

**From:** [REDACTED]  
**To:** [Council Northernbeaches Mailbox](#)  
**Cc:** [Jean-Marc Noe](#)  
**Subject:** Mod2024/0445  
**Date:** Monday, 26 August 2024 8:13:39 PM

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**Attention: Claire Ryan**

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Myself and my husband are the new owners of 991 Pittwater Road, Collaroy. Our settlement on the house is next Tuesday, 3 September.

We have just been made aware of the new development planned for 37 Hay Street, Collaroy and we have many concerns after reading the latest DA, as follows.

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**Questions regarding DA approval of 25 June 2024:**

Can we receive a copy of the Joint Expert Report of Town Planers prepared by Mr McNamara and Ms Ryan filed with the Land & Environment Court on 10 April 2024 and on which Commissioner Targett relies heavily for his decision?

We would like to have access to the details of the Joint Expert Report to better understand why, for certain aspects, its conclusions appear to differ dramatically from the conclusions of the Development Application Assessment Report by Ms Ryan of November 2024, when there is no obvious explanation on how the amended Development Application addresses specific issues raised the Assessment Report.

In particular, the Assessment Report states:

QUOTE

**B9 Rear Boundary Setbacks**

This clause requires a minimum setback to the rear boundary of 6.0m. The proposal includes structures within the rear boundary setback area as follows:

- Basement excavation is 5.4m from the boundary,
- Ground floor convertible living room / bedroom ("flexi" room) and terrace of Apartment 1, and rear access stairs of Apartments 4, 5, and 6 are 4.4m from the boundary, and
- First floor bedroom 3 of Apartment 1 is 4.5m from the boundary.

With regard to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

*To ensure opportunities for deep soil landscape areas are maintained.*

**Comment:**

The proposed development provides compliant landscaped open space and opportunities for deep soil planting around the site, including within the rear setback area.

*To create a sense of openness in rear yards.*

Comment:

The inclusion of wide access stairs and built form elements within the rear setback contribute to a sense of terracing in the rear yard and detract from the site's sense of openness in the rear yard and do not retain a feeling of being clear of built form, as would be expected for a rear yard.

*To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

*To provide opportunities to maintain privacy between dwellings.*

Comment:

The proposed development results in unreasonable impact on the visual privacy of the adjoining properties, as assessed in detail in the section of this report relating to Clause D8 Privacy of the WDCP. In part, the privacy impact is as a result of the proposed non-compliant rear elements:

- Apartment 1: The eastern window to the ground floor "flexi" room, the ground floor rear terrace, and the eastern window of the first floor bedroom 3.

*To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The four properties subject of this application, and surrounding properties display consistent generous rear setbacks in the order of 8-15m, with the exception of some ancillary structures like rear sheds and garages. The proposed non-compliant elements disrupt the visual continuity of the rear yards in the locality, and prevent continuation of the landscaped character of rear yards.  
UNQUOTE

We note that the amended Development Application doesn't materially change rear setback for Apartment 1.

The Judgement of 25 June 2024 refers to the Joint Expert Report mentioning in paragraph 65:

QUOTE

65 As set out in the Joint Town Planning Report, the town planning experts agree that the Amended Development Application:

....

(5) demonstrates compliance with the rear boundary setback control set out in Section B9 of the WDCP (at [30]); and

(6) demonstrates a development that is consistent with all objectives of Section B9 of the WDCP (at [31]).

UNQUOTE

It appears that compliance with the rear boundary setback control for Apartment 1 is achieved because the building is deemed to be located on a corner block and that “On corner allotments for land zoned R2 Low Density Residential or R3 Medium Density Residential, where the minimum rear building setback is 6 metres, the rear building setback does not apply.” We find difficult to understand how this rule which is clearly relevant for single dwelling projects in a R2 zone, could still be applicable to a multi-dwelling development which is also seeking to exceed the FSR control. We understand that this was the conclusion reached by Ms Ryan in her initial Assessment Report.

We cannot identify clearly either, which changes in the Development Application explain why it is now consistent with all objectives of Section B9 of the WDCP, when the Assessment Report stated that it was inconsistent with all of them.

The Assessment Report also states:

QUOTE

**D8 Privacy**

The proposed development results in unreasonable visual privacy impacts to the dwellings to the east

fronting Pittwater Road (Nos. 987, 989, 991 and 993). The development is considered against the

underlying objectives of the control as follows:

*To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for*

*occupants and neighbours.*

Comment:

The proposal does not comply with Requirement 1 of this clause as it is not designed to optimise privacy for

the occupants of the dwellings to the east. The proposal does not comply with requirement 2 of this clause

as it does not orientate living areas, habitable rooms, and windows to limit overlooking.

The proposal

orientates the living areas and main private open space of the five upper-level units to the east. The floor

level of those upper-level units is above that of the dwellings to the east, though not to the extent that it

would result in looking over and beyond. The difference in levels will result in direct viewing into the private

open spaces of those dwellings. The proposal includes raised private open spaces to the rear, increasing

opportunity for overlooking to the east from the ground floor units. The proposal relies on landscaping to the

rear to assist with providing privacy, which should not be used in place of good design, as per the planning

principle set by *Super Studio v Waverley Council* [2004] NSWLEC 91.

UNQUOTE

We note that the amended Development Application does not address the privacy issue related to the fact that there is a direct view from ground level and 1<sup>st</sup> level of Apartment 1 into living area of 991 Pittwater road, including swimming pool, patio and kitchen. Furthermore, the amended Development Application makes the situation worse, with small windows to the East and balcony orientated to the North replaced by large veranda on 1<sup>st</sup> floor orientated to the East and large terrace on ground floor 1.5m above floor level of 991 Pittwater and 3m from boundary.

More generally, we cannot see how the amended Application Development address the points raised in the Assessment Report.

It is not clear to us whether the town planning experts have considered that landscaping solutions will address privacy issues (we note that *syzigium paniculatum* are listed to be planted on the boundary and such trees can reach significant height when mature. This, however, will take several years and do not address the construction and tree growing period. As stated in the Assessment Report, “landscaping [...] should not be used in place of good design”).

We therefore would like to understand how the amendments to the Development Application specifically address the issues on privacy raised in the Assessment Report so the town planning expert could now states as reported in paragraph 94 of the judgement: “all contentions regarding privacy and overlooking had been adequately resolved by the Amended Development Application”.

#### Submission to Section 455 Modification MOD2024/0445:

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The Modification Application seeks an increase of the FSR from 0.55:1 (10% above control) that was granted by a decision of the Land and Environment Court, to 0.72:1 (24% above control). The FSR of 0.55:1 was a central element of the decision by the Commissioner to validate the Development Application, and it is reasonable that any increase of the non-compliant FSR should be reviewed by the court. Consequently, the Council should refuse the application for the same reasons set out in the Assessment Report of November 2023.

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The modified development significantly reduces rear setbacks and the compliance of such setbacks with all objectives of Section B9 of the WDCP should be reassessed.

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It seems that the modification request is motivated by the fact that a FSR of 0.55:1 restricts the living space in the various apartments and that an increase of about 14% of the surface of apartments 2 to 10 is required for comfortable living. Our

suggestion is that Apartment 1 be deleted from the development, resolving the FSR issue and many issues related to rear setback controls and privacy of neighbours. Providing senior housing with 9 apartments (instead of 10) would still meet the public interest criteria.

Kind regards,

Meagan Noe

