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**From:** Jill Marsland  
**Sent:** 26/03/2024 2:47:11 PM  
**To:** Council Northernbeaches Mailbox  
**Cc:** Grant Christmas  
**Subject:** TRIMMED: Submission - MOD2024/0094 - 3 Summit Ave, Dee Why  
**Attachments:** Ltr - Northern Beaches Council - Submission re Mod2024-0094 - 26-03-24.pdf;

**Attention: Mr Dean Pattalis**

Dear Mr Pattalis,

Please find our letter attached.

Kind regards,

**Apex Planning and Environment Law**

**Jill Marsland**

Senior Associate

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Ref: 018/2024

26 March 2024

General Manager  
Northern Beaches Council  
PO Box 82  
MANLY NSW 1655

Attn: Mr Dean Pattalis

**By e-mail**

Dear Sir / Madam

**YOUR REFERENCE:       MOD2024/0094**  
**PREMISES:               3 SUMMIT AVENUE, DEE WHY**

1. As you are aware, we act for Mr Matt Winnell, the registered owner of Lot 18 in DP 12667 known as 1 Summit Avenue, Dee Why (**Client**). Our Client's property (**No. 1**) is immediately adjacent to, and shares its eastern boundary with, Lot 19 in DP 12667 known as 3 Summit Avenue, Dee Why (**No. 3**).
2. We are instructed that No. 3 is owned by Mr Carl Sakellaris and Mrs Anna Sakellaris.
3. Our Client has instructed us to lodge the following submission in relation to Modification Application No. MOD2024/0094 (**Mod**) for No. 3.
4. Our Client's submission is in regard to an omission of a notation that was on the stamped approved plans for the original consent DA2018/0383 (**Consent**).
5. The Consent was granted to No. 3 by Council on 24 May 2018. The stamped approved plans included an Elevations plan prepared by Grant Seghers Architect, Drawing No. DA-06, Rev A and dated 7 March 2018. The following notation was included on the West Elevation:

ALL REMEDIATION WORKS OF BOUNDARY FENCE AND WALL BETWEEN NO.1 & NO.3 SUMMIT AVE SHALL BE DOCUMENTED AND AGREED IN A BOUNDARY NOTICE IN ACCORDANCE WITH THE DIVIDING FENCES ACT 1991 – SIGNED BY BOTH OWNERS

6. This notation is shown in Figure 1:

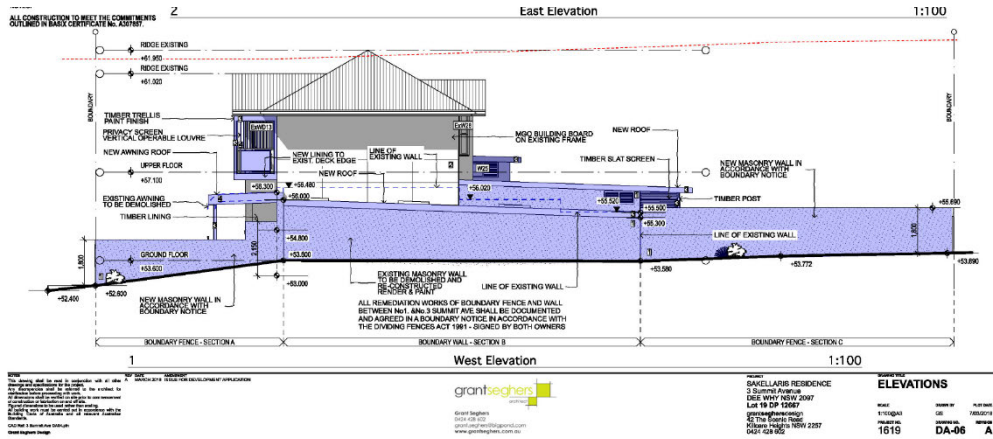


Figure 1: Notation shown on the Western Elevation.

7. However, Council will observe that this notation has been omitted from the Elevations plan prepared by Grant Seghers Design, Drawing No. Mod-06, Rev A and dated 29 February 2024, which was submitted with the Mod and is shown in Figure 2:

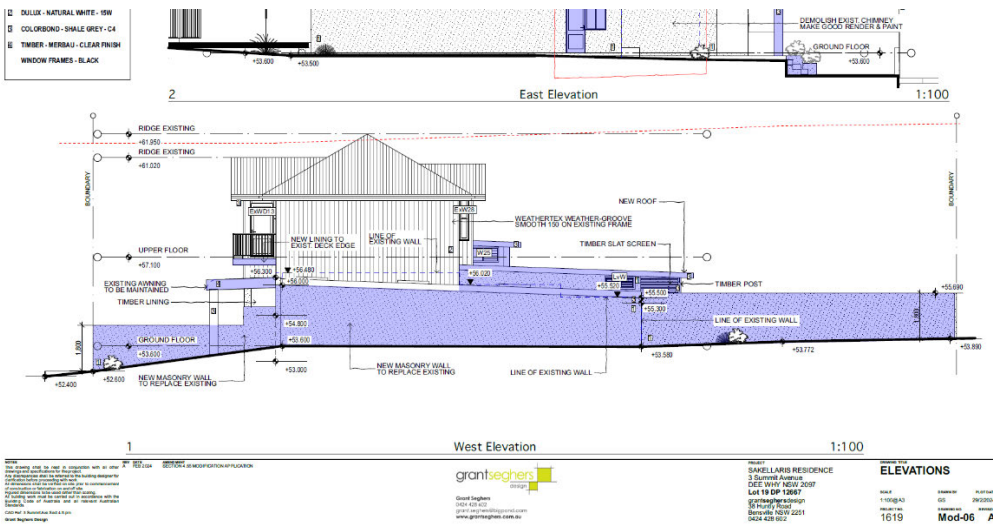


Figure 2: Notation has been omitted from the Western Elevation.

8. There has been extensive correspondence between our Client and Mr Sakellaris over the past few years. We are instructed that a Boundary Notice dated 1 November 2022 for the replacement of the rear portion of the western dividing fence was agreed in writing by the parties (though not signed by Mr and Mrs Sakellaris), and that those fencing works have been completed with payment shared equally between the parties. The completed works are shown in Figure 3.

A new dividing fence has been constructed along the rear portion of the western boundary of No. 3 and paid for in equal measure by the owners of No 1 and No 3 Summit Ave.



Figure 3: Completed portion of the dividing fence, viewed from No. 1 Summit Ave.

9. The remaining portion of the dividing fence is a wall of an existing carport on No. 3 and was to be replaced when the development approved under the Consent was constructed. The notation on the western elevation approved under the Consent referred to this wall. We are instructed that our Client requires the owners of No. 3 to issue him with a Boundary Notice to remediate the wall between No 1. and No. 3 (**Remediation Works**) and that the requirements of the notation have not been resolved.
10. Further, our Client requires sufficient detail from structural engineering plans showing any potential impact of the Remediation Works on the deep drainage to his own proposed dwelling at No. 1 pursuant to CDC-8039985-C (**CDC**). The Remediation Works proposed by No. 3 may consequently require our Client to make changes to his own proposed works under the CDC.
11. It is our view that Council, as consent authority, ought to require the Mod plans to be resubmitted by Mr Sakellaris to include the notation as shown on the western elevation of the stamped approved plans under the Consent. Mr Sakellaris is also required to issue a Boundary Notice to our Client to remediate the wall as part of the works under the Consent and Consent as modified. This inclusion would appropriately reflect the fact that the dividing wall along the western elevation of No. 3 is yet to be remediated. We also consider that Council ought to require structural engineering plans to be submitted with the Mod to provide the detail of any Remediation Works to the western boundary and consequent engineering impacts to the deep drainage on No. 1.
12. Further, we submit that the Council is bound, as a matter of law, to have regard to the deletion of the notation. That is because the Council must take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified: see section 4.55(3) of the Environmental Planning and Assessment Act 1979. Those reasons

undoubtedly included the agreement that has been made between our Client and Mr Sakellaris.

13. Please contact us if you have any questions about this letter.

Yours faithfully

**Apex Planning and Environment Law**



**Grant Christmas**

Solicitor / Principal

Law Society of NSW:

Accredited Specialist (Local Government & Planning)

e: [REDACTED]  
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**Jill Marsland**

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