

16 January 2021

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

By e-mail: [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

FAO: Adam Mitchell

Dear Adam

**Submission with regard to Development Application DA2021/2435  
Alteration and additions to residential development – Alterations and additions to a  
dwelling house including a spa  
40 Hillcrest Avenue, Mona Vale, NSW**

I write regarding the above Development Application DA2021/2435 (subject DA) to make a submission on behalf of [REDACTED]

This submission is prepared further to the assessment of the plans, reports and Statement of Environmental Effects (SEE) submitted as part of the subject DA against the relevant EPIs and Planning Controls and with the benefit of a site visit to assess the impact of the proposed development on my clients.

The subject DA seeks consent for alterations and additions to a dwelling house including a spa at 40 Hillcrest Avenue, Mona Vale (subject site). My client's property sits to the of east / southeast of the subject site at 42 Hillcrest Avenue.

I have reviewed submitted DA plans and reports and assessed the impacts on my clients to arise by virtue of the proposed development against the relevant planning controls. Additional information is required to fully assessed the proposed development as detailed in this submission. In summary the additional information required includes:

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- Height poles to be erected at the rear elevation of the proposed to fully assess the overbearing impact and view loss on my client
- Amended shadow diagrams to include the built form, window and door locations and shadow on the roof of 42 Hillcrest Avenue
- Plans showing extent of non-compliance with the building envelope
- Detailed landscaping plans including limiting planting species to ensure growth limited to no more than 2 metres along eastern (south-eastern) boundary with no. 42 Hillcrest Avenue

A summary of the impacts and non-compliance of the subject DA as determined from the information submitted is set out below.

### Summary of submission

- Proposed development is non-compliant development contrary to Pittwater LEP Clause 7.8 – Foreshore area and Pittwater DCP 2014 Controls, A4.9 Mona Vale Locality; C1.1 Landscaping; C1.3 View Sharing; C1.4 Solar Access; C1.5 Visual Privacy; C1.6 Acoustic Privacy; D9.1 Character as viewed from a public place; D9.7 Side building line; D9.9 Building Envelope
- Overshadowing impacts, particularly to the principal living spaces on the western elevation of no. 42 Hillcrest Avenue and the principal outdoor living area
- Significant loss of visual privacy by virtue of the proposed rear balcony looking directly towards my client's private open space area to the rear, pool, master bedroom, and front balcony at close proximity contrary to DCP Control C1.5 – Visual Privacy.
- Loss of acoustic privacy by virtue of proximity of the proposed balcony from the main bedroom and living area of no.42 Hillcrest Avenue. The balcony would result in unacceptable noise levels brought about by everyday living, contrary to DCP Control C1.6 – Acoustic Privacy.
- Overbearing impact of the elongated built form projecting into the view corridor of no. 42 Hillcrest Avenue due to non-compliance with Clause 7.8 of the LEP and DCP Controls D9.7 Side and rear building line and D9.9 Building Envelope.
- Potential impacts of Banksia on the front eastern boundary – see requested condition for planting not to exceed a maximum height of 2 metres along the eastern boundary of the site

- Impact on amenity of neighbouring occupiers – cumulative impact of the above.
- Impact on the visual amenity and the natural environment when viewed from Bungan Beach contrary to DCP control A4.9 and D9.1.

On the information submitted, it is recommended that the subject DA be refused for the reasons summarised above.

Should Council consider supporting the proposed development contrary to the concerns set out in this submission, it is requested that recommended amendments and conditions are applied as set out on page 18.

Should additional information or amended plans be submitted, my client requests the opportunity to provide further comments.

### **Site details and character of the area**

The subject site is located on the north east side of Hillcrest Avenue, Mona Vale. The boundary identification survey shows the site area as 752.5 sqm. The south-eastern boundary of the subject site abutting my client's property at 42 Hillcrest Avenue is approximately 41.11 metres. The front boundary facing Hillcrest Avenue is 17.02 metres.

The site is situated adjacent to and partially within the foreshore building line abutting a steep cliff with no access to Bungan Beach. The site is also partially included within the Pittwater Geotechnical Hazard Map and listed as Geotech Hazard H1 and wholly within the Coastal Risk Planning Map identified as Bluff/Cliff instability.

Surrounding development is predominantly made up of detached dwellings which generally complement the low density and well landscaped environment. An important aspect of the surrounding environment is the open aspect and dual access views of Mona Vale Beach and Bungan Beach.

My client's property is in very close proximity to the subject site, approx. 2 metres off the side, south-eastern boundary.

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**Figure 1 – Aerial photo of location of subject site in close proximity to 42 Hillcrest Avenue**



Source: Northern Beaches Council Planning Maps – Aerial view

### **Proposed development**

Development Application DA2021/2435 seeks consent for alterations and additions to a dwelling house including a spa at 40 Hillcrest Avenue, Mona Vale which includes the following:

- Extended side wings to accommodate:
- Open aspect central pavilion, pushing development out to the boundaries of the site rather than containing new development away from the side boundary to protect neighbouring amenity

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- Increase in the overall ridge height of the existing dwelling
- Increased elongated built form – particularly along the eastern boundary of the site and into the foreshore area, abutting my client's property

### **Impacts and non-compliance of proposed development**

#### **Relevant legislation and Planning Controls**

In preparing this submission, I have carefully considered the following legislation and planning controls:

*Environmental Planning & Assessment Act 1979 (The Act)*  
*Environmental Planning and Assessment Regulation 2000 (The Regulations)*  
*Coastal Management Act 2016 (CM Act)*  
*Pittwater Local Environmental Plan 2014 (LEP)*  
*Pittwater Development Control Plan 2014 (DCP)*

#### **Local Environmental Plan (LEP)**

**Land use zone:** The subject site is zoned C4 Environmental Living under the LEP. There are concerns with the scale of the development and the lack of integration with the landform as set out in this submission.

#### **Clause 7.1 Acid Sulphate Soil**

Identified as Class 5, it should be determined whether an acid sulphate soil management plan should be submitted and assessed as part of this subject DA.



### **Clause 7.5 Coastal Risk Planning**

The subject site is located within the Pittwater Coastal Risk Planning Map as Bluff/Cliff Instability. A Coastal Engineering Report and Geotechnical Report have been submitted with the subject application. This is not my area of expertise.

However, from my reading of the accompanying reports I refer to page 10 of the Coastal Engineering Report. In considering items (c), (d) and (g) of Cl. 7.5 of the LEP, the Coastal Engineering Report states that, *'[items (c), (d) and (g)] are for the geotechnical engineer to assess... Assuming that they find that the proposed development is at an adequately acceptable low risk of damage over a 100-year planning period with appropriate measures incorporated in design and construction, (c), (d) and (g) would be met.'*

The Geotechnical Report states the risk to property was considered low to moderate.

It is noted that Council's Natural Environment Referral Response – Coastal, does not raise any objection to the proposed development subject to conditions. However, the moderate risk identified in the Geotechnical Report appears to conflict with the need for an adequately acceptable low risk of damage as referred to in the Coastal Engineering Report.

### **Clause 7.7 Geotechnical hazards**

The subject site is partially located within Area H1 on the Landslip Risk Map. A Geotechnical Report has been submitted with the Development Application and risks to neighbouring property should be fully assessed as part of this application. As outlined above, this submission raises some concerns with the findings of the Geotechnical hazards and risks identified.

### **Clause 7.8 Limited development on foreshore area**

The subject site is partially located within the foreshore area as shown in the Pittwater LEP foreshore building line map and included as an extract in figure 2.

**Figure 2 – Pittwater LEP foreshore area map**



**Source: Northern Beaches Council Planning Maps**

Clause 7.8 (2) (a) of the Pittwater LEP 2014 states the following:

- (2) Development consent must not be granted for development on land in the foreshore area except for the following purposes—*
- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
  - (b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

The proposed development includes alterations and additions to an existing dwelling house.

The proposed new balcony, spa and cabana are all contained within the foreshore area. The purple hatched line shown in the extract from submitted DA plans in figure 3 shows the location of the foreshore building line and encroachment of the proposed balcony within the foreshore area.

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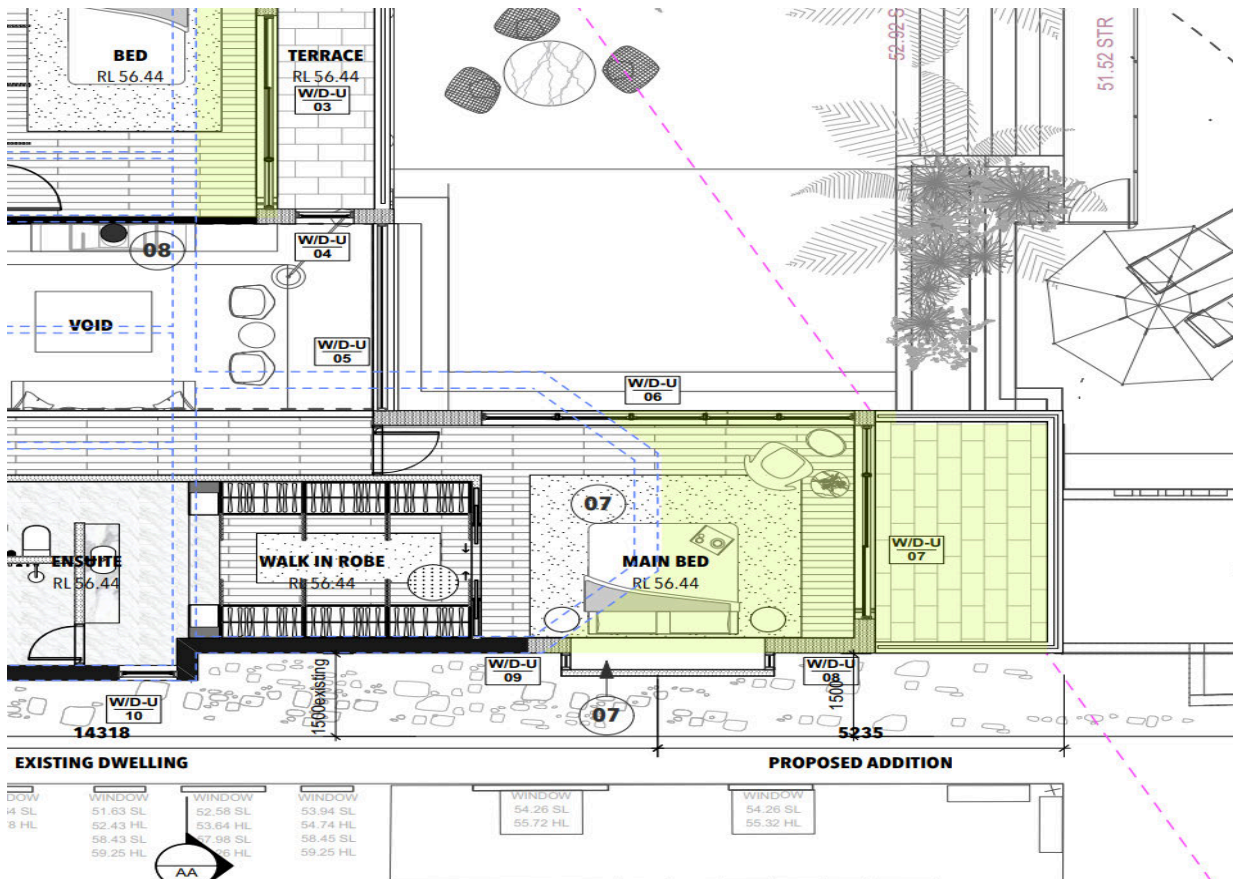
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Council's Natural Environment – Coastal referral responses concludes that the DA includes proposed works like pool, cabana and improvement in recreation area consistent with Cl. 7.8(2)(b). This submission agrees that the pool improvements / spa and cabana alterations do not conflict with Cl. 7.8(2)(b) but contends that the proposed balcony addition amounts to extending the footprint of the building further into the foreshore area contrary to Cl. 7.8(2)(a).

In accordance with Clause 7.8 of the LEP, the proposed balcony should be removed from the submitted plans. It should also be noted that this submission includes further concerns arising from the proposed balcony.

**Figure 3 – Development within the foreshore building line area**



Source: Extract from DA plans



Should amended plans be submitted to address this stated non-compliance, it is requested that my clients be given the opportunity to provide additional comments.

## **Development Control Plan (DCP) - Non-compliant development and amenity impacts**

### **DCP Control C.1.1 Landscaping**

**Comment:** It is noted that Council's Landscaping referral response does not support the subject DA. One of the stated reasons for not supporting the subject DA is the lack of information submitted with regard to the landscaping proposals for the subject site. My client is also concerned with this lack of detail.

In addition to this, the submitted plans show a proposed Banksia Integrifolia to be planted along the front eastern boundary abutting my client's property. A Banksia Integrifolia can grow to a height that could impact the stability of the front boundary wall and impact on solar access. The submitted plan states that the Banksia would grow to 10 metres.

It is requested that a detailed landscaping plan be submitted, and my clients given the opportunity to comment. It is also requested that the landscaping plan submitted include planting along the eastern boundary that would not grow any higher than 2 metres.

### **DCP Control C1.3 View Sharing**

**Comment:** The elongated eastern elevation would project into my client's view corridor of Bungan Beach and severely obstruct views currently enjoyed. The impact is largely a result of the extended roof form over the proposed balcony and degree of encroachment into the foreshore area.

### **DCP Control C1.4 Solar Access**

**Comment:** The shadow diagrams to be assessed as part of this subject DA do not include the windows serving 42 Hillcrest Avenue and fail to show the level of shadow on the roofscape. Additional shadow diagrams should be submitted to show this level of detail to enable the full assessment of solar impacts to be determined. However, it is clear from the shadow diagrams

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submitted that a degree of overshadowing will impact my clients particularly from mid-day and from 3 pm in their principal living space, bedroom and principal outdoor entertaining space. The impact on solar access is contrary to DCP Control C1.4.

## DCP Control C1.5 - Visual Privacy

### **Controls**

*Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).*

*Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.*

*Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.*

**Comment:** DCP Control C1.5 seeks to optimise visual privacy through good design and create a sense of territory and safety. The stated controls seek to ensure that neighbouring dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices.

The proposed rear balcony serving the master bedroom on the eastern elevation is located to look directly towards my client's private open space area to the rear which includes the outdoor dining area and pool area. The proposed new balcony is also directly adjacent to the existing balcony to the rear of no. 42 Hillcrest Avenue.

The proposed development is of a height and side setback which would facilitate direct overlooking at a close proximity and the location of the proposed balcony would exacerbate this impact.

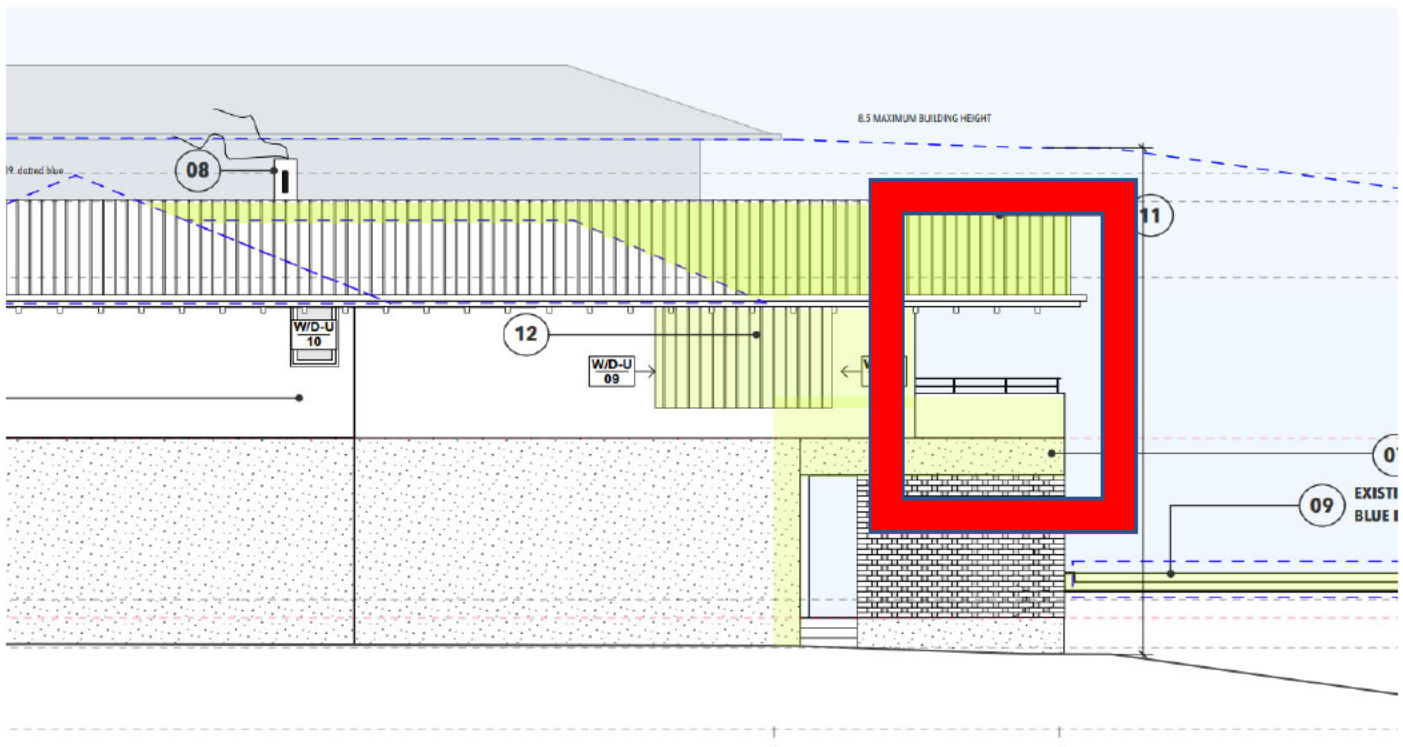
DCP Control C1.5 includes incorporating privacy screens where necessary. However, as the balcony and master bedroom of no 42 would look towards the ocean view, the installation of

privacy screens would result in the view corridor from my client's property to Bungan Beach being severely obscured.

It is the physical built form and proposed siting of the eastern elevation addition which should be amended to reduce the impact of the proposed development, or the subject DA should be refused given that it is contrary to DCP Control C1.5, as well as the other stated controls.

Figure 4 details the area of impact. It is requested that the proposed balcony be removed or pulled back to reduce the level of impact to arise from the proposal and include a hipped rather than gable end to limit solar impacts.

**Figure 4 – Eastern elevation of proposed development**



Source: Extract from submitted plans – DA2021/2435

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It is also requested that the window box on the eastern elevation be conditioned to restrict any glazing on the eastern elevation window box, facing towards my client's property at no. 42 Hillcrest Avenue.

The proposed new roof to the Cabana should also be conditioned to be a non-trafficable area to avoid any potential overlooking and privacy screens or fencing should not be erected to facilitate the use of this area as a terrace or trafficable space.

### **DCP Control C1.6 – Acoustic Privacy**

#### ***Controls***

*Noise-sensitive rooms, such as bedrooms, should be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like.*

*Walls and/or ceilings of dwellings that are attached to another dwelling/s shall have a noise transmission rating in accordance with Part F (5) of the Building Code of Australia. (Walls and ceilings of attached dwellings must also comply with the fire rating provisions of the Building Code of Australia).*

*Noise generating plants including pool/spa motors, air conditioning units and the like shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.*

**Comment:** The proposed development includes living areas and private open space areas (proposed balcony) in close proximity to my client's bedroom. The noise arising from the proposed siting of the new dwelling and particularly the open balcony, would result in unacceptable levels of noise and have an impact on my client's acoustic privacy contrary to DCP Control C1.6. Should the requested amendment to remove or pull back the balcony, as shown in figure 4, be incorporated the acoustic impacts would be reduced.

## DCP D9.7 - Control Side and rear building line

### **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.*

### **Control:**

2.5 to at least one side; 1.0 for other side

6.5 rear (other than where the foreshore building line applies)

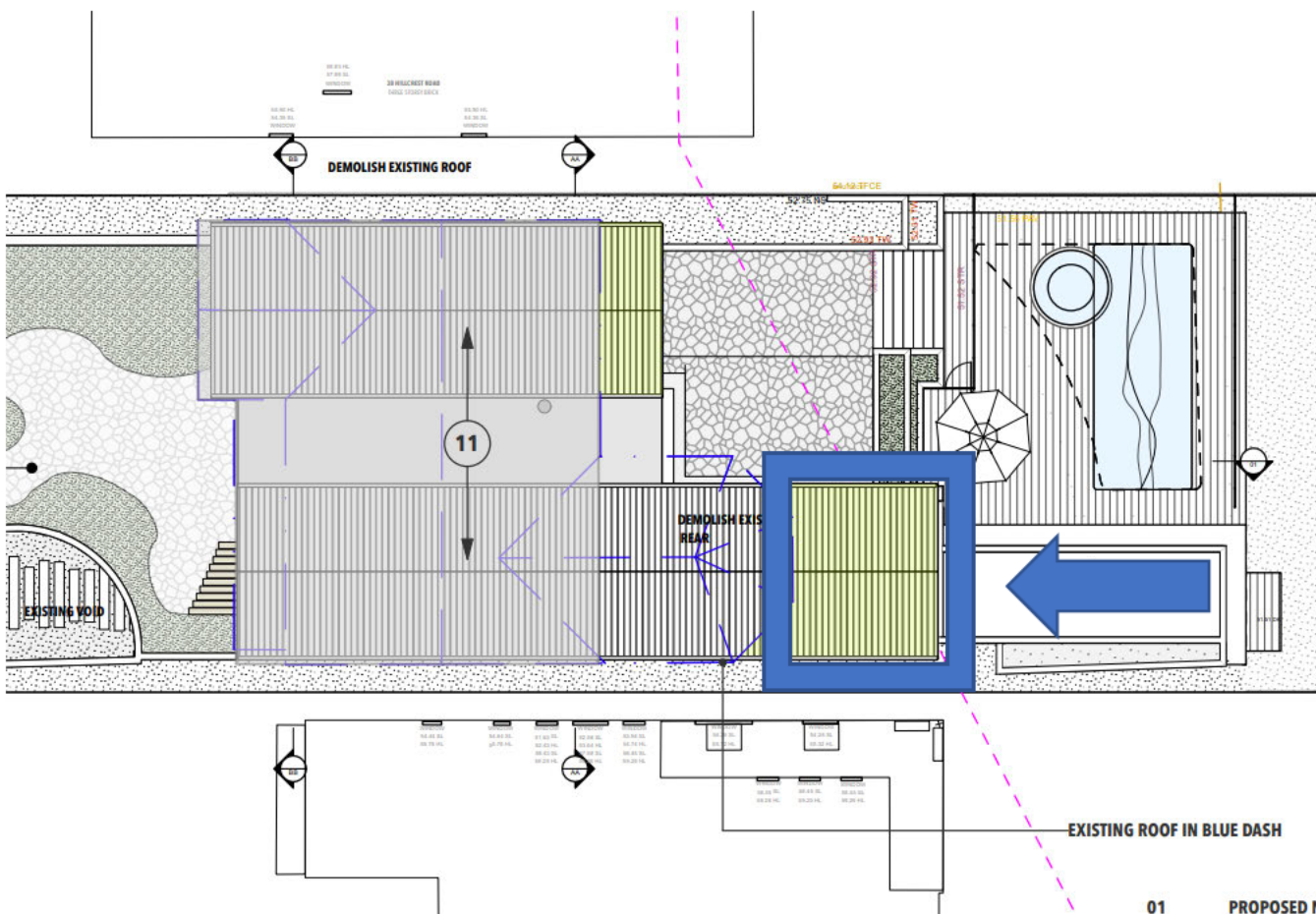
**Comment:** The proposed development is non-compliant with the side boundary setbacks of DCP Control D9.7. The eastern elevation is 1-1.5 metres off the eastern boundary and the western elevation is 1 metre off the western boundary. The resulting impact of pulling back the eastern elevation off the boundary by an additional 1-1.5 metres would reduce the overbearing impact on my client to a certain extent. The design of the proposed development incorporates an open pavilion through the middle of the site and by virtue of this, pushes the development out towards the side boundaries. There is scope within the design to pull the eastern elevation by reducing the width of the central pavilion.

However, the rear set back where the balcony extends along the eastern elevation presents a significant impact. Although numerically compliant with the rear setback, the foreshore building line applies. The close proximity and overbearing height, bulk and scale of the proposed development results in a development that does not achieve the desired future character of the locality, where the bulk and scale is not minimised and there is an unreasonable impact on privacy and solar access contrary to the outcomes of this control.



To address this impact, it is recommended that the proposed development is pulled back to off the side and rear boundary. As shown in figure 4 and figure 5, it is requested that amended plans be submitted to remove the proposed balcony to achieve an improved outcome and address the non-compliance of the stated controls.

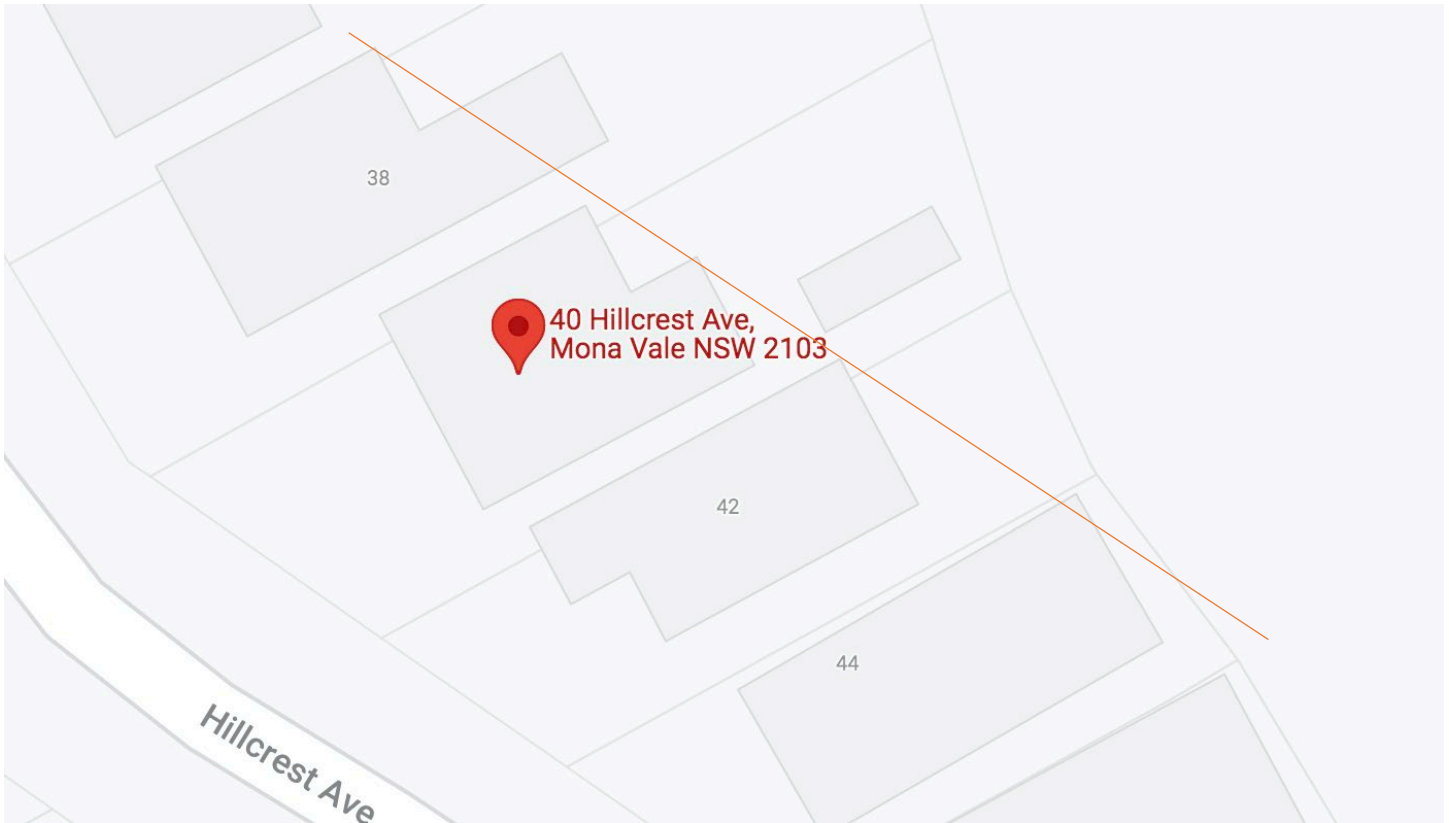
**Figure 5 - Recommendation to amend the siting of the proposed development by pulling back from the rear boundary**



Source: Extract from Master Set DA plan with own overlay

The removal of the proposed balcony would also comply with the established rear building line as shown in figure 6.

**Figure 6 – Established rear boundary set back**



Source: Extract from Google Maps with own overlay

## **DCP Control D9.9 - Building envelope**

### ***Outcomes***

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

*To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

*To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*

*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 ensure a reasonable level of privacy, amenity and solar access is provided within the*

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*development site and maintained to residential properties. (En, S)*

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

**Comment:** The proposed development is not supported with plans to demonstrate compliance with the building envelope. From my assessment of the plans, the proposed development would not comply with DCP Control D9.9, by virtue of the height and non-compliance with the side building line when considered from the front and rear elevation. A building envelope plan should be submitted showing the building envelope from the side boundary at ground level at the proposed front and rear elevation. My clients request the opportunity to comment.

The impact to arise from the non-compliance with the side setback and building envelope is the overbearing impact of the proposed development given the bulk and scale, the loss of privacy, view loss and the potential overshadowing impact already addressed in this submission.

### **Impact on amenity of neighbouring occupiers**

The proposed development would clearly have a materially significant impact on neighbouring amenity. The Development Application fails to comply with the DCP controls referred to in this submission. The impact on neighbouring amenity by virtue of the bulk and scale of the proposed development and non-compliance would create an unacceptable overbearing impact, loss of privacy, view loss and overshadowing impact. It is recommended that the proposed development be refused given the objections raised. Should Council be minded approving the proposed development, contrary to the concerns set out in this objection, then amendments and conditions are requested to mitigate against the harm discussed.

### **Impact on amenity when viewed from a public place**

The proposed development would be highly visible from Bungan Beach. The encroachment of the proposed balcony into the foreshore area and non-compliance with the building envelope and side set back would result in an inappropriately bulky form of development and visually intrusive when viewed from Bungan Beach contrary to DCP Control 4.9 and 9.1.

## Recommendations

- Request additional information be submitted as follows:
  - Height poles to be erected at the rear elevation of the proposed to fully assess the overbearing impact and view loss on my client
  - Amended shadow diagrams to include the built form, window and door locations and shadow on the roof of 42 Hillcrest Avenue
  - Plans showing extent of non-compliance with the building envelope
  - Detailed landscaping plans including limiting planting species to ensure growth limited to no more than 2 metres along eastern (south-eastern) boundary with no. 42 Hillcrest Avenue
- Refuse the proposed development given the objections raised in this submission.
- Should Council be minded approving the proposed development, contrary to the objections raised in this submission, it is recommended that amended plans be submitted to:
- Pull back the side and rear eastern elevation to remove the balcony and increase the side setback of the eastern boundary to 2.5 metres. From an assessment of the submitted plans, there is scope within the building design to be varied to accommodate these amendments by reducing the size of the internal pavilion and achieve an improved outcome which address the compliance of the stated controls to reduce the overbearing and privacy impacts and address non-compliance with the stated DCP Controls.
- It is requested that Council provide my client with the opportunity to provide a submission on additional and / or amended plans.
- Should Council be minded approving the submitted or amended plans, it is recommended that the following conditions be attached-
  - The roof area above the Cabana is to be a non-trafficable area and privacy screens or fencing should not be erected along the eastern boundary to facilitate the use of this roof area as a terrace or trafficable area in perpetuity.

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- The window box serving the master bedroom on the eastern elevation is not to include glazing along this elevation.
- Planting along the eastern boundary should not grow to a height of more than 2 metres.
- A privacy screen should not be erected along the eastern elevation of the balcony, in perpetuity (if approved contrary to the objections set out in this submission).

## Conclusion

This submission sets out my client's concerns regarding the proposed development under Development Application DA2021/2435 and recommendations/requests.

The proposed development would have a materially detrimental impact on the amenity of neighbouring occupiers (my clients).

This Development Application is non-compliant with the Pittwater LEP Clause 7.8 – Foreshore area and Pittwater DCP 2014 Controls, A4.9 Mona Vale Locality; C1.1 Landscaping; C1.3 View Sharing; C1.4 Solar Access; C1.5 Visual Privacy; C1.6 Acoustic Privacy; D9.1 Character as viewed from a public place; D9.7 Side building line; D9.9 Building Envelope

It is respectfully requested that the proposed development be refused to address the concerns outlined in this submission or amended accordingly to mitigate against the harm expressed.

Should additional and or amended plans be submitted to address concerns expressed, my clients request that they be given an opportunity to comment accordingly and that the recommended conditions be attached to any consent.

I thank you in advance for your consideration of the concerns raised in this submission.

Kind regards,



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