
Sent: 19/12/2022 5:54:29 PM
Subject: Re DA Application DA 2022/1128
Attachments: KEY Note 38 the Drive [191222].pdf;

Hello,

please find attached further comments to be uploaded to Council's portal for consideration of the above mentioned DA.

Thank you

Craig Key

Attention: Stephanie Gelder and Tyson Ek-Moller

Re: 38 The Drive, Freshwater DA 2022/1128

Dear Stephanie and Tyson,

We are the owners of 1 Seddon Hill Road, Freshwater. Our property adjoins the Applicant's property on our north boundary. We refer to the documents, all dated 17/11/2022, uploaded to Council's portal by the owner of 38 The Drive (the 'Applicant') in relation to DA 2022/1128.

It is not clear whether these additional documents have been uploaded at Council's request or what part of the DA review process they cover. Accordingly, we have set out below a few queries for Council on the process being undertaken and some specific comments on the matters raised in the additional documents submitted by the Applicant. We apologize upfront if our response is lengthy, but the applicant raised many points in their updated documents that we think need to be commented upon.

1. Process

- How are the multiple objections raised with respect to this application being addressed by Council, including the very technical issues around the accuracy of the actual plans presented by the applicant as to survey, height levels, section views, the accuracy of the view analysis and other questions raised by multiple objectors (for example refer to objection lodged by Poppy Bevan Design Studio on 11/8/22 in the section entitled Dimensional Inconsistencies beginning on p2 of her submission).

What process has the Council undertaken to confirm the accuracy or otherwise of the applicant's submission in 'toto' given the multiple questions around these issues raised by multiple other objectors?

- Has Council requested the Applicant to make changes to DA 2022/1128 and if so, will those changes be subject to further notification to affected neighbours?

2. Applicant's Updated View Assessment Document

It is very difficult to ascertain from the Applicant's updated view analysis document what precise changes have been made or addressed by the Applicant. It would have been helpful and courteous if these changes were highlighted for the benefit of the community so they could be readily identified.

In relation to 1 Seddon Hill Road, the only changes we see are that the updated assessment demonstrates an **increased adverse view impact** as shown in the pictures on pages 13 and 14 compared to the original view assessment submitted by the Applicant. Everything else as it relates to 1 Seddon Hill Road seems to be the same as the original, and the now presumably superseded, view assessment.

Why was this updated view assessment submitted by the Applicant? Perhaps Council could advise on this?

In any case, our letter uploaded to the Council portal dated 11/8/22, supported by Turnbull Planning's report uploaded to the portal on 12/8/22, raised multiple concerns relating to the original view assessment's feasibility and findings. All those objections and the very detailed rationales for

each of them (see pp 10 – 15 of Turnbull’s report) remain as stated and continue to apply to this updated view assessment document.

Similarly, the multiple other objections raised for Council’s consideration in our submissions continue to apply. We hope that Council has already read our original substantial objection documents and we will therefore not repeat here the multiple objections contained therein again.

Council has recently also requested us to prepare a series of photos to show the actual view loss we would incur from our property as result of the proposed development. Details are contained in Turnbull Planning’s submission dated 14/12/2022. The photographs speak for themselves and show a devastating loss of iconic views from all our property outlooks to the north and north-east. The conclusion reached by Turnbull Planning is summarized below:

"As was shown in a previous submission relating to this proposal, a better design could both preserve a far larger proportion of our client’s views and at the same time allow future occupants of the proposed development to share those extravagant views with adjoining and nearby neighbours. Regrettably, the view loss in the context of an unfulfilled desire for an ‘improved planning outcome’ in a clause 4.6 variation request, in this case, means the development should fail and as such, be refused.

Whilst view loss itself is a factor in the assessment to be undertaken by Councils consultant, when this issue is considered in the context of the non-compliances with relevant planning controls, the height bulk and scale of the proposal, the impacts relating to privacy (into our clients POS and also other locations) and amenity (see our earlier submission), overshadowing and the poor design expression, we remain of the opinion that the scheme should fail."

In addition to the impact to our own property we note that the updated view assessment continues to also demonstrate the severe to devastating impact of the Applicant’s DA proposal on multiple neighbours as well.

3. Additional Observations

Additional points on the Applicant’s submitted updated documents are set out below:

- The Applicant’s original DA proposal submitted on 26/4/2021, DA 2021/0472 exceeded the permitted height limit by 48%. Council rejected that submission and the Applicant had to withdraw it as shown on Council’s website as follows:

“Status: Withdrawn

Determined: 27/09/2021 (Council Staff)”

It is hard to see why now a 21% breach would be entertained, especially when a more considerate and intelligent design would easily accommodate the Applicant’s needs, given they have a very large parcel of land to work with, and take account of the multiple objections raised by surrounding properties.

It also seems to us completely disingenuous for the Applicant to suggest as he does in these updated documents that because he has reduced the extent of his height breach from 48% (something the Council already rejected flat out) to “only 21%” this somehow demonstrates “consideration” towards his neighbours.

It is also completely inaccurate for the Applicant to suggest that in the current DA they have reduced the height of their proposed building by one level from the previous application (DA 2021/0472) as the Council had already rejected that additional level and now the Applicant

returns with essentially the same non complying proposal which was already previously withdrawn.

Therefore any notion, as implied by the Applicant, that Council supports the current DA Application based on the height breach reduction from 48% to 21% should be carefully reviewed and considered.

- Also could Council take note that we lodged our own DA application (DA 2021/0101) for our site a matter of weeks before the Applicant. Our DA has been approved, the CC issued and construction has commenced.

As we point out above we are the direct neighbours to the south of the Applicant's property.

In our own DA application we received a total of seven objections and only one related to a potential minor view impact (a wooden pergola on our western boundary which we agreed to remove). No objections were received from the Applicant concerning any possible adverse view impact on them from our proposed development.

But now, by way of contrast, the Applicant has received **thirty three** lodged objections to their current proposal and the Application they previously withdrew (which as mentioned above is essentially identical to the present application).

These thirty three objections consistently include in no specific order - view impact, overlooking, overshadowing, bulk, scale and lack of amenity as their bases for objection. They are raised by local residents, professionals including architects and multiple town planners, concerned individuals and the residents of an entire block of flats.

We respectfully ask Council to consider whether all these people, residents living together for years in the area and watching its development, along with professionals from assorted fields with multiple decades of combined expertise and experience in those fields, all be wrong and falsely aggrieved and only the Applicant be right?

- Also having recently been through the DA approval process ourselves as explained above, we are very aware of the level of consideration required to be given by Council/the Panel to ensure that all participants concerns are taken into account in a balanced and reasonable manner.

A case in point is the following:

When we submitted our own DA 2021/0101 for approval to the Panel it included a small 1m x 5m balcony proposed on the north east corner of our property. The Applicant objected strongly to this minimal, *(and fully compliant)*, balcony on the basis of perceived excessive overlooking of their property and potential noise generation (even with full screening installed) and even though our proposed balcony was 13.7metres from the Applicant's home.

The Panel agreed with the Applicant's objection and so we removed the small balcony from our design in consideration.

And yet here we are now considering the Applicant's proposed DA as it severely negatively impacts the north side of our entire property in terms of view destruction, overlooking, overshadowing and potential noise generation. Whereas the Applicant could not stomach our proposed small balcony, we are now expected to stomach the below as being entirely

acceptable! (the pictures below are actual photos as per Turnbull Planning's submission dated 14/12/22 showing before and after shots from two locations on our property as requested from us by Council):





- Note also that the Applicant's proposed home is now 3.05 metres from our home with full banks of floor to ceiling windows facing south.
- If Council/the Panel were concerned in our DA Application (DA 2021/0101) about the impact of our small, 13.7 metre distant (and fully compliant) northern balcony on the Applicant's amenity, then surely they need to be equally and extremely concerned about the impact of the enormous structure (described as oppressive by Turnbull Planners in their submission dated 14/12/22) now being proposed by the Applicant on the same boundary, only 3.05 metres from our new home's amenity, as concerns overshadowing , overlooking and the potential for noise generation. And, in all fairness and reasonableness, if the Panel saw fit to remove our balcony then, how can they not

see fit to remove the bulkiness, oppressive nature and non complying structure the Applicant proposes now?

I would also like to highlight what I consider to be a very key point for Council's consideration. The example of the balcony is a very compelling one in this case because during our design phase (and throughout the DA approval process) we strove to consider our neighbours concerns and Council sought to accommodate them in the decisions made by Council/The Panel.

Therefore we trust that Council/the Panel will, in the interests of consistency and fairness be as strong in enforcing a reasonableness requirement on the Applicant as they were on us, as detailed above.

- In considering the Applicant's proposal I wonder if they, as we did, modelled the impact of their proposed design on their neighbours upfront? If they did that would be great, and perhaps the Applicant will add it to Council's portal, or if they did not, might Council not ask them for that to be done properly now?

Critically, a sensitive modelling exercise alone undertaken by the Applicant and his advisers upfront, should have led to multiple design outcomes providing the Applicant with his dream home, whilst also addressing the bulk of the multiple concerns that would have been obvious from such modelling. Particularly, as the Applicant has the good fortune of a large site which affords multiple opportunities to design a sympathetic build with huge views, and the majority of the objections, if not all, could have been satisfied if the Applicant had simply chosen to consider his neighbours' concerns upfront and sought out a more considered, thoughtful and sympathetic design.

- The approach adopted by the Applicant appears to be more akin to an old school commercial developer (as shown below in the diagram submitted showing the maximum CDC build envelope) and which would suggest an altogether different philosophy. As is common with some commercial developments, is the Applicant seeking to have approved as big and ambitious a proposal as possible in order to maximise potential sale price? I understand the property (without an approved DA) was up for sale recently, however was withdrawn from sale.

Is the intention to reduce the scale, bulk and height of the proposal in small increments around the edges, only when absolutely forced to by Council (such as reducing the height breach from 48% to 21%) and then trumpeting these as huge concessions while also drawing out the approval and objection process hoping to wear down neighbours and objectors, rather than proposing something more appropriate to his needs (there are only two people living there who also spend significant amounts of time away at their substantial Tasmanian property and land holdings) and consistent with the surrounding established, low density, and considerably developed, residential neighbourhood and natural environs?

The current blocklike design is more appropriate as a block of flats, not a sensitively designed home. It's not without reason that a number of other objectors make this very point in their own objections and also point to large areas in the Applicant's design which are vaguely designated as living areas for example that seem much more consistent with the design not being for a home but for a block of flats 'in disguise'. It certainly resembles a block of flats from the pictures.

This cynical practice described above, as being more akin to a commercial developer, we understood had been rejected by Council decades ago, particularly as it concerns residential proposals.

4. Summary Application Document

We now turn to responding to the 'Summary of Application' document lodged by the Applicant on Council's portal dated 17/11/2022. I reproduce it here for brevity and our responses to each of the issues raised by the Applicant are in red capitalised.

"38 THE DRIVE FRESHWATER

History of Consultation Process with Northern Beaches Council

- Pre DA Meeting: PLM2013/0107 - 3 October 2013 (THIS IS 9 YEARS AGO AND WHAT IS ITS RELEVANCE? ANOTHER EXAMPLE OF WHERE THE APPLICANT PROPOSES SOMETHING OUTRAGEOUS OR IRRELEVANT TO HIS CURRENT APPLICATION WHILST TRUMPETING ITS VALUE)
- DA Submitted: DA2021/0472 – 26 April 2021
- Height Poles Installed & Certified by Adam Clerke Surveyors :12 August 2021 (AT THE TIME COUNCIL INFORMED US IN WRITNG THAT THE ERECTED HEIGHT POLES WERE PLACED AT A HEIGHT THAT ALREADY REMOVED THE TOP LEVEL OF THE APPLICANTS PRIOR (AND SINCE WITHDRAWN DA) NUMBER DA 2021/0472. IN IT THE APPLICANT HAD ORIGINALLY SOUGHT APPROVAL FOR A SIX LEVEL HOME BUT COUNCIL HAD REDUCED THAT TO FIVE, BEFORE EVEN FURTHER CONSIDERING THE APPLICATION AND THEREFORE, THE PRESENT APPLICATION IS VIRTUALLY IDENTICAL TO THE PREVIOUSLY REJECTED ONE.
- DA Withdrawn: DA2021/0472 – 27 September 2021 AS STATED ON COUNCIL WEBSITE :

"Status: Withdrawn

Determined: 27/09/2021 (Council Staff)" SEE ABOVE ALSO.

- Pre DA Meeting: PLM2021/0366 – 24 February 2022 Removed the entire "Top Storey" to accommodate neighbours - approximately (SEE OUR EARLIER COMMENTS ON PRE DA MEETING.
- ALSO HOW COULD THIS POSSIBLY BE A PRE DA MEETING HELD ON 24/2/22 WHEN THE ORIGINAL DA WAS LODGED ON 26/4/2021?
- FINALLY THE "TOP STOREY" REMOVED BY THE APPLICANT BREACHED THE HEIGHT LIMIT BY 48% AND WAS NEVER GOING TO BE APPROVED BY COUNCIL AND NOW THEY SUBMIT AN EQUALLY OUTRAGEOUS PROPOSAL WITH A HEIGHT LIMIT BREACH OF 21% AND MULTIPLE OTHER BASES FOR OBJECTIONS (AS PER THE 33 LODGED) AND TRUMPET THAT AS A SIGNIFICANT EXAMPLE OF HOW THEY ARE CONSIDERING THEIR NEIGHBOURS AND WHICH RESULTS IN THE DEVESTATING LOSS OF AMENITIES TO US AND OTHERS AS DEMONSTRATED BY THE ACTUAL VIEW IMPACT PICTURES COUNCIL ASKED US TO TAKE FROM OUR PROPERTY).

159m2, even though top storey would meet CDC obligations (Pre DA Notes finalised 9/06/2022) (THERE IS A VERY SIGNIFICANT GAP BETWEEN THE DESCRIBED PRE DA MEETING MENTIONED ABOVE AND WHEN THE "NOTES WERE FINALISED". WE RECALL IN OUR OWN CASE IT WAS A MATTER OF DAYS. ARE THESE NOTES AVAILABLE ON COUNCIL'S WEBSITE FOR INTERESTED PARTIES TO VIEW AND COMMENT ON?

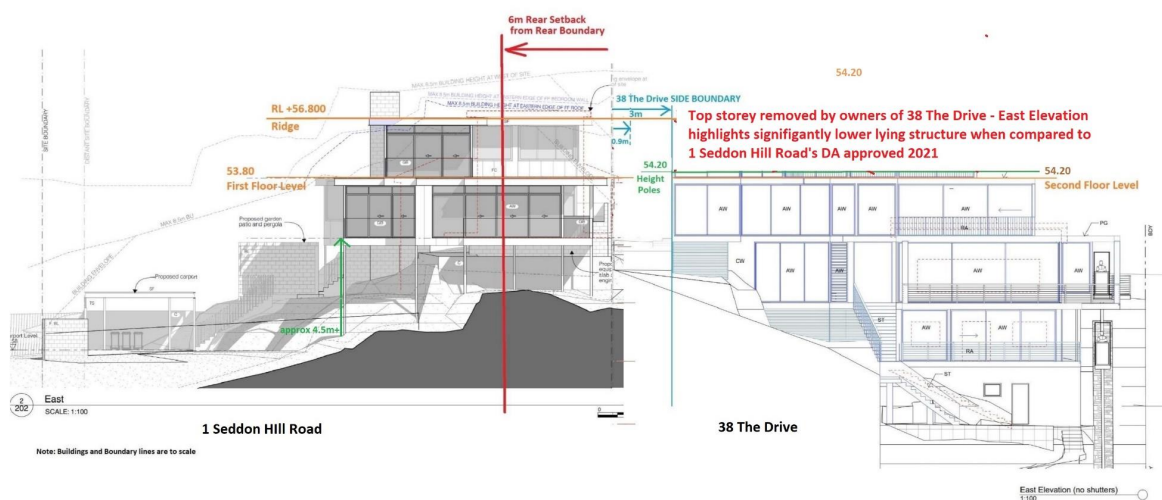
- DA Re Submitted: DA2022/1128 – 19 July 2022 IS ESSENTIALLY IDENTICAL TO THE ONE SUBMITTED AND WITHDRAWN ON COUNCIL ON 26 APRIL 2021 AND EXHIBITS THE SAME INTENT FROM THE APPLICANT TO TRY AND SLIP THROUGH EGRGIOUS BREACHES WHILST PRESENTING THEM AS CONCESSIONS ON THEIR PART TOWARDS THEIR NEIGHBOURS.

(Comparative Approval Process for Southern Neighbour at 1 Seddon Hill Road)

- DA Submitted: DA2021/0101 – 25 March 2021
- DA Approved: 25 August 2021
- Construction Certificate Issued CC2022/0161 - 24 February 2022 (CORRECT)



RELATIONSHIP BETWEEN 38 THE DRIVE AND 1 SEDDON HILL ROAD



The development at 1 Seddon Hill Road development relied on a significant variation to the 6m rear setback control to accommodate the new dwelling. The new double storey building was approved at

a distance of 1.79m from the rear boundary, with the north western roof eave a mere 1m from the rear boundary within a DCP control of 6m.

THE APPLICANT RAISED THIS OBJECTION DURING OUR DA PROCESS AND IT WAS PROFESSIONALLY CONSIDERED AND REJECTED BOTH BY THE COUNCIL AND THE PANEL IN APPROVING OUR DEVELOPMENT. VERY SIMPLY, THE SPECIFICS OF OUR SITE WARRANT BUILDING OUR HOME CLOSER TO THE BOUNDARY THAN SPECIFIED IN THE DCP. THE COUNCIL AND PANEL'S DECISION GRANTING US APPROVAL ARE ALL ON THE COUNCIL'S WEBSITE. ADDITIONALLY IT IS WORTH POINTING OUT THAT OUR NEW HOME IS POSITIONED FURTHER SOUTH THAN ITS PREDECESSOR WAS AS WELL. ANOTHER EXAMPLE OF CONSIDERING OUR NEIGHBOURS UPFRONT BEFORE LODGING OUR DA).

IT IS ALSO NOT BY ACCIDENT THAT THE APPLICANTS CHOOSE TO SHOW AN EASTERLY VIEW OF THE HOMES HERE AND I ENCOURAGE COUNCIL TO REVIEW NORTH AND SOUTH VIEWS TO TRULY DEMONSTRATE THE MASSIVE BULK, SCALE AND IMPINGEMENT ON OUR PROPERTY HE IS PROPOSING.

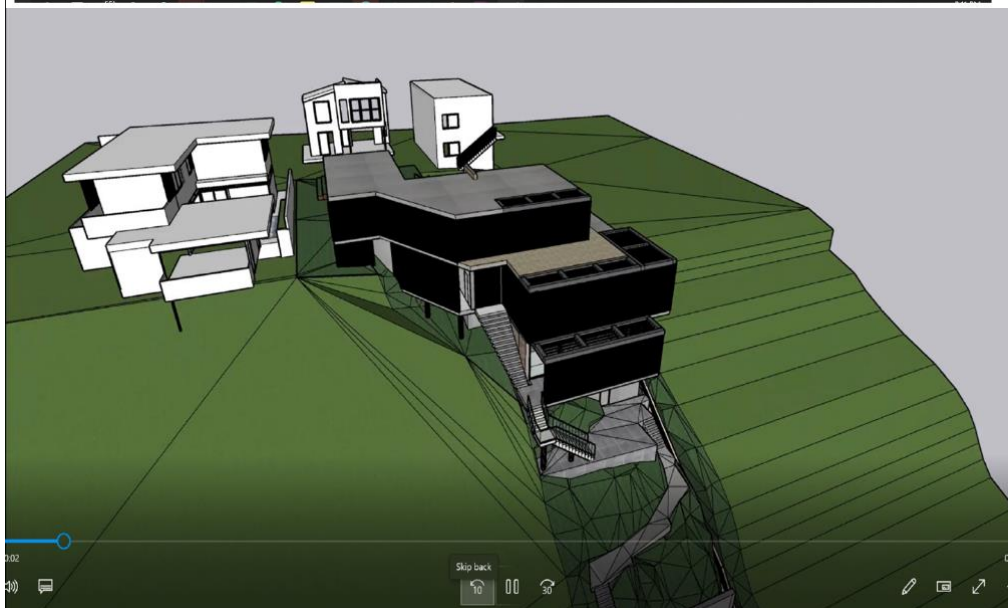


RELATIONSHIP BETWEEN PROPOSED DA AT 38 THE DRIVE, 1 SEDDON HILL ROAD, 9 LODGE LANE AND 11 LODGE LANE

All surrounding developments are double storey: **CORRECT AND THE APPLICANT IS PROPOSING A 5 LEVEL HOME IN THEIR CURRENT APPLICATION**) 11 Lodge Lane is a double story residential apartment building

- 9 Lodge Lane is a double story development
- 1 Seddon Hill currently being built is a double storey set 1.79m from its rear boundary in an area with a designated DCP rear setback control of 6m (DA approved in 2021) **(SEE MY EXPLANATORY COMMENTS ABOVE RE DCP SETBACK AND YES CORRECT OUR HOME IS A MODEST TWO STOREYS, BUILT ON THE SAME FOOTPRINT AS OUR PREVIOUS HOME, LOWER IN HEIGHT AND WITH NO ADVERSE IMPACT AT ALL ON OUR NORTHERN NEIGHBOUR'S AMENITY CONTRARY IN EVERY REGARD TO WHAT HE IS PROPOSING FOR HIMSELF IN HIS CURRENT APPLICATION)**

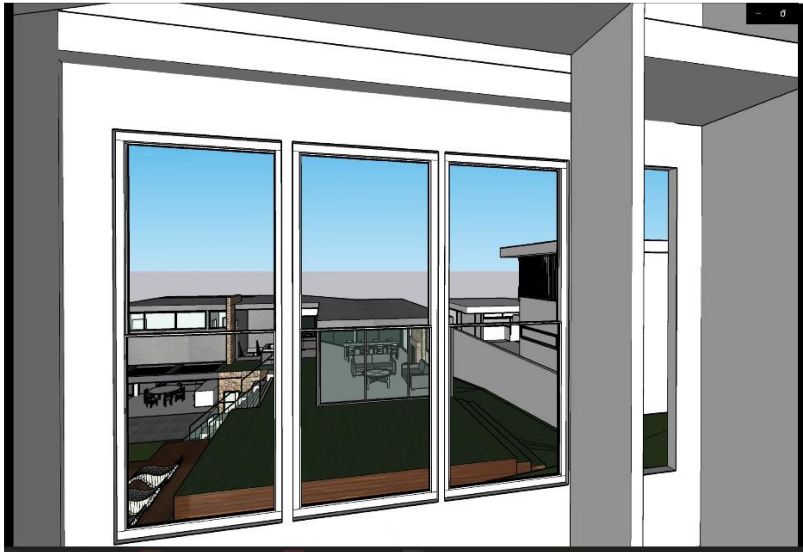
- THE PICTURES PRESENTED BY THE APPLICANT BELOW ARE ALSO PRESENTED FROM A STRANGE ANGLE, AND AGAIN ATTEMPTING TO PRESENT HIS CASE IN THE BEST LIGHT FOR HIMSELF).



RELATIONSHIP BETWEEN PROPOSED DA AT 38 THE DRIVE, 1 SEDDON HILL ROAD, 9 LODGE LANE AND 11 LODGE LANE (THE PICTURES COUNCIL ASKED US TO TAKE TO SHOW THE ACTUAL IMPACT ON US FROM WHAT THE APPLICANT PROPOSES SPEAK FOR THEMSELVES. THEY ARE SET OUT IN FULL IN TURNBULL PLANNING'S REPORT ON COUNCILS WEBSITE DATED 14/12/22, AND A SERIES OF THOSE PHOTOS IS SET OUT ABOVE EARLIER IN THIS DOCUMENT AND REPEATED HERE FOR EMPHASIS).

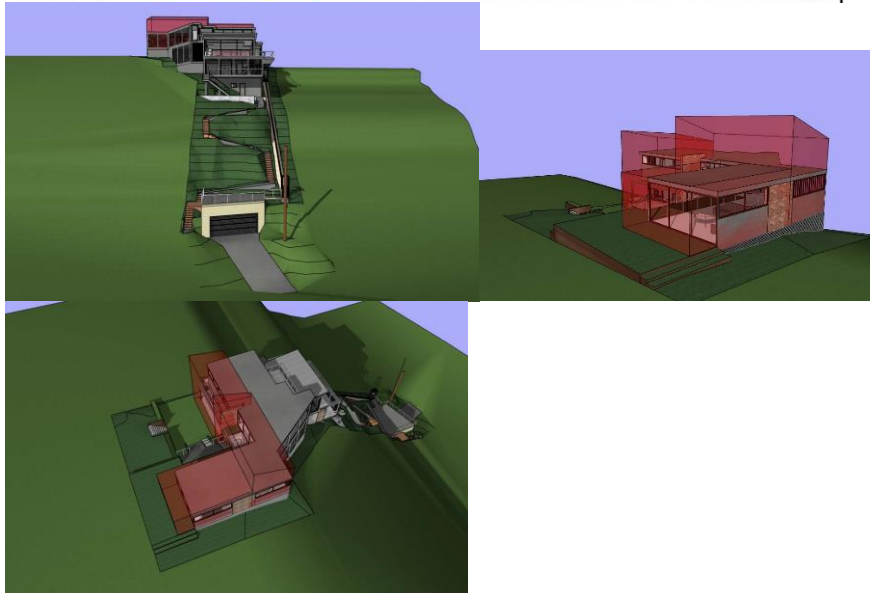
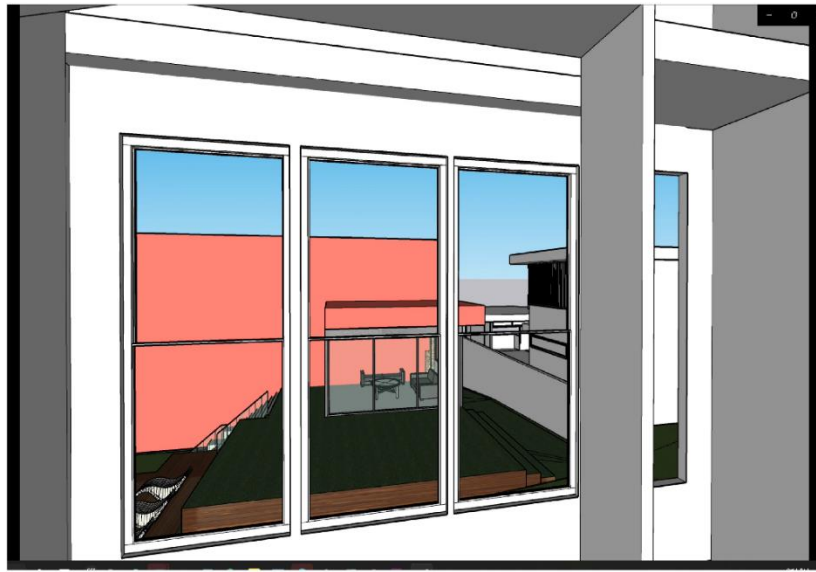






Compliant CDC which can be achieved by 38 The Drive IT IS UNCLEAR WHAT THIS IS INTENDED TO CONVEY? HAS THIS BEEN SURVEYED , MEASURED, PLANS PREPARED OR IS IT SOME KIND OF ISOLATED IMAGE? IS THE APPLICANT TRYING TO SUGGEST THAT IF THEY DON'T GET THEIR WAY WITH THE CURRENT DA APPLICATION THEY INTEND TO 'PUNISH' OTHER RESIDENTS WITH AN EVEN BIGGER BUILD, AN EXTRA ADDITION TO WHAT THEY ARE PRESENTLY PROPOSING? COUNCIL HAS ALREADY REJECTED AN ADDITIONAL UPPER FLOOR? ARE THEY PROPOSING NOT HAVING THE POOL? HOW DOES THIS DEMONSTRATE CONSIDERATION FOR ANY OF THE CONCERNS RAISED BY NEIGHBOURS OR COUNCIL , IT REMAINS UNCLEAR AS TO ITS PURPOSE OR RELEVANCE TO THE CURRENT DA UNDER CONSIDERATION, OTHER THAN TO REINFORCE A POSSIBLE PHILOSOPHY OF THE APPLICANT SEEKING TO HAVE AS BIG A DEVELOPMENT APPROVED AS POSSIBLE AND TO ONLY ADDRESS OBJECTIONS IN AN INCREMENTAL AND MINIMAL WAY, IF ABSOLUTELY FORCED TOO, IRRESPECTIVE OF ANY NEIGHBOUR'S LEGITIMATE CONCERNS.

View of proposed DA at 38 The Drive from 9 Lodge Lane



View of compliant CDC at 38 The Drive from 9 Lodge Lane

AGAIN IT REMAINS UNCLEAR WHAT THIS MODEL HAS TO THE PURPOSE OR RELEVANCE TO THE CURRENT DA UNDER CONSIDERATION, OTHER THAN TO REINFORCE A POSSIBLE PHILOSOPHY OF THE APPLICANT SEEKING TO HAVE AS BIG A DEVELOPMENT APPROVED AS POSSIBLE AND TO ONLY ADDRESS OBJECTIONS IN AN INCREMENTAL AND MINIMAL WAY, IF ABSOLUTELY FORCED TOO.

38 THE DRIVE'S GRANNY FLAT IN RELATIONSHIP TO 36 THE DRIVE & GRANNY FLAT AT 6 COASTVIEW PLACE NOT APPLICABLE TO 1 SEDDON HILL ROAD BUT WASN'T THE BACKGROUND TO HAVING THE LEGISLATION TO BUILD GRANNY FLATS SO THAT THEY COULD BE USED FOR ELDERLY IN LAW ACCOMODATION OR TO HOUSE NANNIES ETC. I.E. MODEST STRUCTURES FOR A SPECIFIC PURPOSE.

MISLEADING. ALL THE PROPERTIES SHOWN ARE AT STREET LEVEL OR EMBEDDED INTO A HILLSIDE. THIS IS COMPLETELY DIFFERENT TO THE APPLICANT'S WHOSE PROPOSED 5 LEVEL HOME HAS ITS VAST BULK ON THE TOP OF THE HILL WHERE IT IS HIGHLY VISIBLE FOR MILES AROUND AS A SOLID MULTI LEVELLED BLOCK, SIGNIFICANTLY IMPACTING NEIGHBOURING VIEWS, CREATING HUGE OVERSHADOWING AND OVERLOOKING AND A BULK AND SCALE BEYOND ANYTHING ON THE HEADLAND. IT IS UNLIKE ANY OF THE EXAMPLES SHOWN ABOVE. ALSO, THE MAXIMUM No. OF LEVELS IN ANY OF THE EXAMPLES IS FOUR. SIGNIFICANTLY LESS IN BULK/SCALE THAN THE 5 (ORIGINALLY 6) LEVEL HOME THE APPLICANT IS PROPOSING.

5. Conclusion

We would like to thank the Council and assessing professionals for taking the time to review this document and re-iterate that we are wholly supportive of the Applicant developing his property in line with established principles of reasonableness and consideration of impact on neighbouring properties. It is however time consuming and wasteful to have to continually review what is essentially the same proposal as was put forward by the Applicant in the earlier DA application, which Council has already declined.

These new documents show an even worse view sharing impact on 1 Seddon Hill Road than their previous view assessment document. The actual devastating impact on our, and others, iconic views and other amenities is clearly presented in Turnbull Planning's report dated 14/12/22.

These additional documents serve only to confirm again the Applicant's absolute disregard in relation to impact on neighbours and a calculated and self-serving approach to their own (and our) DA process, causing enormous disquiet amongst residents, professionals, Council (when previously considering what is essentially the same proposal), and the community at large. Let alone the impact on the streetscape of the headland and trying to wear down residents through attrition. All of which could easily have been avoided if the Applicant had taken a less selfish, more considered and reasonable approach to these matters from the outset. The Applicant has the good fortune of a large block to work with and multiple alternative designs could be envisioned that allowed him to keep his amenities and at the same time not take everyone else's.

It also important we feel, and are sure it is the Council's/Panel's intention, to assess this Application with the rigour and a consistent approach to the one they took, in assessing our own DA Application approx. 12 months ago.

All the above comments should be read in conjunction with our objection dated 11/8/22 and Turnbull Planning's objection lodged on our behalf on 12/8/22 and their response to Council's questions set out in their document dated 14/12/22.

Yours sincerely

Sonja and Craig Key

(Owners) 1 Seddon Hill Road, Freshwater