

## Natalie Graham

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**From:** Kylie Herbst  
**Sent:** Monday, 28 February 2022 4:34 PM  
**To:** Planning Panels - Northern Beaches  
**Cc:** Adam Mitchell; Miranda Korzy; Miranda Korzy  
**Subject:** DA: 2021/1522 - 189 Riverview Road Avalon Beach Demolitions Works and Construction of a Dwelling House  
**Attachments:** 21051 Road Reserve 1.pdf; Northern Beaches Planning Panel 16 February 2022.docx  
**Categories:** NBLPP

174 Riverview Road  
Avalon Beach NSW 2107

28 February 2022

To the Panel

### **Re: DA 2021/1522 - 189 RIVERVIEW ROAD, AVALON BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE**

The basis of adjournment was the provision of the following information from the applicant by 16 February 2022.

“The Panel decided to adjourn the public meeting to a date to be fixed and to defer further consideration for the following reasons:

1. Procedural fairness. The original Assessment Report published on Councils website on Tuesday 25 January 2022 accidentally omitted significant parts due to a technical error. The corrected Assessment Report was published on Council’s website on Tuesday 1 February 2022. The Panel considers that is inadequate notice to the community of the correct contents of the Assessment Report. In addition, the Council letter dated 25 January 2022 advising objectors of the Panel meeting on 2 February 2022 erroneously indicated that the meeting would be livestreamed on Council’s website. For technical reasons that has not been possible.
2. Survey considerations. There appear to be discrepancies related to the height of the proposed buildings on the subject land between, on the one hand, a survey report provided by the applicant and, on the other hand, a survey report obtained by the neighbour at 187 Riverview Road, Avalon Beach. The Panel wishes Council to further investigate the apparent discrepancies and provide a report. The applicant is requested to investigate the apparent discrepancies and to make a submission to Council by 16 February 2022.
3. Clarification. The applicant is requested to provide by 16 February 2022 updated Site, Floor, Landscape and Northern Elevation Plans clarifying the location of the external stairs, inclinator, their respective landings and the supports for the proposed inclinator, including the location of same in relation to Tree 27; and details of such supports including materials, dimensions, and whether they are in the location of the sub-root zones of trees that are to be retained.
4. Geotechnical Report. The applicant is requested to provide by 16 February 2022 an updated Geotechnical Report which considers the most recent plans and includes details and recommendations for the stabilisation of the boulder/rock shelf near the north boundary and the extent of excavation associated with the lowest level.”

For the public record, the only information available on the council website, since February 17 and to date, are

- Plans – Inclinator
- Photomontage Inclinator

The requested information concerning the survey and geotechnical report has not been supplied or if supplied has not been made available for public scrutiny.

Further with respect to procedural fairness there is no explanation from council concerning the landscape report dated 20 December 2021 and subsequent revision. Refer item 4 of the key points.

### **A new approach is needed and a complete reassessment of this development.**

A strategy of ‘just enough, just in time’ and clear behaviours and actions that do not promote transparency and disclosure have been a concern at the outset of this planned development from both the applicant and council.

On 12 December 2017, owner and rate payer, Raphael Khan forwarded to us draft plans for 189 Riverview Road received from the applicant. He was distressed and in shock by the bulk, scale and incongruity of the proposed DA. (Reference: draft plans received by Kylie Herbst on 12 Dec 2017 via email.)

During March 2018, we were visited by the applicant along with his town planner and architect.

Several hours were spent explaining the proposed design including the rough height and breadth of the proposed garage and façade. We spoke at length regarding the fact the development would be adjacent to the eastern boundary with no compliance with the front building line and pointed out how the garage and carport were positioned at 187 and 191 Riverview Road respectively.

We were told the height would be 3 metres straight up from the road reserve at the road edge and worryingly, all trees would be removed from the property to accommodate a design that would maximise the potential value of the lot. By design, the applicant was going for 'the maximum' ignoring the current controls that exist.

The applicant stated we should be happy with the design and the build as we would have no trees blocking our view (only his building and garage). We did not state any opinions regarding the suitability of the design when approached at the time, preferring to review the subsequently lodged development application to get clarity on the development proposed.

There was no further consultation or communication with the applicant until the plans were lodged with council and we were invited to make a submission in September 2021.

## **Key Points:**

### **1. Procedural fairness due to technical issues.**

The Panel must ask council what the technical issues were and how they came about. The fact that not all information was made available is unacceptable. The effected neighbours and community have been unable to access accurate information in a timely way regarding this DA application and the council is unable to provide an evidence based outcome for key decisions.

These issues must also be made public to restore confidence in council and maintain rigour regards accountability and responsibility. As rate payers, we employ council to maintain the highest standards ethically and to ensure our environmental living protections are upheld such as the front building line in Riverview Road Avalon Beach.

### **2. Plans.**

Plans Master Set Amended 25 November 2021.

- When maximising the page (+) it is not possible to read the RS datum points and small writing. It is obscured. This must be rectified for ease of reading and understanding otherwise it is not possible to assess effectively and fairly.
- Page 2 RL measurement is truncated from the south elevation.
- The registered building architect is not named on the plans nor is the registration number provided. The registered architect has not made himself available to the panel and it is clear there is an issue.
- Durie Designs is not a company registered with Architects NSW. Jamie Durie is not a qualified building architect i.e. not registered.

### **3. Trees**

Trees T4, T5, T7 and T8 are too close to the built form and will suffer from the detrimental effects, leading to long term decay. Please refer to slide 13. Slide 38 gives rise to grave fears regarding the long-term welfare of Trees 7 and 8. Slide 40 clearly shows potential habitat loss which includes trees of key concern by all in submissions received to date by most.

This information is part of the highly detailed Landscape Referral Response dated 20 December 2021 which did not support the amended DA.

### **4. Landscape Referral Response**

Landscape Referral Response summary of information

- 10 September 2021 – unsupported
- 20 December 2021 – unsupported. For superseded plans master set being those plans
- 17 January 2022 response by landscape architect effectively abrogating all responsibility for decision to the Responsible Officer Adam Mitchell. What has changed between revised plans lodged in November, the landscape referral response 20 December 2021 and the subsequent further response on 17 January 2022? Where are the basis for these revisions available? Why has the assessment been taken over by an alternative landscape officer senior landscape architect?
  - LANDSCAPE REFERRAL RESPONSE 17 January 2022 Following issue of updated and amended plans and reports, the Landscape Referral is assessed by an alternate Landscape Officer (Senior Landscape Architect).

The impact to landscape is assessed, not the merits of the landscape architecture. This requires explanation.

### **5. Garage construction materials: perforated block and battens**

From the same Landscape Referral Response 17 January 2022 comes the following

"Of concern, but ultimately subject to the Planning Officers assessment, is the proposed garage and timber batten structure that presents to the streetscape. Under DCP control D1 Character as viewed from a public place, "Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place" and there is no landscape treatment to soften the proposed dominance and impact, and additionally the public view of water is removed and the DCP outcomes to preserve and enhance local views is lost."

Material finishes such as breeze block and timber battens as portrayed on Slide 41 are designed to prevent views. These are designed for privacy over all other considerations to meet the minimum requirement. The only acceptable option is for an open carport akin to 191 Riverview. Further breeze block is omitted as a material finish on slide 43.

No dimensions and measures are provided anywhere in the plans to illustrate the amount of space between solid forms of wood and brick. No dimensions or measures are provided for:

- Battens
  - o Width of batten, depth of batten
  - o Width of viewing slot between battens, depth of viewing slot
  - o Corner treatment for battens
- 'Breeze', permeable block
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    - Blocks to be used
    - Transparency factor e.g. 25%, 50%, 75%
    - If various sized blocks are to be used (as implied by the renders provided), what is the differentiation in transparency factor at various points across the walls and façade

## 6. Survey

Registered surveyor and registration number is not provided. Compared to the survey for 187 Riverview where the surveyor is named as the registered surveyor and identification number is supplied. This is not true of the site survey submitted by Sydney Surveyors.

- Print quality is poor. Unable to print a legible physical copy of the plan.

## 7. Survey Height Differences

There are substantial height differences in survey plans for 189, 191 and 174 Riverview Road (see attached). Due to the substantial discrepancies, we engaged CMS Surveyors to survey our property and specifically the road reserve on our western boundary to provide additional data points and clarity.

Height differences in reference survey plans for 187 Riverview Road (187) and 189 Riverview Road (189), and 189 Riverview Road and 191 Riverview Road (191):

- o BM nail in bitumen
  - 187 - RL33.65
  - 189 - RL32.63
  - **Height difference = 1002mm**
- o Power Pole - south
  - 187 - RL33.32
  - 189 - RL31.91
  - **Height difference = 1410mm**
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## 8. Excavation and fill works

The exact positioning of excavation and fill works is not represented on the amended plans nor on a survey plan. There is no ability to assess the extent of the planned works and relation of these works to trees, sandstone shelves, current and proposed dwelling (plans amended set). This must be produced to provide information for a full and effective assessment of the development proposed.

## 9. Height ambiguity/inaccuracy and height poles

We emphatically do not agree with the council that view loss can be assessed without the need for height poles and that this assessment can be made without them due to the slope of the land.

As Council and the panel would have observed upon visit to the site there is a driveway and parking pad perfectly suitable for erecting height poles for a specific period to enable an assessment.

We are concerned that:

1. The differences in survey measures between 187 and other properties is substantive enough to result in a built form 1500mm higher than the plans illustrate

2. Height poles should be erected to provide clarity on access, position and height of the inclinor on the northern boundary, inclusive of the front façade, elevations and revision to the eastern boundary fencing which previously was 2100mm high and council has specified must be lowered to 1000mm high (condition to the DA)
3. The heavily vegetated state is primary due to privet and other noxious weeds running amok on a property not maintained effectively to control these species. These must be removed. Suggestion is to have the applicant remove the privet and noxious weeds prior to height poles being erected.

## 10. 189 Survey Plans and Plans Master Set

Today, people can view down and across the property and have done for decades. The orientation of our house constructed in the 1960's affords a view down and across the block to Pittwater. The applicant purchased knowing this and the environmental compliance requirements having already undertaken a substantive development at 3 Plateau road. Key points:

- BM32.62 is not measured same between owners
- RL 30.30 – height of the entrance lobby. Noted, also the average ground height under garage
- RL 32.40 – height of the garage floor; this is 2100mm higher than the natural slope of the land and clearly not following the topography sympathetically as the applicant has assured. The driveway will drop no more than 200mm, 20 cm from the height of BM32.62 meaning the driveway is virtually level with Riverview Road.
- RL34.30 – height to top of roof parapet. Total height of the garage from floor to top of roof parapet is 4 metres. Is there a living landscaped roof or solar panels or both?
- **RL35.33** – Page 4, page 13 of Plans amended Master set top of the roof
- From RL30.30 average ground height under the garage to RL35.33 being the RL of the roof. This is a height of **just over 4 metres 4003mm. This is dramatic view loss.**
- Now to Slide 16 where the Garage Parapet is **RL35.90** This is a difference of 570mm from the measurement provided on Slide 13. More than half a metre difference in the same measurement on different slides.

**The overall height has now increased from 4003mm to 4600mm, more than 4.5 metres of view loss for the community and ourselves.** The inaccuracies in the plans are worrying (referential integrity) and brings into question the overall quality and reliability of the plans and survey provided.

Now slide 41. The top of the garage parapet is now stated as RL35.50, which is the third distinct measurement, for the same measure.

To summarise, in the amended plans, there are three different measured heights for the top of the garage. These are:

- RL35.33 slides 4 and 13
- RL35.90 slide 16
- RL35.50 slide 41, 42 and 43

Quality of architecture plans regarding the plans master set (first set) and amended plans (second set): The plans master set and amended plans have quality issues:

- Sets have same amendments in each, same description and same date of change
- No identification of which changes are amendments for approval.
- The lineage of the plans original and amended set are such that all changes in the amendments table pre-date the lodgement date of the original plans master set
- Detail and precision of plans is poor when assessed against plans from other building architects; more effort has been put into the renders, than the technical requirements of the building architecture plan e.g. material difference in quality can be evidenced in plans for DA2021/1910
- Too much of the plans master set for DA2021/1522 must be inferred; the level of detail and precisions in terms of quality plans is not present.
- There are issues with referential integrity between different renders of the plans
- Shadow Diagrams. Impact of the garage is missing from diagrams on Slide 21. The impact of the new development is not shown on the dwelling and garage at 187 –slide 22, slide 23, slide 24, slide 25 – significant as it is the winter sun, slide 26, slide 27, all the way to slide 32
- Excavation volume. No stated measurement for the existing excavation for comparison of scope and scale of works; must be derived.

This development can proceed with a suitable compromise as having been suggested in our first and second submission against. By approving the development, the Northern Beaches Council has shifted the heavy lifting to this panel.

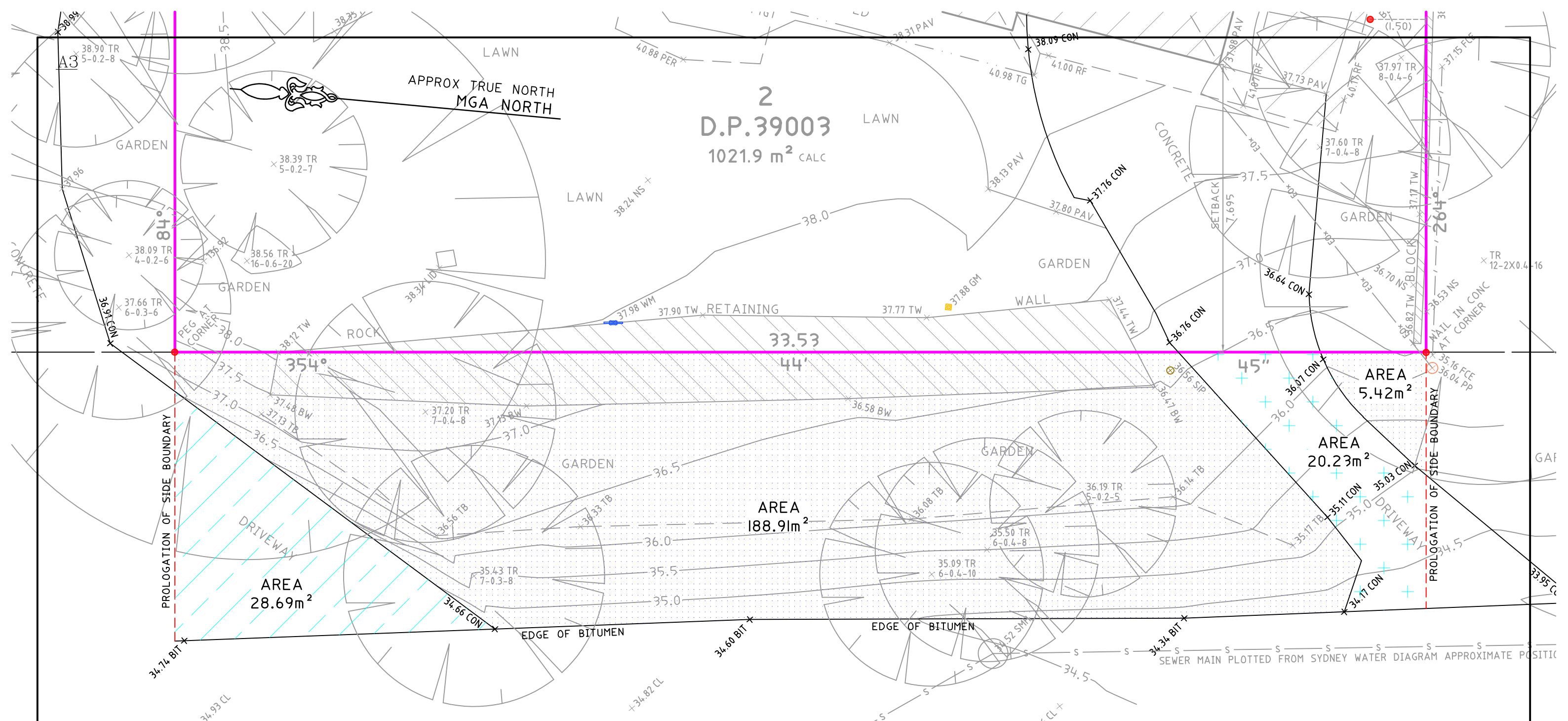
We trust common sense will prevail and the following objectives are achieved

1. Environmental security for the trees to be preserved and requirements from the Landscape Referral report dated 20 December to be incorporated into the panel judgement
2. The front building line is respected resulting in the lowering of the garage and full set back of the development behind the front building line
3. Change and refine the plans master set to:
  - a. Mitigate for view destruction and solar loss by making use of the existing driveway access and parking platform for the garage and front entry akin to 187 Riverview Road
  - b. Reduction in footprint of the build to a more modest scale and size suitable for a narrow block

c. Environment security for trees of key concern

Yours sincerely

Kylie Herbst and Chris Zonca

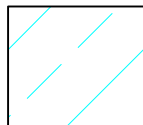
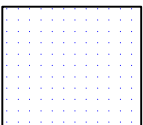



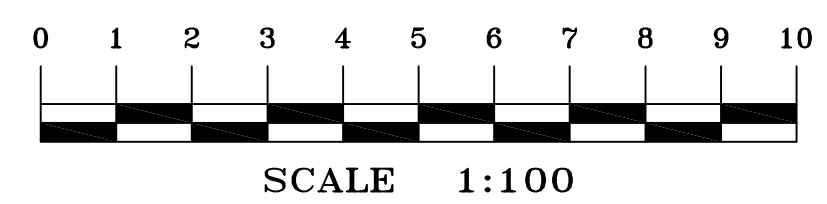
APPROX TRUE NORTH  
MGA NORTH

2  
D.P. 39003  
1021.9 m<sup>2</sup> CALC

RIVERVIEW


ROAD

- 
 DENOTES No. 178 DRIVEWAY AREA  
 AREA: 28.69m<sup>2</sup>
- 
 DENOTES ROAD RESERVE AREA  
 FROM PROLOGATION OF SIDE  
 BOUNDARIES TO EDGE OF BITUMEN  
 TOTAL AREA: 194.33<sup>2</sup>
- 
 DENOTES No. 174 DRIVEWAY AREA  
 AREA: 20.23m<sup>2</sup>



I	FIRST ISSUE	/05/2021

**CLIENT: KYLIE HERBST**  
**PLAN SHOWING ROAD RESERVE AREAS**  
**FRONTING TO LOT 2 IN DP39003**  
**No.174 RIVERVIEW ROAD AVALON**


**C.M.S. Surveyors Pty. Ltd.**  
 A.C.N 096 240 201  
 PO Box 463 Dee Why NSW 2099  
 2/99A South Creek Road, Dee Why NSW 2099  
 Phone: (02) 9971 4802 Fax: (02) 9971 4822  
 E-mail: info@cmssurveyors.com.au

SURVEYED HC	DRAWN MC	CHECKED DR	APPROVED DR
SURVEY INSTRUCTION 21051	SCALE 1: 100	DATE OF SURVEY 31/01/2022	
DRAWING NAME <b>21051Road reserve I</b>			ISSUE <b>I</b>
CAD FILE 21051Roadreserve I.dwg			

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To be clear, there was no further consultation or communication until the plans were lodged with council and we were invited to make a submission in September 2021.

### **Key Points:**

#### **1. Procedural fairness due to technical issues.**

The Panel must ask council what the technical issues were and how they came about. The fact that not all information was made available is troubling at best. At worst, applicants may receive an unfair advantage in that the community are not made fully aware of all information in DA applications and council is unable to achieve an evidence based outcome for key decisions.

These issues must also be made public to restore confidence in council and maintain rigour regards accountability and responsibility. As rate payers, we employ council to maintain the highest standards ethically and to ensure our environmental living protections are upheld such as the front building line in Riverview Road Avalon Beach.

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#### **4. Landscape Referral Response**

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By approving the development, the Northern Beaches Council have shifted the heavy lifting to this panel.

We trust common sense will prevail and the following objectives are achieved

1. Environmental security for the trees to be preserved and requirements from the Landscape Referral report dated 20 December to be incorporated into the panel judgement
2. The front building line is respected resulting in the lowering of the garage and full set back of the development behind the front building line
3. Change and refine the plans master set to:
  - a. Mitigate for view destruction and solar loss by making use of the existing driveway access and parking platform for the garage and front entry akin to 187 Riverview Road
  - b. Reduction in footprint of the build to a more modest scale and size suitable for a narrow block
  - c. Environment security for trees of key concern

Yours sincerely

Kylie Herbst and Chris Zonca