
From: Toby Ledgerwood
Sent: 22/11/2024 1:18:12 PM
To: Council Northernbeaches Mailbox
Subject: TRIMMED: Letter of Submission to Application DA2024/1427
Attachments: Letter of Submission to DA20241427 14 Bareena Drive Balgowlah Heights.pdf;

Attention: Michael French

Dear Michael,

Please find attached my letter of submission to DA2024/1427, Alterations and additions to 14 Bareena Drive Balgowlah Heights.

I am the neighbouring property owner at 15 Bareena Drive Balgowlah Heights.

I look forward to hearing from you shortly.

Regards,

Toby Ledgerwood



Letter of Submission to DA2024/1427

22 November 2024

Michael French
Northern Beaches Council
PO Box 82 Manly NSW 1655

RE: SUBMISSION LETTER TO DA2024/1427 - 14 BAREENA DRIVE BALGOWLAH HEIGHTS

Dear Michael,

I am the neighbouring property owner at 15 Bareena Drive Balgowlah Heights. The proponent shares a Western boundary with myself which measures 40.2m in length. My house is a single-storey building, with living, dining and kitchen spaces all located directly to the East of the proponents proposed development.

My submission focuses on three major concerns with the Development Application DA2024/1427, as follows:

- Proposed building height, and its environmental affects involving overshadowing onto my private open space;
- Maximum wall height & impacts to side setbacks along the Western elevation;
- Overlooking and privacy concerns involving size and location of rumpus room window, W09 & W12;
- Overlooking and privacy concerns regarding first floor living space

My assessment forming this submission has been made observing the following legislation and environmental planning instruments:

- Environmental Planning and Assessment Act 1979 and associated regulations;
- Manly LEP 2013;
- Manly DCP 2013; and

1. Site and Content

Figure 1 below illustrates the location of the proponents property at 14 Bareena Drive, Balgowlah Heights in relation to my property at 15 Bareena Drive, Balgowlah Heights.

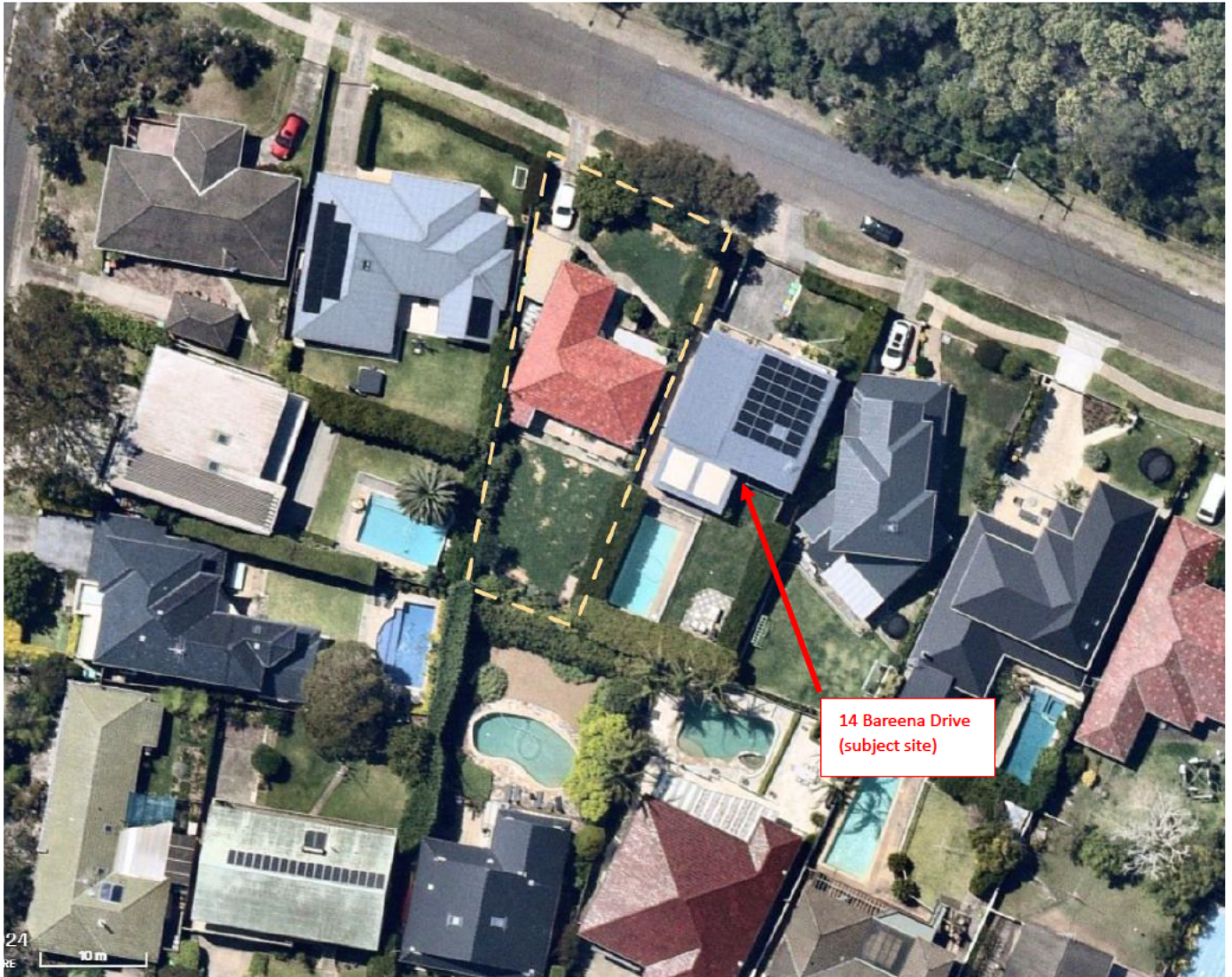


Figure 1 – 15 Bareena Dr in proximity to the subject site

2. Concerns with the Development Proposal

2.1 Assessment of Clause 4.6 Variation

A Clause 4.6 Variation Request dated September 2024 has been prepared by BMA Urban, to argue that the exceedance in building height under the Manly Local Environmental Plan 2013 (MLEP) can be justified on the following basis:

- Compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the proposed development.
- The proposal, notwithstanding the non-compliance, is consistent with the objectives of the height of buildings standard.
- There are sufficient environmental planning grounds to justify the contravention.
- There is an absence of any environmental impacts arising from the proposed variation.
- The proposed non-compliance with the height of buildings standard will not result in any matter of significance for State or regional environmental planning

The site is subject to a 8.5m height standard as defined under Clause 4.3 of the MLEP. The proposed first floor extension exceeds the height standard along the Northern building line due to the new parapet roof feature.

Firstly, it must be noted there are numerous conflicting references to the extent of height breach contained within the applicant's Architectural Drawing submission. Drawing ref A401- Section AA of the Architectural Documentation notes a 420mm exceedance (Figure 2), whereas Drawing ref A704 3D Height Plane Diagram (contained within the same drawing package) reference an exceedance of 440mm (Figure 3). Both references are taken from existing ground level at RL 79.23 to the proposed ridge line at RL 88.15 (ie 420mm exceedance). The Architectural Documentation must be amended to be consistent in the extent of height breach at 420mm.

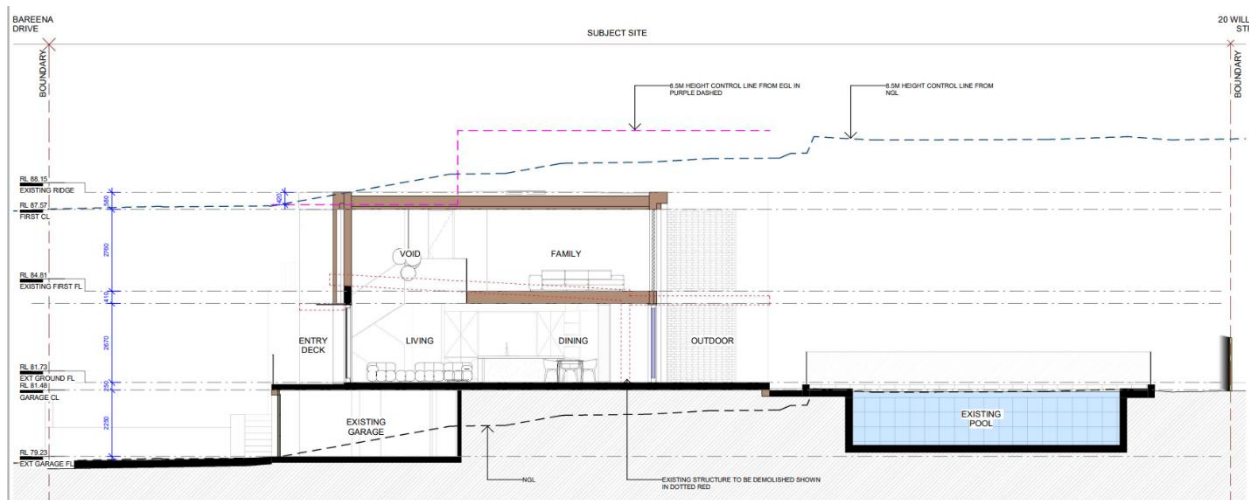


Figure 2 North – South section

Additionally, and importantly, there are errors in the calculation of the height breach as reported within BMA Urban's Clause 4.6 Variation Request. BMA Urban have incorrectly calculated the extent of the height breach under Section 2.2 of their paper, stating the departure measures 440mm or 5.1% against the Development Standard. BMA Urban have measured from the *top* of the existing ground floor slab at RL 79.23, whereas the correct level should be taken from the *underside* of the existing ground floor slab, which assuming a 300mm concrete slab, would be RL 78.93.

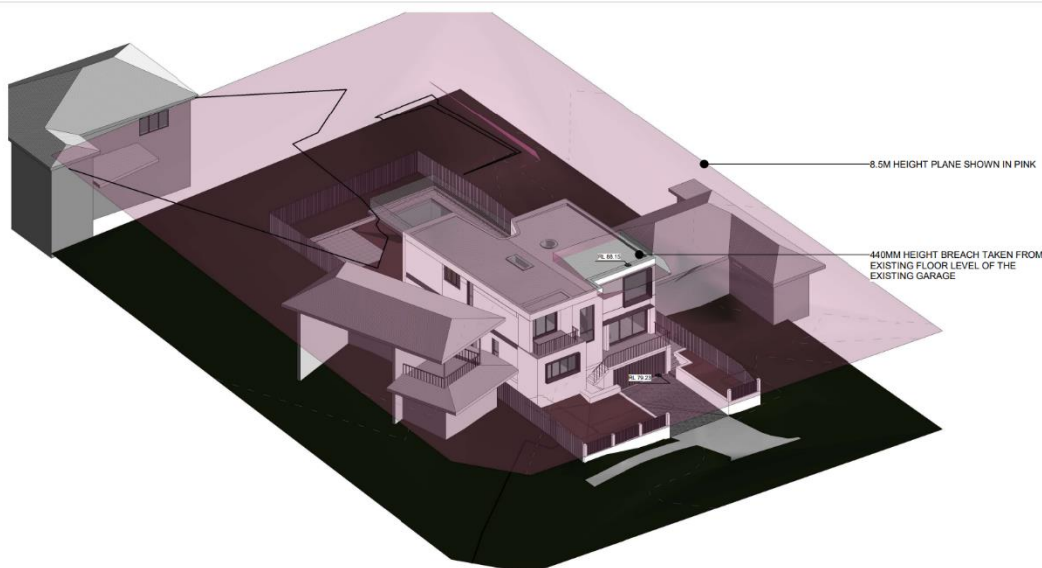


Figure 3 - 3D diagram showing height breach

The ruling handed down by the Courts in relevant case law *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070, the Courts confirmed that the definition of “ground level (existing)” from which building height should be measured:

‘is not to be based on the artificially modified levels of the site such as the floor levels of an existing building. This includes the entrance steps of an existing building.’

As mentioned above, the proponents submission depicts existing ground level as being measured from modified levels of the site from the existing building level, which contradicts the ruling in Case Law *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070.

Acknowledging the above, and the correct and lawful RL to which the 8.5m height breach is calculated from (RL 78.93), the height exceedance of the current building form is 720mm (being the current proposed 420mm exceedance plus an additional 300mm, being the *underside* of the existing ground floor). The revised 720mm exceedance in height control equates to 8.5%.

The proposed building height exceedance of 720mm or 8.5%, is inconsistent with the prevailing building height of the streetscape & has not supported previously by Northern Beaches Council in previously approved Development Applications.

Most importantly, the proposed height exceedance of 720mm or 8.5% directly contravenes the following relevant objectives under Clause 4.3(a) of the MLEP:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality;
- (b) to control the bulk and scale of buildings,
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings
(refer to Section 2.2 for further explanation)

The following justifications contained within BMA Urban’s Clause 4.6 Variation Request for exceeding the building height control are therefore incorrect & should be discounted from Council’s objective review of the submission:

- The proposal, notwithstanding the non-compliance, is consistent with the objectives of the height of buildings standard.
- There is an absence of any environmental impacts arising from the proposed variation.

In summary, there are insufficient environmental planning grounds to justify contravening the relevant development standard by 720mm or 8.5%, when assessed against the objectives under Clause 4.3(a) of the MLEP.

2.2 Overshading as a result of height control breach

The additional shadow cast by the proposed building mass onto my rear private open space is significant, and contravenes the following planning objective under Clause 4.3(a) of the MLEP:

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings

The Clause 4.6 Variation Request dated September 2024 prepared by BMA Urban, gives the below justification as part of their assessment to this planning objective:

‘In terms of overshadowing, the shadowing analysis prepared by HA S which forms part of the architectural plan detail set relied upon in preparation of this variation request (Issue P4- dated 10 September 2024), demonstrates that the extent of additional shadowing impact resulting from the breach, is not unreasonable and does not adversely prejudice the extent of available solar access to the neighbouring properties and or public areas located proximate to the dwelling on the subject land.’

Figure 4 below is an extract of the shadow diagram contained within Hass Studios architectural package lodged with the application. The diagram demonstrates the existing and additional loss of solar amenity as a result of the proposed building mass at 9am during the Winter Solstice. The additional red hatched section noted on the diagram as ‘minor additional shadow cast by the portion that breaches height control’ equates to over 100% loss in solar amenity to my private open space.

The additional building height therefore adversely impacts solar access to my private open space and consequently contravenes planning objective (d) under Clause 4.3(a) of the MLEP. Not only is solar access is *not* maintained to my private open space, it is significantly reduced as a direct consequence of the contravention in building height standards.

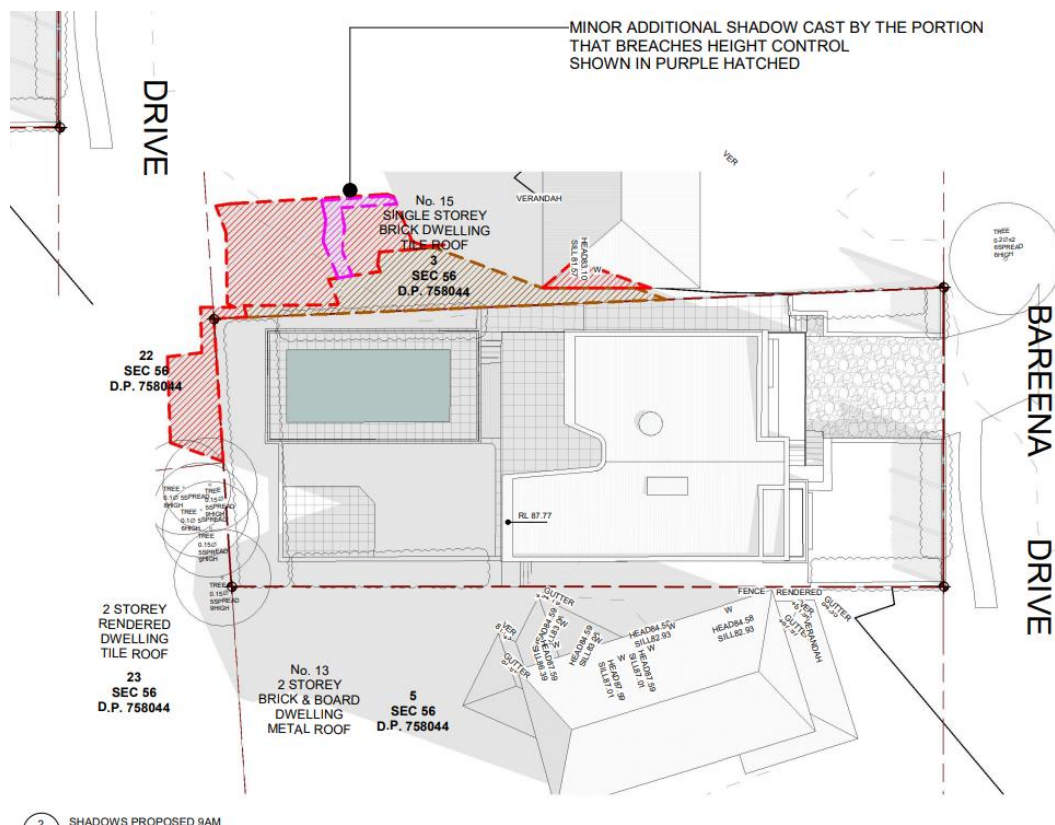


Figure 4 Overshadowing diagram – 9am Winter Solstice

2.3 Wall Height & Side Setbacks to Western elevation

Clause 4.1.4.2 of the Manly Development Control Plan 2013 (MDCP) defines the permissible side setbacks and secondary street frontages. Relevant extracts noted below:

- (a) Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.
- (b) Projections into the side setback may be accepted for unenclosed balconies, roof eaves, sunshoods, and the like, if it can demonstrate there will be no adverse impact on adjoining properties including loss of privacy from a deck or balcony.
- (c) All new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries;

Figure 5 below is an extract taken from the MDCP, which demonstrates the relationship between side setbacks and wall height as noted under Clause 4.1.4.2 (a) above.

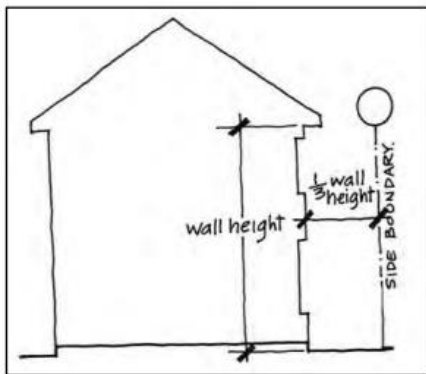
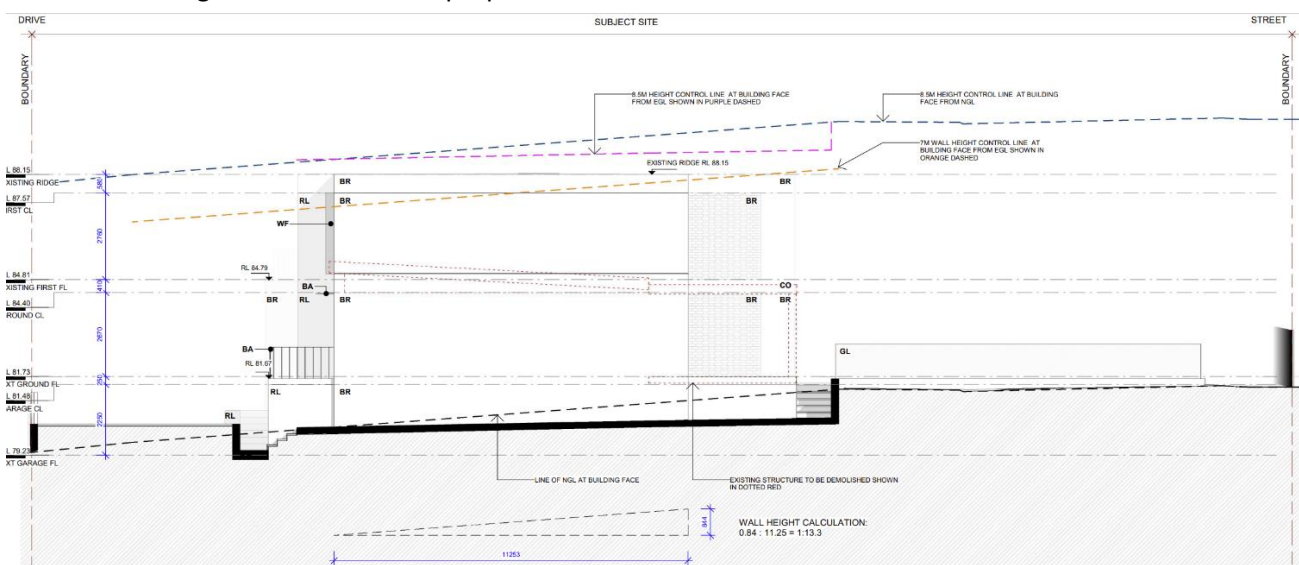


Figure 5 Side setback diagram as noted under the MDCP

The maximum wall height under the MDCP is 7.0m from the existing ground floor level. As mentioned above, the existing ground floor level for the subject site is RL 78.93. The proposed first floor wall height is measured at RL 87.57 (under the line of the roof eave) which equates to a wall height of 8.64m. This exceeds the MDCP control by 1.64m.

Refer to Figure 6 below for the proposed Western elevation.



Not only does the first-floor setback not comply with Clause 4.1.4.2 (a) of the MDCP, there are bulk and scale concerns due to the proposed double-height 'flat' (non-articulated) wall when viewed from the Western elevation. At a minimum, setting the first floor level back towards the East (when viewed from the Western elevation) to comply with appropriate setbacks, would improve this position.

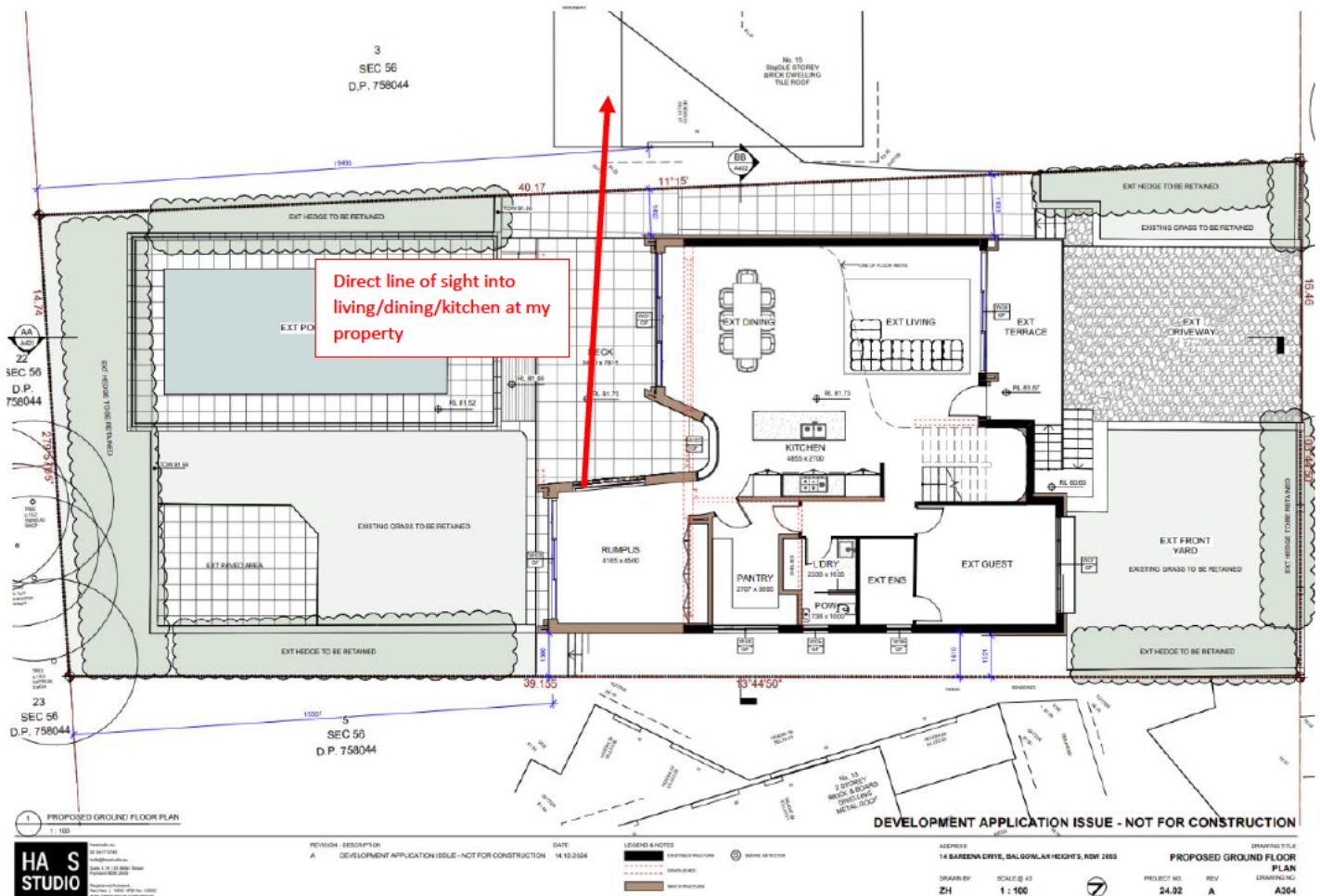


Figure 7 – Proposed ground floor

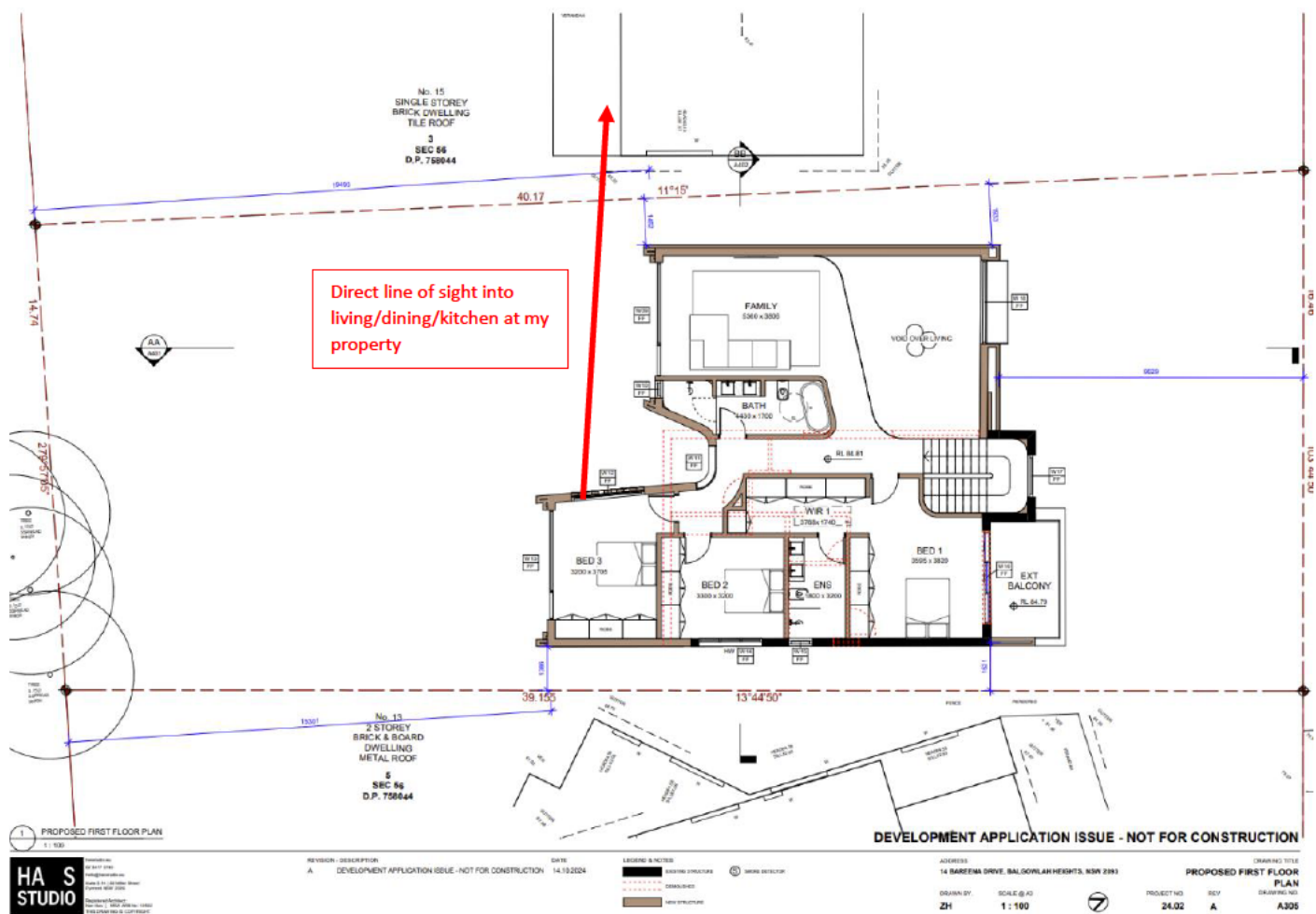


Figure 8 – Proposed first floor

2.4 Overlooking & Privacy concerns over size and location of W09 & W12

As well as bulk & form of the proposed development, there are significant concerns of the visual impacts caused by the rear extensions on both ground & first floor.

Ground floor

The rear addition of the Rumpus room on the Southern elevation of the ground floor is concerning as it introduces a direct line of sight into my living, dining, and kitchen rooms, as well as my Southern terrace private open space, as notated in Figure 7. This line of sight into my habitable area & private open space (as defined under the MDCP) is a breach of Privacy under Clause 3.4.2 of the MDCP, contravening the following planning objective:

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;
- mitigating direct viewing between windows and/or outdoor living area of adjacent buildings

Additionally, the proposed Western window of the rear Rumpus room is not contained within the Window Schedule of Hass Studios architectural package lodged with the DA submission. Figure 9 below notates the lack of window identification on plan. The proposed window dimensions, and extent of glazing, that introduces the line of sight into my habitable area & private open space, is therefore unknown & cannot be assessed against the Clause 3.4.2 Privacy and Security of the MDCP.

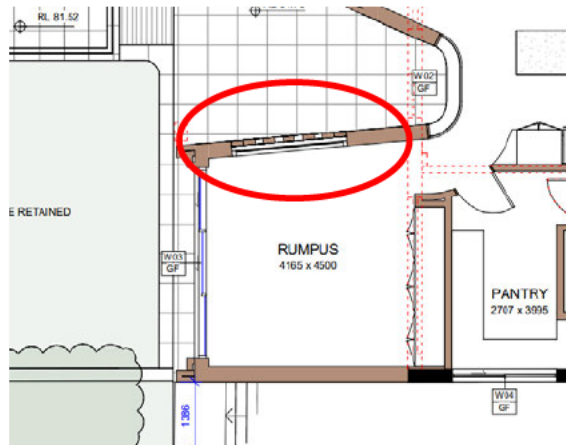


Figure 9 Proposed rumpus room Western window (undocumented window)

First floor

Likewise, proposed window W12 of the new bedroom 3 introduces a direct line of sight into my living, dining, and kitchen rooms, as notated in Figure 8. This line of sight into my habitable area & private open space (as defined under the MDCP) is a breach of Privacy under Clause 3.4.2 of the MDCP for the same reasons as mentioned above.

Unlike the ground floor window of the same elevation, W12 has been included within the Window Schedule, note Figure 10 below. The glazed window area of W12 is 6.4sqm, which is highly inappropriate for a bedroom overlooking private open space and habitable areas within my property.

WINDOW SCHEDULE					
NO.	LEVEL	WIDTH	HEIGHT	AREA	ORIENTATION
W01	GF	4280	2620	11.2 m ²	S
W02	GF	2150	2620	5.6 m ²	S
W03	GF	3860	2620	10.1 m ²	S
W04	GF	2100	850	1.8 m ²	E
W05	GF	820	2120	1.7 m ²	E - EXT
W06	GF	820	2120	1.7 m ²	E - EXT
W07	GF	3052	1580	4.8 m ²	N - EXT
W08	GF	3900	2620	10.2 m ²	N
W09	FF	3595	2760	9.9 m ²	S
W10	FF	545	2600	1.4 m ²	S
W11	FF	1487	2760	4.1 m ²	S
W12	FF	2310	2760	6.4 m ²	W
W13	FF	3470	2760	9.6 m ²	S
W14	FF	2000	1260	2.5 m ²	E
W15	FF	750	2600	2.0 m ²	E
W16	FF	2940	2760	8.1 m ²	N
W17	FF	1332	3130	4.2 m ²	N - EXT
W18	FF	2645	2575	6.8 m ²	N
W19	RF	900	900	0.8 m ²	SKY
W20	RF	1800	600	1.1 m ²	SKY

Figure 10 Window Schedule

Clause 3.4.2.1 of the MDCP defines Window Design and Orientation, with design directives as follows:

- a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary .
- b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

W12 as currently designed, directly contravenes Clause 3.4.2.1 of the MDCP & should not be supported by Council.

In addition, proposed window W09 introduces a privacy concern into my rear private open space.

Figure 11 below demonstrates the line of sight onto my private open space, when stood in the proposed family room on the first floor. I fiercely oppose the introduction of a primary living space overlooking my private open space. The expanse of the proposed full height, full width window W09 (3.6m wide x 2.7m high) as identified above in Figure 10, is extremely inappropriate in this setting and context.

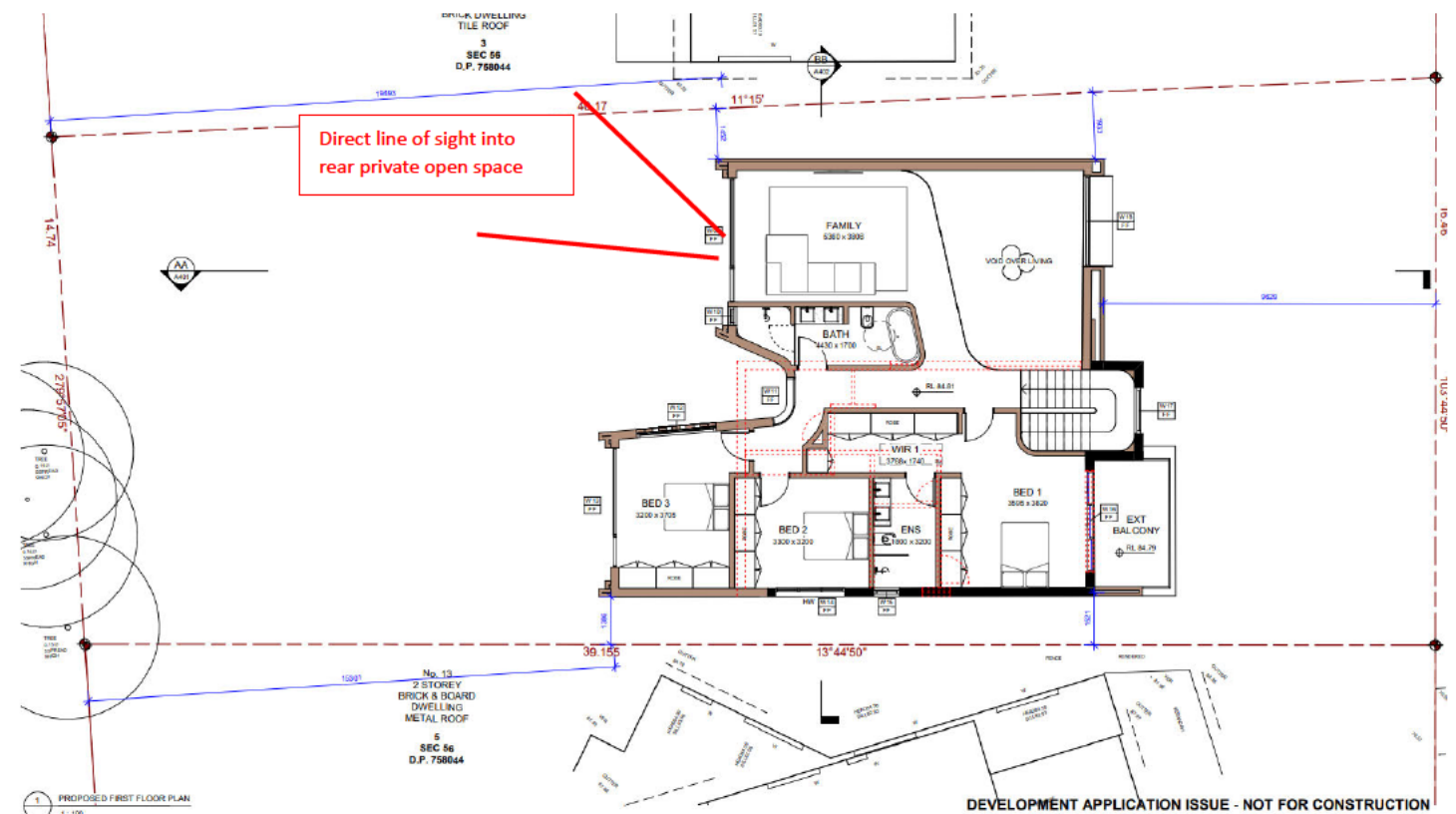


Figure 11 Lines of sight into private open space caused by W09

I'm aware that this concern regarded the oversized window of W09 is shared with the proponents rear neighbours at 20 Willawa Street Balgowlah Heights. To support item 3.2 of their own submission to DA2024/1427, I would cite Clause 3.4.2.1 of the MDCP, which provides planning guidance in relation of appropriate window sizing.

2.5 Overlooking & Privacy concerns regarding configuration of first floor living space

Inter-related with my privacy concerns around window size and position, is the location of the proposed living space to the rear of the first floorplate.

Positioning a habitable use, such as the proposed living space, against a glazed full height, full width non-compliant window (per the MDCP) introduces lines of sight into adjoining properties, both private open space (as is the case in my instance) and bedrooms (as noted in fellow submissions made by 20 Willowa Street & 13 Bareena Drive). Properties at 14 Vista Ave, 16 Vista Ave & likely 18 Willowa Street, are additional properties which will suffer a loss of privacy due to the proposal as currently documented.

On Sunday 3rd November 2024, myself together with my rear neighbour at 20 Willowa Street, met with the proponent to discuss our mutual concerns and also to discuss the possible design changes which would alleviate the concern relating to overlooking.

Figure 12 below demonstrates diagrammatically the recommended design solution discussed at this meeting. The proposed relocation of the living space to the North provides a better design outcome, in terms of natural light, views, ventilation from prevailing wind direction, and addresses our shared concerns of overlooking.

The proponent mentioned he would take this away for consideration, however I have not heard back on the outcome.

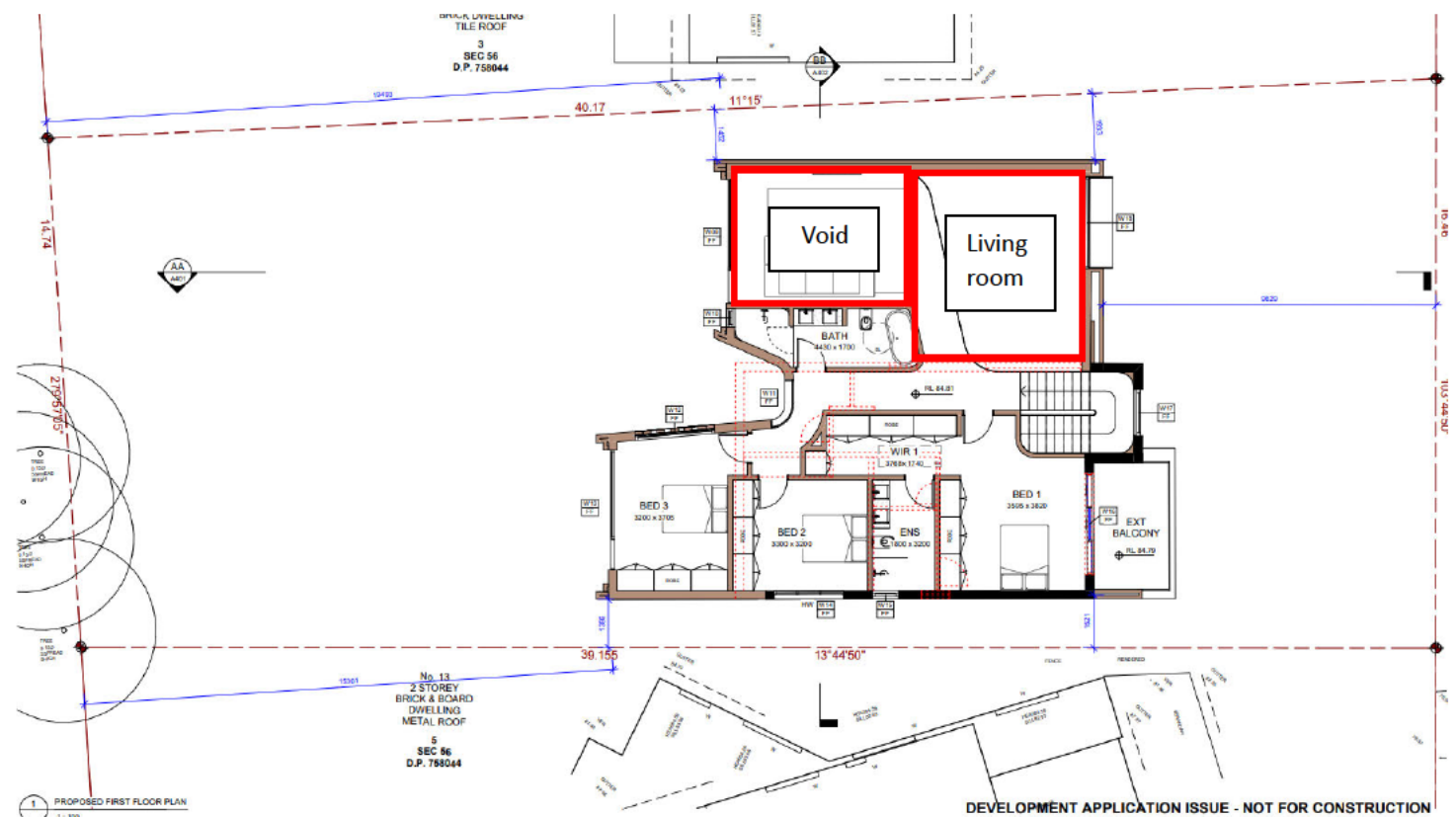


Figure 12 Reconfiguring first floor plate to address overlooking concerns from neighbours

3. Recommendation

The following recommendations are put forward to Northern Beaches Council to address to various concerns:

1. Lower the Northern parapet of the proposed building within the MLEP controls of 8.5m, when measured from the underside of the existing ground floor slab;
2. Lower the Western wall elevation as per the MDCP to 7.0m from the underside of the existing ground floor slab;
3. Increase the Western side setbacks as per the MDCP to 1/3rd of wall height on both ground & first floor levels
4. Include rumpus room Western window in documented window schedule to determine appropriateness of proposed size and extend of glazing;
5. Significantly reduce the extent & type of glazing (ie opaque) to rumpus room window, W09 & W12 to address overlooking into private open space and habitable space from both my property and neighbouring properties,
6. Introduce external privacy screens to rumpus room window (to be scheduled), W09 & W12 to address overlooking into both private open space and habitable space from my property and neighbouring properties,
7. Reconfigure Western portion of the proposed first floor so the living space is facing the North and void is facing the South.

I look forward to receiving a response to each of the above items as part of Council's assessment of DA2024/1427.

Kind regards,



Toby Ledgerwood
15 Bareena Drive
Balgowlah Heights