

S U B M I S S I O N: Hofbauer  
a written submission by way of objection to DA 2020/0442

Mr Danny Hofbauer

198 Whale Beach Road  
Whale Beach  
NSW 2107

29 May 2020

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

Northern Beaches Council  
[council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

Dear Chief Executive Officer,

Re:  
231 Whale Beach Road Whale Beach NSW 2107  
DA 2020/0442

WRITTEN SUBMISSION: LETTER OF OBJECTION  
Submission: Hofbauer

This document is a written submission by way of objection to DA 2020/0442  
lodged under Section 4.15 of the EPAA 1979 [the EPA Act]

The DA seeks development consent for the carrying out of certain development, namely:

*Demolition of the existing Apartment and Retail Building and Construction of a New Shop Top Housing Development*

*Cost of Work*

*\$13m*

I have been assisted by an experienced professional in presenting this Written Submission.

I am fortunate to have my immediate neighbour using the same experienced professional, and together we have arrived at a common approach, and a preferred common outcome.

In this respect it makes Council's consideration of this DA easier, as we are both asking for exactly the same outcome.

The Submissions are very similar, save for the Tenacity Assessments from our respective properties.

My requested amendments to be made by Amended Plans are exactly the same as my neighbour.

I am not only presenting my amenity problems, and the urban design concerns, but I am also presenting a potential solution to that problem, that hopefully provides a better framework to resolve what is a complicated design problem on a very sensitive site. I do hope the Applicant and Council take this approach as being constructive.

## Executive Summary

This Written Submission addresses my objection to the above development.

I want to emphasise the fact that I take no pleasure in objecting to my neighbour's DA.

I am objecting because the proposed DA has a very poor impact on the amenity of my property, and the urban design particularly from Whale Beach, and this is caused by the DA being non-compliant to multiple controls.

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

It does seem unreasonable that the Applicant wishes to remove my amenity to improve his own, and is proposing a catalogue of non-compliant outcomes that would seriously adversely affect my amenity.

The Applicant or his Advisors did not visit my property to assess my amenity loss.

My concerns are not only my amenity loss, but the wider urban design outcomes, particularly those when viewed from Whale Beach.

I am very concerned that the Applicant and his Advisors have under forecast the non-compliance, by not representing the registered surveyor's Ground Level [Existing] accurately onto the DA drawings. The height of the building is potentially higher and the building envelope is more non-compliant than the DA drawings and the SEE suggests.

My main concerns are:

- Character as viewed from a Public Place
- Scenic Protection
- Security
- View Sharing
- Landscaping
- Vibration
- Acoustic Privacy from commercial uses

My amenity losses are directly attributable to non-compliance of the main PLEP and PDCP controls:

- Height of Buildings: Control 8.5m v 9.51m Proposed 12% non-compliance
- Side Setback South: Control DCP @ 3m and ADG @ 6m Proposed 1.8m 60-70% non-compliance
- Side Setback North: Control DCP @ 3m and ADG @ 6m Proposed 1.8m 60-70% non-compliance
- Rear Setback: Control DCP @ 3m and ADG @ 6m Proposed Zero >1000% non-compliance
- Front Setback: Control 3.5m v 3.15m Proposed 10% non-compliance
- Communal Open Space: Control ADG 25% Proposed Zero; >1000% non-compliance
- 14m deep Basements, and over 8,000 cub m of rock excavation
- Total Floor Area of 2461sqm, nearly three times the site area of 844.7sqm

The overall combined effect caused by the non-compliant Height of Building, Side Setback North, Side Setback South, Front Setback, and Rear Setback and other non-compliance such as zero ADG Communal Open Space, lead to a considerable unreasonable visual bulk and a very poor character as viewed from a public place. The subject site falls within a scenic protection category one area, and I contend that the overdevelopment of the site fails to meet the outcomes.

I have specific concerns on safety and security of the 'breezeway'.

I also would not want any loss of ocean view, or my highly regarded beach/water interface view lost for any reason.

I suggest that the landscape provision is totally inadequate.

Council Officers had already highlighted to the Applicant pre submission that adherence to the following five DCP clauses was of utmost importance:

*D12.1 Character as viewed from a public place*

*D12.3 Building colours and materials*

*D12.5 Front building line*

*D12.6 Side and rear building line*

*D12.14 Scenic Protection Category One Areas*

The proposed development presents significant non-compliance to multiple controls and the residential amenity outcomes are therefore considered unreasonable.

The Palm Beach Whale Beach Association [PBWBA] could not have made the issues of importance more clearly to the Applicant pre-submission:

*“The priority is to preserve views, limit bulk and scale.”*

Despite these clear guidelines, the Applicant has presented a non-complaint envelope that causes amenity loss to neighbours.

The overall wall height of the building exceeds that of neighbours, and no consideration has been given to present a massing envelope that corresponds with the wall heights and maximum building heights of neighbouring dwellings.

The Applicant has not properly considered the neighbouring sites within Zone E4 Environmental Living, and how these proposals respond to the Objectives of E4 of neighbouring sites:

E4 Objectives of zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The neighbouring sites are in a sensitive low-impact residential development zone, and little consideration has been given to the objectives in those zones, and to curtail overdevelopment on this subject site. The non-compliance to controls, and lack of consideration of height and setback controls to marry in with neighbours is of great concern.

The DCP states:

*The total landscaped area on land zoned E4 Environmental Living shall be 60% of the site area.*

The transition from a 60% total landscape area in neighbouring sites, to this proposed development is stark in comparison. This proposed development is only delivering 8.5% as deep soil planting >3m wide. The transition from a 60% requirement to the 8.5% is quite unreasonable.

The overall effect is a development that is considerably out of scale with the neighbours, particularly when viewed from Whale Beach, and of a massive city block, where built form dominates the landscape, next to E4 where the reverse is the control.

The outcome surely must be to strictly adhere to the controls that are the most onerous, and in this case, it is 6m side and rear setbacks to ADG requirements.

Maximising the side setbacks to both side boundaries to provide deep soil planting, is the obvious response to the E4 boundary condition.

A reduction of wall heights to address the wall heights of neighbours must be considered, to bring the proposed development in general alignment with the wall height of neighbour dwelling built form.

Whether a development of this scale, with this massive extent of excavation, is appropriate for consideration in the heart of Whale Beach is a major concern. The disruption to the peaceful existence of beach goers and the community for over 3 years during the demolition, excavation and construction phase is a major issue for Council and the community. The demolition and excavation during summers months would be massively disruptive to the sensitive neighbourhood.

Inevitably the current building needs to be replaced, but I contend that a more sensitive redevelopment, significantly limiting excavation, and complying with all NBC and ADG controls, and with a wall height that corresponds with neighbours, is preferable. This type of outcome might be considerably more reasonable and considerably more preferable, than the proposed development.

The character of the proposed development when viewed from Whale Beach and from Whale Beach Road is jarring. The character is of a heavy commercial building better suited to a more urban environment. Council should encourage the development of a more delicate 'residential pavilion' style outcome, rather than a building with considerable solid heavy facades. The design challenge is nevertheless considerable, when developing a massing that connects between the two road frontages. A lower wall height to match neighbours, with a more compliant ADG side setback, would give the Architect a smaller bulk to address. The envelope that this Statement considers a 16.2m high building, set off a lower base at RL 7.8m and rising to RL 24.0m. That envelope gives the ability of creating a 'base, middle, and top' proportionality through five levels. Achieving a 'residential pavilion' style outcome is a challenge, however, this Architect has a 'great hand' within that residential design character by multiple examples of fine work at a lower scale. Transferring that delicate 'residential pavilion' hand to this scale is the challenge. An alternative, would be to consider a more delicate Koichi Takada type Bower Pavilion: that might be another design approach. Greater side setbacks would allow a far better landscape solution, allowing landscape to dominate the site, rather than the built form. The development requires a much softer hand – this Architect definitely has those skills, but they are not deployed in these proposals.

## Breezeway

Of particular concern, is the Applicant's design response to Council request that the Applicant provide an:

*"Opening up the centre of the building to create a breezeway and a physical break."*

The design response has been to propose an extremely unpleasant environment, with a narrow dark zone that would be a security risk.

The outcome looks incredibly 'mean', considering the massive 2460sqm development on this modest sensitive site.

I am greatly concerned to the safety and security of this zone.

The proposed development has created a very uninviting space.

Dark, wind sweep, with a narrow slot, 1.4m to 2.1m wide, and a staggering 14m high, totally encased and covered by Apartment 5. Other units have secondary window access, giving the appearance of a poor-quality outcome.

Acoustically the breezeway will create a poor outcome.

Council most probably was considering a soft landscaped solution, with a total 'physical break', of more substantial width than a poor 1.4m wide slot in a 14m high dark zone. There is little architectural joy in this space: it would be a security risk for users.

The Applicant's own Design Compliance Report on page 4, suggests the design is non-compliant to BCA:

*"D1.12 The internal non-required stairway connects 4 storeys where only 3 are permitted in accordance with this clause. "*

On page 5 of the Report there also appears to be no access for persons with a disability, contrary to D3, AS1428.1- 2009 & Access to Premises Standard 2010

The three substantially long and steep stairs would be a considerable effort, with a 10.4m rise, with only two small landings. The lower stair exceeds maximum rise controls at 3.9m in a single flight

The design of this space is totally unacceptable.

There are other BCA non-compliances listed within the Applicant's own Design Compliance Report, that require amendment prior to any consent.

I contend it would be preferable to 'add' this 2.1m width onto the northern setback zone, and to increase the northern side setback zone to 5.1m, and clear this 5.1m zone of any intrusions.

I would contend that this would allow for an external landscaped zone, to include for a sandstone accessway from Whale Beach Road to the beach. This would be a far preferable solution.

It would provide a far safer zone, with a north facing aspect, to allow for a high-quality landscape solution, not only for a permeable accessway, but also the potential to achieve a better zone for Communal Open Space under ADG Control.

### Excessive Storey Heights

The neighbours dwelling present wall heights at #229 Whale Beach Road towards the beach to RL 24.00 and ridge heights to RL 25.6. The building envelope at #229 Whale Beach road is already at LEP and DCP height controls: it cannot be perceived as being 'vulnerable'.

The proposed development must consider similar wall heights at RL 24.00 to achieve a bulk and scale which is more considered and reasoned.

The neighbour wall heights to the north at #233 Whale Beach Road is lower at RL 22.00

The proposed wall heights are over 2450mm higher than the highest of the two neighbours, and added with the non-compliant side and rear setbacks, the overall bulk and scale would be totally unreasonable.

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, particularly from the iconic Whale Beach.

The proposed development would not comply with numerous DCP outcomes, particularly those within the following clauses:

- *D12.1 Character as viewed from a public place*
- *D12.6 Side and rear building line*



- *D12.14 Scenic Protection Category One Areas*

The proposed Storey Heights are excessive to ADG guidelines, and these could decrease to:

- 3.6m storey heights, with 3.3m ceiling for Commercial;
- 3.0m storey heights, with 2.7m ceiling for Residential, and
- 2.7m storey heights, with 2.4m ceiling for Carpark.

Allowing for 2 x Commercial @ 3.6m [7.2m] + 3 x Residential @ 3.0m [9.0m] + 1 Carpark @ 2.7m, the overall building height would require 18.9m building height above the basement slab. To achieve a RL 24.0 wall height to match neighbouring sites, the Basement would need to be lowered to RL 5.1m.

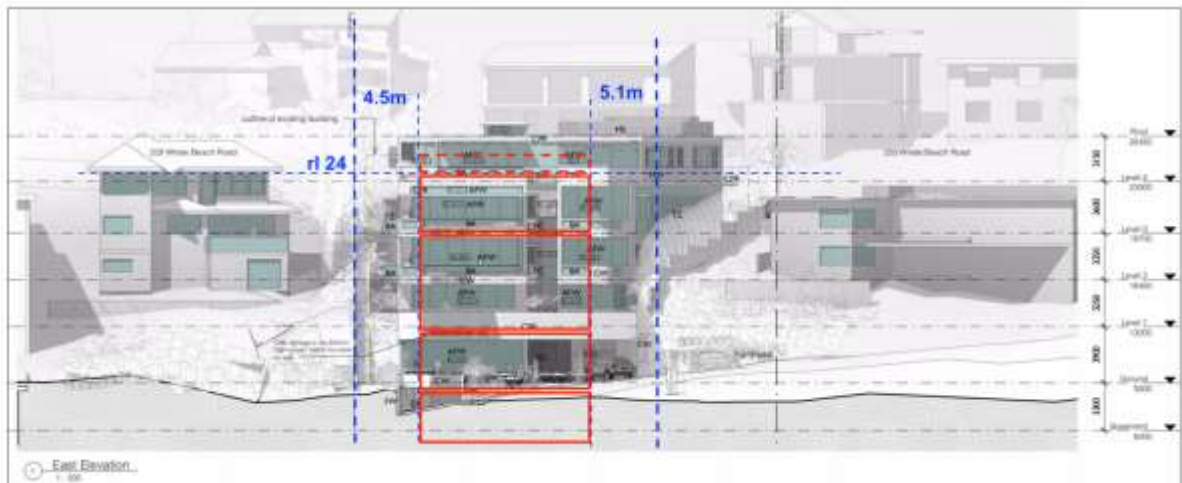
An amended scheme could deliver:

- Basement RL 5.1m Carparking, provide additional double stackers to increase carparking
- Ground RL 7.8m Commercial & Carparking
- First RL 11.4m Residential
- Second RL 14.4 Residential
- Third RL 17.4 Residential
- Fourth RL 20.4 Commercial [Back of pavement WBR @ RL 20.75 and 21.5 balustrade not to extend past 13m contour]
- Roof RL 24.0 Roof [not to extend past 15.5m contour, preferably a greater setback to reduce the bulk]
- Plant RL 25.2 Plant, maximum permissible of any plant or lift over run, positioned at western side facing Whale Beach Road to avoid view loss.

The amended sectional profile would present wall heights that align with the wall heights at #229 Whale Beach Road at RL 24.0.

Plant Screens above the roof should be conditioned at a maximum of 1.2m, giving a maximum height of RL 25.2, being more appropriate massing to the roof forms within #229 Whale Beach Road.

The screens should have side setback from the roof edge by 3m. No part of the building or roof plant should be above RL 25.2.



**More Appropriate Massing Diagram:** The massing envelope should respect the wall heights of neighbours, with a wall height control at RL 24, and a 1.2m high plant zone set well back towards Whale Beach Road [WBR]. The side setbacks to be 5.1m to the north to allow a public accessway from WBR to the beach and to be more compliant to ADG, and a 4.5m side setback to the south to allow for TPZ and to be more compliant to ADG. Both side setbacks improve privacy, overshadowing, landscaping provision, communal space, and a significant reduction in visual bulk

### Setback Controls

It is inappropriate to propose side setback and rear setback controls that do not accord with the Apartment Design Guide [ADG].

ADG Objective 3F-1 states:

*Adequate building separation distances are shared equitably between neighbouring sites to achieve a reasonable level of external and internal visual privacy.*

By proposing 1.8m side setbacks and zero rear setback, there is absolutely no 'shared equity' consideration to future developments on neighbouring sites.

Council should insist on a 6m side setback to ADG controls, or a dimension closer to that control.

I have suggested transferring the internal cavernous, but under width internal stairway zone of 2.1m, and adding that to the northern DCP setback zone of 3.0m, to create a 5.1m

external landscape zone that doubles as a permeable accessway as well as a Communal Open Space under ADG Control.

### Tree Protection

I am greatly concerned to the protection of Tree 4 (Norfolk Island Hibiscus), and Tree 5 (Giant White Bird of Paradise) on 229 Whale Beach Road.

The TPZ encroachment will be 36% and 37% or more.

In respect to Tree 4 (Norfolk Island Hibiscus) it is noted:

*“...if the design is to be placed to accommodate a minor (i.e. <10%) encroachment of the notional TPZ, this would require an offset of a minimum 4.5m from the boundary”*

I ask that a minimum 4.5m side setback from the boundary must be conditioned to give <10% TPZ outcome.

In respect to Tree 5 (Giant White Bird of Paradise) a similar side setback is required.

The extent and depth of the encroachment is of considerable concern. The excavation is >12m deep next to these trees, with a side setback of only 1m or less. [RL 18.27 – 6.0]. The TPZ is currently a large, deep soil grassed area within the subject site, providing a significant nutrient and structural zone for both of these trees

### Alternative More Skilful Design Consideration

Considering the very poor ‘Breezeway’ proposal, and the poor non-compliant side setbacks, Council might consider with the Applicant enforcing the ADG 6m side setback control, or consider my proposal of a 5.1m northern side setback, along with a reduced building height as mentioned immediately above, to arrive at a massing envelope that will be less harmful to neighbour’s amenity, and respond better to

- *D12.1 Character as viewed from a public place*
- *D12.14 Scenic Protection Category One Areas*

The zero rear setback is considered far too aggressive facing the ocean beach environment, and a DCP 3m or preferably the ADG 6m control, or something close to that dimension, should be considered the desired outcome.

As mentioned previously, Council might consider the Applicant using the north setback zone, compliant to ADG side setback controls, for a soft landscaped design solution for the pedestrian accessway, and deleting the internal 'Breezeway' concept. These soft open spaces may also be used for the communal open space requirement under ADG of 25% of the site area.

In this Written Submission, I will further describe the matters relating to the above consideration drawing particular attention to the misleading information and outstanding information. I will address the main issues within the Statutory Planning Framework. I will provide a rebuttal to the Applicant's Statement of Environment Effects Rebuttal, making particular concern to the absence of a Clause 4.6. I will highlight NSW LEC Planning Principles that are relevant for Council to consider. I will then present Proposed Conditions of Consent that if implemented by way of Amended Plans may resolve many of the concerns.

This alternative outcome will deliver a more compliant building envelope, and will remove a considerable amount of amenity loss including safety and security, view loss, privacy and solar loss. Excavation will be significantly reduced.

The outcome will provide a more considered response to a similar wall height to neighbours, it will allow a more 'shared equity' consideration to future developments on neighbouring sites, whilst delivering a permeability of a pedestrian stair to the beach through a more desirable open aired landscaped zone through the northern ADG side setback zone.

If Amended Plans are not submitted, then I have no other option to ask Council to REFUSE the DA dues to non-compliance to multiple controls within PLEP and PDCP, the ADG, and unreasonable amenity and poor urban design outcomes.

## **Site Description**

The SEE describes the site:

*The site is legally known as Lot B in DP316404, being 231 Whale Beach Road, Whale Beach. The site is located with dual frontage to both Whale Beach Road and Surf Road.*

*Topographically, the site is steep in nature with a fall from Whale Beach Road to Surf Road (Sloping West to East).*

*Immediately to the north of the site is a two-storey residential dwelling and to the south a three-storey residential dwelling. Further to the south adjoining the southern neighbour is a*

*five-storey commercial/community building which houses Whale Beach Surf Lifesaving Club, which also includes Moby Dicks Function Centre. To the east, is a grassed area for the Whale Beach Surf Club patrol members to park vehicles and across the road is Whale Beach. On the west of the site across Whale Beach Road are two-three storey residential dwellings. The character of the immediate locality is predominately residential with a mixture of commercial uses spread along Whale Beach Road and The Strand. Due to the topography of the area, the locality has varying built forms and densities with sites ranging from one-storey to five-storeys.*

## Proposed Development in Detail

The SEE describes the proposed development.

*The proposal involves the following:*

- *Demolition of existing building and associated structures on site.*
- *Construction of a new five-storey shop top housing development (5 residential apartments and 3 retail premises) and 1 basement level of car parking (totaling 21 car parking spaces for retail and residential units).*

*The apartment mix comprises the following:*

*o Apartment 1 – approx. 192sqm*

- *Single level three-bedroom apartment*
- *Located on Level 1*

*o Apartment 2 – approx. 262sqm*

- *Split level four-bedroom apartment*
- *Located on levels 1 and 2*

*o Apartment 3 – approx. 179sqm*

- *Single level three-bedroom apartment*
- *Located on level 2*

*o Apartment 4 – approx. 131sqm*

- *Single level two-bedroom apartment*
- *Located on Level 3*

*o Apartment 5 – approx. 260sqm*

- *Single level three-bedroom apartment* ▪ *Located on level 4*

*The commercial mix comprises the following:*

*o Retail 1 – 153sqm*

*▪ Located on ground floor with frontage to Surf Road*

*o Retail 2 – 124sqm*

*▪ Located on Level 3 with frontage to Whale Beach Road*

*o Retail 3 – 50sqm*

*▪ Located on Level 3 with frontage to Whale Beach Road*

*Associated site and landscape works.*

*Strata subdivision.*

I add further detail as follows:

The Applicant's Design compliance document by MBC, identifies that the proposed development has a total floor area of 2461sqm, nearly three times the site area of 844.7sqm.

The proposed development is a considerable dense over-development, that is non-compliant to all envelope controls: building height, side, rear and front setback.

The development represents a six-storey height development over the majority of the floor plan.

Excavation will be over 14m deep to Whale Beach Road, and the neighbours side boundaries.

This proposed development is set against neighbours in an E4 Zone, yet little consideration has been given in assessing these matters.

The geotechnical report [Douglas September 2019] identifies that:

*Neighbours may, however, find vibration levels above about 3 mm/s as being strongly perceptible to disturbing.*

Unfortunately, the report continues to suggest that:

*8 mm/sec be employed at this site to reduce the risk of structural damage to surrounding buildings. This should be reduced to 3 mm/sec for any buildings founded on loose sandy soils.*

I urge Council to condition 2.5mm/s, with a stop warning at 2.0mm/s, to ensure that vibration will not cause neighbours considerable stress during this long and dangerous excavation.

There is no estimation to the quantum of rock to be removed within the DA, contrary to submission controls. I estimate the quantum to be c.8,000 cub m [30m x 20m x 13.33m]. This will take up to 6 months to complete, so vibration issues must be strictly controlled to 2.0 mm/s [alarm] & 2.5mm/s [stop work].

The geotechnical report also suggests:

*The existing retaining walls to the east of the site (in poor condition) fall outside the site boundary it is understood these walls will be demolished and replaced with new retaining structures.*

This is not detailed on any drawing, or neighbouring Owners Consent appear to be given to achieve this outcome. No DA has been sort for this work.



## **Misleading Information & Outstanding information**

### **Height Poles/ Templates**

I ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor, and for these surveyor plans uploaded onto NBC website.

The Height Poles will need to define the maximum built form in all zones:

- All Roof Forms
- All Plant Screens and all Plant
- All Solar panel heights
- All lift over runs
- All sun control and privacy control devices
- Extent of all Decks and Planters
- Extent of Privacy Screens and balustrades

The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

I require these height poles to fully determine view loss, as the building envelope is substantially non-compliant.

As the maximum building height drawings appear misleading, it is essential that the Registered Surveyor be given the task to accurately set out and record the height poles for the non-compliant development

### **Existing Ground Levels**

The Applicant has not shown the existing survey heights on plans, elevations, sections so it is difficult to determine the extent of the building envelope above maximum height controls.

All survey marks adjacent maximum built form near the Applicant's suggested 8.5m maximum building height line must be shown.

The Applicant must position the survey marks 14.79 and 17.17 along the southern elevation, as these zones within the proposed development are above maximum building heights.

The Applicant should position the survey marks 18.84 along the northern elevation, as these zones clearly are above maximum building heights.

A full run of survey marks must be on every elevation and section to clearly describe the existing ground levels.

### **Overshadowing Diagrams**

Overshadowing diagrams need to be presented at hourly intervals, and full elevational studies completed.

### **Privacy**

Due to the non-compliant 1.8m side setbacks, the privacy outcomes are not acceptable.

There is ample opportunity for occupants of the proposed development to have a direct line of site to neighbour's property windows and POS through louvres that are positioned at too great an interval, and clear glazing and decks zones that provide a clear line of site.

The setbacks do not provide adequate privacy separation according to ADG control.

Acoustic Report needs reassessment.

### **Tenacity Assessment**

The Applicant has not provided a full Tenacity Assessment, and has under forecast the severity of the loss.

I provide my own Tenacity Assessment within this Submission.

As the maximum building height drawings appear misleading, it is essential that the Registered Surveyor be given the task to accurately set out and record the height poles for the non-compliant development. The 3D montage work will be need to be re-assessed against height poles.

### **Rose Bay Marina Assessment**

The Applicant has not provided a Rose Bay Marina Assessment, identifying street view loss, and the potential loss of street view due to non-compliant side setback.

I provide my own Rose Bay Marina Assessment within this Submission.

## Summary of Assessment Issues

I list the main assessment issues that I will comment upon.

There may be other issues that affect other neighbours.

### PLEP 2014

- 1.2 Aims
- 2.3 Zone Objectives
- 4.3 Height of Buildings
- 4.6 Exceptions to Development Standards
- 7.1 Acid Sulphate Soils
- 7.2 Earthworks
- 7.2 Earthworks
- 7.3 Flood Planning
- 7.4 Flood Plain Risk Management
- 7.7 Geotechnical Hazards

### P21DCP

- B3.1 Land Slip
- B3.11 Flood Prone Land
- B4.5 Landscape and Flora & Fauna Enhancement Category 3 Land
- B4.22 Preservation of Trees
- B5.9 Stormwater Management
- B5.10 Stormwater Discharge
- B6.2 Internal Driveways
- B6.3 Off-Street Vehicle Parking Requirements
- B8.1 Construction and Demolition: Excavation & landfill
- C1.1 Landscaping
- C1.2 Safety and security
- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.6 Acoustic Privacy
- C1.25 Plant, Equipment Boxes and lift Over-Run
- D Locality Specific Development Controls
- D12 Palm Beach Locality

- D12.1 Character as viewed from a public place
- D12.3 Building Colours and Materials
- D12.5 Front Building Line
- D12.6 Side and Rear Building line
- D12.11 Fences
- D12.14 Scenic Protection Category One Areas

## Environmental Planning & Assessment Act 1979 [EPAA]

I do not intend to repeat every clause from Council's PLEP & PDCP outcomes and controls, but wish to emphasize the main non-compliances to the planning outcomes and controls, and identify the amenity losses that are directly attributable to that non-compliance to outcomes and controls.

As NSW LEC Planning Principles state:

*How much of the impact is due to the non-complying elements of the proposal?*

*Are the impacts consistent with impacts that may be reasonably expected under the controls?*

The subject site is sizable, and there is no reason, unique or otherwise why a fully compliant solution to the PLEP, PDCP and ADG outcomes and controls cannot be designed on the site.

## Main Concerns within this Written Submission

My main concerns within this Written Submission are:

- Character as viewed from a Public Place
- Scenic Protection
- Security
- View Sharing
- Landscaping

These amenity losses are directly attributable to non-compliant:

- Height of Buildings
- Northern Side setback
- Southern Side Setback
- Rear Setback
- Front Setback

I also have concerns on the following matters, and request that Council condition any consent with appropriate conditions:

- Stormwater Disposal
- Geotechnical Report Recommendations incorporated within design and structural engineering plans
- Boundary Identification Survey
- Structural Adequacy & Excavation work
- Soil & Water Management Program
- Compliance with Standards
- Tree protection
- Road Reserve
- Removing, Handling and Disposing of Asbestos
- Survey Certificate
- Protection of Adjoining Property: Excavation
- Landscape Completion Certificate
- Stormwater Disposal
- Certification of Structures
- Geotechnical Certification prior to Occupational Certificate
- Dilapidation Survey of Neighbours Property prior to Construction Certificate

- Post Construction Dilapidation Survey of Neighbours Property prior to Occupational Certificate
- Swimming Pool Requirements
- Noise Nuisance controls from plant and occupants
- Lighting Nuisance from internal and external light sources
- Vibration to be below 2.5mm/sec on boundary
- No excavation within 1m of boundary
- Retaining wall structures near boundary to be fully designed and certified by structural engineer
- Glare and Reflection
- Site Demolition and Construction Waste Management
- Impact of The Works Plan: Parking, Pedestrians, Transport, Public Safety, etc
- Truck Details & Movements
- Traffic Management Plan: Trucks & traffic Controllers
- Traffic and Parking impacts
- Sediment Control Plan

## Environmental Planning Instruments

I ask Council to carefully consider SEPP [Coastal Management] 2018. [CM SEPP]

The site is located within the Coastal Use Area and Coastal Environmental Area as identified by SEPP [Coastal Management] 2018 and the provisions are applicable in relation to the proposal.

I am concerned that the proposals have not been designed, sited to avoid adverse impacts on matters listed within cl 13[1][a], cl 14[1][ii], and cl 15 of the CM SEPP.

I am concerned that the proposals are inconsistent with the provisions of the CM SEPP, including the matters prescribed by cl 13, 14, and 5 of this policy.

Views to and from the site are a considerable issue not properly addressed by the Applicant. The unreasonable bulk and scale of the proposed development when viewed from the beach is of great concern.



## Pittwater LEP 2014

A summary of my main issues:

- 1.2 Aims
- 2.3 Zone Objectives
- 4.3 Height of Buildings
- 4.6 Exceptions to Development Standards
- 7.1 Acid Sulphate Soils
- 7.2 Earthworks
- 7.3 Flood Planning
- 7.4 Flood Plain Risk Management
- 7.7 Geotechnical Hazards

### Clause 1.2 Aims of Plan

In these proposals the local amenity and environmental outcomes would be challenged by non-compliance.

I contend that the proposed development does adversely affect the character or amenity of the area or its existing permanent residential population by view loss, and other amenity losses.

I contend that the DA fails the major objectives of this control as follows:

#### *1.2 Aims of Plan*

- 1) *This Plan aims to make local environmental planning provisions for land in Pittwater in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.*
- (2) *The particular aims of this Plan are as follows*
  - (a) *to promote development in Pittwater that is economically, environmentally and socially sustainable,*
  - (b) *to ensure development is consistent with the desired character of Pittwater's localities,*
  - (g) *to protect and enhance Pittwater's natural environment and recreation areas,*
  - (i) *to minimise risks to the community in areas subject to environmental hazards including climate change,*
  - (j) *to protect and promote the health and well-being of current and future residents of Pittwater.*

The requirements under this clause clearly have not been met.

### **Zone B1 Neighbourhood Centre**

I am concerned that the proposed development does not accord with the objectives

#### **Objectives of zone**

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
- To provide healthy, attractive, vibrant and safe neighbourhood centres.

I am concerned that the proposed development does not provide healthy, attractive, vibrant and safe neighbourhood centres.

The scale of the development is excessive, and exceeds controls, and causes unreasonable view loss, solar loss, privacy loss, and unreasonable visual bulk.

The internal 'Breezeway Concept' will present considerable security issues, and unsafe enclosed spaces, whilst being an unattractive and less healthy place to frequent.

The Applicant has not properly considered the neighbouring sites within Zone E4 Environmental Living, and how these proposals respond to the Objectives of E4 of neighbours:

#### **E4 Objectives of zone**

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Is it appropriate to propose a significant non-compliant building height, and significant non-compliant setbacks alongside a E4 property? I contend that it is not.

### 4.3 Height of Buildings

The scale of the development is excessive, and exceeds controls, and causes unreasonable security, safety, view loss, solar loss, privacy loss, and unreasonable visual bulk.

The proposed building heights simply refuse to accord with the PLEP 8.5m control, and progresses eastwards presenting a maximum building height of 9.51 m, representing a non-compliance of over 12%.

Council should note ground level existing survey mark at 14.79 on the south with the proposed development above at RL 24.30 being the Level 5 Planter. This represents a height of 9.51m [>12% to DCP]

There are many other non-complaint zones within the proposed development, and these non-compliances lead directly to amenity loss.

Most of the site is covered with development that is at or over the maximum building height. Coupled with substantially non-compliant side, rear and front setbacks, the overall impact would be that most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment, particularly from Whale Beach.

No Clause 4.6 has been submitted, contrary to controls.

The proposed development does not accord with neighbours wall heights, and the outcome is jarring to the casual observer.

### 4.6 Exceptions to Development Standards

A Clause 4.6 has not been submitted contrary to PLEP control.

Development Consent cannot be granted as no adequate Clause 4.6 has been submitted addressing the non-compliant Height of Buildings, contrary to PLEP controls.

There is no environmental planning ground, unique or otherwise, that justifies any contravention.

Even if a Clause 4.6 was submitted, it would fail as (a) the request to vary the control could not identify any environmental planning ground that justifies the contravention, and does not

exist; and (b) the proposal is inconsistent with the objectives of the standard in any event due to significant amenity loss.

Council may consider they cannot continue considering the DA, and if the Applicant does not withdraw, they may have no other option than to immediately refuse the DA.

The Council should immediately consider refusing the DA, and perhaps is precluded from proceeding any further with its assessment and consideration of the DA.

Council may consider in light of the absence of a Clause 4.6 application, and based upon false and misleading building heights, and other misleading information, to reject the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.

I contend that the DA fails the major objectives of this control as follows:

#### *4.6 Exceptions to development standards*

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*4) Development consent must not be granted for development that contravenes a development standard unless—*

*(a) the consent authority is satisfied that—*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Planning Secretary has been obtained.*

*(5) In deciding whether to grant concurrence, the Planning Secretary must consider—*

*(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

*(b) the public benefit of maintaining the development standard, and  
(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

This is contrary to LEP controls.

I contend that the DA fails the major objectives of this control as follows:

#### *4.3 Height of buildings*

*(1) The objectives of this clause are as follows*

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

The requirements under this clause clearly have not been met. I am particularly concerned that a reasonable sharing of views, overshadowing and privacy has not been achieved.

#### **7.1 Acid Sulphate Soils**

I ask Council to include suitable conditions to any consent

#### **7.2 Earthworks**

I ask Council to include suitable conditions to any consent

#### **7.3 Flood Planning**

I ask Council to include suitable conditions to any consent

#### **7.4 Flood Plain Risk Management**

I ask Council to include suitable conditions to any consent

## 7.7 Geotechnical Hazards

The Douglas Geotechnical report states on page 7 of 14:

*“Neighbours may, however, find vibration levels above about 3 mm/s as being strongly perceptible to disturbing. Based on the experience of DP with rock excavations in Sydney it is suggested that a maximum peak particle velocity in any component direction (PPVi) of 8 mm/sec be employed at this site to reduce the risk of structural damage to surrounding buildings.”*

Considering the extent of this excavation that might run for over 6 months, the age and delicate finishes of adjoining dwellings, and the proximity to many other full-time occupied dwellings by seniors, I request that Council consider enforcing a stronger set of vibration limits on this project.

Council might also consider whether the demolition and excavation be carried out over the winter months to avoid a complete shut-down of the area in summer.

I attach those suggested conditions within my Conditions of Consent.

The conditions are:

The vibration limit set by the Applicant is **8.0mm/sec**. This is far too high.

It is intended to extend excavation through bedrock for foundation to footings. This can cause considerable vibration.

Residents often *‘find vibration levels above about 3 mm/s as being strongly perceptible to disturbing’*.

Often vibration levels to 2 mm/sec can cause residents to evacuate a residence in sheer terror!

Due to the high number of seniors living permanently in the area during the day, a lower level than 8 mm/sec is required.

Full Time Vibration Monitoring is required to ensure that compliance.

Geotechnical Inspection is required

Dilapidation Surveys is required

Reduce Peak particle velocity to be less than **2.5mm/sec** at the common boundary, with warning alarms on site to stop work if thresholds are exceeded at **2.0mm/sec** during demolition, excavation and main construction activity.

The level at **2.0mm/sec** can be normally easily achieved by making attenuation cuts into the upper siltstone strata and sandstone, prior to milling, and always ensuring the attenuation cuts are 0.5m lower than the excavated surfaces at all times. The hammer of the Excavator never is to face neighbouring dwellings, but to face the street. Other precise methods are to be specified by the Geotechnical Engineer.

Demolition of slabs and pool structures constructed into bedrock will need particular care as excessive vibration can occur from the removal of reinforced concrete slabs. Slabs will need to be mechanically sawn before removal. Other precise methods are to be specified by the Geotechnical Engineer.

The secant pile wall will need to be carried out with utmost care. Other precise methods are to be specified by the Geotechnical Engineer.

Where compaction is to be undertaken near existing structures or underground services, large vibratory machines should be avoided to reduce the potential for generation damaging vibrations. Other precise methods are to be specified by the Geotechnical Engineer.

As the magnitude of vibration transmission is site specific, it is recommended that a vibration trial be undertaken at the commencement of rock excavation. The trial may indicate that smaller or different types of excavation equipment should be used. The initial stages of the excavation, during the vibration trial, should be undertaken in the centre of the site to minimise the risk of damage to surrounding structures.

To minimise the effects of hydraulic rock hammer equipment, the work method should allow for as a minimum:

- excavation of loose or rippable sandstone blocks by bucket or single tyne attachments prior to commencement of rock hammering;
- use of rock sawing or milling heads around the perimeter of the excavation;
- selective breakage along open joints where these are present;
- use of rock hammers in short bursts to prevent generation of resonant frequencies; and
- the movement of large blocks away from existing structures prior to breaking up for transport from site.

Daily Acoustic Reports to be sent to Principal Certifying Authority, Geotechnical Engineer and

to Council Enforcement Officer, highlighting breaches of the warning alarms, and confirmation of action taken to reduced similar construction activity.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority, to include method statement of excavation works, monitoring of boundary levels, halt signals, notifications on site and to PCA and Council, and attenuation methods to reduce vibration risks.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To reduce risk of vibration damage to neighbours property.



## P21DCP

A summary of the main issues are:

- B3.1 Land Slip
- B3.11 Flood Prone Land
- B4.5 Landscape and Flora & Fauna Enhancement Category 3 Land
- B4.22 Preservation of Trees
- B5.9 Stormwater Management
- B5.10 Stormwater Discharge
- B6.2 Internal Driveways
- B6.3 Off-Street Vehicle Parking Requirements
- B8.1 Construction and Demolition: Excavation & landfill
- C1.1 Landscaping
- C1.2 Safety and security
- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.6 Acoustic Privacy
- C1.25 Plant, Equipment Boxes and lift Over-Run
- D Locality Specific Development Controls
- D12 Palm Beach Locality
- D12.1 Character as viewed from a public place
- D12.3 Building Colours and Materials
- D12.5 Front Building Line
- D12.6 Side and Rear Building line
- D12.14 Scenic Protection Category One Areas

### Detailed Assessment

My main issues are:

- Safety and Security
- View Sharing
- Landscaping
- D Locality Specific Development Controls
- D12 Palm Beach Locality
- D12.1 Character as viewed from a public place

- D12.3 Building Colours and Materials
- D12.5 Front Building Line
- D12.6 Side and Rear Building line
- D12.14 Scenic Protection Category One Areas

I will address those issues first.

## **C1.2 Safety and Security**

The clause states:

### **Outcomes**

*On-going safety and security of the Pittwater community. (S)*

*Opportunities for vandalism are minimised. (S, Ec)*

*Inform applicant's of Council's requirements for crime and safety management for new development.(S)*

*Improve community awareness in relation to Crime Prevention through Environmental Design (CPTED), its principle strategies and legislative requirements (S)*

*Identify crime and safety priority areas in Pittwater LGA (S, Ec)*

*Improve community safety and reduce the fear of crime in the Pittwater LGA (S)*

*Develop and sustain partnerships with key stakeholders in the local area who are involved in community safety. (S)*

### **Controls**

*There are four Crime Prevention through Environmental Design (CPTED) principles that need to be used in the assessment of development applications to minimise the opportunity for crime they include the following:*

#### *1. Surveillance*

*Building design should allow visitors who approach the front door to be seen without the need to open the door.*

*Buildings and the public domain are to be designed to allow occupants to overlook public places (streets, parking, open space etc) and communal areas to maximise casual surveillance.*

*Development design and design of the public domain (including landscaping) is to minimise opportunities for concealment and avoid blind corners.*

*Adequate lighting must be provided according to the intended use of the development. Lighting must be designed and located so that it minimises the possibility of vandalism or damage. Security lighting must meet Australian Standard AS 4282-1997: Control of the obtrusive effects of outdoor lighting.*

*Lighting is to be designed to minimise electricity consumption, and to minimise annoyance to neighbours.*

*Where provided, public facilities (toilets, telephone, ATMs, etc) are to be located so as to have direct access and to be clearly visible from well-trafficked public spaces.*

*Design landscaping and materials around dwellings and buildings, so that when it is mature it does not unreasonably restrict views of pathways, parking and open space areas.*

## 2. Access Control

*Shared entries must be able to be locked and incorporate an intercom system or the like to allow visitors to gain entry.*

*Building entrances are to be clearly visible from the street, easily identifiable and appropriately lit.*

*Where provided, pedestrian access through a site and through the public domain is to be clearly defined, signposted, appropriately lit, visible and give direct access to building from parking and other areas likely to be used at night.*

*The street number of the property is to be clearly identifiable.*

*Pedestrian access along the street frontage shall not be impeded by landscaping, street furniture or other restrictions.*

## 3. Territorial reinforcement

*Walkways and landscaping should be used to delineate site boundaries and direct visitors to the correct entrance and away from private areas.*

*Where a retail/commercial use and residential dwellings are provided in the same development, separate entries for the different uses are to be provided.*

*Blank walls along all public places (streets, open space etc) shall be minimised.*

#### 4. Space management

*Popular public space is often attractive, well maintained and a well used space. Linked to the principle of territorial reinforcement, space management ensures that space is appropriately utilised and well cared for.*

*Space management strategies include activity coordination, site cleanliness, rapid repair of vandalism and graffiti, the replacement of burned out pedestrian and car park lighting and the removal or refurbishment of decayed physical elements.*

*A crime risk assessment is a systematic evaluation of the potential for crime in an area. It provides an indication of both the likely magnitude of crime and likely crime type. The consideration of these dimensions (crime amount and type) will determine the choice and approximate mix of Crime Prevention through Environmental Design (CPTED) strategies.*

Comment:

I contend that an external, well designed accessway through an enlarged and more ADG compliant northern side setback zone, from Whale Beach Road to Surf Road would be significantly preferable to a narrow internal zone as currently proposed.

Surveillance, access control, territorial reinforcement and space management would all better resolved through a well-crafted landscape solution to an enlarged and more compliant northern side setback zone of the proposed building.

Parents of young children would much prefer that they accessed the beach through this type of external landscaped zone, rather than an internal zone, that currently mixes private access with public access, with hidden areas not open to regular open public view.

This is of significant concern to me.

#### **C1.3 View Sharing**

The clause states:

##### ***Outcomes***

*A reasonable sharing of views amongst dwellings.*

## **Controls**

*All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.*

*The proposal must demonstrate that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.*

*Where a view may be obstructed, built structures within the setback areas are to maximise visual access through the structure e.g. by the provision of an open structure or transparent building materials.*

### **Commentary:**

There is no reasonable sharing of views amongst dwellings.

The proposal is to 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.

Height Poles are required due to the non-compliant envelope proposals. The view loss exceeds 'moderate' on the Tenacity scale.

I am concerned to any view loss that arises from non-compliant development to LEP, DCP, and ADG controls. Any loss is unreasonable and unacceptable, however modest.

My comments are as follows.

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

*"A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable."*

The development breaches multiple planning controls and is unreasonable.

The impact on views arises as a result of non-compliance with one or more planning controls, and the greater than moderate impact is considered unreasonable.

### **Application of Tenacity Planning Principle**

I have only been able to consider the impact of the proposal on the outward private domain views from my property, by visual assessment. There are no height poles erected, so my assessment is limited by their absence.

A preliminary analysis and 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, however I have no confidence that the assessment is fully accurate due to the previous commentary on the absence of height poles.

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.*

Prior to undertaking Step 1 however, an initial threshold in Tenacity is whether a proposed development takes away part of the view and enjoys it for its own benefit and would therefore seek to share the view. In my opinion the threshold test to proceed to Step 1, I provide the following analysis;

An arc of view to the east is available when standing at a central location in the upper level highly used Study and the adjacent entertainment deck. There is a direct view of the beach/ocean interface that I wish retained.

An arc of view to the east is also available when standing at a central location in the lower level entry living spaces and the adjacent main entertainment deck. There is a direct view of the beach/ocean interface, that is not as pronounced at the upper level, that I wish retained.

Both are highly used zones on my property.

The composition of the arc is constrained to the north and south either side of the subject site, by built forms.

I stress to Council that the beach/water interface view is of significantly high value.

The overall composition of the total view is significantly enhanced by the water interface view.

The loss of any of that view would be unacceptable to me.

Although I have significant ocean view, it is the beach/ocean interface view that I enjoy the most.

I ask Council to consider this matter very closely, and spend the time considering this matter wisely, as I strongly hope that the beach/ocean interface view can be maintained.

I also do not want the loss of any ocean view, particularly from non-compliant development.

This view obviously includes scenic and valued features as defined in Tenacity.

The proposed development will take away views for its own benefit.

The view from my living room windows, study and deck towards the water view, and the beach-water interface will be lost.

The existing view is a 'moving landscape', rather than just a 'scenic outlook', given the activity on the water, and on the water edge.

The extent of view loss is moderate due to the beach/water interface, 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 at angles to the east, from standing and seated positions.

A wide arc of view to the east is available when standing at a central location on the living spaces, entertainment decks, and other highly used zones on my property.

In this respect I make two points:

- I have no readily obtainable mechanism to reinstate the impacted views from my existing living zones if the development as proposed proceeds; and
- All of the properties in the locality rely on views over adjacent buildings side boundaries for their outlook, aspect and views towards the beach/water interface and ocean view

### **Step 3: Extent of impact**

The next step in the principle is to assess the extent of impact, considering the whole of the property 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.*

Step 3 also contains a threshold test. If the extent of impact is negligible or minor for example, there may be no justification for proceeding to Step 4, because the threshold for proceeding to considering the reasonableness of the proposed development may not be met. In that case the reasonableness question in Step 4 does not need to be asked and the planning principle has no more work to do.

I consider the extent of view loss in relation to my lower living room and upper level highly used Study loss to be moderate using the qualitative scale adopted in *Tenacity*.

The view lost not only includes water views, but my highly regarded beach/water interface.



As I rate the extent of view loss of the beach/water as moderate in my 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:

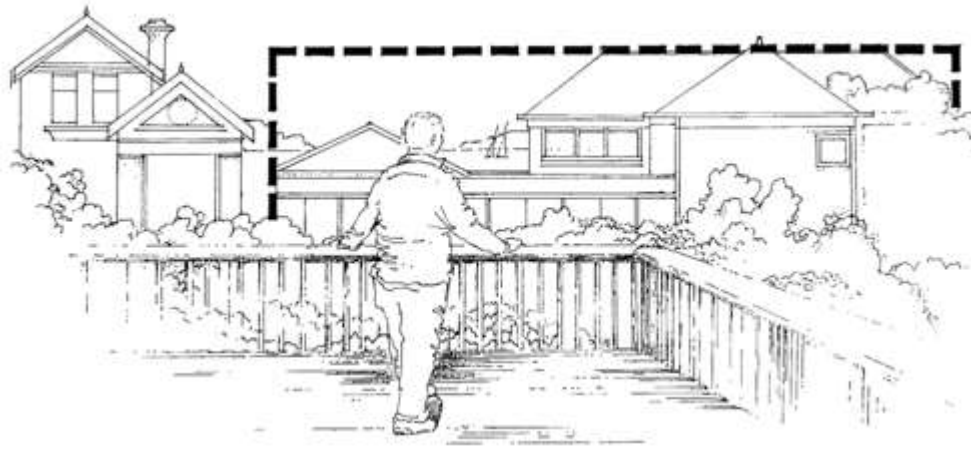
*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning 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.*

As the proposed development does not comply with outcomes and controls, that are the most relevant to visual impacts, greater weight would be attributed to the effects caused.

In my opinion the extent of view loss considered to be moderate, in relation to the views from my lower living rooms and living room deck of my dwelling, and upper level Study and deck particularly to the east towards the beach/water face view.

The view is from a location from which it would be reasonable to expect that the existing view, particularly of the beach/water interface could be retained especially in the context of a development that does not comply with outcomes and controls.

Once Templates are erected, I can provide additional commentary.



***Where there is a potential view loss, Council should require a maximum building height of less than 8.5m for part of the building, and should consider other modifications to the design to achieve view sharing.***

The private domain visual catchment is an arc to the east 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 my property.

The views most affected are from living areas and associated terraces and include very high scenic and highly valued features as defined in Tenacity.

Having applied the tests in the Tenacity planning principle and without a montage that can be relied upon, or height poles erected, I conclude that I would be exposed to greater than moderate view loss.

The significant non-compliance with planning outcomes and controls of the proposed development cause this loss.

Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

The Applicant should have informed the design by a complete view loss consideration that would have clearly identified that any development extending to the east on the subject site would remove my highly regarded beach/water interface view

There are architectural solutions that maintain my view, by proposing a more compliant development to controls, particularly side back, wall height to match neighbours, and building height control.

This would be a modest amendment, but would be highly appreciated and more reasonable, as it would maintain my beach/water face view.

At this juncture, the proposed development cannot be supported on view loss grounds.

I have proposed conditions for Council to consider later in this Submission to give effect to this outcome.

### **Public Domain Street View Loss**

I am concerned that the proposed non-compliant development will take unreasonable amount of ocean view from the street that would otherwise occur.

The SEE has failed to complete a Rose Bay Marina Assessment, or even addressed this issue.

I ask Council to consider the matter under *Rose Bay Marina* Pty Limited v Woollahra Municipal Council & Anr [2013] **NSWLEC** 1046.

The planning principle for public domain views adopted in *Rose Bay Marina* involves a two-stage inquiry: the first factual, followed by a second, analytical.

#### *Stage 1 – Investigation*

The first stage involves several steps. Initially, the task is to identify the nature and scope of the existing views from the public domain, which should include considerations relating to:

- the nature and extent of any existing obstruction of the view;
- relevant elements of the view;
- what might not be in the view;
- whether the change permanent or temporary;
- what might be the curtilages of important elements within the view.

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

The third step is to identify the extent of the obstruction at each relevant location. In this regard, the Court said that the impact on appreciation of a public domain view should not be subject to any eye height constraint.

The fourth step is to identify the intensity of public use of those locations where that enjoyment will be obscured, in whole or in part, by the proposed private development.

The final step is to inquire whether or not there is any document that identifies the importance of the view to be assessed (such as heritage recognition) or where the applicable planning regime promotes or specifically requires the retention or protection of public domain views. The Court made it clear, however, that the absence of such provisions does not exclude a broad public interest consideration of impacts on public domain views.

Comment:

The non-compliant northern and southern side setback would take a street view that otherwise would be available.

### *Stage 2 – Analysis*

The second stage is the analysis of impacts. The Court said the analysis required of a particular development proposal's public domain view impact is both quantitative as well as qualitative, but *'this is not a process of mathematical precision requiring an inevitable conclusion based on some fit in a matrix'*.

Planning controls or policies for the maintenance or protection of public domain views can create a presumption against the approval of a development with an adverse impact on a public domain view. This being so, the document must be properly considered and the legal status of the document is relevant in this regard.

In the absence of such planning controls or policies, the Court said *'the fundamental quantitative question is whether the view that will remain after the development (if permitted) is still sufficient to understand and appreciate the nature of and attractive or significant elements within the presently unobstructed or partially obstructed view.'*

Interestingly in this regard, the Court said that sometimes it may be essential to preserve partially obstructed views from further obstruction whereas in other cases this may be '*mere tokenism*'.

The qualitative evaluation requires an assessment of the aesthetic and other elements of the view, and the outcome of this process '*will necessarily be subjective*'. The framework for how the assessment is undertaken must be clearly articulated including clearly setting out the factors/considerations to be taken into account and the weight attached to them.

- a high value is to be placed on '*iconic views*'
- a completely unobstructed view has value
- whether any significance attached to the view is likely to be altered, and if so, who or what organisation has attributed that significance and why they have done so
- whether the present view is regarded as desirable and whether the change makes it less so and why
- whether any change to whether the view is a static or dynamic one should be regarded as positive or negative and why
- if the view attracts the public to specific locations, why and how that attraction is likely to be impacted
- whether any present obstruction of the view is so extensive as to render preservation of the existing view merely tokenistic
- on the other hand, if the present obstruction of the view is extensive, whether the remainder warrants preservation
- does the insertion of some new element into the view by the proposed development alter the nature of the present view?

Comment:

The view is high value, and many residents in the Northern Beaches would say, an '*iconic view*' of a section of Whale Beach. It would be a completely unobstructed view, which has added value. NBC LEP & DCP both refer to the preservation of views from public spaces. The present view, where it is available, is highly regarded as desirable, as the non-compliant side setback would delete a major portion of the view. The view is a dynamic one as there are passing beach craft traffic and the annual migration of whales that can be spotted from this walk. Pods of dolphins are regularly observed. People complete the Whale Beach Road walk for the ocean view quality so undoubtedly the view attracts the public to this specific

location. Removal of the potential of the view might make the walk less appealing. There is obstruction of the view further down the street, and this is one area where the view could become available. The obstruction of the view by non-compliant side setback would be extensive, so as not to render preservation of the existing view merely tokenistic. A compliant side setback view warrants preservation.

Finally, the Court said that *'a sufficiently adverse conclusion on the impact on views from the public domain may be determinative of an application. However, it may also be merely one of a number of factors in the broader assessment process for the proposal.'*

Not only would a compliant side setback better preserve street views, it would also open up the possibility of creating a landscaped zone for a safer permeable accessway to the beach, and a zone for communal open space for the residents of the site to accord with controls.

#### **C1.4 Solar Access**

There is an unreasonable loss of Solar Access directly attributable to non-compliance of the main PLEP and PDCP controls:

- Height of Buildings: Control 8.5m v 9.51m Proposed 12% non-compliance
- Front Setback: Control 3.5m v 3.0m Proposed 15% non-compliance
- Side Setback South: Control DCP 3m and ADG @ 6m Proposed 1.8m 60-70% non-compliance
- Side Setback North: Control DCP 3m and ADG @ 6m Proposed 1.8m 60-70% non-compliance
- Rear Setback: Control DCP 3m and ADG @ 6m Proposed Zero >1000% non-compliance

I am concerned for my neighbour's loss of amenity. A more compliant envelope would achieve a far better outcome.

#### **C1.5 Visual Privacy**

There is an unreasonable loss of Visual Privacy directly attributable to non-compliance of the main PLEP and PDCP controls:

- Height of Buildings: Control 8.5m v 9.51m Proposed 12% non-compliance
- Front Setback: Control 3.5m v 3.0m Proposed 15% non-compliance

- Side Setback South: Control DCP 3m and ADG @ 6m Proposed 1.8m 60-70% non-compliance
- Side Setback North: Control DCP 3m and ADG @ 6m Proposed 1.8m 60-70% non-compliance
- Rear Setback: Control DCP 3m and ADG @ 6m Proposed Zero >1000% non-compliance

I am concerned for my neighbours loss of amenity. A more compliant envelope would achieve a far better outcome.

### **C1.6 Acoustic Privacy**

There is an unreasonable loss of Acoustic Privacy directly attributable to non-compliance of the main PLEP and PDCP controls:

- Height of Buildings: Control 8.5m v 9.51m Proposed 12% non-compliance
- Front Setback: Control 3.5m v 3.0m Proposed 15% non-compliance
- Side Setback South: Control DCP 3m and ADG @ 6m Proposed 1.8m 60-70% non-compliance
- Side Setback North: Control DCP 3m and ADG @ 6m Proposed 1.8m 60-70% non-compliance
- Rear Setback: Control DCP 3m and ADG @ 6m Proposed Zero >1000% non-compliance

I am concerned for my neighbours loss of amenity. A more compliant envelope would achieve a far better outcome.

I am also concerned to the Acoustic Report submitted in respect to noise impacts.

- The adjustment of the amenity criterion by +10dB, due to the background noise generated by the ocean, is not credible;
- The distance from the proposed development to my boundary line is the relevant dimension, and this needs amendment, and reconsideration;
- All three Retail zones need to be considered, and particularly to the cumulative effect of noise being generated from all three zones;
- It appears unrealistic to suggest that no background music will occur, and that all windows will be shut in this coastal environment;
- The calculations should always include 'raised' vocal effort the report is unreasonable in this respect.

- A major concern is the noise emissions from mechanical plant from the development to the surrounding neighbours. I am concerned that full acoustic rated screens must enclose the roof plant to ensure that the outcome is consistent with control outcomes
- Conditions of consent must be included, restricting opening hours of opening to generally daylight hours, prohibiting any music, and providing fixed glazing in zones that correspond to the Acoustic Report assumptions
- The current high glazed wall proposals, seems not to respond with the acoustic report in terms of minimum composite sound insulation criteria
- The methodology and assumptions do not appear to be incorporated into the design of the proposed development, and this requires further detailed assessment by Council

I wish Council to ensure that the acoustic outcomes are no worse than the current situation on the subject site. I am sure the community would wish for a Whale Beach Road café to continue on the site, but this requires considerably more design consideration, and conditions of usage to achieve that outcome.

I would be concerned if the Surf Road Retail outlet caused any disturbance to adjacent neighbours, and Council's attention to these matters are obviously extremely important.

## **D Locality Specific Development Controls**

### **D12 Palm Beach Locality**

The overdevelopment of the site, shown by the significant non-compliance to outcomes and controls, is a significant concern.

#### **D12.1 Character as viewed from a public place**

My concern is that the proposed development does not achieve the outcomes and controls as required under this clause.

I contend the proposals fail every outcome.

The proposed development does not compliment the desired future character of the Locality.



The proposed development does not have a visual impact which is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation.

The proposed development is not of high quality and is not designed to address the natural context of the area.

The proposed development dominates the streetscape, particularly from Surf Road and is not at human scale, and, within residential areas, buildings give the appearance of being two-storey maximum.

The proposed development does not provide access to public places and spaces which is clear and defined, and particularly the poorly designed 'breezeway'.

### **Outcomes**

*To achieve the desired future character of the Locality.*

*To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)*

*To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.*

*The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)*

*High quality buildings designed and built for the natural context and any natural hazards. (En, S)*

*Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)*

*To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.*

*To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.*

*To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)*

### **Controls**

*The bulk and scale of buildings must be minimised.*

*Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.*

### **D12.3 Building Colours and Materials**

My concern is that the proposed development does not achieve the outcomes and controls as required under this clause. I contend the proposals fail every outcome. Of particular concern is that the colours are generally far too light in colour. Darker earthy tones would make the building recede better into the hillside.

#### ***Outcomes***

*Achieve the desired future character of the Locality.*

*The development enhances the visual quality and identity of the streetscape. (S)*

*To provide attractive building facades which establish identity and contribute to the streetscape.*

*To ensure building colours and materials compliments and enhances the visual character its location with the natural landscapes of Pittwater.*

*The colours and materials of the development harmonise with the natural environment. (En, S)*

*The visual prominence of the development is minimised. (S)*

*Damage to existing native vegetation and habitat is minimised. (En)*

#### ***Controls***

*External colours and materials shall be dark and earthy tones*

### **D12.5 Front Building Line**

The north west corner exceeds controls.

The substation should not be positioned in the front setback zone, or obscure the side setback viewing corridor.

## D12.6 Side and Rear Building line

My concern is that the proposed development does not achieve the outcomes and controls as required under this clause. I contend the proposals fail every outcome.

The proposed side setback is 1.8m, and the rear setback zero.

I contend that the northern side setback should be increased from the 3.0m in the DCP, and increased to the ADG control of 6.0m. Transferring the 2.1m wide breezeway, into the 3.0m DCP control, to arrive at 5.1m northern side setback to contain the permeable pedestrian link to the beach would be a preferable outcome.

### **Outcomes**

*To achieve the desired future character of the Locality. (S)*

*The bulk and scale of the built form is minimised. (En, S)*

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

*To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

*To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)*

*Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)*

*Flexibility in the siting of buildings and access. (En, S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

*To ensure a landscaped buffer between commercial and residential zones is established.*

### **Controls**

*The minimum side and rear building line for built structures including pools and parking structures, other than driveways, fences and retaining walls, shall be in accordance with the following table:*

*Land zoned B1 Neighbourhood Centre or B2 Local Centre adjoining land zoned R2 Low Density Residential, E4 Environmental Living, RE1 Public Recreation, or E2 Environmental Conservation  
3.0m along that adjoining side or rear boundary*

ADG control is 6.0m along that adjoining side or rear boundary

## **D12.14 Scenic Protection Category One Areas**

My concern is that the proposed development does not achieve the outcomes and controls as required under this clause. I contend the proposals fail every outcome, and most controls.

### **Outcomes**

*To achieve the desired future character of the Locality.*

*To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront.(En,S).*

*Maintenance and enhancement of the tree canopy.(En,S)*

*Colours and materials recede into a well vegetated natural environment.(En,S)*

*To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component (En, S)*

*To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.*

*To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

*To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.*

*Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.*

### **Controls**

*Canopy trees are required between dwellings and boundaries facing waterways and waterfront reserves.*

*Development is to minimise the impact on existing significant vegetation.*

*The applicant shall demonstrate the retention and regeneration of existing native vegetation outside of the immediate area required to carry out the development.*

*The development is to incorporate measures for planting and maintenance of native vegetation within those areas which are already cleared, and which are not required to be cleared to allow for the development.*

*The siting, building form, orientation and scale of the development shall not compromise the visual integrity of the site by removal of canopy trees along ridges and upper slopes.*

*The development must incorporate the use of unobtrusive and non-reflective materials and*

*the colours of exterior surfaces shall help blend structures into the natural environment.*

*Applicants are to demonstrate that proposed colours and materials will be dark and earthy.*

**Other Matters:**

B3.1 Land Slip

B3.11 Flood Prone Land

B4.5 Landscape and Flora & Fauna Enhancement Category 3 Land

B4.22 Preservation of Trees

B5.9 Stormwater Management

B5.10 Stormwater Discharge

B6.2 Internal Driveways

B6.3 Off-Street Vehicle Parking Requirements

B8.1 Construction and Demolition: Excavation & landfill

C1.1 Landscaping

C1.25 Plant, Equipment Boxes and lift Over-Run

I ask Council to ensure appropriate conditions are attached to any future approval.

## **Apartment Design Guide**

I am concerned that the proposed development does not accord with the ADG:

### **2C Building Height**

Non-compliant to LEP controls

### **2F Building separation**

Non-compliant to DCP controls

### **2G Street Setbacks**

Non-compliant to DCP controls

### **2H Side & Rear Setbacks**

Non-compliant to ADG & DCP controls

### **3D Communal and Public Open space**

Non-compliant to ADG controls

### **3E Deep Soil Zones**

Non-compliant to controls

### **3F Visual Privacy**

Non-compliant to controls

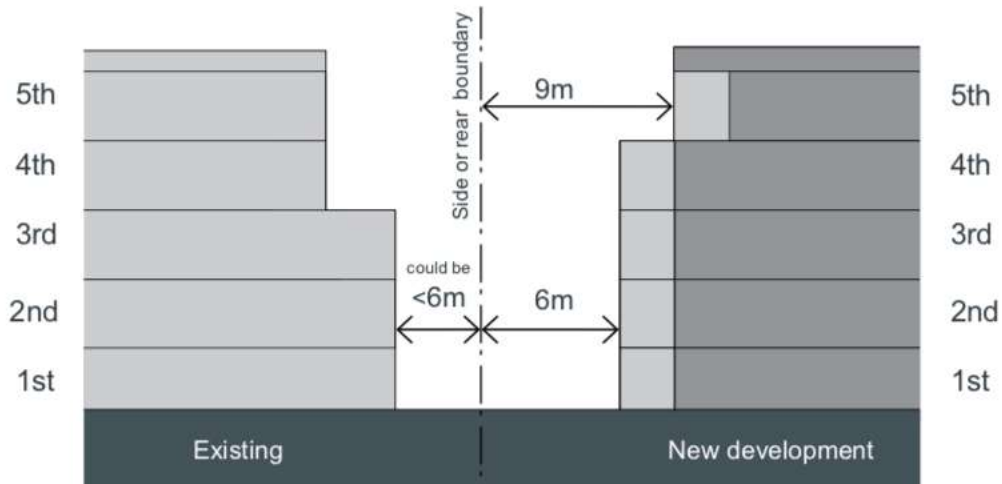
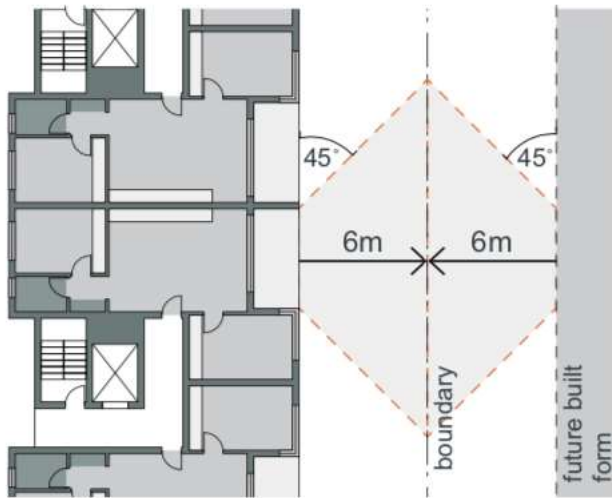


Figure 3F.3 New development adjacent to existing buildings should provide adequate separation distances to the boundary in accordance with the design criteria

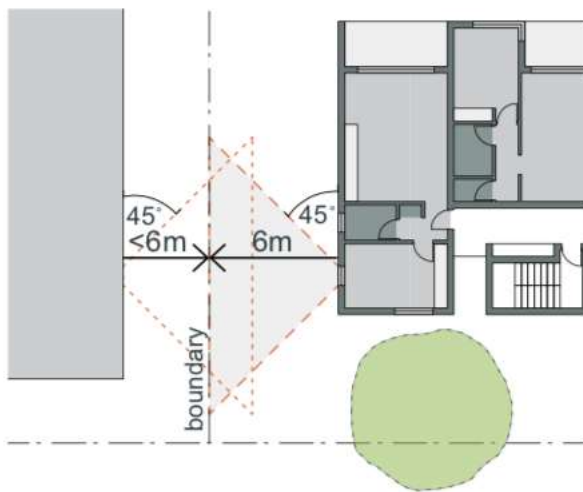
ADG: 6m side & rear setback requirement v Proposed 1.8m

## Boundary conditions

Habitable to habitable rooms



Habitable to non-compliant existing



ADG: Control 6m boundary condition setback v Proposed 1.8m



1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:

Building height	Habitable rooms and balconies	Non-habitable rooms
up to 12m (4 storeys)	6m	3m
up to 25m (5-8 storeys)	9m	4.5m
over 25m (9+ storeys)	12m	6m

ADG: 6m setback for buildings up to 4 storeys, and 9m for 5 storeys v Proposed 1.8m

### *Objective 3D-1*

An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping

#### **Design criteria**

1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)
2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter)

ADG: Control Communal Open Space 25% of site v Proposed Zero

**Comment:**

As mentioned elsewhere, I contend that a better outcome, would be to have a northern side setback closer to the ADG control, and for that zone to include for an accessway to the beach, and to provide a more compliant communal open space for residents of the development.

The southern setback zone requires better consideration for TPZ, and solar and privacy loss.

## Statement of Environment Effects Rebuttal

There are numerous non-factual matters stated within the Applicant's SEE.

The SEE does not meet NBC standards for completeness.

The SEE has failed to identify any environmental planning ground, unique or otherwise, that justifies the contravention of non-compliance to outcomes and controls.

The SEE fails to properly address the major non-compliances of PDCP:

- C1.2 Safety and Security
- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.6 Acoustic Privacy

The SEE fails to consider the poor amenity outcomes.

The SEE fails to address the scale consideration of neighbours buildings to the proposed development, and the poor urban design outcomes, of considerable jarring bulk and scale outcomes.

No Clause 4.6 has been submitted.

The SEE cannot be relied upon.

## NSW LEC Planning Principles

I bring to the attention of Council numerous **NSW LEC Planning Principles** that have relevance to this DA.

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

*“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.”*

### Commentary:

The development breaches multiple planning controls and is unreasonable.

The impact on views arises as a result of non-compliance with one or more planning controls, and the impact is considered unreasonable.

In **Meriton**, [**Meriton v Sydney City Council 2004**], NSW LEC considered Privacy. Meriton suggest that Council should consider:

*“When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.”*

### Commentary:

The freedom of neighbour’s property from being overlooked simply has not been properly and fully considered.

In **Davies**, [**Davies v Penrith City Council 2013**], NSW LEC considered General Impact. Davies suggest that Council should consider:

*“Would it require the loss of reasonable development potential to avoid the impact?”*

*Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?*

*Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?"*

**Commentary:**

The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal.

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.

The proposals are non-compliant in multiple areas, and the Applicant has not quantified the difference between the impacts of a complying and a non-complying development.

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.:"*

**Commentary:**

The proposals are non-compliant in multiple areas in building height, side setback, rear setback and front setback. The proposed development is considerably higher and considerably bulkier than the neighbours. The 'breezeway' concept simply is ineffectual in dealing with the considerable bulk towards the beach front. Most observers would find the proposed 'breezeway' development offensive, jarring or unsympathetic in a streetscape

context, having regard to the built form characteristics of development within the site's visual catchment.

## Proposed Conditions of Consent to any Approval

I ask that Council request that the Applicant submit Amended Plans to resolve these matters in full, prior to determination.

Alternatively, the Applicant may wish to withdraw this DA, and submit a new DA to the following principles.

The massing envelope reductions conditions would preferably all be dealt with under resubmission of Amended Plans or Resubmission of a new DA.

I present them for Council's consideration.

## Massing Envelope Reductions

### Floor Plates:

Reduce Floor Plates to the following levels:

- Basement RL 5.1m Carparking, provide additional double stackers to increase carparking
- Ground RL 7.8m Commercial & Carparking
- First RL 11.4m Residential
- Second RL 14.4 Residential
- Third RL 17.4 Residential
- Fourth RL 20.4 Commercial [Back of pavement WBR @ RL 20.75 and 21.5 balustrade not to extend past 13m contour]
- Roof RL 24.0 Roof [not to extend past 15.5m contour, but preferable to reduce further to reduce bulk]
- Plant RL 25.2 Plant, maximum permissible of any panel, plant or lift over run, positioned at western side facing Whale Beach Road to avoid view loss.

**Reason:** To better respond to the wall heights of neighbouring buildings at RL 24.0. View Loss, Overshadowing, Privacy, Visual Bulk

## Side and Rear Setback

Transfer the 2.1m proposed internal accessway, and adding that dimension to the proposed northern side setback zone of 3.0m, to create a 5.1m northern side setback zone, ensuring that no solar/privacy 'fin' devices are included within the 5.1m zone, to allow a clear 5.1m zone for a safer, external accessway and communal space for residents.

No built forms of any kind within side setback zones. No sun louvres, no privacy screens, no other built elements of any description, other than soft landscape and pedestrian steps and passageway. Apartments to have terraces facing east.

Increase Rear Setback to 3m for Level Ground, and 6m from Level 1 and above.

**Reason:** To provide a safer accessway from Whale Beach Road to the beach through an enlarged northern side setback zone. View Loss, Overshadowing, Privacy, Visual bulk

## Front Setback

Increase front setbacks to 3.5m for the complete frontage and northern end corner.

No substation in front or side setback zone.

**Reason:** improved streetscape, protect street view to ocean

## Excavation

Reduce excavation such that the maximum cut at each floor level does not exceed 6m in depth at any location above natural ground level, save for a central excavation cut for lifts and escape stair through all levels. No excavation outside of the building envelope in side or front setback zones.

**Reason:** to reduce extent of excavation

## 5. Vibration

The vibration limit set by the Applicant is **8.0mm/sec**. This is far too high.

It is intended to extend excavation through bedrock for foundation to footings. This can



cause considerable vibration.

Residents often '*find vibration levels above about 3 mm/s as being strongly perceptible to disturbing*'.

Often vibration levels to 2 mm/sec can cause residents to evacuate a residence in sheer terror!

Due to the high number of seniors living permanently in the area during the day, a lower level than 8 mm/sec is required.

Full Time Vibration Monitoring is required to ensure that compliance.

Geotechnical Inspection is required

Dilapidation Surveys is required

Reduce Peak particle velocity to be less than **2.5mm/sec** at the common boundary, with warning alarms on site to stop work if thresholds are exceeded at **2.0mm/sec** during demolition, excavation and main construction activity.

The level at **2.0mm/sec** can be normally easily achieved by making attenuation cuts into the upper siltstone strata and sandstone, prior to milling, and always ensuring the attenuation cuts are 0.5m lower than the excavated surfaces at all times. The hammer of the Excavator never is to face neighbouring dwellings, but to face the rear street. Other precise methods are to be specified by the Geotechnical Engineer.

Demolition of slabs and pool structures constructed into bedrock will need particular care as excessive vibration can occur from the removal of reinforced concrete slabs. Slabs will need to be mechanically sawn before removal. Other precise methods are to be specified by the Geotechnical Engineer.

The secant pile wall will need to be carried out with utmost care. Other precise methods are to be specified by the Geotechnical Engineer.

Where compaction is to be undertaken near existing structures or underground services, large vibratory machines should be avoided to reduce the potential for generation damaging vibrations. Other precise methods are to be specified by the Geotechnical Engineer.

As the magnitude of vibration transmission is site specific, it is recommended that a vibration trial be undertaken at the commencement of rock excavation. The trial may indicate that smaller or different types of excavation equipment should be used. The initial stages of the excavation, during the vibration trial, should be undertaken in the centre of the site to minimise the risk of damage to surrounding structures.

To minimise the effects of hydraulic rock hammer equipment, the work method should allow for as a minimum:

- excavation of loose or rippable sandstone blocks by bucket or single tyne attachments prior to commencement of rock hammering;
- use of rock sawing or milling heads around the perimeter of the excavation;
- selective breakage along open joints where these are present;
- use of rock hammers in short bursts to prevent generation of resonant frequencies; and
- the movement of large blocks away from existing structures prior to breaking up for transport from site.

Daily Acoustic Reports to be sent to Principal Certifying Authority, Geotechnical Engineer and to Council Enforcement Officer, highlighting breaches of the warning alarms, and confirmation of action taken to reduced similar construction activity.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority, to include method statement of excavation works, monitoring of boundary levels, halt signals, notifications on site and to PCA and Council, and attenuation methods to reduce vibration risks.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To reduce risk of vibration damage to neighbours property and to harm to residents during extensive excavation works.

### **Landscape:**

Increase deep soil planting in increased side setback zones, and position a 1500mm wide sandstone pedestrian accessway and a slow sandstone stairway and pathway from Whale Beach Road to Surf Road, in the extended 5.1m wide northern side setback zone, with risers at 170mm, goings at 270mm, with maximum 10 risers at each flight, generally at natural ground levels, with new sandstone paving to the base of Surf Road at the base of the incline to provide safe access for pedestrians to the beach.

New landscape plan to be submitted, with the use of more tropical native species that dominate in the area.

Delete internal breezeway.

Reposition the Kiosk Substation to protect Whale Beach Road ocean view along southern setback zone.

Tree Protection Zone of Tree 4 (Norfolk Island Hibiscus) is to be unaltered during demolition, excavation and construction, with a minimum 4.5m setback from the boundary, to ensure that a <10% encroachment is maintained to the TPZ of Tree 4.

**Reason:** To provide a safer accessway from Whale Beach Road to the beach through an enlarged northern side setback zone. Protect neighbour's tree. Better protect public views to ocean. View Loss, Overshadowing, Privacy, Visual bulk

### **Privacy**

All sill heights to 1.7m height facing neighbours side boundary, with privacy screens such that no side view is possible due to the non-compliance to ADG controls.

Resolve Acoustic Report and modify proposed development accordingly. Condition commercial usage opening hours to daylight hours, from 7am to 6pm. No opening after 6pm.

**Reason:** Privacy

### **Parking on Whale Beach Road**

A comprehensive review by Council to address the on-street parking outcomes along the street frontage.

I ask Council to impose the following conditions on any approval:

- A. Stormwater Disposal
- B. Geotechnical Report Recommendations incorporated within design and structural engineering plans
- C. Boundary Identification Survey
- D. Structural Adequacy & Excavation work
- E. Soil & Water Management Program
- F. Compliance with Standards
- G. Tree protection
- H. Road Reserve
- I. Removing, Handling and Disposing of Asbestos

- J. Survey Certificate
- K. Protection of Adjoining Property: Excavation
- L. Landscape Completion Certificate
- M. Stormwater Disposal
- N. Certification of Structures
- O. Geotechnical Certification prior to Occupational Certificate
- P. Dilapidation Survey of Neighbours Property prior to Construction Certificate
- Q. Post Construction Dilapidation Survey of Neighbours Property prior to Occupational Certificate
- R. Swimming Pool Requirements
- S. Noise Nuisance controls from plant
- T. Lighting Nuisance from internal and external light sources. No external lighting facing neighbours property.
- U. Vibration to be below 2.5mm/sec on boundary, on excavation
- V. No excavation within 1m of neighbours boundary
- W. Retaining wall structures near boundary to be fully designed and certified by structural engineer
- X. Glare and Reflection
- Y. Site Demolition and Construction Waste Management
- Z. Impact of The Works Plan: Parking, Pedestrians, Transport, Public Safety, etc
- AA. Truck Details & Movements
- BB. Traffic Management Plan: Trucks & traffic Controllers
- CC. Traffic and Parking impacts
- DD. Sediment Control Plan

## Conclusion

In consideration of the proposal and the merit consideration of the development, I contend that the proposals are considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with SEPP [Coastal Management] 2018
- Inconsistent with the design quality issues of SEPP 65
- Inconsistent with the objects of the EPAA 1979

The design of the proposals and the poor amenity outcomes render the proposal inappropriate and unsuitable for the site and the location.

The Applicant has not adequately addressed the security, view loss, solar loss and privacy loss issues of neighbour's amenity.

The built form of the development does not provide an outcome that is compatible with the area, and is incompatible with neighbour's amenity.

The bulk and scale of the building is beyond PLEP, PDCP & ADG controls, and is not consistent with a site responsive design on sloping land on a low side of the street.

The design is not consistent with the desired future character for the locality and exhibits non-compliances with building height controls, front setback controls, and side and rear setback controls.

I contend that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been not satisfactorily addressed.

The development does not satisfy the objectives of the standard and will present poor residential amenity consequences.

The identified non-compliances have not been appropriately justified having regard to the associated objectives.

The subject site is of sufficient size, and there is no reason, unique or otherwise, why a fully compliant solution cannot be designed on the site, to avoid amenity loss.

The Applicant has not submitted a Clause 4.6, and even if it was submitted, it would fail on multiple levels as there are not sufficient environmental planning grounds to justify the departure. The development does not satisfy the objectives of the standard and gives rise to adverse residential amenity consequences.

Council may consider in light of the absence of Clause 4.6 applications, and other misleading information, to reject the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.

I ask Council, that unless the Applicant addresses these matters completely within an Amended Plan resubmission, then Council must **REFUSE** Development Consent to Development Application for the reasons outlined as follows:

Section 4.15[1] [a][i] Provisions of any Environmental Planning Instrument, the development is inconsistent with PLEP 2014

- 1.2 Aims
- 2.3 Zone Objectives
- 2. Zone 4 Environmental Living
- 4.3 Height of Buildings
- 4.6 Exceptions to Development Standards

Section 4.15[1] [a][iii] Provisions of any DCP, the development is inconsistent with PDCP,

- C1.2 Safety and Security
- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.6 Acoustic Privacy
- D Locality Specific Development Controls
- D12 Palm Beach Locality
- D12.1 Character as viewed from a public place
- D12.3 Building Colours and Materials
- D12.5 Front Building Line
- D12.6 Side and Rear Building line
- D12.14 Scenic Protection Category One Areas

Section 4.15[1] [b][i] Likely Impacts of the development. The proposal will have a detrimental impact on both the natural and built environments pursuant to Section 4.15(1)(b)(i) of the *Environmental Planning and Assessment Act 1979*.

The site is not suitable for the proposal pursuant to **Section 4.15(1)(c)** of the *Environmental Planning and Assessment Act 1979*.

The site is not suitable for the proposal pursuant to **Section 4.15(1)(d)** of the *Environmental Planning and Assessment Act 1979*.

The proposal is not in the public interest pursuant to **Section 4.15(1)(e)** of the *Environmental Planning and Assessment Act 1979*.

For the reasons set out above the Development Application should be refused by Council.

I will welcome the opportunity to further expand on any of the issues above once templates and height poles are erected.

As the proposed development contravenes a development standard imposed by an environmental planning instrument by more than 10%, I ask for confirmation that the **NBLPP** will determine this DA.

I request these matters be closely considered in the assessment of the proposed development.

I expect that on such a large and very sensitive site, the Applicant should be charged by Council to deliver a totally compliant scheme to PLEP, PDCP and ADG controls.

There is no excuse that neighbours amenity must suffer due to non-compliance to the controls. All I seek is a fully compliant development to all Council's controls and all ADG controls, to whatever is the more stringent considering the E4 Zone neighbourhood, and for the envelope controls to be drawn accurately based upon the boundary survey levels and other survey marks across the site.

I do hope Council will appreciate that not only am I presenting the problems, but I am also presenting the solutions to those problems.

I am being more than reasonable and helpful to try to reach a compromised solution that resolves my amenity, but allows the Applicant to achieve most of what he wishes to gain from the development, all in a reasonable way.

I do hope the Applicant submits Amended Plans to resolve these matters, erects Height Poles, submits revised and complete overshadowing drawings, and other matters identified within this Submission.

If this does not occur, I ask Council to **REFUSE** this DA.

Yours faithfully,

**Mr Danny Hofbauer**

**198 Whale Beach Road  
Whale Beach  
NSW 2107**