
Sent: 21/09/2016 5:29:07 PM

Subject: Development Application Enquiry: N0279/16

Attachments: Further response to the residents' concerns.pdf; Further response to the residents' concerns.pdf;

For the attn of M/s R Englund

I refer to my earlier correspondence and your recent discussions with the project architect

As discussed here is our response to the latest resident submissions

I trust this impartial response will now enable you to finalise your assessment of the application

As always should you require any additional information or clarification in relation to any of the matters addressed in this correspondence please do not hesitate to contact me.

Regards

Denis

Due to the above file size the attachments to this correspondence will be sent by separate email

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denis fish planning services

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27/07/2016

The General Manager
Northern Beaches Council - Pittwater
PO Box 882
Mona Vale NSW 1660

For the attention of M/s R Englund , Development Assessment Planner

**Proposed new dwelling
at No.41 Marine Pde , Nth Avalon
Development Application No.N0279/16**

Dear Rebecca,

The purpose of this correspondence is to provide a proactive and impartial response to the submissions lodged by Lawrence Winnacott & Assoc P/L on behalf of Y & B McCausland, No.37 Marine Pde, Nth Avalon and the further submissions from L A & P D Quayle, No.39 Marine Pde, Nth Avalon, undated but received by Council on 16/08/2016, The geotechnical assessment prepared by J K Geotechnics, dated 15/08/2016 and that received from Michael Hesse and Associates Pty Ltd, dated 19/08/2016.

Lawrence Winnacott & Assoc P/L on behalf of Y & B McCausland, No.37 Marine Pde, Nth Avalon

Issues of concern :-

- Adverse privacy impact
- Non-compliance with the building envelope control
- Potential adverse impact in a scenic protection area
- Potential adverse impact on the vegetation by the proposed sewer line

Adverse privacy impact

As you would be aware from your previous projects in the Pittwater area overlooking of rear yards and adjacent buildings in foreshore areas is a characteristic of these localities and is consistent with the expectations of residents in these areas as a consequence of their desire to maintain / maximise peripheral views over waterways and surrounding foreshores. This observation / conclusion has also been reflected in some decisions of the Land and Environment Court, one that immediately comes to mind in the former Pittwater Local Government area is *Hain v Pittwater Council [2013] NSWLEC 1155*, in which coincidentally you gave evidence on behalf of Council.

As you may recall in that judgement Commissioner Brown noted amongst other matters that :-

- *the private open space area in the rear yard of the neighbour's property was largely unprotected, as is the case in relation to the McCausland's rear yard and the rear elevation of their dwelling, as confirmed by the photos over*
- *the rear deck area of the subject dwelling was not subject to any condition to address any loss of privacy to the adjoining property, as appears to be the case in relation to the McCausland's dwelling and that of the Quayle's, again as confirmed by the photos over*



- *the room layout within the subject dwelling did not reasonably or practically encourage people to view from critical positions within the dwelling due to the likely placement of furniture*

In this case it is noted that the rooms within the proposed dwelling are to be used as :-

- a lounge room or bedroom, the hallway and 2 bedrooms in the S/W corner of the dwelling at lower ground floor level which have windows in the western facing wall as do the surrounding dwellings in this case, as confirmed by the photos over
- a day bed recess with oblique views from the proposed kitchen area at ground floor level
- a dining room, hallway and lounge room at the rear of the dwelling at ground floor level which has windows in the western & southern facing walls, as do the surrounding dwellings in this case, again as confirmed by the photos over
- the walk-in robe, hallway and master bedroom which have western facing windows, whilst the master bedroom also has a southern facing window, again similar to those associated with the surrounding dwellings
- these windows are not at the same level nor do they directly face those in the southern and eastern elevations of the dwellings at Nos.37 & 39 Marine Pde due to the differences in site level

The dwellings at Nos.37 & 39 Marine Pde have multiple private open space areas which are beyond the 9m limit identified in the DCP in this location which will not be viewed from the proposed dwelling. As indicated in the Statement of Environmental Effects and in subsequent correspondence the proposed dwelling has boundary setbacks to the north, NW and the SW which vary from 1m in relation to the northern boundary, as facilitated by the DCP, to between 20.09m – 28.14m to the western and NW wall of the dwelling and 19.6m to the closest corner of the external terrace at ground floor level. Accordingly for the majority of the wall interface with these 2 adjoining properties the boundary setbacks significantly exceed those specified by the DCP.

- *viewing down to the adjoining private open space area is unlikely to be a regular or consistent view from the site, given the expansive and panoramic views of the ocean and headlands that are available, the same conclusion can be drawn in relation to the proposed dwelling given its design & orientation and that associated with the surrounding dwellings and the number & size of the proposed windows on the northern, NW and SW elevations of the proposed dwelling.*

In light of the above observations it is abundantly apparent that the proposal is consistent with the terms of the Land and Environment Court planning principle identified in the matter of *Meriton v Sydney City Council [2004] NSWLEC 313* and later refined in the matter of *Super Studio v Waverley [2004] NSWLEC 91* in that :-

- all of the surrounding dwellings and parts of their private open space areas will remain private
- the separation from all of the surrounding properties and the dwellings thereon either comply with or significantly exceed the boundary setbacks specified by the DCP
- the only overlooking from a high and regularly used area within the proposed dwelling is restricted to an oblique view from the kitchen located at ground floor level
- the windows in the northern and western elevation of the proposed dwelling are not at the same level nor do they directly face those in the southern and eastern elevations of the dwellings at Nos.37 & 39 Marine Pde



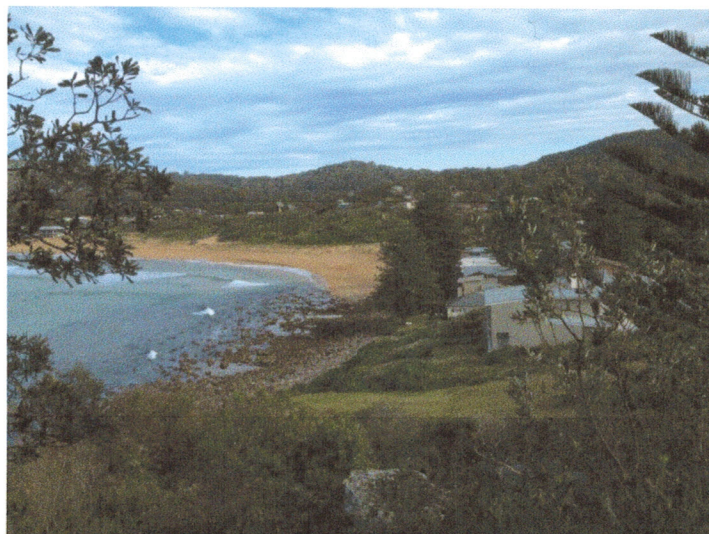
- there is no part of the proposed dwelling which could be considered to constitute a poor design element given its compliance with all of the associated planning controls
- the proposal does not rely solely on landscaping as the sole protection against overlooking

In summary then the proposal is consistent with the terms of the relevant Land and Environment Court planning principles, the level of privacy achieved will be greater than that normally associated with dwellings in suburban areas due to the subdivision pattern and the existing & proposed site landscaping will further restrict the potential for overlooking of the surrounding properties. Finally in relation to landscaping as you may have noted during your site inspection weed infestations are being removed and replaced with native plants including the littoral rainforest species indigenous to the headland, all existing screen planting between Nos.39 & 41 Marine Pde is to be retained and is now supplemented with a 2.5m high Silverberry (*Elaeagnus x Ebbingei*) hedge and I am advised that the owner of the property is currently sourcing advanced Banksia Integrifolias which are to be planted along the northern boundary as shown on the concept landscape plan in order that these are planted and gain some height during the course of construction of the dwelling noting that there is no associated site disturbance along this boundary.



The McCausland's dwelling viewed from the rear yard of the development site. Note how it overlooks the rear yard of the adjoining property and the lack of any privacy screens or screening vegetation.

The dwellings at Nos.13 – 29 Marine Pde viewed from the rear yard of the development site. Note this area characteristic where adjoining properties overview the rear yards, the lack of any privacy screens or screening vegetation.





The rear of Nos.37 & 39 Marine Pde (the Quayle's dwelling), again note the extent of overlooking, the lack of any privacy screens or screening vegetation.



The northern and western facades of the dwelling at No.37 Marine Pde viewed from the footpath, note the large picture windows which overview the front & rear yards of Nos.31 – 35 Marine Pde, it is also noted that there are no privacy screens or appropriate vegetation to prevent overlooking from the wrap around upper level deck.



The view along the western elevation of No.43 Marine Pde (the Quayle's dwelling) which has windows and decks which overview the rear yard of No.39 Marine Pde. From Council's electronic records I am unable to ascertain when this dwelling was approved however it is abundantly apparent that the proposal did not meet the then current side boundary setback requirement, hence the easement over the access handle serving No.41 Marine Pde, nor does it comply with the building envelope control which was introduced in February,2004.

I do not begrudge these neighbours their prior dwelling approvals however it is totally unreasonable and unacceptable that they expect a different standard be applied to the proposed development than what they currently experience and enjoy at the present.

Finally as noted in the Statement of Environmental Effects and in my previous submission the physical and amenity separation is greater on the development site than that which is normally achieved in the usual neighbourhood context due to the subdivision pattern and the relative location of the dwellings in this locality.

Non-compliance with the building envelope control

This misinterpretation of the planning control was addressed in my previous response which concluded that pursuant to Clause D1.11 of the DCP the building height plane is measured at a height of 3.5m above natural ground level at the **side** boundaries then projected at 45° over the site. The side boundaries of the development site are the eastern and western boundaries and the proposal as submitted therefore complies with this planning control.

Potential adverse impact in a scenic protection area

This matter was specifically addressed in section 6.49 of the Statement of Environmental Effects which confirmed compliance with the associated objectives of Clause D1.2.

The respondent's frequent reference to the proposal being a 3 storey dwelling is incorrect and misleading. The proposed dwelling is predominantly a 2 storey structure, that portion of the building containing a 3rd level constitutes less than 20% of the overall size of the dwelling and most of this part of the building is below ground such that as shown on the submitted plans, this level of the building can only be seen from the southern & western elevations.

When viewed from the west this level will be screened by existing & proposed landscaping and views from the south are restricted to distant elevated views due to the topography of the area and the allotment layout & location.

Any implication that the potential impact in this scenic protection area has in anyway been ignored or down played is vehemently rejected. As indicated in the Statement of Environmental Effects the potential visual impact of the proposed building was one of the primary design considerations and as detailed in that planning report, the modulated design of the proposed dwelling, the retention of existing vegetation, the proposed supplementary landscaping and the proposed exterior colours and material all combine to significantly minimise the visual prominence of the new dwelling to the extent that it will have a perceived bulk and scale considerably less than many of the existing dwellings on the coastal escarpment.

I am sure your recent inspection of the property and the area generally which included an assessment of the potential visual impact from Avalon Beach will have corroborated my



assessment of the proposal when viewed from the public domain.

The respondent makes mention of the removal of 1 of the Norfolk Island Pines, which as you are aware had Council's prior approval under the terms of its Tree Preservation Order. The tree was removed prior to your inspection therefore any mention of its removal has no bearing on the existing or likely future visual prominence of the subject dwelling.

I note also that the respondent states that the proposed building is larger than the existing dwelling, this is not correct. As confirmed by the details on the submitted architectural plans the building footprint is less than that of the existing dwelling and whilst the new dwelling may in part be higher than that existing it nevertheless complies with the building height limit specified by the LEP.

Potential adverse impact on the vegetation by the proposed sewer line

As I have indicated in my earlier response the location of this service line as shown on the architectural plans could impact on the health & well being of the Norfolk Island Pine in the NW corner of the development site and I have suggested that Council impose a condition in any consent that the tree be root mapped by a qualified arborist prior to the design of the sewer line connection.

In relation to the respondent's conclusions :-

- the proposal as submitted complies with the relevant planning controls and / or their associated objectives
- the proposal does not have any significant visual privacy impact, in fact it has a lesser privacy impact than that associated with most residential development due to the subdivision pattern and the relative location of the dwellings in this locality
- the documentation lodged with the application and in particular the flora and fauna report confirms that the proposal does not give rise to any adverse impact on the environment
- the Statement of Environmental Effects confirms that the proposal complies with the identified with the desired future character for the Avalon Beach locality
- the proposal does not constitute a 3 storey dwelling, it is as described in the development application predominantly a 2 storey and part 3 storey dwelling with a single storey garage
- the orientation of the proposed dwelling will not have an adverse impact on the visual privacy of Mr. and Mrs McCausland's property to the extent that it could be classified as being unacceptable and unreasonable. In fact as this response has demonstrated overlooking from the houses in the locality presently, including that from the McCausland's property is greater than that which would arise from the proposed dwelling

L A & P D Quayle, No.39 Marine Pde, Nth Avalon

- "A massive over development" and lack of concern for the neighbours
- A lack of concern for the neighbours and the area generally
- Major concerns about the stability of the site, the Norfolk Island Pine in the NW corner of the site and perceived shortcoming in the Geotechnical Report prepared by White Geotechnical Group P/L
- Possible damage to underground infrastructure located within the right of way and possible obstructed access during the course of construction

Over development and lack of concern for the neighbours

For any proposal to be assessed as an over development, or in this case "a massive over development" it must be measured against some standard or standards, in this case the relevant planning controls and the nature of surrounding development.



As confirmed in the Statement of Environmental Effects, the proposal complies with all of the relevant planning controls and / or their associated objectives. Further, as your recent site inspection will have revealed the height, bulk and scale of the proposed dwelling is commensurate with those in the locality and as confirmed by Dwg No.A1.1 the proposed dwelling has a smaller site coverage and a greater landscaped area component than the existing dwelling.

This criticism therefore is totally unjustified and therefore should be given no determining weight in Council's assessment of the proposal.

A lack of concern for the neighbours and the area generally

This criticism is again baseless and unjustified. As indicated in the Statement of Environmental Effects the design brief was to accommodate the client's residential needs, create a built form which would be similar to that of the existing and surrounding dwellings which does not significantly intrude into the primary and peripheral views of surrounding development and which complied with the relevant Council planning controls. As confirmed in the Statement, the proposed dwelling achieves these objectives.

In relation to the potential impact on the area, the Geotechnical and Flora & Fauna reports have confirmed that :-

- that the proposed new dwelling and its associated infrastructure are suitable for the site and upon completion it will achieve an 'acceptable' risk management level within the terms of the Council's Geotechnical Policy and no geotechnical hazards will be created as a consequence of the proposed works providing they are carried out in accordance with the recommendations detailed in the geotechnical report and subject to good engineering & building practice
- there will be no negative impact on threatened species, endangered populations or endangered ecological communities, the proposal maintains and enhances known habitats for locally native species, threatened species, endangered populations or endangered ecological communities and whilst the site is not considered to constitute a wildlife corridor the proposal will supplement the wildlife corridor on the Council reserve and that it has no potential for an adverse impact on the reserve, including the proposed stormwater disposal arrangements

"Major concerns" regarding the stability of the site, the Norfolk Island Pine in the NW corner of the site and perceived shortcoming in the Geotechnical Report prepared by White Geotechnical Group P/L

This is not my area of expertise so my client referred the submission from G K Geotechnics to White Geotechnical for an appropriate reply which is addressed over and in the appended report

Similarly the contention that the Norfolk Island Pine would become destabilised as a consequence of the proposal has been referred to the consultant arborist, a copy of his report is appended to this correspondence in which he notes :-

- that the proposed works in the main are significantly further away from the Norfolk Island than the existing structures which are to be demolished (*see P.7 of his report*)
- the tree is easily retained, protected and managed prior to and during the proposed redevelopment (*see P.10 of his report*)

Finally at P.12 & 13 of his report he provides a detailed management plan to assist in the retention and safety of the Norfolk Island Pine. I respectfully suggest that these recommendations could and should be included as a condition in any consent granted by Council.



Possible damage to underground infrastructure located within the right of way, obstructed access during the course of construction and possible damage to adjoining properties

As detailed on the submitted architectural plans (see *Dwg No.A1.1*) it is intended to remove the existing concrete slabs in the driveway and replace these with a new concrete driveway with an exposed aggregate finish (*also see the submitted landscape concept plan*). As shown on the driveway section (*again Dwg No.A1.1*), the levels of the driveway will remain unaltered , the proposal simply involves removing the existing concrete slabs and pouring a new concrete slab.

The reason why the driveway surface is to be replaced is that over time it has become worn and is prone to moss and debris build up which at times affects a vehicle's traction, by installing an exposed aggregate finish it is intended to provide a greater level of traction.

I note the respondent's concern regarding the possible damage to the underground services and as noted in the Statement of Environmental Effects, the subject property also has underground services in the driveway.

As you may be aware various Australian Standard and workplace minimums apply in relation to the minimum depth of underground services, these are 450mm for electricity, gas & water and 500mm – 565mm for telecommunications lines.

Under these circumstances, the proposed removal of the existing 150mm thick concrete slabs will not require any interference with the existing underground services.

In relation to construction access and storage, the terms of the right-of way are that the beneficiary (ie the owners of No.39 Marine Pde, L A & P D Quayle) must have essentially unfettered access over this right-of way. As indicated in the Statement of Environmental Effects (*see page No.35*), vehicular access, including construction materials delivery is to be obtained via the existing driveway. The existing / proposed forecourt area at the top of the driveway will be used for the storage of building materials, a site shed & workers amenities and in order to exclude the public from accessing the site outside of working hours a demountable steel mesh fence would be located across the top of the driveway thus maintaining the access arrangements for Nos.39 & 43 Marine Pde.

The only time the beneficiaries of this right of way would be denied access would be during the removal of the concrete slabs and the pouring of the replacement driveway, in all likelihood this would occur in the later phases of the construction process therefore any inconvenience to these property owners should be relatively brief.

In relation to possible damage from construction vehicles it is noted that the driveway extends across the full width of the access handle / right of way which is 3m wide, which equates to a lane width on a public road and it complies with the requirements of Clause B6.3 of the DCP which specifies a minimum 3m driveway width for a single dwelling. Under these circumstances there is no doubt that construction vehicles which are able to negotiate 3m width lane widths on a public road will be able to access the property without damaging those adjacent. Finally in relation to the control of airborne pollutants, as you are aware demolition works have to be carried out in accordance with AS 2601-1991 : *The Demolition of Structures* and construction works are subject to Council's usual hours of operation and the noise / dust emission controls specified by the Environment Protection Authority.

The submission by JK Geotechnics on behalf of Y & B McCausland, L & D Quayle and S Hesse

First I cannot understand how the writer claims to have "carried out a detailed inspection of the topographic, surface drainage and geological conditions" when by his own admission the inspection was carried out "from across the northern and western site boundaries", which are in excess of 20m from the location of the proposed works and the area is both uphill from these boundaries and in varying degree is covered by native and introduced vegetation.



Nevertheless, as indicated in the revised assessment the consultant Geotechnical Engineer carried out a further site inspection to reaffirm his original observations & conclusions and can categorically state that the proposal as submitted complies with the requirements of the Pittwater Geotechnical Risk Management Policy, (2009) and upon completion the project will achieve an 'acceptable' rating subject to the works being carried out in accordance with the recommendations detailed in his original report and subject to good engineering and building practice.

The submission from Michael Hesse and Associates Pty Ltd on behalf of the owners of 37 Marine Parade (W & Y McCausland, 39 Marine Parade (L & D Quayle) and 43 Marine Parade (S Hesse)

- Doubts about the estimated cost of construction
- The accuracy and extent of the survey prepared by Hill & Blume Surveyors
- The adequacy of the geotechnical report prepared by the White Geotechnical Group
- The adequacy of the concept landscape plan due to the perceived inadequacies of the survey plan
- Photos within the Statement of Environmental Effects predate the removal of the Norfolk Island Palm adjacent to the western wall of the existing dwelling
- A suggestion that the Flora & Fauna report may have to be re-written following removal of the Norfolk Island Pine

Estimated cost of construction

The project architect has advised that the cost of works detailed on the Development Application form were obtained from their consultant Quantity Surveyor. The internal passenger lift is not an itemised item and has been included in the overall cost. That section of the driveway which adjoins the garage is a gravel hardstand not concrete hence different cost basis. As indicated earlier there is to be no change to the levels of the existing driveway and no excavation, simply the removal of the concrete slabs.

The survey prepared by Hill & Blume Surveyors

As confirmed by the architectural plans there are no building works proposed in the "lower Northern, Western and Southern boundaries" hence there was no need to obtain detailed survey information in this part of the site.

The geotechnical report prepared by the White Geotechnical Group

As stated in the report which accompanied the original application the author reviewed the architectural plans and carried out a detailed site inspection. He was therefore given unfettered access to the site and in particular those areas external to the existing building footprint, therefore he was able to comprehensively assess the geotechnical and hazard implications of the proposal.

As stated in his original report and the appended supplementary report, the proposal will achieve an 'acceptable' risk management level within the terms of the Council's Geotechnical Policy providing the works are carried out in accordance with the recommendations detailed in the geotechnical report and subject to good engineering & building practice.

The adequacy of the concept landscape plan

The respondent suggests that due to the lack of levels and details on the survey the concept landscape plan is therefore deficient. This rationale is not correct

All consultants involved in the preparation of this application were given access to the site. The landscape consultant inspected the site, took various photos as necessary and compiled a series of file notes prior to the preparation of the landscape concept plan. Accordingly it was not necessary to rely upon survey details and levels, further this is not how landscape drawings are prepared. It is also essential that the consultant familiarise themselves with local micro-climatic



conditions (*most important in this case due to the exposed cliff-top location*) the age , range and condition of other vegetation growing on a site and those surrounding.

The integrity of the landscape concept plan is not in question, also as you are aware these plans prepared and lodged at Development Application stage are concept plans as opposed to working drawings at Construction Certificate stage and the intent of a landscape concept plan is to indicate to Council whether the site can be landscaped to satisfy the DCP provisions and provide landscaping which will be commensurate and compatible with landscaping in the immediate locality. The concept plan fulfils these requirements and I note that if the landscaping was carried out in accordance with the layout on the concept plan it would provide for more trees and shrubs than what is provided on many of the sites in this locality. This conclusion is corroborated by the aerial photo below.



Photos within the Statement of Environmental Effects predate the removal of the Norfolk Island Pine

This observation is correct however I am sure that your recent site inspection which included viewing the site from the Avalon beachfront, after the removal of the Norfolk Pine, would have confirmed my conclusions in the Statement of Environmental Effects that the visual prominence of the proposed dwelling will be significantly minimised by the retention of the existing trees, the proposed supplementary planting and the proposed exterior building finishes & colours and the building will continue to be read against the vegetated hillside. Further, although the proposed building is marginally higher than the existing, the perceived bulk & scale viewed from the areas generally to the south of the site will be negligible and less than that of most of the other dwellings on this escarpment.

I might also point out that the new dwelling has been carefully modulated into many parts with different roof levels, thus breaking up the apparent bulk when viewed from all elevations. Further the exterior building materials and colours have been selected to integrate with the natural environment and the sandstone cliffs below. This particularly sensitive approach was taken in the early design phase, which I was involved in, fully aware that this was the most southerly and elevated site on the escarpment and that we had to achieve the highest design standards to achieve an appropriate environmental fit. Lastly on this point I think it is worth noting that the proposed building is far more appropriate to its prominent landscaped setting than the existing dwelling with its yellow painted walls and blue trim.



The Flora & Fauna report may have to be re-written following removal of the Norfolk Island Pine

Again this is not necessary. The author of the Flora & Fauna report was advised that approval had been granted by Council for the removal of this tree (see *P.10 of that report*) and noted that the tree had a limited habitat potential for fauna, other than for common large bird species which may choose the site to nest in. The likelihood of any nesting occurring was considered to be low and in the event such species choose to nest in the area, they would have the option to nest in any of the other retained Norfolk Pines.

I trust that this detailed response to the residents' concerns will have dispelled any doubts or concerns you have had in relation to the appropriateness and the complying aspects of this proposal.

Thank you for your consideration of this further response, should you require any additional information or clarification in relation to any of the above matters please do not hesitate to contact me.

Yours faithfully

Denis Fish
Consultant Town Planner

Political Donations & Gifts Disclosure Statement pursuant to Sec.147 of the E P & Act, 1979

Neither my clients nor I have made a political donation to any Councillor or given a gift to any Councillor or employee of this Council over the past 2 years.

Attachments :

- The further geotechnical assessment prepared by the White Geotechnical Group dated 30/08/2016
- The Arborist report prepared by Growing My Way, Tree Consultancy dated Sept, 2016



denis fish planning services

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27/07/2016

The General Manager
Northern Beaches Council - Pittwater
PO Box 882
Mona Vale NSW 1660

For the attention of M/s R Englund , Development Assessment Planner

**Proposed new dwelling
at No.41 Marine Pde , Nth Avalon
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Dear Rebecca,

The purpose of this correspondence is to provide a proactive and impartial response to the submissions lodged by Lawrence Winnacott & Assoc P/L on behalf of Y & B McCausland, No.37 Marine Pde, Nth Avalon and the further submissions from L A & P D Quayle, No.39 Marine Pde, Nth Avalon, undated but received by Council on 16/08/2016, The geotechnical assessment prepared by J K Geotechnics, dated 15/08/2016 and that received from Michael Hesse and Associates Pty Ltd, dated 19/08/2016.

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Adverse privacy impact

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- *the private open space area in the rear yard of the neighbour's property was largely unprotected, as is the case in relation to the McCausland's rear yard and the rear elevation of their dwelling, as confirmed by the photos over*
- *the rear deck area of the subject dwelling was not subject to any condition to address any loss of privacy to the adjoining property, as appears to be the case in relation to the McCausland's dwelling and that of the Quayle's, again as confirmed by the photos over*



- *the room layout within the subject dwelling did not reasonably or practically encourage people to view from critical positions within the dwelling due to the likely placement of furniture*

In this case it is noted that the rooms within the proposed dwelling are to be used as :-

- a lounge room or bedroom, the hallway and 2 bedrooms in the S/W corner of the dwelling at lower ground floor level which have windows in the western facing wall as do the surrounding dwellings in this case, as confirmed by the photos over
- a day bed recess with oblique views from the proposed kitchen area at ground floor level
- a dining room, hallway and lounge room at the rear of the dwelling at ground floor level which has windows in the western & southern facing walls, as do the surrounding dwellings in this case, again as confirmed by the photos over
- the walk-in robe, hallway and master bedroom which have western facing windows, whilst the master bedroom also has a southern facing window, again similar to those associated with the surrounding dwellings
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- *viewing down to the adjoining private open space area is unlikely to be a regular or consistent view from the site, given the expansive and panoramic views of the ocean and headlands that are available, the same conclusion can be drawn in relation to the proposed dwelling given its design & orientation and that associated with the surrounding dwellings and the number & size of the proposed windows on the northern, NW and SW elevations of the proposed dwelling.*

In light of the above observations it is abundantly apparent that the proposal is consistent with the terms of the Land and Environment Court planning principle identified in the matter of *Meriton v Sydney City Council [2004] NSWLEC 313* and later refined in the matter of *Super Studio v Waverley [2004] NSWLEC 91* in that :-

- all of the surrounding dwellings and parts of their private open space areas will remain private
- the separation from all of the surrounding properties and the dwellings thereon either comply with or significantly exceed the boundary setbacks specified by the DCP
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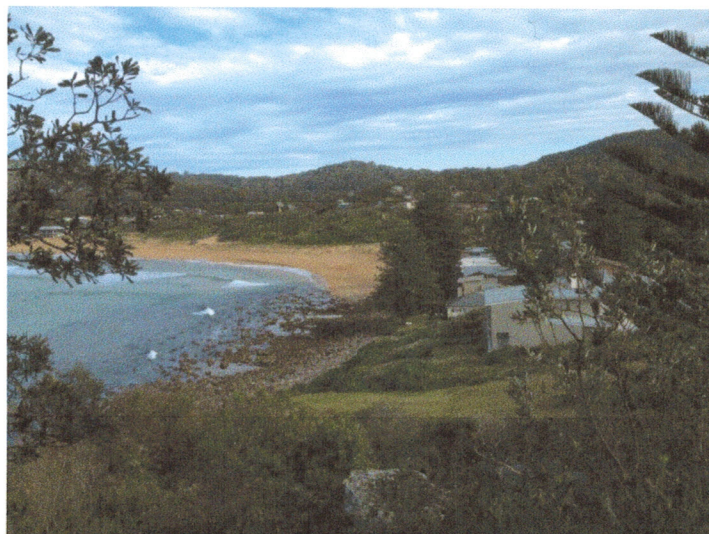
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In summary then the proposal is consistent with the terms of the relevant Land and Environment Court planning principles, the level of privacy achieved will be greater than that normally associated with dwellings in suburban areas due to the subdivision pattern and the existing & proposed site landscaping will further restrict the potential for overlooking of the surrounding properties. Finally in relation to landscaping as you may have noted during your site inspection weed infestations are being removed and replaced with native plants including the littoral rainforest species indigenous to the headland, all existing screen planting between Nos.39 & 41 Marine Pde is to be retained and is now supplemented with a 2.5m high Silverberry (*Elaeagnus x Ebbingei*) hedge and I am advised that the owner of the property is currently sourcing advanced Banksia Integrifolias which are to be planted along the northern boundary as shown on the concept landscape plan in order that these are planted and gain some height during the course of construction of the dwelling noting that there is no associated site disturbance along this boundary.



The McCausland's dwelling viewed from the rear yard of the development site. Note how it overlooks the rear yard of the adjoining property and the lack of any privacy screens or screening vegetation.

The dwellings at Nos.13 – 29 Marine Pde viewed from the rear yard of the development site. Note this area characteristic where adjoining properties overview the rear yards, the lack of any privacy screens or screening vegetation.





The rear of Nos.37 & 39 Marine Pde (the Quayle's dwelling), again note the extent of overlooking, the lack of any privacy screens or screening vegetation.



The northern and western facades of the dwelling at No.37 Marine Pde viewed from the footpath, note the large picture windows which overview the front & rear yards of Nos.31 – 35 Marine Pde, it is also noted that there are no privacy screens or appropriate vegetation to prevent overlooking from the wrap around upper level deck.



The view along the western elevation of No.43 Marine Pde (the Quayle's dwelling) which has windows and decks which overview the rear yard of No.39 Marine Pde. From Council's electronic records I am unable to ascertain when this dwelling was approved however it is abundantly apparent that the proposal did not meet the then current side boundary setback requirement, hence the easement over the access handle serving No.41 Marine Pde, nor does it comply with the building envelope control which was introduced in February,2004.

I do not begrudge these neighbours their prior dwelling approvals however it is totally unreasonable and unacceptable that they expect a different standard be applied to the proposed development than what they currently experience and enjoy at the present.

Finally as noted in the Statement of Environmental Effects and in my previous submission the physical and amenity separation is greater on the development site than that which is normally achieved in the usual neighbourhood context due to the subdivision pattern and the relative location of the dwellings in this locality.

Non-compliance with the building envelope control

This misinterpretation of the planning control was addressed in my previous response which concluded that pursuant to Clause D1.11 of the DCP the building height plane is measured at a height of 3.5m above natural ground level at the **side** boundaries then projected at 45° over the site. The side boundaries of the development site are the eastern and western boundaries and the proposal as submitted therefore complies with this planning control.

Potential adverse impact in a scenic protection area

This matter was specifically addressed in section 6.49 of the Statement of Environmental Effects which confirmed compliance with the associated objectives of Clause D1.2.

The respondent's frequent reference to the proposal being a 3 storey dwelling is incorrect and misleading. The proposed dwelling is predominantly a 2 storey structure, that portion of the building containing a 3rd level constitutes less than 20% of the overall size of the dwelling and most of this part of the building is below ground such that as shown on the submitted plans, this level of the building can only be seen from the southern & western elevations.

When viewed from the west this level will be screened by existing & proposed landscaping and views from the south are restricted to distant elevated views due to the topography of the area and the allotment layout & location.

Any implication that the potential impact in this scenic protection area has in anyway been ignored or down played is vehemently rejected. As indicated in the Statement of Environmental Effects the potential visual impact of the proposed building was one of the primary design considerations and as detailed in that planning report, the modulated design of the proposed dwelling, the retention of existing vegetation, the proposed supplementary landscaping and the proposed exterior colours and material all combine to significantly minimise the visual prominence of the new dwelling to the extent that it will have a perceived bulk and scale considerably less than many of the existing dwellings on the coastal escarpment.

I am sure your recent inspection of the property and the area generally which included an assessment of the potential visual impact from Avalon Beach will have corroborated my



assessment of the proposal when viewed from the public domain.

The respondent makes mention of the removal of 1 of the Norfolk Island Pines, which as you are aware had Council's prior approval under the terms of its Tree Preservation Order. The tree was removed prior to your inspection therefore any mention of its removal has no bearing on the existing or likely future visual prominence of the subject dwelling.

I note also that the respondent states that the proposed building is larger than the existing dwelling, this is not correct. As confirmed by the details on the submitted architectural plans the building footprint is less than that of the existing dwelling and whilst the new dwelling may in part be higher than that existing it nevertheless complies with the building height limit specified by the LEP.

Potential adverse impact on the vegetation by the proposed sewer line

As I have indicated in my earlier response the location of this service line as shown on the architectural plans could impact on the health & well being of the Norfolk Island Pine in the NW corner of the development site and I have suggested that Council impose a condition in any consent that the tree be root mapped by a qualified arborist prior to the design of the sewer line connection.

In relation to the respondent's conclusions :-

- the proposal as submitted complies with the relevant planning controls and / or their associated objectives
- the proposal does not have any significant visual privacy impact, in fact it has a lesser privacy impact than that associated with most residential development due to the subdivision pattern and the relative location of the dwellings in this locality
- the documentation lodged with the application and in particular the flora and fauna report confirms that the proposal does not give rise to any adverse impact on the environment
- the Statement of Environmental Effects confirms that the proposal complies with the identified with the desired future character for the Avalon Beach locality
- the proposal does not constitute a 3 storey dwelling, it is as described in the development application predominantly a 2 storey and part 3 storey dwelling with a single storey garage
- the orientation of the proposed dwelling will not have an adverse impact on the visual privacy of Mr. and Mrs McCausland's property to the extent that it could be classified as being unacceptable and unreasonable. In fact as this response has demonstrated overlooking from the houses in the locality presently, including that from the McCausland's property is greater than that which would arise from the proposed dwelling

L A & P D Quayle, No.39 Marine Pde, Nth Avalon

- "A massive over development" and lack of concern for the neighbours
- A lack of concern for the neighbours and the area generally
- Major concerns about the stability of the site, the Norfolk Island Pine in the NW corner of the site and perceived shortcoming in the Geotechnical Report prepared by White Geotechnical Group P/L
- Possible damage to underground infrastructure located within the right of way and possible obstructed access during the course of construction

Over development and lack of concern for the neighbours

For any proposal to be assessed as an over development, or in this case "a massive over development" it must be measured against some standard or standards, in this case the relevant planning controls and the nature of surrounding development.



As confirmed in the Statement of Environmental Effects, the proposal complies with all of the relevant planning controls and / or their associated objectives. Further, as your recent site inspection will have revealed the height, bulk and scale of the proposed dwelling is commensurate with those in the locality and as confirmed by Dwg No.A1.1 the proposed dwelling has a smaller site coverage and a greater landscaped area component than the existing dwelling.

This criticism therefore is totally unjustified and therefore should be given no determining weight in Council's assessment of the proposal.

A lack of concern for the neighbours and the area generally

This criticism is again baseless and unjustified. As indicated in the Statement of Environmental Effects the design brief was to accommodate the client's residential needs, create a built form which would be similar to that of the existing and surrounding dwellings which does not significantly intrude into the primary and peripheral views of surrounding development and which complied with the relevant Council planning controls. As confirmed in the Statement, the proposed dwelling achieves these objectives.

In relation to the potential impact on the area, the Geotechnical and Flora & Fauna reports have confirmed that :-

- that the proposed new dwelling and its associated infrastructure are suitable for the site and upon completion it will achieve an 'acceptable' risk management level within the terms of the Council's Geotechnical Policy and no geotechnical hazards will be created as a consequence of the proposed works providing they are carried out in accordance with the recommendations detailed in the geotechnical report and subject to good engineering & building practice
- there will be no negative impact on threatened species, endangered populations or endangered ecological communities, the proposal maintains and enhances known habitats for locally native species, threatened species, endangered populations or endangered ecological communities and whilst the site is not considered to constitute a wildlife corridor the proposal will supplement the wildlife corridor on the Council reserve and that it has no potential for an adverse impact on the reserve, including the proposed stormwater disposal arrangements

"Major concerns" regarding the stability of the site, the Norfolk Island Pine in the NW corner of the site and perceived shortcoming in the Geotechnical Report prepared by White Geotechnical Group P/L

This is not my area of expertise so my client referred the submission from G K Geotechnics to White Geotechnical for an appropriate reply which is addressed over and in the appended report

Similarly the contention that the Norfolk Island Pine would become destabilised as a consequence of the proposal has been referred to the consultant arborist, a copy of his report is appended to this correspondence in which he notes :-

- that the proposed works in the main are significantly further away from the Norfolk Island than the existing structures which are to be demolished (*see P.7 of his report*)
- the tree is easily retained, protected and managed prior to and during the proposed redevelopment (*see P.10 of his report*)

Finally at P.12 & 13 of his report he provides a detailed management plan to assist in the retention and safety of the Norfolk Island Pine. I respectfully suggest that these recommendations could and should be included as a condition in any consent granted by Council.



Possible damage to underground infrastructure located within the right of way, obstructed access during the course of construction and possible damage to adjoining properties

As detailed on the submitted architectural plans (see *Dwg No.A1.1*) it is intended to remove the existing concrete slabs in the driveway and replace these with a new concrete driveway with an exposed aggregate finish (*also see the submitted landscape concept plan*). As shown on the driveway section (*again Dwg No.A1.1*), the levels of the driveway will remain unaltered , the proposal simply involves removing the existing concrete slabs and pouring a new concrete slab.

The reason why the driveway surface is to be replaced is that over time it has become worn and is prone to moss and debris build up which at times affects a vehicle's traction, by installing an exposed aggregate finish it is intended to provide a greater level of traction.

I note the respondent's concern regarding the possible damage to the underground services and as noted in the Statement of Environmental Effects, the subject property also has underground services in the driveway.

As you may be aware various Australian Standard and workplace minimums apply in relation to the minimum depth of underground services, these are 450mm for electricity, gas & water and 500mm – 565mm for telecommunications lines.

Under these circumstances, the proposed removal of the existing 150mm thick concrete slabs will not require any interference with the existing underground services.

In relation to construction access and storage, the terms of the right-of way are that the beneficiary (ie the owners of No.39 Marine Pde, L A & P D Quayle) must have essentially unfettered access over this right-of way. As indicated in the Statement of Environmental Effects (*see page No.35*), vehicular access, including construction materials delivery is to be obtained via the existing driveway. The existing / proposed forecourt area at the top of the driveway will be used for the storage of building materials, a site shed & workers amenities and in order to exclude the public from accessing the site outside of working hours a demountable steel mesh fence would be located across the top of the driveway thus maintaining the access arrangements for Nos.39 & 43 Marine Pde.

The only time the beneficiaries of this right of way would be denied access would be during the removal of the concrete slabs and the pouring of the replacement driveway, in all likelihood this would occur in the later phases of the construction process therefore any inconvenience to these property owners should be relatively brief.

In relation to possible damage from construction vehicles it is noted that the driveway extends across the full width of the access handle / right of way which is 3m wide, which equates to a lane width on a public road and it complies with the requirements of Clause B6.3 of the DCP which specifies a minimum 3m driveway width for a single dwelling. Under these circumstances there is no doubt that construction vehicles which are able to negotiate 3m width lane widths on a public road will be able to access the property without damaging those adjacent. Finally in relation to the control of airborne pollutants, as you are aware demolition works have to be carried out in accordance with AS 2601-1991 : *The Demolition of Structures* and construction works are subject to Council's usual hours of operation and the noise / dust emission controls specified by the Environment Protection Authority.

The submission by JK Geotechnics on behalf of Y & B McCausland, L & D Quayle and S Hesse

First I cannot understand how the writer claims to have "carried out a detailed inspection of the topographic, surface drainage and geological conditions" when by his own admission the inspection was carried out "from across the northern and western site boundaries", which are in excess of 20m from the location of the proposed works and the area is both uphill from these boundaries and in varying degree is covered by native and introduced vegetation.



Nevertheless, as indicated in the revised assessment the consultant Geotechnical Engineer carried out a further site inspection to reaffirm his original observations & conclusions and can categorically state that the proposal as submitted complies with the requirements of the Pittwater Geotechnical Risk Management Policy, (2009) and upon completion the project will achieve an 'acceptable' rating subject to the works being carried out in accordance with the recommendations detailed in his original report and subject to good engineering and building practice.

The submission from Michael Hesse and Associates Pty Ltd on behalf of the owners of 37 Marine Parade (W & Y McCausland, 39 Marine Parade (L & D Quayle) and 43 Marine Parade (S Hesse)

- Doubts about the estimated cost of construction
- The accuracy and extent of the survey prepared by Hill & Blume Surveyors
- The adequacy of the geotechnical report prepared by the White Geotechnical Group
- The adequacy of the concept landscape plan due to the perceived inadequacies of the survey plan
- Photos within the Statement of Environmental Effects predate the removal of the Norfolk Island Palm adjacent to the western wall of the existing dwelling
- A suggestion that the Flora & Fauna report may have to be re-written following removal of the Norfolk Island Pine

Estimated cost of construction

The project architect has advised that the cost of works detailed on the Development Application form were obtained from their consultant Quantity Surveyor. The internal passenger lift is not an itemised item and has been included in the overall cost. That section of the driveway which adjoins the garage is a gravel hardstand not concrete hence different cost basis. As indicated earlier there is to be no change to the levels of the existing driveway and no excavation, simply the removal of the concrete slabs.

The survey prepared by Hill & Blume Surveyors

As confirmed by the architectural plans there are no building works proposed in the "lower Northern, Western and Southern boundaries" hence there was no need to obtain detailed survey information in this part of the site.

The geotechnical report prepared by the White Geotechnical Group

As stated in the report which accompanied the original application the author reviewed the architectural plans and carried out a detailed site inspection. He was therefore given unfettered access to the site and in particular those areas external to the existing building footprint, therefore he was able to comprehensively assess the geotechnical and hazard implications of the proposal.

As stated in his original report and the appended supplementary report, the proposal will achieve an 'acceptable' risk management level within the terms of the Council's Geotechnical Policy providing the works are carried out in accordance with the recommendations detailed in the geotechnical report and subject to good engineering & building practice.

The adequacy of the concept landscape plan

The respondent suggests that due to the lack of levels and details on the survey the concept landscape plan is therefore deficient. This rationale is not correct

All consultants involved in the preparation of this application were given access to the site. The landscape consultant inspected the site, took various photos as necessary and compiled a series of file notes prior to the preparation of the landscape concept plan. Accordingly it was not necessary to rely upon survey details and levels, further this is not how landscape drawings are prepared. It is also essential that the consultant familiarise themselves with local micro-climatic



conditions (*most important in this case due to the exposed cliff-top location*) the age , range and condition of other vegetation growing on a site and those surrounding.

The integrity of the landscape concept plan is not in question, also as you are aware these plans prepared and lodged at Development Application stage are concept plans as opposed to working drawings at Construction Certificate stage and the intent of a landscape concept plan is to indicate to Council whether the site can be landscaped to satisfy the DCP provisions and provide landscaping which will be commensurate and compatible with landscaping in the immediate locality. The concept plan fulfils these requirements and I note that if the landscaping was carried out in accordance with the layout on the concept plan it would provide for more trees and shrubs than what is provided on many of the sites in this locality. This conclusion is corroborated by the aerial photo below.



Photos within the Statement of Environmental Effects predate the removal of the Norfolk Island Pine

This observation is correct however I am sure that your recent site inspection which included viewing the site from the Avalon beachfront, after the removal of the Norfolk Pine, would have confirmed my conclusions in the Statement of Environmental Effects that the visual prominence of the proposed dwelling will be significantly minimised by the retention of the existing trees, the proposed supplementary planting and the proposed exterior building finishes & colours and the building will continue to be read against the vegetated hillside. Further, although the proposed building is marginally higher than the existing, the perceived bulk & scale viewed from the areas generally to the south of the site will be negligible and less than that of most of the other dwellings on this escarpment.

I might also point out that the new dwelling has been carefully modulated into many parts with different roof levels, thus breaking up the apparent bulk when viewed from all elevations. Further the exterior building materials and colours have been selected to integrate with the natural environment and the sandstone cliffs below. This particularly sensitive approach was taken in the early design phase, which I was involved in, fully aware that this was the most southerly and elevated site on the escarpment and that we had to achieve the highest design standards to achieve an appropriate environmental fit. Lastly on this point I think it is worth noting that the proposed building is far more appropriate to its prominent landscaped setting than the existing dwelling with its yellow painted walls and blue trim.



The Flora & Fauna report may have to be re-written following removal of the Norfolk Island Pine

Again this is not necessary. The author of the Flora & Fauna report was advised that approval had been granted by Council for the removal of this tree (see *P.10 of that report*) and noted that the tree had a limited habitat potential for fauna, other than for common large bird species which may choose the site to nest in. The likelihood of any nesting occurring was considered to be low and in the event such species choose to nest in the area, they would have the option to nest in any of the other retained Norfolk Pines.

I trust that this detailed response to the residents' concerns will have dispelled any doubts or concerns you have had in relation to the appropriateness and the complying aspects of this proposal.

Thank you for your consideration of this further response, should you require any additional information or clarification in relation to any of the above matters please do not hesitate to contact me.

Yours faithfully

Denis Fish
Consultant Town Planner

Political Donations & Gifts Disclosure Statement pursuant to Sec.147 of the E P & Act, 1979

Neither my clients nor I have made a political donation to any Councillor or given a gift to any Councillor or employee of this Council over the past 2 years.

Attachments :

- The further geotechnical assessment prepared by the White Geotechnical Group dated 30/08/2016
- The Arborist report prepared by Growing My Way, Tree Consultancy dated Sept, 2016