

LAWRENCE WINNACOTT

AND ASSOCIATES PTY. LTD.

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**PLANNING PROPERTY AND
DEVELOPMENT CONSULTANTS**

RECEIVED AVALON

29 JUL 2016

CUSTOMER SERVICE

Interim General Manager,
Northern Beaches Council
P.O. Box 882,
MONA VALE. 1660

28th July, 2016.

Attention Rebecca Englund

Dear Sir,

**Re: Development Application No N0279/16 – Demolition of Existing Structures
and Construction of a New 3 Storey Dwelling and Detached Garage – 41 Marine
Parade Avalon Beach**

Lawrence Winnacott & Associates Pty. Limited has been engaged by Mr. & Mrs. McCausland the owners of property No 37 Marine Parade, Avalon to undertake an independent assessment of the above development application and to provide a submission to Council on their behalf. Mr. and Mrs. McCausland's property is located to the north west of the subject property.

The development application plans and documents contained on the Council's website have been reviewed and we have undertaken an inspection of the area. Our review has had regard to the provisions of the Environmental Planning and Assessment Act 1979, the Environmental Planning and Assessment Regulation 2000, and Pittwater Local Environmental Plan 2014, Pittwater 21 Development Control Plan and relevant planning principles adopted by the NSW Land and Environment Court.

The proposed development involves demolition of the existing 1-2 two storey dwelling house and detached garage and the construction of a new 3 storey dwelling house and detached garage. In contrast to the existing dwelling house the proposed new dwelling is oriented further to the south west and located closer to the western side boundary. The proposed dwelling includes windows on each level and an elevated ground level terrace skewed to the north west towards Mr. and Mrs. McCausland's property.

The proposed development involves excavation up to approximately 3.0 metres in depth on the low western side of the site to enable the creation of a third storey. This lower level of the building includes a lounge room, 2 bedrooms, bathroom, cellar, lift and plant room. The development also proposes a new sewer pipe as shown on the application site plan connecting with the existing main within the Council reserve.

Following our review of the development application and their consideration of the matter Mr. and Mrs. McCausland object to the application. Their principal ground of objection is the adverse visual privacy impact of the development on their property. They also raise concerns in relation to the scale of the propose development, non-compliance with certain provisions

of Council's planning controls and adverse impact on the environmental of the area generally. These grounds of objection are discussed below.

Adverse Privacy Impact:

The principal aspect of Mr. and Mrs. McCausland's dwelling is to the south with panoramic views over the bushland public reserve in the foreground, Avalon Beach and the northern beaches coast beyond. The southern side of their dwelling incorporates their principal outdoor private open space areas including decks, courtyards and swimming pool. The main living area of their dwelling containing lounge, dining room and kitchen area includes large sweeping windows to take advantage of the views.

The subject property is a battleaxe allotment with the main body of the lot located to the south of properties No. 37 and 39 Marine Parade. The principal aspect of the existing 1-2 storey house on the property is to the south and south west taking advantage of panoramic views over Avalon Beach and the coast. The building is orientated such that its rear wall, containing a bay window for a kitchen area and a narrow ground level balcony faces towards Mr. and Mrs. McCausland's property. The principal living room windows and outdoor terrace areas face towards the ocean and away from Mr. and Mrs. McCausland's property. The existing development on the subject property has minimal privacy impact on Mr. and Mrs. McCausland's property.

Unlike the existing dwelling house on the subject property the proposed new dwelling contains 3 storeys and is skewed more to the west and contains windows of principal living areas and the main outdoor open space terrace overlooking Mr. and Mrs. McCausland's property.

The Council planning controls relating to visual privacy are contained in Clause C1.5 of Pittwater 21 DCP the DCP. The outcomes and controls relating to visual privacy are;

Outcomes

Habitable rooms and outdoor living area of dwellings optimise visual privacy through good design. A sense of territory and safety is provided for residents.

Controls

Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9.0 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

It is also appropriate to give consideration to the planning principles for visual privacy adopted by the NSW Land and Environment Court in *Meriton v Sydney City Council*. The planning principles contain comments relative to the privacy relationship between the proposed development and Mr. and Mrs. McCausland's property including ;

- *At low densities there is a reasonable expectation that a dwelling and some of its private open space will remain private.*
- *In a low density area, the objective should be to achieve separation between windows that exceeds the numerical standards above (9.0 metres).*
- *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.*
- *Apart from adequate separation, 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.*

Even though the distance of separation between the proposed dwelling house and Mr. and Mrs. McCausland's property is greater than the 9.0 metre distance referred to in Clause C1.5 of the DCP it is apparent that an adverse visual privacy impact will occur from the design of the proposed development. Overlooking would be possible from the proposed ground floor dining room window W06 and terrace, lower level lounge 2/bedroom 4 sliding glass door D02 and from the west facing hall windows over 3 levels. From these locations it would be possible to view directly in to Mr. and Mrs. McCausland's outdoor private open space areas as well as their main living rooms, including at night when illuminated. Mr. and Mrs. McCausland are understandably very concerned regarding such unreasonable potential intrusion on their privacy.

We have considered design modifications for the proposed development which would mitigate the adverse privacy impact on Mr. and Mrs. McCausland's property. These include;

- Replace dining room window W06 with a highlight window or alternatively incorporate a fixed vertical louvre screen for the full height of the window,
- Provide a fixed vertical louvre screen 1.7 metres high along the western edge of the ground level terrace extending from its northern end to the alignment with the southern lounge room wall.
- Incorporate obscure glass in the west facing hall windows over 3 floors,
- Remove lower level sliding door D02 from the lounge 2/ bedroom 4 and provide an external door at W00, or alternatively erect a privacy screen 1.7 metres high around the area of steppers in crushed sandstone adjoining this room as shown on the application landscape plan.

If the proposed development is amended to incorporate the above suggested design elements this would provide a potential compromise for Mr. and Mrs. McCausland's concerns in relation to adverse visual privacy impact on their property.

Building Envelope Control:

The statement of environmental effects submitted with the development application states that the proposed development complies with the building envelope provisions of Clause D1.11 of Pittwater 21 DCP. The north western corner of the proposed dwelling is located the minimum 1.0 metre distance from the side property boundary. The development application drawings do not include any building envelope height plane at this point however it is apparent that having regard to the height of the development the DCP building envelope control is not complied with. This non-compliance contributes to the bulk and scale of the

proposed development and contributes non-compliance with the following DCP outcomes for building envelope;

- *To achieve the desired future character of the locality,*
- *To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment,*
- *The bulk and scale of the built form is minimised,*
- *Equitable preservation of views and vistas to and/or from public private places,*
- *To ensure a reasonable level of privacy is provided within the development site and maintained to residential properties.*

Scenic Protection:

The subject property is located in a Scenic Protection Category 1 area as referred to in Clause D1.20 of the DCP. The outcomes of this provision of the DCP include the following;

- *To achieve the desired future character of the locality,*
- *To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront,*
- *To maintain and enhance the natural environment of Pittwater as the dominant feature of the landscape with built form being a secondary component,*
- *To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility,*
- *To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment,*
- *Development shall minimise visual impacts on the natural environment when viewed from any waterway, road or public reserve.*

The subject property is unique in that it extends further to the coastal escarpment on the northern headland of Avalon Beach than any of the other residential allotments in the vicinity. As a consequence development on this property is the most visually prominent on the North Avalon headland. Therefore any proposed development on the subject property should be the subject of intense scrutiny in relation to scenic protection and the outcomes for this as outlined above in the DCP.

The desired future character for the Avalon locality as referred to in the DCP includes;

The locality will remain primarily a low density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

The existing development on the subject property is a 1-2 storey dwelling and detached garage. It is proposed to replace this with a 3 storey dwelling house. The development will be larger and higher than the existing development. It is proposed to excavate the site so as to achieve a three storey building.

Having regard to the unique locational characteristics of the subject site it is imperative that any proposed development has a height, bulk and scale and architectural design to achieve the outcomes of Clause D1.20 of the DCP. However it is submitted that the proposed three storey development on the site does not achieve these outcomes. The visual impact of the proposed development on the North Avalon headland will be further accentuated by the recent removal of a large Norfolk Island Pine tree which previously had the effect of softening the visual impact of the existing development.

Impact of Sewer Line on Vegetation:

The development application site plan shows that a new sewer connection is proposed to the existing main within the Council Reserve. The proposed sewer line is shown as being in close proximity to the trunk of the large Norfolk Island pine tree located in the north western corner of the subject property. The notation on the application site plan states *existing Norfolk Island pine tree to be protected*. This notation also appears on the application landscape plan. No assessment is made in the flora and fauna report submitted with the application regarding the potential impact of the proposed sewer line on the Norfolk Island pine. It would appear that having regard to the proximity of the sewer line to the trunk of the Norfolk Island pine that it will have an impact on the root system of this tree. The tree is a significant feature in the landscape of the North Avalon headland and if it is required to be removed the proposed dwelling house will present as an even more significant building element within the natural environment of the North Avalon headland, particularly when viewed from Avalon Beach and surrounding public and private places.

It is submitted that a detailed assessment of the potential impact of the proposed sewer line on the Norfolk Island tree in the north western corner of the subject site should be undertaken and be considered by Council in its assessment and determination of the application. Such assessment should have regard to the Water Services Association of Australia publication Sewerage Code of Australia WSA 02-2002-2.2 Sydney Water Edition Version 3.

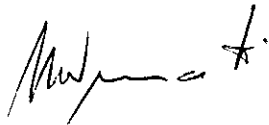
Conclusion:

Mr. and Mrs. McCausland accept that it is reasonable for the owners of the subject property to undertake the construction of a new dwelling house. However they do expect that any such development will comply with Council's planning requirements for the area and not have any adverse visual privacy impact on their property or adverse impact on the environment of the area generally.

The proposed development does not comply with the desired future character for the Avalon Beach locality. The construction of a three storey building on the site will result in a development more visually conspicuous and intrusive than the existing development. The orientation of the proposed dwelling house will have an adverse impact on the visual privacy of Mr. and Mrs McCausland's property to an extent which is unacceptable and unreasonable.

Council is requested to take into consideration the grounds of objection outlined in this letter and the comments referring to the design of the development. In order to address the specific concerns of Mr. and Mrs. McCausland in relation to adverse visual privacy impact constructive suggestions have been made to mitigate this issue. Council is requested to either require amended application plans to address the matters referred to or impose suitable conditions of consent to address these matters.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'L. Winnacott', followed by a small star-like flourish.

L. Winnacott - Director