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09 November 2020

Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
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BY EMAIL AND POST

Dear Chief Executive Officer

DEVELOPMENT APPLICATION DA2020/1289
PROPOSED DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL
11 BRUCE STREET MONA VALE

We are consultant town planners and act on behalf of Margie Lingard ('our client'), who resides at 9 Bruce Street Mona Vale ('our client's property').

PURPOSE OF THIS DOCUMENT

This document is a submission by way of objection to Development Application DA 2020/1289 (the 'development application') relation to No 11 Bruce Street Mona Vale (the 'subject property').

INTRODUCTION

The Council is currently considering a development application in respect of the subject property.

The development application seeks consent for demolition works and construction of a dwelling house including swimming pool (the 'proposed development' or 'proposal').

Our client's property is directly adjacent to, and to the south of the subject property.

As mentioned above, this submission constitutes an objection to the development application as lodged.

SITE LOCATION AND DESCRIPTION

The subject property is legally described as Lot 9 in Deposited Plan 15762 and is known as No 9 Bruce Street Mona Vale.

The subject property is some 592.1 sqm in area. It is a single parcel of land located on the eastern side of Bruce Street.

The subject property is a rectangle shaped parcel of land with a single street frontage and with vehicular access to Bruce Street.

Currently situated on the subject property is a two-storey brick dwelling house with tile roof.

The site is surrounded by residential development consisting of two or three-storey dwelling houses that mostly relate to the east-west slope of the land and have eastern aspects towards views across and towards Warriewood Beach.

Annexure 1 provides a locality plan.

Annexure 2 provides a location plan showing the spatial relationship between the subject property and our clients' property.

Annexure 3 provides a photographic palette containing a number of photos showing the site, our client's dwelling house and other surrounding properties.

We note that the property is zoned 'Environmental Living' E4 under the PLEP. See **Annexure 4** for details.

THE DEVELOPMENT PROPOSAL

The development application proposed demolition works relating to an existing modest dwelling house and the construction of a new larger dwelling house including a swimming pool. More specifically, the proposed works involve the following:

1. Demolition of the existing dwelling house, driveway and paths;

2. Removal of one existing exempt species tree, a Cotoneaster glaucophyllus;

3. Construction of a new three storey dwelling house with a garage and storage on the third and highest level;

4. Construction of a new elevated driveway and crossover with access steps within the road reserve;

5. Construction of a new plunge pool and terrace; and

6. Construction of new front and rear fences.

NATURE OF SUBMISSION

In preparing this submission we have considered the following legislation, regulations and other statutory instruments and documents:

- *Environmental Planning and Assessment Act 1979* ('EPAA');
- *Environmental Planning and Assessment Regulation 2000* ('EPAR');
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* ('BASIX');
- *State Environmental Planning Policy (Coastal Management) 2018 ('Coastal Management SEPP');*
- *Pittwater Local Environmental Plan 2011* ('PLEP'); and
- *Pittwater 21 Development Control Plan 2014* ('PDCP').

We have reviewed the development application and the various reports, plans and other documents accompanying or otherwise associated with the proposal.

We have also undertaken an inspection of our client's property and the area in which the subject property is located. During that inspection, we were able to gain appreciation of the impact of the proposed development on our client's property and the use and enjoyment by our client of her own land.

Having considered the subject property and its surrounds and the details of the development application currently before Council, it is our opinion that the proposal, in its present form, does not warrant support by the council.

As mentioned above, this submission constitutes an objection to the development application as lodged (refer to Page 2).

This submission details the various ways the proposed development lacks finesse and a reasonable consideration for the amenity of the land itself, the local environment, surrounding properties, and in particular, our client's property.

The objection is based on various grounds detailed in the following paragraphs.

OVERSHADOWING

Given the expansion of building form and scale that is proposed, overshadowing is a significant issue as regards this development proposal and our submission is that it has been glossed over by the applicant, both in the Statement of Environmental Effects (SEE) and the Architectural Masterplan Set.

To begin, we consider the shadow diagrams provided by the applicant to be grossly inadequate in their depiction of the real effects of shadowing on our client's property. Nowhere on the architectural plans is it confirmed that the diagram shows the shadows created during the June 21st Winter Solstice and the use of brightly coloured outlines, in our opinion, does not effectively show the extent of a *shadow*, which is not a one-dimensional projection. The inadequacy of the applicant's shadow diagrams is also highlighted by the fact that they have not been certified.

In light of these issues and based on our own view of the site from our client's property, we have reason to suspect that the actual extent of overshadowing upon our client's property is actually greater than that which is linearly depicted in the Masterplans.

We therefore suggest to Council that a new set of *certified* and accurate shadow diagrams depicting the shadowing upon our clients property at 9am, 12pm and 3pm of the 21st of June should be requested to permit the Council officers to make a proper assessment.

Upon reading the applicant's SEE, we note the assertion that the main private open space of our client's property would receive the minimum 3 hours of sunlight between 9am and 3pm on June 21st, however we do not understand how this assumption can be made when the shadow diagrams do not show the private open space of No 9 Bruce Street in full. Particularly as our client's property is already significantly overshadowed in the afternoons from the north by the subject property and probably from the north-west by neighbouring properties on the upper-hill side of Bruce Street. Any incremental increases (and experience suggests this will be considerable) to overshadowing upon our client's property must be considered as a major detriment to our client's own enjoyment of the dwelling house at No 9 Bruce Street.

Thus, we also recommend that Council request that amended and further detailed shadow diagrams be provided that depict the rear garden of 9 Bruce Street in full and that Council consider the major overshadowing that will occur at the winter solstice. This is one of the single main impacts that this development causes as regard our clients property however it has virtually been dismissed out of hand by the applicant. There are improvements that

can be made to the design that do not materially impact the design but at the same time provide a far better planning outcome for our clients.

We suggest the following:

- That the applicant acknowledge the extent of impact and consider lowering the entire structure to reduce the overall shadowing impact and well as impacts relating to privacy and visual character.

- Since this proposal involves a new dwelling house, the setback of the footprint from the south should be increased to 2.5m and reduced to 1.0m to the north. This would materially assist reduction of shadow impacts and we can see no reason that this cannot be done.

- Shadow diagrams showing incremental shadows should also be produced and the quality of the diagrams should be improved.

- The shadow diagrams should be certified per Council requirements.

- Shadow diagrams should confirm the date and time projected ie 21 June.

- The SEE should be amended to include additional detail justifying the approach taken by the designer in arriving at the solution proposed.

PRIVACY

When considering the impact on privacy, we refer to PDCP Section C1.5 ('Visual Privacy'). The PDCP C1.5 controls relevantly state:

- 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.

In the SEE, the applicant's state the following (refer pp.7-8):

> The louvred screen at the southern end of the proposed deck at 11 Bruce Street acts to restrict views from this deck towards the pool at 9 Bruce

> Street. This pool area is also screened by the proposed new planting as well as the existing frangipani trees on the neighbouring property which provide screening during the swimming season.

We accept this statement as regards considerations for the privacy of the open space, however we consider that the applicant has not adequately addressed the impact on privacy from the middle and upper terrace balconies of our client's property, which will be significantly reduced following the eastern extension and construction of the balcony, as currently proposed.

The balconies constitute areas of private open space and being physically proximate to one another, also create possible internal privacy issues.

In regard to the issue of privacy, we refer to the well-established general planning principle set out in *Meriton v Sydney City Council* [2004] NSWLEC 313. In that decision Roseth SC stated (at [45]-[46]):

> 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. ...
>
> ... Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.
>
> ... Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight. ...

It is clear from *Meriton v Sydney City Council* and subsequent cases in which the planning principle has been fairly consistently applied that separation rather than landscaping is the main safeguard in the protection of privacy.

As such, we recommend that the entire building footprint be shifted to the north to create setbacks of 1.0m on the northern side and 2.5m on the southern side. This action would provide a reduction in impacts as regards privacy and in terms of shadows as detailed above.

These amendments would not entirely resolve the privacy issues present but, we believe, they would provide a far better planning outcome for the protection of visual privacy both for our client and for the applicant. They would also reduce the shadowing impact upon our client's property which, as aforementioned, constitutes a serious issue in the context of this proposal.

BUILDING ENVELOPE & HEIGHT

The proposal is located in an area where an 8.5m height control applies (Area H). Refer **Annexure 5**. The development complies with this control.

Building envelope in the Warriewood Locality is addressed in PDCP under Part D14.11. The intended outcomes of this Part are as follows:

> To achieve the desired future character of the Locality.
>
> To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.
>
> To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.
>
> The bulk and scale of the built form is minimised.
>
> Equitable preservation of views and vistas to and/or from public/private places.
>
> To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.
>
> Vegetation is retained and enhanced to visually reduce the built form.

Under Part D14.11, buildings must be sited within the envelope that expands at a 45-degree angle extending from 3.5 vertical metres above the site boundary.

Excluding the eaves which, as noted by the applicant, are a 'permissible variation', there are minor encroachments to the building envelope on both the northern and southern sides of the proposed development. Most notable, the upper garage floor level and roof apex level, as depicted in the applicant's elevation plans, both exceed the building envelope control.

Should council enforce building envelope restrictions upon the south eastern corner of the proposed garage, this would not only improve the building articulation and visual impact but would also improve solar access to our client's property. As such a lowering of the building would provide a better outcome in terms of compliance and in terms of our clients amenity.

While the proposed development is consistent with the height controls under PLEP and only minimally breaches PDCP building envelope controls, the fact remains that it is a considerably bulky development. To allow other neighbours and concerned parties to better interpret the bulk and scale of the proposed development and thus gain a better understanding of the effect it may have upon the streetscape character and upon their own property

rights, we suggest that height poles be erected on the subject site to demonstrate the extent of the proposed dwelling. These height poles should be placed at the footprint perimeter and where the building achieves its greatest height.

BUILDING ARTICULATION

Now, in relation to the issue of building articulation, we refer first to Part D14.1 of PDCP, 'Character as viewed from a public place'. Some controls found within this Part read as follows:

> Buildings which front street or creekline corridors must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality. Black street frontages without windows will not be permitted.
>
> ...
>
> The bulk and scale of buildings must be minimised.
>
> Garages, carports and other parking structures including hardstand areas **must not be the dominant site feature** when viewed from a public space. Parking structures should be located behind the front building line, preferably set back further than the primary building, **and be no greater in width than** 50% of the lot frontage, or **7.5 metres**, whichever is the lesser. [our emphasis]

In our analysis of the architectural masterplans, we found the proposed development to significantly breach these controls. Specifically, the front elevation of the proposed dwelling does not have any visible windows and, in our opinion, does not have a 'presence' that is compatible with any houses in the proximate locality consequent of the boxy appearance, high front fencing and form of the raised driveway and garage (parking structures), which the Masterplan shows to be the only elements of the dwelling visible from the street. This does not provide a good planning outcome and in our view the driveway access should be lowered to provide a more organic form that follows the land contours in a more respectful manner. Of course this allows lowering of the house itself, reduction of shadows and a vast improvement in terms of streetscape appearance in the vicinity of the property.

While the applicant's SEE fails to make any justification for this, it does mention the following (refer page 9):

> The proposed development will incorporate an articulated façade fronting the street including the garage on the upper level and a courtyard terrace and master bedroom below. These are combined with landscaped screening,

> planters and a modulated front fence designed to balance the requirements for screening and privacy in the courtyard area without compromising views from the street or neighbouring properties. The dominant feature of the street elevation will be the landscaping.

Contrary to these assertions, we consider the garage and raised driveway (which we note is missing from the detailed elevations) to be far more visually dominant than 'landscaping' when viewed from the street, and we also note that the 7.83m length of the proposed garage exceeds the relevant control. We invite the reader to view the following montage from the masterplan set which shows little landscaping but a dominance of hard form materials including the driveway which seems to indicate interference with pedestrian traffic along the street. The non-compliance with landscaped area informs the treatment in the front setback area as can be send below and illustrated by the tokenistic planting proposed. The proposal is located in Area 1 under the Landscaped Area Map in the PDCP (refer **Annexure 6**).

Figure 1 – James De Soyres – Proposed Streetscape View

The applicant's SEE also makes no mention of the visual impact of the side elevation of the proposed dwelling house, which has minimal articulation and does not provide a visually appealing aspect for our clients.

We therefore suggest that an amended design with greater articulation in structure on the south side be submitted, to improve the visual impact of

the proposed dwelling from the front and side elevations and reduce impression of bulk in terms of the appearance from our clients property.

COASTAL MANAGEMENT SEPP

The coastal environment of NSW is both fragile and rich, providing essential habitats, natural wonders and encapsulating a key lifestyle element of local culture.

We do not find that the outline provided in the applicant's SEE adequately justifies or explains how the coastal environment area will be protected during the construction of the proposed development, nor how the effects of the everyday activities of the residents of 11 Bruce Street upon the coastal area will be managed following construction. We do not find adequate evidence of the applicant's consideration for the protections found under the Coastal Management SEPP for the coastal zone in their SEE or in their Waste Management Report.

We therefore respectfully submit that Council enforce this Policy and recommend that a statement and amended plan be prepared by the applicant to address this significant oversight.

PUBLIC SAFETY

As briefly aforementioned, the elevations and impressions of the proposed development fail to depict the raised driveway that will extend from the road and above the public nature strip to the upper floor garage.

Aside from the dominating visual impact it will have from the street, this element of the proposal is also unsafe and therefore not in the public interest.

Currently the proposed driveway is raised above the nature strip to provide access to the garage and, as such and as mentioned above, both obstructs public access and creates a trip hazard to users of this public space. The same can be said of the stairs to provide pedestrian access (see Figure 1 above). The proposal well serves the amenity for occupants of the proposed dwelling house but fails to protect the public interest or have any regard for the importance of function of the public domain.

We therefore suggest that the placement and height of the driveway be modified, lowering the driveway and floor level to create a more organic and less dominating structure that also improves compliance with front setback encroachments. This would significantly reduce visual impacts to north and south and would result in lowering the height of the building overall, improving the visual impact of the proposed dwelling house in streetscape terms.

With respect, we submit that if Council does not enforce these changes, the proposal risks the safety of pedestrians in a public space and would create an reprehensible infringement to the public interest.

CONCLUSION

In assessing the impact of a development proposal upon a neighbouring property, what was said by Roseth SC in *Pafburn v North Sydney Council* [2005] NSWLEC 444 (16 August 2005), at [19]-[24], is, in our respectful submission, extremely helpful:

> 19 Several judgments of this Court have dealt with the principles to be applied to the assessment of impacts on neighbouring properties. *Tenacity Consulting v Warringah* [2004] NSWLEC 140 dealt with the assessment of views loss; *Parsonage v Ku-ring-gai Council* [2004] NSWLEC 347 dealt with the assessment of overshadowing; while *Meriton v Sydney City Council* [2004] NSWLEC 313 and *Super Studio v Waverley Council* [2004] NSWLEC 91 dealt with the assessment of overlooking.
>
> 20 Five common themes run through the above principles. The first theme is that change in impact may be as important as the magnitude of impact. ...
>
> 21 The second theme is that in assessing an impact, one should balance the magnitude of the impact with the necessity and reasonableness of the proposal that creates it. ...
>
> 22 The third theme is that in assessing an impact one should take into consideration the vulnerability of the property receiving the impact. ...
>
> 23 The fourth theme is that the skill with which a proposal has been designed is relevant to the assessments of its impacts. Even a small impact should be avoided if a more skilful design can reduce or eliminate it.
>
> 24 The fifth theme is that an impact that arises from a proposal that fails to comply with planning controls is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.

In the case of the proposed development before Council now:

- the magnitude of the impact upon privacy, solar access and visual character would be considerable;
- the proposal demonstrates disregard for the legitimate expectations and entitlements of both our client and the public to safety, the

preservation of local character and to the enjoyment of simple property rights;

- our client's enjoyment of their property will be adversely impacted as a direct result of the proposal through the overshadowing of their private open space, reduced privacy and greatly reduced visual amenity;

- the lack of building articulation and other attractive design elements in the development proposal will derogate from the aesthetic character of the locality; and

- the proposal fails to comply with a number of important planning controls and fails to provide sufficient shadow diagrams or justifications for departures from the applicable controls.

In short, in light of all of the above, our client has, as Roseth SC pointed out in *Pafburn*, a legitimate expectation that the development to take place on the subject property 'will comply with the planning regime'.

We respectfully submit that, having regard to the likely impacts of the proposal upon our client's enjoyment of their property and the potential impacts on the public realm, the only appropriate course of action for Council as consent authority is to refuse consent to the development application in its current form or alternatively insist that the following changes to the application be made:

- preparation of a new set of certified shadow diagrams depicting the shadows created at 9am, 12pm and 3pm on the 21st of June and including the back garden of 9 Bruce Street and the extent of incremental shadows;

- amendment of architectural plans to move the entire building footprint to the north to create setbacks 1.0m on the northern side and 2.5m on the southern side, to preserve the privacy of our clients, the overwhelming feeling of bulk to the side boundary and to reduce overshadowing;

- amendment of architectural plans with greater articulation of the southern facade and reduced bulk of the upper floor garage;

- amendment of architectural plans to lower the entire building, driveway and floor level, to create a more organic and less dominant appearance; and

We request that height poles be erected.

Only when these amendments have been undertaken, should Council consider the granting of development consent to the proposal.

If the amendments as suggested are made, our client may consider withdrawal of this and any further objection.

Our client reserves all of her rights and entitlements.

Yours faithfully,
TURNBULL PLANNING INTERNATIONAL PTY LIMITED

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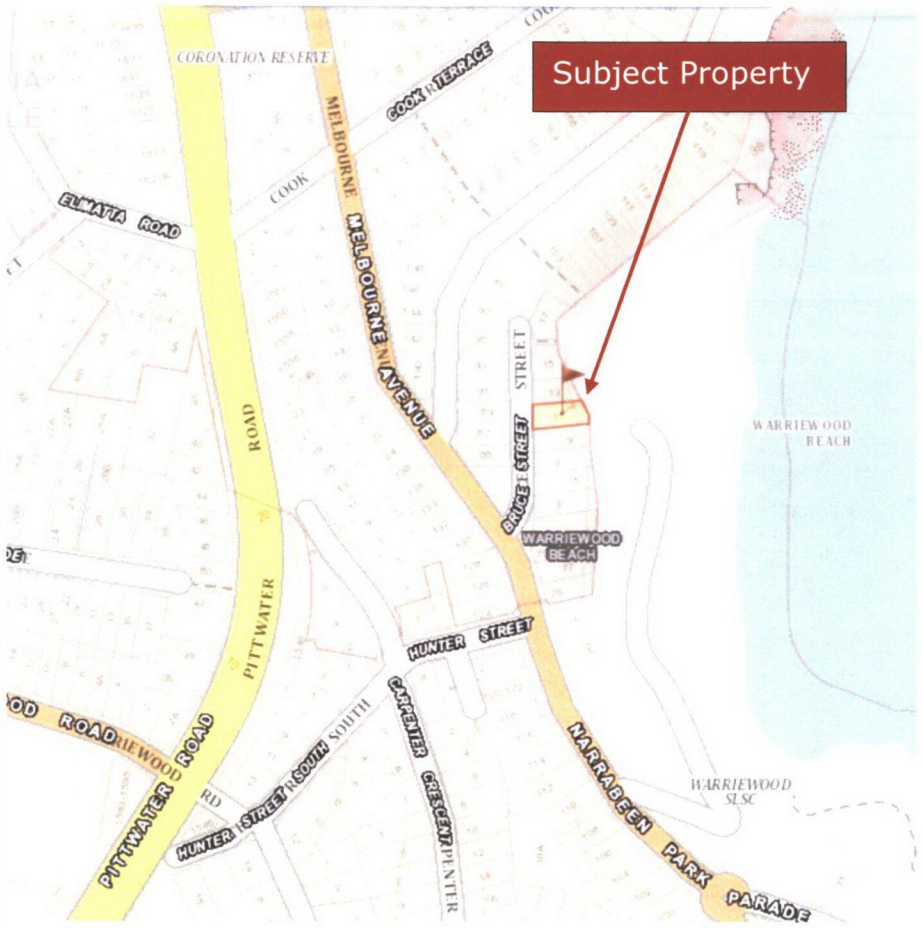
ANNEXURE 1



LOCALITY PLAN
EXTRACT FROM SIX MAPS

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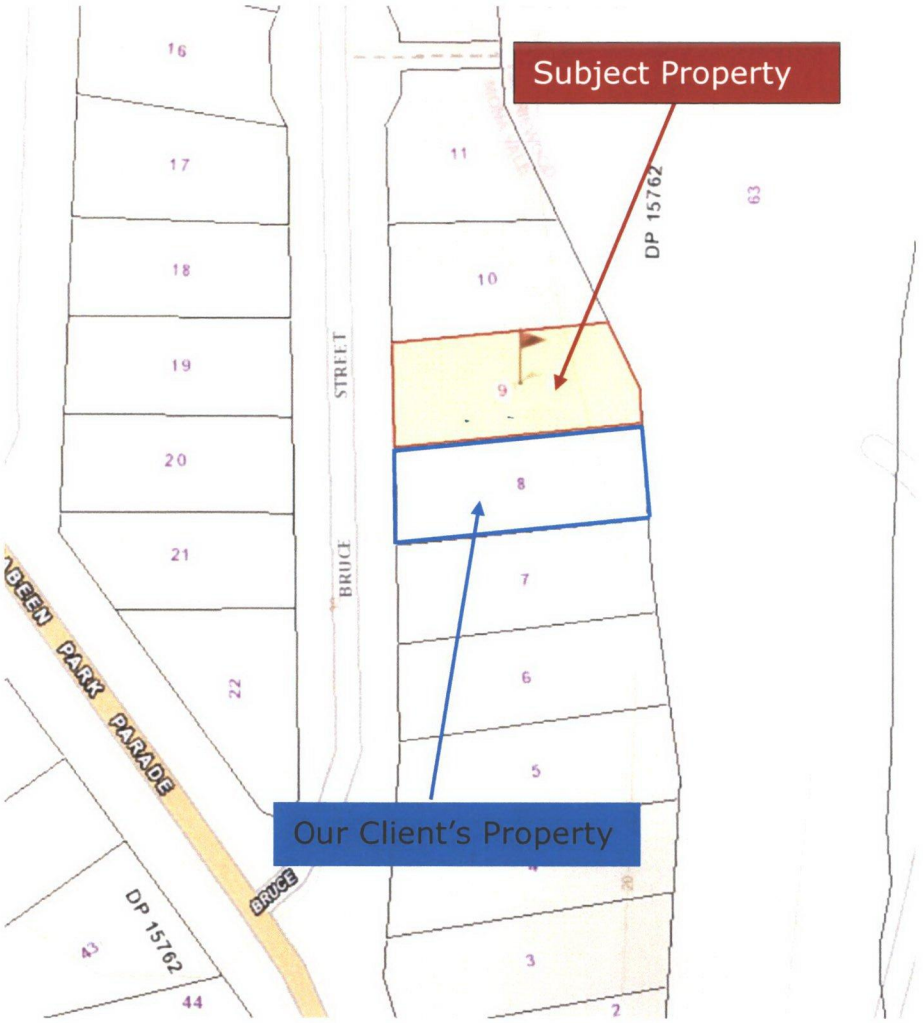
TOWN PLANNERS Turnbull PLANNING INTERNATIONAL PTY LTD	October 2020 Ref: lin.bru9m	Annexure 1
	DRAWN: TG	11 Bruce Street Mona Vale

ANNEXURE 2



PLAN SHOWING RELATIONSHIP BETWEEN SUBJECT AND OUR CLIENTS PROPERTY

EXTRACT FROM SIX MAPS

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TOWN PLANNERS Turnbull	October 2020 Ref: lin.bru9m	Annexure 2
	DRAWN: TG	11 Bruce Street Mona Vale

ANNEXURE 3

Photograph 1 – Front of existing dwelling on subject land parcel

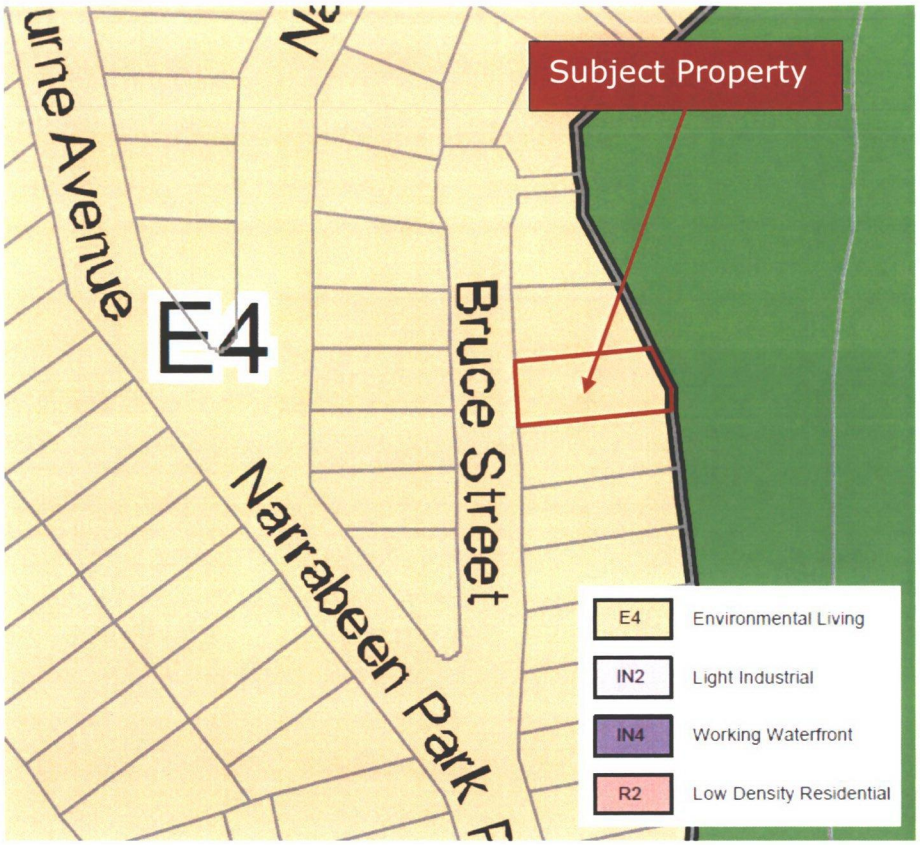
Photograph 2 – Rear of existing dwelling on subject land parcel

ANNEXURE 3 (CONT)

Photograph 3 – Front yard of subject showing green space in setback area

Photograph 4 – Private open space on ocean side of our clients property

ANNEXURE 4



LAND ZONING MAP
EXTRACT FROM PLEP

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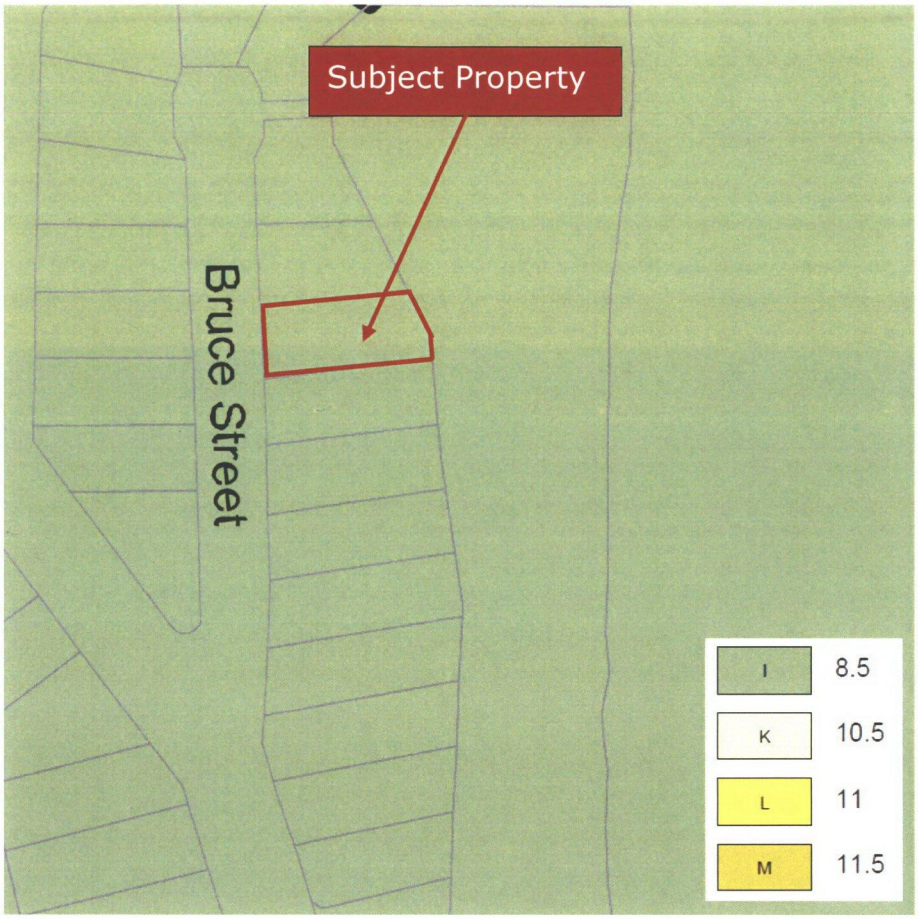
TOWN PLANNERS Turnbull	October 2020 Ref: lin.bru9m	Annexure 4
	DRAWN: TG	11 Bruce Street Mona Vale

ANNEXURE 5



BUILDING HEIGHT MAP
EXTRACT FROM PLEP

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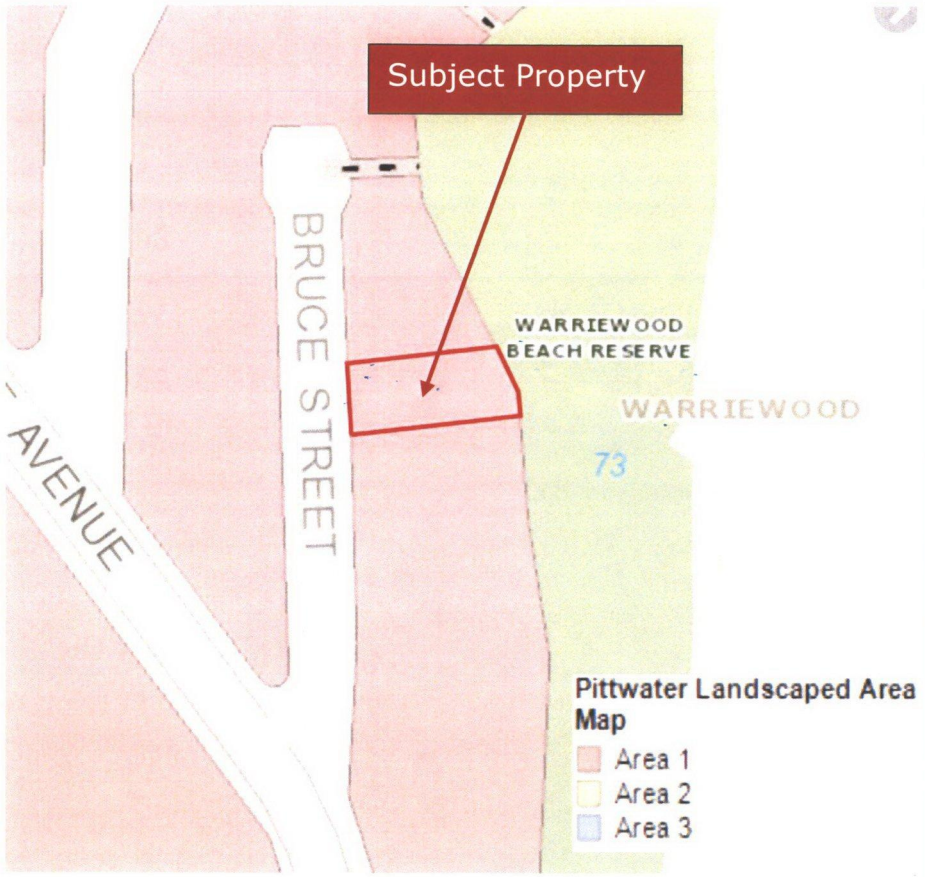
Turnbull TOWN PLANNERS	October 2020 Ref: lin.bru9m	Annexure 5
	DRAWN: TG	11 Bruce Street Mona Vale

ANNEXURE 6



LANDSCAPED AREA MAP
EXTRACT FROM PDCP

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Turnbull TOWN PLANNERS	October 2020 Ref: lin.bru9m	Annexure 6
	DRAWN: TG	11 Bruce Street Mona Vale