

SUBMISSION: HERBST

A written submission by way of objection to DA 2021/1522

Chris Zonca & Kylie Herbst
174 Riverview Road
Avalon Beach
NSW 2107

29 November 2021

Chief Executive Officer
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Dear Chief Executive Officer,

Re: DA 2021/1522 189 Riverview Road Avalon Beach NSW 2107
Amended Plans and Reports available on the NBC portal 25 November 2021

WRITTEN SUBMISSION: LETTER OF OBJECTION No. 2 Submission Herbst

This document is a written submission by way of objection 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 *the demolition of the existing dwelling and the construction of a new dwelling*
Cost of Work: \$2.726m. (Development application has been revised.)

The revised development application does not adequately address our concerns raised in the initial submission.

Northern Beaches Council must reject this Development Application – Amended.

Please note regarding Plans Master Set Amended, all amendments described in this Plans Master Set Amended pre-date any community and neighbour submissions. All submissions, including those of council post-date this amended design must remain valid.

We, again, ask for no built form in the front setback zone, and for the existing vehicle access to be retained, with garaging and entry to occur at the level of the base of the existing ramp at RL 29.5, and the top of any roof structure not to be above RL 31.5, with fully compliant front setback, side boundary envelope, and for the western extension of the top floor to be within 8.5m height controls.

Further There has been no consultation with 174 Riverview Road. The property immediately in front of 189 Riverview Road since the DA was lodged.

Commentary regarding the Plans Master Set Amended is provided below.

- Page 1
 - 191 Riverview Road has a carport not garage. The car parking facilities for 191 are represented as for a garage e.g. drawing for 187 Riverview Road.
- Page 2
 - 189 Riverview Road façade remains visually bulky and too high and not in keeping with the streetscape as previously submitted.
 - The façade is 3.46metres high. The position and height of the garage results in devastating view loss for us at 174 Riverview Road.
 - The construction intends to take up most of the 6.5m building setback which result in devastating view loss from our property at 174 Riverview Road Avalon Beach.
- Page 4
 - All amendments described as A to I pre-date any community and neighbour submissions, all of which post-date this amended design.
 - Tree 13 is surrounded on three sides by the dwelling and subsequently enveloped by it. This will result in terminal decline of a tree declared to be high value.
 - Construction is proposed between the road reserve and the front building line. This is non-compliant development. This construction will seriously the impact the health and vigour of several high value trees leading to terminal decline
 - Trees identified at 191 Riverview Road remain impacted, T6, T14, T15, T17, T24 and T26
 - Trees identified at 187 Riverview Road Remain impacted T12 and T23
 - Trees impacted at 189 Riverview Road will be T4, T5, T7 and T8
- Page 7
 - B Building redesign per pre-DA comments. The garage remains within the building set back zone, is too high, is not located at ground level behind the building set back zone and not in keeping with the local streetscape. Importantly T7 and T8 are likely to be severely impacted and suffer terminal decline.
 - We have requested templates and height poles to assess the proposed construction. This has not been done to date.
 - This is non-compliant development and must be rejected
- Page 12
 - Secondary dwelling on lowest floors relies on access provided by the northern external stair which is non-compliant. Access must be compliant and sensitive to the neighbouring property. This must be rejected.
- Page 16
 - All amendments described as B to H pre-date any community and neighbour submissions, all of which post-date this amended design.
 - There is no kerbside built up along Riverview Road. The slope of the land from number 185 Riverview Road along to the end of Stokes Points drops away into each property and the road is not curbed and guttered as implied. To imply there is, is misleading.
 - The garage is elevated 2.1 metres above ground level and is 3.5 metres high. This is a total of 5.6 metres above ground level.
 - This will severely impact the health and vigour of trees
 - 189 Riverview Road T4, T5, T7, T8

- 187 Riverview Road T12, T23
 - 191 Riverview Road T14, T15, T17, T26 and T39
 - This is out of keeping with the streetscape of Riverview Road, especially on the western side of Stokes Point
 - This results in devastating view loss for us here at 174 Riverview Road
 - Loss of public amenity provided by the views which are treasured by locals and visitors alike
- This must be rejected.
- Page 17
 - All amendments described as B to I pre-date any community and neighbour submissions, all of which post-date this amended design. The maximum surface area of 532.88 metres square is too high and not appropriate
- Page 21
 - Proposed building shadow does not include the shadow cast by the garage i.e. the entire shadow cast by the construction between the front set back and the boundary has been omitted. As neighbours, we are concerned by the degree of solar loss likely for 187 Riverview Road Avalon Beach.
- Page 24
 - Proposed shadow diagram is incorrect. The proposed shadow would cast cross the entire block into the next property.
- Page 45
 - There is no kerbside built up along Riverview Road. The slope of the land from 183 along to the end of Stokes Points drops away into each property and the road is not curbed and guttered. To imply there is, is misleading.
- Page 46
 - The next redesign should relocate the garage to the same level as the entrance lobby. This change would result in a construction more in keeping with the local streetscape.

The development continues to breach multiple planning controls and remains unreasonable. The impact on views arises because of non-compliance with one or more planning controls.

We, again, ask for no built form in the front setback zone, and for the existing vehicle access to be retained, with garaging and entry to occur at the level of the base of the existing ramp at RL 29.5, and the top of any roof structure not to be above RL 31.5, with fully compliant front setback, side boundary envelope, and for the western extension of the top floor to be within 8.5m height controls.

The subject site is zoned Zone E4 Environmental Living under the LEP, and there is no reason, unique or otherwise why a fully compliant solution to LEP and DCP controls cannot be designed on the site.

The proposed development will cause a devastating view loss from our property as previously documented. Equitable preservation of views has not been achieved.

In our initial written submission, we asked Council to request that the Applicant submits further Amended Plans to resolve the matters raised within this Submission, and failing a comprehensive set of amendments undertaken by the Applicant as identified within this Submission, to ask the Applicant to withdraw the DA, or if that is not forthcoming, to **REFUSE** this DA.

The Amended Development Application has minor changes and amendments that predate the written submissions by neighbours and concerned community members. Council must ask the Applicant to withdraw the DA, and if not forthcoming, council must **REFUSE** this DA.

Again, the proposed development will cause a **devastating view loss** from our property. Equitable preservation of views has not been achieved.

If any Amended Plan Submission is made by the Applicant, and re-notification is waived by Council, we ask Council to inform us immediately of those amended plans, so that we can inspect those drawings on Council website.

The bulk and design of the amended proposed works are not compatible with neighbouring development and will be a negative contribution to the scenic amenity of the area when viewed from surrounding viewpoints, particularly our property.

The Statement of Environment Effects that accompanies the amended development proposal states C.1.3. The view impacts for our property are not considered and not mentioned. Our views orient west and we are impacted by devastating view loss.

D.18 Front Building Line. We stridently object to the construction of a garage within the front building and raised 2 metres about ground level. This remains incongruent and out of step with neighbouring properties. The garage can be set back conformably behind the building line and lowered as evidenced by the garages at 185 and 187 Riverview Road.

We disagree with the Statement of Environmental Effects "The development proposes a garage within the front setback, at street level, to service the parking requirement of the dwelling. In this regard, the variation to the front setback control is considered reasonable as there is no other viable area to provide car parking.". The design can be revised to achieve this outcome satisfactorily. A pre-existing parking platform is 'in situ' at the property.

The revised proposed development is a clear case of **overdevelopment**:

- 4.3 Height of Buildings
- D1.8 Front Building Line
- D1.11 Building Envelope
- D1.14 Landscaped Area - Environmentally Sensitive Land

Although FSR is not a PLEP standard, Council should note that, if measured, the proposed development would be **0.65:1**.

Salanitro-Chafei v Ashfield Council[2005] NSWLEC 366 at 23-28 considered character and FSR, and Commissioner Roseth concluded:

The upper level of density that is compatible with the character of typical single-dwelling areas is around 0.5:1. Higher densities tend to produce urban rather than suburban character. This is not to say that a building with a higher FSR than 0.5:1 is necessarily inappropriate in a suburban area; only that once 0.5:1 is exceeded, it requires high levels of design skill to make a building fit into its surroundings.

We contend that the same conclusions can be reached as Roseth SC in Salanitro-Chafei, with this DA:

"The proposed building has a FSR significantly in excess of 0.5:1. This is one of the explanations why it appears so incongruous in its surroundings."

A proposed development built on the front boundary creating devastating view loss, and a built form over 21m high, equating to a seven-storey building facing Pittwater, can only be described as *incongruous in its surrounding*.

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”

The non-compliant elements of the proposed development, particularly caused from the non-compliant front setbacks, the excess height, envelope control, and site coverage, would have most observers finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context’*

This Written Submission addresses our objection to the above development.

We want to emphasise the fact that we take no pleasure in objecting to our neighbour’s DA. We also point out that Mr Durie has at no time approached us to discuss the revision proposed.

We are objecting because the proposed DA (revised) has a very poor impact on the amenity of our property, and the urban design particularly in the catchment area, and this is caused by the DA being non-compliant to multiple controls.

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

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

We are greatly concerned to the **devastating** view loss to the west from our highly used study, living, dining, kitchen and entertainment decks. The loss of view is caused by proposed development in the front setback zone, built form beyond maximum building heights, proposed development into the side boundary envelope zones, proposed new landscape in our water viewing corridor, and non-compliance to landscape area.

The water view is our main view across the subject sites front and rear boundary.

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 continues to breach multiple planning controls and remains unreasonable.

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

We ask for no built form in the front setback zone, and for the existing vehicle access to be retained, with garaging and entry to occur at the level of the base of the existing ramp at RL 29.5, and the top of any roof

structure not to above RL 31.5, with fully compliant front setback, side boundary envelope, and for the western extension of the top floor to be within 8.5m height controls.

Our main concerns are:

- C1.3 View Sharing
- D1.1 Character as viewed from a public place

The Applicant states within the SEE:

“The desire to achieve a view sharing outcome with the site specific design”

Unfortunately, the reverse is true. By making design choices that present a virtual ‘*sight-screen*’ to the front boundary, the Applicant has produced a design that achieves a **devastating view loss**. That outcome is totally unreasonable and unacceptable.

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

In this Written Submission we ask Council to request the Applicant to submit further Amended Plans to bring the proposed development back into a more generally compliant envelope including:

- D1.8 Front Building Line. We ask for no built form in the front setback zone, and for the existing vehicle access to be retained, with garaging and entry to occur at the level of the base of the existing ramp at RL 29.5.
- 4.3 Height of Buildings. Top of landscaped roof to be RL 32.5. Re-adjust heights to be more generally at or under 8.5m
- D1.11 Building Envelope. Increase side setbacks in areas where there is excessive non-compliance.
- D1.14 Landscaped Area - Environmentally Sensitive Land. Increase Landscape Area to 60%, by increase of Landscape Area in Front Setback Zone. Maintain landscape species in Front Setback Zone to a mature height below RL 32.5.

The proposed development is considered to be inconsistent with the outcomes, controls and objectives of the relevant legislation, plans and policies.

The height, bulk and scale of the proposal is inconsistent with the desired future character of the E4 zone, has adverse impacts in terms of view loss, fails to maintain the general dominance of landscape over built form, and does not maintain the existing residential amenity of the area. For these reasons, the proposal does not satisfy the aims of the LEP or the objectives of the Zone E4 Environmental Living.

The merit assessments fail to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, or that the proposed development will be in the public interest.

The proposal is not of an appropriate bulk and scale when compared to surrounding dwellings and dominates the neighbouring dwellings.

The overall combined effect caused by the non-compliances 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 environmental sensitive land and we contend that the overdevelopment of the site fails to meet the outcomes.

We are concerned to the non-compliance of the LEP:

PLEP 2014

- 1.2 Aims of Plan
- 2.3 Zone Objectives Zone E4 Environmental Living
- 4.3 Height of Buildings
- 7.6 Biodiversity protection

P21DCP

- A4.1 Avalon Beach Locality
- B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community
- B4.22 Preservation of Trees and Bushland Vegetation
- C1.1 Landscaping
- **C1.3 View Sharing**
- D1 Avalon Beach Locality
- **D1.1 Character as viewed from a public place**
- **D1.8 Front Building Line**
- D 1.11 Building Envelope
- D1.14 Landscaped Area - Environmentally Sensitive Land
- D1.20 Scenic Protection Category One Areas

SECTION 2: CHARACTERISTICS OF OUR PROPERTY

Key aspects of our property are as follows:

- Our property is immediately across the street from the subject property.
- The subject site lies to the west of our property.
- We enjoy good levels of view sharing, over the subject site's front and rear boundaries.

SECTION 3: MATTERS OF CONCERN

We are concerned that these impacts will negatively impact the level of amenity currently enjoyed. The following aspects of the proposal are of concern:

- The extent of the proposed building envelopes
- The siting and extent of the proposed dwelling without having sufficient consideration for maintaining amenity

We provide further details of these matters below and request Council's close consideration of these in the assessment of the application.

We are concerned that the SEE has failed to properly address our amenity concerns, and is suggesting that the DA accords with LEP & DCP outcomes and controls when it clearly it does not.

The non-compliance to LEP and DCP outcomes and controls forms the basis of our objection.

The subject site is of a large size, and there is no reason, unique or otherwise why a fully compliant solution to all outcomes and controls cannot be designed on the site.

This letter of objection will detail our concerns, and our amenity losses that have arisen as a direct result of the non-compliance to outcomes and controls.

SECTION 4: SITE DESCRIPTION

The site is described within the Applicant's SEE.

Number 189 Riverview Road is a generally rectangular shaped allotment comprising a total site area of 1071m², with a primary frontage of 18.29m to Riverview Road and a depth of between 59.131m to 60.35m down to the mean high watermark. The site is currently occupied by a 1 & 2 storey single dwelling with stone jetty to the waterfront.

SECTION 5: PROPOSED DEVELOPMENT

The site is described within the Applicant's SEE.

This application proposes the demolition of the existing site structures and the construction of a new dwelling. Specifically, the works include:

Ground Floor:

- 2 car garage
- Entry lobby (amended design no longer has a powder room)

Level - 1:

- Music room with lounge area. Access to courtyard areas. (Amended design has removed the media room.)

Level - 2:

- Open plan kitchen/living/dining room with butler's pantry. This level opens out to a terrace with swimming pool. (Amended design has relocated a bedroom from Level 2 to Level 3.)
- Laundry

Level - 3:

- 4 bedrooms including the master suite (was previously three bedrooms). The master suite will include 2 ensuites and 2 walk-in robes
- The master suite will open out to a terrace
- Kids play area
- Linen/storage space
- bathroom

Level - 4:

- Gym/exercise space

Level – 5

- 2 bedrooms • Rumpus
- Bathroom (Amended design has included a bathroom on this level.)

SECTION 6: OUTSTANDING INFORMATION

Height Poles

We ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope within the Front Setback, and to have these poles properly measured by the Applicant's Registered Surveyor.

The Height Poles will need to define:

- All Roof Forms, and all items on the roof
- Extent of all Decks, Balustrades, Privacy Screens

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

SECTION 7: ENVIRONMENTAL PLANNING INSTRUMENTS LEP & DCP

The following matters are relevant to the development under the LEP 2012:

Provision	Compliance	Consideration
1.2 Aims of Plan	No	The proposal does not comply with the aims of the plan.
2.3 Zone Objectives Zone E4 Environmental Living	No	The proposal is defined as a dwelling house and is permissible with consent in the E4 Environmental Living zone. The proposal does not satisfy the zone objectives.
4.3 Height of Buildings	No	A maximum height of 8.5m is permitted. The proposed development is higher. Unauthorised Building Works along with the previous artificial raising of ground level existing, may require a re-assessment under <i>Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189</i> .
7.2 Biodiversity protection	No	Native canopy trees would be removed as a result of the proposal. Destruction of the most important EEC Pittwater and Wagstaffe

		Spotted Gum Forest species. Significant incursion into TPZ of Neighbours Trees and Street Trees.
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CLAUSE 1.2 AIMS OF PLAN

In these proposals, the local amenity and environmental outcomes would be challenged by non-compliance. We 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. We contend that the DA fails the aims of this control as follows:

1.2 Aims of Plan

- (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.

The proposal build extensively within the Front Setback Zone, fails to achieve 60% of Deep Soil Landscape Zone, exceeds the maximum height, side boundary envelope in the relevant clauses of the LEP and DCP. The proposal therefore is of a larger building envelope than what is provided for by the existing controls and presents excessive bulk and scale onto surrounding properties in a manner which is not consistent with the desired future character of the locality.

The proposed development requires the destruction of the most important EEC Pittwater and Wagstaffe Spotted Gum Forest species. There is significant incursion into TPZ of Neighbours Trees and Street Trees.

ZONE E4 ENVIRONMENTAL LIVING

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 proposed development does not provide for the housing needs of the community within a low density residential environment. The proposed building height is more typically associated with a higher density residential environment, not the low density residential environment.

The proposed development presents as a hard edge to the front boundary, more suited to an urban location.

The proposed development still presents as a structure more than 21m. The DA amended is 21.2m tall structure to Pittwater, with the equivalence of a seven-storey building. The previous design was 21.6m tall. The amended design has presented a height reduction of 400mm overall which insignificant in the context of overall bulk, scale and suitability for the site.

The built form remains relentless from the front boundary to the rear foreshore line.

The deep soil Landscape Area does not accord with the most important 60% provision.

The proposal does not retain the single dwelling character of this environmentally sensitive residential area of Avalon Beach

The proposal does not maintain a general dominance of landscape over built form, and the destruction of the most important EEC Pittwater and Wagstaffe Spotted Gum Forest species. Significant incursion into TPZ of Neighbours Trees and Street Trees.

The proposed development would result in a built form that would have several devastating adverse amenity impacts on surrounding properties.

The proposed development is of a height and scale that is not compatible with the desired future character of the area. The proposed development is excessive in height and scale and is too bulky on the street frontage, and facing Pittwater.

The proposed development does not maintain or enhance local amenity. The proposal results in the devastating loss of private views from an adjoining property.

The proposed bulk and scale of the development has not been minimised.

The proposal has failed to provide adequate side envelope and is not appropriately setback from the street which result in built form dominance, poor streetscape outcome and devastating view loss.

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 objectives of this clause have not been met:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment: The height and scale of the proposed development is not consistent with the desired character of the locality, with both neighbours dwelling maintaining strict compliance with the 8.5m development standard. The proposed development presents as 21.6m tall structure to Pittwater. The proposed development presents as a hard edge to the front boundary. The built form is relentless from the front boundary to the rear Foreshore Line.

(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment: The height and scale of the proposed development is not consistent with the desired character of the locality, with both neighbours dwelling maintaining strict compliance with the 8.5m development standard. The proposed development presents as 21.6m tall structure to Pittwater. The proposed development presents as a hard edge to the front boundary. The built form is relentless from the front boundary to the rear Foreshore Line.

(c) to minimise any overshadowing of neighbouring properties,

The excessive non-compliant built form casts additional shadow.

(d) to allow for the reasonable sharing of views

The excessive non-compliant built form, particularly in the Front Setback zone, takes Tenacity Views from our property.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

The excessive additional height, and the failure of the building to comply with side boundary envelope controls, and non-compliant street setbacks is a major failure of the proposed development

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The visual impacts of this proposed development on the natural environment of this highly visible area of Avalon Beach creates a jarring effect to the landscape.

We understand that the Applicant has undertaken unauthorized building works on the subject site without any consents, including the erection of substantial retaining walls on the subject property.

These unauthorized building works along with the previous artificial raising of ground level existing, may require a re-assessment under *Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189*.

The building height measurements submitted may not been measured correctly as they have not been taken from the existing ground levels. *Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189* should be considered as the land has been artificially raised and modified, and substantial retaining walls are obvious within the existing site, distorting the true *ground level existing* position.

In *Stamford Property Services*, the Court maintained the principles as *Bettar*, and restated that “*ground level (existing)*” must relate to the levels of the site, and not to the artificially modified levels of the site as reflected by the building or built form presently located on the land.

4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

The Applicant has not submitted a Clause 4.6. The proposed development does not accord with the objectives of Heights 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.*

Clause 4.6(4)(a)(i) assessment:

The written request fails to adequately address the matters contained in Clause 4.6(3)(a) and (b) as follows:

- The height of the building is in excess of 8.5m
- There are insufficient environmental planning grounds to justify contravening the height of buildings development standard nor has it been established as reasonable or unnecessary;
- The assessment does not agree with the applicant's statement that excavation is limited and is an appropriate response to the topography of the site. The assessment finds that the proposal involves excessive cut and fill which is not appropriate for the site or its surrounds;
- The bulk and scale of the proposed development is out of character with the area;
- The proposed development would result in adverse amenity impacts for the surrounding area;
- The proposed development results in a dominance of built form over landscape, and the destruction of the most important EEC Pittwater and Wagstaffe Spotted Gum Forest species, and
- The proposal results in a **devastating view loss** for an adjoining property

Clause 4.6(4)(a)(ii) assessment:

Clause 4.6(4)(a)(ii) requires the consent authority to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone in which the development is proposed to be carried out.

The proposed development is considered against the objectives of the height of buildings development standard, as described below:

- (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.*
- (i) to share public and private views:*

Consideration:

The proposal does not share private views. Through height departure, front setback, and side envelope the proposal does not achieve satisfactory private view sharing.

The proposed dwelling is poorly designed so as to not minimise its visual impact.

The proposal is excessive in height, and includes a departure from the heights of buildings development standards;

The proposed new dwelling is poorly designed and is not compatible with the desired future character of the area in terms of building height and roof form;

The proposal would have an adverse impact on its surrounds.

The proposed dwelling has not been skilfully designed to minimise adverse bulk and scale impacts;

The proposal has not minimised the adverse effects of bulk and scale;

The proposal does not provide adequate spatial relief to adjoining properties;

The proposal results in a dominance of built form over landscape, and the destruction of the most important EEC Pittwater and Wagstaffe Spotted Gum Forest species

The proposal includes substantial departures from the building envelope development standards which contribute to excessive bulk.

Statement as to satisfaction:

The assessment of any request for variation against the objectives of the development standard finds that the objectives of the development standard are not satisfied.

The proposed development is considered against the objectives of the Zone E4 Environmental Living Zone, as described below:

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 proposed development does not provide for the housing needs of the community within a low density residential environment. The proposed building height is more typically associated with a higher density residential environment, not the low density residential environment.

The proposal does not retain the single dwelling character of this environmentally sensitive residential area of Avalon Beach

The proposal does not maintain a general dominance of landscape over built form. The landscaped area is below the minimum required landscaped area for the site. The proposed development would result in a built form that would have a number of adverse amenity impacts on surrounding properties.

The proposal calls for the destruction of the most important EEC Pittwater and Wagstaffe Spotted Gum Forest species.

The proposal, however, does not achieve adequate landscaping or landform retention.

The proposed development is of a height and scale that is not compatible with the desired future character of the area. The proposed development is excessive in height and scale and is too bulky on the street frontage.

The proposed development does not maintain or enhance local amenity. The proposal results in the devastating loss of private views from an adjoining property.

The proposed bulk and scale of the development has not been minimised. The proposal has failed to provide adequate side setbacks and is not appropriately setback from the street which result in built form dominance, poor streetscape outcome and view loss.

Statement as to satisfaction:

The assessment of any request for variation against the objectives of the zone finds that the objectives of the zone are not satisfied.

7.2 BIODIVERSITY PROTECTION

The proposal calls for the destruction of the most important EEC Pittwater and Wagstaffe Spotted Gum Forest species, namely 7 Spotted Gum, 5 Forest Oak, 2 White Mahogany, Grey Gum, Grey Ironbark, Christmas Bush. Significant incursion into TPZ of Neighbours Trees and Street Trees.

The proposed development fails this clause as the Applicant has not considered avoiding the 'impact' by alternative design solutions that preserve the highly significant trees on the subject site, and on neighbouring sites and on Council land.

PITTWATER DEVELOPMENT CONTROL PLAN 2014

The following matters are relevant to the development under PDCP 2014:

Provision	Compliance with Control	Compliance with Objectives
A4.1 Avalon Beach Locality	No	No
B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community	No	No
B4.22 Preservation of Trees and Bushland Vegetation	No	No

C1.1 Landscaping	No	No
C1.3 View Sharing	No	No
D1 Avalon Beach Locality	No	No
D1.1 Character as viewed from a public place	No	No
D1.8 Front Building Line	No	No
D 1.11 Building Envelope	No	No
D1.14 Landscaped Area - Environmentally Sensitive Land	No	No
D1.20 Scenic Protection Category One Areas	No	No

A4.1 AVALON BEACH LOCALITY

Desired Character

The most important desired future character is that Avalon Beach will continue to provide an informal relaxed casual seaside environment. The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancies will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity, fewer hazards and other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, commercial, community and recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport. Vehicular and pedestrian access into and through the locality is good. Pedestrian links, joining the major areas of open space (Angophora Reserve, Stapleton Park and Hitchcock Park) and along the foreshores, should be enhanced and upgraded. Similarly, cycle routes need to be provided through the locality. Carparking should be provided on site and where possible integrally designed into the building.

Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with development. The objective is that there will be houses amongst the trees and not trees amongst the houses.

Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

Most houses are set back from the street with low or no fencing and vegetation is used extensively to delineate boundary lines. Special front building line setbacks have been implemented along Avalon Parade to maintain the unique character of this street. This, coupled with the extensive street planting of canopy trees, gives the locality a leafy character that should be maintained and enhanced.

The design, scale and treatment of future development within the Avalon Beach Village will reflect the 'seaside-village' character of older buildings within the centre, and reflect principles of good urban design. External materials and finishes shall be natural with smooth shiny surfaces avoided. Landscaping will be incorporated

into building design. Outdoor cafe seating will be encouraged.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors. The natural landscape of Careel Bay, including seagrasses and mangroves, will be conserved. Heritage items and conservation areas indicative of early settlement in the locality will be conserved, including the early subdivision pattern of Ruskin Rowe.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

The proposed development fails every paragraph of the Desired Character of Avalon Beach, as described above, namely:

- *primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.*
- *Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale.*
- *Existing and new native vegetation, including canopy trees, will be integrated with development.*
- *The objective is that there will be houses amongst the trees and not trees amongst the houses.*
- *Building colours and materials will harmonise with the natural environment.*
- *Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance.*
- *Most houses are set back from the street with low or no fencing and vegetation is used extensively to delineate boundary lines*
- *A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land.*
- *As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.*

B4.7 PITTWATER SPOTTED GUM FOREST – ENDANGERED ECOLOGICAL COMMUNITY

The proposal calls for the destruction of the most important EEC Pittwater and Wagstaffe Spotted Gum Forest species, namely 7 Spotted Gum, 5 Forest Oak, 2 White Mahogany, Grey Gum, Grey Ironbark, Christmas Bush. Significant incursion into TPZ of Neighbours Trees and Street Trees.

The Outcomes and Controls are not respected:

Outcomes

Conservation of intact Pittwater Spotted Gum Forest EEC. (En)

Regeneration and/or restoration of fragmented and / or degraded Pittwater Spotted Gum Forest EEC. (En)

Reinstatement of Pittwater Spotted Gum Forest to link remnants. (En)

Long-term viability of locally native flora and fauna and their habitats through conservation, enhancement and/or creation of habitats and wildlife corridors. (En)

Controls

Development shall not have an adverse impact on Pittwater Spotted Gum Endangered Ecological Community.

Development shall restore and/or regenerate Pittwater Spotted Gum Endangered Ecological Community and provide links between remnants.

Development shall be in accordance with any Pittwater Spotted Gum Forest Recovery Plan.

Development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees.

Development shall retain and enhance habitat and wildlife corridors for locally native species, threatened species and endangered populations.

Caretakers of domestic animals shall prevent them from entering wildlife habitat.

Fencing shall allow the safe passage of native wildlife.

Development shall ensure that at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Pittwater Spotted Gum Endangered Ecological Community).

Development shall ensure any landscaping works are outside areas of existing Pittwater Spotted Gum Endangered Ecological Community and do not include Environmental Weeds.

B4.22 PRESERVATION OF TREES AND BUSHLAND VEGETATION

Outcomes

- i. To protect and enhance the urban forest of the Northern Beaches.*
- ii. To effectively manage the risks that come with an established urban forest through professional management of trees.*
- iii. To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.*
- iv. To protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.*
- v. To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long-term.*
- vi. To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.*

The proposal calls for the destruction of the most important EEC Pittwater and Wagstaffe Spotted Gum Forest species, namely 7 Spotted Gum, 5 Forest Oak, 2 White Mahogany, Grey Gum, Grey Ironbark, Christmas Bush. Significant incursion into TPZ of Neighbours Trees and Street Trees.

C1.1 LANDSCAPING

A built form softened and complemented by landscaping. (En)
Landscaping reflects the scale and form of development. (En)
Retention of canopy trees by encouraging the use of pier and beam footings. (En)
Development results in retention of existing native vegetation. (En)
Landscaping results in the long-term retention of Pittwater's locally native tree canopy. (En)
Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species (En)
Landscaping enhances habitat and amenity value. (En, S)
Landscaping results in reduced risk of landslip. (En, Ec)
Landscaping results in low watering requirement. (En)

The proposal does not maintain a general dominance of landscape over built form. The landscaped area is below the minimum required landscaped area for the site.

The proposed development would result in a built form that would have a number of adverse amenity impacts on surrounding properties.

The proposal calls for the destruction of the most important EEC Pittwater and Wagstaffe Spotted Gum Forest species and incursion into TPZ of Neighbours Trees and Street Trees.

We support NBC's Landscape Officer Referral dated 10 September 2021:

This application is for demolition of an existing residential dwelling, and the construction of a new residential dwelling, inclusive of a swimming pool, double garage and new landscape works.

Councils Landscape Referral section has considered the application against the Pittwater Local Environmental Plan, and the following Pittwater 21 DCP controls:

1. *B4.22 Preservation of Trees and Bushland Vegetation*
2. *C1.1 Landscaping*
3. *D1.14 Landscaped Area - Environmentally Sensitive Land*
4. *D1.20 Scenic Protection Category One Areas*

The Statement of Environmental Effects provided with the application notes that a number of trees are required to be removed in order to facilitate proposed works. This statement is largely supported by the Architectural Plans as it is evident a significant number of trees are proposed to be removed. It is further noted that an Ecology Report has been provided alongside the application, however an Arboricultural Impact Assessment has not.

Generally, there a number of concerns raised with the proposal, largely relating to the removal significant, high value, native canopy trees, as well as the impacts of proposed works on those trees proposed to be retained. The Ecology Report provided has noted that a total of seventeen native canopy trees are to be removed, sixteen of which are from the Pittwater Spotted Gum Forest, an Endangered Ecological Community (EEC). Nine trees are proposed to be retained, all of which are located below the Foreshore Building Line. Two additional trees also appear to be retained within the road reserve at the front of the site.

It is noted that a Pre-Lodgement Meeting was conducted for this site, with Biodiversity Advice recommending the redesign of the built form and site layout to ensure Trees No. 13 and 27 be retained.

Tree No. 13 and 27 are of particular high value, and efforts should be made to retain these. Landscape comments also recommended that an alternative building layout be sought, particularly in the eastern portion of the site, preventing the removal of a number of significant native trees. It is evident that limited re-design has occurred, as both of these two high value trees, as well as trees towards the eastern boundary, are proposed for removal. Considering the bulk and scale of the building, it is recommended again that the site layout be re-visited, exploring opportunities to retain these two trees and other high value vegetation. That being said, the need for this is to be determined following advice by both the Planning and Biodiversity Teams respectively.

Further concern is raised regarding the impacts of proposed works on trees to be retained, specifically on those trees located in adjoining properties as well as the road reserve. Trees in neighbouring properties are considered prescribed, irrespective of species and height, and must therefore be protected and retained throughout proposed works. Any negative impacts towards the short-term and long-term health of these trees would likely not be supported. The Tree Protection Zone Diagram demonstrated that the proposed dwelling is to have an encroachment of 8.97% into the Tree Protection Zone (TPZ) of Tree No. 15, a 13.89% TPZ encroachment for Tree No. 24, and a 15.41% TPZ encroachment for Tree No. 26. These encroachments into the TPZ of Trees No. 24 and 26 are in addition to existing TPZ encroachments as result of the existing dwelling, meaning Tree No. 24 has a total encroachment of 17.69%, with the total for Tree No. 26 equalling 19.89%. Trees No. 4 and 5 are both located within the road reserve adjacent to the eastern boundary and have expected TPZ encroachments of 23.41% and 22.23% respectively, with both Structural Root Zones (SRZ) impacted as well. In addition, Tree No. 23, located in the neighbouring property to the south is also likely to be impacted by proposed works, with the proposed dwelling encroaching a total of 29.24% into the TPZ, an increase of 15.53% when compared to the existing dwelling and site conditions. It is clear that proposed works are expected to have a significant impact of these trees, with the potential to negatively impact the health and vitality of these existing trees long term. As no Arboricultural Impact Assessment has been provided, the true impacts of these works are not fully known. For this reason, it is therefore recommended that an Arboricultural Impact Assessment be provided with the application in accordance with Councils Development Application Lodgement Requirements. This Arboricultural Impact Assessment is required to investigate the proposed works, including the required excavation, and determine the likely impacts these are to have on existing trees to be retained. The removal of any of these trees, in addition to the significant tree removal already proposed, would likely not be supported. It should be noted that any encroachment into the TPZ of existing trees by greater than 10%, or any encroachment into the SRZ, is deemed to be major, and therefore requires a tree root investigation in accordance with AS4970-2009, specifically Clause 3.3.3 Major Encroachment.

The retention of existing native canopy trees is vital to satisfying control B4.22 as key objectives of this control include "to effectively manage the risks that come with an established urban forest through professional management of trees", "to protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide". The retention of existing vegetation is also necessary to satisfy control D1.20, as key objectives of this control include "to achieve the desired future character of the locality", as well as "to maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component".

The landscape component of the proposal is therefore not currently supported due to the significant impacts of proposed works on existing trees and vegetation. It is recommended that an alternative building design and site layout be sought, exploring the retention of key native trees, including Trees No. 13 and 27, as well as other significant vegetation towards the eastern boundary. In addition, it is also recommended that an Arboricultural Impact Assessment be provided with the application in accordance with Councils Development Application

Lodgement Requirements. This Arboricultural Impact Assessment is required to investigate the proposed works and determine the likely impacts these are to have on existing trees to be retained. It should be noted that any encroachment into the TPZ of existing trees by greater than 10%, or any encroachment into the SRZ, is deemed to be major, and therefore requires a tree root investigation in accordance with AS4970-2009, specifically Clause 3.3.3 Major Encroachment.

Upon the receipt of the required information and documentation, further assessment can be made. The proposal is therefore unsupported.

C1.3 VIEW SHARING

View Sharing

The proposed development does not satisfy view loss consideration under the controls.

No View Loss Analysis has been prepared by the Applicant.

There is no reasonable sharing of views amongst dwellings.

The new development is 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.

Our 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.”

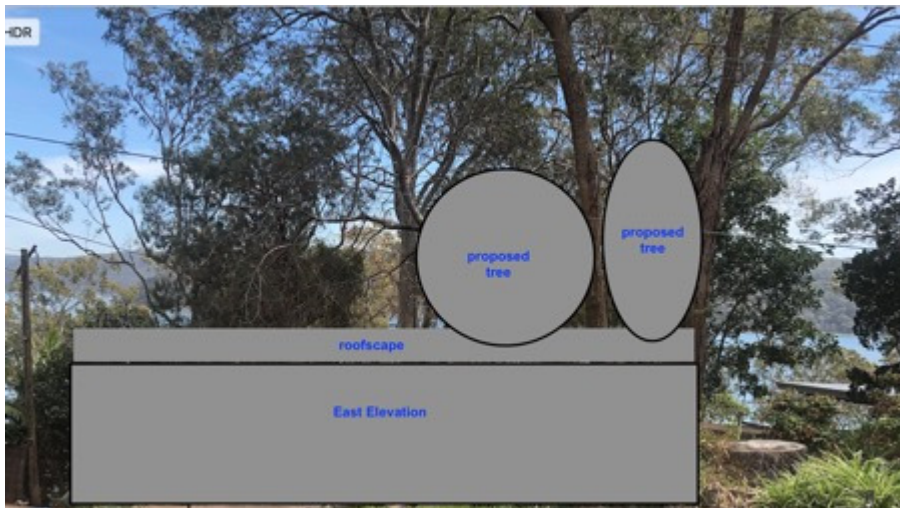
The development breaches multiple planning controls and is unreasonable.

The proposed development will cause a **devastating view loss** from our property. Equitable preservation of views has not been achieved.

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



Existing



Application of Tenacity planning principle

We are concerned that no adequate consideration of view impact from our property. The views lost are views to the water.

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 we have no confidence that the assessment is accurate due to the absence of height poles.

We have used the power poles on the front boundary, and projected heights from the survey levels on the registered surveyor's drawings. We ask for height poles to be positioned so that a full assessment can be made.

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 our opinion the threshold test to proceed to Step 1, we provide the following analysis;

An arc of view to the west is available when standing at a central location on the elevated decks, living spaces, and other highly used zones on our property.

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

The central part of the composition includes the subject site.

Views include scenic and valued features as defined in *Tenacity*.

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

The view from our study (we both work from home), living zones and decks towards the water view, and the land-water interface.

The existing view is a 'moving landscape', rather than just a 'scenic outlook', given the activity on the water. The extent of view loss is **devastating**, 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 front and rear boundary of the subject site from standing [1.6m] and seated [1.2m] positions.

An arc of view to the west is available when standing at a central location on the elevated decks, living spaces, and other highly used zones on our property. Our combined living area, home office, dining area, kitchen and outdoor living room is on the one floor.

In this respect we make two points:

- We have no readily obtainable mechanism to reinstate the impacted views from our living zones if the development as proposed proceeds; and
- All of the properties in the locality rely on views over adjacent buildings for their outlook, aspect and views towards the water view

We attach a series of photographs from our highly used Living Room and Entertainment Decks.

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.

We consider the extent of view loss in relation to our living room zones to be **devastating** using the qualitative scale adopted in *Tenacity*.

The view lost includes water views and land-water interface. As we rate the extent of view loss as devastating in our 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.

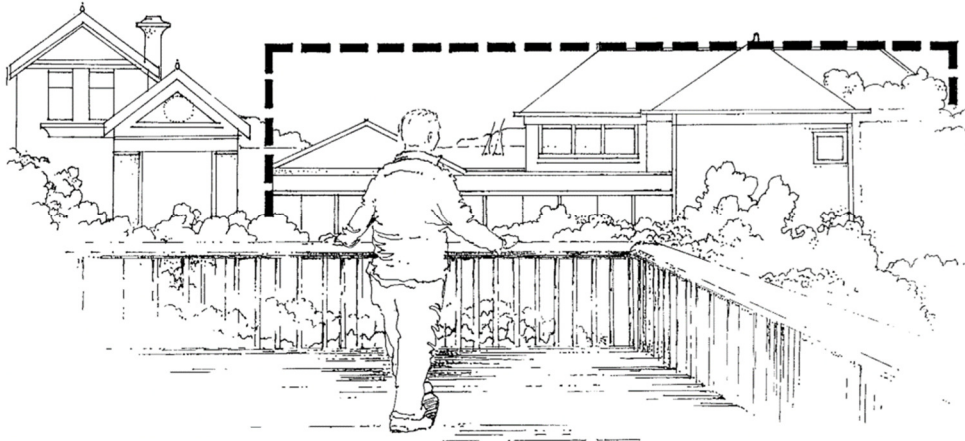
Step 4 is quoted below:

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 our opinion the extent of view loss considered to be **devastating**, in relation to the views from our living rooms and living room deck of our dwelling, particularly to the west. The view is from a location from which it would be reasonable to expect that the existing view, particularly of the water could be retained especially in the context of a development that does not comply with outcomes and controls.

Once Templates are erected, we can provide additional commentary.



Where there is a potential view loss, Council could require a maximum building height of less than 8.5m for part of the building.

The private domain visual catchment is an arc to the west 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 our 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 height poles erected, we conclude that we would be exposed to a devastating view loss.

The 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.

As noted by his Honour, Justice Moore of the Court in *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 (Rebel), “the concept of sharing of views does not mean, for the reasons earlier explained, the creation of expansive and attractive views for a new development at the expense of removal of portion of a pleasant outlook from an existing development. This cannot be regarded as “sharing” for the purposes of justifying the permitting of a non-compliant development when the impact of a compliant development would significantly moderate the impact on a potentially affected view”. The same unreasonable scenario in Rebel applies to the current DA. The proposed breaching dwelling will take away views from our property (and possibly other adjoining properties) to the considerable benefit of the future occupants of the proposed dwelling. This scenario is not consistent with the principle of View Sharing enunciated by his Honour, Justice Moore in Rebel. The adverse View Loss from our property is one of the negative environmental consequences of the proposed development

The proposed development cannot be supported on visual impacts grounds. Equitable preservation of views has not been achieved.

Recent Refusals on View Loss

We bring to Council attention two recent refusals by Council on view loss: DA 2020/1338 & DA 2019/0380. Although no two DA are ever the same, we ask Council to consider these matters.

DA 2020/1338

We bring to the attention of Council a recent refusal by NBC DDP on 24 March 2021, following a Refusal Recommendation of NBC Development Assessment Manager, by NBC Reporting Manager Anna Williams, a very senior and highly experienced NBC Planning Officer, and the NBC Responsible Officer Rebecca Englund, a very senior NBC Planning Officer, that Council as the consent authority refuses Development Consent to DA2020/1338 for Alterations and additions to a dwelling house on land at Lot 63 DP 8075, 55 Bower Street, Manly, subject to the conditions that were outlined in the Assessment Report.

The assessment of DA 2020/1338 involved a consideration of a view loss arising from a proposed development that presented a non-compliant envelope to LEP and DCP controls.

The DDP agreed with the recommendation and refused this DA.

The DDP Panel that refused this DA were three of the most senior DDP members: Peter Robinson Executive Manager Development Assessment, Lashta Haidari Manager Development Assessment, and Liza Cordoba Manager Strategic & Place Planning

The Assessment Report found that:

'the impact associated with the non-compliant built form, specifically the proposed upper floor, is unreasonable and the objectives of the relevant standards and controls are not achieved.'

The Assessment Report within the Tenacity Assessment concluded:

Whilst the level of impact is categorised as moderate at worst, the impact would be reduced with a compliant or near compliant design.

There is also a question as to whether a more skilful design could reduce the level of impact for adjoining properties.....that a more skilful design could lessen the impact.

The proposal is also considered to be inconsistent with the requirements of this control, which require views between buildings to be maximised, in addition to those objectives that seeks to provide for view sharing between properties and to maximise disruption and loss of views."

The DA was recommended for refusal, and DDP refused the DA in full support of the NBC Reporting Manager and NBC Responsible Officer Assessment Report.

We contend that this DA Refusal by the DDP sets a benchmark of the custom and practice of Council in consideration of all view loss concerns.

The severity of the view loss that was considered unacceptable by the DDP. This level of view loss was considered as '*moderate*' by the assessing officers and the DDP. The photographs are shown from page 156 of the DDP Agenda, 24 March 2021.

DA 2019/0380

Council will be aware of a recent 2021 NSWLEC Appeal that was dismissed by a very senior Commissioner on a view loss consideration: DA 2019/0380, 72 Carrington Parade, Curl Curl:
Der Sarkissian v Northern Beaches Council [2021] NSWLEC 1041

We raise the refusal by Council of the DA, and the subsequent dismissal by NSWLEC of the Applicant's appeal.

Council's Planning Officer was exemplary in this matter, not only defending an unreasonable DA with a recommendation for refusal that would cause a severe view loss to neighbours, but also presenting the case at NSWLEC, that ultimately had the Court dismiss the Applicant's Appeal by a very senior NSWLEC Commissioner. The key issues:

- The main view loss concern was to a neighbour immediately behind 72 Carrington Parade, Curl Curl.
- The view loss involved setback controls.
- The view loss at Curl Curl was severe –our loss would be devastating: we would have significant loss of land/water interface from our living spaces

The key matters within the Commissioner's Conclusion:

- *the determinative issue in this case is view loss*
- *the proposal would significantly change the amenity enjoyed for the worse.*
- *both policy controls and view sharing principles suggest the proposal goes too far.*
- *proposal attempts to achieves too much on a constrained site.*
- *a reasonable development at the upper level in regard to view sharing and setback policy,*
- *with good design, there is scope for this to occur while also providing for reasonable floor space on this level.*

It is clear that our view loss occurs through a poor consideration on front setback, building height, side boundary envelope non-compliances.

Our commentary on this DA is very similar to Commissioner Walsh in Der Sarkissian v Northern Beaches Council [2021] NSWLEC 1041

- the determining issue in this case is view loss – in our case a devastating land/water interface view loss
- the proposal would significantly change the amenity enjoyed for the worse.
- policy controls of side boundary envelope, wall height, and front setback non-compliances and view sharing principles suggest the proposal goes too far.
- proposal attempts to achieves too much on a sensitive site.
- a reasonable development in regard to view sharing would share the view
- with good design, there is scope for view sharing to occur while also providing for reasonable floor space on all levels

The Applicant has not provided information on impact on views including views from all neighbours properties.

The Applicant should be requested to erect height poles indicating the building envelope and Council should undertake its own site visit. The proposed development is non-compliant to controls, and it is essential that height poles are erected, unless of course Council refuse the DA on a multitude of other grounds.

There is no reasonable sharing of views amongst dwellings. Equitable preservation of views has not been achieved.

The new development is 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.

Our 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.

- D1.8 Front Building Line
- 4.3 Height of Buildings
- D1.11 Building Envelope
- D1.14 Landscaped Area - Environmentally Sensitive Land

The impact on views arises as a result of non-compliance with one or more planning controls, and the devastating impact is considered unreasonable. Equitable preservation of views has not been achieved.

Height Poles/ Templates

We 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.

The Height Poles will need to define:

- All Roof Forms, and all items on the roof
- Extent of all Decks
- Extent of Privacy Screens
- All proposed Trees & Landscape

Public Domain Street View Loss

We are 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 front 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.

1. a high value is to be placed on *'iconic views'*
2. a completely unobstructed view has value
3. 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
4. whether the present view is regarded as desirable and whether the change makes it less so and why
5. whether any change to whether the view is a static or dynamic one should be regarded as positive or negative and why
6. if the view attracts the public to specific locations, why and how that attraction is likely to be impacted
7. whether any present obstruction of the view is so extensive as to render preservation of the existing view merely tokenistic
8. on the other hand, if the present obstruction of the view is extensive, whether the remainder warrants preservation
9. 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 Pittwater. It is 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 front setback would delete a major portion of the view. The view is a dynamic one as there are passing boat traffic. People complete the Riverview walk for the Pittwater 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 front setback would be

extensive, so as not to render preservation of the existing view merely tokenistic. A compliant front 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 front setback better preserve street views, it would also maintain the existing entry access ramps to accord with controls.

The proposed development will cause a **devastating view loss** from the street. Equitable preservation of views has not been achieved.

D LOCALITY SPECIFIC DEVELOPMENT CONTROLS

D1 AVALON BEACH LOCALITY

D1.1 CHARACTER AS VIEWED FROM A PUBLIC PLACE

The DCP states:

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 keeping 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'.

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

Controls

Buildings which front the street must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality. Blank street frontage facades without windows shall not be permitted.

Walls without articulation shall not have a length greater than 8 metres to any street frontage.

Any building facade to a public place must incorporate at least two of the following design features:

- *entry feature or portico;*
 - *awnings or other features over windows;*
 - *verandahs, balconies or window box treatment to any first floor element;*
 - *recessing or projecting architectural elements;*
 - *open, deep verandahs; or*
 - *verandahs, pergolas or similar features above garage doors.*

The bulk and scale of buildings must be minimised.

Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place. Parking structures should be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser.

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.

Television antennas, satellite dishes and other telecommunications equipment must be minimised and screened as far as possible from public view.

General service facilities must be located underground.

Attempts should be made to conceal all electrical cabling and the like. No conduit or sanitary plumbing is allowed on facades of buildings visible from a public space.

Our concerns are:

- 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 (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)
- 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.

D1.8 FRONT BUILDING LINE

The DCP states:

Outcomes

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

The amenity of residential development adjoining a main road is maintained. (S)

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

Vehicle manoeuvring in a forward direction is facilitated. (S)

To encourage attractive street frontages and improve pedestrian amenity.

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

Controls

The minimum front building line shall be in accordance with the following table:

6.5 or established building line, whichever is the greater

Our concerns are:

- Achieve the desired future character of the Locality.
- **Equitable preservation of views** and vistas to and/or from public/private places. (S)
- Vegetation is retained and enhanced to visually reduce the built form. (En)
- Vehicle manoeuvring in a forward direction is facilitated. (S)
- To preserve and enhance the rural and bushland character of the locality. (En, S)
- To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.
- To encourage attractive street frontages and improve pedestrian amenity.
- To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.
- The minimum front building line shall be in accordance with 6.5m or established building line, whichever is the greater

We are particularly concerned over the non-compliant front setback that causes **devastating view loss**. Equitable preservation of views has not been achieved.

D 1.11 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 development site and maintained to residential properties. (En, S)

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

Controls

Buildings are to be sited within the following envelope:

Planes are to be projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height

Our concerns are:

- 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 development site and maintained to neighbouring properties. (En, S)
- Vegetation is retained and enhanced to visually reduce the built form. (En)
- Buildings are to be sited within the following envelope: Planes are to be projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height

The non-compliance to the Building Envelope is a concern and the non-compliance contributes to **view loss**. Equitable preservation of views has not been achieved.

D1.14 LANDSCAPED AREA - ENVIRONMENTALLY SENSITIVE LAND

The DCP states:

Outcomes

Achieve the desired future character of the Locality. (S)

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

A reasonable level of amenity and solar access is provided and maintained. (En, S)

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

Conservation of natural vegetation and biodiversity. (En)

Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)

To preserve and enhance the rural and bushland character of the area. (En, S)

Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.(En, S)

Controls

The total landscaped area on land zoned R2 Low Density Residential, R3 Medium Density Residential or E4 Environmental Living shall be 60% of the site area.

The use of porous materials and finishes is encouraged where appropriate.

We have concerns with:

- Achieve the desired future character of the Locality. (S)
- The bulk and scale of the built form is minimised. (En, S)
- A reasonable level of amenity and solar access is provided and maintained. (En, S)
- Vegetation is retained and enhanced to visually reduce the built form. (En)

- Conservation of natural vegetation and biodiversity. (En)

The control at 60% of the site area of 1071 sqm, gives a minimum zone of 642sqm to be achieved. The Applicant states that the deep soil zone is 579sqm at 54% of the site area.

There is c.50sqm of external stairs and garbage refuse zones that reduce the area to 530 sqm, representing 49% of the site area, and Stairs & Refuse area 50sqm and a 18% non-compliance.

The shortfall is very apparent in the Front Setback zone. Equitable preservation of views has not been achieved.

D1.20 SCENIC PROTECTION CATEGORY ONE AREAS

The DCP states:

Outcomes

To achieve the desired future character of the Locality.

Achieve the desired future character of the Locality. (En,S)

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 visual impacts on the natural environment when viewed from any waterway, road or public reserve.

Controls

Screen planting shall be located between structures and boundaries facing waterways.

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.

The proposed development has not been designed to minimise visual impacts in the scenic protection area. The landscaped provision results in an unacceptable dominance of built form. The proposed development is excessive in bulk and scale resulting in adverse impact on the streetscape and on the visual amenity of the surrounding environment. We are concerned that Equitable preservation of views has not been achieved.

MATTERS FOR CONSIDERATION PURSUANT TO SECTION 4.15(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 AS AMENDED

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15 of the Environmental Planning and Assessment Act 1979 (as amended). Guidelines (in *italic*) to help identify the issues to be considered have been prepared by the Department of Planning and Environment.

The relevant issues are:

(i) The provision of any planning instrument

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979.

It is considered that the application, is inappropriate on merit and is not worthy of the granting of development consent.

(iii) Any development control plan

Council's DCP applies

Context and Setting

i. What is the relationship to the region and local context in terms of:

- *The scenic qualities and features of the landscape*
- *The character and amenity of the locality and streetscape*
- *The scale, bulk, height, mass, form, character, density and design of development in the locality*
- *The previous and existing land uses and activities in the locality*

The proposed works are not commensurate with that established by adjoining development and development generally within the sites visual catchment with adverse residential amenity impacts in terms of views, privacy and overshadowing. Equitable preservation of views has not been achieved.

ii. What are the potential impacts on adjacent properties in terms of:

- *Relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)*

- *visual and acoustic privacy*
- *views and vistas*
- *edge conditions such as boundary treatments and fencing*

These matters have been discussed in detail earlier in this Submission. The works have not been designed such that potential impacts are devastating and not within the scope of the built form controls. Equitable preservation of views has not been achieved.

Access, transport and traffic:

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- Vehicular parking spaces

The proposal will result in direct reversing onto the road network, providing a less safe access and egress of cars from the site.

Public Domain

The proposed development will adversely impact on the public domain, by non-compliant built form. Equitable preservation of views has not been achieved.

Flora and Fauna

Multiple trees are being removed, and neighbours trees being severely affected. Proposed trees block water views. Equitable preservation of views has not been achieved.

Natural hazards

The application is accompanied by a geotechnical report that shows excessive excavation and fill.

Site Design and Internal Design

i) Is the development design sensitive to environmental considerations and site attributes including:

- *size, shape and design of allotments*
- *The proportion of site covered by buildings*
- *the position of buildings*
- *the size (bulk, height, mass), form, appearance and design of buildings*
- *the amount, location, design, use and management of private and communal open space*
- *Landscaping*

These matters have been discussed in detail earlier in this Submission. Equitable preservation of views has not been achieved.

(c) The suitability of the site for the development

- Does the proposal fit in the locality
- Are the constraints posed by adjacent development prohibitive
- Are the site attributes conducive to development

The proposal does not fit in the locality. Equitable preservation of views has not been achieved.

(d) Any submissions received in accordance with this act or regulations

It is envisaged that Council will appropriately consider this Submission received during the notification period.

(e) The public interest

The architect has not responded appropriately addressing the sites setting and maintaining the amenity of the nearby residential properties. The development will not provide a quality built form outcome on the site. Equitable preservation of views has not been achieved.

LIKELY IMPACTS OF THE DEVELOPMENT

This assessment has found that the proposal will have a detrimental impact on the natural and built environments pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.

SUITABILITY OF THE SITE

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

PUBLIC INTEREST

The proposal is not in the public interest because it results in a development of excessive bulk and scale which has adverse amenity impacts on adjoining properties and the broader locality. Equitable preservation of views has not been achieved.

NSW LEC PLANNING PRINCIPLES

We 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 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.

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.

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 non-compliant elements of the proposed development, particularly caused from the non-compliant front setbacks, the excess height, would have most observers finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context’*

SUBMISSION OF AMENDED SECTION 8: PLANS

These conditions would preferably all be dealt with by a submission of Amended Plans. We present them for Council’s consideration. In this Written Submission we ask Council to request the Applicant to submit Amended Plans to bring the proposed development back into a more generally compliant envelope including:

- D1.8 Front Building Line. We ask for no built form in the front setback zone, and for the existing vehicle access to be retained, with garaging and entry to occur at the level of the base of the existing ramp at RL 29.5.
- 4.3 Height of Buildings. Top of roof to be RL 32.5. Readjust heights to be more generally at or under 8.5m
- D1.11 Building Envelope. Increase side setbacks in areas where there is excessive non-compliance.
- D1.14 Landscaped Area - Environmentally Sensitive Land. Increase Landscape Area to 60%, by increase of Landscape Area in Front Setback Zone. Maintain landscape in Front Setback Zone below RL 32.5.

SECTION 9: CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, Council’s LEP & DCP and other relevant policies.

The assessment of the written requests on merit has found that the proposed development will not be in the public interest as defined by LEP because it is not consistent with the objectives of the particular standards and the objectives for development within the zone in which the development is proposed to be carried out.

The application must be recommended for **REFUSAL**.

The proposed development does not satisfy the relevant objectives of the LEP and the relevant outcomes and controls contained in the DCP as they are reasonably applied to an application proposing a new dwelling.

If the Applicant does not give Council immediate confirmation that the above matters will be rectified by resubmission of Amended Plans based upon our consideration of a more skilful design, and corrects all incorrect information on the DA drawings, then Council has no other option than to **REFUSE** this DA for the reasons stated in this Written Submission

The outcome is a building that causes poor amenity outcomes and other amenity loss concerns due to non-compliance to multiple residential outcomes and controls.

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, outcomes and controls.

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

Having given due consideration to the relevant considerations pursuant to 4.15 of the Environmental Planning & Assessment Act 1979 (as amended) it has not been demonstrated that the proposed development is appropriate for approval.

This application results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

In consideration of the proposal and the merit consideration of the development, the proposal is not considered to be consistent with the objectives, outcomes and controls of the DCP and objectives, aims, outcomes and controls of the LEP.

The resultant development is not considered to be an appropriate outcome for the site as it fails the balance between the development of the site and the retention of significant natural features and the maintenance of a reasonable level of amenity for adjoining properties.

The processes and assessments have not been satisfactorily addressed.

We expect that the final determination will be carried out by the LPP, due to the numerous excessive non-compliances to outcomes and controls, if not refused earlier for the reasons stated within this Submission.

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

We expect that on such a sensitive site, the Applicant should be charged by Council to deliver a totally compliant scheme to LEP and DCP outcomes and controls.

There is no excuse that neighbours amenity must suffer due to non-compliance to the controls.

We contend that the Development Application is not in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, LEP and DCP and other relevant policies.

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, LEP & DCP and other relevant policies.

We contend that if the Applicant does not redesign the scheme in accordance with the More Skilful Design outcomes referred to earlier, then the Development Application should be refused on the following grounds.

- The Applicant has failed to submit appropriate written requests pursuant to clause 4.6 LEP of which seek to justify contravention of the following development standards: Clause 4.3 Height of Buildings, and fails to adequately demonstrate that:

- compliance with the development standard is reasonable or necessary in the circumstances of the case;
- there are insufficient environmental planning grounds to justify contravening the development standard.
- the applicant’s written request has not adequately addressed the matters in this respect
- the proposed development is not in the public interest because it is inconsistent with the objectives of the particular standard and the objectives for development within E4 zone
- The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not satisfy the aims at **Clause 1.2 Aims of Plans** of LEP. The proposal is excessive in height, bulk and scale; and does not have adequate regard for the maintenance of existing residential amenity.
- The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not satisfy the following zone objectives of the **E4 zone**. The proposed development has not sought appropriate variations to the Clause 4.3 Height of Buildings. The proposal also includes a departure from D1.8 Front Building Line, D1.11 Building Envelope, and D1.14 Landscaped Area - Environmentally Sensitive Land. The proposal is excessive in bulk and scale, and is inconsistent with the desired future character of the area resulting in adverse impacts on the harbourside and foreshore. The proposal results in an unacceptable dominance of built form over landscape. The proposal fails to minimise the adverse effects of bulk and scale resulting in adverse amenity impacts.
- The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not satisfy the objectives relating to **Height of Buildings at Clause 4.3** of LEP
- The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not satisfy the objectives relating to **7.6 Biodiversity protection** of LEP
- The proposal is contrary to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that it does not satisfy objectives of **MDCP**:
 - A4.1 Avalon Beach Locality
 - B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community
 - B4.22 Preservation of Trees and Bushland Vegetation
 - C1.1 Landscaping
 - **C1.3 View Sharing**
 - D1 Avalon Beach Locality
 - D1.1 Character as viewed from a public place
 - D1.8 Front Building Line
 - D 1.11 Building Envelope
 - D1.14 Landscaped Area - Environmentally Sensitive Land
 - D1.20 Scenic Protection Category One Areas
- The proposal is contrary to Section **4.15(1)(b)** of the *Environmental Planning and Assessment Act 1979* in that it will have an adverse impact on the natural and built environments in the locality.
- The proposals are unsuitably located on the site pursuant to Section **4.15(1)(c)** of the *Environmental Planning and Assessment Act 1979*.
- The proposal is contrary to the public interest pursuant to Section **4.15(1)(e)** of the *Environmental Planning and Assessment Act 1979*.

The proposed development will cause a **devastating view loss** from our property. Equitable preservation of views has not been achieved.

We ask for amended plans to be submitted that resolves these matters. If this is not forthcoming, we ask Council to **REFUSE** this DA.

Yours faithfully,

Chris Zonca & Kylie Herbst
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