
Sent: 7/03/2023 3:30:17 PM
Subject: DA2022/1128 | Objection to development application at 38 The Drive
Freshwater NSW
Attachments: Objection to DA2022.1128 at 38 The Drive, Freshwater.pdf;

Dear Stephanie,

We **attach** a letter of objection on behalf of Mr Craig and Mrs Sonja Key in relation to development application 2022/1128.

Could you please kindly confirm receipt of this email and the attached objection.

Kind regards,
Annabelle Burgess
Lawyer

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Our Ref: PNV.440157
Your Ref:

7 March 2023

By Email: stephanie.gelder@northernbeaches.nsw.gov.au

Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

Attention: Stephanie Gelder and Tyson Ek-Moller

Dear Ms Gelder and Mr Ek-Moller

**Objection to Development Application 2022/1128 at 38 The Drive,
Freshwater**

1. Introduction

- 1.1 We act for Mr Craig Key and Ms Sonja Key (our **clients**) who are the owners of 1 Seddon Hill Road, Freshwater, legally identified as Lot 4 in Deposited Plan 305295 (our **clients' property**) in respect of their objection to Development Application 2022/1128 for the proposed development at 38 The Drive, Freshwater, legally identified as Lot 12 in Deposited Plan 829988 (**the site**).
- 1.2 Development Application 2022/1128 seeks consent for the partial demolition of the existing dwelling and construction of a new dwelling including retention of substantial portions of the existing dwelling and a detached secondary dwelling over a garage together with a swimming pool (**the development application or proposed development**).
- 1.3 Our clients own the property located directly adjacent to and abutting the southern side of the site.
- 1.4 This submission sets out our clients' objection to the development application as is currently lodged based on recent amendments provided in relation to:
 - (a) Amended master plans dated 23 January 2023 (**amended plans**);
 - (b) Updated clause 4.6 written request regarding height of building dated 14 February 2023 (**clause 4.6 written request**); and
 - (c) Amended view **request**; and impact assessment dated 20 January 2023 (**view impact assessment**).

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- 1.5 Notwithstanding this, this submission is consistent with, and follows the previous objections lodged by our clients,¹ their consulting town planner Turnbull Planning International Pty Limited (**Turnbull Planning International**),² and their consulting architect, Poppy Bevan.³

2. Summary of Objections

- 2.1 Our clients object to the development application for the following reasons:

- (a) The development application does not provide for reasonable view sharing as required under the Warringah Development Control Plan 2011 (**WDCP**);
- (b) The proposed development fails the fourth test propounded in *Tenacity Consulting v Warringah Council* (**Tenacity**),⁴ more recently endorsed and refined in *Furlong v Northern Beaches Council* (**Furlong**);⁵
- (c) The proposed development contravenes the general privacy planning principles set out in *Meriton v City of Sydney* (**Meriton**)⁶ and does not to comply with the visual privacy objectives under the WDCP;
- (d) The amended plans do not adequately address the privacy concerns of our clients provided for in earlier objections to the development application submitted to Council;
- (e) The written request made pursuant to clause 4.6 of the *Warringah Local Environmental Plan 2012* (**WLEP**) to exceed the maximum building height must be refused on the basis that it represents a 15.76% exceedance of the 8.5m maximum height control within the context of an already non-compliant development; and
- (f) The Council and the Northern Beaches Local Planning Panel (**Panel**) cannot undertake a proper and informed assessment of the development application given the inaccuracy of the accompanying plans and reports.

3. Photographic Analysis of View Loss

- 3.1 In its submission dated 11 December 2022, Turnbull Planning International on behalf of our clients and at the request of the Council, provided photographic analysis of the proposed view loss to our clients caused by the development application.

¹ See Key submission dated 11 August 2022 and 20 December 2022.

² See Turnbull Planning International submission dated 12 August 2022 and 14 December 2022.

³ See Bevan submission dated 12 August 2022.

⁴ [2004] NSWLEC 140 (*'Tenacity'*).

⁵ [2022] NSWLEC 1208 (*'Furlong'*).

⁶ [2004] NSWLEC 313 (*'Meriton'*).

- 3.2 These photographs were taken by a registered surveyor (Usher and Co Surveyors) and the masking was completed by Ms Poppy Bevan, a registered Architect.
- 3.3 In response to the amended plans and amended view impact assessment, our clients engaged David Murgatroyd, an experienced 3D visualisation and architectural expert to prepare an updated photo montage reflecting the ongoing view loss caused by the proposed development as currently lodged. A methodology of David Murgatroyd's work is at Annexure A.
- 3.4 As no new height poles have been erected to reflect the amended plans, the updated photo montage is based on the photographs taken by the registered surveyor for the purposes of the original analysis. The location of the photographs is described below. A Certificate of Accuracy in respect of the original and updated photo montages is prepared by Poppy Bevan at Annexure B.
- 3.5 We submit that whilst the amended plans have modified the proposed development, there is immaterial difference in terms of view impact on our clients' property between the original scheme and the scheme currently lodged. Our clients will lose highly valuable views of the headland and land sea interface of North Curl Curl Beach as a result of the development application being approved.
- 3.6 The view cone diagrams below are representative of the 'before' and 'after' view impacts to our clients' property.

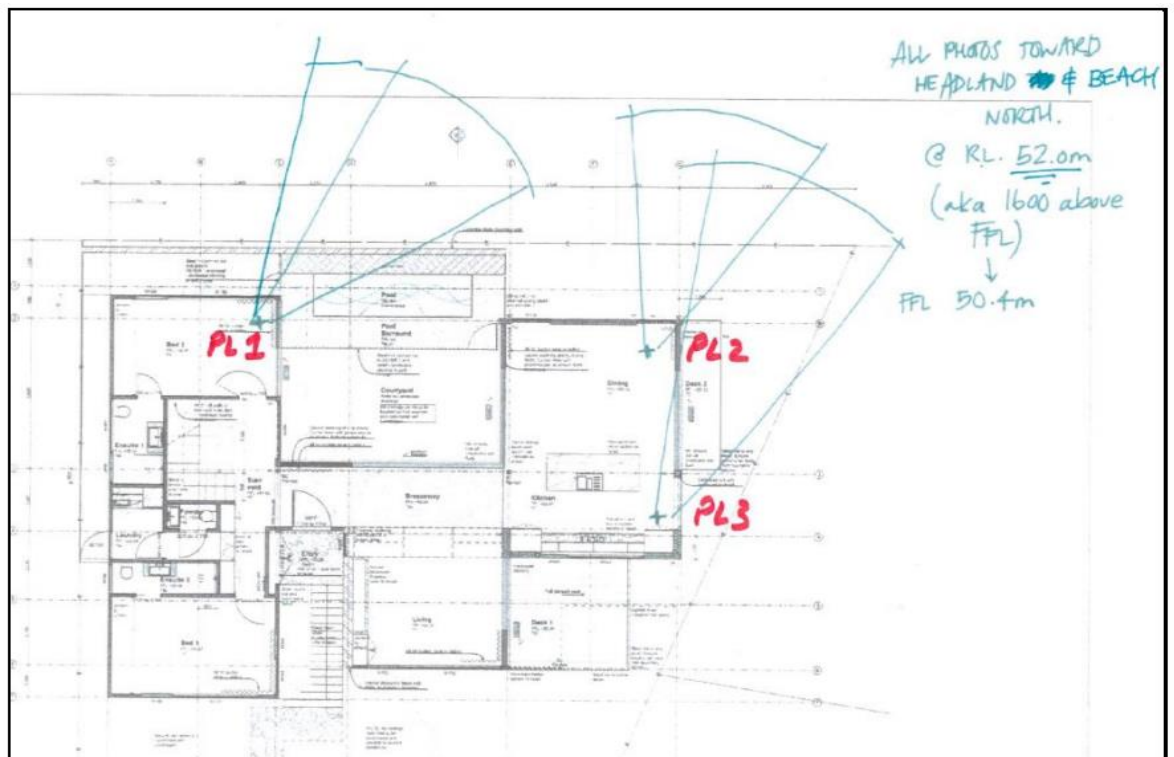


Figure 1: Diagram showing positions and RL's for photographs taken from future ground level of dwelling house under construction (Courtesy Poppy Bevan Architect).

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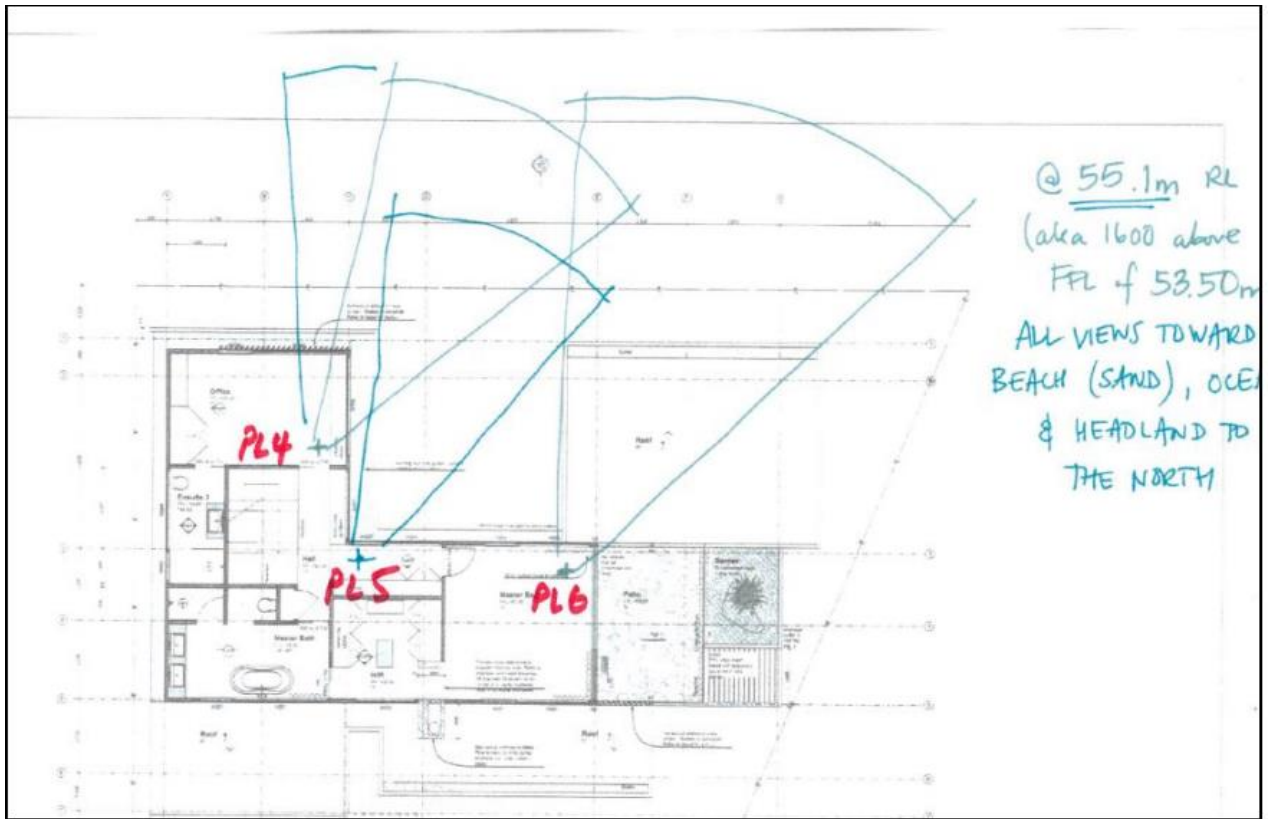


Figure 2: Diagram showing positions and RL's for photographs taken from future 1st floor level of dwelling house under construction (Courtesy Poppy Bevan Architect)

PL-1: Before



PL-1: After



PL-1 is taken from the proposed location of our clients' pool area. Whilst the view of the horizon is impacted from this location, this photograph clearly demonstrates the overwhelming bulk of the proposed development along the southern boundary shared with our clients. This will significantly affect our clients' privacy and right to use and enjoy their property.

PL-2: Before



PL-2: After



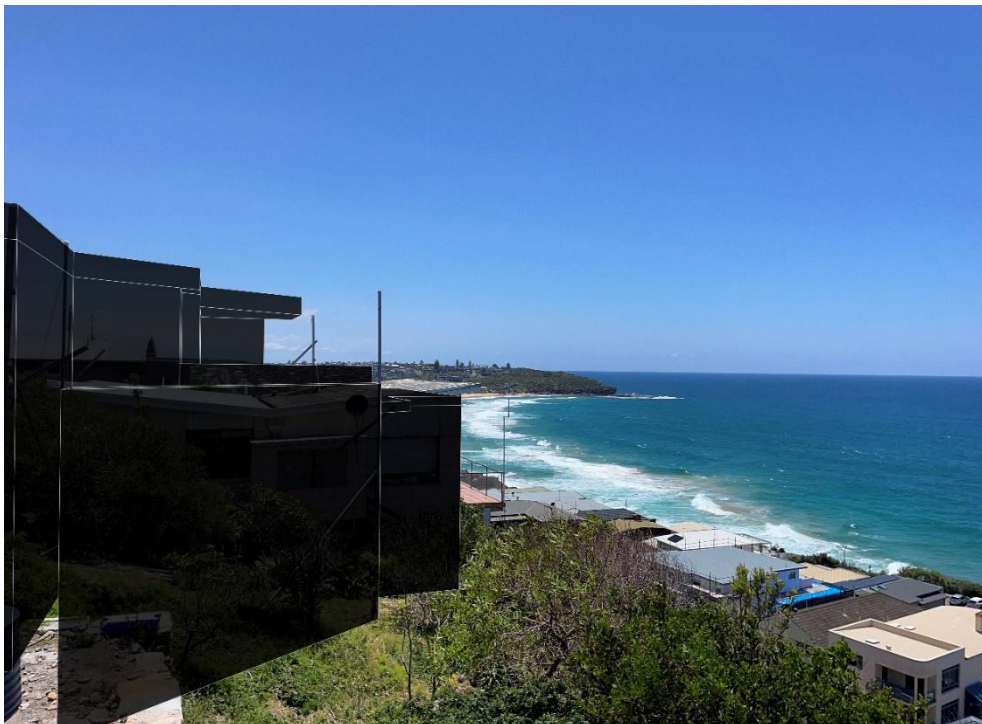
PL-2 shows demonstratable loss of the remaining views of the headland that are not previously compromised by the existing dwelling on the site.

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PL-3: Before



PL-3: After



PL-3 depicts a loss of a large portion of views of the iconic headland.

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PL-4: Before



PL-4: After



PL-4 is taken from a standing position in our clients' upper living area. This photograph shows total loss of the land and sea interface, as well as the loss of the iconic views of North Curl Curl beach.

PL-5: Before



PL-5: After



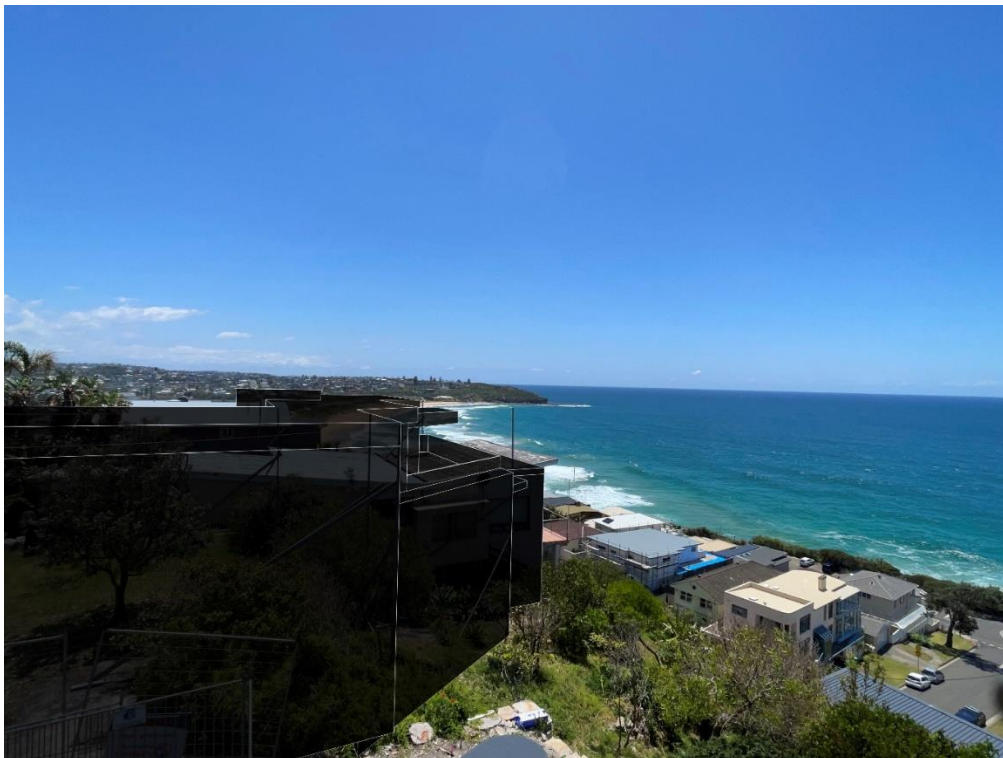
PL-5 is taken from the upper level of our clients' dwelling. This photograph shows total obliteration of our clients' view of North Curl Curl Beach and the land sea interface. Significant parts of the ocean and headland views are also severely impacted.

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PL-6: Before



PL-6: After



PL-6 shows almost total obliteration of the highly valued view of North Curl Curl beach enjoyed by our clients from the upper floor master bedroom. Such proposed view impacts caused by the development application is of significant concern to our clients.

4. View Loss

4.1 Control D7 of the WDCP requires development to provide for the reasonable sharing of views and sets out the following objectives:

- To allow for reasonable sharing of views;
- To encourage innovative design solutions to improve the urban environment; and
- To ensure existing canopy trees have priority over views.

4.2 The development application represents a significant departure from this development control, resulting in severe view loss for our clients from many vantage points.

4.3 In *Tenacity*, the Land and Environment Court set out a series of tests to assess the view loss likely to arise due to proposed development. These tests have been further refined in *Furlong*.

4.4 Council would be aware that *Furlong* concerned an application for development consent for a three-storey home in Dee Why. Council refused the development application due to the potential view loss impacts on neighbouring properties, particularly when there were alternative design solutions available to the applicant that would mitigate against such impact. The Land and Environment Court upheld the decision on appeal for the same reasons.

4.5 The tests articulated in *Tenacity* and refined in *Furlong* will be assessed in turn below in respect of the current development application and proposed view impact on our clients' property:

- (a) The first test is an assessment of the views to be affected. Senior Commissioner Roseth observed that 'iconic' views are more highly valued than those of partial views.⁷ Our clients' property has iconic views of North Curl Curl Beach and headland, the ocean and the foreground suburbs, comparable to those views subject of the proceedings in *Furlong*, albeit from a north-easterly aspect. PL-4 depicts the predicted view loss from the upper-level living area and shows the entire loss of the North Curl Curl Beach, headland and ocean views.
- (b) The second test requires consideration of what part of the property the views are obtained. In *Tenacity*, it was held that side views would be more difficult to protect than views from a front or rear position.⁸ *Furlong* refined this principle to suggest protection of side views may be appropriate in some circumstances.⁹ Notwithstanding this, the majority of the iconic elements enjoyed by our clients are from the rear of their property. PL-5 clearly demonstrates complete view loss of all highly valued views from the rear vantage point. Given the iconic elements enjoyed by our clients

⁷ *Tenacity* [26].

⁸ *Ibid* [27].

⁹ *Furlong* [50].

are highly valuable, we contend that protection of such rear views must be afforded significant weight and consideration by the Council.

- (c) The third test is an enquiry into the extent of the impact on the whole property. The proposed view loss for our clients' property must be considered as a 'severe-devastating' impact. PL-2, PL-4, PL-5 and PL-6 depict close to total eradication of our clients' highly valued view of North Curl Curl Beach, the land sea interface and the headland from 4 different vantage points on their property.
- (d) The fourth test assesses the reasonableness of the proposal causing the impact. The development application does not pay sufficient regard to the WDCP which requires reasonable view sharing.¹⁰ Such disregard and non-compliance with the D7 View Loss and D8 Privacy controls are entirely attributable to the significant view loss to be suffered by our clients. The amended plans do not reduce the potential view loss impacts or concerns subject of our clients' earlier objections. The proposed development and potential view impact could be remedied with more skilful and considered design solutions that are consistent with the WDCP.

- 4.6 The proposed development fails the fourth test in *Tenacity* by demonstrating a high degree of unreasonableness in the proposed design. Such unreasonableness should not be supported by the Council as it will result in 'devastating-severe' view loss of iconic views enjoyed from our clients' property.

5. Amenity impacts privacy

- 5.1 Our clients' concern for the protection of their privacy in respect of the development application are well established.¹¹ However, these concerns have not been addressed in the amended scheme, as the proposed development will continue to result in the inappropriate erosion of our clients' visual privacy enjoyed at their property.
- 5.2 D8-Privacy of the WDCP provides the following requirements for visual privacy:
- Building layout design should be designed to optimise privacy for occupants of development and occupants of adjoining properties;
 - Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking;
 - The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screen devices, high sills or obscured glass;

¹⁰ Ibid [62].

¹¹ See Key submissions dated 11 August 2022 and 20 December 2022.

- The windows of one dwelling are to be located so they do not provide direct or close views (i.e., from less than 9 metres away) into the windows of other dwellings;
- Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.

5.3 With reference to the above, our clients strongly object to the locations of W25 and W26 on the first-floor plan, shown on DA10 of the amended plans.

5.4 We echo the concerns of Turnbull Planning International expressed in their supporting submission at Annexure C, that the objectives of W25 and W26 on the southern side of the site is to seemingly maximise the southerly views from the proposed development.

5.5 A survey plan and 2D impact diagram of the proposed development on our clients' property was prepared by Poppy Bevan and is at Annexure D. An additional 3D impact diagram is also provided at Annexure E, with the accompanying methodology at Annexure F.

5.6 The 2D impact diagram shows that in pursuit of obtaining expansive southerly views, the locations of W25 and W26 will cause detrimental impacts on our clients' amenity, as they provide a direct line of sight from the proposed development's entertainment area downwards into our clients' swimming pool and living room.

5.7 Further, a marked up 2D impact diagram is at Annexure G and shows a 9-metre radius from points of impact of looking towards our clients' property. The impact diagram shows that the location of W25 and W26 are such that they provide close views that are less than 9 metres away from W108 of Bed 2, W110 of Dining and complete view into the outside pool area in our clients' property. This will result in an unacceptable impact on our clients' privacy and right to use and enjoyment of these spaces.

5.8 We also draw Council's attention to the removal of the screens from W25. Given that there is inadequate separation between the proposed development and our clients' property, the reason for removing these screens is unclear and unacceptable.

5.9 Council should have regard to the general planning principle on privacy set out in *Meriton* that:

the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, whilst sometimes is the only solution, is less desirable.¹²

5.10 Whilst our clients would strongly prefer a more effectively designed development and arrangement of windows, and contend that there are alternative design

¹² *Meriton* [46].

solutions available to the applicant (see paragraph 6.8 to 6.10), the use of the screen, whilst less desirable, did provide necessary privacy protection for our clients.

- 5.11 We submit that the proximity of W25 and W26 to our clients' property, and the removal of the privacy screens on W25 is unacceptable non-compliance with the D8-Privacy control. This non-compliance will result in significant overlooking and have views that are less than 9 metres away from key living spaces in our clients' property.
- 5.12 For completeness we note that the window sill height of W25 was raised 1 metre in the amended plans. We agree with the observations of Turnbull Planning International, that this is a 'tokenistic' concession that does little to mitigate against the overwhelming privacy impact caused by the proposed development.¹³
- 5.13 As a result, the proposed development falls grossly short of providing a high level of visual privacy for our clients. Instead, we contend that the development application indicates a continuous favouring by the applicant of its own amenity over the privacy of neighbouring properties. This must not be supported by the Council through the granting of development consent.
- 5.14 We direct Council to read the supporting submission on visual privacy prepared by Turnbull Planning International referenced in this Part 5 in full to further understand the scope to which our clients' visual privacy will be affected by the proposed development.

6. Clause 4.6 written request is unacceptable

- 6.1 The applicant submitted a revised written request under clause 4.6 of the *Warringah Local Environmental Plan 2011 (WLEP)* seeking Council's approval of non-compliance with the maximum building height control on 14 February 2023.
- 6.2 The maximum building height is 8.5m under clause 4.3 of the WLEP.
- 6.3 The applicant seeks approval for a maximum height of 9.840m. This represents an exceedance of 1.34m or 15.76% from this development standard.
- 6.4 The objectives for the height of buildings under clause 4.3 of the WLEP are as follows:
- To ensure that the buildings are compatible with the height and scale of the surrounding and nearby development;
 - To minimise visual impact, disruption of views, loss of privacy and loss of solar access;
 - To minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments; and

¹³ See Annexure C, Turnbull Planning International submission, 2.

- To manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.
- 6.5 The applicant has failed to demonstrate that compliance with the building height development standard is unreasonable or unnecessary, and that there are sufficient environmental planning grounds to justify contravention.
- 6.6 The development application does not fulfil any of the relevant objectives for height of buildings listed above. The survey plan and 2D impact diagram at Annexure B shows the excessive scale of the proposed development in comparison to our clients' property. Whilst the applicant does benefit from a larger allotment, the proposed development continues to be incompatible with scale of other developments in the locality.
- 6.7 For the reasons set out above in Part 3 and 4, the proposed development does not minimise the disruption of views and loss of privacy for our clients' and their property.
- 6.8 We draw Council's attention to DA18 of the amended plans which indicates a void located under the 'Dining' measuring approximately 1.8m in height. Another void is located under 'Sitting' measuring approximately 1.9m in height.
- 6.9 The utilisation of these voids to lower the entire building height is an alternative design solution available to the applicant. Making use of this alternative design would avoid the need for height exceedance at the north-easterly point of the proposed development and a clause 4.6 written request.
- 6.10 A more effective development design such as that proposed above in paragraph 6.9, would result in the lowering of the entire proposed development. This would significantly reduce the view impact loss experienced by our clients as illustrated above in Part 3 and 4, and make the proposed development generally more consistent with the objectives under clause 4.3 of the WLEP.
- 6.11 We submit that Council must also consider the clause 4.6 written request with regard to the totality of non-compliance represented by the development application. For the reasons already set out above in Part 4 and 5, the proposed development demonstrates significant non-compliance with the privacy and view loss planning controls under the WDCP.
- 6.12 We contend that Council and ultimately the Panel cannot justify approval of such an over-indulgent development application on the basis that it demonstrates significant disregard to several planning controls under the WDCP and WLEP. There are alternative designs that would moderate the view loss and privacy impact onto our clients and other neighbouring properties.

7. Inaccuracy of plans and material

- 7.1 The inconsistencies and inaccuracy of the documentation accompanying the development application prevent Council and the Panel from making a proper and informed assessment of the proposed development.

- 7.2 We reiterate and follow the earlier concerns raised by our clients' consulting architect, Poppy Bevan in her submission dated 12 August 2022, as to the various discrepancies and inaccuracy of the plans and materials supporting the development application.
- 7.3 We draw Council's attention to the 3D modelling and photograph montage included in the view impact assessment. There is no visual evidence provided to indicate that survey data has been used to align the cameras or indicates how well they align. As such, the accuracy of the photo montages and visualisation of the proposed view impacts on our clients' property cannot be considered reliable.
- 7.4 Further, Council cannot rely on the mark ups reflecting the amended plans in the amended view impact assessment to make an informed determination of the view impacts caused by the proposed development given the hastily and uncertified nature of such revisions. Relying on such mark ups when assessing the development application may result in unacceptable outcomes for our clients and the precinct generally.
- 7.5 Conversely, the photograph montage prepared by David Murgatroyd included in Part 3, were completed with reference to and 3D model alignment with the background photographs. Annexure H shows the reference points (marked with red) on the existing structures. This enabled proper alignment with the background in order to accurately visualise the scope and scale of the proposed development.
- 7.6 We note that by email dated 20 February 2023, we sought confirmation on behalf of our clients as to whether new height poles will be erected to reflect the adjusted height of the proposed development. We were not provided with a meaningful response from Council confirming whether the applicant was required to erect any new height poles.
- 7.7 At the time of preparing this objection, we understand that no new height poles have been erected. We contend that this fundamentally prevents Council from understanding the proposed view impact of the proposed development on neighbouring properties. Because there are no new height poles, the Council cannot properly assess the development application and its impacts.
- 7.8 Our clients have invested considerable time and costs to prepare objections and engage experts to present to Council accurate and well-considered information and analysis on the scale and impact of the proposed development.
- 7.9 We therefore ask that Council and ultimately the Panel, give significant consideration and weight to the supporting and peer-reviewed evidence and assessment of the proposed development prepared by Poppy Bevan, David Murgatroyd and observations of Turnbull Planning International when assessing the development application and impact on our clients' property.

8. Conclusion

- 8.1 The amended plans have failed to minimise the privacy and view impacts of the proposed development on our clients' property. Instead, the proposed development as currently lodged continues to represent an excessive and non-compliant development that must not be supported by the Council or the Panel.
- 8.2 Our clients' vehemently object the development application on the basis that:
- (a) The proposed development will cause 'severe-devastating' view loss of highly valued and iconic elements, including North Curl Curl Beach, the headland and land sea interface from several vantage points in our clients' property.
 - (b) The close proximity of the proposed development to our clients' property on its southern boundary will result in an unacceptable built form that will significantly erode our clients' privacy.
 - (c) The proposed view loss and erosion of our clients' privacy is attributable to the development application's significant non-compliance with the WLEP and WDCP. The impact of such non-compliance will adversely impact against our clients' enjoyment and use of their property.
 - (d) There are alternative design solutions that should be utilised to provide effective and amenable development outcomes for the applicant, our clients and the precinct generally.
 - (e) The development application is supported by ill-considered reports and diagrams that the Council (and the Panel) cannot rely upon to properly assess the development application.
- 8.3 For the reasons set out above and the totality of non-compliance with the WDCP and WLEP, we contend that Council must also reject the applicant's clause 4.6 written request to exceed the maximum building height.
- 8.4 We request that Council strongly consider our comments and the supporting evidence and observations prepared by Poppy Bevan, David Murgatroyd and Turnbull Planning International, when assessing the view and privacy impact of the proposed development on our clients' property.

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- 8.5 On the basis of the above, we contend that Council and ultimately the Panel must reject the development application.
- 8.6 We kindly request that the Council please provide sufficient notice to the author of this letter as to when the development application will be heard before the Panel.

Yours faithfully

Piper Alderman

Per: 

Paul Vergotis

Partner (Accredited Specialist -
Planning & Environment Law)

Encl.

02/03/2023

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Statement on Methodology - Photomontages for 38 The Drive, Freshwater

The computer generated photomontages were prepared from a 3D massing model based on PDF plans by SketchArc (dated 27/01/23), including PDF survey by Adam Clerke Surveyors Pty Ltd (Ref:6213A), and camera location survey by Usher & Co (Ref:6540). Photography was obtained by Usher & Co on 06/12/22, according to EXIF data contained in each image file.

All relevant plans were aligned to a common coordinate system using an MGA2020 aligned version of survey by Stutchbury Jaques Pty Ltd (Ref:6592/07), prepared for No.1 Seddon Hill Rd. Specifically, the southern (common) boundary to No.38 The Drive was used as a common reference. Surveyed roof elements for the existing residence on site were given priority over other features, as this was the focal point for the majority of views tested. Height poles visible in each photograph are no longer relevant to the amended scheme, and were not given any weighting.

Each photomontage was created using Adobe Photoshop software, from an Autodesk 3DS MAX model aligned with survey data, in line with the Land & Environment Court's policy on the use of photomontages.

The camera used was an iPhone 12 Pro, with positioning methodology as documented in Survey Report by Usher & Co (Ref:6540)

Signed



David Murgatroyd
B. Ind Des (UNSW)

6th March 2023

Certificate of Accuracy

Statement of Methodology - Photomontage masking images

The computer generated photomontages were prepared based on photographs PL1-PL6 provided by Usher & Co on 06/12/22 as supported by their Camera Location Survey (Ref:6540). These photographs show the location of the height poles erected on the site of 38 The Drive, Freshwater for the proposed design (now superseded).

By way of utilising photo editing software, a layer of masking was added to each of the PL1-PL6 photos to infill the areas between each of the height poles on the subject property. This area of masked infill indicates the location of the proposed building and was blacked out at 90% opacity in order to show the impact of the proposed design on the existing views from 1 Seddon Hill Road, Freshwater.

These images were created accurately to the best of our ability given the information provided.

Signed





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6 March 2023

Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

BY EMAIL ONLY

Dear Chief Executive Officer

Attention: Ms Stephanie Gelder/Louise Kerr

**AMENDED ARCHITECTURAL PLANS AND OTHER DOCUMENTS RELATING
TO DEMOLITION OF EXISTING DWELLING HOUSE AND CONSTRUCTION
OF A NEW PRINCIPAL DWELLING AND A DETACHED SECONDARY
DWELLING OVER A GARAGE, TOGETHER WITH A SWIMMING POOL &
LANDSCAPING
PROPERTY: 38 THE DRIVE FRESHWATER (DA 2022/1128)**

We are consulting town planners and represent Mr Craig Key & Ms Sonja Key ('our clients'), who are the owners of No 1 Seddon Hill Road (jointly and severally, 'our clients property').

This submission follows from earlier submissions lodged by this firm, on behalf of these same clients.

The **submission outlined below focuses on visual privacy**. We note others have dealt with additional merit issues.

The Councils planning controls seek to ensure that the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours. The controls further seek to encourage design solutions to improve the urban environment. We submit in the strongest terms, that the scheme now proposed fails to satisfy these fundamental objectives.

In terms of the privacy matter, the proximity of the proposed development to our clients' property, the entertainment/living room purpose of the rooms from which the overlooking occurs, the position of windows parallel to the common boundary and the overall height of the development, will combine to create a completely unacceptable visual privacy impact on our clients' property.

The extract from the diagram below, compiled and prepared by Poppy Bevans Architect, illustrates the significant extent of the impact using a '9m overlooking

field of influence' per Section D8 Requirement 4, 'Visual Privacy' of Warringah Development Control Plan 2011 (WDCP).

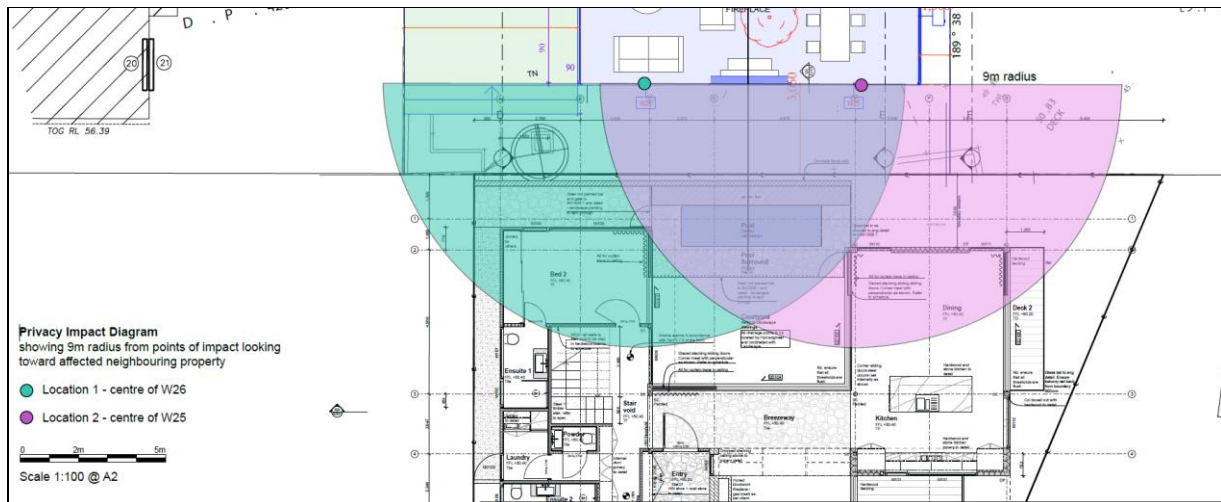


Figure 1 – Diagram Showing Juxtaposition of Proposed Development and Our Clients Dwelling House (Currently Under Construction) With 'Privacy Field of Influence' Overlaid
Courtesy Poppy Bevan Architect

Council will of course be aware of the well-established general planning principle relating to privacy set out in *Meriton v Sydney City Council* [2004] NSWLEC 313 (cited specifically in section D8 of WDCP). In that decision Roseth SC stated (at [45]-[46]) as follows:

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. ...

In the present case it is abundantly clear that the dwelling designer has virtually ignored the privacy issue that arises as a result of these large picture windows on the south side of the dwelling (W25 and W26). The sole objective appears to involve maximising the southerly views from the new dwelling, despite a significant 'cost' in terms of neighbour amenity as regards the Key residence. Whilst there is an opportunity for landscaping between built elements, as is stated in *Meriton v Sydney City Council* above, this should not be relied on and must be given little weight in a notional planning assessment. In this case the designer has completely failed to address this significant issue. The only, we say tokenistic, concession that has been made is the raising of the sill height of window W25 to 1m. With respect, this does nothing to assist with ameliorating the privacy impact.

It is clear from *Meriton v Sydney City Council* and subsequent cases in which the planning principle has been consistently applied, that separation rather than

screening devices are the main safeguard in the protection of privacy. Such devices are a poor substitute for adequacy in design.

In *Davis v Penrith City Council* [2013] NSWLEC 1141 Moore SC, confirmed, at [121], the following as the criteria for assessing impact on neighbouring properties:

How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?

How reasonable is the proposal causing the impact?

How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?

Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?

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

The extract from the designers drawings under, further graphically illustrate the impacts caused by the large 'picture' windows on the southern elevation. We submit this could have been avoided with an improved/reworked design. We must assume the applicant has been granted the ability to deal with the issue by way of acceptance by Council of revised drawings, but has rather decided to ignore the issue.

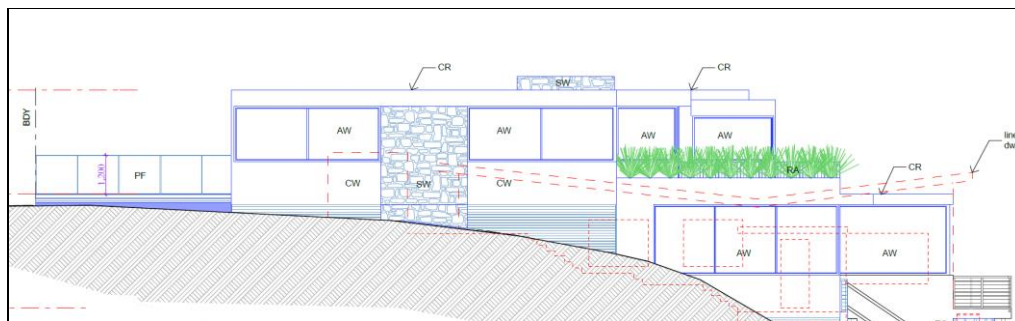


Figure 2 – South Elevation Extract from
Amended Master Plan Set 'SketchArc' Sheet 13
Note: AW denotes Aluminium Window

In this matter, the proposal causes significant privacy impact, the design imposes an unreasonable impact on our clients amenity, the clients property in utilising the northern part of a small site is vulnerable to impact, the design is severely flawed and the proposal is not consistent with **any** of the above indicia.

As Dickson C pointed out in *Rose & Sanchez v Woollahra Municipal Council* [2016] NSWLEC 1348 (19 August 2016) at [78]:

In applying these criteria *Meriton v Sydney City Council* [2004] NSWLEC 313 at [45] clarifies the scope of visual privacy in the context of residential design as: the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.

That is the heart of the matter – the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.

Control D8 ('Visual privacy') of WDCP makes provision for visual privacy, as follows:

- Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.
- Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.
- The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.
- The windows of one dwelling are to be located so they do not provide direct or close views (i.e. from less than 9 metres away) into the windows of other dwellings.

We have further reviewed the amended set of architectural plans and other documents and can only conclude that a severe visual privacy concern remains for our clients, by reason of proposed windows 25 and 26. The occupant of this new dwelling will be able to look directly into our client's principal private open space and main living area. Such a state of affairs is demonstrably and self-evidently unacceptable.

Yours faithfully,

TURNBULL PLANNING INTERNATIONAL PTY LIMITED



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Town Planner
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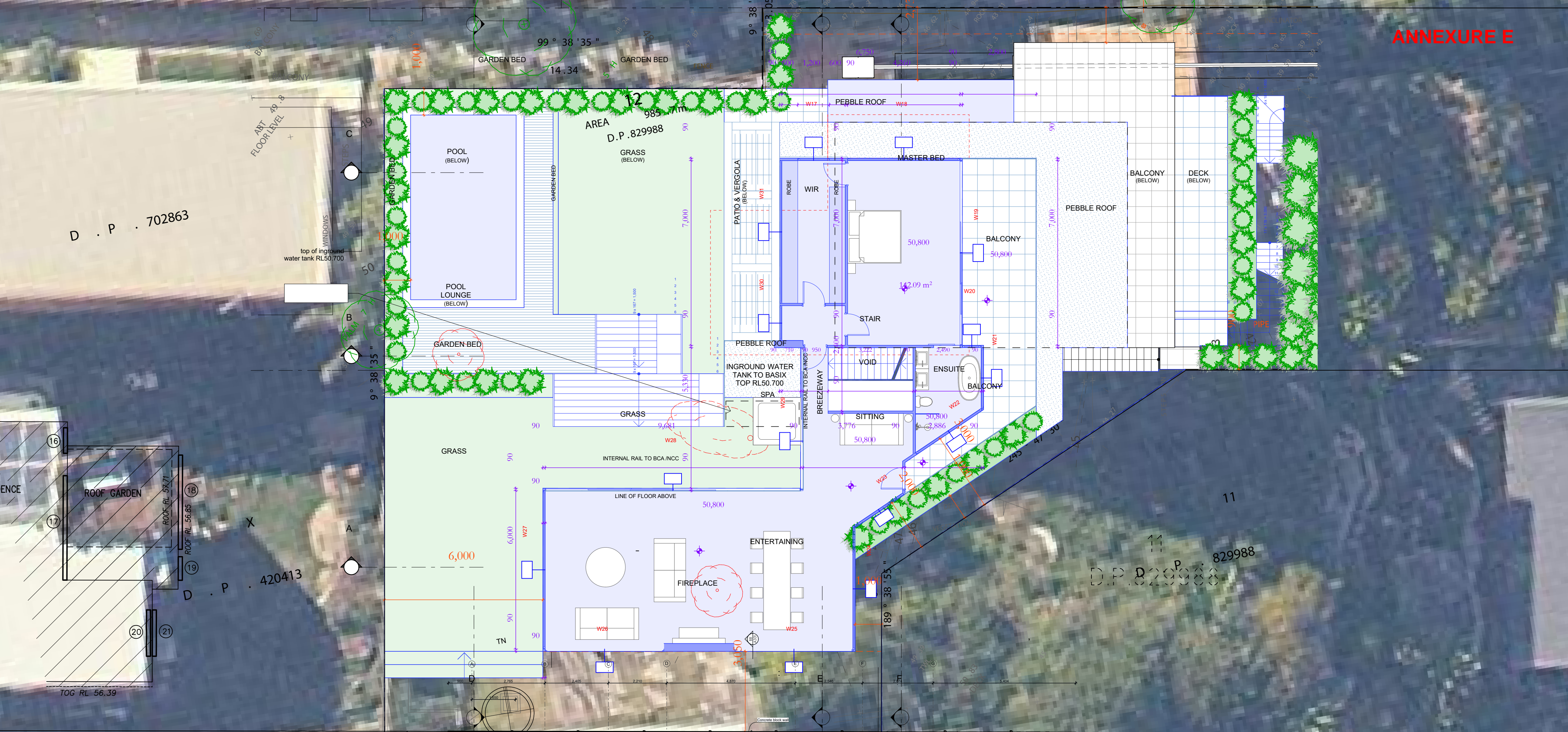
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This architectural floor plan depicts a residential building with a complex layout of rooms and outdoor areas. The plan is oriented with a north arrow pointing towards the top right. The building's footprint is irregular, with a central courtyard and a breezeway. The rooms include:

- Bed 1** (FFL +50.40 TF) and **Bed 2** (FFL +50.40 TF) at the top left.
- Ensuite 1** (FFL +50.40 TF) and **Ensuite 2** (FFL +50.40 TF) adjacent to the bedrooms.
- Laundry** (FFL +50.40 TF) and **Powder** (FFL +50.40 TF) rooms.
- Entry** (FFL +50.20 TF) with a coat closet and a steel mesh screen.
- Living** (FFL +50.40 TF) with a fireplace and a gas insert.
- Kitchen** (FFL +50.40 TF) with a corner sliding door and a stainless steel sink.
- Dining** (FFL +50.40 TF) with a glazed stacking sliding door.
- Deck 1** (FFL +50.20 TF) and **Deck 2** (FFL +50.20 TF) with hardwood decking.
- Courtyard** and **Breezeway** (FFL +50.40 TF) connecting the main building to the pool area.
- Pool** (FSL +50.00 TF) with a pool surround and a pool lift.
- Stair void** (FFL +50.40 TF) and **Stair** (FFL +50.40 TF) connecting the different levels.

The plan also shows various outdoor features such as a garden bed, a pool lift, and a pool surround. The building is surrounded by a boundary wall and a driveway. The plan includes detailed annotations for materials, finishes, and construction details.

ROOF RL 45.93

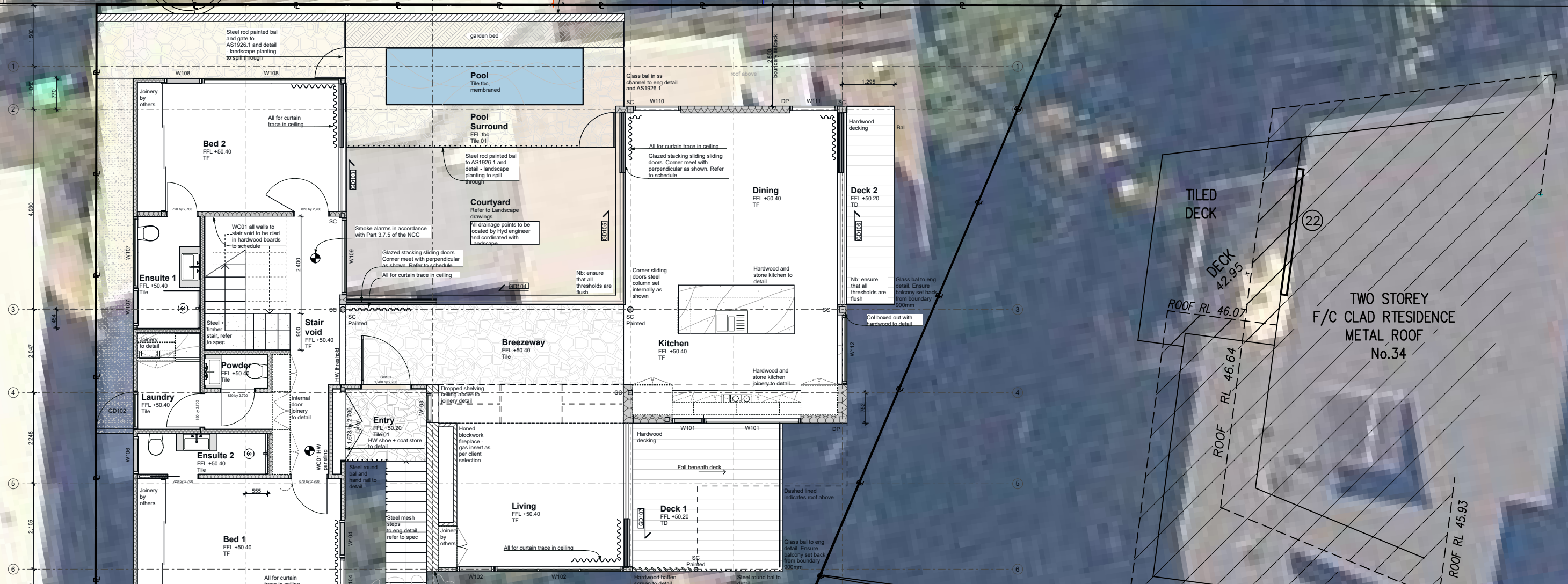


Impact Diagram with 3D Context Overlay

The proposed design at 38 The Drive amongst the context of the neighbouring properties, including the currently under construction home at 1 Seddon Hill road (located on the adjacent allotment to the south).

0 2m 5m

Scale 1:100 @ A2



6th March 2023

Statement of Methodology - Plan overlays regarding 38 The Drive, Freshwater

The computer generated plan overlays were prepared from a combination of 2D scaled vector files (PDFs) for the proposed project at 38 The Drive and the currently under construction project at 1 Seddon Hill Road, Freshwater, as well as by way of Six Maps imagery (sourced 28/02/23).

The PDF plans for 38 The Drive were sourced from the Northern Beaches Council website 'Property Search' (file "DA2022/1128 - Plans - Master Set - Amended" uploaded 27/01/2023). The PDF plans for 1 Seddon Hill Road were sourced from the CC approved plans (CC2022/0161 stamped 13/04/2022) and were retrieved from our own files as architects of the project. The survey was prepared by Stutchbury Jacques PTY LTD Ref: 6592/07.

With the aid of vector editing software, we extracted the floor plans of the relevant storeys (located toward the top of the site with floor levels of ~50m AHD) and overlaid these with the survey in order to confirm alignment. For 38 The Drive, the relevant plan was the First Floor, sheet number DA10. For 1 Seddon Hill Road the relevant plan was the Ground Floor Plan sheet number 202.

2D plan overlay

For the 2D plan overlay, the survey and the two floor plans for the adjoining properties were aligned at 1:100 scale and released as a PDF entitled "Survey and 2D plans scale 1-100 @ A2".

3D plan overlay

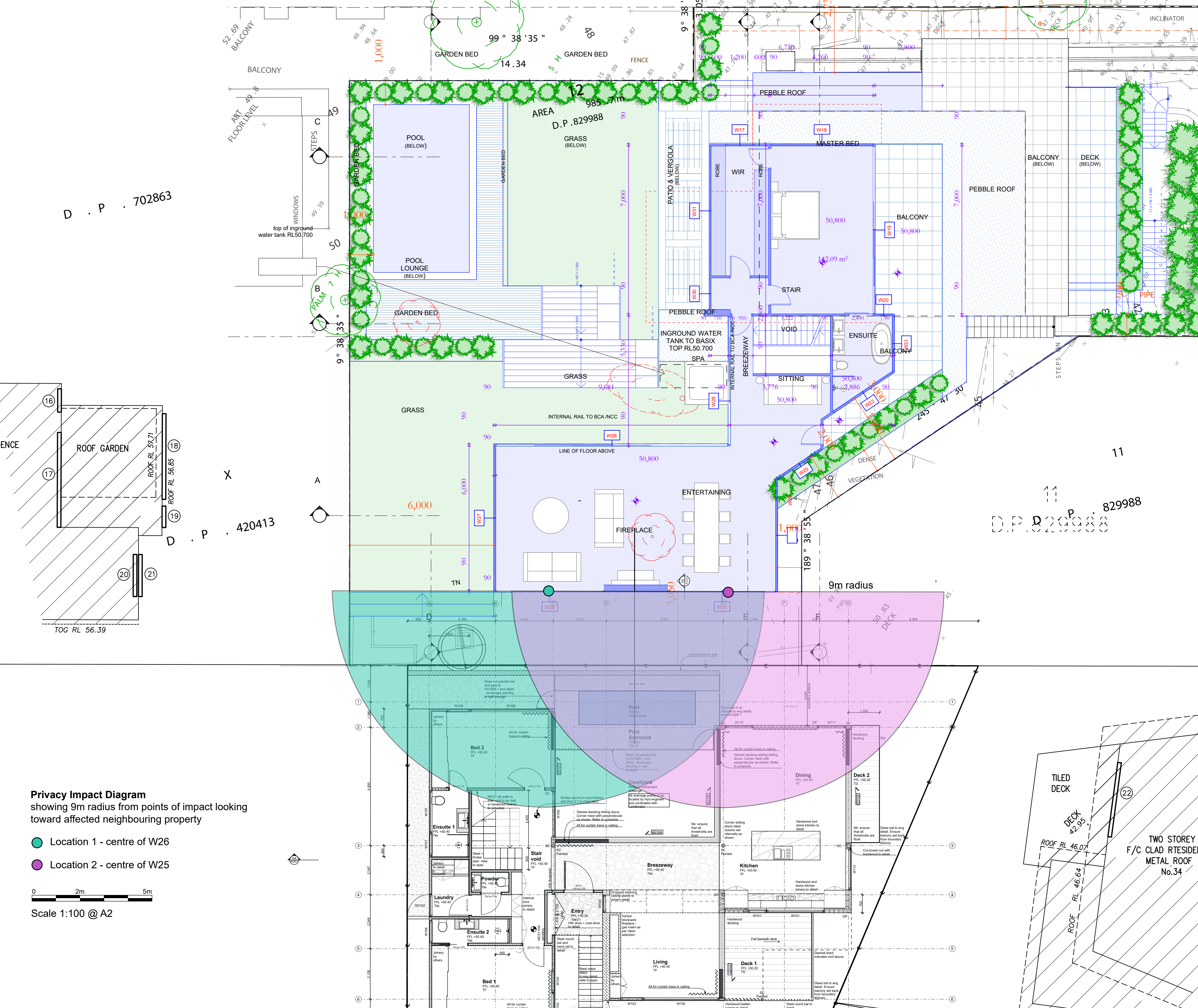
For the 3D plan overlay the Six Maps image was scaled as accurately as possible to align with the survey and plan details showing property boundaries and existing built elements. Due to the nature of aerial imagery and the fall of the land, it is recognised that this overlay is not exact and has been undertaken to the best of our ability with the intent of representing a legible aerial view of the proposed design within the context of the existing built environment and local context. This composite document was released as a PDF entitled "Survey and 3D plan overlay scale 1-100 @ A2".

2D plan overlay - Privacy Impact

In order to create the Privacy Impact diagram, we drew several arcs of 90mm radius on the 2D plan overlay. These arcs represent a 9m radius as derived from the 1:100 scale of the drawing. These arcs were located at the centre of each proposed window W25 and W26 in order to outline the impact of overlooking and privacy from the proposed design on the under construction project at 1 Seddon Hill Road. This composite document was released and entitled "Survey and 2D plans - Privacy Impact - scale 1-100 @ A2".

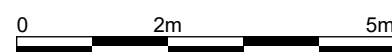
Signed





showing 9m radius from points of impact looking toward affected neighbouring property

- Location 1 - centre of W26
- Location 2 - centre of W25



Scale 1:100 @ A2

TWO STOREY
C CLAD RTESIDENCE
METAL ROOF
No.34

ANNEXURE H

Survey Reference Wireframe Overlays – 3D Model Alignment

PL-1



PL-2



2.

PL-3



PL- 4



3.

PL-5



PL-6

