
From: Zack Wilson
Sent: 21/06/2024 4:47:31 PM
To: Council Northernbeaches Mailbox; Megan Surtees
Cc: [REDACTED]
Subject: TRIMMED: DA2024/0534 - Submission - Letter of objection
Attachments: DA2024-0534 Letter of Objection.pdf;

Good afternoon, Northern Beaches Council,

Attention: Megan Surtees

Please find attached our letter of objection in relation to DA2024/0534 at 14 Bassett Street, Mona Vale.

If you have any questions, please do not hesitate to contact me.

Kind regards

Zack Wilson (PIA Assoc.)
Senior Town Planner



21 June 2024

Our Ref: GLN12209_DA2024/0534 Letter of objection.docx

Scott Phillips
Chief Executive Officer
Northern Beaches Council
PO Box 82
Manly NSW 1655

By email: council@northernbeaches.nsw.gov.au

Dear Scott,

RE: Development Application No. 2024/0534 Letter of objection

Assessing Officer: Megan Surtees

Property: Lot 23 Section B Deposited Plan 6195; 14 Bassett Street, Mona Vale NSW 2103

GLN Planning Pty Ltd. has been engaged by the registered owners of Lot 1 in Deposited Plan (DP) 1049663, Lot 24 Section B DP 6195, Lot A DP 355312 and Lot 3 DP 530220; 16, 12 & 24 Bassett Street and 25 Grandview Parade, Mona Vale NSW 2103 following the notification of Vaughan Patrick Milligan's (the **Applicant**) development application (DA) 2024/0534 submitted 8 May 2024 for *alterations and additions to residential development – Alterations and additions to a dwelling house* (the **Proposal**) over Lot 23 Section B Deposited Plan 6195; 14 Bassett Street, Mona Vale NSW 2103 (the **Site**). Our brief was to undertake a preliminary assessment of the Proposal and secondly, if concerns were identified, to prepare and lodge a submission with Northern Beaches Council (**Council**).

We note Council's notification period of the DA concluded 30 May 2024, and submissions received after the end of the notification period will be considered in the assessment of the proposal, prior to determination of the DA as per Council's *Northern Beaches Community Participation Plan (Plan Making and Development Assessment)*. This has been confirmed by Megan Surtees via email dated 27 May 2024.

1 Tasks undertaken

For the purpose of assessing the Proposal and preparing this submission, we have undertaken the following tasks:

- Obtained a copy of all relevant documents associated with the DA from Council's Property Search
- Review of all the DA's documentation including architectural plans, Statement of Environmental Effects (**SEE**) and accompanying Section 4.6 written variation request prepared by VMDC Planning (April 2024)
- Review of relevant planning controls
- Preliminary assessment of the Proposal

- Inspection of our clients properties and surrounding locality on 18 June 2024
- Detailed assessment of the Proposal.

2 Statutory Controls

The following Environmental Planning Instruments and Development Control Plan are relevant to the assessment of the Proposal:

- *Environmental Planning and Assessment Act 1979 (EP&A Act)*
- *Environmental Planning and Assessment Regulation 2021*
- State Environmental Planning Policy
- *Pittwater Local Environmental Plan 2014 (LEP)*
- Pittwater 21 Development Control Plan (DCP)
- NSW Coastal Design Guidelines 2023

Our assessment has identified a number of issues with the Proposal which would have direct potential impacts on the residents and properties listed above and indirectly contribute to a conclusion that the Proposal is not acceptable in its current form. Consequently, we document these concerns in our submission below.

3 Matters for Consideration

3.1 Pittwater Local Environmental Plan 2014

The Site is zoned R2 Low Density Residential under the provisions of the LEP, and the Proposal is a permitted land use with development consent. However, the Proposal includes a number of non-compliances with development standards and development controls, the majority of which require the Northern Beaches Local Planning Panel (if it is to approve the DA) to accept a variation to those standards in accordance with the LEP and DCP. **Table 1** below provides a summary of the applicable development standards of the LEP.

Table 1. Applicable provisions under the LEP

Section	Requirement	Proposed	Comment
Part 1 Preliminary			
1.2 Aims of Plan	This Plan aims to make local environmental planning provisions for land in Pittwater in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.	Alterations and additions to existing dwelling house.	Refer to discussion in Section 3.1.1 of this submission.
Part 2 Permitted and prohibited development			

Section	Requirement	Proposed	Comment
2.1 Land use zones	R2 Low Density Residential	Alterations and additions to existing dwelling house	Permitted with development consent.
2.3 Zone objectives and Land Use Table	- To provide for the housing needs of the community within a low density residential environment. - To enable other land uses that provide facilities or services to meet the day to day needs of residents. - To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.	Alterations and additions to existing dwelling house comprising: - Construction of a new first floor addition to provide for primary bedroom with ensuite, walk in robe, retreat, wet bar and attached alfresco area. - Refurbishment of the existing first floor terrace area. - Removal of the existing concrete parapet along the south-east elevation and replacement with a glass balustrade.	Refer to discussion in Section 3.1.2 of this submission.
2.7 Demolition requires development consent	The demolition of a building or work may be carried out only with development consent	Removal of the existing concrete parapet along the south-east elevation and replacement with glass balustrade.	Permitted with development consent. However, we note this provision has not been addressed in the SEE and Architectural Plans.
Part 4 Principal development standards			
4.3 Height of buildings	8.5m	10.17m	Without justifiable submission of a Section 4.6 written variation request, a consent authority has no power to approve the proposed variation to the development standard.
Part 5 Miscellaneous provisions			
5.4 Controls relating to miscellaneous permissible uses	Secondary dwellings on land other than land in a rural zone	The Proposal includes additional elevated private open space terrace that services a bedroom, and parents retreat of the dwelling including "wet bar" with new external access stairs.	A detached one storey stone secondary dwelling is located at the rear of the Site. See discussion below.
Part 7 Additional local provisions			
7.1	Development consent is required for the carrying out of works described in the table to this subclause	The Site is identified as Class 5 acid sulfate soils and within	Not applicable in this instance.

Section	Requirement	Proposed	Comment
Acid sulfate soils	on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.	500m of adjacent Class 4 acid sulfate soils.	
7.7 Geotechnical Hazards	This clause applies to land identified as "Geotechnical Hazard H1" and "Geotechnical Hazard H2" on the Geotechnical Hazard Map.	The Site is identified as 'W Hazard H1'.	"Once geotechnical risk management measures have been identified for the Site, it is the owners' responsibility to ensure their sites are maintained in accordance with "AGS 2007" standards and the principal that every reasonable and practical step that is available should be used to remove risk" (Geotechnical Risk Management Policy for Pittwater – 2009).

3.1.1 Aims of Plan

We contend the Proposal is contrary to Section 4.15(1)(a)(i), Section 4.15(1)(a)(iii), Section 4.15(1)(b), (c), and (e) of the EP&A Act as it fails to satisfy all relevant aims under the LEP because of undue amenity impacts on neighbouring properties as follows:

- (a) to promote development in Pittwater that is economically, environmentally and socially sustainable,
- (b) to ensure development is consistent with the desired character of Pittwater's localities,
- (f) to encourage a range of housing in appropriate locations that provides for the needs of the community both now and in the future, ...

Residential amenity includes access to sunlight, daylight, and privacy. A high standard of residential amenity should be achieved in any proposed alterations and additions. The amenity of adjacent buildings as well as the building subject to alteration should not be adversely affected. Hence, given the elevated nature of the Proposals siting and design, we contend undue amenity impacts arise on our clients' properties and include overlooking, visual privacy issues, overshadowing and noise related impacts.

Further, we are of the opinion the Proposal negatively impacts the appearance of the building by way of excessive height, bulk, scale and incompatibility of design in the locality. We contend no part of the rooftop terrace, any permanent or temporary structure installed, or furniture placed on it shall exceed the 8.5m maximum height of building development standard set by the LEP at any time.

The submitted documentation does not clearly illustrate all neighbouring buildings, their window locations, room types and location of external living areas and private open spaces. Hence, the extent of impact (line of sight) from the proposed rooftop terrace cannot assess the level of overlooking to our clients' properties. Taking the above into consideration, it is unclear what (if any) design measures have been included to minimise amenity impacts including but not limited to overlooking,

overshadowing, noise, and built form visual impacts, noting the existing concrete parapet along the south-eastern elevation is proposed to be demolished and replaced with a glass balustrade. Considering the height of Proposal and rooftop terrace, the existing dwellings siting on an elevated position and existing exceedance of the height of buildings development standard, we find it difficult to agree with the statement “this is not considered to contribute to unreasonable privacy impacts as the terrace is recessed into the existing building footprint” (pg. 24 of the SEE).

In terms of view loss, if a DA is made to Council for development which has the potential to impact on neighbouring views, then it is desirable that Council assess the impacts of views in accordance with the 4-step process set out in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 (**Tenacity**), including determining whether the impact is negligible, minor, moderate, severe or devastating.

3.1.2 Zone R2 Low Density Residential

The Proposal is inconsistent with the objectives of the R2 Low Density Residential zone as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

The Site has been developed as a detached dwelling house under a Complying Development Certificate (**CDC**) issued in 2015 (CDC165/15) and subsequent CDC (CDC0043/16) for alterations and additions to a partially constructed dwelling house. We further note that in 2016, the partially constructed dwelling house was regularised by a Building Information Certificate (**BIC**) (BC0017/16) as issued by Council dated 7 March 2016.

Importantly, the Proposal relies on the existing lift access with a maximum building height of 10.17m that exceeds the 8.5m height of buildings development standard to justify adding an additional storey and roof top terrace that contributes additional bulk to the existing dwelling, leading to what is essentially a three-storey dwelling, sited in an elevated location, in a low-density residential environment.

Further, we acknowledge a detached one storey stone secondary dwelling is located at the rear of the Site. Hence, we ask Council to ensure that no additional dwelling entitlements are granted over the Site, noting the potential that an independent living studio that can rely upon separate access from the principal dwelling exists on the lower floor of the existing dwelling, and the Proposal will also obtain “improved accessibility for the occupants” to the third storey via the “new external access stairs” (pg. 24 of the SEE), noting the ease to mechanical lock an elevator from operating to the Proposal.

Accordingly, we contend that the combination of an additional third storey with rooftop terrace, and the increased bulk and scale of the Proposal will have a detrimental impact on the existing streetscape, locality and residential amenity of our clients’ properties. The proposed third storey further reduces the visual and acoustic amenity enjoyed by the residents and will be visually obtrusive when viewed from the public domain by way of overall height, scale and materials. Hence, a photomontage has not been prepared to assist in the assessment of the impact of the Proposal on the visual qualities of Bassett Street, Mona Vale headland, Basin Beach, Mona Vale Beach and Surfview Road further south.

While the NSW Coastal Design Guideline is not a mandatory consideration for development assessment, it does advise on best practice urban design for development in the coastal zone to assist proponents better understand coastal places and create sustainable designs for coastal areas. Hence, we contend the Proposal disregards the beauty and character of the coastal locality regarding building scale and height to ensure the Proposal integrates with, and does not dominate, coastal landforms and other elements of the coastal environment (for example, keep building mass below tree canopy). Further, the Proposal has not been designed and located to limit the visual intrusion when viewed from the public domain (refer to **Figure 1**).

3.2 Characterisation

We agree with the Applicant that the immediate locality is represented by a mix of detached multi-level dwellings (mainly a consequence of the existing sloping topography) within a landscaped setting, with many dwellings designed and orientated to enjoy the expansive views across Basin Beach, Mona Vale Beach and the Tasman Sea. However, we contend the SEE accompanying the DA does not accurately detail the intricacies of the Proposal. The SEE states (pg. 11):

The new works will comprise:

First Floor

- *Construction of a new first floor addition to provide for primary bedroom with ensuite, walk in robe, retreat, wet bar and attached alfresco area.*
- *Refurbishment of the existing first floor terrace area*
- *Removal of the existing concrete parapet along the south-east elevation and replacement with a glass balustrade.*

The proposed works represent a high-quality architectural design solution that will provide a significant enhancement to the amenity and usability of the existing dwelling. The resultant development is a skilful design for a sensitive coastal site, with use of screening devices, varied glazing, sill heights, and materiality to reduce bulk and scale.

Upon review of the documentation submitted as part of the DA, we contend the "existing first floor terrace area" is in fact the rooftop of the existing two storey residence and the Proposal comprises alterations and additions to create a third storey with excessively oversized rooftop terrace. We have informed this view based on commentary provided at Page 5 of the SEE that describes the Site as being 'currently developed with a **"two storey"** residence with existing lift access to a terrace area on the first level'.

Critical to establishing this point of view, we note the existing two storey dwelling commenced construction under a CDC issued in 2015 (CDC165/15) and subsequent CDC (CDC0043/16) for alterations and additions to a partially constructed dwelling house. We further note that in 2016, the partially constructed dwelling house was regularised by a BIC (BC0017/16) as issued by Council dated 7 March 2016. Importantly, as we have not yet received a copy of the documentation determined by Council via our request to access information under the *Government Information Public Access Act 2009*, we have assumed that the extent of the lift access has been constructed with no regard for the maximum height of building development standard established by the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* and LEP and remains unauthorised. Therefore, irrespective of there being an existing element of the dwelling, it should not be relied

upon to determine the existing height of the building and justify the addition of a third storey and rooftop terrace.

Rooftop terraces can improve the amenity and liveability of dwellings by providing evaluated external living spaces that allow occupants additional access to natural light, breeze and views. However, given the elevated nature of rooftop terraces, they need to be carefully sited and designed to prevent undue amenity impacts on neighbouring properties. These may include overlooking or visual privacy issues, overshadowing or noise related impacts. Rooftop terraces also have the potential to either visually enhance or negatively impact the appearance of a building by way of excessive height, bulk, scale or incompatibility of design or building materials if not planned well. As such, the design of rooftop terraces should be similar to and consistent with the built form characteristics of the dwelling, use compatible and complementary materials and where constructed as an addition, be integrated visually into the existing roof line. As stated above, we contend the Proposal results in the creation of a new third storey that has complete disregard for the height of buildings development standard established by the LEP and fails to adequately address issues relating to excessive height, bulk, scale, visual privacy issues, amenity and noise related impacts.

Further, if a rooftop terrace is covered by a roof structure, it is defined as a storey under the LEP and is included within the definition of building height as they are included in the highest point of the building. We contend no part of the Proposal (including any permanent or temporary structure installed or furniture placed on it) shall exceed the 8.5m maximum building height development standard at any time. The Proposal has not been designed to limit overlooking into the private open spaces, habitable rooms and windows of adjacent dwellings with no Amenity Impact Assessment supporting the Proposal which would include:

- Who may be impacted – a Site Plan and Floor Plan showing all neighbouring buildings, their window locations, room types and location of external living areas and private open spaces.
- The extent of the impact – identify all available view lines from the Proposal and the extent of overlooking of neighbouring properties.
- What is proposed – design measures to minimise amenity impacts including but not limited to overlooking, overshadowing, noise, built form visual impacts. Examples of mitigation measures which may be effective include, but are not limited to, setting the rooftop terrace back from the roof and / or building edge, utilising a solid balustrade, including privacy screening or integrating landscape planter boxes to the rooftop terrace perimeter, lighting installations so that light is projected downwards onto the floor surface of the rooftop terrace.

If the Proposal and supporting SEE had adequately considered “Who may be impacted”, The extent of the Impact” and “What is proposed”, the ‘removal of the existing concrete parapet along the south-east elevation and replacement with a glass balustrade’ (pg. 11 of the SEE) would have identified a direct impact, resulting in overlooking into the private open space and habitable rooms of Lot 24 Section B in DP 6195; 12 Bassett Street, Mona Vale NSW 2103. Additionally, pending confirmation from Council that the external access stairs to the rooftop terrace has been regularised by the BIC, the Proposal fails to address integrating the staircase within the dwelling design and by retaining it, has unacceptable visual and amenity impact on adjoining properties, specifically, Lot 1 in DP 1049663; 16 Bassett Street, Mona Vale NSW 2103.

Ultimately, we contend the Proposal is incorrectly characterised and should be described as alterations and additions to an existing dwelling house to create a new third storey and rooftop terrace.

3.3 Bulk, scale and height

Most land in NSW (but not all) is typically subject to a 'height of buildings' development standard which is designed to limit the height of development that may occur. This together with the 'floor space ratio' development standard (not relevant in this instance), are at the very heart of the NSW planning system, as these two development standards largely set the outer limits of the bulk, scale and yield of development that is achievable on any development site.

Section 4.3(2) of the LEP states:

The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

In order to understand the meaning of the first few words of that control, the LEP offers a definition of "building height (or height of a building)" which states as follows:

building height (or height of building) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Under this definition, it is essential to know how to correctly understand and identify the "ground level (existing)" of any development site for the purposes of maximising the development that may be undertaken. Accordingly, of relevance is the definition of "ground level (existing)" in the LEP which states:

ground level (existing) means the existing level of a site at any point.

As prescribed by the relevant Height of Buildings Map sheet, the Site is subject to a maximum building height of 8.5m. We contend a maximum building height development standard of 8.5m generally accommodates development up to two storey in height and the addition of a new third storey and rooftop terrace is out of context for the R2 Low Density Residential zone. The Proposal introduces a significant amount of new floor area upon the third storey in breach of the height limit when compared to the existing building form. The Proposal seeks to increase the amount of floor space located on the new third storey from approximately 4.39m² (existing lift footprint) to 138m² (an increase of **approximately 3,043.5%**), which is an astronomical increase (above the 8.5m height of buildings development standard) and fundamentally changes the form, scale and character of the building as viewed from neighbouring properties and the public domain. Further, whilst the new third storey maintains the existing setbacks, it cannot be disregarded that the Proposal adds additional scale and visual bulk when viewed from Lot 1 in DP 1049663 and Lot 24 Section B DP 6195; 16 and 12 Bassett Street, Mona Vale NSW 2103 which is not an acceptable outcome.

We further note the DA is accompanied by a Section 4.6 written variation request to vary the development standard whilst relying on the existing lift shaft / access to the roof to establish the existing height of the building and justify the addition of a new third storey. The proposed variation stated in the SEE and Section 4.6 written variation request is 1.67m or 19.64%.

Regardless of the Section 4.6 written variation request providing justification of the Proposal, we contend the Proposal is incompatible with the height and scale of surrounding and nearby development creating an undesirable character which is to 'give the appearance of a two storey maximum' (refer to Section D9.1 of the DCP). As identified above, the additional quantum of floor area introduced is substantially more than what exists on the Site and introduces a new residential component which increases opportunity for privacy impacts due to the deficient building separation to the side boundaries of a similar scaled building (i.e. residential flat building).

The proposed variation is substantially beyond the 10% commonly applied as a rule of thumb for variations to development standards, extending over additional parts of the Site, and therefore, represents a major variation that could only be justified by the circumstances identified as the existing building height and topography, resulting in an extensive increase in site coverage beyond the existing building envelope. The three-storey character of the Proposal and breach of the height of buildings development standard is not what would be reasonably anticipated for the R2 Low Density Residential zone and the presentation of the third storey form to the eastern and western boundary would not be reasonably anticipated in the R2 Low Density Residential zone. Further, unlike the Warringah Development Control Plan 2011 that establishes a maximum wall height of 7.2m for the R2 Low Density Residential zone, the Proposal has wall heights between 8.5m and 10.17m (approx.) presenting to each side boundary.

In addition, there is a significant breach of the side boundary building envelope for the entire length of the eastern and western façade, noting the development control requires planes to be projected at 45 degrees from a height of 3.5m above existing ground level from the side boundaries to the maximum building height (i.e. 8.5m). Importantly, the SEE does not provide a sound justification in support of the proposed variation relating to the outcomes of the control and desired future character of the locality, contributing to additional unnecessary overshadowing and visual impact on our clients' properties. We do not understand how 'the existing lift shaft was approved within the building envelope' (pg. 30 of the SEE) other than via a retrospective approval for unauthorised works and should not now be relied upon to justify variations to both the LEP and DCP to introduce a new third storey and rooftop terrace. We also disagree with the statement that "minor roofing areas protrude within the building envelope" (pg. 30 of the SEE) and argue a compliant scheme would result in the removal of a significant amount of habitable floor space.

The height of buildings development standard contains a number of objectives as follows:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

We disagree with the Applicant's assessment of the objectives of the height of buildings development standard. In our view, the Proposal, comprising a third storey above the 8.5m height of buildings development standard is not compatible as there are no examples of development to

this scale within the R2 Low Density Residential zone and visual catchment of the Site, which is characterised predominantly by two storey dwelling houses. The Applicant has not qualified a sound justification for contravening the development standard with any evidence to demonstrate compatibility with the height and scale of surrounding buildings and therefore, Council cannot be satisfied it meets the objectives of the development standard. The minor footprint of the lift access which exceeds the height of buildings development standard is not considered sufficient justification to add a substantial upper level of habitable living and entertaining area to the building.

We are concerned the Proposal is incompatible with the adjoining dwellings and is not considered to ‘minimise the adverse visual impact’. This is also a concern for the dwelling presenting to the eastern and western boundaries which will experience the full scale and height of the third storey from their internal living spaces, back yards and private open space (if approved). This would not reasonably be anticipated in the R2 Low Density Residential zone for our clients with regards to visual impact and solar access (refer to **Figure 2, Figure 3 & Figure 4**).

We also contend the Applicant’s environmental planning ground is insufficient as a consequence of the lift access to the rooftop, as this is a minor existing portion of the existing dwelling that is in breach of the height limit. The additional storey is a new element comprising 138m² of new floor area in breach of the height of buildings development standard. We consider the breach of the height of buildings development standard is not considered warranted or caused by the existing lift access, given the addition of a new third storey. Further, the “suggested” absence of impact is not considered to be a sufficient environmental planning ground, as this is a requirement of new development to demonstrate no unreasonable impacts.

Accordingly, we consider the Proposal is, and Section 4.6 written variation request lacking, and the assessment and design of the Proposal has not properly considered the objectives of the development standard to achieve a planned outcome to the character of the area, as opposed to maintaining the existing character. In our view, the Proposal should not protrude beyond the whole of the existing building envelope, where such a protrusion would be an infringement of the existing planning controls that relate to bulk and scale. As viewed from Bassett Street and Surfview Road, the new portions will clearly read as a third storey, inconsistent with the building form and character of the R2 Low Density Residential zone. Further, no landscaping is proposed, with any amount of landscaping considered insufficient to mitigate the built form of the Proposal.

Therefore, the Proposal fails to maintain the appearance of a two-storey building and being sited in an elevated location, will present as a third storey.

3.4 Pittwater 21 Development Control Plan

Having regard to the below assessment (refer to **Table 2**), it is concluded that the Proposal is inconsistent with the DCP, and objectives specified in Section 4.15(1)(a)(iii) of the EP&A Act.

Table 2. Variation to development controls

Development control	Comment
A4.9	Mona Vale’s context is derived from low density residential development along the valley floor and slopes / ridgelines to the north, south and west. Due to the topography, some significant views can be obtained to the east. Conversely, the slopes are visually

Development control	Comment
Mona Vale Locality	prominent. These areas are characterised by one and two storey dwelling houses, increasing in areas on the headland, noting a diverse style and architecture, a common thread being the subdued external finishes. The desired character of the locality "will remain primarily low density with dwelling houses a maximum of two storey in any one place", integrated with the landform and landscape. Future development "will maintain a building height limit below the tree canopy and minimise bulk and scale". Although designed by a well-recognised architect and Australian Institute of Architects Life Fellow, the existing dwelling is considered bulky and out of character within the streetscape, exceeding the height of building development standard and building envelope control established by the DCP, benefiting from State wide planning provisions by virtue of a CDC and retrospective approval for unauthorised works under a BIC. However, a copy of Council's Pre-lodgement Notes (PLM2022/0028) suggests that a similarly proposed rooftop addition to the existing two storey dwelling, raised a number of concerns including privacy, dwelling entitlements, height, bulk and scale, over shadowing, and impact to existing views. However, we contend the Proposal does not adequately address the concerns previously raised by Council and creates undue amenity impacts to neighbouring properties and the wider locality comprising building height, bulk and scale, overshadowing, visual privacy, acoustic nuisance and view sharing. The Proposal is not considered to have minimised visual impact from our clients properties and public domain, resulting in a built form that is considered excessive for the R2 Low Density Residential zone and inconsistent with what could reasonably be expected to be developed on the Site in accordance with the planning controls, leading to the conclusion that the new third storey element is excessive for the Site and adds unreasonable bulk and scale presenting to our clients. Critically, the Proposal has not been designed with residential amenity including visual and acoustic privacy in mind and the submitted documentation does not demonstrate critical view lines from the Proposal into adjoining properties. Further, the inclusion of a rooftop terrace has complete disregard to the existing and desired character of the Mona Vale coastal locality. The amenity of adjacent buildings as well as the existing dwelling subject to the Proposal should not be adversely affected. Hence, given the elevated nature of the Proposals siting and design, we contend undue amenity impacts arise on neighbouring properties and include overlooking, visual privacy issues, overshadowing and noise related impacts. Even if the Applicant was to suggest mitigation strategies such as increased setbacks to the side boundaries, landscaping zones and orientating overlooking away from the adjoining boundaries, these strategies could not remedy our concerns with the height, and visual impact of the third storey. As such, the visual impact on our clients will be unreasonable given the scale, length and proximity of the third storey and rooftop terrace to the common boundaries. The length of the new third storey and rooftop terrace is considered excessive and encroaches the building envelope for the full length of the façade, with no real attempt to step back the newly introduced third storey element. Although a different material is used to provide architectural interest, the length and height of the side boundary walls are considered too visually dominant for the R2 Low Density Residential zone. The existing residential dwellings to the east and west will experience a three-storey wall adjoining the side boundary from their internal living spaces, back yards and private open space. This is not consistent with what would reasonably be expected in the R2 Low Density Residential zone in accordance with the planning controls. Further, we are of the opinion the Proposal negatively impacts the appearance of the building by way of excessive height, bulk, scale and incompatibility of design in the Mona Vale coastal locality. We contend no part of the rooftop terrace, any permanent or

Development control	Comment
	temporary structure installed, or furniture placed on it shall exceed the 8.5m maximum height of building development standard set by the Pittwater Local Environmental Plan at any time.
C1.3 View Sharing	One of the fabulous things about the location is the prime position overlooking Basin Beach, Mona Vale Beach and the Tasman Sea. This ideal positioning means many homes are lucky enough to enjoy uninterrupted ocean and district views. The notion of view sharing is invoked when a property enjoys existing views, and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it, all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable). The Land and Environment Court of New South Wales (LEC) has acknowledged that views from a person's home can have considerable value. The LEC has a well-established planning principle in respect to the assessment of impacts of development on views which was set out in Tenacity. Whilst we acknowledge a planning principle is not a binding law, it is described by the LEC as a statement of a desirable outcome from a chain of reasoning aimed at reaching a planning decision, or a list of appropriate matters to be considered in making a planning decision. Although a planning principle is not binding on a decision maker, the LEC will try to apply the principle consistently in appeals before it, unless it is inconsistent with the council's applicable controls. If a planning principle is observed by the council when assessing a development, the planning decision is more likely to be sound in the eyes of the LEC. In other words, if an application is made to a council for development which has the potential to impact on neighbouring views, then it is desirable that the council assess the impact on views in accordance with the 4-step process set out in Tenacity, including determining whether the impact is negligible, minor, moderate, severe or devastating. The planning principle in Tenacity can be read from paragraph 26 onwards as follows: <i>26 The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.</i> <i>27 The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.</i> <i>28 The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.</i> <i>29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked</i>

Development control	Comment
	<i>whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.</i> The issues of visual impact assessments are very complex. While the process for addressing impact on sightlines from private property is well understood through Tenacity, we contend the SEE fails to adequately address view sharing and ensure that views are not unreasonably compromised by the Proposal. Hence, we believe a thorough visual impact assessment is necessary in support of the Proposal, noting Councils Pre-lodgement Notes acknowledge that if any impact to existing views result from the Proposal, a detailed view analysis is to be undertaken and form part of the DA. We contend the Proposal will unreasonably obstruct ocean views presently enjoyed by Lot 1 in DP 1049663, Lot A DP 355312 & Lot 3 DP 530220; 16 & 24 Bassett Street and 25 Grandview Parade, Mona Vale NSW 2103 and farther afield from highly used rooms and balconies, resulting in inconsistency with the aims of the LEP and DCP (refer to Figure 5 & Figure 6). We contend that without a comprehensive assessment (i.e. not relying on the Site View Analysis Sharing Plan that forms part of the Architectural Plans which does not detail the extent to which existing views are obstructed by the Proposal), further documentation is necessary to undertake a detailed analysis of the Proposal against the relevant DCP provisions and LEC guidelines, noting the submitted documentation and SEE have not fully acknowledged or considered the loss of views from neighbouring properties. Therefore, we contend the Proposal's design has not provided a considered outcome to the character of the area and prioritises the amenity of the Applicant and the dwellings residents at the cost of view sharing.
C1.4 Solar access	As per the DCP, development is to be sited and designed to maximise midwinter solar access to neighbouring properties, having regard to slope, views and existing vegetation, specifically with regard to excessive overshadowing and dependence for artificial lighting. In <i>The Benevolent Society v Waverley Council</i> [2010] NSWLEC 1082 the LEC consolidated and revised its planning principle on solar access now in the following terms: <i>Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.</i> We contend that the Proposal will result in additional and unreasonable overshadowing of Lot 1 in DP 1049663, Lot 24 Section B DP 6195; 16 & 12 Bassett Street, Mona Vale NSW 2103 to windows and private open space, resulting in non-compliance with the provision of the DCP and LEC and arises from a poor design with the solar diagrams not fully assessing the potential solar loss. The Proposal has been designed without considering the amenity of the neighbouring properties limited morning and afternoon sun as a result of the existing dwelling and addition of a new third storey, and it is considered that no third storey addition is the only acceptable outcome to not reduce the amenity of adjoining properties. What has been submitted gives the very clear indication that the outcome is not in accordance with the planning controls, and accordingly, the amount of sunlight lost should be taken into account, as well, as the amount of sunlight retained.
C1.5 Visual Privacy	Consideration of privacy are typically balanced with other considerations such as views and solar access. The degree of privacy impact is influenced by factors including the use of the spaces where overlooking occurs, the times and frequency these spaces are being

Development control	Comment
	used, expectations of occupants for privacy and their ability to control overlooking with screening devices. We contend the Proposal grossly impinges upon the privacy of Lot 1 in DP 1049663 & Lot 24 Section B DP 6195; 16 & 12 Bassett Street, Mona Vale NSW 2103 by enabling opportunities for overlooking and resulting in adverse privacy impacts to existing internal and external amenity including internal living spaces, bedrooms, backyards and private open space. Direct overlooking of the eastern and western boundaries has not been mitigated through setbacks, privacy screens treatments and the removal of the existing parapet demonstrates a clear lack of respect towards neighbours. We disagree that the opportunity for overlooking is reduced due to the new third storey being "little used bedrooms and parents retreat". The inclusion of a "wet bar" and external staircase clearly demonstrates this area is intended to be utilised for entertaining purposes if not as a separate dwelling with independent access. We also note a submission to Council that suggests the rooftop terrace could support 70-90 people for entertaining purposes and we contend this third storey will in fact be habitable living areas and should be accessed accordingly.
C1.6 Acoustic privacy	Noise is defined under the <i>Protection of the Environment Operations Act 1997</i> (POEO Act) and defines offensive noise as: <i>offensive noise means noise—</i> 1. <i>that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances</i> a. <i>is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or</i> b. <i>interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or</i> 2. <i>that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.</i> Parties at residential properties can give rise to noise in the form of musical instruments, amplified music, loud voices, shouting and antisocial noisy behaviour which may disturb neighbouring residents. Council is the appropriate regulatory authority for amplified music from parties that affects a residential neighbourhood. However, the SEE fails to acknowledge or address the potential for the third storey and rooftop terrace to be used for entertaining purposes, especially given it is sized to accommodate 70 to 90 guest and we contend the Proposal has failed to acknowledge the proximity and location of our clients' bedrooms. We further contend an acoustic consultant has not been engaged to prepare a noise assessment for Council to truly understand the potential impact of approving an elevated, unscreened rooftop terrace.
D9.1 Character as viewed from a public place	We contend the Proposal does not adequately address the concerns previously raised and creates undue amenity impacts to neighbouring properties and the wider locality comprising building height, bulk and scale, overshadowing, visual privacy, acoustic privacy and view sharing. Accordingly, we contend that the combination of an additional third storey with rooftop terrace, and the increased bulk and scale of the Proposal will have a detrimental impact on the existing streetscape, locality and residential amenity of our clients' properties. The proposed third storey further reduces the visual and acoustic amenity enjoyed by the residents and will be visually obtrusive when viewed from the public domain by way of overall height, scale and materials. Hence, a photomontage has not been prepared to assist in the assessment of the impact of the Proposal on the visual qualities of Basset

Development control	Comment
	Street, Mona Vale headland, Basin Beach, Mona Vale Beach and Heath Street further south.
D9.9 Building Envelope	Building envelopes set the appropriate scale of future development in terms of bulk and height relative to the streetscape, public and private open spaces, and block and lot sizes in a particular location. The underlying objective of the building envelope development control is to achieve the desired future character of the locality whilst ensuring a reasonable level of privacy, amenity and solar access is maintained by neighbouring residential properties. The objectives provide for flexibility in design; however, this flexibility does not mean the automatic right to design what the corresponding development control may achieve. The elements of the proposed building which exceed the building envelope development control and height of buildings development standard relate to the roofline and habitable room areas and the rooftop terrace, with the length of the new third storey and rooftop terrace considered excessive by virtue of its full length of the façade, with no real attempt to step back the newly introduced third storey element. Importantly, the SEE does not provide a sound justification in support of the proposed variation relating to the outcomes of the control and desired future character of the locality, contributing to additional unnecessary visual bulk, overshadowing and visual impact on our clients' properties.

The Proposal has a number of significant variations from relevant standards. While the justification for these variations generally has some basis, it is undeniable, that full compliance should result in a smaller building that better meets the planned outcome for the Mona Vale locality. We contend that a compliant development would prevent additions to the building and result in a less acceptable development.

4 **Likely Impacts of the Proposal**

The likely impacts of the Proposal can be summarised as:

- Exceedance of the height of buildings development standard
- Excessive bulk and scale
- Poor architectural design
- Overdevelopment of the Site establishing an undesirable precedent for future development within the Mona Vale locality
- Visual and acoustic privacy
- View loss
- Overshadowing.

5 **Objects of the Environmental Planning and Assessment Act 1979**

Section 1.3 of the EP&A Act provides the objects of the Act. The Proposal is inconsistent with the following objects as bolded in the extract below:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,***
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,***
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

6 Suitability of the Site

The Site is a particularly constrained development site by way of topography and its juxtaposition with existing development. Additionally, our clients currently enjoy extensive views across the subject Site to Basin Beach, Mona Vale Beach and the Tasman Sea which must be properly taken into consideration.

The DA seeks to maximise the development of the Site at the expense of our clients and fails to address the applicable development standards and controls which apply to the Site. The alterations and additions of the Site bear no relationship to the built form and visual form of the existing development of the Site. The increased floor area by the addition of a new third storey and rooftop terrace within the existing height plane of the lift access does not provide for the orderly and economic development of the Site.

7 The Public Interest

The public interest is served by development approved by Council being undertaken in a manner that provides for the equitable application of the effective planning controls by a consent authority. The planning controls under the LEP and DCP as imposed under the EP&A Act have not been applied in a manner that is consistent with the intent of the provisions and that ensures an appropriate level of residential amenity for the Site and adjoining development.

Approval of the Proposal would undermine the intent and effectiveness of the applicable planning controls and so approval would be contrary to the public interest of the locality and the broader Northern Beaches Council Local Government Area.

8 Inadequate Information

The DA fundamentally lacks an appropriate assessment under Section 4.15 of the EP&A Act specifically in relation to assessment of building height, likely impacts including but not exclusive to bulk and scale, view impacts, visual privacy, overshadowing and acoustic privacy. The submitted documentation does not accurately address the extent of demolition of the existing parapet nor the means of preventing overlooking.

The DA as submitted is identified as providing inadequate information to enable the Proposal to be supported by Council. Should further information be submitted to address the matters raised by our clients, further resident and objector notification of any amended material should be undertaken.

9 Conclusion

We have reviewed the available documentation and determined that there are a number of issues that warrant the refusal of the DA in its current form. The Proposal involves substantial variations to a number of planning controls and development standards and would result in an outcome that is inconsistent in the R2 Low Density Residential zone. These potential impacts have been outlined above.

The critical assessment issues in relation to the Proposal include excessive height, bulk, scale and incompatibility of design in the locality, overlooking, visual privacy issues, overshadowing and noise related impacts. We contend Council cannot be satisfied that the request to vary the height of building s development standard is well justified via the Section 4.6 written variation request, and ultimately, the scale of the Proposal and compatibility of the Proposal are reasons that justify Council being unable to support the application.

9.1 Recommendation

That Council recommend REFUSAL to the Northern Beaches Local Planning Panel for DA2024/0534 submitted 8 May 2024 for alterations and additions to residential development – Alterations and additions to a dwelling house over Lot 23 Section B Deposited Plan 6195; 14 Bassett Street, Mona Vale NSW 2103.

9.1.1 Site suitability

Pursuant to Section 4.15(1)(c) of the EP&A Act, the Site is not suitable for the Proposal due to inconsistencies with the desired character of the Mona Vale locality.

9.1.2 Aims of Pittwater Local Environmental Plan 2014

Pursuant to Section 4.15(1)(a)(i) of the EP&A Act the Proposal is inconsistent with the Section 1.2 Aims of The Plan of the LEP.

9.1.3 Built form, bulk and scale

Pursuant to Section 4.15(1)(a)(i) and 4.15 (1)(a)(iii) of the EP&A Act the Proposal is inconsistent with the built form controls with the following relevant planning instruments, particularly due to the addition of a third storey and rooftop terrace.

9.1.4 Section 4.6 written variation request for height of buildings

Pursuant to Section 4.15(1)(a)(i) of the EP&A Act the Proposal is inconsistent with the provisions of Section 4.6 Exceptions to Development Standards of the LEP in relation to the request to vary Section 4.3 Height of Buildings. We contend Council cannot be satisfied that the written request demonstrates that compliance is unreasonable and unnecessary in the circumstances of the case or there are sufficient environmental planning grounds as required by Section 4.6(3) and Section 4.6(4)(a)(i) of the LEP.

We contend Council cannot be satisfied the Proposal will be in the public interest as the objectives of the development standard relating to building height have not been satisfied as required by Section 4.6(4)(ii).

9.1.5 Public interest

Pursuant to Section 4.15(1)(e) of the EP&A Act, the Proposal is not in the public interest due to the built form non-compliances and inconsistencies with the desired character of the Mona Vale and coastal locality.

Should you have any questions, please do not hesitate to contact me.

Yours faithfully

GLN PLANNING PTY LTD

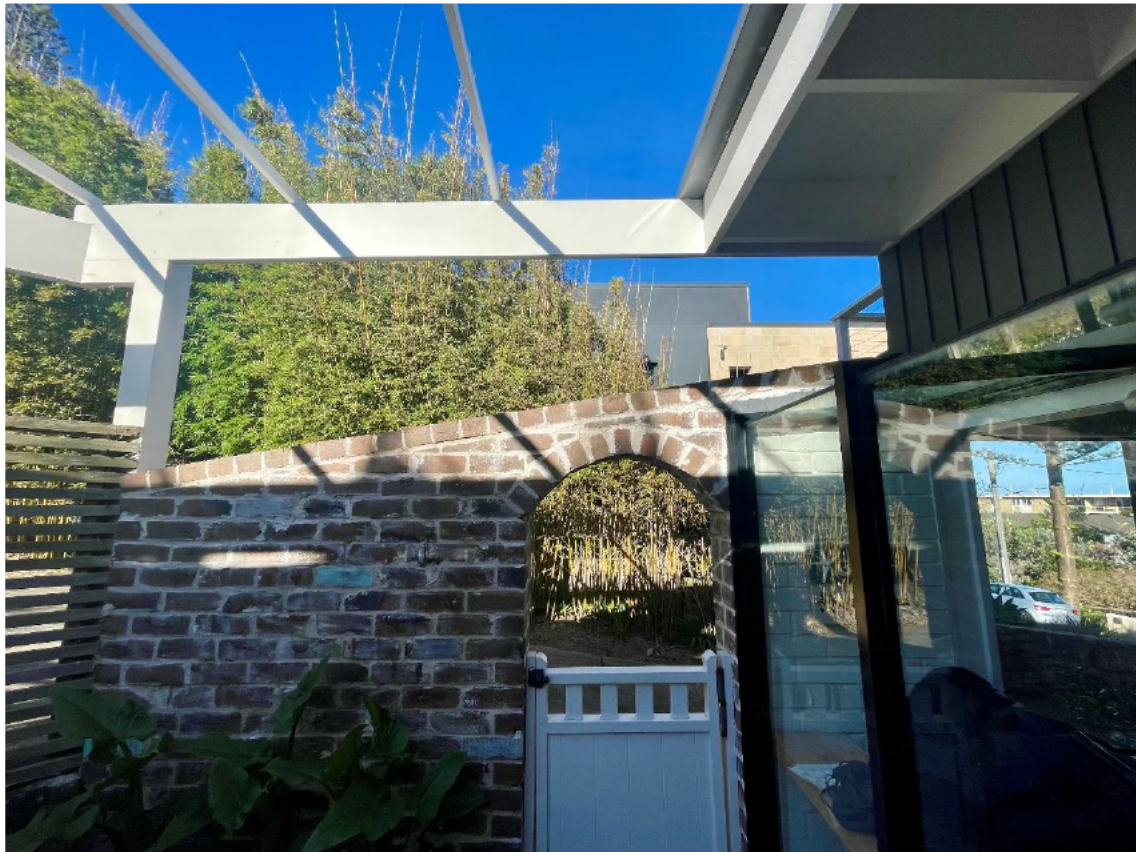


ZACK WILSON
SENIOR TOWN PLANNER



Source: GLN Planning, 2024

Figure 1. View of existing dwelling from Surfview Road



Source: GLN Planning, 2024

Figure 2. Existing view (looking east) from entertaining area at 16 Bassett St



Source: GLN Planning, 2024

Figure 3. Existing view (looking north east) from turf private open space at 16 Bassett St.



Source: GLN Planning, 2024

Figure 4. Existing view (looking south east) from turfed rear yard at 16 Bassett St.



Source: GLN Planning, 2024

Figure 5. Existing view (looking east) from the principal entertaining space at 24 Bassett St.



Source: GLN Planning, 2024

Figure 6. Existing view (looking south east) from the rear yard and garage at 25 Grandview Parade