
From: Peter Gorian
Sent: 18/10/2022 12:12:54 PM
To: Council Northernbeaches Mailbox
Subject: TRIMMED: Objection to DA MOD2022/0471 attention Adam Susko
Attachments: MOD 2022-0471 Comments to Council - Gorians.pdf;

Please see attachment

Would also like to talk with Adam about this development to gain an understanding of the councils position and our options re view impacts of the development at 1955 Pittwater Road DP 373531.

Our contact number is [REDACTED]

thanks

Peter Gorian & Toni Capel
60 Alexandra Crescent
Bayview, NSW 2104

From: Peter Gorian & Toni Capel (owners 60 Alexandra Crescent, Bayview, NSW 2104)

To: Adam Susko, Northern Beaches Council, 1 Park Street, Mona Vale, NSW 2103

Date: 8/Oct/2022

Subject: Development DA 2019/0154 – 1955 Pittwater Road, Bayview

Mod 2022/0471 (29/9/2022)

Thank you for the notification concerning the latest DA development modification and opportunity to comment.

In reviewing documentation, we believe the council should revisit the entire development. The proposed development clearly violates many restrictions imposed by the Land and Environment Court settlement (see attachment-1 red highlighted sections). We would also request that the development respects and strictly complies with all building restrictions (in particular maximum heights) as well as privacy and view policies.

1. We note the incremental expansion of the development via a number of DA modifications of which MOD 2022/0471 is the latest and probably not the last. The resulting build is significantly larger than the original proposal. The original proposal was rejected by the Council and subsequently approved (within restrictions) by the Land and Environment Court. However, due to these modifications the bulk and scale of the development the Court originally blessed has changed substantially. In effect, the current proposal is a 4-story building construction with one level thinly camouflaged as an 'uninhabited' storage floor.

The 'storage' areas are very significant and have not been included in the FSR assessment. The latest rendition of the development clearly indicates the potential future intended habitable use of these storage areas. The original design showed louvres for 'ventilation' of the substantial car parking area so a 3-story development. The latest development rendition has increased floor heights. The added front storage area now includes street facing windows. Clearly, the rear storage areas can be adopted for rumpus and cinema purposes or later modified to include their own windows and entrances. The prior DA storage modification documents included a commitment there would be NO external impacts and the space used purely for storage. Please see Appendix-5 for a comparison of the originally approved rendition and the current proposal. These clearly show the increased build and size of the development and intended habitable use of the storage areas. This should also place into question any previous approvals given for the 'storage' floor.

2. The new effective roof heights and plans for the terrace/garden have also substantially increased; generating significant view and privacy issues for our property, which is located directly behind/above the development. Similar concerns also exist for adjacent properties as well as shading concerns.

We are not familiar with building codes/restrictions on large roof top terraces and 'roof services'. I appreciate council confirming that any relevant codes have and will continue to be strictly enforced. (Also, see item 5.) There remains a significant question regarding why a roof top terraces of this magnitude has been permitted in an R2 zone. The latest development rendition clearly indicates an expansion of the terrace area with landscaping. While not shown there will likely also be extensive 'shade' sails or umbrellas added. In effect an entertainment floor on top of the main building structure clearly visible to adjoining properties and the public. The likely additions for shade will again result in a further erosion of the views from our property as well as the concerns raised in item 5. We also note that the high-level entrance area to the terrace has also been extended further impacting views and violating height limits.

Photographs of likely view impacts (significant iconic water view including that of Lion Island and the councils protected green shoreline areas) from our property are included in the appendices. To further help access the view impact the developer should provide appropriate drawings clearly showing all heights (as the council has already requested) and erect new height poles. Council is invited to visit our property to help make their own assessment.

We note there also appears to be key plan elevation drawings not provided with the 8 m height boundary limits specified in the court approval documents – see appendix-4. Previous drawings also included the roofline of the adjacent properties to enable the building height, bulk and view impacts to be better assessed. We note these have been ‘omitted’ from the latest set of drawings provided.

3. Environmental Impact of the development continues to expand. Our property was designated E4 zoning on the grounds of visibility impacts of the location. The LOWER properties next to Pittwater Road were designated R2 presumably because they were lower and not visible. The incremental increases in the height, bulk and visibility of this property is a public concern and completely out of character with this environmentally sensitive area.

4. Sewerage/Drainage/Seepage/Safety Issues: As mentioned in the 2019 submission we believe a natural spring is located near the NW corner of the block. In this submission, we warned that seepage could be a significant problem and should be taken into account in the building design. We have heard that the adjacent property, which involved a much smaller excavation, had significant problems in this respect. The state of the building site since the excavation work commenced would appear to indicate these concerns were valid. There has clearly been continuing water buildup and run off from the site. We note excavation reinforcement was added over a year ago. We now learn that the developer’s geotechnical engineer has safety concerns. It is unclear to us whether geotechnical and structural engineering adequately reflects the now obvious hydraulic water load problems of the site. It is also unclear who is responsible for ensuring public and property safety? Is an independent evaluation warranted?

5. Obtrusive Lighting and Sound Impacts: While not indicated on the plans there will likely be roof top terrace lighting and sound systems. The terrace has a prominent location, which can easily result in obtrusive lighting and noise impacts for neighboring properties and the public.

6. One of the reasons for the substantial increase in overall height was to improve internal ceiling heights and to accommodate roof top ‘service’ requirements. From the information provided it would appear the DA modification is in effect seeking approval to expand the overall building height from 8.0m to effectively 11.5m. There are a number of cost effective viable alternatives. Removing the added ‘storage’ floor on the southern (left) side along with the roof top terrace will enable accommodation of all services within the existing building height restrictions. These changes would also result in a significant reduction in the bulk and cost of the development. The garage level can be reduced further with just a little more excavation. The original hydraulic ramp lift design will eliminate the need for a substantial lift service tower. Condenser units relocated off the roof area. In short, there is no reason to violate any height envelopes or impact views.

7. Modification appears to be in violation of Councils Development Control Plan C1.25. See appendix – concerns highlighted in red. The DCP calls for service equipment such as air conditioning units and lift overruns to be clearly shown/included at the time of DA original lodgment. The original design presumably located this equipment elsewhere.

8. We request a thorough review of the agreement approved by the land and environment court to ensure all non-compliances are clearly identified and communicated. In reviewing documentation there would appear to be violations of the agreement in the current design and modified design proposal? Particularly the 8m max height boundary restriction; the 2-storey restriction; 1-storey above existing ground level within the rear 25% setback of the site; 0.449:1 space ratio (reflecting clearly habitable storage areas); size and bulk; retention of most existing trees on the site(?) and restrictions on the flat buildings (including terraces?). See attachment-1.

9. The DA calls for new fencing to provide safety and security but appears to lack details in these respects. Please clarify. There is also no clear information on the roof materials/colors to be used.

10. The modification calls for the unconditional acceptance of all plans. We would hope the onus is on the developer to ensure the plans comply with the consents given – in particular heights. Is it normal practice

to transfer that onus to the council and or affected residences to verify the development complies? We would hope note.

11. Verifications. Considering the history of creeping design changes, we would also recommend there is a thorough and timely building inspection plan to ensure there is no need for any 'accidental' minor variations during the building process. We would also appreciate an independent assessment of the 'natural' boundary levels be made by the council or ourselves. The current plans rely on the assessment made by the developer's surveyors. Again, in reviewing documentation the basis for the later survey appears questionable.

Thank you again for the opportunity to comment.

Yours Sincerely

Peter Gorian & Toni Capel

A solid black rectangular box used to redact the signature of Peter Gorian & Toni Capel.

Attachment-1: Consent Judgement



Land and Environment Court

New South Wales

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|--------------------------|--|
| Case Name: | Westaway v Northern Beaches Council |
| Medium Neutral Citation: | [2020] NSWLEC 1326 |
| Hearing Date(s): | Conciliation conference on 15 June 2020 |
| Date of Orders: | 28 July 2020 |
| Decision Date: | 28 July 2020 |
| Jurisdiction: | Class 1 |
| Before: | O'Neill C |
| Decision: | <p>The orders of the Court are:</p> <p>(1) The Applicant is granted leave to amend the application to rely on the amended plans referred to in Condition 1 of the conditions of consent at Annexure A.</p> <p>(2) The Applicant is to pay the Respondent's costs thrown away in the sum of \$17,500.00 within 28 days of the date of these orders, pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979.</p> <p>(3) The appeal is upheld.</p> <p>(4) Development Application No. 2019/0154 for demolition of existing structures and construction of a multi-dwelling development for Seniors Living, at 1955 Pittwater Road, Bayview, is approved, subject to the conditions of consent at Annexure A.</p> |
| Catchwords: | DEVELOPMENT APPLICATION – conciliation conference – agreement between the parties |
| Legislation Cited: | <p>Environmental Planning and Assessment Act 1979</p> <p>Land and Environment Court Act 1979</p> <p>Pittwater Local Environmental Plan 2014</p> <p>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</p> |

| | |
|--------------------------|--|
| Category: | Principal judgment |
| Parties: | Ian Westaway (Applicant) Jan Westaway (Second Applicant) Northern Beaches Council (Respondent) |
| Representation: | Counsel: M Staunton (Applicant) A Gough (Solicitor) (Respondent) Solicitors: Sattler & Associates Pty Ltd (Applicant) Storey & Gough (Respondent) |
| File Number(s): | 2019/199786 |
| Publication Restriction: | No |

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal of Development Application No. 2019/0154 for demolition of existing structures and construction of a multi-dwelling development of four units and parking for housing for seniors or people with a disability (the proposal) at 1955 Pittwater Road, Bayview (the site) by Northern Beaches Council (the Council). The application is made pursuant to the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP Seniors).
- 2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which has been held on 15 June 2020. I presided over the conciliation conference.
- 3 At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties.
- 4 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision, if the parties' decision is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application.

5 There are jurisdictional prerequisites that must be satisfied before this function can be exercised, pursuant to cll 29(2) and 40 of the SEPP Seniors.

6 The site is zoned R2 Low Density Residential pursuant to Pittwater Local Environmental Plan 2014. The objectives of the zone, to which regard must be had, are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.

7 I am satisfied that the amended proposed development is compatible with the surrounding land uses, having regard to the natural environment; the services and infrastructure that are available to meet the demands arising from the proposed development; and the bulk and scale, built form and character of the proposed development.

8 **The amended proposed development retains most existing trees on the site** and includes a commitment to clear noxious and undesirable environmental weeds from the site and from within the council reserve. There are bus stops accessed via footpaths within 400m of the site and the bus stops provide access to buses travelling north and south. The scale of the amended proposed development is commensurate and compatible with the low density residential character established in the locality.

9 Clause 40 of the SEPP Seniors includes the following development standards:

40 Development standards—minimum sizes and building height

(1) **General** A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.

(2) **Site size** The size of the site must be at least 1,000 square metres.

(3) **Site frontage** The site frontage must be at least 20 metres wide measured at the building line.

(4) **Height in zones where residential flat buildings are not permitted** If the development is proposed in a residential zone where residential flat buildings are not permitted—

- (a) the height of all buildings in the proposed development must be 8 metres or less, and

Note. Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).

(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and

Note. The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

- 10 The site has an area of 1296.5sqm and a frontage of 32.64m. Residential flat buildings are not permitted in the R2 zone and the proposal has a maximum height of 8m above existing ground level. The proposal is no more than two storeys above existing ground level adjacent to boundaries and is a single storey above existing ground level within the rear 25% setback of the site.
- 11 The proposal has a floor space ratio of 0.469:1, a landscaped area of 53%; a deep soil zone exceeding 15% with a minimum dimensions of 3 min the rear setback; all dwellings will receive a minimum of 3 hours direct sunlight; each dwelling has a balcony area exceeding 10sqm accessible from the living area and which is more than 2 m in length and depth; and more than 0.75 car spaces have been provided for each bedroom.

Orders

- 12 The orders of the Court are:
 - (1) The Applicant is granted leave to amend the application to rely on the amended plans referred to in Condition 1 of the conditions of consent at Annexure A.
 - (2) The Applicant is to pay the Respondent's costs thrown away in the sum of \$17,500.00 within 28 days of the date of these orders, pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979*.
 - (3) The appeal is upheld.
 - (4) Development Application No. 2019/0154 for demolition of existing structures and construction of a multi-dwelling development for Seniors Living, at 1955 Pittwater Road, Bayview, is approved, subject to the conditions of consent at Annexure A.

Susan O'Neill

**Commissioner of the
Court**

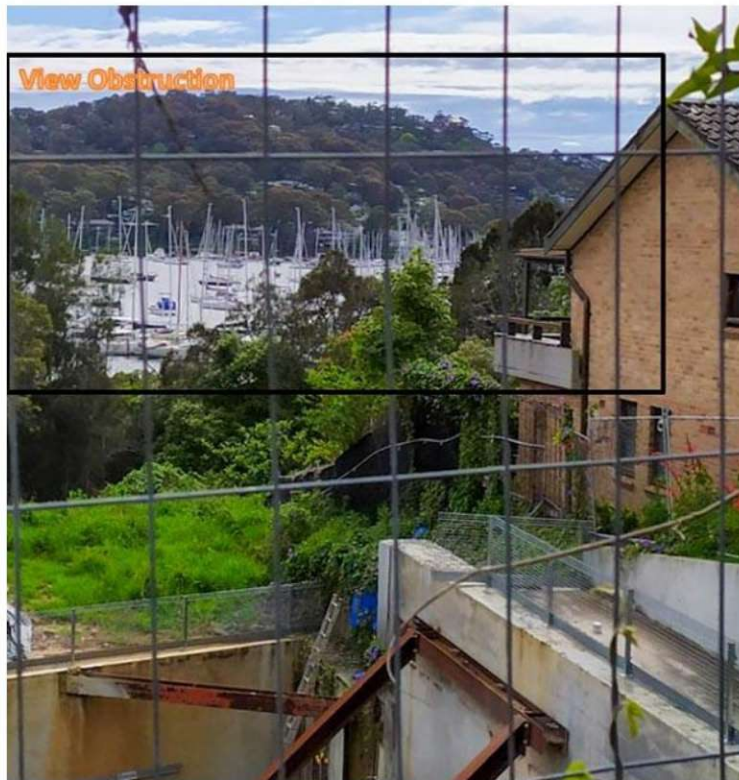
Annexure A (285841, pdf)

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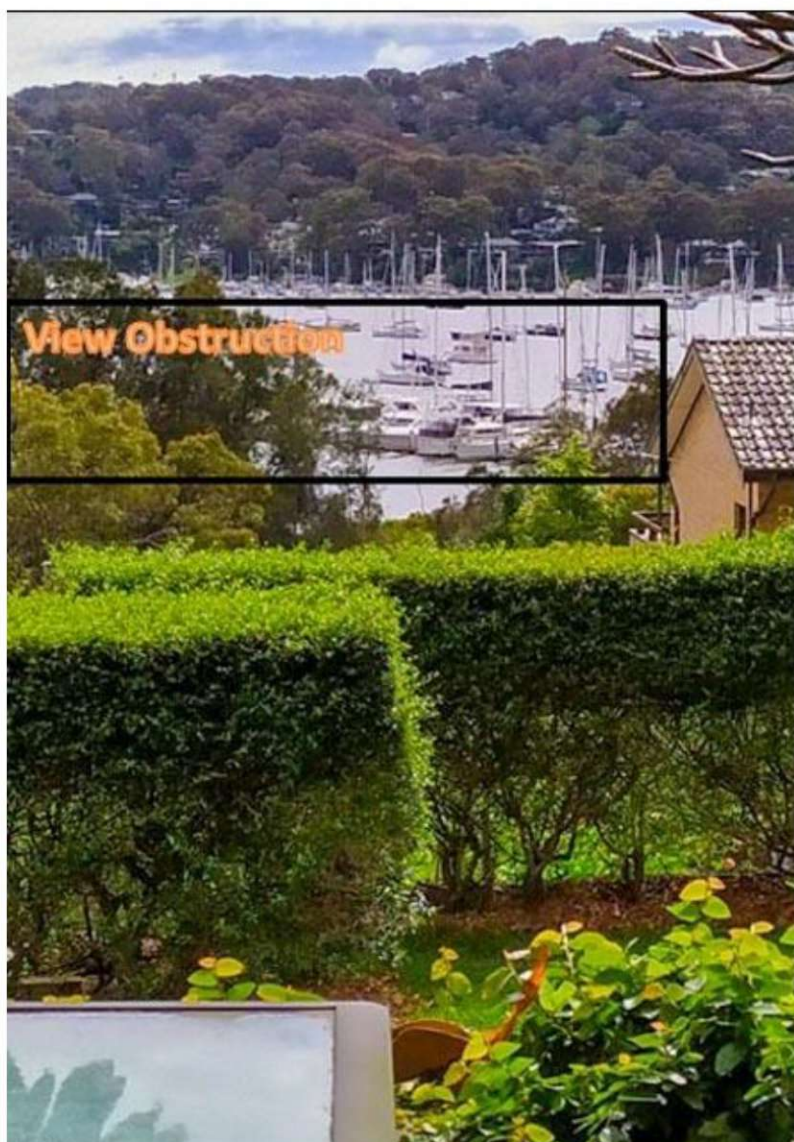
APPENDIX-1 View Impacts

Substantial. Privacy, noise and shadowing concerns

Lower Garden View & Privacy Impact – near boundary fence including view onto proposed roof top terrace and 'single storey' on rear 25% set back.



Pool Garden/Entertaining Area View & Privacy Impacts



Rumpus Lower Deck/Entertaining Area View & Privacy Impacts



Upper Floor Level View & Privacy Impacts (Living/Kitchen/Master Bedroom)



APPENDIX-2 DCP C1.25 COMPLIANCE

Areas of concern/compliance are in bold (most of it).

C1.25 Plant, Equipment Boxes and Lift Over-Run

Land to which this control applies

All Land not including the Warriewood Valley Locality

Uses to which this control applies

Attached dwelling
Boarding house
Dual occupancy (attached)
Dual occupancy (detached)
Dwelling house
Exhibition home
Group home
Hostel
Multi dwelling housing
Residential flat building
Rural worker's dwelling
Secondary dwelling
Semi-detached dwelling
Seniors housing

Outcomes

To achieve the desired future character of the Locality.

The **bulk and scale of the built form is minimised**. (En, S)

Equitable preservation of views and vistas to and/or from public/private places. (S)

To achieve reduction in visual clutter. (En, S)

The appropriate location and design of noise generating equipment.

Controls

Where provided, plant and equipment boxes, air conditioning units and lift over-runs are to **be integrated internally** into the design fabric of the built form of the building. Council does not encourage air conditioning units on the roof of residential flat buildings and multi dwelling housing. **The location of air conditioning units shall be indicated on development assessment plans for approval at the time of Development Application lodgement.**

Locate and design all noise generating equipment such as mechanical plant rooms, mechanical equipment, air conditioning units, mechanical ventilation from car parks, driveway entry shutters, garbage collection areas or similar **to protect the acoustic privacy of workers, residents and neighbours.**

Variations

Subject to achievement of the outcomes of this control, consideration may be given to the location of plant, equipment boxes and lift over-runs on the roof a building where it can be shown that there will not be a **non-compliance with Council's built form controls including building height and building envelope.**

Where located on the roof any plant, equipment boxes and lift over-runs are to be adequately screened from view from adjoining properties and the public domain.

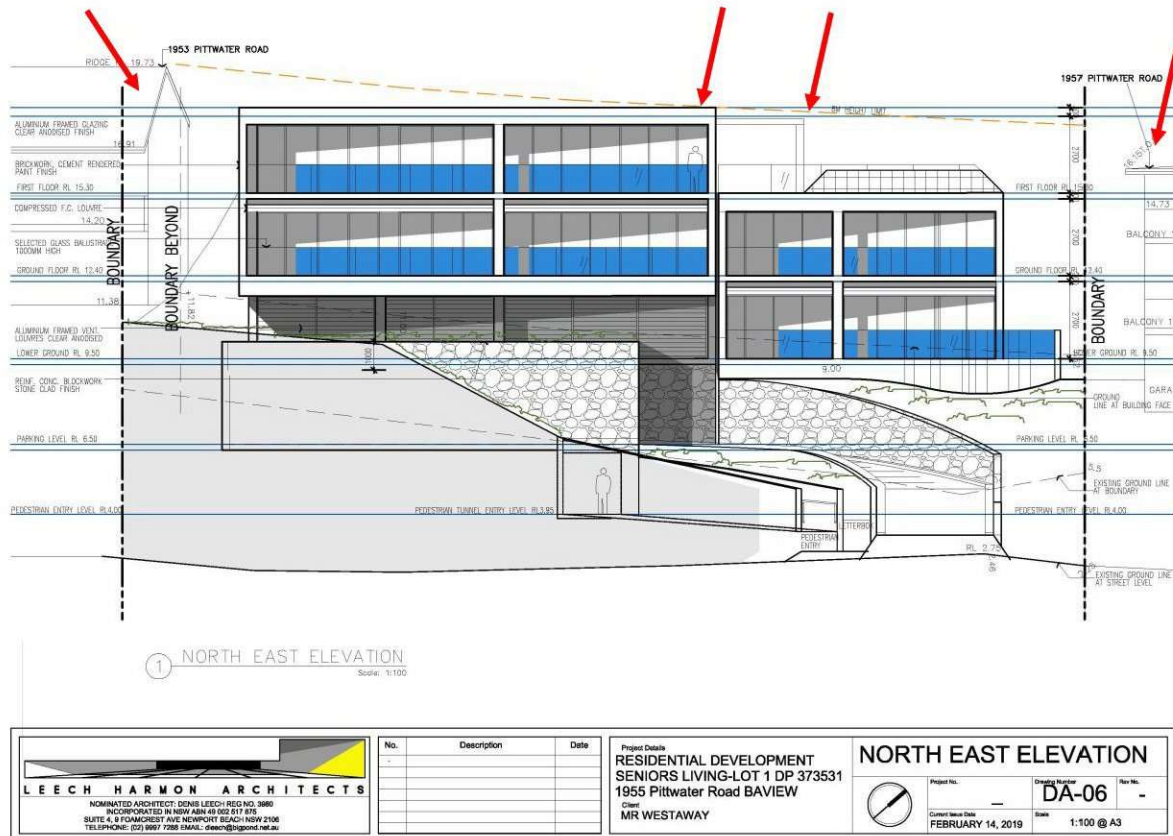
APPENDIX-3 COUNCIL FACT SHEET: VIEW SHARING COMPLIANCE

FILES.NORTHERNBEACHES.NSW.GOV.AU/SITES/DEFAULT/FILES/DA-FACT-SHEET-VIEW-SHARING.PDF

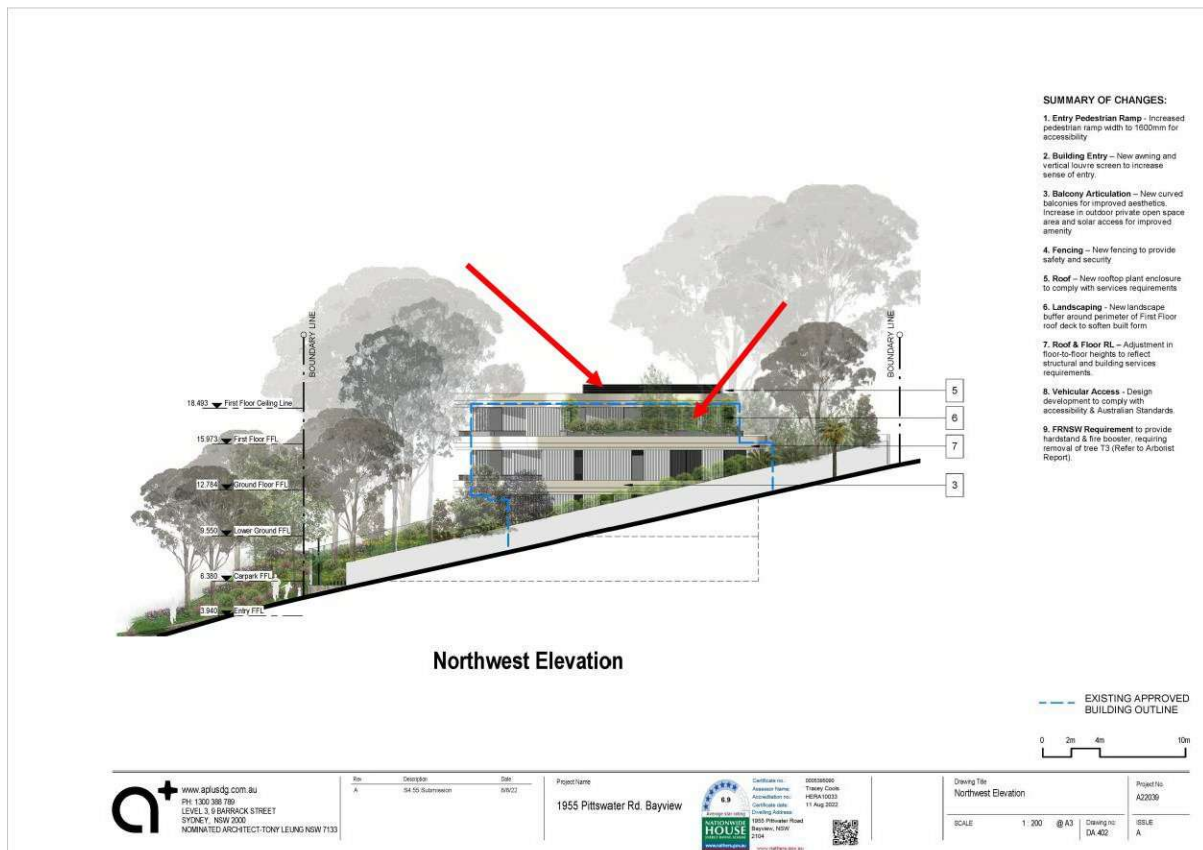
It would be appreciated if the process outlined in the council fact sheet linked above is appropriately followed. This has not taken place.

APPENDIX-4 MISSING PLAN DRAWING DETAILS.

A complete set of drawings be provided to assess the impact of the changes proposed rather than the 'selected' ones provided in the modification request. In particular, the revised NE elevation showing the 8m height limit shown on the original DA submission and the adjoining property roof lines to enable the bulk of the new proposal to be better evaluated. Should these show an issue where the developer has not been forthcoming then we would like an independent view of the plans and land survey be conducted by the council or ourselves?



NOTE – THE NW ELEVATION APPEARS TO SHOW A MAJOR NONCOMPLIANCE ON THE 8.0M HEIGHT LIMIT AT BOUNDARY. UPDATED DRAWING (INCLUDING THE HOUSES ON EITHER SIDE OF THE DEVELOPMENT) BE PROVIDED TO ENABLE BULK AND VIEW IMPACTS TO BE PROPERLY ASSESSED.



APPENDIX-5 DEVELOPMENT RENDITIONS.

Original development rendition and current proposal are shown.

Note the original louvered garage ventilation area associated with the parking area has been replaced by an additional 'uninhabited' storage floor, including a full set of front facing and side windows. All these changes appear to well outside the scope of the development originally approved by the Land and Environmental Court and that approved in the last modification request. That last modification incorporated storage areas to better utilize the additional space generated from the extensive site excavation. We did not object at that time since it was clearly stated that this was **purely an internal change and there would be NO change in the external building envelope.**



