

19 May 2023

The General Manager
Northern Beaches Council

Attention: Development Determination Panel

Dear Sir,

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

I write with regard to the assessment report recommending approval of the new dwelling at the subject site. I write on behalf of both the owners of No. 1160 to the south and No. 1164 to the north who will be subjected to devastating view loss of their iconic views should this recommendation be supported.

Site History:

Prior to the seawall development, consent was granted for a new dwelling (DA2014/0480) on the subject site. No objections were raised on views by the neighbours as it matched the existing rear alignment of the adjoining dwellings. Council also approved the dwelling with a nil front setback to the Pittwater Road frontage. The rear alignment and nil front setback was reasonable with regard to a view sharing outcome but also required due to the coastal risk implications of wave inundation.

Since that time there have been coastal weather events that have meant the local residents in this area had to make a decision with regard to building a seawall to protect their homes. Every resident had to agree to move forward with a seawall at great expense and disruption to their homes for years. If one resident did not agree, it would not have gone forward. They agreed it was in the best interest of everyone to build the seawall. Had they have known it would be the reason their neighbour could take their iconic panoramic views they would not have proceeded. The

seawall was intended to protect their homes. It was not designed to allow residents to build closer to the water and certainly not ruin their existing views. It is supremely unfair and morally and ethically questionable.

Doug and Lesley McGrath built and have lived in No. 1164 since the 1970's and have no intention of redeveloping their home in their retirement years. Andrew Dickson and family at no. 1160 have just completed renovations, including the first-floor terrace, so they do not have any more renovations plans for the future at this stage. To finish building a new terrace and have Council say they will never use it so your iconic view can be obliterated, defies reason and logic, and also the principles of view sharing. It is also demonstrating a great hubris on Mr. Keeler's part that he thinks he knows better as to how the Dickson's would use their terrace. I will address this further in this submission.

Rear Setback:

The application of a 6m rear setback control in this location is redundant control to apply to these sites. The rear boundary extends into the beach. There is no foreshore building line applicable. The objectives of this control therefore should have more work to do than just simply meeting the 6m rear setback control. The relevant objectives of the rear setback control are as follows:

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*
- *To maintain the **existing visual continuity and pattern of buildings**, rear gardens and landscape elements.*

The impacts to views will be devastating on the amenity of their homes. Privacy is not a greater concern in this area as it is accepted that it is traded to access the superior views.

The proposal does **not** maintain the existing visual continuity and pattern of buildings in this location. The terraces at ground and first floor level will be almost fully enclosed and extends further seaward than the 2 adjoining properties. Alignment of the east façade of the proposal (not including the terraces) does not maintain a pattern of buildings due to the enclosed nature of the terraces and the excessive use of operable privacy screen which will no doubt be permanently

closed. Furthermore, No. 1160 has their first floor setback further towards the street than their ground floor.

This does not achieve the objectives of the control.

View Sharing Planning Principle

A view loss assessment by Urbaine Design Group has comprehensively shown the serious flaws in the assessment of the view loss conducted by Mr. Keeler in identifying the value of the views in question, in particular from No. 1160, and the resultant impacts. The report also shows that the Applicants provided misleading view analysis which was accepted by Council and used to support their recommendation of approval.

The assessment against the *Tenacity* is deeply flawed with the most frivolous reasoning I have come across for devastating impacts to iconic views. The assessment report correctly describes the views obtained from both adjoining properties to be panoramic headland and coastal interface views which are considered iconic.

No. 1160 Pittwater Road:

The assessment report against step 4 of the planning principle states that:

“While the proposal will impact upon the existing northeast view corridor obtained from the first floor terrace at 1160 Pittwater Road, it is considered that this view corridor is highly vulnerable. The rear setback of the dwelling at 1160 Pittwater Road is greater than the prevailing rear setback of existing dwellings along the eastern side of Pittwater Road, meaning that any future development at the subject site will likely impact upon the northeast view corridor.”

This is completely untrue. No objection was raised by No. 1160 with the 2014 consent on view grounds, as they maintained a general rear alignment with adjoining dwellings. Council approved a nil front setback and stands to reason they could support it again which would achieve a more skilful design that allows views to be retained. They would achieve the same scale of dwelling as proposed. The scale of the dwelling, as proposed, is already reflective of an overdevelopment that adds unnecessary length to the dwelling.

The reasonableness of the dwelling takes into account all non-compliances across the site, not just the those resulting in the impact. The non-compliant front setback still results in the dwelling pushing further seaward than the adjoining properties. If a front variation is supported it should be facilitating an outcome that reduces the impacts on views yet this will still obliterate the view of Narrabeen headland.

The front setback variation doesn't achieve:

- *To maintain the visual continuity and pattern of buildings and landscape elements.*
- *To achieve reasonable view sharing.*

Furthermore, the proposed internal layout proposes excessive floor space that could be reduced and achieve the same development potential.

The ground floor includes:

- A garage larger than the typical 40m²
- A long and excessively entry foyer that is approximately the same size as BED1
- The ensuite for BED1 is half the size of the BED1
- A courtyard between bed1 and kitchen. The new seawall provides for ample open space at the rear which would be of much greater amenity with regard to view access.

The first floor level:

- BED2 is approximately 30m² and that doesn't include the ensuite
- The living room is bigger than BED2. What purpose does it serve to have a bedroom (a non-primary habitable space) be larger than the second living room? It is just dead space.
- The courtyard on ground floor creates this void to the first floor of 3m in length. **There is absolutely no reason to create this courtyard and cut out at the first floor along the northern elevation.** It serves no purpose other than to lengthen the dwelling to achieve the side boundary views. The roof form provides several skylight windows with its Opera House sail roof form providing more than adequate solar access into the home.

The following reasoning within the assessment report as to why obliterating the view from the very recently constructed first floor terrace is completely trivial:

“Despite the view from the terrace being significantly impacted by the proposal, the extent of this impact is considered to be reasonable due to the nature of the space where the view is obtained. The terrace is a partially covered space that is most likely used during temperate and generally clear weather. The view corridor is only attainable from the uncovered portion of the terrace, an area unlikely to be used during inclement weather. As the terrace cannot be permanently inhabited, the frequency of access the view corridor is less compared to an internal living room. The requirement to retain the existing northeast view corridor from a space that is likely to be accessed intermittently is considered to place an unreasonable restriction on the development potential of the subject site.”

No terrace, whether partially enclosed or completely open, can be permanently inhabited. A fully enclosed terrace would not be a terrace **by its nature**. A partially enclosed terrace would still be impacted by inclement weather as well and not be used at such time either. Whether it is completely open or partially enclosed is a ridiculous distinction to try and make. Made even more ridiculous that it is being used as a reason to obliterate an iconic view. **There is no control or Caselaw (that I am aware of) that supports a distinction between a covered/uncovered balcony in relation to the views it accesses.** This is entirely baseless under the planning legislation. We demand that Council back up this claim with the relevant planning control or LEC precedence.

The terrace is recently built and there is a very good reason as to why the eastern portion has remained completely open and includes glass balustrades which should not have to be spelled out to Planners at Council who assess view loss regularly but I will just in case. **It was designed that way to minimise view impacts across the site.**

If the owners of No. 1160 knew that completely covering the terrace would result in Council coming to the conclusion that they are more likely to regularly use it so obliterating the iconic view is unreasonable, they would've done that for sure. Now they are being punished for respecting their neighbours view corridors.

The position Council is now taking is that if you enclose a terrace/balcony it is seen as a permanently habitable space so iconic side boundary views cannot be impacted. This position

raises a high level of concern considering the terraces proposed at the subject site achieve a high level of enclosure of both their ground floor and first floor terrace. It raises questions as to the Applicant's ability to 'future proof' themselves from future development on adjoining properties as now they will have unobstructed panoramic views achieved from enclosed balconies. This is not a reasonable position for Council to be taking.

A quote from the Applicant's response to the Council RFI states

*"The consequence of these changes is that the proposed dwelling has a substantially larger setback from the eastern boundary of 29.165 metres to the line of enclosure than the neighbour to the North to be able to maintain the existing Iconic views of Longreef Headland. 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.**"*

It seems as if Mr. Keeler has just taken the Applicant's justification and not analysed it with any voracity. The ability to push seaward would not be present without the new seawall. It is the Court that has established that iconic views should not be impacted if the proposal is unreasonable or if there is a more skilful design to achieve that. There is a more skilful design in this situation. .

The Applicant's provided no 3D view loss assessment for this site. It was probably due to the fact it completely obliterates their iconic view of Narrabeen Headland and it would be hard to make that look reasonable. Notwithstanding that the view analysis provided for No. 1164 was a false mischaracterisation of the existing view we have no confidence that view analysis from No. 1160 would be accurate.

No. 1164 Pittwater Road, Collaroy

The Applicant's provided a false mischaracterisation of the view obtained from this property within their response to the request for information. They said that they never had a view of Fishermans Beach which is entirely false. The view in fact extends from Long Reef headland, Fisherman's Beach, Collaroy Headland, Collaroy Pool and beach right up to and including, the Collaroy Surf Club. For Council to include the misleading 3D view analysis into their assessment report and rely

on that as justification is tantamount to negligence in their assessment. We have had to engage a specialist in view loss analysis to support this position.

It is clear in the assessment report that Council is taking the position that they believe development in this area is not meeting its maximum development potential. Development potential that would not exist without the construction of the seawall that everybody contributed too.

The existing ground floor view of Long Reef headland will be obliterated and it does not need to be. In obliterating this ground floor view the Applicant's will pick up their own iconic side boundary views from the ground floor towards Narrabeen Headland.

The development potential is not determined by how well you can access the view at the expense of neighbours. Development potential is determined by the application of planning controls and assessment of the amenity impacts.

Step 4 asks if there is a more skilful design that would achieve a greater view sharing outcome. There is a more skilful design by virtue of reducing the front setback to shift the entire dwelling towards the street so that the ground and first floor rear terraces closely align with the eastern façade of No. 1164. Council was accepting of a nil setback in 2014 it stands to reason they could support a reduced front setback in this case. It is currently at 2.495m to the southwest corner and could be shift)back to be achieve an approximate 500mm to allow both adjoining properties to retain their view corridors.

We have previously addressed the excessively oversized dimensions of the internal spaces proposed as well as the 3m long cut out of along the northern elevation to facilitate a superfluous courtyard. There are a number of more skilful design changes possible that still achieve the same development potential.

The above is the preferred 'more skilful design' options and would either allow the applicant to keep the design as currently shown or make some minor changes to reduce the scale of the rooms and delete the courtyard. If that is not something Council will support then it is imperative that the rear terraces are made to be completely open and include glass balustrades. Remove all the superfluous privacy screens and solid elements impacting on accessing views across the side boundary. It is a common outcome for sites that access iconic and high value views that terraces/balconies are left open and include glass balustrades to allow for reasonable view

sharing. Privacy is traded for access to the views. The rear yards currently all include glass balustrades and overlook one another. Having open rear terraces does not result in an unreasonable privacy outcome.

Council is obligated under section 4.15(3A)(b) of the EP&A Act 1979 to be flexible in the application of their DCP controls. It states that:

(b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development

The objective of clause D7 of the DCP says it is to allow for a reasonable sharing of views. A front setback variation to the level suggested in this submission would achieve a more reasonable sharing of views and would not require any changes to the current scale of the dwelling. The development potential of the site would not change which is consistent with a more skilful design test in *tenacity*. The second option of having open terraces and glass balustrades would also be a more skilful design that does not impact on the development potential.

Land & Environment Court Precedence

As mentioned previously, a 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 is relevant to this current DA. The case surrounded views obtained across a side boundary from 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 Council 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.”

In the *Furlong* case, the bedroom/home office was accessed via an 8m long hallway which added unnecessary length and forward projection of the dwelling that impacted on side boundary iconic views of an adjoining property. The current proposal in question achieves an unnecessary building length via excessively large internal areas and a superfluous courtyard along the northern elevation. It impacts 2 dwellings instead of the 1 in the *Furlong* case.

It is the same situation at the moment. The Applicants seek to improve their views across side boundaries at the expense of neighbours via adding superfluous length to the dwelling via oversized internal areas and 3m long courtyard in the middle of the dwelling. **Council have argued that this is unreasonable in Court and it demands that Council be a consistent in their assessment to ensure certainty and fairness in the DA process.** 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.”

The objective facts of this application are that it will completely obliterate iconic views from No. 1160 to the north and severely impact on the iconic views obtained from No. 1164 to the south from multiple internal and external areas. 2 dwellings to be impacted in this situation.

Not only would this approval mean that the Applicant's are improving their own iconic side boundary views while taking away existing iconic side boundary views of neighbours which Council have argued successfully in Court that they find that *'ironic'* but it also risks the ability of the Applicant's also 'future proofing' themselves to prevent the ability of neighbours redeveloping to get their views back. The Applicant has said that It should be noted that in the future these views will be similarly available and valuable to the owners of No. 1162 should they redevelop however that is no guarantee whatsoever and he would be will within his rights, or whoever it is sold too, to protect their now unobstructed iconic views should this be approved.

This assessment report has reasoned that views from enclosed balconies are more valuable than completely open terraces (we firmly reject that position). The design includes enclosed balconies that now will achieve completely unobstructed panoramic iconic views across their side boundaries. Both neighbours do not have any intention of redeveloping any time soon given the expenditure of the seawall and recent alterations and additions to No. 1164. It would be a long time in the future before adjoining dwellings would seek to redevelop and would be made extremely difficult to push further seaward than the dwelling at No. 1162 to try and get their views back. It would also be true that new planning controls would be in force by that stage and may include a foreshore building line or site-specific rear setbacks in relation to the seawall which would make it more difficult to get these views back.

Alternatively, in approving this application is to suggest it would be possible for development along the seawall to continue to extend further seaward than your adjoining property in an attempt to improve your side boundary views and maximise their development potential. It then becomes a race to the edge of the seawall as there is a pointless 6m rear setback control and no foreshore building line under the current planning controls.

Conclusion

This has been a very stressful and upsetting process for the immediate neighbours involved. The seawall was intended to protect their homes. Not be the reason they lose significant amenity from obliterating their iconic views. It was never intended to increase the development potential of their sites and if they had their time over again knowing that this would be the outcome they would not have gone through with the seawall without some agreement to ensure that existing views would not be severely impacted by residents wanting to redevelop.

For Council to take a position that the development potential of the sites are now not being maximised since the seawall construction, so impacts to iconic views are reasonable, is deeply insulting to the residents. It is morally and ethically wrong to have to pay for a seawall to protect your home from wave inundation only for it to create a risk to the amenity of your home from an opportunistic neighbour seeking to improve their own amenity at your expense.

The specious reasoning with regard to the open first floor terraces

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

Yours sincerely



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