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12 August 2025

Northern Beaches Council
725 Pittwater Road
Dee Why NSW 2099

Attention: Thomas Burns, Principal Planner
Thomas.Burns@northernbeaches.nsw.gov.au

RE: DA 2025/0024 158 PACIFIC PARADE DEE WHY NSW 2099

SUPPLEMENTARY LETTER OF OBJECTION

Dear Tom,

I refer to my earlier submission dated 4 March 2025 (prepared by Bill Tulloch on my behalf) objecting to the above development application (DA 2025/0024). This letter supplements the objections outlined in that submission, and should be read in conjunction with that submission.

You recently provided me by email with a copy of a View Impact Assessment (VIA) submitted by the applicant, which provides surveyed montages of the proposed development at 154-158 Pacific Parade, Dee Why as observed from my apartment at 5/139-141 Pacific Parade, Dee Why (report dated 4 August 2025 from David Murgatroyd of Rock Hunter Australia Pty Ltd).

The VIA clearly demonstrates the extent to which the development would result in a severe view loss from my apartment, including that my views of Dee Why Beach would be completely obliterated by the proposed development. These beach views are not partially impacted - they would be entirely blocked by the new development.

The VIA clearly evidences the concerns raised in my earlier submission dated 4 March 2025:

“Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Viewing Sharing of the DCP. The proposed development is not considered to result in the reasonable sharing of views.

Significant concern is raised in relation to view loss to my ... property as a result of the proposed development, roof form and building height encroachment of this proposal.

o EXCESSIVE BUILDING HEIGHT [LEP HOB]: Proposed 14.9m v Control 11.0m [35% non-compliance]

o EXCESSIVE BUILDING HEIGHT [SEPP 30% BONUS HOB]: Proposed 14.9m v Control 14.3m [4% non-compliance]”

The DCP Controls on View Sharing require that all new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties and must demonstrate that view sharing is achieved through the application of the Planning Principles established in the NSW Land and Environment Court case *Tenacity Consulting v Warringah Council*.

The proposed development is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to achieve an appropriate view sharing outcome to neighbours.

It is evident from the VIA that the proposed development fails to achieve a reasonable sharing of views available from my property. Recent NSWLEC Decisions make it clear that applicants cannot solely rely upon compliant HOB outcomes in defence of a poor view sharing outcome (see further details in my 4 March 2025 submission).

I also reiterate the following from my earlier submission:

“I contend that the view impact is considered above a moderate impact from the respective zones within the property given the significant proportion of the views which are impacted. The views most affected are from my ... highly used zones and include very high scenic and highly valued features as defined in *Tenacity* [*Tenacity Consulting v Warringah Council*]. The views are certainly worthy of consideration and substantial protection.”

It is of particular concern that the loss of views from my apartment is further exacerbated by the 25% ‘in-fill affordable housing bonuses’ of HOB applied by the applicant in their Development Application. The applicant has applied affordable housing bonuses to significantly increase the scale and height of the proposed building, thereby causing even more severe and irreversible view loss for existing residents.

DPIE Practice Notes, dated December 2023 states the following:

‘Responding to local standards: The full extent of the in-fill affordable housing bonuses may not be achieved on all sites, due to site constraints and local impacts. The in-fill affordable housing bonuses should not be treated as an entitlement. DAs that propose in-fill affordable housing will be subject to merit assessment by the consent authority. The application of the bonuses does not affect a consent authority’s responsibility to consider the requirements of relevant EPIs, a development’s likely impacts or the suitability of the site for the development.’

As noted by his Honour, Justice Moore of the Court in *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 (Rebel),

“the concept of sharing of views does not mean, for the reasons earlier explained, the creation of expansive and attractive views for a new development at the expense of removal of portion of a pleasant outlook from an existing development. This cannot be regarded as “sharing” for the purposes of justifying the permitting of a non-compliant development when the impact of a compliant development would significantly moderate the impact on a potentially affected view”.

The same unreasonable scenario in Rebel applies to the current DA. The proposed breaching dwelling will take away views from my property and neighbouring properties to the considerable benefit of the future occupants of the proposed dwelling. This scenario is not consistent with the principle of View Sharing enunciated by his Honour, Justice Moore in Rebel. The proposed development cannot be supported on visual impact grounds.

The VIA demonstrates a failure by the Applicant to provide approximately “like for like” view impacts as between the proposed development and existing dwellings.

These issues warrant refusal of the DA in my view.

To summarise:

1. I contend that the proposed development, when considered against the DCP and the NSW Land and Environment Court Planning Principle in *Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC*, will result in an unacceptable view impact and will not achieve appropriate view sharing.
2. I contend that the proposal is contrary to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that it does not satisfy the view sharing controls of the DCP.

I respectfully ask the Council to reject this DA, or at a minimum to seek modifications to this DA including:

- **Reducing the Height of Building to below the LEP standards @ 11.0m to ensure view sharing.**
- **Relocating any of the proposed 13 street tree canopy away from corner locations, so as not to impede view sharing.**

I further request that Council consider carefully the matters raised in my original objection letter dated 4 March 2025, as well as the objections raised in this letter specifically in response to the significant view loss which would result as illustrated in the VIA, to gain a comprehensive understanding of my position and the cumulative negative impacts the proposed development would have on neighbouring properties including my property.

Thank you for your time and consideration.

Yours sincerely,

Diane Somerville