

14 April 2021

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

Dear Chief Executive Officer

**PROPERTY: 9 WANDEEN ROAD CLAREVILLE  
DA2020/1772 FOR DEMOLITION WORKS AND CONSTRUCTION OF  
DWELLING HOUSE INCLUDING SPA POOL**

**INTRODUCTION**

This letter responds to Northern Beaches Councils letter dated the 29<sup>th</sup> of March 2021, in respect of development application (DA2020/1772).

The proposal is for demolition works and construction of dwelling house including spa pool at 9 Wandeen Road Clareville.

The Council letter raised issues with the application that we seek to rectify and clarify herein and by reference to amended drawings. These issues matters were the following:

1. Clause 4.3 – Height of Building.
2. Clause A4.1 – Avalon Beach Locality.
3. Clause B8.1 – Construction and Demolition - Excavation and Landfill.
4. Clause C1.4 – Solar Access
5. Clause D1.9 – Side and Rear Building Line

This addendum will address the proposed amendments to the scheme and how they address the concerns raised.

In our view subject to the amendments, development consent is warranted, subject to reasonable conditions of consent.

## **Amendments to the Scheme**

The proposed change to the scheme involves the following;

- 1) Further reduction to the height of the building to remove the height breach. Height has been reduced in the areas of the parapet that previously encroached and created a non-compliance.
- 2) The proposed roof structure located over the entry into the swimming pool area has been reduced by 300mm to comply with the 8.5m building height.
- 3) The building has been reduced an additional 150mm below the natural ground level.
- 4) The entire proposed structure has moved North by 1m.
- 5) An increase of the rear setback has been provided, reducing the overshadowing impacts to the southern property.

The application has seen significant amendments to it to respond to Councils issues and requests since the pre-DA meeting (PLM2020/0220) on the 24/09/2020.

In our view the amended scheme appropriately addresses the planning issues and the applicant would of course submit to any reasonable condition of consent. See under:

### **1. Clause 4.3 – Height of Building**

A concern of Council was the impact of the height of the dwelling house and specifically it's encroachment into the HOB line. Council suggested the scheme didn't address:

- 1) Objectives A, C & E of the HOB control;
- 2) Overshadowing to 221 Hudson Parade; and
- 3) Height compared with the locality.

The objective of the HOB control within the PLEP 2014 state as follow:

- (1) *The objectives of this clause are 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.*

The yellow highlighted sub clauses are dealt with under.

To ensure consistency with the objective of the height of building control, to protect the surrounding residential character, protect the natural environment and contribute positively to the surrounding precinct, the amended proposal has involved design changes to address these issues. The proposal has adequately addressed the issues for the following reasons:

- 1) The height of the building has been reduced to avoid encroaching into the 8.5m building line, removing the requirement for assessment of a clause 4.6 variation request. The height of the building at its maximum point is 8.486m, and this is compliant with the control.
- 2) The reduction in height, has resulted in a further reduction of overshadowing to the southern neighbour (221 Hudson Parade). The reduction in height has further increased the already compliant level of overshadowing impact to the adjoining neighbour. This issue will be further explored in Clause C1.4 – Solar Access, of this document.
- 3) The amended design recognises the streetscape qualities, by minimising visual impact. Furthermore, the HOB is consistent desired locality of the area. This issue will be further explored in Clause A4.1 – Avalon Beach Locality, of this document.
- 4) This reduction in height will also ensure the bulk and scale of the proposed building does not unreasonably impact the southern adjoining neighbour.
- 5) The amended design, ensures that the building retains and enhances the natural features of the site, specifically retention of Tree No 5.
- 6) The difficulty of compliance occurs where the topography is sloping down from east to west. Due to the natural depression, the amended scheme had to be integrated with this feature, and as such the scheme was reduced below at this point to reduce HOB impacts.
- 7) It is relevant to note that the proposed building height does not unreasonably impact view loss and is compliant with the LEC principle espoused in 'Tenacity'.

There is no unreasonable view loss, visual amenity impact or unacceptable bulk and scale issue generated by the amended design, which now results in a scheme that is compliant with the 8.5m HOB control under the PLEP 2014.

## **2. Clause A4.1 – Avalon Beach Locality**

Concern with the scheme was raised in relation to its impact on the locality of Avalon Beach. further that it didn't respond to the topography, was excessively bulky and the first floor impacted on the rear property unacceptably. It is important to note, that A4.1 Avalon Beach Locality of the PDCP and D1.1 Avalon Beach Locality share similarities, however control D1.1, outlines specific controls. Our assessment is based on the controls outlined within D1.1.

The outcomes of D1.1 Avalon Beach Locality provide as follows:

### Outcomes

- To achieve the desired future character of the Locality.
- To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)
- To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.
- The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)
- High quality buildings designed and built for the natural context and any natural hazards. (En, S)
- Buildings do not dominate the streetscape and are at 'human scale'.
- To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.

In our view, the proposal adequacy achieves the outcomes of the control.

The controls of sD1.1, as relevant to the proposal, have been provided below:

### Controls

Buildings which front the street must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality. Blank street frontage facades without windows shall not be permitted.

Walls without articulation shall not have a length greater than 8 metres to any street frontage.

Any building facade to a public place must incorporate at least two of the following design features:

- entry feature or portico;
- awnings or other features over windows;
- verandahs, balconies or window box treatment to any first floor element;
- recessing or projecting architectural elements;
- open, deep verandahs; or
- verandahs, pergolas or similar features above garage doors.

The bulk and scale of buildings must be minimised.

Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place. Parking structures should be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser.

Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.

For the following reasons, we believe the scheme achieves the objectives of the control and is acceptable on the merits:

- 1) The amended scheme responds sensitively to the natural characteristics of the area. Specifically, it maintains the spotted gums on the site. Furthermore, the design follows the natural topography, of the slope where the local depression at the western end of the site, has been integrated into the design.
- 2) The scheme addresses the objectives of the control, and does not unreasonably impact as regards view loss, overshadowing, or privacy.
- 3) The scheme incorporates positive landscaping features and elements into the proposal, softening its appearance from the street, as well as landscaping elements at the rear, to minimise its visual appearance from 221 Hudson Parade. The scheme provides compliance with the landscape control.
- 4) The scheme has involved significant reduction in height, bulk and scale, to ensure consistency with the locality. No breach of the HOB control occurs within the amended scheme. The scheme provides a dwelling that does not dominate the streetscape and is at 'human scale'.
- 5) The proposal has been amended to move the dwelling 1m forward, as such the north-west portion of the building no longer complies with the 6.5m front setback requirement. This has been done to reduce the impact of the non-compliant rear setback. This change is consistent with Council's Pre-DA advice.
- 6) As the control indicates, the impact on the street frontage is more important than that for rear setback. The scheme positively protects and enhances the streetscape characteristics the control identifies to be of importance to the locality. This is achieved by providing a balanced front and rear setback encroachment (caused by narrow depth of the land) to protect the green leafy texture of the locality.

- 7) The control identifies that building articulation and modulation must be provided for the building which faces the street. The scheme adequately addresses this through appropriate design elements. The control does not identify, modulation requirement for the rear facade of the building. Requiring the first floor of the rear of the building to provide strict compliance with the rear setback control is unreasonable in our opinion in the present circumstances.
- 8) The proposed amendment will create a dwelling that reflects the local character, streetscape and built elements that the control seeks to achieve.
- 9) Council's pre-DA advice indicated that providing a compliant (6.5m) or reduced 5.5m front setback, would be acceptable on merit. This means an encroachment into the rear setback for a 'reasonable' width dwelling (given the narrow depth of the lot) is inevitable. The scheme now provides a 5.48m front setback (variable) which will maintain protection of Tree No 5. We note that Councils latest comments are inconsistent with the pre-DA advice. The design focusses on pre DA advice, so the setbacks provided, which are generous in any event, must be considered in the context of the advice provided to the applicant and a compliant height.

The amended scheme adequately addresses compliance with the locality control within the PDCP 2014.

### **3. Clause B8.1 – Construction and Demolition - Excavation and Landfill**

As the amended proposal results in excavation in excess of 1.5m, B8.1 of the PDCP requires a geotechnical report to be provided. We have engaged Whitegroup Geotechnical to prepare a report to address this concern.

This report will be provided to Council separately as due to the Easter Long Weekend it was delayed.

### **4. Clause C1.4 – Solar Access**

Concern with the previous scheme was raised in relation to impact on solar access and overshadowing, specifically on the southern adjoining neighbour at 221 Hudson Parade. The controls and objectives as relevant under the PDCP state:

## Outcomes

Residential development is sited and designed to maximise solar access during mid-winter. (En)

A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)

Reduce usage and/dependence for artificial lighting. (En)

## Controls

The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).

The proposal must demonstrate that appropriate solar access is achieved through the application of the Land and Environment Court planning principle for solar access.

For the following reasons, we believe the scheme achieves the objectives of the control and is therefore acceptable on the merits:

- 1) The amended scheme results in a dwelling that is compliant with the HOB control. The reduction in height further increases sunlight access to relevant neighbours.
- 2) A reasonable level of overshadowing is provided. This is important, as the site is currently a 'brownfields' development, meaning it is not at its maximum potential under the controls. The proposal brings the site to 'highest and best use' and there is always going to be 'some' impact associated with a new dwelling house. The aim is to reduce impacts to an acceptable level rather than try to completely eliminate same as this would be unrealistic for this suburban environment. The planning controls recognise this. In our view, the new dwelling maintains a reasonable level of solar access to 221 Hudson Parade. The control under C1.4, identifies that the control must achieve compliance with the "main private open space of each dwelling". Open space for 221 Hudson Parade ie 'main private open space', is located toward the front of the dwelling to maximise benefit from aspect towards Pittwater. The rear portion, of the property is not 'main private open space'. This is supported by the floor plan, which shows their main living areas in the northern part of the site.
- 3) There is no definition of 'principle private open space' or 'Main private open space' under the PDGP 2014, however there is definition of

'principle private open space' (PPOS) under the MDCP 2013. PPOS is defined as follows:

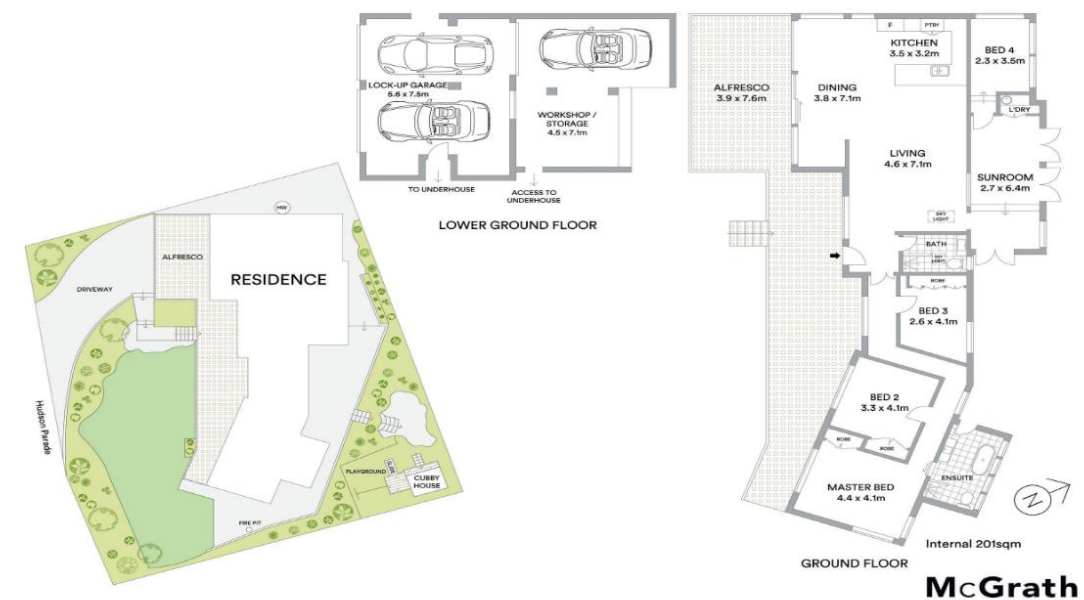
**principal private open space**

means private open space located adjacent to living rooms, excluding bedrooms of a single area and dimension sufficient to enable it to usefully serve domestic outdoor functions for the exclusive use of the occupants of the dwelling.

The above definition is important, as it provides a guide to interpreting the location of PPOS which is the term described but not defined within the PDCP 2014. The definition above supports our claim, that the PPOS for 221 Hudson Parade is the area adjacent to the living room and kitchen of that dwelling house, and which is facing south towards the vista. This definition in turn supports a contention that the northern open space for No 221 Hudson, is not that dwelling's PPOS.

This definition is relevant, as both Manly and Pittwater share significant similarities in terms of character and planning controls. The definition will also logically be incorporated into a future DCP when consolidation across the LGA occurs.

See floor plan below which illustrates this point.



Scale in metres. Indicative only. All information contained herein is obtained from sources we believe to be accurate. We cannot guarantee its accuracy. Interested persons should make and rely on their own enquiries.

221 Hudson Parade – Layout Courtesy McGrath

- 4) The control identifies that windows to the 'principal living area' of adjoining dwellings must achieve a minimum of 3 hours of sunlight. The submitted shadow diagrams suggest 221 Hudson Parade located to the north has its 'principal living area' achieving numerical compliance with the control.



- 5) The proposal is consistent with the LEC principle established in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082.
- 6) No objection has been raised from the surrounding community as far as we are aware of. Specifically the owners of 221 Hudson Parade have not raised an issue in respect of overshadowing.
- 7) Whilst the scheme does result in some overshadowing to open space for the neighbours at the rear, reasonable solar access is achieved. Specifically, the sunroom and bedroom 4 of 221 Hudson Parade will achieve numerical compliance.
- 8) Control C1.4, suggests variations to the control are acceptable on merit subject to the below:

#### Variations

##### General

Where the following constraints apply to a site, reasonable solar access to the main private open space and to windows to the principal living area will be assessed on a merit basis:

- where the orientation or shape of a lot precludes northerly orientation (20° west to 30° east of north),
- where there is adverse slope or topography,
- where there is existing vegetation, obstruction, development or fences that overshadow, or
- where other controls have priority, e.g. heritage and landscaping considerations.

In the case of 9 Wandeen Parade, the additional overshadowing arises due to specific design changes that occurred as a result of the pre-DA meeting with Council. The requirement to protect Tree No 5 and provide a compatible front setback, resulted in the dwelling encroaching into the rear setback line. Furthermore, the unique shape of the lot means that any reasonably sized structure proposed, will have difficulty achieving compliance with the setbacks. A compromise and design changes were therefore proposed to minimise the impact of overshadowing on the southern lot. In this case landscaping for the Avalon Locality and the front setback control were deemed to enjoy priority.

- 9) The amended scheme, now relocates the dwelling 1.0m towards the north, so encroaching into the front setback area. This results in an increase in the rear setback and further improves solar access and numerical compliance for 221 Hudson Parade.

The amended scheme adequately addresses C1.4 of the PDCP.

## **5. Clause D1.9 – Side and Rear Building Line**

Concern was raised with the non-compliant rear setback encroachment. Specifically, Council didn't accept the rear setback encroachment and wanted strict compliance with the control on the first floor, reducing internal floor space.

The outcomes of the control state:

### Outcomes

- To achieve the desired future character of the Locality. (S)
- The bulk and scale of the built form is minimised. (En, S)
- Equitable preservation of views and vistas to and/or from public/private places. (S)
- To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.
- To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)
- Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)
- Flexibility in the siting of buildings and access. (En, S)
- Vegetation is retained and enhanced to visually reduce the built form. (En)
- A landscaped buffer between commercial and residential zones is achieved. (En, S)

For the following reasons, we believe the scheme achieves the objectives of the control despite the numerical non-compliance and it is therefore acceptable on the merits:

- 1) Council's comments within the pre-DA notes acknowledged a re-design was required and that a rear setback encroachment was preferred by Council. The design reviewed at that point had the same built elements, at the rear wall height that the current scheme does. Requiring a modulation, of the first level is inconsistent with the previous advice provided by Council. See below extract from Pre-DA advice.

However, noting that a re-design is required to provide a greater front boundary setback, Council is likely to support a slight variation to this control, provided the applicant is able to demonstrate that the outcomes of this control can be achieved, with particular emphasis on minimising impacts upon native vegetation and minimising overshadowing.

- 2) The amended design results in a dwelling that is compliant with the HOB control. As such no clause 4.6 variation request is required.

- 3) The unique shape of the lot means that any reasonably sized structure proposed on the site, will never achieve compliance with setbacks as such a compromise and design changes have been proposed to minimise the impact of overshadowing on the southern lot.
- 4) The proposal achieves strict compliance with both side setback requirements. The proposal also enjoys compliance with the building envelope control.
- 5) The rear setback encroachment is a result of protecting tree 5, which was identified to be significant to the locality. To maintain this important characteristic of the area, the dwelling had to be shifted towards the rear of the site, to protect the root system of the tree.
- 6) The proposal does not unreasonably impact views, cause overshadowing or create privacy impacts.
- 7) The portion of the dwelling on the first floor that encroaches into the rear setback, comprises mostly a balcony with associated pool and a living room. The orientation of 9 Wandeen Road is towards the north, which alleviates concerns with privacy that would otherwise create an issue.
- 8) The proposal involves landscape planting along the rear boundary to provide adequate screening to the southern property. A consent condition can be implemented requiring planting to achieve a specific height.
- 9) The control outlines variations where the site constraints make strict adherence to the setback control impractical. In our view there is more than sufficient evidence provided to demonstrate that the development complies with the objectives of the PDCP.
- 10) The amended design results in an increase of rear setback over the site length. The front setback of 5.48m (variable), is consistent with Council's Pre-DA advice. See below extract from pre-DA advice;

Council advises that the applicant explores an alternative design to provide a greater front building line of at least 5.5m to alleviate the visual impacts of the development and allow for the retention of Tree T5 (Spotted Gum), which is located within the front setback area.

A 'compatible balance of setbacks' has been achieved, through the amended design, to ensure Tree No 5 is protected whilst at the same time enhancing streetscape character.

## **Conclusion**

This letter addresses the concerns outlined in Council's letter and provides an appropriate design solution, to achieve an acceptable outcome for adjoining neighbours and our clients.

The amended scheme adequately addresses the objectives of the control and maintains local character notwithstanding technical non-compliance with the guideline setback controls. The development is now also fully compliant with the statutory height control under the PLEP.

The fine-grained details of the application have been addressed to deal with relevant environmental considerations and potential impacts. The amendments to the scheme are consistent with the pre-DA advice and demonstrate that the adjoining property will achieve compliance with the solar access requirements of the PDCP.

In our opinion, there are no remaining matters which would prevent Council from granting consent to the proposed development, subject to the imposition of appropriate and reasonable conditions of consent.

Should you wish to further discuss please don't hesitate to call this office.

Yours faithfully

**TURNBULL PLANNING INTERNATIONAL PTY LIMITED**



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