
From: George Youhanna
Sent: 12/06/2025 12:19:49 PM
To: Council Northernbeaches Mailbox
Subject: TRIMMED: Submission to DA2025/0536 - 19 Burne Avenue, Dee Why
Attachments: Submission 19 Burne Avenue, Dee Why 12 June 2025.pdf;

Dear NBC

Please find attached a submission on the above DA, on behalf of the owners of 17 and 21 Burne Avenue, Dee Why.

Kind regards,
George

George Youhanna
Principal
BTP, Grad Cert Urb Des, Grad Dip Law, MPIA



M [REDACTED]
E [REDACTED]
W www.blueskyurban.com.au



12 June 2025

Chief Executive Officer
Northern Beaches Council
PO Box 82
Manly NSW 1655

Attn: Dean Pattalis

RE: OBJECTION TO DA2025/0536 – 19 BURNE AVENUE, DEE WHY

**CONSTRUCTION OF A SECONDARY DWELLING AND
ALTERATIONS & ADDITIONS TO A DWELLING HOUSE**

Dear Mr Pattalis

This submission is made on behalf of the owners of 17 and 21 Burne Avenue, Dee Why, being the adjoining properties to the east and north of the site. This submission identifies a number of significant deficiencies and issues with the proposed development, including proposed development over a Right of Carriageway that benefits the adjoining sites, tree removal on an adjoining property, ocean and district view loss, privacy impacts, non-compliances with the gross floor area and parking development standards (with no clause 4.6 exception requests), and other non-compliances.

As will be demonstrated, the proposed secondary dwelling has not been well considered in its design which appears to have overlooked fundamental site constraints, including development over an existing Right of Carriageway and removal of a significant tree on neighbouring land, for which no owners' consent has been provided. The proposed secondary dwelling is an entirely inappropriate building with regard to both form and siting, with sub-standard internal amenity as a result of the 2.49m wide internal width. The secondary dwelling would directly overlook and overshadow the principal private open space of 17 Burne Avenue, and also overlook and completely obstruct all ocean views from the living rooms and terraces at 21 Burne Avenue.

Further, any breaches of the secondary dwelling floor space ratio (FSR) and parking development standards are not supported by well-founded clause 4.6 exception requests, which are a jurisdictional prerequisite to the grant of consent.

1. RIGHT OF CARRIAGEWAY

The subject site at 19 Burne Avenue (Lot 2, DP209386) is a battleaxe lot which is located to the east of 17 Burne Avenue (Lot 3, DP209386), and to the south of 21 Burne Avenue (Lot 1, DP209386). The adjoining site at 17 Burne Avenue has a frontage to Burne Avenue and 21 Burne Avenue is a battleaxe lot.

Vehicular and pedestrian access to the subject site is via an existing driveway which extends from Burne Avenue and traverses part of 17 Burne Avenue, the access handle of 19 Burne Avenue and the access handle and the main part of 21 Burne Avenue, as depicted below:

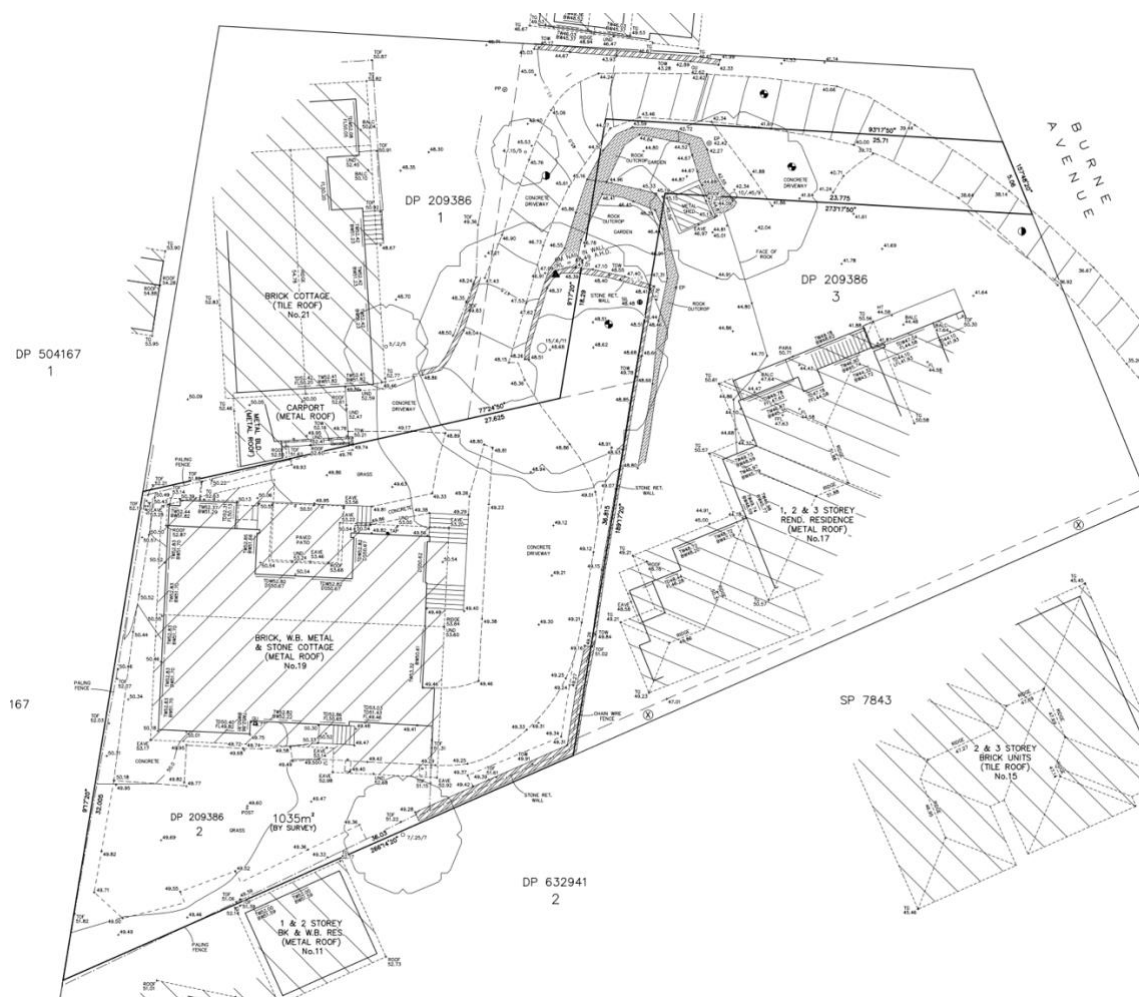


Figure 1: Extract from Survey of 19 Burne Avenue (Lot 2) submitted with DA, dated 29/11/21, prepared by Hill and Blume Consulting Surveyors

The survey identifies the existing Rights of Carriageway that apply to 17, 19 and 21 Burne Avenue. In relation to 19 Burne Avenue, the site benefits from Rights of Carriageway over 17 and 21 Burne Avenue which allow legal access to the main part of the site. Conversely, the access handle of 19 Burne Avenue is burdened with Rights of Carriageway that benefit 17 and 21 Burne Avenue.

The registered easement that burdens Lot 2 and benefits Lots 1 and 3 is described on the title of 19 Burne Avenue, Dee Why as:

"H979407 RIGHT OF CARRIAGEWAY OVER THAT PART OF THE LAND WITHIN DESCRIBED SHOWN AS SITE OF PROPOSED ROW 4.57 WIDE IN DP209386"

The following extract from DP209386 depicts the subject Right of Carriageway in the access handle of Lot 2:

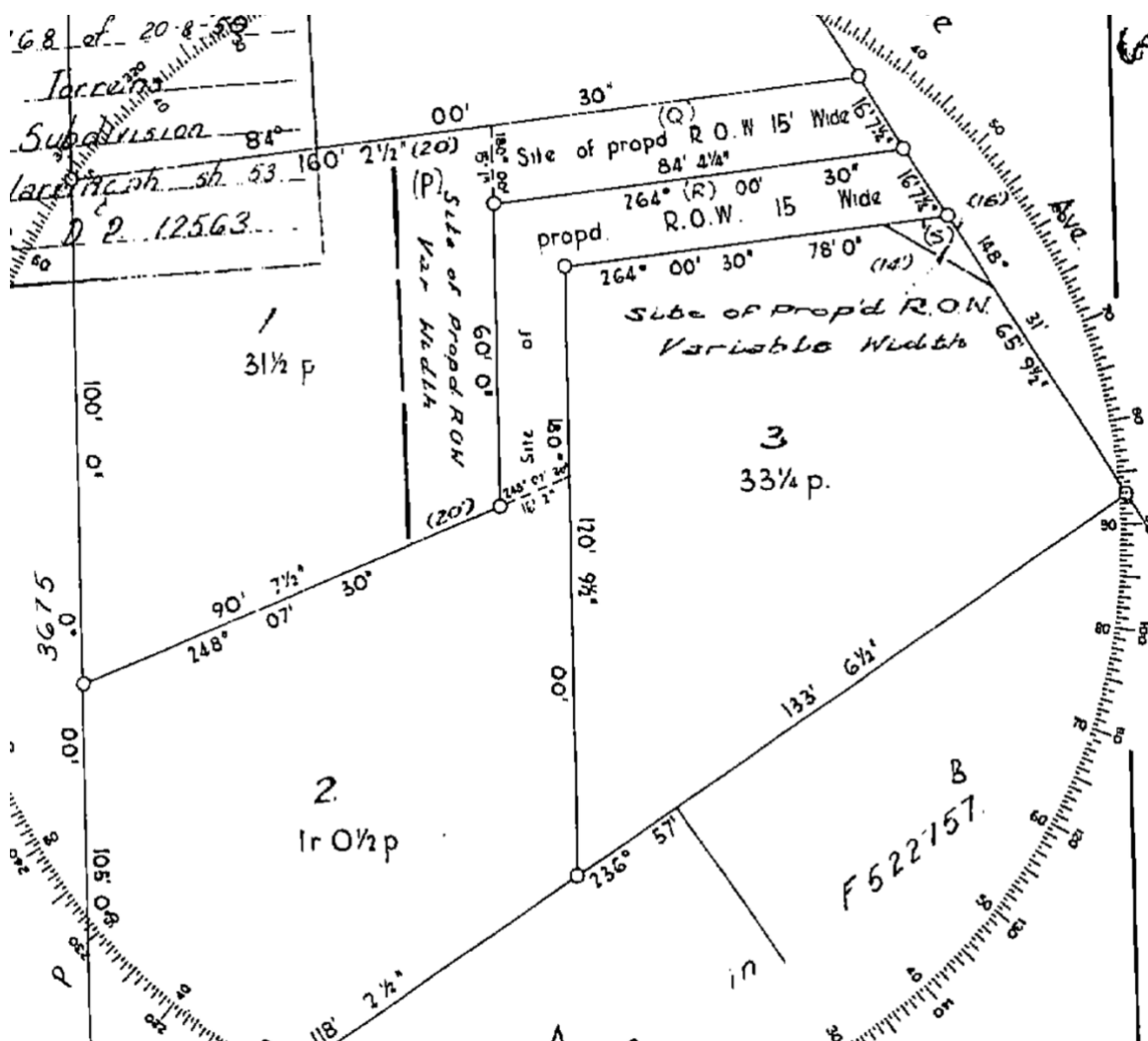


Figure 2: Extract from DP209386, showing the R.O.W. in the access handle of Lot 2

A significant and likely fatal issue with the proposed development is that the secondary dwelling is located on the access handle of 19 Burne Avenue, which would unlawfully interfere with the right to access this part of the site in accordance with the existing Right of Carriageway burdening Lot 2 and benefitting Lots 1 and 3. Any structure on the Right of Carriageway that would impede access to the Right of Carriageway by Lots 1 and 3 would be unlawful and contrary to the rights of the dominant tenement, in this case being Lots 1 and 3.

The proposed disregard of a registered easement on the title of the subject site and the consequent impact of impeding lawful access to the Right of Carriageway by Lots 1 and 3 is a valid matter for consideration under section 4.15(1)(b),(c),(d) and (e) of the Environmental Planning and Assessment Act 1979 (EPA Act). It is anticipated that Northern Beaches Council, as the consent authority, would not support a development that completely disregards the access rights conferred on Lots 1 and 3 by an existing Right of Carriageway.

It is noted that Council's Development Engineer has raised concerns relating to the location of the existing driveway relative to the Right of Carriageway on 21 Burne Avenue, as set out in the referral comments.

2. TREE REMOVAL

The proposed secondary dwelling requires the removal of an existing tree located on 21 Burne Avenue, Dee Why. The tree is located to the east of the existing driveway. It is understood that owners' consent for removal of the tree has not been obtained from the owners of 21 Burne Avenue.

The subject tree is identified in the Arboricultural Impact Appraisal and Method Statement prepared by Naturally Trees, dated 15 May 2024 and submitted with the development application as Tree 3, being a mature *Angophora costata* with a height of 12m and a spread of 12m. The tree has no defects and is identified for removal presumably only due to being located within the proposed secondary dwelling envelope, with several limbs of the tree extending towards the east, from the main tree trunk.

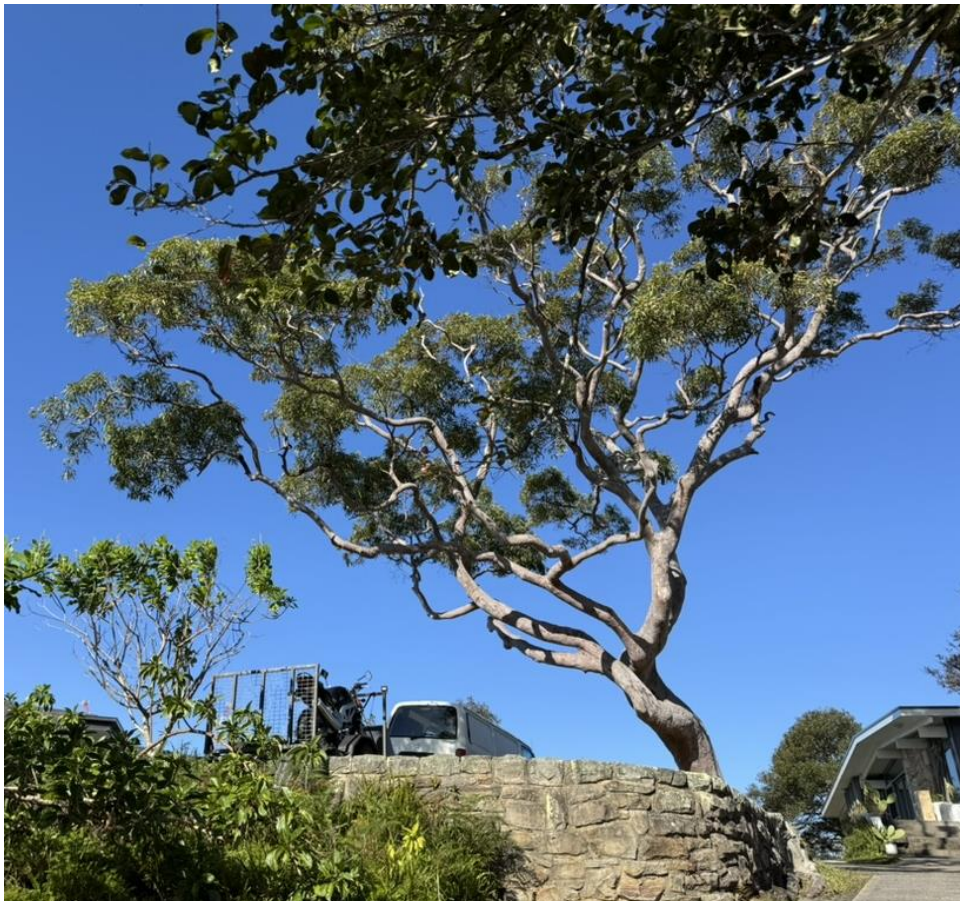


Figure 3: Photographs of Tree 3, located on 21 Burne Avenue, Dee Why

Section 23 of the Environmental Planning and Assessment Regulation 2021 (Regulation) requires that the written consent of the owner of the land is required to make a development application.

In the absence of owners' consent from 21 Burne Street, Dee Why to the development application (being land to which the development application relates in terms of the removal of Tree 3 on 21 Burne Street), the development application has not been properly made. As owners consent is a precondition to the exercise of the power to grant development consent (including deferred commencement consent), a consent authority cannot grant consent to the proposed development, due to the absence of owners' consent.

In addition to the lack of owners' consent as discussed above, the subject tree is an outstanding specimen in excellent health, contributing significantly to the amenity of the area, and regardless of whether owners' consent is obtained, should not be removed to accommodate an inappropriate and poorly sited development.

3. VIEW LOSS AND VISUAL IMPACT

The proposed secondary dwelling would have a devastating impact on the ocean and district views currently available from 21 Burne Avenue, as a result of the secondary dwelling completely blocking all significant views to the east of the dwelling. The views that would be affected are obtained from a sitting room, dining room, living room, kitchen and balcony/terrace, in both a standing and sitting position. The eastern façade of 21 Burne Avenue has been designed to obtain and enjoy district and ocean views, with large windows to all rooms and an east-facing balcony:



Figure 4: East elevation of 21 Burne Avenue, Dee Why



Figure 5: District and ocean views from kitchen of 21 Burne Avenue, Dee Why



Figure 6: District and ocean views from balcony of 21 Burne Avenue, Dee Why

In terms of the fourth step of the test set out in *Tenacity Consulting v Warringah* [2004] NSWLEC 140, the proposal is a completely unreasonable form of development that seeks to impede lawful access by Lots 1 and 3 to the Right of Carriageway on which the secondary dwelling is sited, and requires the removal of a tree on an adjoining site without owners' consent.

Further, it should be abundantly clear that it was never intended for a dwelling to be constructed on the access handle, but rather, that the access handle should only provide access to the main part of the lot, being a suitable location for an appropriately designed dwelling house.

The sub-standard internal dimensions of the secondary dwelling, with an internal width of only 2.49m, is further evidence of the unreasonableness of the proposal. A minimum bedroom dimension of 3.0m is a widely adopted residential standard and a minimum living room width of 3.6m is considered the minimum acceptable width to provide adequate internal amenity and accommodate furniture and circulation space.

It is also of relevance to reasonableness that the proposal does not comply with the landscaped area requirement of 40% of the site area (as discussed later in this submission), largely due to the secondary dwelling footprint.

The proposal is simply not a reasonable form of development and as such, the proposed devastating view impact is unacceptable with regard to *Tenacity*.

In relation to visual impact, the 14m long roof ridge of the proposed secondary dwelling (at RL52.45) would extend well above the ocean and headland horizon line currently visible from 21 Burne Avenue, and the western façade of the secondary dwelling would completely dominate the outlook from the east facing windows and balcony of 21 Burne Avenue, replacing views of mature trees and landscaping, the Dee Why town centre and the ocean beyond, with a largely blank façade, being part one and part two storeys in height, and an outdoor terrace (Terrace 4) which serves as the principal private open space of the secondary dwelling:

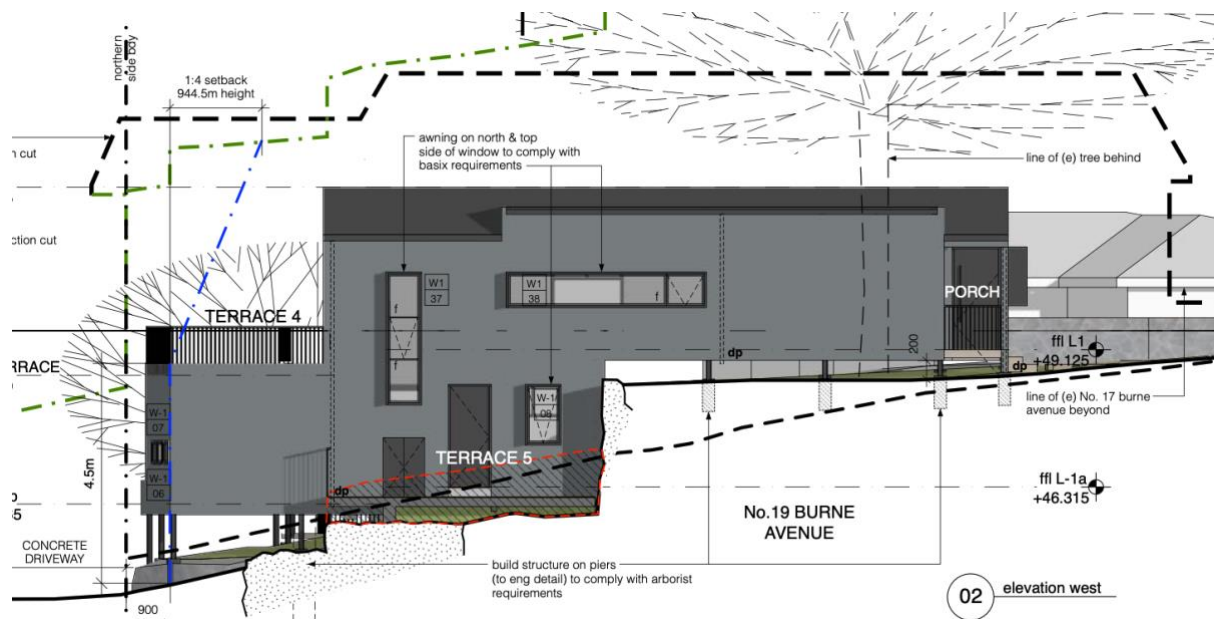


Figure 7: Extract from plan DA-14, prepared by Romina Rojo Studio, showing the western façade of the proposed secondary dwelling

The objectives of Control D9 Building Bulk in Warringah Development Control Plan (WDCP) are:

- *To encourage good design and innovative architecture to improve the urban environment.*
- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

The proposed secondary dwelling does not represent good design and does not improve the urban environment, being an inappropriately sited dwelling with sub-standard internal amenity. Additionally, the secondary dwelling has an unacceptable adverse visual impact when viewed from the adjoining property at 21 Burne Avenue, Dee Why. The proposed height and scale of the secondary dwelling does not have sufficient regard for the site conditions and site constraints, proposing a dwelling within a battleaxe access handle.

4. PARKING/ACCESS

In relation to car parking, section 53(2)(b) of State Environmental Planning Policy (Housing) 2021 (SEPP Housing) which relates to secondary dwellings includes the following non-discretionary development standard:

- (b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.*

The proposed development includes a double carport and a double garage, being a total of four (4) car parking spaces, excluding any additional parking on the driveway (within 19 Burne Avenue). It should be noted that it may not be possible to manoeuvre two vehicles into and out of the double garage, due to the proposed garage configuration.

The proposed four (4) parking spaces does not appear to be the same as the number of parking spaces currently provided on the site. While not specified or indicated on the plans, there appears to be sufficient width for two (2) hardstand parking spaces to the east of the dwelling at 19 Burne Avenue, adjacent to the southern boundary. If it is established that the number of parking spaces provided on the site is not the same as the existing number of spaces, section 4.15(3)(b) of the EPA Act facilitates the use of clause 4.6 in relation to the contravention of the car parking non-discretionary development standard. In this case, no written exception request has been provided in relation to a contravention of the car parking development standard. Further, if required, it is likely to be difficult to demonstrate sufficient environmental planning grounds for a proposed increase in car parking spaces and therefore vehicular movements where the existing driveway is narrow, steep and does not have a passing bay, making it unlikely that the driveway satisfies current design standards. It is also unclear as to whether any of the parking spaces are for the use of the secondary dwelling, or are for the use of the main dwelling exclusively.

Council's Development Engineer has also raised concerns with the proposed parking and driveway access, as previously discussed in this submission.

5. FSR

The proposed secondary dwelling appears to have a gross floor area (GFA) of greater than 60m². The architectural plans indicate that the area of the secondary dwelling is 66.5m², which is consistent with area calculations. To clarify the proposed GFA, the area of each floor should be identified on the floor plans and a GFA diagram should be provided, clearly identifying any areas excluded from the GFA calculations (eg, stair void).

6. LANDSCAPED AREA

The landscaped area calculation as identified on architectural plan DA-24, of 439.5m² (42.5%) appears to include areas beneath the secondary dwelling, part of the driveway (Turfcell Lawn) and areas with a width of less than 2m, contrary to Control D1 Landscaped Open Space and Bushland Setting, of WDCP. It is estimated that the actual landscaped area is less than 34%, being well below the required 40%, failing to achieve the objectives of the controls. The non-compliant landscaped area is indicative of overdevelopment of the site.

7. SETBACKS

The main part of the secondary dwelling is set back only 600mm to 900mm from the side boundaries within the access handle, being less than the minimum 900mm setback requirement under Control B5 Side Boundary Setbacks. Additionally, Terrace 5 which is raised above existing ground level is located on a nil setback (and in part appears to be encroaching beyond the boundary) and the proposed stairs and landing adjacent to Terrace 4 is also on a nil setback.

8. OVERSHADOWING

The proposed secondary dwelling will result in substantial overshadowing of the principal private open space of 17 Burne Avenue at midwinter, from approximately 12 noon onwards.

The shadow diagrams submitted with the application do not quantify that at least 50% of the private open space of 17 Burne Avenue will receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21. Additional hourly or half hourly shadow diagrams should be provided to clearly quantify compliance with Control D6 Access to Sunlight.

9. PRIVACY

The secondary dwelling would have an adverse impact on the privacy of both 17 and 21 Burne Avenue.

The living area, kitchen/dining area and Terrace 4 (being the principal private open space of the secondary dwelling) would directly overlook the principal private open space of 17 Burne Avenue, in addition to being directly opposite bedroom and bathroom windows. The level of overlooking of 17 Burne Avenue is unreasonable and completely unacceptable.

In relation to 21 Burne Avenue, the secondary dwelling west facing windows and Terrace 4 would directly overlook the principal private open space, balcony and living areas of the dwelling, as can be seen in the west elevation in Figure 7 above.

Additional overlooking impacts occur from Terrace 2 above the proposed garage, which is elevated by one storey, with an open balustrade to the eastern edge of the terrace, as can be seen on the east elevation (plan DA-08) and in the 3D rendering in Figure 9 below. The elevated nature of Terrace 2, together with the large area of the terrace (approximately 40m²) which adjoins a games room and the siting of the terrace directly opposite 17 Burne Avenue is likely to result in noise nuisance and disturbance

to 17 Burne Avenue. It is noted that there is an additional proposed terrace at Level 2, and that the Level 2 terrace (Terrace 3) is in fact larger than Terrace 2.

With regard to the above, Terrace 2 should be deleted or substantially reduced in area, with a significantly greater eastern boundary setback, in order to maintain aural and visual privacy to 17 Burne Avenue.

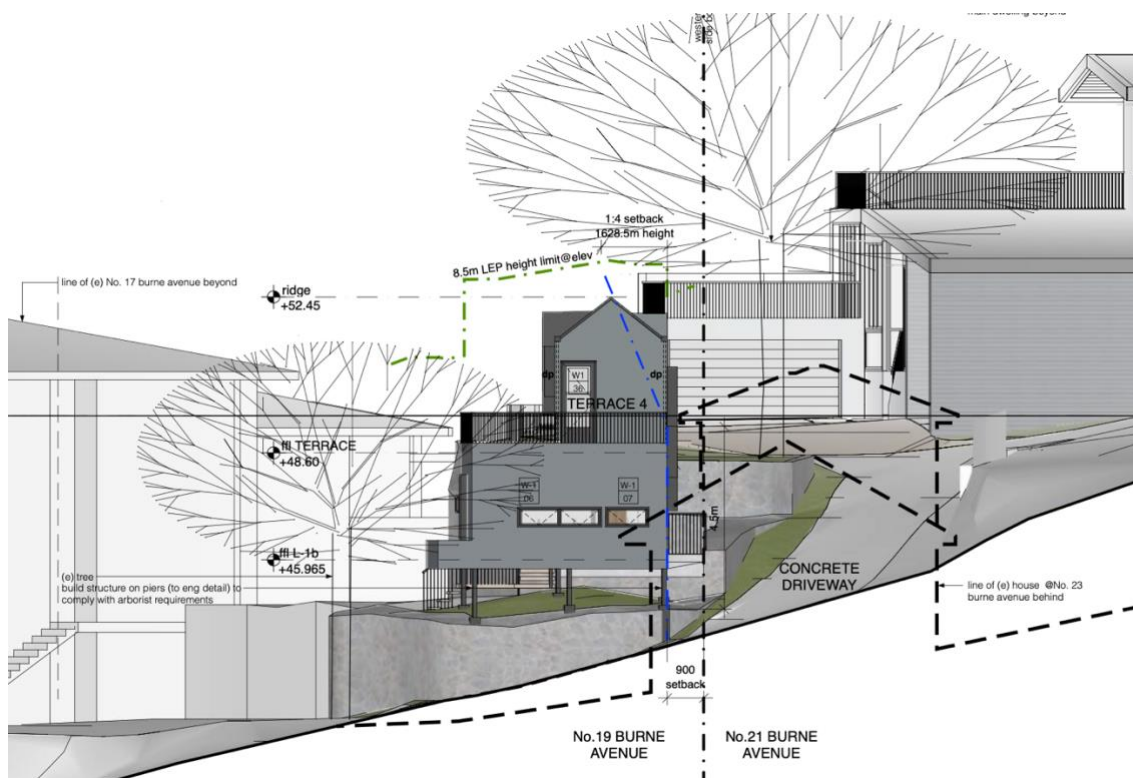


Figure 8: Extract from plan DA-16, prepared by Romina Rojo Studio, showing the northern façade of the proposed secondary dwelling and in the background the proposed garage and Terraces 2 & 3 above (in relation to the main dwelling alterations and additions)



Figure 9: Extract from plan DA-00, prepared by Romina Rojo Studio, depicting the eastern façade of the proposed garage and Terrace 2 above of the garage of the main dwelling, with Terrace 3 above

10. EXCAVATION AND GEOTECHNICAL REPORT

The Geotechnical Site Investigation Report prepared by Soilsrock Engineering Pty Ltd, dated 01/07/2024, identifies at page 12 that ground anchors are required to stabilise vertical excavations in relation to the secondary dwelling (and swimming pool). In relation to the secondary dwelling, consent has not been sought or provided by 21 Burne Avenue for the installation of ground anchors that extend into 21 Burne Avenue. The report subsequently states that if ground anchors are not allowed then “...*piling shoring walls by concrete soldier piles with 300mm to 450mm diameter combined with shotcrete in cantilever are required.*”

Given the narrow site width of 4.57m in the location of the proposed secondary dwelling, and given that owners’ consent for ground anchors has not been provided, plans and sections should be produced for Council’s consideration at DA stage which include the recommended 300mm to 450mm soldier piles. This is particularly important given that the site is located within the *Warringah Landslide Risk Map Area B – Flanking Slopes from 5 to 25 degrees*.

All other recommendations contained in the geotechnical report should be specifically required to be complied with as conditions of consent, if development consent is granted to the proposed development.

Additionally, a dilapidation report should be required as a condition of consent, in relation to the dwellings and structures at 17 and 21 Burne Avenue (including all retaining walls), and the entire driveway from Burne Avenue through to 19 Burne

Avenue, given the possibility of damage to the driveway and adjoining dwellings and structures from construction vehicles and vibrations from excavation and construction.

11. CONSTRUCTION TRAFFIC IMPACTS

The residents of 21 Burne Avenue require unimpeded access to the driveway and Burne Avenue, at all times to access essential services. It would not be acceptable for the driveway to be impassable due to construction vehicles for any extended period of time. Similarly, the residents of 17 Burne Avenue require unimpeded access to their property from the driveway.

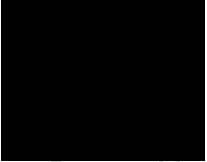
With regard to the steepness and narrow width of the existing driveway, the difficult access to the proposed secondary dwelling location and the identified landslide risk, a construction traffic and vehicle program should be produced before determination, for Council's consideration, to demonstrate that the proposed secondary dwelling and alterations and additions can be excavated and constructed without impacting on vehicle movements to and from 17 and 21 Burne Avenue via the existing driveway. Details should include the likely type and size of trucks, excavators and other machinery required for excavation, piling, retention, removal of spoil, etc. and a plan demonstrating that the trucks and excavators etc would not interfere with driveway access either during excavation/construction or when parked after construction hours. The suitability of any specified trucks and machinery to access the driveway should also be considered in relation to vehicle weight and the driveway gradient, narrow width and tight bends.

12. SUITABILITY OF THE SITE FOR THE DEVELOPMENT

A relevant matter for consideration under s.4.15(1)(c) of the EPA Act is the suitability of the site for the development. As discussed in detail in this submission, the siting of a secondary dwelling within a 4.57m wide battleaxe access handle, over a registered easement, requiring the removal of a significant tree on an adjoining site, is entirely inappropriate and unacceptable. It follows that the site is unsuitable for the proposed secondary dwelling component of the development, which should not be approved in any form.

In light of the legal, statutory, policy and merit issues identified in this submission, we object to the proposed development and ask that the identified issues are considered in detail and given due weight in the assessment of the DA.

Yours sincerely,



George Youhanna
Principal

BTP, Grad Cert Urb Des, Grad Dip Law, MPIA