

Memo

To: Northern Beaches Local Planning Panel (NBLPP)

Cc: Peter Robinson – Executive Manager, Development Assessments

From: Tom Burns – Planner

Date: 20 September 2022

Subject: Item 4.2, DA2022/0498 - 109 Narrabeen Park Parade MONA VALE NSW 2103

Reference: Late submission from resident objector – Richard Wilkins/Bill Tulloch

Dear Panel Members,

The purpose of this memo is to advise the Panel that a late submission has been received from Richard Wilkins and Bill Tulloch of 164 Narrabeen Park Parade, Mona Vale. The additional submission raises the following matters:

- Issue 1 – View Loss
- Issue 2 – Building Height

Issue 1 – View Loss

The submission contends that no height poles have been erected to represent the roofline over the kitchen and rear outdoor dining roofline, which are sited at RL38.50 and RL37.55 AHD respectively.

The panel should note that a height pole has been erected to represent the roofline of the ground floor kitchen roofline. The height pole has been certified by a registered surveyor. This height pole is located on the right hand side of the photographs. The height pole is sited at RL38.415, which is 85 millimetres lower than the proposed roofline. However, this is sufficient to enable a proper assessment. The panel will note that this is located below the apex of the existing gable roofline and a small additional view corridor will be provided through this design. Indicative view diagrams have been provided within the assessment report to indicate the extent of view loss and view gain created by the proposal.

In addition, the submission asserts that the assessment report stipulates that the extent of the view loss from 164 Narrabeen Park Parade is not of a moderate scale. The panel will note that on page 136 of the agenda the assessment report stipulates that the qualitative extent of the view loss from 164 Narrabeen Park Parade is of a moderate scale. A detailed analysis of the extent and reasonableness of the view impact is provided within the assessment report.

Issue 2 – Building Height

The submission notes that the proposed development does not comply with Clause 4.3 – Height of Buildings of *Pittwater Local Environmental Plan 2014 (PLEP)*, which limits buildings to a maximum height of 8.0 metres. The submission states that the excavated ground level below the base of the lower ground floor slab should be considered as the existing ground level.

The assessment of the subject development application has considered the top of the lower ground floor slab as 'existing ground level' for the purpose of determining the maximum building height. The exact level of the ground below the lower ground floor slab is not known and should not be considered as the 'existing ground level'. This approach is consistent with the recent matter of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021]* that was before the NSW Land and Environment Court. The maximum building height measures at 8.38 metres above the 'existing ground level', which exceeds the 8.0 metre development standard.

The applicant has submitted a written request pursuant to Clause 4.6 of PLEP. The applicant's request is well founded and agreed with, noting that the height plane has been distorted by an artificial ground level as the existing ground level has been excavated below the natural contours of the site. When extrapolating the ground levels around the building footprint, in accordance with the NSW Land and Environment Court Case of *Bettar Vs Council of the City of Sydney [2014] NSWLEC 1070*, the proposal complies with the 8.0 metre building height standard. This matter is discussed in further detail within the assessment report.

Moreover, the submission notes that the proposed development does not comply with the superseded DCP provision that requires buildings to remain below the crown of the road. The submission contends that the residents along Narrabeen Park Parade were not properly consulted when this DCP provision was not adopted within the current Pittwater 21 Development Control Plan. It is noted that this control is no longer within the current Pittwater 21 Development Control Plan. Hence, this is not a relevant control for consideration pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Recommendation

The Panel note the submission.

No changes required to the recommendation or conditions contained in the assessment report.