

S U B M I S S I O N : P L A N K  
a written submission by way of further objection to DA 2020/0096

David Plank

Owner of 8 Ebor Rd,  
Palm Beach  
NSW 2108

Postal address:  
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NSW 2070

4 July 2020

Chief Executive Officer  
Northern Beaches Council  
725 Pittwater Road  
Dee Why  
NSW 2099

Northern Beaches Council  
[council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

Dear Chief Executive Officer,

Re:  
26 Ralston Road, Palm Beach, NSW 2108  
DA 2020/0096  
Amended Plans

WRITTEN SUBMISSION: LETTER OF OBJECTION  
Submission: Plank

This document is a submission by way of further objection to DA 2020/0096  
lodged under Section 4.15 of the EPAA 1979 [the EPA Act]

The DA seeks development consent for the carrying out of certain development, namely:

*“Demolition of existing house and Driveway, construction of two new dwellings [lot 4 & lot 5], construction of two garages and terraces, construction of two plunge pools, new landscape works”*

*\$4.355m Cost of Work*

The subject site lies to the north of my property.

I enjoy water views over the subject sites rear and front boundary. I enjoy a good level of privacy from the subject site

The Applicant has falsely stated within the SEE that:

*“The proposed development will have no impact to views or view sharing of any significant features such as water bodies, ocean or beaches.”*

The Applicant has failed to inform the design within the site analysis of these vital issues that affect site layout and envelope control.

I have major concerns relating to:

- View Loss
- Privacy
- Landscape

I have major concerns to non-compliance to outcomes and controls.

Prior to the submission of the Amened Plan Submission by the Applicant, the Applicant did not have any prior consultation with me.

I am greatly concerned that despite significant objections to the DA by numerous neighbours, the Applicant has not chosen in this set of Amended Plans to resolve the amenity concerns that were strongly presented to Council by way of Written Submissions.

The tokenistic modifications presented within this resubmission of amended plans do not address the fundamental amenity problems.

I ask that unless the Applicant submits further Amended Plans to accord with the conditions set out in this Submission, that Council must ask the Applicant to WITHDRAW this DA or face immediate REFUSAL.

## Executive Summary

I write to submit my Written Submission to object to the above DA.

I have major concerns relating to:

- **View Loss.** The Applicant has failed to identify within the Site Analysis the precise water view from my property, and has not made any attempt to address the matter in a correct fashion. A Tenacity Assessment has not been undertaken by the Applicant
- **Privacy.** I am very concerned on the poor acoustic and visual outcomes by the proposed Roof Decks facing my property.
- **Landscape.** The NBC Landscape Referral response confirms that the landscape plan is not to NBC standards. The Officer has confirmed that some trees are planted potentially within the Tenacity Viewing Corridor from my property. This is unacceptable.

Council must consider that based on the lack of any Tenacity Assessment or proper consideration of maintaining view sharing from my property, of not submitting any privacy assessment, and presenting landscaping plans not in accordance with NBC controls, not prepared by a registered landscape architect, including planting large trees in Tenacity Viewing corridors, major concerns to other immediate neighbours left unaddressed, and other incorrect information, to reject the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.

The proposed development is considered to be inconsistent with the outcomes, controls and objectives of the relevant legislation, plans and policies.

The DA scheme submitted requires to be comprehensively amended, and I ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with all the matters raised in this objection, then I ask Council to either simply issue a REFUSAL.

I am concerned to the non-compliance of the PLEP:

## Clause 1.2 Aims of Plan

I am concerned to the non-compliance of the PDCP:

C1.3 View Sharing

C1.5 Visual Privacy

C1.6 Acoustic Privacy

The non-compliance to PLEP and PDCP outcomes and controls forms the basis of my objection.

My loss of amenity will suffer from these non-compliances to outcomes and controls.

The Amended Scheme identifies the main viewing location from my residence being the main living spaces and decks at RL 106.28, and then proceeds to add built form directly between my main view locations and the water view.

The Amended Scheme continues to promote two roof level decks that would cause acoustic and visual privacy problems to my residence. The built form at these levels would unreasonably remove the water views I enjoy.

I will be proposing amendments to overcome these very poor amenity outcomes later in this Submission.

### Characteristics of my Property

Key aspects of my property are as follows:

My property forms a common boundary with the subject property.

The subject site lies to the north of my property.

I enjoy water views over the subject sites rear and front boundary.

There is an arc of view available when standing at a central location on the elevated living room and entertainment decks.

The composition of the arc is constrained to the west and east either side of the subject site, by other dwellings and landscape.

The central part of the composition includes the subject site and the existing dwelling that currently occupy the site.

Views include scenic and valued features as defined in Tenacity.

My property enjoys good privacy between my property and the subject site.

## Matters of Concern

The proposal will result in poor outcomes relating to:

- View Loss
- Privacy
- Landscaping

I am concerned that these impacts will negatively impact the level of amenity currently enjoyed.

The following aspects of the proposal are of concern:

- The extent of the proposed building envelopes
- The siting and extent of the proposed dwelling, and of new substantial trees, without having sufficient consideration for maintaining view corridors and protecting privacy

I provide further details of these matters below and request Council's close consideration of these in the assessment of the application.

I am concerned that the SEE has failed to properly address my amenity concerns, is suggesting that the DA accords with LEP & DCP outcomes and controls when it clearly it does not.

The non-compliance to LEP and DCP outcomes and controls forms the basis of my objection.

The subject site is of significant size, and there is no reason, unique or otherwise why a fully compliant solution to all outcomes and controls cannot be designed on the site.

I am being advised by a highly experienced consultant to assist me in this matter.

This letter of objection will detail my concerns, and my amenity losses that have arisen as a direct result of the non-compliance to outcomes and controls.

### Site Description

The subject site is generally rectangular in shape, very large, with a combined area of 1498sqm.

The site falls from the south-east at RL 103.4 to RL 98.3 to the north-west.

The western boundary has a fall of 1m over the 46m boundary.

The southern boundary has a fall of 4m over the 30.5m boundary.

My property lies on land at the higher levels, with an elevated position over the subject site, with views to the north over the ridge of the existing dwelling at RL 106.6.

The relevant levels identified within the Applicant's Survey on my property at 8 Ebor Road, Palm Beach are:

- RL 103.64 Pool
- RL 106.28 Balcony

The existing dwelling on the subject site rises to a ridge at RL 106.6, with a lower floor at RL 99.3, and therefore I have extensive views to the north from my main living rooms, other highly used rooms, and main decks at RL 106.28.



## Proposed Development

The proposed development is partially described within the Applicant's SEE.

Council should note:

- The Applicant's Site Analysis has not taken been informed by View Analysis considerations.
- The proposed development proposes development and new trees into my viewing corridors to completely block water views.
- The proposed development proposes roof top decks causing privacy issues.

The proposed development at 26 Ralston shown within the amended plans present levels that greatly exceed the existing ridge line on the existing dwelling:

### **LOT 4**

RL 107.35 Top of Balustrade

RL 106.70 Parapet

RL 106.25 Roof

### **LOT 5**

RL 108.50 Top of Balustrade

RL 107.85 Parapet

RL 107.40 Roof

It should be noted that the existing dwelling has a lower floor at RL 99.22 [survey], with the existing ridge at RL 106.63 [survey], giving an existing storey height of over 7.4m.

Raising the proposed ground floor of both dwellings to RL 100, with 3m storey heights, allows for a roof at the north edge of both dwellings to be at RL 106. A low pitched skillion roof sloping to the north at 1:50 falls, would adequately allow for a two-storey dwelling with garaging at RL 100. The roof level would be similar to the RL 106.6 as it passes through the alignment of the existing ridge of the existing dwelling.

This arrangement is more than ample to create a two-storey development on the site.

The existing crossover levels are at RL 100.4, with the existing accessway crossing the RL 100 contour within the front setback zone.

Two dwellings at two-storey can be designed on the subject site, to maintain the water views from my property off a RL 100 base.

Ground levels under the canopy and TPZ of all retained trees can be fully maintained.

What the Applicant has not done, is to inform the design of the development to protect views.

The site analysis should have clearly considered my water views, and arrived at a design solution to maintain those views.

The proposed development intends to completely remove my water views. This is totally unacceptable.

## Misleading Information & Outstanding information

### **Height Poles/ Templates**

I ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor.

The Height Poles will need to define:

- All Roof Forms
- Extent of all Decks
- Extent of Privacy Screens

The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

These heights must be fully represented in the height poles

### **LOT 4**

RL 107.35 Top of Balustrade  
RL 106.70 Parapet  
RL 106.25 Roof

### **LOT 5**

RL 108.50 Top of Balustrade  
RL 107.85 Parapet  
RL 107.40 Roof

I require these height poles to fully determine view loss.

I require height poles of every proposed new tree in the viewing corridor at the mature height.

## **Statement of Environmental Effects**

The Applicant has not provided a full SEE in accordance with Council controls.

The SEE has failed to properly adequately address:

- View Loss
- Privacy
- Landscaping

The SEE, as submitted, cannot be relied upon.

## **Site Analysis**

Site Analysis has not been properly addressed contrary to DCP controls.

- View Loss
- Privacy
- Landscaping

## Statutory Planning Framework

The statutory planning framework is not generally described within the Applicant's SEE.

I do not intend to repeat every clause from Council's LEP & DCP outcomes and controls, but wish to emphasis the main non-compliances to the planning outcomes and controls, and identify the amenity losses that are directly attributable to that non-compliance to outcomes and controls.

As NSW LEC Planning Principles state:

*How much of the impact is due to the non-complying elements of the proposal?*

*Are the impacts consistent with impacts that may be reasonably expected under the controls?*

I am concerned to the non-compliance of the PLEP outcomes and controls:

Clause 1.2 Aims of Plan

I am concerned to the non-compliance of the PDCP outcomes and controls:

C1.3 View Sharing

C1.5 Visual Privacy

C1.6 Acoustic Privacy

Landscaping

The subject site is sizable, at nearly 1500sqm, and the proposal is for a new build, and there is no reason, unique or otherwise why a fully complaint solution to outcomes and controls cannot be designed on the site.

## PLEP

### Principal Development Standards:

#### Clause 1.2 Aims of Plan

In these proposals the local amenity and environmental outcomes would be challenged by non-compliance.

I contend that the proposed development does adversely affect the character or amenity of the area or its existing permanent residential population by view loss, and other amenity losses.

I contend that the DA fails the major objectives of this control as follows:

#### *1.2 Aims of Plan*

- 1) This Plan aims to make local environmental planning provisions for land in Pittwater in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.
- (2) The particular aims of this Plan are as follows
  - (a) to promote development in Pittwater that is economically, environmentally and socially sustainable,
  - (b) to ensure development is consistent with the desired character of Pittwater's localities,
  - (g) to protect and enhance Pittwater's natural environment and recreation areas,
  - (i) to minimise risks to the community in areas subject to environmental hazards including climate change,
  - (j) to protect and promote the health and well-being of current and future residents of Pittwater.

The requirements under this clause clearly have not been met.

## **MDCP**

The main concerns:

C1.3 View Sharing  
C1.5 Visual Privacy  
C1.6 Acoustic Privacy  
Landscaping

### **C1.3 View Sharing**

The clause states:

#### ***Outcomes***

*A reasonable sharing of views amongst dwellings.*

#### ***Controls***

*All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.*

*The proposal must demonstrate that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.*

*Where a view may be obstructed, built structures within the setback areas are to maximise visual access through the structure e.g. by the provision of an open structure or transparent building materials.*

#### **Commentary:**

No assessment has been made, and no consideration of this vital matter within the site analysis.

There is no reasonable sharing of views amongst dwellings.

The new development is not designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The proposal has not demonstrated that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.

My comments are as follows.

**In Tenacity, [Tenacity Consulting v Warringah Council 2004],** NSW LEC considered Views. Tenacity suggest that Council should consider:

*“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.”*

The development breaches multiple planning controls and is unreasonable.

The impact on views arises as a result of non-compliance with one or more planning controls, and the severe to devastating impact is considered unreasonable.

### **Application of Tenacity planning principle**

I have only been able to consider the impact of the proposal on the outward private domain views from my property, by visual assessment.

A preliminary analysis and assessment in relation to the planning principle of Roseth SC of the Land and Environment Court of New South Wales in *Tenacity Consulting v Warringah [2004] NSWLEC 140 - Principles of view sharing: the impact on neighbours (Tenacity)* is made, however I have no confidence that the assessment is accurate due to the previous commentary.

The steps in Tenacity are sequential and conditional in some cases, meaning that proceeding to further steps may not be required if the conditions for satisfying the preceding threshold is not met.



## Step 1 Views to be affected

The first step quoted from the judgement in *Tenacity* is as follows:

*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, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Prior to undertaking Step 1 however, an initial threshold in *Tenacity* is whether a proposed development takes away part of the view and enjoys it for its own benefit and would therefore seek to share the view. In my opinion the threshold test to proceed to Step 1, I provide the following analysis;

An arc of view to the north is available when standing at a central location on the elevated decks, living spaces, and other highly used zones on my property.

The composition of the arc is constrained to the west and east either side of the subject site, by built forms.

The central part of the composition includes the subject site and parts of both buildings and roof forms that currently occupy the site.

Views include scenic and valued features as defined in *Tenacity*.

The proposed development will take away views for its own benefit.

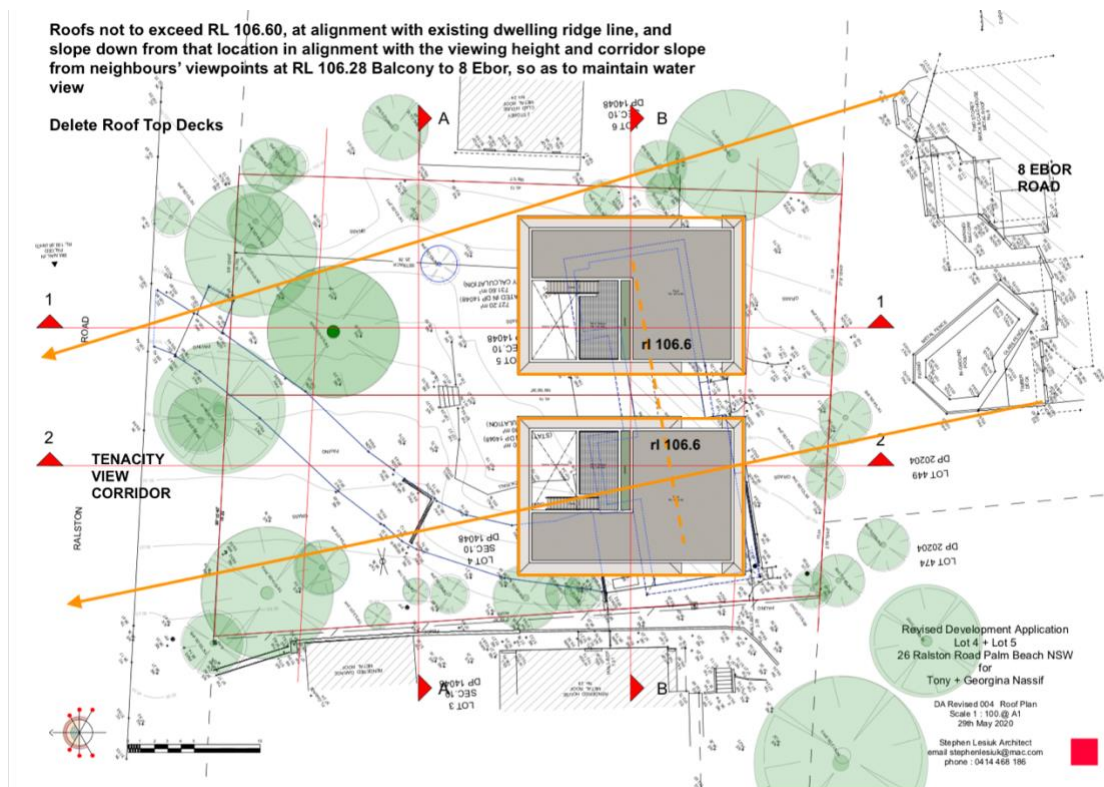
The view from my windows and deck towards the water view, and the land-water interface will be lost.

The existing view is a 'moving landscape', rather than just a 'scenic outlook', given the activity on the water.

The extent of view loss is severe to devastating, and the features lost are considered to be valued as identified in Step 1 of *Tenacity*.



View Point from 8 Ebor Road Palm Beach



Tenacity Viewing Corridor from 8 Ebor Road Palm Beach

## **Step 2: From where are views available?**

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

*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 expectation to retain side views and sitting views is often unrealistic.*

The views in all cases are available across the front and rear boundary of the subject site at angles to the south, from standing and seated positions.

A wide arc of view to the north is available when standing at a central location on the elevated decks, living spaces, and other highly used zones on my property.

In this respect I make two points:

- I have no readily obtainable mechanism to reinstate the impacted views from my living zones if the development as proposed proceeds; and
- All of the properties in the locality rely on views over adjacent buildings for their outlook, aspect and views towards the water view

## **Step 3: Extent of impact**

The next step in the principle is to assess the extent of impact, considering the whole of the property and the locations from which the view loss occurs.

Step 3 as quoted is:

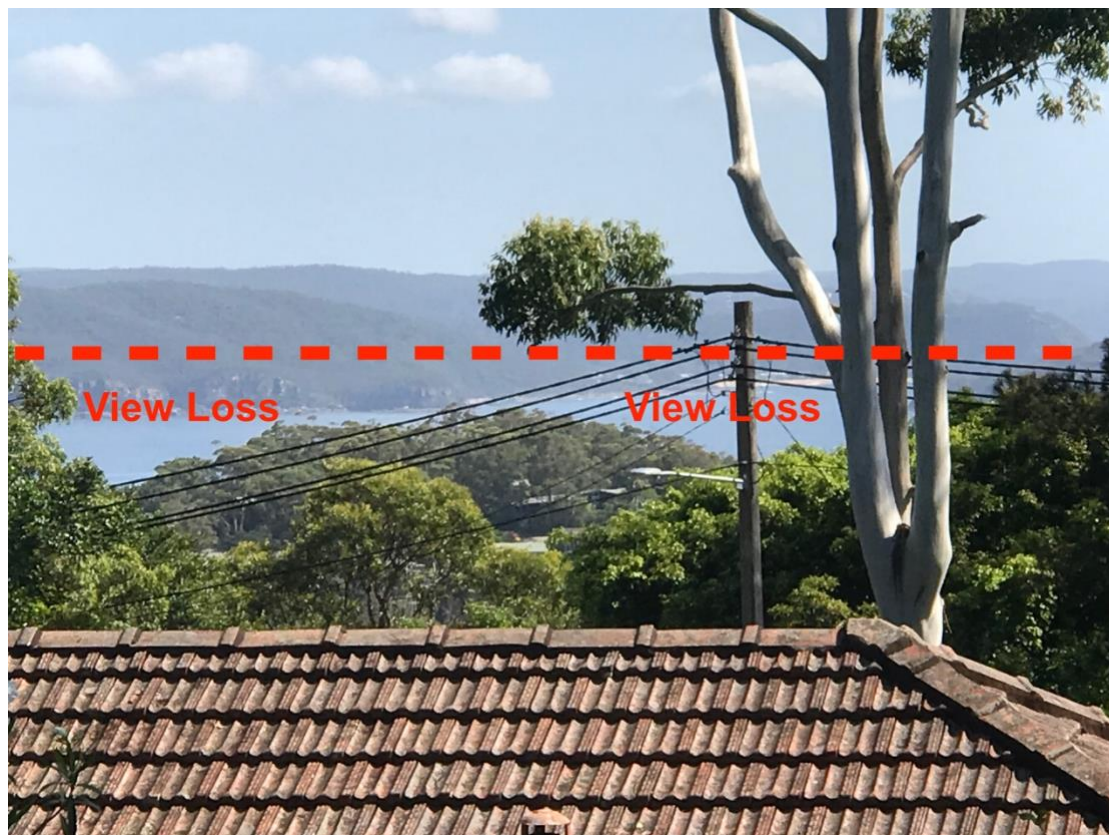
*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). 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.*

Step 3 also contains a threshold test. If the extent of impact is negligible or minor for example, there may be no justification for proceeding to Step 4, because the threshold for proceeding to considering the reasonableness of the proposed development may not be met. In that case the reasonableness question in Step 4 does not need to be asked and the planning principle has no more work to do.

I consider the extent of view loss in relation to my living room loss severe to devastating using the qualitative scale adopted in *Tenacity*.

The view lost includes water views and land-water interface. As I rate the extent of view loss as severe to devastating in my opinion the threshold to proceed to Step 4 of *Tenacity* is met.



#### Step 4: Reasonableness

The planning principle states that consideration should be given to the causes of the visual impact and whether they are reasonable in the circumstances.

Step 4 is quoted below:

*The fourth step is to assess the reasonableness of the proposal that is causing the impact. 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. 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.*

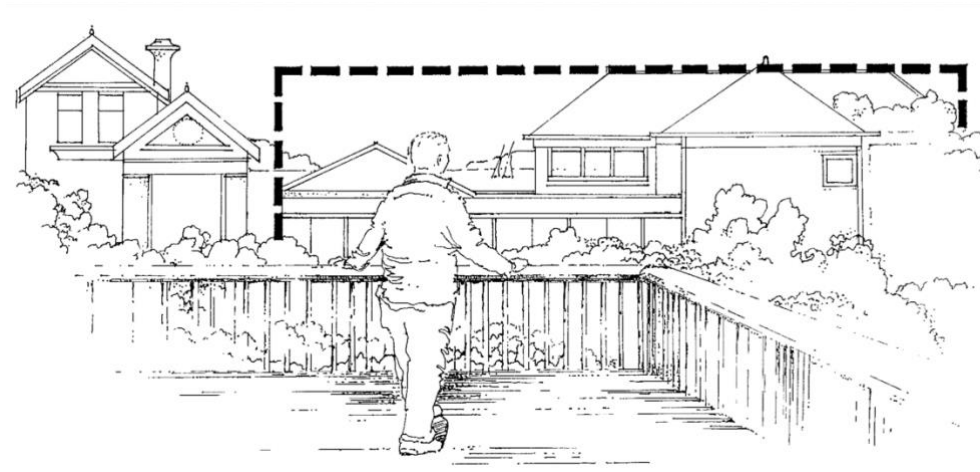
As the proposed development does not comply with outcomes and controls, that are the most relevant to visual impacts, greater weight would be attributed to the effects caused.

In my opinion the extent of view loss considered to be **devastating**, in relation to the views from my living rooms and living room deck of my dwelling, particularly to the north.

The view is from a location from which it would be reasonable to expect that the existing view, particularly of the water could be retained especially in the context of a development that does not comply with outcomes and controls.

Once Templates are erected, I can provide additional commentary.





***Where there is a potential view loss, Council should require a maximum building height of less than 8.5m for part of the building.***

The private domain visual catchment is an arc to the north from which views will be affected as a result of the construction of the proposed development.

The proposed development will create view loss in relation to my property.

The views most affected are from living areas and associated terraces and include very high scenic and highly valued features as defined in Tenacity.

Having applied the tests in the Tenacity planning principle and without a montage or height poles erected that can be relied upon, I conclude that I would be exposed to a devastating view loss.

The significant non-compliance with planning outcomes and controls of the proposed development cause this loss.

Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

The applicant should have informed the design by a complete view loss consideration that would have clearly identified that any development over the existing ridge level would be problematic. There may be architectural solutions that maintain my view, by proposing development above the existing ridge line in some part of the large site, but this needs careful consideration by the Applicant, along with templates to fully test the design outcome.

As stated earlier in this Submission, the Applicant has the opportunity to resolve this issue by raising the proposed ground floor of both dwellings to RL 100, with 3m storey heights, allows for a roof at the north edge of both dwellings to be at RL 106.

A low-pitched skillion roof sloping down to the north at 1:50 falls, would adequately allow for a two-storey dwelling, with garaging at RL 100.

The roof level would be similar to the existing ridge at RL 106.6 as it passes through the alignment of the existing ridge of the existing dwelling.

This arrangement is more than ample to create a two-storey development on the site.

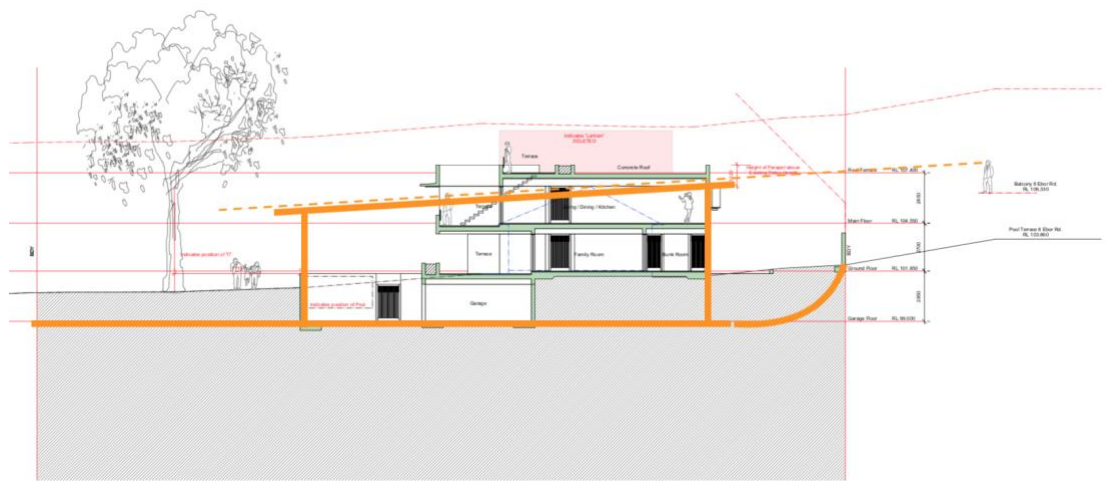
The existing crossover levels are at RL 100.4, with the existing accessway crossing the RL 100 contour within the front setback zone, allowing a level access to garaging at RL 100.

Two dwellings at two-storey can be designed on the subject site, to maintain the water views from my property off a RL 100 base.

Ground levels under the canopy and TPZ of all retained trees can be fully maintained.

I would have no objection for the floor plates to increase in length towards the front boundary of the subject site, and therefore for the GFA to increase, as long as my view was protected.

The proposed development cannot be supported on visual impacts grounds.



## C1.5 Visual Privacy

The clause states:

### **Outcomes**

*Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*

*A sense of territory and safety is provided for residents. (S)*

### **Controls**

*Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).*

*Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.*

*Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.*

*Direct views of private open space or any habitable room window within 9m can be restricted (see diagram below) by:*

- *vegetation/landscaping*
- *a window sill height 1.7 metres above floor level, or*
- *offset windows*
- *fixed translucent glazing in any part below 1.7 metres above floor level, or*
- *solid translucent screens or perforated panels or trellises which have a maximum of 25% openings, and which are:*
  - *permanent and fixed;*
  - *made of durable materials; and*
  - *designed and painted or coloured to blend in with the dwelling.*

**Commentary:**



My concern is to the Roof Decks from both acoustic and visual privacy. These decks need to be deleted.

There is a direct line of sight from the proposed roof decks to my property.

The acoustic concern would always be a significant issue, irrespective of what height any privacy screen is erected on these two roof decks.

These two roof decks will need to be deleted, and replaced by roofs that are totally non-accessible.

My concern also is to the extent of the south facing glazed areas in close proximity to my private open spaces and habitable rooms and decks. These windows need to be substantially reduced in size and required privacy screens.

The size of these windows also has concerns under PBP bushfire controls.

Habitable rooms and outdoor living areas of dwellings has not optimised visual privacy through good design.

## **C1.6 Acoustic Privacy**

The clause states:

### ***Outcomes***

*Noise is substantially contained within each dwelling and noise from any communal or private open space areas are limited. (S)*

*Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or private open space areas (S)*

### ***Controls***

*Noise-sensitive rooms, such as bedrooms, should be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like.*

*Noise generating plants including pool/spa motors, air conditioning units and the like shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.*

*Developments must comply in all respects with the Protection of the Environment Operations Act 1997, and other relevant legislation.*

**Commentary:**

My concern is to the Roof Decks, and the potential of noisy party decks facing our private open space, bedrooms, and living spaces, irrespective of the privacy screen height.

These decks need to be deleted.

Noise has not been substantially contained within each dwelling and noise from any communal or private open space areas has not been limited.

**Landscaping**

The NBC Landscape Referral response confirms that the Landscape Plan is not to NBC standards.

The Officer has confirmed that some trees are planted potentially within the Tenacity Viewing Corridor from my property. This is unacceptable.

I strongly object to the concept that this landscape outcome is left to a future Certifier to resolve. This matter needs to be completely resolved prior to any determination of the DA.

The Applicant must engage a Registered Landscape Architect to consider these very important issues.

The Landscape Architect must be required to provide a 3D model to identify maximum envelope of landscaping to protect Tenacity Water Views from my property and other amenity issues to other neighbours whilst mitigating the built form and providing better privacy.

The Landscape Architect must locate taller trees outside of the Tenacity Viewing Corridor.

Taller shrubs are to be considered to the immediate south of each Dwelling to better screen each dwelling potential.

Maximise the landscape content, with no neighbour amenity loss.

Submit 3D Model in the Amended Plans so that this detailed consideration can be assessed by Council and all neighbours.

## **Statement of Environment Effects Rebuttal**

There are numerous non-factual matters stated within the Applicant's SEE.

The SEE does not meet NBC standards for completeness.

The SEE has failed to identify any environmental planning ground, unique or otherwise, that justifies the contravention of non-compliance to outcomes and controls.

The SEE fails to address the major non-compliances within PLEP

Clause 1.2 Aims of Plan

The SEE fails to address the major non-compliances of PDCP:

C1.3 View Sharing

C1.5 Visual Privacy

C1.6 Acoustic Privacy

Landscaping

The SEE fails to consider the poor amenity outcomes particularly from view loss.

The SEE cannot be relied upon.

### **NSW LEC Planning Principles**

I bring to the attention of Council numerous **NSW LEC Planning Principles** that have relevance to this DA.

In **Tenacity**, [**Tenacity Consulting v Warringah Council 2004**], NSW LEC considered Views. Tenacity suggest that Council should consider:

*“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.”*

#### **Commentary:**

The development breaches multiple planning controls and is unreasonable.

The impact on views arises as a result of non-compliance with one or more planning controls, and the severe to devastating impact is considered unreasonable.

In **Meriton**, [**Meriton v Sydney City Council 2004**], NSW LEC considered Privacy. Meriton suggest that Council should consider:

*“When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.”*

#### **Commentary:**

The freedom of neighbour’s property from being overlooked simply has not been properly and fully considered.

In **Davies**, [**Davies v Penrith City Council 2013**], NSW LEC considered General Impact. Davies suggest that Council should consider:

*“Would it require the loss of reasonable development potential to avoid the impact?”*

*Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?*

*Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?"*

**Commentary:**

The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal.

In **Veloshin, [Veloshin v Randwick Council 2007]**, NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

*"Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified."*

**Commentary:**

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

## **Proposed Conditions of Consent to any Approval**

I ask Council to impose the following conditions to any consent.

I ask that Council request that the Applicant submit Amended Plans to resolve these matters in full, prior to determination.

### **Massing Envelope Reductions**

[These conditions would preferably all be dealt with under resubmission of Amended Plans. I present them for Council's consideration]

1. Roofs not to exceed RL 106.60, at alignment with existing dwelling ridge line, and slope down from that location in alignment with the viewing height and corridor slope from neighbours' viewpoints at RL 106.28 Balcony to 8 Ebor, so as to maintain water view
2. Delete Roof Top Decks
3. Glazing facing south towards 8 Ebor private decks and the bushfire hazard to be significantly reduced in size, and to have full height and full width privacy screens, and BAL FZ bush fire shutters
4. Remove existing Leighton Greens Trees: #16/3 & #18. These trees are considered spite trees and fall within NBC Exempt Tree Species List and the Biosecurity Act 2015. These trees can be removed without consent.
5. Mitigate the bulk, by screening each dwelling to the south by a range of low-lying shrubs, medium-high shrubs to a maximum RL 106 height.
6. Delete all trees with a mature height greater than RL 106, that are within Tenacity View Loss corridor.

Height Poles to be erected to assess view loss, once these amended plans submitted.

Reason:

- View Loss
- Privacy
- New Trees in Tenacity Viewing Corridor
- Spite Tree Removal

## Conclusion

The proposed development does not satisfy the relevant objectives of the LEP and the relevant outcomes and controls contained in the DCP as they are reasonably applied to an application proposing a new dwelling.

The outcome is a building that causes poor amenity outcomes including view loss and other concerns due to non-compliance to multiple residential outcomes and controls.

The development does not satisfy the objectives of the standard and will present poor residential amenity consequences.

The identified non-compliances have not been appropriately justified having regard to the associated objectives, outcomes and controls.

The subject site is of considerable size, and there is no reason, unique or otherwise, why a fully compliant solution cannot be designed on the site, to avoid amenity loss.

The identified non-compliances to outcomes and controls have not been appropriately justified having regard to the associated objectives.

Having given due consideration to the relevant considerations pursuant to 4.15 of the Environmental Planning & Assessment Act 1979 (as amended) it has not been demonstrated that the proposed development is appropriate for approval.

This application results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

In consideration of the proposal and the merit consideration of the development, the proposal is not considered to be consistent with the objectives, outcomes and controls of the DCP and objectives, aims, outcomes and controls of the LEP.

The resultant development is not considered to be an appropriate outcome for the site as it fails the balance between the development of the site and the retention of significant natural features and the maintenance of a reasonable level of amenity for adjoining properties.

The proposed development does not satisfy the appropriate outcomes and controls.

The processes and assessments have not been satisfactorily addressed.

The DA scheme submitted requires to be amended, and I ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.



If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, then I ask Council to either heavily condition any approval, or simply issue a refusal.

I expect that the final determination will be carried out by the LPP, due to the numerous excessive non-compliances to outcomes and controls, if not refused earlier.

I request these matters be closely considered in the assessment of the proposed development.

I expect that on such a large site, the Applicant should be charged by Council to deliver a totally compliant scheme to LEP and DCP outcomes and controls.

There is no excuse that neighbours amenity must suffer due to non-compliance to the controls.

I contend that the Development Application is not in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, MLEP and MDCP and other relevant policies.

I contend that the Development Application should be refused for the following reasons:

- A. The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that it does not meet Clause 1.2 of PLEP which contains the **Aims of the Plan**, namely
- (a) to promote development in Pittwater that is economically, environmentally and socially sustainable,
  - (b) to ensure development is consistent with the desired character of Pittwater's localities,
  - (g) to protect and enhance Pittwater's natural environment and recreation areas,
  - (i) to minimise risks to the community in areas subject to environmental hazards including climate change,
  - (j) to protect and promote the health and well-being of current and future residents of Pittwater.
- B. The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that it does not meet the objectives of the **E4**

C. The proposal is contrary to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that it does not satisfy PDCP:

C1.3 View Sharing

C1.5 Visual Privacy

C1.6 Acoustic Privacy

D. The proposal will have a detrimental impact on both the natural and built environments pursuant to **Section 4.15(1)(b)** of the *Environmental Planning and Assessment Act 1979*.

E. The site is not suitable for the proposal pursuant to **Section 4.15(1)(c)** of the *Environmental Planning and Assessment Act 1979*.

F. The proposal is not in the public interest pursuant to **Section 4.15(1)(e)** of the *Environmental Planning and Assessment Act 1979*.

For the reasons set out above the Development Application should be refused by Council.

As previously stated, Council must consider that based on the lack of any proper Tenacity Assessment or consideration of maintaining view sharing from my property , of not submitting any privacy assessment, and presenting landscaping plans not in accordance with NBC controls and not by a registered landscape architect, including planting large trees in Tenacity Viewing corridors, other major concerns to other immediate neighbours left unaddressed, and other incorrect information, to reject the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.

I will welcome the opportunity to further expand on any of the issues above once templates and height poles are erected on a much reduced and more properly considered design.

Yours faithfully,

David Plank

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