



northern
beaches
council

17 May 2023



Avenue One Design Pty Ltd
3/18 Hutchinson Street
SURRY HILLS NSW 2010

Dear Charlie,

Development Application No: DA2022/2277 for Demolition works and construction of a dwelling house including garage at 272 Whale Beach Road WHALE BEACH.

I refer to your application which is under assessment by Council.

The assessment of your application has revealed issues, which prevent Council from supporting the proposal in its current form.

The following is a list of the issues identified:

Pittwater Local Environmental Plan 2014

Zone C4 Environmental Living

The subject site resides within the C4 Environmental Living zone, which seeks to provide residential development of a low density and scale integrated with the landform and landscape. The proposal involves excavation up to 8.2m in depth which is not considered a sensitive response to the existing landform. Whilst it is acknowledged that excavation is required to provide sufficient access to the basement and lower ground floor, the excavation footprint remains excessive. Based on Cost Summary Report lodged with this application and assessment of the plans it is calculated there will over 700 cubic meters of material is to be removed from the site.

4.3 – Height of Buildings

In accordance with recent caselaw via the NSW Land and Environment Court (Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582), and the definition of building height in the Dictionary of the Pittwater Local Environmental Plan 2014 (PLEP 201), it is established that the submitted architectural plans demonstrate a maximum building height of 10.5m where Clause 4.3 Height of Buildings of the PLEP 2014 permits a maximum of 8.5m.

The proposal exhibits a variation of 23.5% to the maximum building height requirements of the LEP. Such a variation is considered excessive. Within the Statement of Environmental Effects dated December 2022 prepared by Avenue One Design the proposed building height is 9.5m above ground. A review of the longitudinal section (A 400 Rev G) below demonstrates the height at 10.5m above natural ground level and therefore Clause 2D is not applicable on this occasion. It is considered amendments can



be made through a more skilful design. Additionally, it is noted there was no Clause 4.6 Exceptions to development standards lodged with this application.

Pittwater 21 Development Control Plan

A4.12 Palm Beach Locality

The Palm Beach locality seeks to remain primarily a low-density residential area with dwelling houses at a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

It is acknowledged that there are several examples within the Palm Beach locality that exceed two storeys, however as mentioned above the proposal has not been designed to integrated effectively within the landform, such that it fails to meet the desired character of the area.

B8.1 Construction and Demolition - Excavation and Landfill

This control seeks to minimise site disturbance. As mentioned above the level of excavation has not sensitively responded to the site's topographical features. Therefore, it is recommended that the proposed excavation is further staggered to minimise site disturbance.

C1.3 View Sharing

Concern is raised in relation to view loss to properties as a result of the proposed development, roof form and building height encroachment of this proposal.

Clause 1.3 requires that new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties and must demonstrate that view sharing is achieved through the application of the Planning Principles established in the NSW Land and Environment Court case *Tenacity Consulting v Warringah Council* (the Court case can be found here:

<https://www.caselaw.nsw.gov.au/decision/549f893b3004262463ad0cc6>).

In relation to Principal four of the Court case ('Assessment of the reasonableness of the proposal that is causing the impact'), it is considered that a development which complies with all planning controls would be deemed more reasonable than one that is non-compliant. The proposal as it currently stands presents numerous non-compliances to PLEP 2014 and P21DCP, which questions whether a more 'skilful' (or sensitive) design would achieve an improved and acceptable outcome.

Further exploration of an alternative design outcome which would include the amendments mentioned within this letter, is therefore encouraged to satisfactorily address the Planning Principles established in the NSW Land and Environment Court case.



Once an amended proposal has been contemplated which seeks to address the concerns identified in this letter, height poles may be required to further assess the view impacts.

C1.4 Solar Access

The current shadow diagrams display shadowing from adjoining dwellings/structures and from the topography. Council requests solar access diagrams which demonstrate shadowing created by the proposal (only) at 9am, 12pm and 3pm during the winter solstice.

C1.5 Visual Privacy

Privacy concerns are raised in relation to the proposal, situated within 9.0m of the neighbouring properties. Consideration should be reviewed for possible treatments to the eastern elevation (obscured glazing and privacy screens to the terraces).

D12.6 Side and rear building line

The proposal provides a minimum setback of 0.9m to the western side boundary and a minimum setback of 0.9m to the eastern side boundary. The control states side setback shall be 2.5m to at least one side and 1m for the other side. The proposal does not comply and fails to comply with the following outcomes: -

- *"To achieve the desired future character of the Locality,*
- *The bulk and scale of the built form is minimised,*
- *Flexibility in the siting of buildings and access.*
- *Equitable preservation of views and vistas to and/or from public/private places.*
- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*
- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*
- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*
- *Vegetation is retained and enhanced to visually reduce the built form."*

Large portions of the western and eastern elevations do not adequately step in as the wall height increases. Furthermore, the proposed side setbacks have not adequately considered the siting of surrounding buildings.

Overall, it is considered that an increased setbacks are required to minimise the visual impact of the works and provide adequate flexibility in the siting of buildings.



D12.8 Building envelope

The proposal involves a significant envelope breach on the both the western and eastern side boundaries. On the western side boundary, a breach up to 3.8m for length of 9.5m and on the eastern side boundary a breach up to 2.6m for 4.9m. As mentioned above the proposal has not responded sensitively to the landform, resulting in excessive bulk on both elevations. The proposal in its current form does not comply with the following outcomes: -

- *“To achieve the desired future character of the Locality.*
- *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.*
- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties.”*

D12.10 Landscaped Area - Environmentally Sensitive Land

The total landscaped area on land zoned C4 Environmental Living shall be 60% of the site area.

Based on the plans submitted the proposal has a landscaped open space of 46.6% (330sqm) and allowing for the 6% of the total site area which may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only adds 6% (42.5sqm), therefore there would be a significant shortfall of (12.3%) 52.4sqm.

The variation (6%) is permitted subject to the proposal achieving the outcomes of this control which currently this proposal does not delivery: -

- *“Achieve the desired future character of the Locality.*
- *The bulk and scale of the built form is minimised.*
- *A reasonable level of amenity and solar access is provided and maintained.*
- *Vegetation is retained and enhanced to visually reduce the built form.*
- *Conservation of natural vegetation and biodiversity.*
- *Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.”*

Interdepartmental Referral Comment

Development Engineer

The proposal was reviewed by Council’s Development Engineer, who provided the following comment:

“Stormwater

Proposed hardstand area is greater than 50sqm, as per Council’s Water Management for Development Policy, an On-site Stormwater Detention System is required.



Stormwater plans proposing an OSD are provided. OSD is proposed under Garage slab, the access to OSD should be outside the garage to have 24x7 free access. Revised plans to be provided.

Geotech

Site is mapped on H1 landslip hazard zoning, Geotech Report prepared by Fortify Geoetch, Ref: JS/S1589 is provided. Report does not provide any information on removal of existing stone retaining wall along frontage of site within public road reserve.

This wall seems to support neighboring site.

Geotech Engineer to provide any risk/ recommendations associated with removal of this wall.

Form 1 and 1A are also not provided."

Landscape & Design Officer

The proposal was reviewed by Council's Landscape & Design Officer, who provided the following comment:

"The proposal is not supported with regard to landscape issues.

Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):

- *B4.22 Preservation of Trees and Bushland Vegetation*
- *C1.1 Landscaping*
- *D12 Palm Beach Locality*

The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone.

Landscape Referral cannot support the proposal in its current form due to the following concerns:

- *The landscape plans do not show existing trees to be retained, whereas the architectural plans show the tree in the road reserve and two trees in the rear setback to be retained. Other trees are proposed to be removed, and works are within 5 metres of trees shown to be retained (on the architectural plans) which requires an Arboricultural Impact Assessment. An Arboricultural Impact Assessment, prepared by an Arborist with minimum AQF Level 5 in arboriculture, is required to determine the existing trees significance, what impact the proposed works will have to existing trees and the appropriate tree protection measures. Furthermore, coordinate the drawings for the second floor terrace prior to engaging the Arborist so an accurate assessment can be made,*



- *The landscaped area calculation isn't clear and it includes the green roof areas in the calculations. Please provide a clear landscaped area calculations plan showing areas on natural ground and areas on slab. Please note for areas on slab to be included in the calculations these soil depths are required; 300mm for groundcovers or native grasses, and 600mm for shrubs. Please refer to PDGP Part C1.1 and D12.10 for more information,*
- *Please clarify the landscape treatments for the side boundary setbacks."*

Manager, Transport & Civil Infrastructure Assets

The proposal was reviewed by Council's Manager, Transport & Civil Infrastructure Assets, who provided the following comment:

"The proposal includes works which may impact the public road reserve including stairs, retaining walls, driveway and landscaping. The proposed retaining walls on the road reserve appear to remove all verge width behind the kerb which is not acceptable. It is unclear if any existing retaining walls are present as they are not indicated on the survey nor visible in streetview imagery. Any retaining walls shall be set back preferably 1.2m from the kerb but may need to be adjusted to be consistent with adjoining properties. Walls shall be designed to ensure appropriate safe sight distance is not obstructed for vehicles leaving the driveway.

The encapsulation of the power pole within a retaining wall/garden bed is not supported and must be removed from the proposal. Clear access to the base of the pole must be provided for asset inspections must be provided in accordance with Ausgrid standards and specifications.

Locating tap and shower shown as on public road reserve shall be removed from the landscape plans. All such private facilities shall be located within the property boundary.

Amended plans are required before further consideration can be given.

Any works on the road reserve including retaining walls, stairway, and landscaping on the road reserve must be included in a s138 Application for Civil works, to be conditioned by the Development Engineering Team. Plans to include details of proposed landscaping consistent with Council's policies for plant selection.

The proposal is therefore unsupported."

Council is providing you with three options to progress the handling of your application:

1. Prepare and submit further supporting information/amendments to the assessing officer directly addressing the issues by 31 May 2023 (14 days). If the amended information is deemed acceptable and satisfactorily addresses all the issues raised, you must then upload all documentation via the NSW planning portal; or
2. Request that the current proposal proceed to determination in its current form, which may result in refusal of the application; or



3. Withdraw the application from Council, which may include the refund of a portion of the application fees. Please note, that should this be your preferred option, Council will require additional information and will request this under separate cover.

Should you choose to amend your application, we ask that you contact the assessment officer to discuss resolution of the above issues and submission requirements. This is to ensure any amendments satisfactorily address the assessment issues, prior to further expenses and resources being spent on the application.

Should you choose to amend your plans to address the concerns above, you may also need to update your supporting documentation (eg: BASIX certificate, Bushfire Report, Geotechnical Report, etc). Please discuss this with the assessment officer to ensure the right documentation is updated.

To ensure the timely and efficient processing of your application, it is recommended that a genuine attempt is made to address these issues in their entirety as only one opportunity for amendments will be provided.

As per the requirements of section 36 of the Environmental Planning and Assessment Regulation 2021 you are advised that this application was accepted on 12 January 2023 and 125 days in the assessment period has now elapsed.

Please advise of your selected option by responding to this letter by 31 May 2023 at council@northernbeaches.nsw.gov.au and marked to the attention of the assessment officer. Should Council not receive your response and selected option by this date, Council will assume that you are not withdrawing this application and it will be determined in its current form.

Should you wish to discuss any issues raised in this letter, please contact Phil Lane on 1300 434 434 during business hours Monday to Friday.

Regards,

A handwritten signature in black ink, appearing to read 'Phil Lane'.

Phil Lane
Principal Planner