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FW: OBJECTION TO PROPOSED DEMOLITION OF EXISTING DWELLING AND
Subject: ERECTION OF A NEW DWELLING AND SWIMMING POOL, DA 2022/0630,
PPTY: 52 PITT ROAD, NORTH CURL CURL.

ATTENTION: MAXWELL DUNCAN, SENIOR PLANNER

**RE: OBJECTION TO PROPOSED DEMOLITION OF EXISTING DWELLING AND ERECTION OF A NEW DWELLING
AND SWIMMING POOL, DA 2022/0630, PPTY: 52 PITT ROAD, NORTH CURL CURL.**

Dear Maxwell,

I refer to the abovementioned Development Application (DA) seeking approval of Northern Beaches Council (Council) for the "*Proposed Demolition of Existing Dwelling and Erection of a New Dwelling and Swimming Pool*", on a property known as 52 Pitt Road, North Curl Curl (subject site).

I was requested by the owners/residents of adjoining properties at 51 Austin Avenue and 53 Austin Avenue seeking my professional opinion of the abovementioned DA.

My Clients' home at 53 Austin Avenue is located generally to the north of the subject site. I also advise that my Clients own an adjoining property at 51 Austin Avenue, which is also generally located to the north of the subject site.

I confirm that I have viewed the subject site from my Clients' properties and also viewed the subject site from the adjoining Pitt Road and Austin Avenue.

For the reasons referred to in this submission, I consider that the proposed development would be reasonable in terms of its impacts on my Clients' properties, **subject to** the imposition of the following draft Conditions of Consent in any future approval granted by Council. The following draft Conditions of Consent that I propose are to ensure that the proposed development will not have adverse amenity impacts on my Clients' properties.

Prior to providing my draft Conditions of Consent, I wish to provide the following preliminary comments:

- By way of introduction, I wish to briefly advise you of my qualifications and experience. I am a Consultant Planner with 15 years' experience in 3 Local Government Councils, including 9 years as a Senior Development Control Planner. I hold a Bachelor of Town Planning Degree from the University of NSW and a Bachelor of Laws Degree (Hons) from the University of Technology, including a High Distinction in Environmental Studies. I have appeared as an Expert Planning Witness for 9 Councils in the Land and Environment Court (Court) and I have also appeared in numerous Appeals as a Court Appointed Expert.
- I also note that the following draft Conditions of Consent that I propose are primarily related to the issue of View Loss, so as to ensure that there will not be future unreasonable View Loss to my Clients' properties.
- In terms of View Loss, I note that I have assessed many applications based on the issue of View Loss. Of particular note is the fact that I was appointed by Woollahra Council in opposition to proposed redevelopments of both Double Bay Marina and Rose Bay Marina. Both applications resulted in Court Appeals and both Appeals considered the issues of View Loss from both private properties and the public domain. Thankfully, Woollahra Council was successful in both Appeals, and I particularly note the fact that the Rose Bay Marina Appeal resulted in the Court's Planning Principle entitled "*Impact on public domain views*".
- I note the previous application by the current Applicant, which was withdrawn. I wish to advise that in response to the previous application, there was an agreement between my Clients and the Applicant that

the maximum height of the previous proposed dwelling would be limited to the existing ridge line of the existing ridge and the Applicant also agreed to a number of draft Conditions of Consent referred to below.

I wish to provide the following points for your consideration:

• **RESPONSES TO SEE:**

- On page 3, at the 3rd paragraph, the SEE notes that the proposed development breaches the Height of Buildings Standard under Warringah Local Environmental Plan 2011 (LEP 2011). The SEE claims that this breach is in the *“Southwest Corner of the Balcony Awning which is 9% higher than the 8.5m Height of Buildings Standard”*.
- My Clients and myself do not raise objection to this breach, subject to the proposed development extending no higher than the proposed maximum RL 28.71 AHD, which reflects the maximum RL Level of the proposed dwelling and also the maximum RL Level of the existing dwelling.
- Accordingly, my Clients and myself seek the imposition of the following draft Condition of Consent:

“The maximum height of the proposed new dwelling is to be RL 28.71 AHD and there shall be no structures, plant, equipment, discs, aerials, works, or the like to extend higher than the maximum RL 28.71 AHD”.

- The SEE notes that there is a *“minor non-compliance in the wall height in the western façade”*. Again, this breach, and the above breach of the Height of Buildings Standard, require the maximum height of the proposed dwelling to be RL 28.71 AHD, the same as the maximum height of the proposed dwelling and the existing dwelling.
- In Section D7 entitled Views, the SEE claims that *“The proposed dwelling will not result in any obstruction of views that surrounding properties benefit from”*. This comment is correct, provided there is a Condition of Consent requiring the maximum height of the proposed dwelling to be RL 28.71 AHD. Furthermore, there must be no structures, plant, equipment, discs, antennas, works or the like to be placed on the proposed roof.
- I note that the SEE is accompanied by a Clause 4.6 Request, seeking variation of the Height of Buildings Standard referred to above. As you are aware, one of the objectives of the Height of Buildings Standard is that there must not be a *“disruption of views”*. I support variation of the Height of Buildings Standard, subject to the imposition of the following draft Conditions of Consent referred to in **bold** in this submission. If the draft Conditions of Consent are imposed in any future approval by Council, then the proposed development will achieve the objective of not disrupting views from my Clients’ properties, (and other properties) despite the breach of the Height of Buildings Standard (and other breaches).

• **DRAFT CONDITION OF CONSENT RE MAXIMUM RL LEVEL OF PROPOSED NEW DWELLING:**

- As noted above, one of the draft Condition of Consent that I seek to have imposed on any Council approval for the proposed development is as follows:

“The maximum height of the proposed new dwelling is to be RL 28.71 AHD and there shall be no structures, plant, equipment, discs, aerials, works, or the like to extend higher than the maximum RL 28.71”.

- As noted above, the imposition of the above draft Condition of Consent in addition to the following draft Conditions of Consent referred to in this submission, will achieve the objective of ensuring that the proposed development will not *“disrupt the views”* from my Clients’ properties.

• **DRAFT CONDITION OF CONSENT RE MATURITY HEIGHT OF PROPOSED LANDSCAPING:**

- The proposed Landscape Plans are satisfactory, subject to a draft Condition of Consent in the following terms:

“All proposed and existing trees and vegetation under the Landscape Plans shall be maintained at all times at a maximum RL 28.71 AHD”.

- The imposition of maintaining the existing and proposed trees and vegetation to a maximum height of RL 28.71 AHD is to ensure that existing and proposed trees and vegetation will not disrupt the Views of my Clients’ properties (and other properties).
- As you are aware, the Court has frequently imposed a condition requiring maintenance of trees and vegetation to a maximum RL Level to ensure no unreasonable View Loss from adjoining properties.

NO ACCESS TO ROOF, EXCEPT FOR MAINTENANCE PURPOSES:

- The proposed roof does not contain a roof terrace, and should not do so.
- If a roof terrace was erected, this would create a range of adverse impacts on my Clients’ properties, and other adjoining properties, such as Overlooking Impact and View Loss.
- Accordingly, my Clients and myself earnestly request the imposition of the following draft Condition of Consent in any approval granted by Council:

“The proposed roof shall not be used as a roof terrace or accessible by any persons, other than persons associated with maintenance of the proposed roof”.

IMPOSITION OF A COVENANT

- In order to ensure that my Clients’ properties (and other adjoining properties) do not suffer View Loss in the future, my Clients and myself earnestly request a Covenant on Title which would restrict the maximum height to RL 28.71 AHD.
- In a recent Development Application, DA No. DA2020/0147, before the Northern Beaches Local Planning Panel (NBLPP) at 14 and 16 Ellen Street, Curl Curl and 2 Wyadra Avenue, Freshwater, the NBLPP did impose a Covenant on Title as per the attached Minutes. My Clients and myself earnestly request a similar Covenant on Title restricting the maximum height to RL 28.71 AHD.
- I note the Covenant Buster Clause under LEP 2011, which has the effect of ensuring that a Covenant generally has no force. I, however, note that one of the exceptions to the Covenant Buster Clause is a Covenant imposed by a Consent Authority. As noted above, the NBLPP imposed a Covenant on Title in relation to the attached DA No. DA2020/0147.

NON-REFLECTIVE ROOF

- My Clients and myself seek a draft Condition of Consent in the following terms: -

“The proposed roof shall be made of dull, non-reflective colours and materials and such amendment shall be shown on the Construction Certificate Plans prior to issuing of the Construction Certificate.”

CONCLUSION:

- I consider that the proposed development would be a reasonable development, subject to the imposition of the following draft Conditions of Consent:
 - “The maximum height of the proposed new dwelling is to be RL 28.71 AHD and there shall be no structures, plant, equipment, discs, aerials, works, or the like to extend higher than the maximum RL 28.71 AHD”.***

- ii. ***“All proposed and existing trees and vegetation under the Landscape Plans shall be maintained at all times at a maximum RL 28.71 AHD”.***
- iii. ***“The proposed roof shall not be used as a roof terrace or accessible by any persons, other than persons associated with maintenance of the proposed roof”.***
- iv. ***“The proposed roof shall be made of dull, non-reflective colours and materials and such amendment shall be shown on the Construction Certificate Plans prior to issuing of the Construction Certificate.”***

- Thus, my Clients and myself earnestly request the imposition of the above draft Conditions of Consent i.-iv. in any future approval granted by Council.

Thank you for considering this submission. If you wish, my Clients invite you to inspect their properties in order that you fully understand the above draft Conditions of Consent.

Yours sincerely,

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