
Sent: 2/05/2023 9:22:57 AM
Subject: 1162 Pittwater Road, Collaroy - Submission
Attachments: 1164 Pittwater Road COLLAROY - submission (3) Draft Amendments.pdf;

I had sent a submission yesterday which still had the track changes on it. Please find an updated submission.

Kind regards,
Will

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William Fleming

Planner



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27 April 2023

The General Manager
Northern Beaches Council

Attention: Nick Keeler

Dear Sir,

**DEVELOPMENT APPLICATION DA (DA2022/1153)
PROPOSED CONSTRUCTION OF A NEW DWELLING HOUSE
1162 PITTWATER ROAD, COLLAROY**

We are providing this supplementary submission with regard to the additional information and amended plans provided by the applicant. The amended plans do little to minimise the impact to the iconic view of Long Reef Headland or the views of Fisherman's Beach, Collaroy Headland and pool and Collaroy Beach to the corner of the Surf Club. The Request for Information (RFI) response provides 3D overlaid images of the views obtained by my client's which are egregiously intentionally misleading.

The applicants RFI response purports that the amendments have 'no impact' with regard to the existing view. They claim that my client's do not access any views of Fishermans Beach currently so the new dwelling will not impact on those views. The view of the tip of the Headland is still retained.



View Taken from first floor balcony

This is categorically false and misleading. To suggest that the existing view does not capture the whole of the Headland and Fishermans Beach is insulting to our intelligence. The photo below is taken from the first-floor balcony in comparison to what the applicants say is an ‘approximation’ of their positions.



The image below was provided with a previous submission and taken from inside the bedroom at the first floor. Again, we can see all the Headland and Fishermans Beach, Collaroy Headland and pool and Collaroy Beach to the corner of the Surf Club. It is one thing to provide an ‘approximation’ and another to ask us not to believe our own eyes. It seems that the applicant would rather ‘gaslight’ my client’s into thinking the view they have enjoyed for decades actually never existed in the first place.

There has been no mention of the view loss from the ground floor kitchen or lounge / dining rooms. The amendments to the plans will obliterate the views from the ground floor primary habitable spaces.



View from Ground Floor



View from Bedroom

A basic review of aerial images would show that the 3D overlays are wrong.



It is clear that the 3D images provided by the Applicant are inaccurate and misleading. The existing view takes in all the Headland and Fishermans Beach Collaroy Headland and pool and Collaroy Beach to the corner of the Surf Club. This is an iconic view and should not be obliterated by the proposed development when there is a more skilful design which achieves a greater view sharing outcome for everyone.

The view obtained is a panoramic whole view taking in iconic features of the Northern Beaches. We reject the ascertain that the views are 'partial views'. The applicants further claim that:

“Council is establishing a principle that the value of the views of this headland is great enough that development should be restricted to avoid further impact. It should be noted that in the future these views will be similarly available and valuable to the owners of 1162. From our discussions with Council we understand this proposal is viewed as a landmark application, due to the proximity to Collaroy beach and recent coastal protection works, and will set a precedent for the assessment of future development in similar circumstances.”

It is not Council setting the principle. The planning principle exists already and was established by the Court. It is “view sharing” planning principle meaning that no one ‘owns’ the view. It is to be shared. The planning principle is there to protect the amenity of people’s homes with regard to views where it is reasonable to do so. It is not the value of the view in terms of a monetary value that is being considered here, it is the impact of the development on the amenity of neighbouring homes with regard to view loss. It is clear the applicants are more concerned with maximising their views with regard to the monetary value at the expense of the amenity of neighbours.

Land & Environment Court Precedence

We also reject the claim that the only impact is from the balcony and first floor windows. We have reiterated that the views from the ground floor will be unreasonably impacted and have not been considered by the Applicants. Notwithstanding, I note that recent judgement known as ***Furlong v Northern Beaches Council [2022] NSWLEC 1208*** in relation to a DA refused by NBC at 55 Wheeler Parade, Dee Why. The case predominately surrounded views obtained by a bedroom/home office and described the view in paragraph 28 of the judgement question as:

“The particulars of the existing views within Bedroom 5/Home Office which are available now and would be impacted upon by the proposal can be gleaned easily enough from the advice of the experts, the RLA Analysis and from my own observations during the site inspection. Of most note to me were the panoramic views to the North Head environs, Curl Curl Beach, the ocean and horizon, along with foreground suburbs. These views would be highly valued and I accept the opinion of the experts that the view of the North Head peninsula is an “iconic view””

The Court dismissed the appeal and provided a reasoning which can be applied directly to this current situation. It was also the argument of NBC as to why the development was considered unreasonable. Paragraph 47 states that:

“In its closing submissions, Council pointed to the “irony” of the proposal itself, seeking to secure views from a bedroom across a side boundary, and at the expense of existing views available from Bedroom 5/Home Office at 51A Wheeler Parade across its common side boundary with the site. Questions were also raised about “future proofing” a proposed bedroom at the cost of impacts on existing views enjoyed by neighbours.”

It is the same situation at the moment. The Applicants seek to improve their views across side boundaries at the expense of neighbours. Council have argued that this is unreasonable in Court and we ask for consistency in that assessment. The Court also said in paragraph 53 in regard to views obtained from a bedroom:

"I note that Bedroom 5/Home Office is not part of the living area or well used kitchen area of the dwelling, and it is not a consideration for me that there appears to be a particularly high level of day time use of the room at present. The applicant is right that the question under examination is not about the personal use of the room now, but about the objective facts. When I consider the factual setting, there is the obvious potential for use of Bedroom 5/Home Office as a bedroom, a use from which views should not be unreasonably discounted (the same use which the application before me seems to value considerably in regard to view opportunity). There is also the potential for use as a study or office. The potential for these kinds of uses is considerable and somewhat related to its practical handiness to kitchen and other "living areas" within the dwelling (ie differentiated from the other bedrooms which are all upstairs). The use of the space as a guest room also came up in evidence. The potential for this use relates to its sense of separation and bathroom access. There was some degree of agreement on the part of the planners that modern times seem to be providing for more work from home, although no empirical evidence was provided on this."

My client's use the room regularly for multi-use and not solely as a bedroom. It is a creative / working hub (or space?0 of their home. The view obtained from this space is what should be assessed and not the use predominantly.

With regard to the reasonableness of the proposal the Court stated in paragraph 57 that:

*"Indeed, there are some noteworthy considerations in relation to the proposal and its reasonableness when considering the view sharing question. There are two types of considerations which are concerning to me. First is the physical form of the relevant master bedroom addition, of itself. Second is the arguments in justification of it. The physical form aspects of the proposal which draw attention are what Mr Davies describes as "an 8.7m long internal landscape courtyard and adjoining corridor of equal length leading to the master bedroom" (Ex 3 App H p 5). I note the commentary from the applicant's landscape specialist in support of the internal landscape feature and in particular the retention of the rock outcrop, and drawing a connection with certain WDCP requirements (Ex 3 App D). However, I prefer the opinion of Mr Davies that this rock outcrop is not of such landscape significance that would warrant the building to be designed around it in the circumstances (Ex 3 p 13). **The way I see the evidence before me, I do not see any great benefit of the master bedroom's location at the end of the "8.7m long" corridor, other than related to the view availability from it."***

I have highlighted the last sentence as I feel it can be applied to this situation. The applicants have intentionally chosen to extend past the rear alignment with the eastern facades of the adjoining dwellings for no other reason than to maximise their own views across a side boundary at the expense of the neighbours. They can shift the entire dwelling closer to the front boundary and maintain the scale of the dwelling as it is presented currently. It is also clear that the Court and Council do not consider the monetary value of the view in their assessments.

It is apparent that Council should refuse the DA and be consistent in its application of the planning principle with regard to panoramic iconic views accessed from a bedroom

Further Issues with the Amended Plans

The 3D image with the overlay of the proposed house is misleading as well. Notwithstanding that a more skilful design would have the rear balcony completely open to limit any view impacts, the views will not be able to be accessed through towards Fishermans Beach as the image suggested.

'Operable' privacy screens are proposed here which will remain closed permanently as the plans show no windows.



*Figure B – Approximation of View from 1164 Bedroom Balcony
(Amended DA Design)*

As we have stated from the beginning, my client's would have no objection if the applicants matched the rear alignment with the eastern façade (not the balcony projection) of no. 1164 to ensure views are not impacted. The applicants will still achieve a view of the Headland without obliterating the majority of the existing Headland/Fishermans Beach, Collaroy Headland and pool and Collaroy Beach to the corner of the Surf Club view from my client's property.

The dwelling can be shifted further towards the front boundary to be consistent with the rear alignments of adjoining dwellings and achieve the same development potential. It is obvious that the Applicant is reluctant to do that because it does not achieve a superior view outcome. The applicant wants unobstructed views both towards the north and the south at the expense of both immediate neighbours. The view is to be shared. Not taken.

It is disappointing for my client's that after going through the inconvenience and expense of building a seawall with surrounding neighbours to protect their homes to now have No. 1162 see it as an opportunity to build out further to the water at the expense of immediate neighbours. A seawall necessary to protect their homes is now the cause of them potentially losing their iconic view. It is unfair in the extreme.

Lastly, with regard to the applicant RFI response letter, they have provided an image and commentary of the following:

To further show that the amended design is particularly generous with regards to the sharing of views towards Long Reef Headland, in Figure D we have prepared the same visual, but with the proposed design replaced with a replica of the existing dwelling located at 1164 Pittwater Rd:



*Figure D – Approximation of View from 1164 Bedroom Balcony
(Proposed Design Replaced With a Replica of The Existing Dwelling at 1164)*

We believe that Figure D clearly illustrates that some impact on the views towards Long Reef Headland from 1164 Pittwater Rd would be entirely reasonable, as a dwelling of the same form and position as the dwelling that the views are available from would partially obscure the headland.

It should be therefore observed that the proposed dwelling in the amended DA design is being particularly generous with these specific views as it has far less impact than the replica dwelling shown above.

I have no idea what the point of superimposing No. 1164 onto the subject site and then saying it is proof of the proposed dwelling is reasonable. It is not what is being assessed here. Utterly confusing and nonsensical.

1160 Pittwater Road

Of extreme concern is the fact that the Applicant has failed to prepare a view analysis in respect of No. 1160, or indeed any other submission in respect of 1160's concerns. The concerns raised with the impacts to No. 1164 can be applied to No. 1160 as well. The RFI response from the applicant stated that Council had raised issues with the impacts to both the northern and southern views. It is considered insufficient detail to be able to assess the impacts.

Notwithstanding, the amended design maintains the same view loss as the original design and has done nothing to address the previously expressed concerns.



View from far rear of balcony



View from First floor bedroom

Consistent with the principals in respect of view sharing expressed in *Tenacity Consulting v Warringah Council* (**Tenacity Council**), the Applicant fails to address the “four step assessment”. In this respect:

1. Step 1 – The proposed amended development continues to take in full the view of the iconic view of Narrabeen Headland. As per Tenacity Council, a water view in which there is an interface between land and water is visible is more valuable than one which is

obscured. Clearly, there is an interface between land and water in respect of Narrabeen Headland. On the present amended development, this view will be lost to 1160 in its entirety.

2. Step 2 – The above picture from the balcony represents the loss of a view from a standing position at the very most rear of the 1160 dwelling. The balcony is a living area and significant entertainment area of the dwelling used on a regular (almost daily) basis. To be clear, this is not a case of seeking to protect views across side boundaries but a whole panoramic iconic view. This is a clear case of seeking to protect a view the most rear and highest point of the 1160 dwelling. Irrespective, Tenacity Council made it clear that the decision “*did not mean the protection of views across side boundaries is not appropriate in some circumstances*”. As Council has argued in Court in the *Furlong* judgement, they considered it ‘ironic’ that the applicants seek to improve their views across a side boundary at the expense of neighbours views which are accessed across a side boundary.
3. Step 3 – In respect of the assessment of the extent of the impact, in assessing the qualitative view loss from the very most rear of the property and also from the bedroom which is used as a home office and living area (not just a bedroom), the view loss is accurately described as total and devastating. The revised plans do absolutely nothing to address the loss of view to 1160. The view loss is a “high value” view loss. In assessing the view from the perspective of the property as a whole – there is no other locations from the dwelling where this view can be observed.
4. Step 4 – In assessing the reasonableness of the proposal, it is beyond doubt that a more skilful design would provide the applicant with the same development potential and amenity and reduce the impact on the views of the respective neighbours. The Applicant has ignored this fact in its entirety in respect of the amended plans.

If the applicant chose to bring the dwelling back so that it is consistent with the rear alignment of 1164, there would likely not be any issues and 1162 would enjoy an uninterrupted view the same as 1160 and 1164 currently enjoys. Again, to have to build a seawall to protect your homes and have it be the source of your view loss is unfair. Although the Applicant has proposed to bring the rear of the dwelling back a short amount, they have added an additional “sail” roofing which extends further to the rear and causes the same, if not worse, view loss to both 1160 and 1164.

The amended proposal fails to address the previously expressed issues in any meaningful way, and indeed, at all.

In summation, the applicant has provided intentionally misleading information to support their unreasonable development application. The view impacts are both severe and unnecessary. The view impacts on the iconic view from No. 1164 and the impacts to the Narrabeen Headland to the north from No. 1160 are unacceptable and contrary to the principles of view sharing. Stephen Clement submits in his undated RFI Response Letter that “It should be noted that in the future these views will be similarly available and valuable to the owners of 1162”.

It is totally unreasonable that in this proposal, the views of the neighbours are destroyed but in the same submission, they want to future-proof themselves so in the future, no-one can build past them and take their views.

It has been stated by council “the application is not required to be formally renotified to neighbouring properties as the proposed amendments, in the opinion of Council, result in a lesser environmental impact to adjacent properties compared to the original proposal.” These neighbours are watching this case very carefully because of the precedence it would set for future development along the seawall. They are worried that if this proposal is approved, it will open the door for future developments to go further and further seaward with no Council controls limiting developing closer to the water.

Please don't hesitate to contact me should you have any questions.

Yours sincerely



William Fleming
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