Loss
6. Overdevelopment: Reduce Master Bedroom Deck to a maximum of 3.0m in depth, increasing green roof zone. Reason: Overdevelopment, Visual Bulk
7. Overdevelopment: Reduce Living Room Deck to a maximum of 3.6m in depth, increasing green roof zone. Reason: Overdevelopment, Visual Bulk
8. Eaves: Reduce eaves to 0.5m in all locations. Reason: Overdevelopment, Visual Bulk.
9. Privacy: Increase sills to all windows facing the side boundaries to a minimum 1.7m above FFL at each floor level [W2, W3, W4, W5, W6, W7, W11, W12, W14, W15, W16, W17, W19, W20, W22, W24, W28, W29, W31, W36]. Obscured glass to all bathrooms. Privacy screens to all glass facing side boundaries. Reason: Privacy
10. Privacy: 1.7m privacy screens to all decks and balconies at all levels facing the side boundaries. 1.7m privacy screens to the proposed pool facing the side boundary. Privacy screens 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. Reason: Privacy
11. Landscape: The design to be modified to retain the seven existing mature native trees of importance, that are in good condition. An alternative building design and site layout must be sought, exploring the retention of key native trees. Maintain existing crossover and driveway location.
12. Landscape: Retain all existing native trees in good condition, irrespective of size, in the 3.5m side setback zones adjacent neighbour's dwellings.
13. Provide additional new semi mature native canopy trees [400 lit pot size] to replace the trees removed
14. Landscape: Arborist Tree 19: 8m high Port Jackson Fig has a TPZ of 5.67m, and a SRZ of 2.65m. The crown has a diameter of 8m. The proposed development has 4m deep excavation proposed only 1.7m from the trunk, cutting through a large portion of the TPZ, and the SRZ. Delete excavation in

the TPZ. The Port Jackson Fig must have no built form within 6m of the trunk, to allow for the existing 4m radius of the crown, plus a 2m clearance for future growth of the crown.

15. Landscape: Green Roof [north and south] to have on slab dense planting to 1.8m high above deck level, and these species to be immediately replaced if the landscape in the green roof zone fails
16. Landscape: Privacy landscaping to the height of the proposed wall heights along each side boundary. Privacy planting to 1.8m height along southern side of the proposed pool. Create 1m deep soil planting zones in side setback zones to support privacy planting, and create 1m deep soil zones to support all proposed landscape. Reason: Inadequate landscape provision.
17. Swimming Pool. The pool to be positioned central to the width of the site, to ensure that privacy impacts are reduced to either neighbour. Remove pool from extending beyond the Foreshore Building Line. Reason: Privacy, overdevelopment, FBL intrusion
18. Colours: The external finish to the roof and all external wall and slab edges, 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. Reason: To accord with DCP, Glare.

10. CONTENTIONS THAT RELATE TO A LACK OF INFORMATION

Geotechnical

The Applicant has not provided adequate protection to our property from excessive excavation and potential land slip and damage to our property, and to the cliff face and St Michael's Cave, including excessive vibration limits, lack of full-time monitoring of the vibration, incomplete dilapidation report recommendations, incomplete attenuation methods of excavation, exclusion of excavation and fill in the setback zone, exclusion of anchors under our property, and incomplete consideration of battering in the setback zone.

View Impact Analysis

The Applicant has not provided an adequate View Impact Analysis which details the extent to which existing water views from our property 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 to all envelope controls, to request that the Applicant position 'Height Poles/Templates' to define the 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

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.

Incomplete Drawings

- Drawing A06 has incorrectly titled north and south elevations.
- All plans, sections, and elevations have incomplete levels and dimensions to adequately control and set-out the proposed development to site boundaries.
- Grids 1 to 5 have not been provided with an offset dimension to the front boundary.
- Side Setbacks to all wall surfaces have not been shown.
- Eave projection dimensions have not been shown.

11. REASONS FOR REFUSAL

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

SEPP (Coastal Management) 2018

The proposal would not satisfy the matters for consideration under SEPP CM 2018

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 E2 Environmental Conservation and C4 Environmental Living zone of the LEP as it fails to provide for the housing needs of the community within a low-density residential environment.

- Clause 7.2 Earthworks
- Clause 7.7 Geotechnical Hazards

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:

- B3.1 Landslip Hazard
- B3.4 Coastline [Bluff] Hazard
- B4.22 Preservation of Trees & Bushland
- B8.1 Construction and Demolition – Excavation & Landfill
- C1.1 Landscaping
- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- D1.11 Building Envelope

Solid Fuel Heater

Delete Chimneys.

It is unclear if the fireplace flue exhaust location on the plans is within 6000 mm (horizontally) from a neighboring structure, as such it may not comply with the distance criteria listed in AS 2918:2018. The provided plans also do not make it clear if the flue structure is within 3000mm of the roof line of the proposed building which also must be demonstrated. The applicant has not demonstrated that the proposed solid fuel heater will comply with the emission reduction requirements set out in Australian Standards 4012 and 4013. To have a solid fuel heater incorporated into the development the applicant is required to provide further information or advise if they wish to remove the solid fuel heater and instead rely on a more environmental friendly heating source for the development that produces less particulate pollution. The proposal is not supported until the applicant demonstrates that the flue exhaust complies with AS 2918:2018 and details are supplied of the proposed solid fuel heater unit to be installed that demonstrates compliance with AS 4012 & 4013.

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 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, and (iii) through 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.

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,

Garry and Susan Farrell [Courcheval Pty Limited]
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