



27 March 2023

The General Manager
Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

Dear Sir/Madam,

**Submission in regards to amended DA2022/1211 Development Application
23 Lancaster Crescent, Collaroy**

“Demolition works and construction of a dwelling house including swimming pool.”

Corona Projects has been engaged by the property owners of 25 Lancaster Crescent to undertake an assessment of the revised architectural drawings submitted under DA2022/1211 and provide a submission to Council on their behalf. 25 Lancaster Crescent lies to the west of the development site at 23 Lancaster Crescent. This assessment is based on a review of the amended development application plans and documents available for inspection on Northern Beaches Council’s website uploaded on the DA tracker on 27 February 2023.



Figure 1 – Site Locality Map (NearMaps, 2022)



1. Introduction

Whilst it is noted that the amended proposal for a new dwelling house with pool at 23 Lancaster Crescent resubmitted in February 2023 shows a 300mm reduction in floor level, 500mm increase in rear setback and other minor design changes, it will still continue to raise considerable concerns regarding view loss, overshadowing, visual bulk, and compliance with local planning controls. Consequently, it will still pose an unacceptable impact on the residential amenity of 25 Lancaster Crescent and the character of the locality.

2. View Loss

At present, the residents of 25 Lancaster Crescent enjoy iconic water, headland and beach views from key internal habitable rooms and the primary external private open space on their lower ground, ground and first floors. The panoramic Dee Why lagoon, Dee Why beach, Pacific Ocean and headland views are framed by an open, unobstructed setting. The view also includes the location of where the lagoon meets the ocean. This open, unobstructed setting is enjoyed by all properties on the southern side of Lancaster Crescent near the development site and is achieved by a consistent rear building line, a considerate stepped building envelope approach and low rear garden plantings.

As detailed in figure 2, the new upper floor at 23 will still obstruct significant views from the existing upper floor of 25, and the rear extrusion on the ground and lower ground floors of 23 will obstruct significant views from the ground and lower ground floors of 25. New 3m and 10m high plantings will also obstruct views for No. 25 when mature. The proposed 10m *Livistona Australis* (Cabbage Tree Palm) tree will be of particular obstruction, given its bulky and obtrusive appearance when mature as shown in figure 11 which is not in keeping with the style of existing plantings in the rear gardens of adjoining sites. **Appendix A** shows the existing and proposed views in greater detail, and highlights the public loss of view from the public domain along Lancaster Crescent.

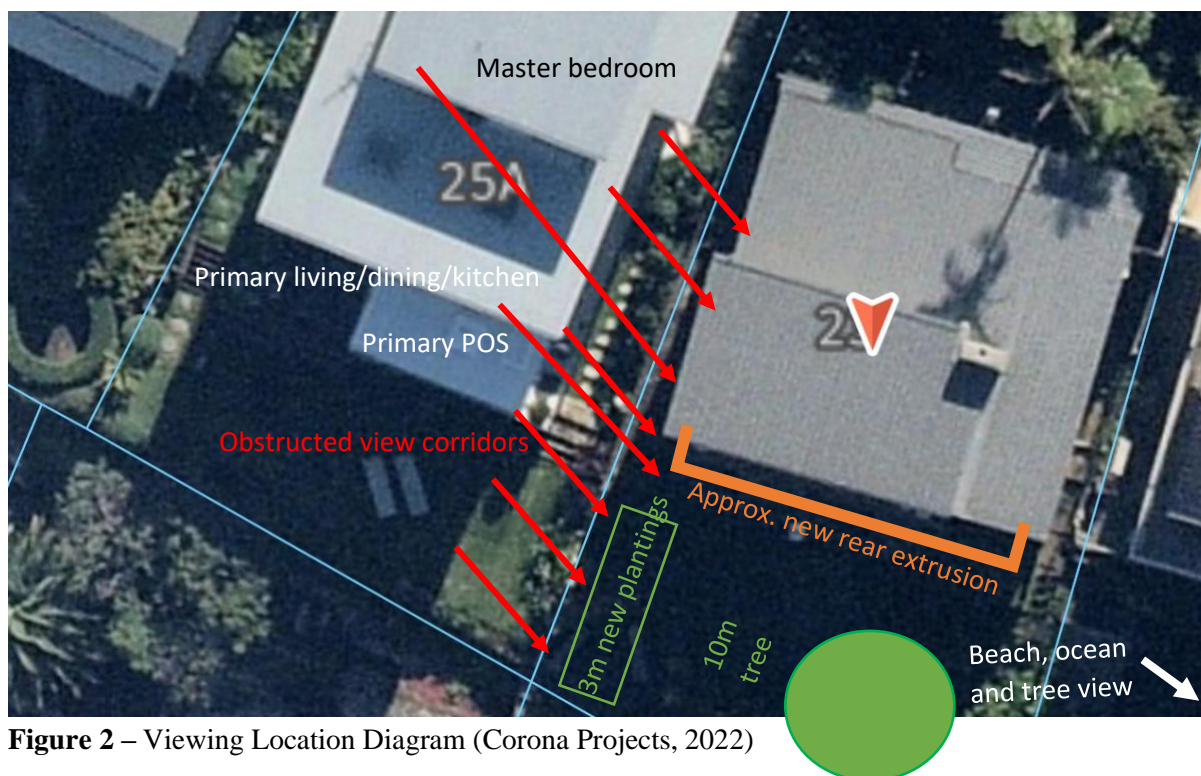


Figure 2 – Viewing Location Diagram (Corona Projects, 2022)

It is evident that the significant changes proposed under DA2022/1211 as amended will impact on the view of 25, displaying no form of view sharing. This is in contrary to the opinion contained in the Statement of Environmental Effects that “the proposal provides for no view loss from surrounding properties.” (page 8).

This severe loss of view will be assessed via the four-step assessment Planning Principles established by Senior Commissioner Roseth under *Tenacity Consulting v Waringah [2004] NSWLEC 140* as follows;

Assessment Step	Comment
1. View Type 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.	The view concerns an unobstructed ocean, beach, headland and tree view. The subject view is therefore highly valuable .
2. Viewing Location 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	The subject view is viewed in a south and south-easterly, crossing the rear and side boundaries. See figure 2. The view is obtained from both seated and standing positions from habitable spaces on all floors.



expectation to retain side views and sitting views is often unrealistic.	
<p>3. Extent of Impact</p> <p>This should be done for the whole of the property, not just for the view that is affected.</p> <p>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.</p>	<p>The extent of view loss is moderate, however, combined with related matters such as visual bulk, non-compliant wall height and shadowing the overall impact is devastating.</p>
<p>4. Reasonableness of Proposal</p> <p>The fourth step is to assess the reasonableness of the proposal that is causing the impact.</p> <p>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.</p> <p>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.</p>	<p>The proposal under DA2022/1211 as revised cannot be considered reasonable due to the numerous non-compliances with planning controls that directly contribute to the subject view loss.</p> <p>The non-compliances regard setbacks, view loss and visual bulk.</p> <p>A more skilful design detailed within the Recommendations of this submission overcome the concerns raised.</p>

It can therefore be concluded that the subject view is significant and is viewed from a very reasonable position that warrants protection. The extent of impact upon the current and future residents of 25 Lancaster Crescent is devastating, and the proposal under DA2022/1211 as amended is still very unreasonable with numerous non-compliances with controls stipulated by local planning instruments.

As such, in accordance with the *Tenacity Consulting v Waringah [2004] NSWLEC 140*, the proposal under DA2022/1211 even as amended cannot be supported in its current state. A re-design as detailed within the Recommendations of this letter should be undertaken to ensure that the view enjoyed by 25 Lancaster Crescent is protected.

3. Solar Access and Overshadowing

The historical south-facing orientation and steeply sloped terrain of dwellings on the southern side of Lancaster Crescent already constrains the amount of sunlight received by the key habitable living areas and the primary private open space of 25 Lancaster Crescent. As such, the dwelling at 25 Lancaster was carefully designed to maximise sunlight by way of east-facing large glazing to capture morning sunlight into important areas. The careful design includes the use of internal and external glass doors on the eastern side of the property to capture sunlight. These east-facing openings provide pleasant sunlight into the home and reduce the reliance of non-renewable energy sources.



The Development Application package still fails to accurately demonstrate the shadow impact of the proposal on 25 Lancaster Crescent as elevational shadow diagrams by the hour on the Winter Solstice showing the existing and proposed shadows in different distinct colours produced by DA2022/1211 have not been provided.

Despite the lack of information, the works proposed under DA2022/1211 are still expected to remove sunlight received by the most used spaces of No. 25 during the morning on the Winter Solstice, resulting in a non-compliance with the applicable solar access objectives under Part D6 Access to Sunlight of the Warringah Development Control Plan 2011 which requires development:

- *To ensure that reasonable access to sunlight is maintained.*
- *To encourage innovative design solutions to improve the urban environment and public open space.*
- *To promote passive solar design and the use of solar energy.*

Even if the proposal did comply numerically with WDCP 2011 solar access controls, “reasonable sunlight” should be subject to consideration against planning principles established in *The Benevolent Society v Waverley Council (2010) NSWLEC 1082* and *Parsonage v Ku-ring-gai (2004) NSWLEC 347*.

Senior Commissioner Moore established the planning principles to properly assess the impact of solar access to open space in *The Benevolent Society v Waverley Council (2010) NSWLEC 1082* as it is concluded that:

“overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guideline” and,

“for private open space to be assessed as receiving adequate sunlight, regard should be had to the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space.”

The overshadowing by DA2022/1211 as amended is still a direct result of “poor design” given the ability for a development to occur in a reconfigured form that does not risk the amenity of the surrounding neighbours. Furthermore, the south-east-facing spaces of 25 Lancaster Crescent which are being overshadowed are the rooms with greatest window size and reliance on the natural light, rendering the areas frequently used and important for the current and future residents.

In addition, Senior Commissioner Roseth concludes in *Parsonage v Ku-ring-gai (2004) NSWLEC 347* that numerical guidelines should be applied with a great deal of judgement with the following example provided:

“Consider a dwelling that now receives sunlight all day. Taking away that sunlight from 9am till noon would satisfy most guidelines; and yet the occupants of such a dwelling are likely to perceive it as a devastating impact on their dwelling’s amenity”



The above example is identical to the circumstances imposed by DA2022/1211 on the primary living rooms and private open spaces as some morning sunlight is expected to be removed. This will have a detrimental impact on the current and future residents, and cannot be supported in accordance with an assessment against the WDCP 2011 and the findings under *The Benevolent Society v Waverley Council (2010) NSWLEC 1082* and *Parsonage v Ku-ring-gai (2004) NSWLEC 347*. A reconfigured design, as detailed in the Recommendations of this letter will assist to protect the solar access for 25 Lancaster Crescent, whilst still allowing 23 Lancaster Crescent to increase their residential amenity.

4. Visual Bulk and ‘Sense of Enclosure’

DA2022/1211 will still appear bulky and obtrusive from the primary living spaces of 25 Lancaster Crescent. As shown in Appendix A, the non-compliant extent of extrusion will provide the current and future residents of 25 Lancaster Crescent with a feeling of enclosure from their primary habitable spaces and principle private open spaces. The 600mm height reduction and 500mm rear setback increase has not produced any noticeable improvement for 25 Lancaster Crescent.

5. WDCP 2011 Non-compliances

DA2022/1211 exhibits major non-compliance with the objectives and controls of the WDCP 2011, as per the below table. In its current form, the proposal can therefore not be supported as it does not contain planning merit.

Control	Comment
Buildings on land shown coloured on the DCP Map Side Boundary Envelopes must be sited within a building envelope determined by projecting planes at 45 degrees from a height above ground level (existing) at the side boundaries.	Non-Compliance – The proposal does not comply with the established building envelope control, but instead continues to encroach within the side boundaries closer to neighbours which has a direct impact on the view obstruction, visual bulk and overshadowing on 25 Lancaster Crescent so cannot be supported.
Development is to ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.	Non-Compliance – The new parking structure and vehicle entry is still located at a higher level than the existing, and will therefore still be more visually prominent when viewed from the street. The close proximity of the garage structure to both the street, and the southerly neighbour renders the higher location unsuitable in combination with the other negative impacts described in this letter.

6. Visual Privacy

Whilst DA2022/1211 shows west-facing windows to be partially screened by new landscaping, there is still a risk of overlooking between these openings and habitable areas of 25 Lancaster Crescent in the event that new landscaping is not adequately dense or does not grow to its identified mature height



due to site conditions. Under *Meriton v Sydney City Council [2004] NSWLEC 313 SC Roseth* concludes that:

“Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.”

As such, a permanently frosted treatment should be applied to all west-facing windows to ensure that privacy between 23 and 25 Lancaster Crescent is provided.

7. Established Rear Building Line

The immediate locality surrounding 23 Lancaster Crescent exhibits an obvious and well-established rear building line for each level. Lots on the southern side of Lancaster Crescent feature steeply sloped terrain, which the current dwellings step with.

Figure 3 shows the existing established lower ground and ground floor rear setbacks which the existing dwelling at 23 Lancaster Crescent contributes to, whilst figure 4 shows the average first floor (third storey) rear building line using 19, 25 and 27 as guides as these sites feature three floors. The proposed works under DA2022/1211 even as amended will be entirely out of character and alignment with these established buildings lines and will subsequently impose adverse amenity impacts for its neighbours .



Figure 3 – Established rear setback facing east (Corona Projects, 2022)

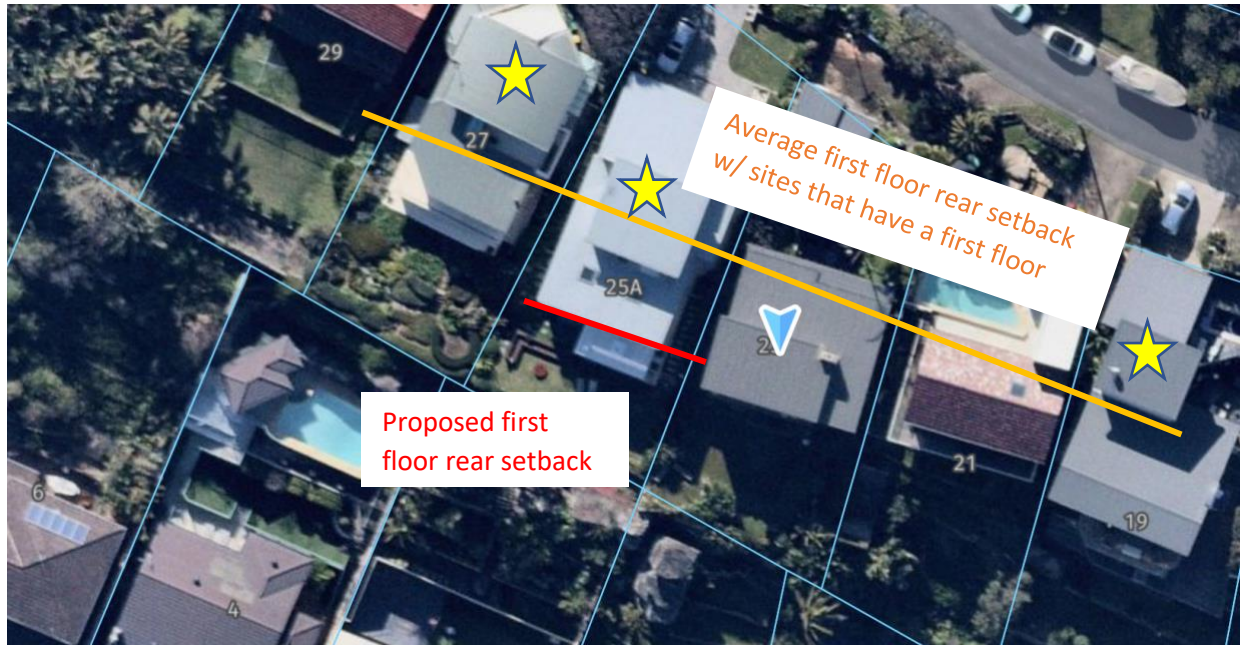


Figure 4 – Established upper floor rear setback, a star indicating which sites have a first floor (NearMaps, 2023)

The extent of rear extrusion is also likely to impact upon the function of a Sydney Water manhole, located along the shared boundary of 23 and 25 Lancaster Crescent, highlighted in Figure 5.

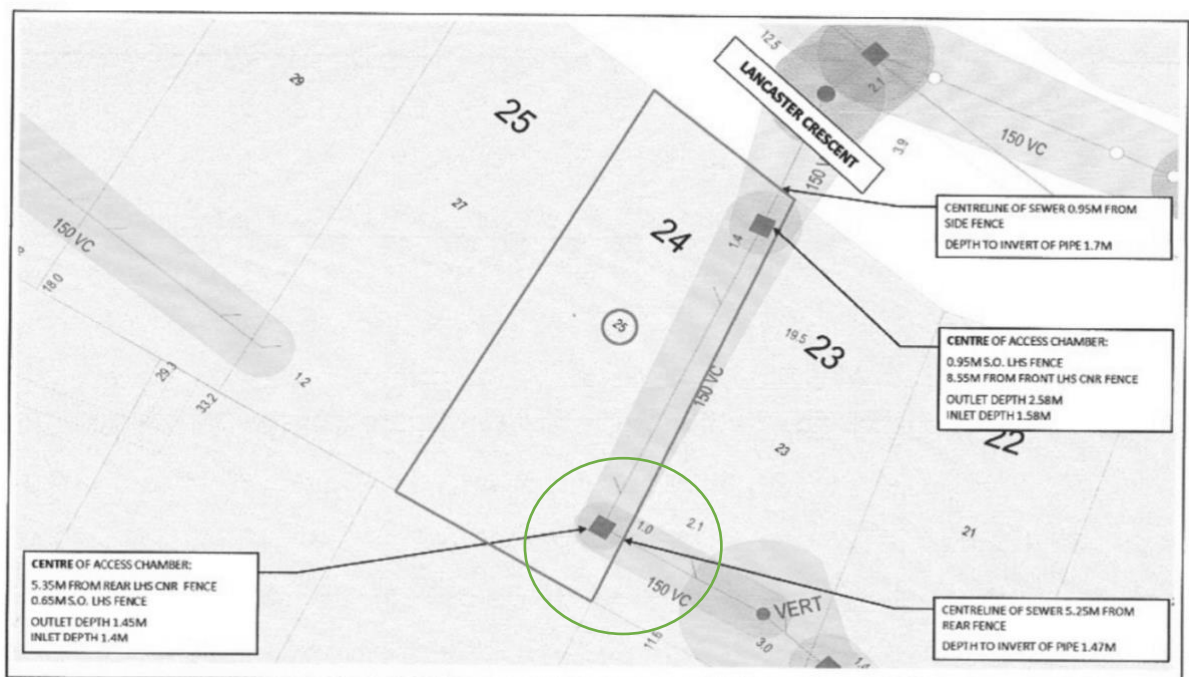


Figure 5 – Access chamber diagram, with the access area circled in green (Olsen Infrastructure, 2021)



8. Against the Public Interest

The WDCP is considered to be contemporary documents updated recently on 1 June 2022. Part of the planning policy process, changes to the LEP and DCP are placed on public exhibition prior to finalisation and gazettal, in order to ensure that the documents reflect the local communities sentiments. Therefore, any non-compliance with the DCP can be considered to be **directly against the public interest**.

As such, the proposal under DA2022/1211 in its current amended form is not in the public interest, and cannot reasonably be supported as the “public interest” is a key consideration that consent authorities such as Council must consider under Clause 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

9. Recommendations

A more skilful design by way of reconfiguration and minor scale reduction can allow both 25 Lancaster Crescent and 23 Lancaster Crescent to retain and/or improve their amenity respectively. Actions a – f provide a suitable scheme which solves all concerns raised within this letter and allow for a new dwelling at 23 Lancaster Crescent.

- a) **Action:** Prepare 3D view loss analysis modelling to accurately depict the extent of view obstruction, and do not allow any envelope that will obstruct the water/headland/landscape/beach view for 25 Lancaster Crescent.
Outcome: To better analyse and understand the impact of proposal and to modify the design, if required to protect the amenity of 25 Lancaster Crescent.
- b) **Action:** Provide elevational hourly shadow diagrams showing the impact of the proposal on the east-facing windows of 25 Lancaster Crescent with existing and proposed shadow shown in 2 different colours, and do not allow any additional shadow during the Winter Solstice.
Outcome: To better analyse and understand the impact of proposal and to modify the design, if required to protect the amenity of 25 Lancaster Crescent.
- c) **Action:** Increase the new upper floor setback to align with 25 Lancaster Crescent, and increase the ground floor and lower ground floor setbacks to align with the existing building at 23 Lancaster Crescent, or greater to comply with the recommendations (a) and (b).
Outcome: This will reduce overshadowing, visual bulk, view obstruction and the obstruction of the access hole between 23 and 25.
- d) **Action:** Limit new tree plantings in the rear garden to species that have a maximum mature height of 1.5m on either side boundary.
Outcome: This will reduce overshadowing and view obstruction, and protect the unique open outlook established along the rear setback of properties on the southern side of Lancaster Crescent.



- e) **Action:** Retain the existing driveway and garage location, and step the rest of the new building down with the terrain further by marginally increasing excavation and dropping floor levels.

Outcome: This will reduce visual bulk, view obstruction and overshadowing for 25 Lancaster Crescent, and better align the scale of works visible from the public domain with the Lancaster Crescent streetscape. Lowering the overall building height does not reduce views or amenity for the development site at 23 Lancaster Crescent, resulting in only a positive outcome for all parties. Retaining the existing driveway also protects the telecom pit which is located where the new driveway is proposed and is often accessed by NBN and Telstra technicians.

- f) **Action:** Frost all west-facing windows, as vegetation planting is not sufficient as a sole privacy mitigation measure in accordance with the findings under *Meriton v Sydney City Council [2004] NSWLEC 313*.

Outcome: This will protect the visual privacy of 25 Lancaster Crescent.

Conclusion

We have strong concerns about the proposed development in its revised format at 23 Lancaster Crescent, Collaroy and believe it cannot be supported in its latest form. The development will still have an adverse impact on the residential amenity of 25 Lancaster Crescent and the character of the locality. A development of this scale cannot be supported on this site. Any future development on the site should ensure compatibility with the local area and address the issues raised in this submission.

The owners of 25 Lancaster Crescent, Collaroy invite Council to conduct a site inspection on their property to best understand the perspective of the discussed concerns. Please contact Mr Michael Riad (0407 418 603) to arrange a visit.

Kind regards,

Emma Rogerson

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Appendix A

Expected existing and proposed views before and after DA2022/1211, to be confirmed by 3D modelling.



Figure 6 – View comparison from the public domain – Lancaster Crescent (Corona Projects, 2023)



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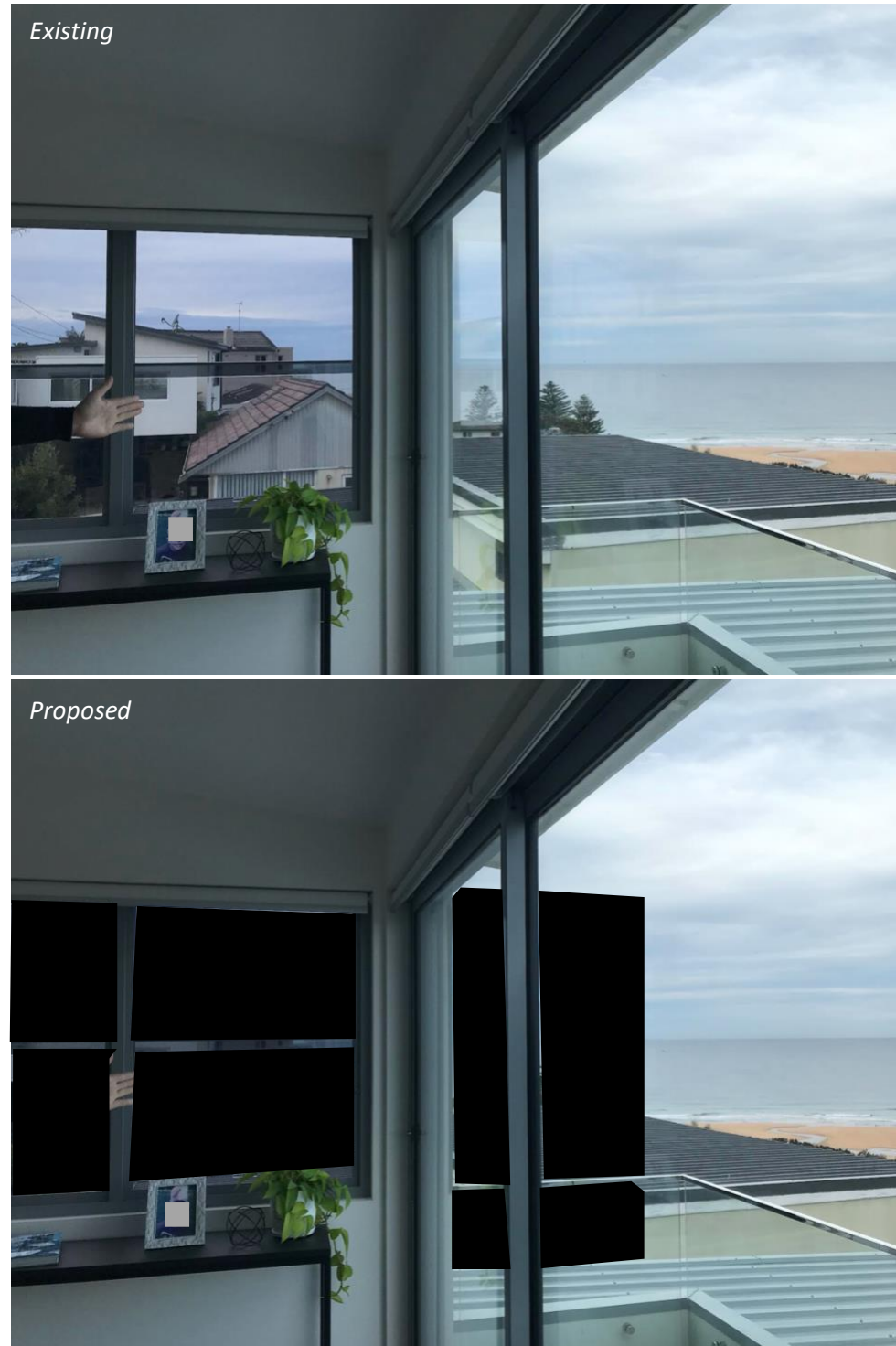


Figure 7 – View comparison from upper floor habitable rooms of 25 Lancaster Crescent (Corona Projects, 2023)



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Figure 8 – View comparison from upper floor habitable rooms of 25 Lancaster Crescent (Corona Projects, 2023)



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Figure 9 – View comparison from ground floor rooms of 25 Lancaster Crescent (Corona Projects, 2023)



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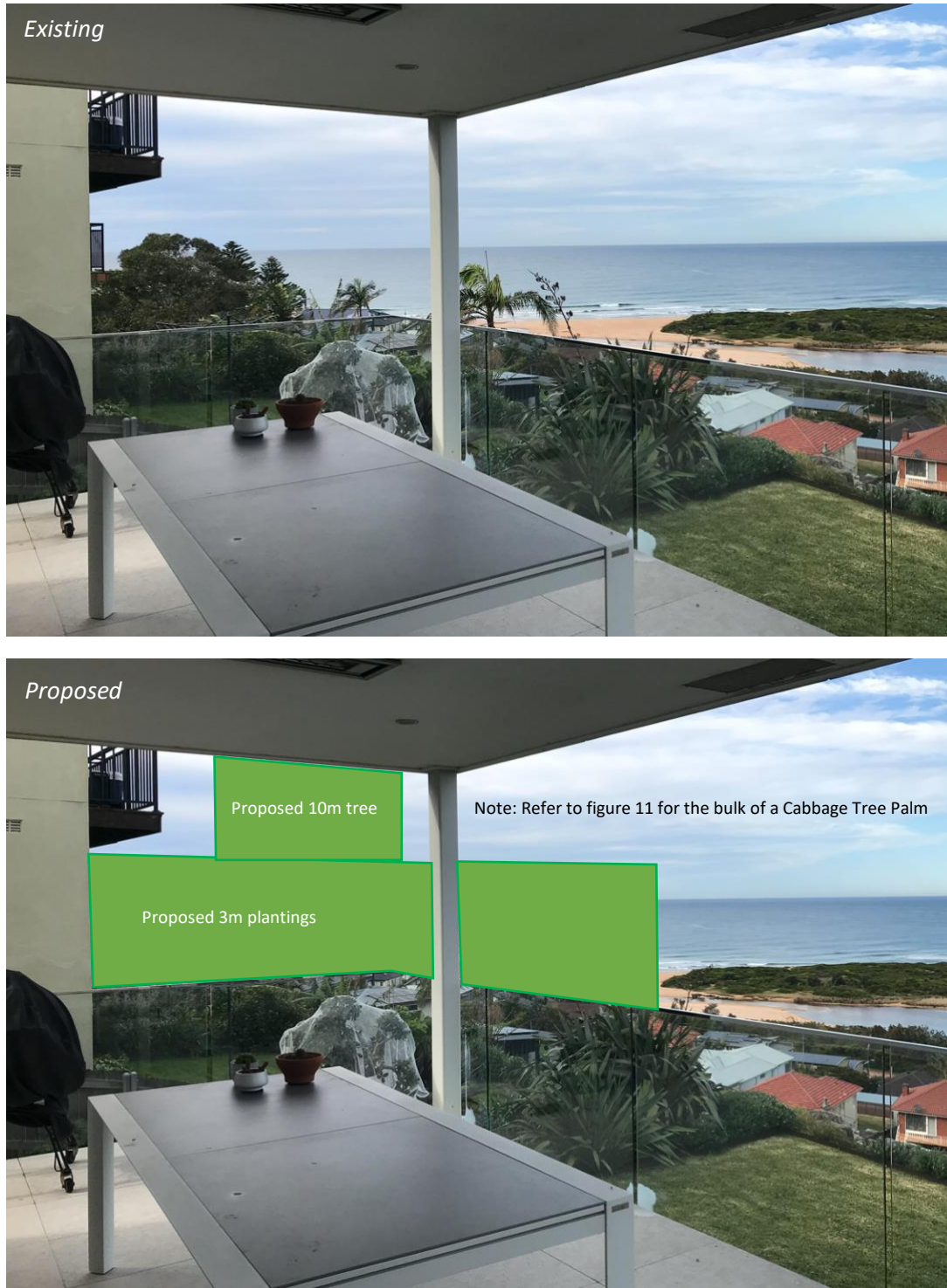


Figure 10 – View comparison from lower ground floor rooms of 25 Lancaster Crescent (Corona Projects, 2023)



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Figure 11 – Proposed 10m mature *Livistona Australis* (Cabbage Tree Palm) tree