
From: Paul Mosley
Sent: 2/03/2025 2:57:16 PM
To: Council Northernbeaches Mailbox
Subject: TRIMMED: Fwd: Modification of Development Consent DA2023/1780. Application MOD2025/0063. Attention: ANAIIS
Attachments: DA20231780. Modification Application MOD20250063.doc; Submission to Council.PDF;

Attention ANAIIS

Hello again Anaiis.

Subsequent to the email I sent to you a few days ago, I have further reviewed the subject Modification Application to Development Consent DA2023/1780. (Modification Application number MOD2025/0063). Another area of significant concern to me (which I initially failed to notice) is the **"minor repitching of the roof over the dining room area, resulting in a slight increase in the short east-west portion of the roof over the dining area.."**

Whereas the increase in the maximum height of the roof from RL43.26 to RL43.49 is not unacceptable, the Application fails to mention that the repitching of the roof also results in an increase in the height of the dwelling along a section of the southern facade which adjoins my north facing garden. Council approved plans provide for the dwelling on the southern facade to step down from TG: 41.34 to TG: 40.89 in the vicinity of the eastern extremity of the ensuite to Bedroom 1. (Approved Drawing # 105 and Drawing # 204). The proposed modification will see the height of the dwelling along the southern facade continue at height TG: 41.34 for a further 5.34 metres westward. The height of this section of the southern facade does not therefore fit within the required building envelope and will result in increased overshadowing of my garden during the winter months. The height of this section of the southern facade was the subject of objection by myself when the original application was submitted . Subsequent to that objection, amended plans were submitted and approved by Council. I have attached for you the submission to Council prepared by Anna Williams at Blackwattle Planning detailing my objection to the height of the southern facade (see section 2. "Overshadowing"). The **"minor repitching of the roof.."** not only sees the overall height of the roof increase but, more importantly, also increases the dwelling height along a section of the southern facade which results in it not fitting within the required building envelope. This is not an insignificant or "minor" modification - it has a real impact, which has previously been detailed, and also results in non-compliance. I therefore request that the application with respect to the repitching of the roof over the dining area be refused.
I can be contacted anytime by return email.

Kind Regards,
Paul Mosley.

----- Forwarded message -----

From: **Paul Mosley** <[REDACTED]>
Date: Wed, Feb 26, 2025 at 2:28 PM
Subject: **Modification of Development Consent DA2023/1780. Application MOD2025/0063.** Attention: ANAIIS
To: <council@northernbeaches.nsw.gov.au>

Attention: ANAIS

Hello Anais,

I understand that you are assigned to consider the subject Modification Application. I am the owner of the property adjacent to the subject property.

Please find the attached letter detailing my concerns regarding one of the many proposed Modifications to the Development Consent.

Kind regards,

Paul Mosley.

87A Marine Parade,
Avalon Beach,
NSW 2107.

26.02.2025

The General Manager,
Northern Beaches Council,
PO Box 52
Manly, NSW 1655

Re: Section 4.55 (1a) Modification of Development Consent
DA2023/1780. Application Number MOD2025/0063

Dear Sir,

I refer to the above Application to Modify Development Consent DA2023/1780 submitted by Vaughan Milligan Development Consulting Pty. Ltd. on behalf of Ms. Jennifer Hempton and Annabelle Chapman (Architect).

The application with respect to the, “minor amendment to the Upper Ground Floor vergola” is, in parts, both factually incorrect and misleading. The application states, “the proposed modifications to the dwelling are wholly within the existing approved building footprint.” With respect to the Upper Ground Floor vergola, this is incorrect. The building footprint is being increased in an easterly direction to accommodate the increased size of the vergola.

The application further states that, “the extent of works within the foreshore area will not change in terms of the built footprint as compared to the approved building extent.” This statement is also incorrect and misleading – the increased size of the vergola to the east results in parts of it encroaching beyond the Foreshore Building Line (LEP Control).

The size and easterly projection of the Upper Ground Floor vergola was the subject of an objection by myself when the DA application was first submitted to Council. I was represented in the matter by Anna Williams at Blackwattle Planning. Subsequent to my objection, amended plans bringing the easterly projection of the vergola behind the required Foreshore Building Line were submitted and approved by Council.

The Application to Modify Development Consent, if successful, will result the Upper Ground Floor vergola once again encroaching on the Foreshore Building Line to the point where a part of it will fail to comply with the required setback. Any encroachment on the Foreshore Building Line in a development of this size, on such a generous block of land, is entirely unnecessary. It impacts adversely on, not only the amenity and views from my own property, but also on the enjoyment of those using the public reserve. It also sets a precedent which Council might find difficult to control in future Development Applications.

It is my belief that Council has already formed the same opinion as myself and ruled on the issue by requiring the original application to be modified. I therefore request that the application with respect to the Upper Ground Floor vergola be refused.

I can be contacted anytime by return email or at [REDACTED]

Yours faithfully,

Paul Mosley.

The CEO
Northern Beaches Council
council@northernbeaches.nsw.gov.au

Attention: Max Duncan
maxwell.duncan@northernbeaches.nsw.gov.au

8 February 2024

Dear Sir,

RE: DA2023/1780 New Dwelling and swimming pool at 89 Marine Parade Avalon

We are assisting Paul Anthony Mosley and Sze Leng Ho, owners of 87A Marine Parade. Thankyou for the opportunity to respond to this matter.

Context

No. 87A adjoins the subject site to the south east. It supports one half of an attached dual occupancy dwelling, with split levels over 2 storeys and in an east west orientation. Being the eastern end of the Dual Occupancy, No. 87A enjoys highly valued ocean and land/water interface views to the east. The existing development of No. 89 Marine Parade ensures that 87A Marine Parade enjoys high levels of sunlight access to internal and external spaces, particularly during midwinter, despite it being to the south of the development site.

The owners of No. 87A are in principle not opposed to the redevelopment of 89 Marine Parade. There are however a number of aspects of the proposed design which are non-compliant with Council's policies and which also result in material impacts upon the amenity enjoyed at 87A Marine Parade.

We are confident that with some reasonable amendments, the proposal can have the support of the owners at 87A Marine Parade.

Our objections to the proposal

We have reviewed the Development Application documentation online and have undertaken a site visit at 87A Marine Parade to understand the impacts upon our clients immediate dwelling and rear yard. Whilst there are a number of areas where the proposed new dwelling will not meet the Council's policy, our submissions relate to the key considerations as follows:

1. View Loss

If the proposed dwelling were to be approved, loss of views from 87A Marine Parade will be severe. We have come to this conclusion by applying the *Tenacity Consulting v Warringah Council* Planning Principle because the impact will be to a large portion of the highly valued and close proximity view of the land water interface, currently enjoyed from the primary living area, kitchen, and principal private open space.

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We believe these circumstances could not be considered a view sharing scenario. The loss is *unreasonable* because it is readily able to be mitigated through amendments to the design which do not reduce the amenity or development potential of the new dwelling.

We note that the Statement of Environmental Effects does not provide an assessment of the proposal against the *Tenacity Consulting v Warringah Council* Planning Principle. In relation to the four step process, we offer the following observations to support our position that the loss of views is not reasonable:

Step 1 Views affected

The view from the living room, kitchen, and principal private open space of No. 87A Marine Parade takes in an expansive north eastern view of the Tasman Sea, and to the north north east Bangalley Head. The views to Bangalley Head are a complete view of the headland itself, its substantial cliffline, the rocky foreshore at its base where the water meets the landform.

The near view of headland and foreshore is considered a *whole view* as outlined in the Tenacity Consulting judgement because the whole of the bay formed by and including the headland is currently enjoyed. It is also highly valued because of its close proximity to both the water and headland and because of the changing nature of the view through the daily tidal processes.

The impressive nature and *whole view* enjoyed in the context of the existing dwelling which maintains a view sharing scenario is shown in Figure 1 below:



Figure 1: View from living area and adjoining private open space
Source: Blackwattle Planning

Step 2 Location of view loss

Whilst the current views to be affected by the proposed dwelling are obtained partially over one side boundary shared between 87A and 89 Marine Parade, it is important to acknowledge viewing angles are over the extreme eastern end of the site and development area. This means that the ability to protect those views is much higher than if they were obtained through more central parts of the proposed building footprint over both side boundaries of a site. As the view lines also adjoin the rear boundary and foreshore area of No. 89 Marine Parade, they are not considered to be a *side view* as described in the Planning Principle.

The views affected are from both a standing and sitting position from every vantage point.

Step 3 Extent of impact

The impacts are to views obtained from the primary active areas of the dwelling being the living room, primary private open space area adjoining the living room, and kitchen. The views are not able to be obtained from anywhere else in the dwelling, and no views in other directions are obtained by No. 87A Marine Parade. Under the current design, whilst some of the whole view will remain, the very important foreshore area and wave action zone in the curve of the bay will be lost.

Given the primary use viewing position and the magnitude of the loss both in quantitative and qualitative terms, the impact is considered appropriately categorised as *severe*.

Step 4 Reasonableness of the impact

Even a complying development must pass the *skillful design* test, and we believe there are a number of changes that could be made to the design to reduce the impact without limiting the views to be obtained by the development site or reducing unreasonably the floor space or amenity of the proposed design, as follows:

1. Floor to ceiling height of the upper ground level

Section D-D of the submitted plans shows a section through the eastern portion of the proposed dwelling, confirming the excessive floor to ceiling heights proposed at 3150mm. The lowering of this level to at least 2750mm (and up to 2400mm) which is considered a generous and reasonable floor to ceiling height would have the effect of lowering the whole of the upper floor over the eastern portion of the dwelling by at least 450mm.

The amenity achieved in the current design would not be materially reduced because the raked ceilings proposed in the living room and bedroom 1/sitting room could still be provided. The viewing height of the dwelling would remain unaffected with the floor level remaining as proposed.

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Because the view loss from 87A Marine Parade is partially in a downward angle, the lowering of the proposed upper ground floor roofline will appropriately reduce the impact upon views whilst allowing the applicant to maintain the amenity and development potential

2. Reduce the height and projection of the frame over the proposed Ocean Deck

The frame proposed over the Ocean Deck of the new dwelling causes a significant loss of the valued view. Its height and projection beyond alignment of the new dwelling into the foreshore area results in significant damage to the views enjoyed at 87A Marine Parade. At an overall height of 3.4m from deck level, the structure is excessive and extends to within 3m of the rear boundary, which is entirely uncharacteristic of dwelling setbacks in the vicinity.

We request that this element be lowered by at least 450mm and be reduced in its easterly projection to be compliant with the Foreshore Building Line (rear setback).

In light of the severe impact and large amount of floor space and private open space affected within 87A Marine Parade, we request that Council require the applicant to erect height profiles so that an assessment of the view impacts can be properly validated.

2. Overshadowing

We believe that the new dwelling proposed will unreasonably impact the amount of sunlight enjoyed by 87A Marine Parade in various locations on the property, including the northern garden area and the balcony adjoining the sitting room at ground level.

We hold concerns regarding the accuracy of the submitted shadow diagrams which appear to overestimate existing shadows and take into account overshadowing from landscaping elements which should be given less weight because of their transitory nature.

The NSW Land and Environment Court provides guidance with respect to assessing overshadowing impacts through its Planning Principle outlined within *The Benevolent Society v Waverly Council*. This decision by Senior Commissioner Moore confirmed the already established position of the Court that overshadowing from vegetation should not be considered in the measurement of existing sunlight. The relevant Principle is as follows:

Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.

Vegetation on 89 Marine Parade in the form of mature melaleucas are not in the form of a hedge and consist of a species with a relatively open habit and foliage. This allows reasonable amounts of sunlight to penetrate and be enjoyed by 87A Marine Parade through 12 noon through to 3pm in midwinter. The analysis provided by the applicant should adopt the Planning Principle, and specific reference is made to this requirement within Control C1.4 of the DCP.

Notwithstanding the inaccurate diagrams, we see that overshadowing impacts will arise upon the private open space areas as a result of non-compliance with the building envelope control. The extent of the building that breaches this requirement is shown outlined in red below:

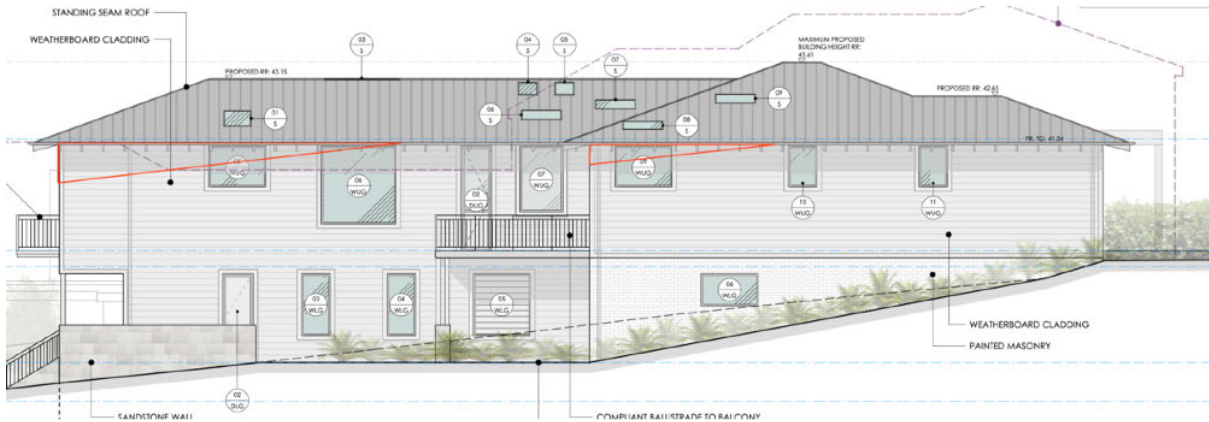


Figure 2: Extent of Building Envelope breach outlined in red. **Source:** Annabelle Chapman Architect **Annotation:** Blackwattle Planning

Impacts that arise from a non-compliance are less reasonable than one that complies. In this case, the variation to the building envelope control is not justified by either exceptions clause in the DCP, ie, the building footprint is not situated on a slope of over 30%, and the proposal is a new dwelling, not a first floor addition to an existing dwelling.

In addition, we note that the extensive excavation of the site proposed negates any construction difficulty posed by the fall of land across the length of the site. Being a site of over 1000sqm and over 18m in width, there is no constraint that justifies the breach of the building envelope control, and therefore the impacts that arise.

A lowering of the floor to ceiling height of the upper floor and therefore the height overall, is both achievable and appropriate and will mitigate this impact.

3. Visual Privacy

Control C1.5 of Pittwater 21 DCP states:

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

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The balcony proposed on the southern elevation at the upper ground floor level provides commanding views into the living areas and private open space areas of No. 87A Marine Parade. The balcony is proposed to the laundry of the new dwelling, and it is anticipated that it is provided as a drying area convenient to the laundry facilities. It is unsightly and inappropriate that balconies be provided and utilised for this purpose, and located on a side elevation that maximises its exposure to neighbouring dwellings.

We ask that the balcony be removed and an alternative space for drying be provided at ground level. Alternatively, a screening device should be provided constructed of a material providing a maximum 25% openings.

4. Acoustic Privacy

The proposed lower ground floor provides for spaces described as *plant room*, *services*, and *equipment storage*. This appears to be excessive floor space for services, particular noting the space available in the excavated basement.

Primarily though, our clients are concerned that acoustic impacts will arise given the proximity to noise sensitive areas of their home as a result of the openings in the *plant room/services* space. We request that council clarify and advise us of the nature of the plant/services/equipment that will be housed in these various spaces so that the acoustic impacts can be appropriately taken into account in the assessment as a likely impact.

Conclusion

Overall, we are mindful of the highly sensitive coastal location and hillside prominence of the site and the locality. The proposed development has the ready capacity to be amended to reduce the impacts upon No. 87A Marine Parade and our clients welcome such changes to allow an otherwise responsive design to proceed.

The site itself is large and wide, and there is significant scope for development of a generous dwelling which responds appropriately to minimise impact upon neighbours. We request that Council visit our client's property to fully understand the likely impacts of the proposal and the benefits of amendments as suggested above.

Please feel free to contact us on [REDACTED]

Regards,

[REDACTED]
Anna Williams,
Director

BLACKWATTLEPLANNING
anna@blackwattleplanning.com.au

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