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**Sent:** 27/01/2022 4:35:38 PM

**Subject:** Objection to Da2021-2257, 75 The Corso and 42 North Steyne of behalf of residents of Pacific Waves 9-15 Central Avenue Manly

**Attachments:** KN56402 Letter of objection to DA2021-2257 on behalf of residents in the Pacific Waves building 27.01.22..pdf;

Attention Mr Maxwell Duncan

Please acknowledge receipt of attached objection to DA2021/2257. Kerry Nash

# KN PLANNING PTY LIMITED

Ref: KN564/02

27 January 2022

General Manager  
Northern Beaches Council  
PO Box 82  
MANLY NSW 1655

**Attention: Mr Maxwell Duncan**

Dear Mr Duncan

**Re: Development Application No DA2021/2257  
42 North Steyne and 75 The Corso Manly  
Objection to proposed development**

KN Planning Pty Limited has been engaged by 13 owners of apartments at Pacific Waves, 9-15 Central Avenue Manly to prepare a submission of objection in respect to the proposed development embodied in Development Application DA2021/2257 on land at 42 North Steyne and 75 The Corso Manly. A list of the owners is attached.

The location of the Pacific Waves building relative to the proposed development site is indicated on the Plan of Survey at *Figure 1*.

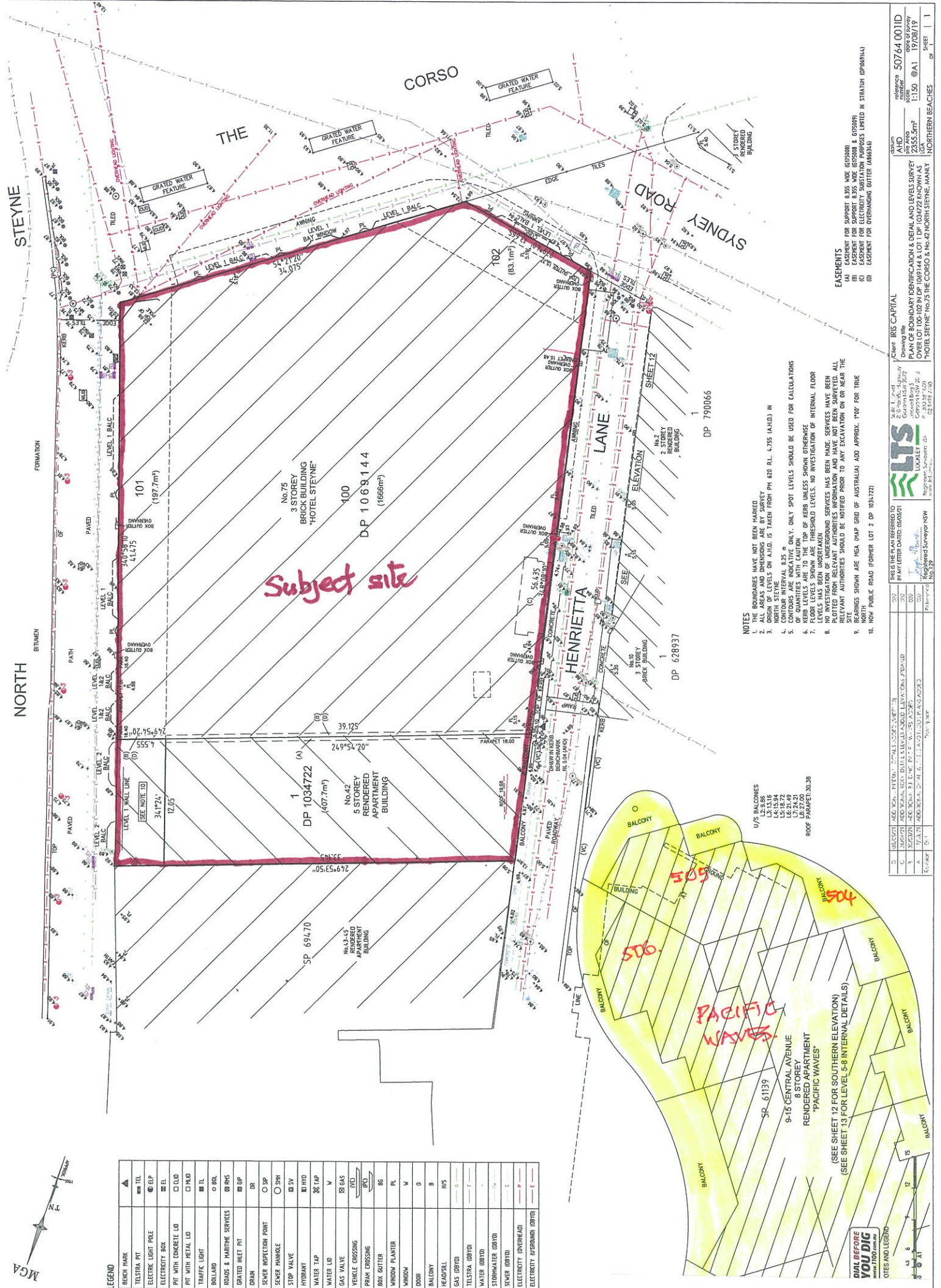
The primary concerns arising from the proposed development are:-

1. Unacceptable view impacts;
2. Excessive building height and floor space ratio non-compliances;
3. Potential adverse heritage impacts
4. Other matters of concern.

**1. Unacceptable view impacts**

A View Impact Analysis has been lodged with the development application. The View Impact Assessment images are based on the following premises, as stated in the report, namely:

- *Studies have been undertaken at the south-eastern end of 9-15 Central Avenue and includes Levels 3-8*
- *The floor level has been surveyed in each case and is taken from the underside of each balcony*
- *The camera view level is positioned at 1.8 metres from the underside of the balcony slab, which is 200mm in depth, thus providing a viewing height of 1.6m which is a standard eye height in a standing position*
- *The potentially affected views are in an easterly and south-easterly direction*
- *Each of the images shows the existing and proposed situation for comparative purposes*
- *All internal views are assumed to be from a habitable room.*



LEGEND	
BENCH MARK	▲
TELSTRA PIT	■ TEL
ELECTRIC LIGHT POLE	● ELP
ELECTRICITY BOX	■ EL
PIT WITH CONCRETE LID	□ CLD
PIT WITH METAL LID	□ MLD
TRAFFIC LIGHT	■ TL
BOLLARD	○ BOL
ROADS & MARITIME SERVICES	■ RMS
GRADED INLET PIT	■ BIP
DRAIN	DR
SEWER INSPECTION POINT	○ SIP
SEWER MANHOLE	○ SH
STOP VALVE	■ SV
HYDRANT	■ HYD
WATER TAP	■ WTAP
WATER LID	■ W
GAS VALVE	■ GAS
VEHICLE CROSSING	■ VCO
PRISM CROSSING	■ PC
BOX CUTTER	■ BC
WINDOW PLANTER	■ PL
WINDOW	■ W
DOOR	■ D
BALCONY	■ B
HEADSILL	■ HS
GAS (DBYT)	■ G
TELSTRA (DBYT)	■ T
WATER (DBYT)	■ W
STORMWATER (DBYT)	■ S
SEWER (DBYT)	■ S
ELECTRICITY (OVERHEAD)	■ P
ELECTRICITY (UNDERGROUND) (DBYT)	■ E

FIGURE 1.

The View Sharing Assessment Report concludes in the following terms:

*"Of the affected apartments at the southern end of the adjoining building, only one apartment could be said to be affected above minor status, with the majority of views impacted being of a negligible nature. In many cases, there is an improvement over the existing situation, due to the removal of existing plant and equipment that proliferates the existing view corridor. The design proposed establishes a more cohesive appearance to the waterway thus providing a greater level of visual consistency and appreciation of the waterway, headland and land-water interface.*

*The most affected apartment, located on Level 5 (Location 5), while experiencing some level of view loss, will also achieve an increased level of view. On balance these improvements result in a lesser degree of overall impact over the existing situation that would not be materially improved by a more skillful, or compliant design, particularly given the existing built form. On this basis, the application is acceptable in relation to the principles of view sharing."*

However, the View Impact Study/View Sharing Assessment conclusions are constrained by the fact that no inspection was undertaken from within potential affected apartments.

Accordingly, as detailed below, the assessment of potential view impacts arising from the proposed development have been significantly understated for apartments on the fourth and fifth levels of the Pacific Waves building.

The author has undertaken an inspection of six (6) apartments in the Pacific Waves building to assess likely view impacts based on the information available in the development application and in accordance with the view sharing principles set out in Part 3.4.3 of the Manly DCP 2013. The photographs provided hereunder were taken at an eye height of 1630mm.

The New South Wales Land and Environment Court has established a planning principle involving a four step process to assist in the assessment of view loss impacts through *Tenacity Consulting v. Warringah Council* [2004] NSWLEC 140, namely:-

*"The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. 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, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured."*

Response:

The proposal impacts on views currently enjoyed from the following apartments within the Pacific Waves building, namely:

*Apartment 405A* – bushland views of North Head, Shelly Headland and Norfolk Pines.

*Apartment 504* – Tasman Sea, Norfolk Pines along Manly Beach, Shelly Beach including land-water interface, Shelly Headland and bushland of North Head.

*Apartment 505* – Tasman Sea, Shelly Beach, including land-water interface, Shelly Headland and bushland of North Head.

*Apartment 506* – view of Manly Beach/Tasman Sea including land-water interface over 46, 47 and 48 North Steyne; Shelly Beach, including land-water interface, bushland on North Head.

*Apartment 605 – Manly Beach, including land-water interface, Tasman Sea, Shelly Beach, including land -water interface and bushland on North Head.*

*Apartment 606 – Manly Beach, including land-water interface, Tasman Sea, Shelly Beach, including land -water interface and bushland on North Head.*

The location of the nominated apartments within Pacific Waves building are detailed on plans at *Figure 2*.

The water and bushland views are iconic and whole views.

*"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."*

Response:

The views detailed above are enjoyed from a sitting and standing position from internal and external living areas. The photographs provided below were taken in a standing position.

*Apartment 405A – views are from the living room (Photograph 1) and balcony (Photographs 2 and 3).*

*Apartment 504 – view from balcony (Photograph 4).*

*Apartment 505 – views from entry to apartment (Photograph 5), living room (Photograph 6), kitchen (Photographs 7 and 8), balcony 1 off living room (Photographs 9 and 10) and balcony 2 off bedroom (Photographs 11 and 12).*

*Apartment 506 – balcony (northern end) (Photograph 13), balcony (Photograph 14) and living room.*

*Apartment 605 – balcony (Photograph 15), living room (Photograph 16) and kitchen.*

*Apartment 606 – balcony (Photograph 17), living room and kitchen.*

*"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."*

Response:

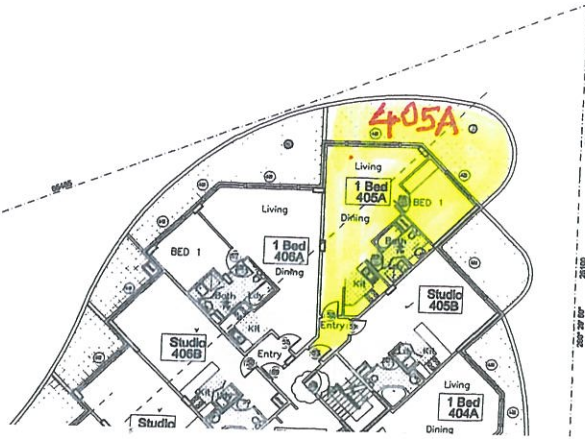
The impact of the proposed development on the views currently enjoyed by the owners and occupants of the nominated apartments are assessed in the following terms:

*Apartment 405A – loss of 70% of bushland on North Head from balcony (Photograph A) and 80% from living room (Photograph B) – impact devastating.*

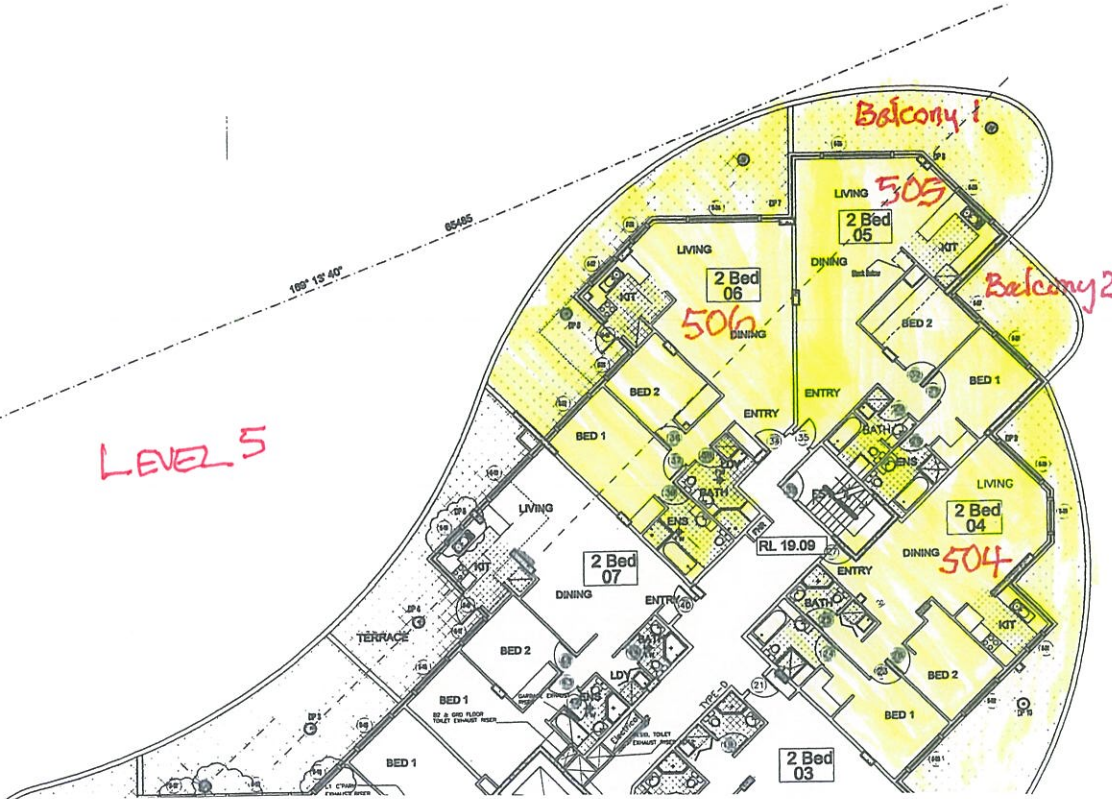
*Apartment 504 – 100% loss of Tasman Sea (Photograph C); Shelly Beach and North Head retained – impact severe.*



LEVEL 4



LEVEL 5



LEVEL 6.

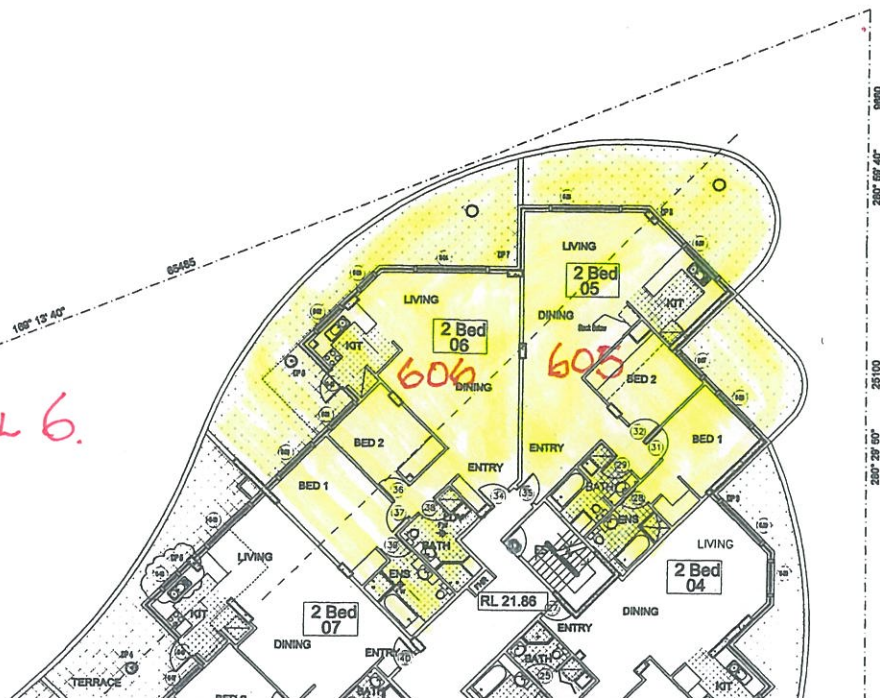


FIGURE 2.



Photograph 1: Apartment 405A, view from living room - standing

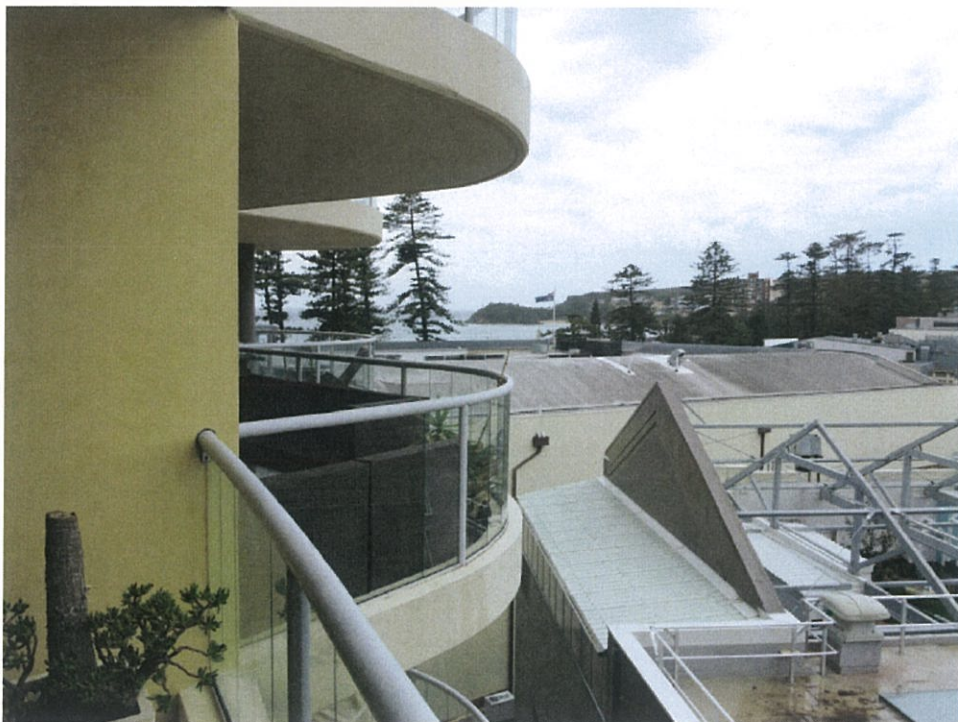


Photograph 2: Apartment 405A, balcony





Photograph 3: Apartment 405A, view of North Head bushland from balcony - standing



Photograph 4: Apartment 504, view from balcony -standing





Photograph 5: Apartment 505, view from entry to apartment - standing



Photograph 6: Apartment 505, view from living room -standing



Photograph 7: Apartment 505, view from kitchen bench -standing



Photograph 8: Apartment 505, view from kitchen sink





Photograph 9: Apartment 505, Balcony 1 off living room

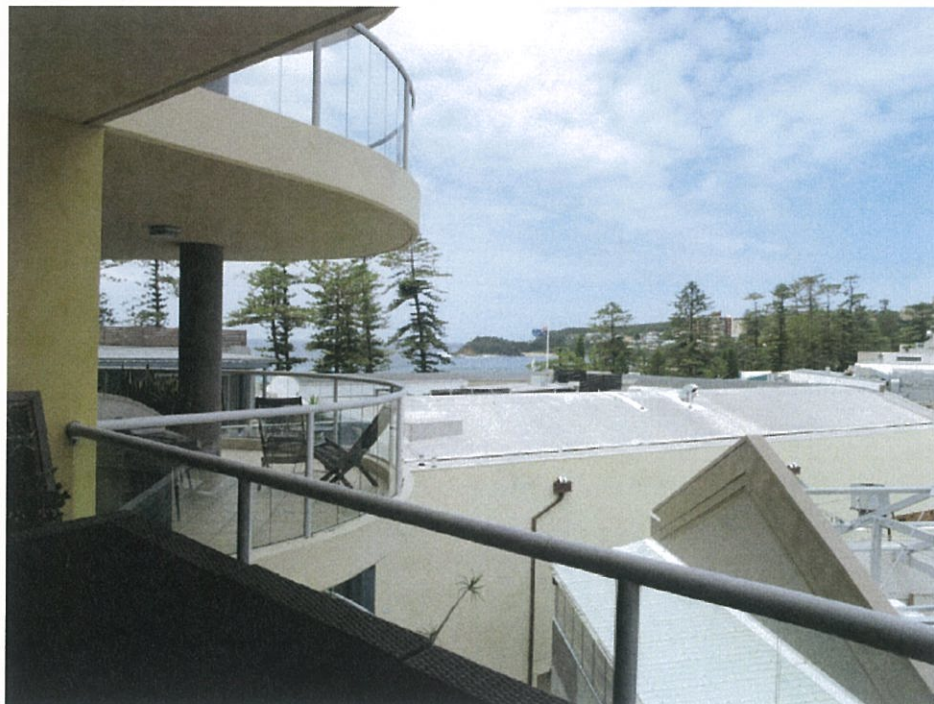


Photograph 10: Apartment 505, view from Balcony 1 – standing





Photograph 11: Apartment 505, Balcony 2 off bedroom



Photograph 12: Apartment 505, view from Balcony 2 – standing

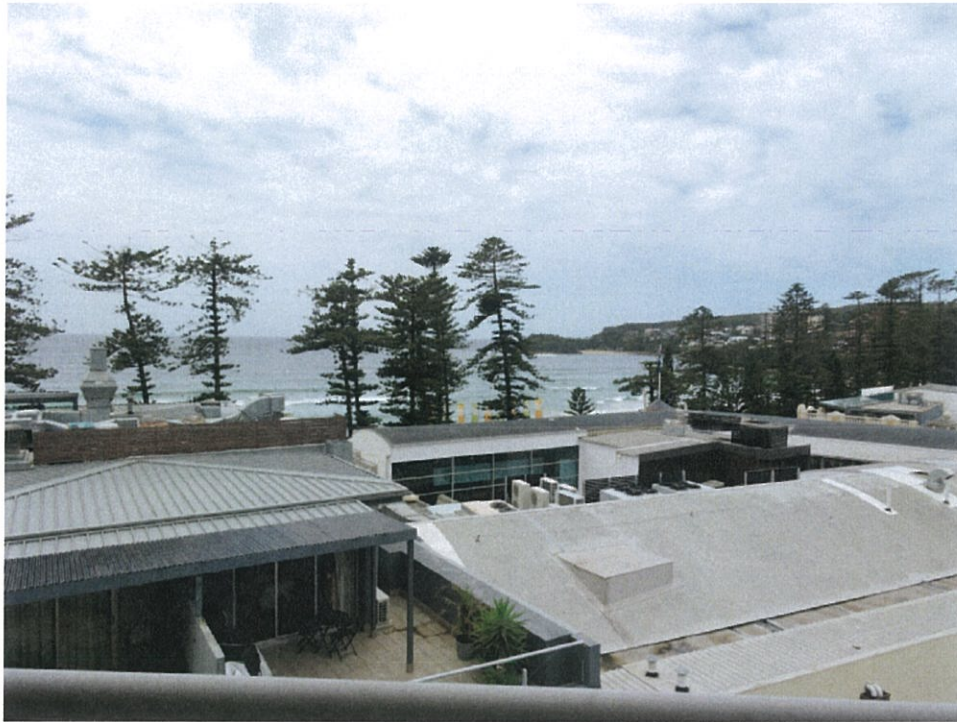


Photograph 13: Apartment 506, view from northern end of balcony over 46, 47 and 48 North Steyne -standing



Photograph 14: Apartment 506, view from balcony looking south-east – standing



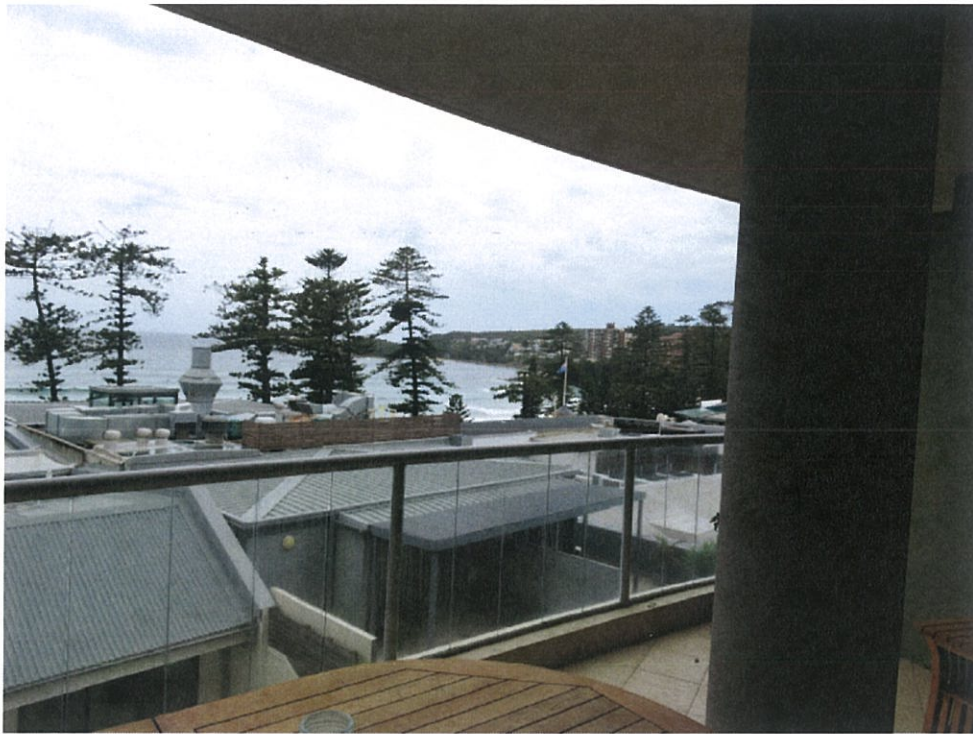


Photograph15: Apartment 605, view from balcony looking south-east – standing

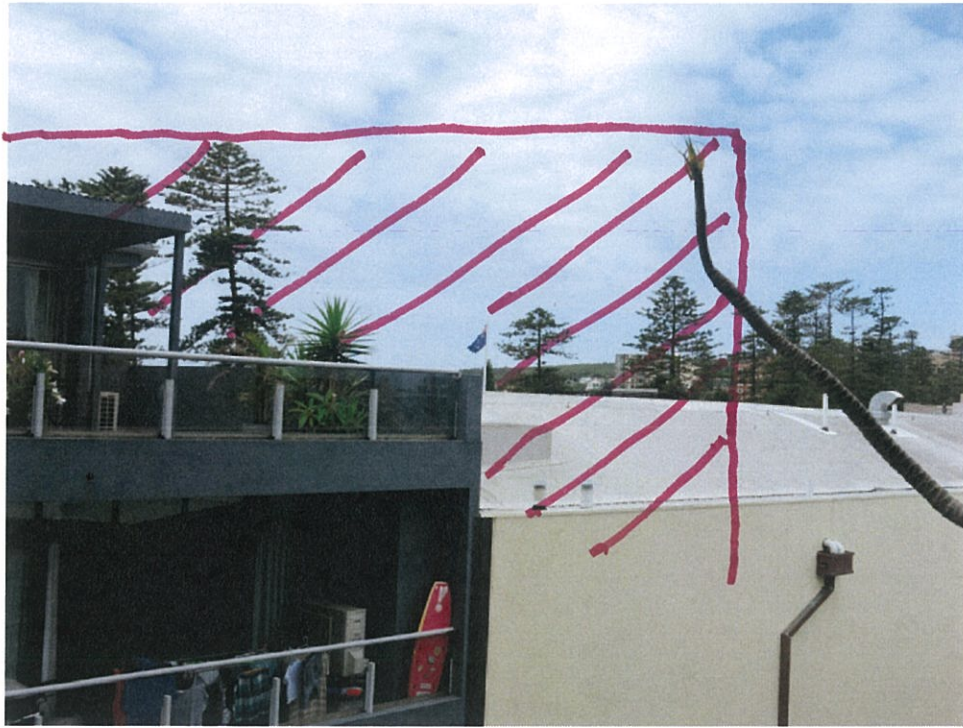


Photograph 16: Apartment 605, view from living room – standing





Photograph 17: Apartment 606, view from balcony looking south-east – standing



Photograph A: Apartment 405A, estimate of view loss from balcony -standing



Photograph B: Apartment 405A, estimate of view loss from living room – standing

*Apartment 505* – from Balcony 1 - 100% loss of Tasman Sea/Shelly Beach, including land-water interface and 50% loss of bushland on North Head with horizon glimpse of Tasman Sea looking east over proposed building retained (*Photograph D*); from Balcony 2 – 100% of Tasman Sea and bushland north of Shelly Beach, including land-water interface, view of Shelly Beach and bushland on North Head retained (*Photograph E*); Kitchen – 80% loss of Tasman Sea, except for distant horizon view and 100% loss of Shelly Beach, including land-water interface and 80% of bushland on North Head retained (*Photograph F*); Apartment entry and living/dining room – 100% of Tasman Sea and Shelly Beach, including land-water interface with only distant horizon view of Tasman Sea retained, 60% of bushland on North Head retained (*Photograph G*) – impact devastating as the orientation and layout of the apartment is to the unobstructed views of Tasman Sea and Shelly Beach and bushland of Shelly Headland and North Head from almost every room in the apartment, including as you enter the apartment.

*Apartment 506* – the view from the northern end of the balcony to Manly Beach over 46, 47 and 48 North Steyne not impacted by proposed development; view from balcony (south-east) towards Shelly Beach and land-water interface 100% loss (*Photograph H*) – impact moderate to severe given retained view to Manly Beach/Tasman Sea over 46-48 North Steyne and horizon view of Tasman Sea over subject site.

*Apartment 605* – given totality of views of Manly Beach, Shelly Beach and Tasman Sea available from balcony and from within apartment the impact of the proposed development is negligible.

*Apartment 606* – given totality of views of Manly Beach, Shelly Beach and Tasman Sea available from balcony and from within apartment the impact of the proposed development is negligible.

*"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 skillful 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."*

**Response:**

The view loss impacts detailed above are directly related to the proposal's non-compliance with the building height development standard under Clause 4.3 and the floor space ratio development standard under Clause 4.4 of the Manly LEP 2013.

The extent of non-compliance is substantial as detailed in the Applicant's Clause 4.6 submissions, including:

- In respect to the building height –

*"For that part of the site where a 10m building height applies, the maximum building height is generally 12 m but for a higher section which is set back from the front boundary of the site by 5m and reaches a maximum height of 15.15m; the remainder of the site, where the 12 metre height limit applies, the maximum building height is 15.15m"*

- In respect to floor space ratio –

*"The gross floor area of the proposal exceeds the development standards on the following portions of the site:*





Photograph C: Apartment 504, estimate of view loss from balcony – standing



Photograph D: Apartment 505, Balcony 1 estimate of view loss – standing



Photograph E: Apartment 505, Balcony 2 estimate of view loss - standing



Photograph F: Apartment 505, Kitchen estimate of view loss – standing





Photograph G: Apartment 505, Living Room estimate of view loss – standing



Photograph H: Apartment 506, Balcony estimate of view loss looking south-east – standing



- Site B, where the permitted FSR is 2.5:1; the proposed FSR is 3:1
- Site B, where the permitted FSR is 3.0:1; the proposed FSR is 4.63:1
- Site C & D, where the permitted FSR is 2.5:1, the proposed FSR is 2.9:1
- Site C & D, where the permitted FST is 3.0:1; the proposed FSR is 3.82:1

In addition to these substantial non-compliances, the demolition of part of the heritage listed building and redevelopment to its non-complying height on both the Henrietta Lane and North Steyne frontages will directly block the views of Tasman Sea, Shelly Beach, including land-water interface and bushland on North Head to the south-east from Apartments 405A, 504, 505 and 506, Pacific Waves.

Furthermore, for the reasons detailed in (2) below it is considered that the justification for the non-compliance with the building height and FSR development standards are not well founded and should be refused by Council.

Given the scale of the view loss impacts detailed above, it is considered that the non-compliance with the development standards would be considered unreasonable in the context of the *Tenacity principles*, as a development, compliant with the building height and floor space ratio standards, would significantly resolve the adverse view impacts on the abovementioned apartments.

Also relevant to any view loss/maintenance of views considerations are the objectives and controls under Part 3.4.3 of the Manly DCP 2013, namely:

*Objective 1: To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

*Objective 2: To minimize disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, **ocean**, **bushland**, open space and **recognized landmarks** or buildings from both private property and public places (including roads and footpaths).*

*Objective 3: To minimize loss of views, including accumulated view loss 'view creep' whilst recognizing development may take place in accordance with the other provisions of this Plan".*

The proposal fails to satisfy Objectives 1, 2 and 3 above for the reasons detailed above.

Objective 3 is relevant in the context of 'view creep', particularly for Apartment 505, in respect to the determination of the Land & Environment Court in *Barecall Pty Ltd v Manly Council in proceedings 10571 of 2006* in which Commissioner Hussey, as paragraph 16 of his judgement stated:

*"16 As one of the main elements of concern, is the intrusion of the proposed units into the view corridors from neighbouring units, I have assessed this from Mr Kler's property ( then owner of Apartment 505) which is likely to be most affected. I am satisfied that the proposed works will marginally increase the eastern views to Manly Beach and the ocean, at the same time as improving the outlook from this unit. Mr Kler acknowledged this improvement, subject to stringent conditions of consent being imposed to maintain this outlook. Accordingly, conditions of consent have been imposed to limit height and type of landscaping at the new units"*

Unfortunately, as evidenced by the photographs from Apartments 505 and 506 the views east over 42 North Steyne are blocked by a plethora of screens, plant and mechanical ventilation exhausts. A poor outcome given the so-called stringent conditions imposed by the Court.

## 2. Excessive building height and floor space ratio non-compliance

As detailed in (1) above the extent of non-compliances with the building height and floor space ratio development standards applying to the sites are substantial.

The Clause 4.6 submissions lodged with the development application are flawed and are not well founded.

In respect to the clause 4.6 submission on building height the proposal clearly fails to satisfy the objectives of the building height standard, in particular objective 4.3(1)(c)(ii) which states:

*(c) to minimize disruption to the following:*

*(ii) views from nearby residential development to public spaces (including the harbour and foreshores)*

For the reasons detailed in (1) above, view loss impacts on Apartments 405A, 504, 505, and 506 in the Pacific Waves building clearly does not achieve the outcome sought under objective 4.3(1)(c)(ii) of the Manly LEP 2013 and accordingly the clause 4.6 submission fails to satisfy clause 4.6(3)(a) in the context of *Wehbe's "first way"*.

Accordingly, the clause 4.6 submission justifying the non-compliance with the building height standard fails and should not be supported by Council.

The Applicants clause 4.6(4) submission is also considered deficient in the context of the Court of Appeal decision in *RebelMH Neutral Pty Limited v North Sydney Council [2019] NSWCA 130*.

In respect to the clause 4.6 submission on floor space ratio the proposal clearly fails to satisfy the objectives of the floor space ratio standard, in particular clause 4.4(1)(a)-(d), namely:

*(1) The objectives of this clause are as follows—*

*(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

*(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

*(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

*(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,"*

For the reasons detailed in (1) above the exceedance of the floor space ratio standards over the site contribute to the bulk of the building and in conjunction with the non-compliant building height elements, the loss of view corridors to the south-east - Tasman Sea, Shelly Beach and North Head – for Apartments 405A, 504, 505 and 506 in the Pacific Waves building.

Such impacts are compounded by the demolition of part of the heritage building at 75 The Corso.

In the circumstances, the objectives of the floor space ratio standard are not satisfied and in the context of *Wehbe's "first way"* the submission fails clause 4.6(3)(a) of the Manly LEP 2013.

Accordingly, the clause 4.6 submission justifying the non-compliance with the floor space ratio standard fails and should not be supported by Council.

### **3. Potential adverse heritage impacts**

As indicated on the extract from the Heritage Map to the Manly LEP 2013 at *Figure 3* the whole of the site known as 75 The Corso is identified as a heritage item, being the The Steyne Hotel. The proposal is to demolish the building known as the 1910 building which provides important functional roles for the operation of the hotel and the demolition and subsequent excavation of a basement level may potentially introduce significant risk considerations for the remainder of the heritage building.

Furthermore, the retention of the heritage item (the 1910 building) will enable the existing view corridor over The Steyne Hotel to be maintained for Apartments 405A, 504, 505 and 506 Pacific Waves as detailed in (1) above.

### **4. Other matters of concern**

There are a number of matters of concern relating to the proposal that don't specifically relate to impacts on residents of Pacific Waves but are relevant to the assessment of the development application, namely:

- Basement Car spaces 13, 15 and 16 do not have sufficient width given that they are located adjacent to walls and structure.
- The demolition of the 1910 building portion of the Heritage building will remove existing toilets and amenities from the existing hotel. The development application clearly states that it proposes to continue the operation of the hotel during demolition, excavation and construction of the new development. How this can be achieved without seriously impacting on the safe operation of the hotel in accordance with the NCC and relevant licensing Regulations is a matter for further information from the Applicant given the potential risks involved.
- Any Construction Management Plan for the development, if approved, needs to recognize the specific constraints relating to the use and role of Henrietta Lane during the demolition and construction periods, including weight limits and ensuring uninterrupted access to the residents' car park for the Pacific Waves building which has ingress and egress off Henrietta Lane.

### **Summary**

The proposed development will have a devastating impact on the quality of the amenity of Apartments 405A, 504, 505 and 506 Pacific Waves building through the loss of views too the Tasman Sea, Shelly Beach and North Head bushland.

The substantial non-compliances of the height and floor space ratio standards reflect an overdevelopment of the site and clearly not within the townscape and heritage values envisaged by Council through the Manly LEP and DCP.

The Clause 4.6 submissions are flawed and not well founded and should not be supported by Council.

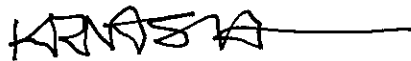




FIGURE 3

Such amenity impacts arising from the proposed development are unacceptable and would justify the refusal of the development application by Northern Beaches Council.

Yours faithfully

A handwritten signature in black ink, appearing to read 'K. Nash', followed by a horizontal line.

**Kerry Nash**  
**Director**

c.c. Ms Samantha Stow

**LIST OF OWNERS REPRESENTED IN SUBMISSION OF OBJECTION TO  
DA2021/2257**

1. Mr & Mrs Stow – 505
2. Mr I Kaye – 506 & 606
3. Mrs M Haynes – 605
4. Mr & Mrs Glading – 507
5. Mr & Mrs de Morentin – 508
6. Mr & Mrs Dybec – 509
7. Royfam & Co Pty Limited – 504
8. Mr N Hogarth – 407A
9. Mr & Mrs Westacott - 804, 405A & 306B
10. Mr & Mrs Stone - 704
11. A Chui Wa Chiu & Chun Man Chiu - 705
12. Mr G Brown – 806
13. Mr P Keen -707