
From: [REDACTED]
Sent: 23/09/2024 10:01:32 AM
To: Council Northernbeaches Mailbox
Subject: TRIMMED: DA 2024/1091; 1 CAREEL HEAD ROAD, AVALON BEACH
NSW 2107 WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: TULLOCH
Attachments: 1 CAREEL HEAD WS.pdf;

Kind regards,

Bill Tulloch BSc[Arch]BArch[Hons1]UNSW RIBA Assoc RAIA
DA Objection Pty Ltd
Director
[REDACTED]

DA OBJECTION

a written submission by way of objection

BILL TULLOCH BSC [ARCH] BARCH [HONS1] UNSW RIBA Assoc RAIA
Director
DA Objection Pty Ltd

prepared for

SUSAN WENDY LOGAN, 712 BARRENJOEY ROAD, AVALON BEACH

23 SEPTEMBER 2024

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RE: DA 2024/1091
1 CAREEL HEAD ROAD, AVALON BEACH NSW 2107
WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: TULLOCH

Dear Sir,

This document is a written submission by way of objection lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

I have been instructed by my clients to prepare an objection to this DA.

I have been engaged by my clients to critically review the plans and documentation prepared in support of the above development application and to provide advice in relation to policy compliance and potential residential amenity impacts.

Having considered the subject property and its surrounds and the details of the development application currently before Council, I am of the opinion that the proposal, in its present form, does not warrant support. In addition, I am of the view that amendments would need to be made to the development proposal before Council is in a position to determine the development application by way of approval.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, my clients ask Council to REFUSE this DA.

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A. EXECUTIVE SUMMARY

The design of the proposed development does not ensure that the existing high levels of amenity to my clients' property are retained.

Having reviewed the documentation prepared in support of the application and determined the juxtaposition of adjoining properties I feel compelled to object to the application in its current form.

The proposal is considered to be inappropriate within the streetscape.

The bulk, scale, density and height of the proposed development is excessive and inconsistent with the established and desired future streetscape character of the locality.

There is no reason, unique or otherwise why a fully compliant solution to LEP and DCP controls cannot be designed on the site.

- Concern is raised in respect of the location of the childcare centre above a liquor store. There is inappropriate access between the two uses. The childcare drop-off and pick-up areas are not sufficiently separated from the liquor store entry area.

The current proposal is not compatible with the existing or desired future character of the Avalon locality due to its excessive height and scale which detracts from visual quality of the Avalon Locality and Category 1 Scenic Protection area.

The proposed development fails to meet Council's planning controls, the objectives and the merit assessment provisions relating to:

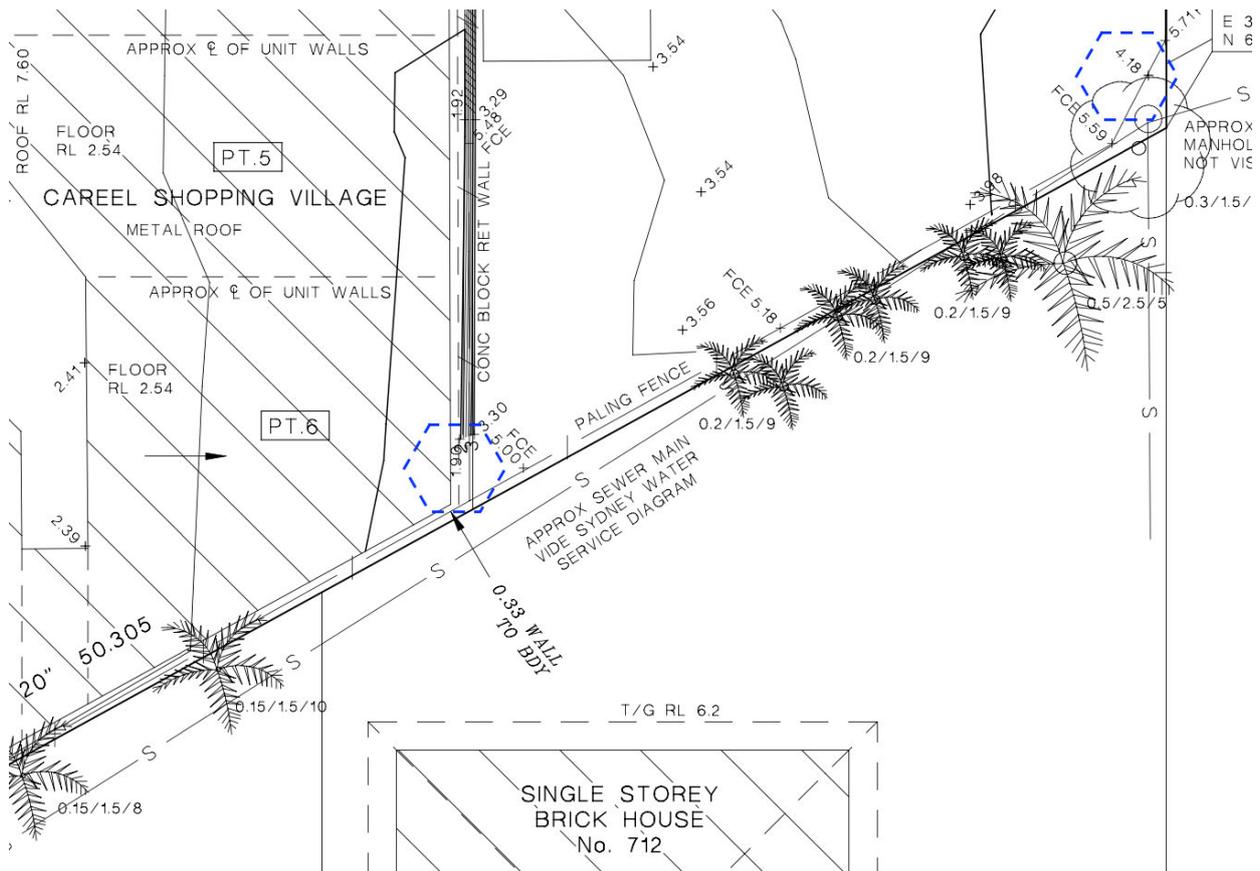
- Excessive Building Height [HOB]: Proposed 9.2m v Control 8.5m [8% non-compliance]
- Excessive Wall Height 8.8m
- Nil setbacks to neighbours' boundaries

My clients bring to Council's attention the following issues.

- The existing EGL shown along the subject sites' southern boundary from RL 4.18 to RL 3.30, then dropping to RL 1.90 has not been shown on the DA drawings

The HOB is 9.2m above the RL 1.90 levels.

No Clause 4.6 has been submitted.



Note: RL 1.90 on survey [blue]

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts that result in adverse impacts on my clients' property.

- The proposal fails to achieve an acceptable Visual Privacy outcome, including direct overlooking from the proposed development. Insufficient height and setbacks of barriers to child play areas. Insufficient sill heights to windows facing southern boundary;
- The proposal fails to achieve an acceptable Acoustic Privacy outcome, with details of mechanical plant and location yet to be shown on the DA drawings. Acoustic barriers are required to be 2m high on the boundary. This is unacceptable. Acoustic barriers at the upper level are of insufficient height. Acoustic barriers are required to address the poor acoustic outcomes from the proposed basement car park to the exit on Barrenjoey Road
- The proposal fails to achieve an acceptable Solar Access outcome, with deep afternoon shadow over my client's property caused by non-compliant height, and incomplete analysis
- The proposal fails to achieve an acceptable Visual Bulk and Scale outcome, with insufficient southern side setback at the upper levels, and nil setback to the eastern boundary causing unacceptable bulk;
- The proposal fails to achieve an acceptable Landscape outcome, with landscape not at a height along the southern boundary to screen the proposed development, and the 3m deep soil zone does not extend to Barrenjoey Road being taken by OSD Tanks and vehicle exit zones. The large Norfolk Island Pine

tree and She Oak tree at the frontage of Careel Bay Road must be retained and appropriate excavation setbacks established.

- The proposal fails to achieve an acceptable Traffic, Access and Parking outcome, with insufficient carpark crest flood control heights, inappropriate and unsafe entry and exit locations, and inappropriate truck serving bay
- The proposal fails to achieve an acceptable Engineering outcome, including flood, geotechnical, stormwater, acoustics
- The proposal fails to achieve an acceptable Building Bulk and Scale
- The proposal fails to achieve an acceptable Character and Streetscape
- Inappropriate Materials with 9.2m high concrete walls facing south to R2 zones, - poor finish selection
- Lack of Articulation of proposed southern wall
- Lack of Security of the landscape zone to the southern boundary that is not securely separated from the commercial areas, potentially allowing customers entry to this zone

The proposed development is expected to generate in the order of 62-73 vehicle trips during the weekday AM/PM and Saturday peak periods when compared to the existing local shopping village on the site, the proposed development is expected to result in a nett increase of 20-46 trips during the week. This increased intensity of vehicle trips and servicing trips is a very obvious concern, particularly to the proposed entry and exit either close to or direct to Barrenjoey Road and the intersection.

It is hard to believe that the intensity of generated traffic will not significantly exceed the current usage at any time of the day over all 7 days.

I note that there are substantial issues relating to the design of the project that remain unresolved:

- The proposal does not accord with flood controls. The proposed crest height for the entry to the Basement Car Park is 3.05m AHD which is below the FPL and the PMF. In the location of the Car Park Crest the FPL and the PMF height are both 3.70m AHD. This will require a major redesign. The levels from 3.70m to the Barrenjoey Road proposed exit will be excessive in grade. This will provide an unsafe outcome;
- The location of the Egress onto the Classified Road to Barrenjoey Road is not supported due to the intensification of use. This will provide an unsafe outcome;
- The location of the Vehicle Entry from Careel Bay Road is not supported due to the intensification of use, and the very close proximity of the entry to the intersection. This will provide an unsafe outcome;
- The location of the Serving Bay is unsafe, requiring truck movements across cars entering the facility

My clients are very concerned about the hours of operation of a much intense form of development and usage. My client requests:

Hours of Operation: Dan Murphy

- The hours of operation for Dan Murphys: 9am to 7pm
- Deliveries of goods and waste collection associated with the retail premises and restaurant or cafe must not occur between 7pm and 7am the following day.

The site is not suitable for the proposed development pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979. The site is not considered suitable for the proposed development in terms of its size, scale and design, despite it being residential development in the zone.

Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest. The extent of issues identified with the proposed development are such that the public's interest is not served by way of approval of the development application.

The proposed development represents an unreasonably large building design, for which there are design alternatives to achieve a reasonable development outcome on the site without having such impacts.

The proposed development does not satisfy the objectives of the zone or contribute to a scale that is consistent with the desired character of the locality and the scale of surrounding development.

Council's development controls relating to managing building bulk and scale are designed to ensure that buildings are consistent with the height and scale of the desired character of the locality, are compatible with the height and scale of surrounding and nearby development, respond sensitively to the natural topography and allow for reasonable sharing of views and visual amenity.

Council's DCP with respect to the locality, requires that development respond to the natural environment and minimise the bulk and scale of buildings. The proposed development in its current form does not achieve this and provides inadequate pervious landscaped area at ground level.

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, does not succeed on merit and is not worthy of the granting of development consent.

FUNDAMENTAL PRINCIPLES OF DESIGN EXCELLENCE

The proposed development fails the fundamental principles of design excellence in terms of:

- The application fails to adequately address environmental impacts of overshadowing, solar access, views and visual privacy
- Context and local character
- Built form, scale and public domain, urban design response
- Density
- Landscape integration
- Architectural expression, in terms of excessive built form
- The application fails to demonstrate a high standard of architectural design and detailing appropriate to the building type and surrounding character
- The form and external appearance of the proposed development will not improve the quality of the public domain
- The proposed development detrimentally impacts on public view corridors
- The application fails to appropriately address streetscape

- The proposed development fails to provide an appropriate bulk, massing and modulation of buildings
- The proposal is not consistent with existing street frontage heights
- The application fails to adequately consider pedestrian, cycle, vehicular and service access and circulation requirements
- The proposed development does not achieve an appropriate interface at ground level between the building and the public domain
- The proposed development fails to demonstrate excellence and integration of landscape design

INCOMPLETE INFORMATION

The proposed development is incapable of consent, as there is a substantial list of incomplete information that has yet to be provided. I refer Council to Section C of this submission - *Contentions that relate to Insufficient Information*

RE-NOTIFICATION

If any Amended Plan Submission is made by the Applicant, and re-notification is waived by Council, my clients ask Council to inform them immediately by email of those amended plans, so that my clients can inspect those drawings on the Council website.

MODIFICATIONS SOUGHT

My clients ask Council to seek modifications to this DA as the proposed development does not comply with the planning regime, by non-compliance to development standards, and this non-compliance leads directly to my clients' amenity loss.

Section D of this submission titled '*Request for amended plans to be submitted to better address impacts upon adjoining properties*', addresses the amendments that my clients seek to better resolve their amenity issues.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, my clients ask Council to REFUSE this DA, in accordance with Section E '*Reasons for Refusal*' of this submission.

B. CONTENTIONS THAT THE APPLICATION BE REFUSED

1. CONTRARY TO AIMS OF LEP

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the aims under the LEP.

- The proposal fails to protect residential amenity, has excessive building bulk and fails to manage environmental constraints.
- The development compromises amenity impacts on neighbours
- The development is not compatible with the desired future character of the locality in terms of building height and roof form.
- The development does not minimise the adverse effects of the bulk and scale of buildings

2. CONTRARY TO ZONE OBJECTIVES

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the objectives of the zone of the LEP.

- The proposal is of a bulk and scale which is inconsistent with development in this location and therefore fails to achieve the desired future character of the neighbourhood.
- The development has not been designed to be in harmony with the natural environment and does not have a high visual quality presentation to the streetscape
- The development compromises amenity impacts on neighbours
- To provide for the housing needs of the community within a low-density residential environment.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment
- The proposed development will not be of an acceptably low density and scale that is integrated with the landform and landscape and will have an unacceptable visual impact on the aesthetic values of the area.

3. LACK OF STATUTORY POWER

CLAUSE 4.6

The development application should be refused as the proposal exceeds the development standard prescribed by the LEP and it has not been supported by a request to vary pursuant to clause 4.6 of the LEP.

4. NON-COMPLIANCE WITH THE CHILDCARE PLANNING GUIDELINE

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the objectives of the Childcare Planning Guideline Design quality principles:

- Principle 1 – Context, concern is raised in respect of the location of the childcare centre above a liquor store and the shared lift access between the two uses. The childcare drop-off and pick-up areas should be separated from the liquor store entry area;
- Principle 2 - Built form, nil setbacks to neighbours is unacceptable. Non-compliant HOB and excessive wall heights;
- Principle 5 – Landscape, removal of existing trees, and the incomplete landscape buffer zone along all neighbour's boundaries is unacceptable;
- Principle 7 – Safety. Significant safety concerns are raised in respect of the access to the childcare centre noting the location, size and function of lift potentially providing access to the bottle shop and childcare centre. The pedestrian path in the basement carpark is not a safe path of travel and needs to be redesigned. Safe ingress and egress onto the site have not been provided

5. INCONSISTENT WITH THE PROVISIONS OF CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

The development application should be refused as the proposal exceeds the development standard prescribed by the LEP and it has not been supported by a request to vary pursuant to clause 4.6 of the LEP.

Council cannot be satisfied that under clause 4.6 of the LEP seeking to justify a contravention of the development standard that the development will be in the public interest because the proposed development is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

- The applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, or that there are sufficient environmental planning grounds to justify contravening the development standard to the extent proposed.
- The proposed development will not be in the public interest because it is inconsistent with the objectives of the height of buildings development standard or the objectives in the zone to provide for residential development of a low density and scale integrated with the landform and landscape.

There is nothing in the written request's consideration of the relationship between the proposal and the zone objectives which might provide sufficient environmental planning grounds for the breach.

The test is concerned with establishing sufficient environmental planning grounds to justify a contravention, something more than compliance or consistency with zone and development standard objectives must be sought.

My clients contend that:

- The written request does not establish that the development is consistent with the objectives of the standard as the proposal does not reasonably share public and private views.
- The written request does not establish that the development is consistent with the character compatibility objectives of the height standard in terms of FSR, maximum building height, number of storeys and wall height.

Furthermore, and in simple terms, I contend that:

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact
- the impacts are not consistent with the impacts that may be reasonably expected under the controls;
- the proposal's height and bulk do not relate to the height and bulk desired under the relevant controls;
- the area has a predominant existing character and are the planning controls likely to maintain it;
- the proposal does not fit into the existing character of the area;
- the proposal is inconsistent with the bulk and character intended by the planning controls;
- the proposal looks inappropriate in its context

The objectives of the standard have not been met.

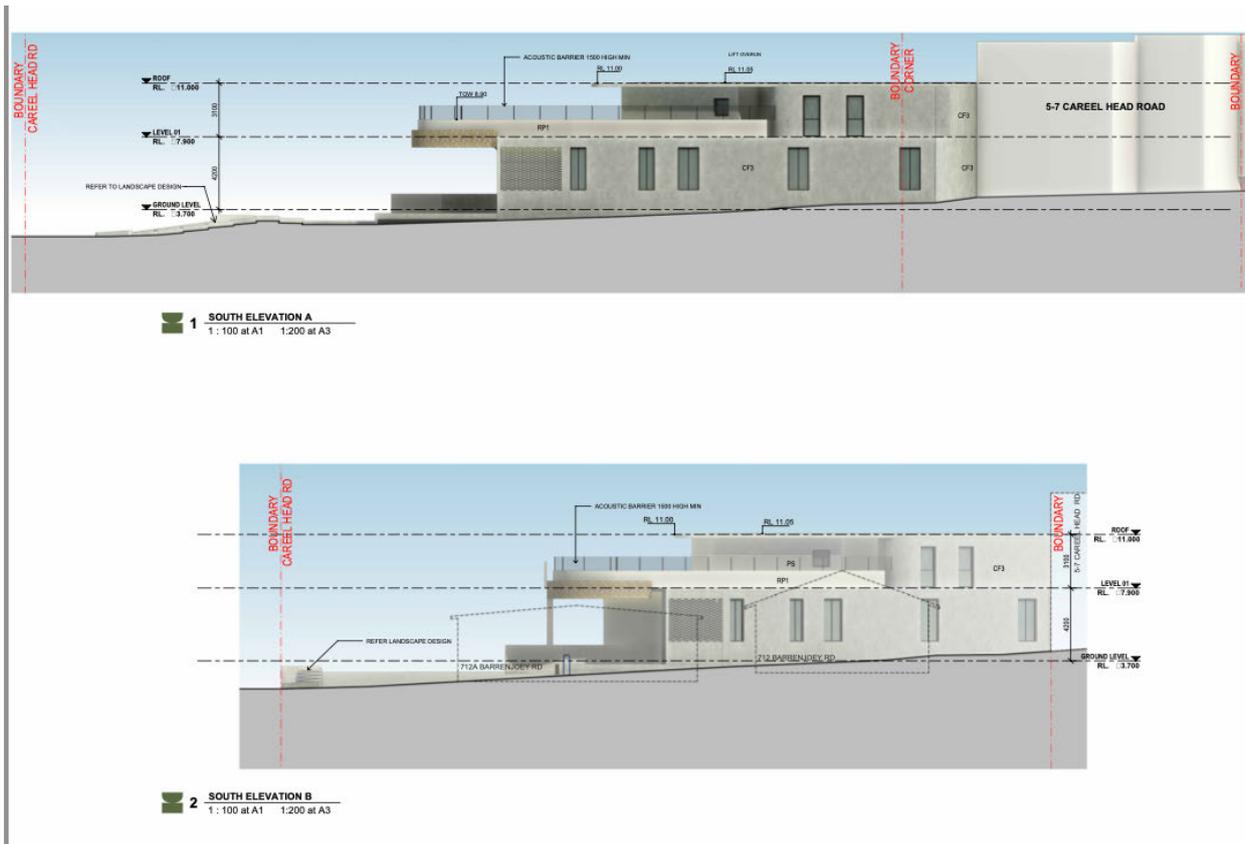
The bulk and scale of the proposed development is inappropriate for the site and locality.

Strict compliance with the maximum building height is reasonable and necessary in the circumstances of this case.

In summary, the proposal does not satisfy the requirements of clause 4.6 of LEP 2014.

The variation of the standard would not be in the public interest because it would set a precedent for development in the neighbourhood, such that successive exceedances would erode the views enjoyed from other similar properties.

The proposed development is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.



The proposed development fails to meet Council's planning controls, the objectives and the merit assessment provisions relating to:

- Excessive Building Height [HOB]: Proposed 9.2m v Control 8.5m [8% non-compliance]
- Excessive Wall Height 8.8m
- Nil setbacks to neighbours' boundaries

6. BUILDING BULK & SCALE

The proposed development should be refused due to its excessive bulk and scale and its failure to comply with the numerical standards and controls.

The application will result in an unacceptable loss of visual amenity from adjoining private properties, and from the public domain including the foreshore.

The loss of visual amenity is due to the excessive bulk and scale of the proposed development.

The breaches of the building envelope will result in both an adverse visual impact when viewed from private and public domains.

The numerical non-compliances result in a cumulative impact, that increases the built form, resulting in an overdevelopment of the site.

The proposal will present excessive bulk and scale that is not representative of the type of development anticipated by the zone or the applicable controls.

The proposal will result in unreasonable bulk and scale for the type of development anticipated in the zone.

The proposal does not step down with the topography of the site.

The proposal does not allow for enough landscaping to suitably reduce the bulk and scale of the development.

The proposal does not provide adequate articulation of the built form to reduce its massing.

The proposal fails to encourage good design and innovative architecture to improve the urban environment.

The proposal fails to minimise the visual impact of development when viewed from adjoining properties and streets.

7. CHARACTER & STREETScape

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate streetscape outcome, presenting non-compliant envelope controls that are visible from the street.

The proposed development is inconsistent with the provisions relating to the desired future character. The proposal, due to its excessive bulk, its impact on the amenity of adjoining properties and users of the public domain, its poor relationship with the subject property and the environment is inconsistent with the objectives with the desired future character provisions of the locality.

The proposed development will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to visual bulk impact.

The proposed development should be refused due to its excessive bulk, scale and resulting impacts upon the amenity of adjoining properties and the character of the surrounding locality.

The proposal does not meet the streetscape character and key elements of the precinct and desired future character.

The proposal is excessive in scale, has adverse impacts on the visual amenity of the environment, does not positively contribute to the streetscape in terms of an adequately landscaped setting. The proposal is visually dominant, and is incompatible with the desired future townscape area character.

The development has excessive bulk and scale and fails to comply with development standards set out LEP, resulting in a building which has unacceptable adverse impacts on neighbouring properties and the locality.

The non-compliant building envelope will lead to unacceptable visual bulk impact to neighbours.

The multiple non-compliances arising from the proposed upper floor level and the non-compliant setbacks indicates that the proposed development cannot achieve the underlying objectives of this control, resulting in an unacceptable building bulk when viewed from adjoining and nearby properties.

The development presents an inappropriate response to the site and an unsatisfactory response to the desired future character of the area.

The proposed development should be refused because it is incompatible with the desirable elements of the current character of the locality and is inconsistent with the standards and controls:

- The design of the proposal does not recognise or complement the desirable elements of the subject site's current character.
- The proposal does not employ a building form that relates to the landform as it does not step down with the slope of the site.
- The proposal offers little visual relief of the resultant building bulk. Such building bulk is not compatible in scale with adjacent and surrounding development.
- The proposal will present as a large building with insufficient building articulation and landscaping to break up and visually reduce the building bulk.
- The proposal will not appear as low density and, therefore, does not achieve consistency or compatibility with the general built form within the locality or the zone. The development does not present as detached in style with distinct building separation and areas of landscaping.

8. INCORRECT CONSIDERATIONS OF 'GROUND LEVEL EXISTING'

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to present *ground level (existing)* in accordance with the LEP, and the recent decisions on *ground level (existing)* at the NSWLEC.

In accordance with recent caselaw via the NSW Land and Environment Court (*Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*), building height is to be taken from the existing ground level, whether disturbed or undisturbed.

Insufficient information has been provided to establish the exact height of building proposed. The ground level of the existing dwelling houses is not provided on sections.

My clients contend that *ground level (existing)* on the subject site has not been assessed correctly.

- In accordance with recent caselaw via the NSW Land and Environment Court (*Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*), building height is to be taken from the existing ground level, whether disturbed or undisturbed.

- Insufficient information has been provided to establish the exact height of building proposed. The ground level of the existing dwelling houses is not provided

Non-compliant height is not supported with reference to building bulk, view loss, solar, and character.

My clients bring to Council's attention the following issues.

- The existing EGL shown along the subject sites' southern boundary from RL 4.18 to RL 3.30, then dropping to RL 1.90 has not been shown on the DA drawings

The HOB is 9.2m. No Clause 4.6 has been submitted.

9. EXCESSIVE BUILDING HEIGHT

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to comply with the building height development standard under the LEP.

The proposed development should be refused due to its excessive height and failure to comply with the *Height of Buildings* set out in the LEP, and in particular:

- The proposed development, by virtue of its height and scale, will not be consistent with the desired character of the locality
- The development will not be compatible with the height and scale of surrounding and nearby development.

The development application should be refused as the proposal exceeds the development standard prescribed by the LEP and it has not been supported by a request to vary pursuant to clause 4.6 of the LEP. The proposed building height is excessive and does not comply with the objectives or controls in the LEP.

The proposal is inconsistent with the objectives of the Height of Buildings development standard pursuant to LEP.

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact
- The development is not compatible with the desired future character of the locality in terms of building height and roof form.
- The development does not minimise the adverse effects of the bulk and scale of buildings

The adverse impacts of the proposed development, including on the amenity of neighbouring property and public property, are directly attributable to the exceedance of the height of buildings development standard.

The proposal is inconsistent with the LEP as there is a public benefit in maintaining the Height of Buildings development standard in this particular case.

The proposed portion of the building above the maximum height is not 'minor'. The building does not adequately step down the slope.

In respect of the proposed development, I submit that the built form, which also incorporates other substantial non-compliant breaches will have negative impacts on the amenity of neighbours as well as have significant impacts in respect of visual intrusion. Additionally, there is nothing provided for in this development that seeks to minimise the adverse effects of bulk and scale of the building.

My clients have reviewed the responses to these objectives in the applicant's Clause 4.6 and do not consider they satisfy the objectives. My clients strongly refute their arguments.

In respect of the compatibility test, unsurprisingly the applicant completely ignores multiple considerations dealing with the understanding of the site in respect of its topography, how it is viewed from neighbouring properties as well as the lack of compatibility with its form and articulation.

My clients contend that the proposal fails to adequately demonstrate that compliance with each standard is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening each of the standards. Variation of the development standards is not in the public interest because the proposed development is not consistent with the objectives of each development standard nor the objectives of the zone. The proposed development has not sought adequate variations to development standards. The proposal is excessive in bulk and scale, and is inconsistent with the desired future character of the area resulting in adverse impacts on the streetscape. The proposal results in an unacceptable dominance of built form over landscape. The proposal fails to minimise the adverse effects of bulk and scale resulting in adverse amenity impacts.

The proposed development should be refused due to its excessive visual impact and impacts on the character of the locality, adjoining properties and the surrounding environment.

The form and massing of the proposal does not appropriately respond to the low-density character of the surrounding locality

The form and massing of development is also inconsistent with the provisions of the DCP which prescribe that new development should complement the predominant building form in the locality.

The proposal would not recognise or protect the natural or visual environment of the area, or maintain a dominance of landscape over built form. The proposal has not been designed to minimise the visual impact on the surrounding environment.

In *Veloshin*, [*Veloshin v Randwick Council 2007*], NSW LEC considered Height, Bulk & Scale. *Veloshin* suggest that Council should consider:

"Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified."

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

In *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, NSW LEC considered character:

"...whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site's visual catchment".

The non-compliant elements of the proposed development, particularly caused from non-compliant excessive heights would have most observers finding *'the proposed development offensive, jarring or unsympathetic'*.

The planning controls are not limited to preventing offence and the like; and are concerned with establishing a certain physical and landscape character. In this instance I am not convinced that there are strong environmental planning grounds to justify a contravention of the scale proposed.

The proposed development should be refused due to its excessive bulk and scale and its failure to comply with the LEP development standard

The main LEP standards that control bulk have been exceeded;

- The written request is not well-founded as it does not satisfactorily demonstrate: *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case* because it does not achieve consistency with the objectives of the zone or the objectives of the equivalent development standard contained within clause 4.4 of the LEP; and *that there are sufficient environmental planning grounds to justify contravening the development standard* because the provided justification is insufficient and disagreed with.
- The proposal will present excessive bulk and scale that is not representative of the type of development anticipated by the zone or the applicable controls.
- The proposal does not comply with requirement set out within the DCP, as it does not step down with the topography of the site
- The proposal does not comply with requirement set out within the DCP as it does not allow for enough landscaping to suitably reduce the bulk and scale of the development.
- The proposal does not comply with requirement set out within the DCP as it does not provide adequate articulation of the built form to reduce its massing.
- The proposal is inconsistent with the following objectives of the DCP: *To encourage good design and innovative architecture to improve the urban environment; and To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

10. EXCESSIVE WALL HEIGHT

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to comply with the control.

The proposed development should be refused due to its excessive height and failure to comply with the Wall Height set out in the controls.

The proposed development is inconsistent with the objectives of the zone and the objectives that underpin the wall height.

This non-compliance, as well as the other non-compliances, arising from the proposed upper level indicates that the proposal cannot satisfactorily achieve the underlying objectives of this control, ultimately resulting in an unacceptable building bulk that creates a severe amenity impact.

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact
- The development is not compatible with the desired future character of the locality in terms of building height and roof form.
- The development does not minimise the adverse effects of the bulk and scale of buildings

The impacts are very similar to the HOB impacts raised in the section above.

11. INSUFFICIENT SETBACKS

The proposed development should be refused as it is significantly non-compliant with setback of the DCP.

- Neighbours – nil setback

The proposed development does not provide appropriate setbacks. This leads to inconsistency with the character of the area and unreasonable amenity impacts.

The proposal is inconsistent with the objectives of the DCP.

The non-compliance fails:

- To reduce amenity impacts on neighbours
- To provide opportunities for deep soil landscape areas.
- To ensure that development does not become visually dominant.
- To ensure that the scale and bulk of buildings is minimised.

The proposed development results in an encroachment beyond the prescribed building envelope. This non-compliance is indicative of an unacceptable built form and contributes to the severe amenity loss.

I note that flexibility in relation to DCP controls may be acceptable where the outcomes of the control are demonstrated to be achieved. In this case, the control is unable to do so because:

- The design cannot achieve the desired future character as demonstrated earlier in this submission; and,

- The width and height of the design is significantly overbearing in relation to the spatial characteristics of the natural environment, and the confronting presentation to the waterway is not sensitive to this important visual catchment.
- By virtue of the unmitigated height breach and extensive building envelope breach, it is not possible to say that the bulk and scale of the built form has been minimised.
- View loss results from the non-compliant design and a reasonable and equitable sharing of views is not achieved.

The proposal will result in an unsatisfactory scale of built form that will be disproportionate and unsuitable to the dimensions of the site and neighbouring residential development.

The height and bulk of the development will result in unreasonable impacts upon the amenity of neighbouring properties with regard to visual dominance.

The excessive built form of the proposal results in a development where the building mass becomes visually dominant and imposing, particularly when viewed from the visual catchment of neighbouring properties

The cumulative effect of the non-compliances with setback and other development standards results in an over development of the site with the site being not suitable for the scale and bulk of the proposal.

12. EXCESSIVE REMOVAL OF NATIVE TREES

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to retain existing native trees.

The proposal is inconsistent with the objectives of the DCP.

The proposal removes numerous trees as defined by the Arborist Report.

The northern corner of property No. 1 Careel Bay Road supports a large Norfolk Island Pine and a She Oak at the frontage to Careel Bay Road and both trees provide prominence and shall be protected.

My clients contend that there is insufficient arboricultural reason to remove these trees.

The proposal also builds into the SRZ and TPZ of the multiple trees, including potentially my client's trees.

My clients ask for the development to be reduced to ensure that no more than 10% of the TPZ is affected on the subject site.

My clients ask for the development to be reduced to ensure that no TPZ of their trees is affected.

13. INADEQUATE LANDSCAPE AMENITY

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate landscape amenity.

The proposal does not provide for adequate landscape area according to the controls.

Variations to the controls cannot be allowed as the proposal does not meet the objectives of the clause.

The proposed development is inconsistent with the provisions of biodiversity protection, flora and fauna habitat enhancement, and wildlife corridor. There is insufficient information provided to ensure that the proposal will not detrimentally impact native vegetation and habitat.

The proposal fails:

- The northern corner of property No. 1 Careel Bay Road supports a large Norfolk Island Pine and a She Oak at the frontage to Careel Bay Road and both trees provide prominence and shall be protected.
- To enable planting to maintain and enhance the streetscape.
- To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.
- To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low-lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.
- To enhance privacy between buildings.
- To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.
- To facilitate water management, including on-site detention and infiltration of stormwater.

Council's DCP with respect to the locality, requires that development respond to the natural environment and minimise the bulk and scale of buildings. The proposed development in its current form does not achieve this and provides inadequate pervious landscaped area at ground level.

I have significant concerns:

- The northern corner of property No. 1 Careel Bay Road supports a large Norfolk Island Pine and a She Oak at the frontage to Careel Bay Road and both trees provide prominence and shall be protected.
- Major incursion into the SRZ & TPZ of Neighbours Trees. The proposed structure is likely to result in a significant loss of root volume of this tree, potentially making these trees unviable for retention.
- Limited deep soil space provided for large replacement tree species, to the west and east
- Lack of small to medium sized trees included in the planting scheme. The existing planting plan consists of low groundcovers, shrubs and large tree species. Small to medium sized trees included in the proposal is likely to greatly

increase green amenity and screening to residents within the property and on neighbouring properties.

Pittwater Spotted Gum Forest Endangered Ecological Community

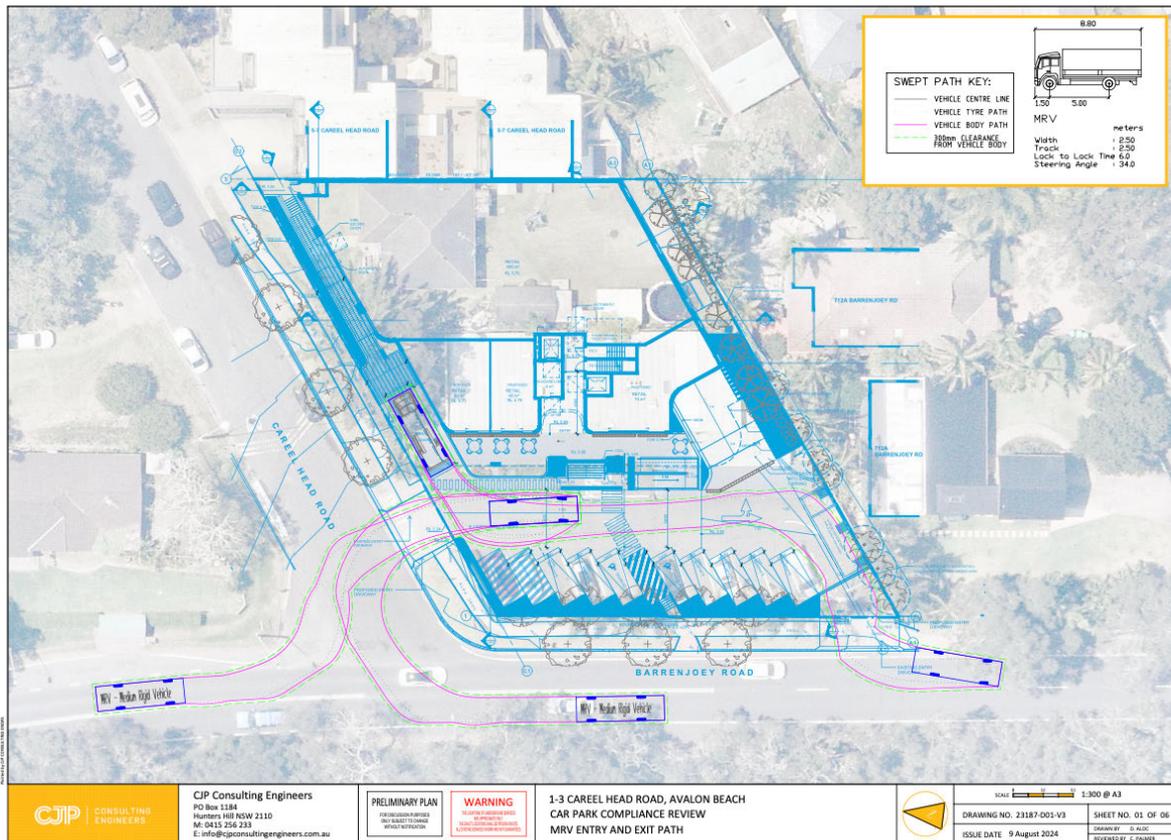
- Deletion of the majority of plant species as they are not characteristic of the Pittwater Spotted Gum endangered ecological community, including any native cultivars.
- Replacement with species to ensure that at least 80% of any new planting incorporates native vegetation (as per species listed for the Pittwater Spotted Gum Endangered Ecological Community)
- Provision of four additional native replacement trees including one each of *Eucalyptus crebra* (Narrow leaved Ironbark), *Golchidion ferdinandi* (Cheese Tree), *Corymbia maculata* (Spotted Gum), and *Allocasuarina torulosa* (Forest Sheoak).

14. TRAFFIC, ACCESS & PARKING

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as traffic, access and parking issues do not accord with the DCP provisions.

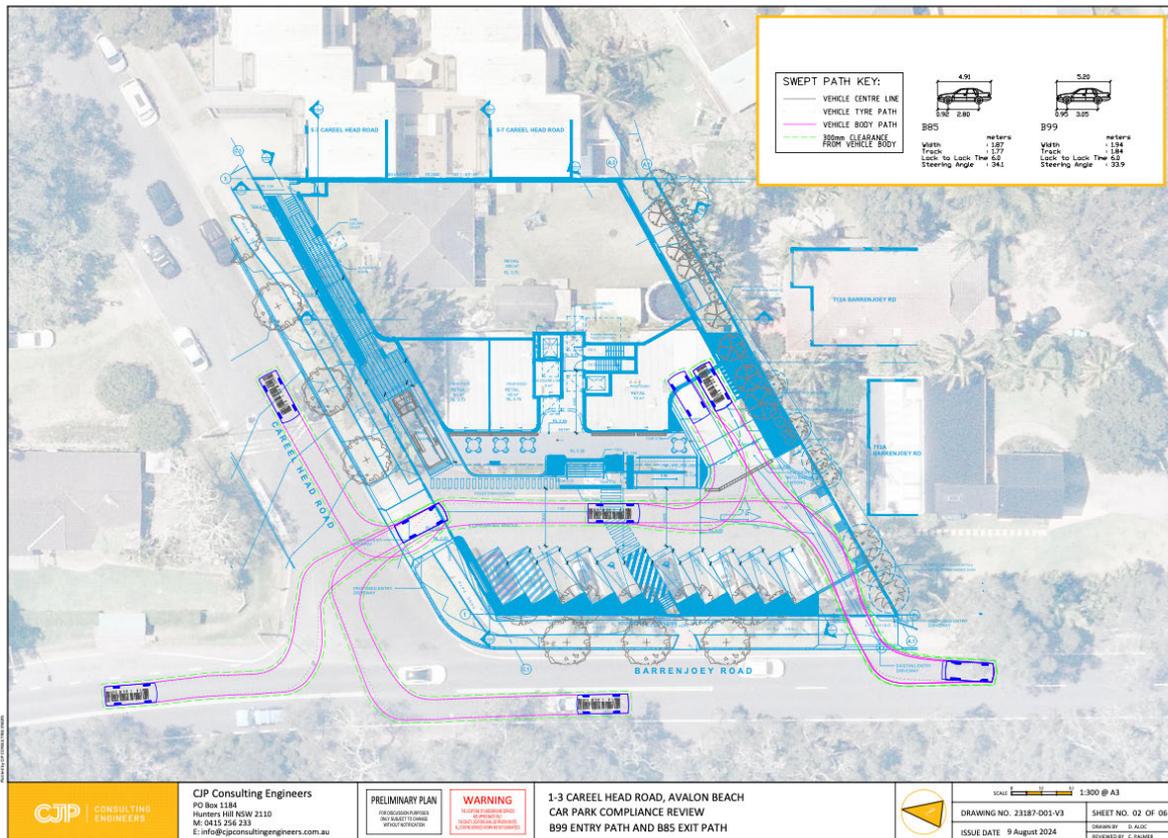
My clients are concerned that the proposed design:

- The proposal does not accord with flood controls. The proposed crest height for the entry to the Basement Car Park is 3.05m AHD which is below the FPL and the PMF. In the location of the Car Park Crest the FPL and the PMF height are both 3.70m AHD. This will require a major redesign. The levels from 3.70m to the Barrenjoey Road proposed exit will be excessive in grade. This will provide an unsafe outcome;
- The location of the Egress onto the Classified Road to Barrenjoey Road is not supported due to the intensification of use. This will provide an unsafe outcome;
- The location of the Vehicle Entry from Careel Bay Road is not supported due to the intensification of use, and the proximity of the entry to the intersection. This will provide an unsafe outcome;
- The location of the Serving Bay is unsafe, requiring truck movements across cars entering the facility



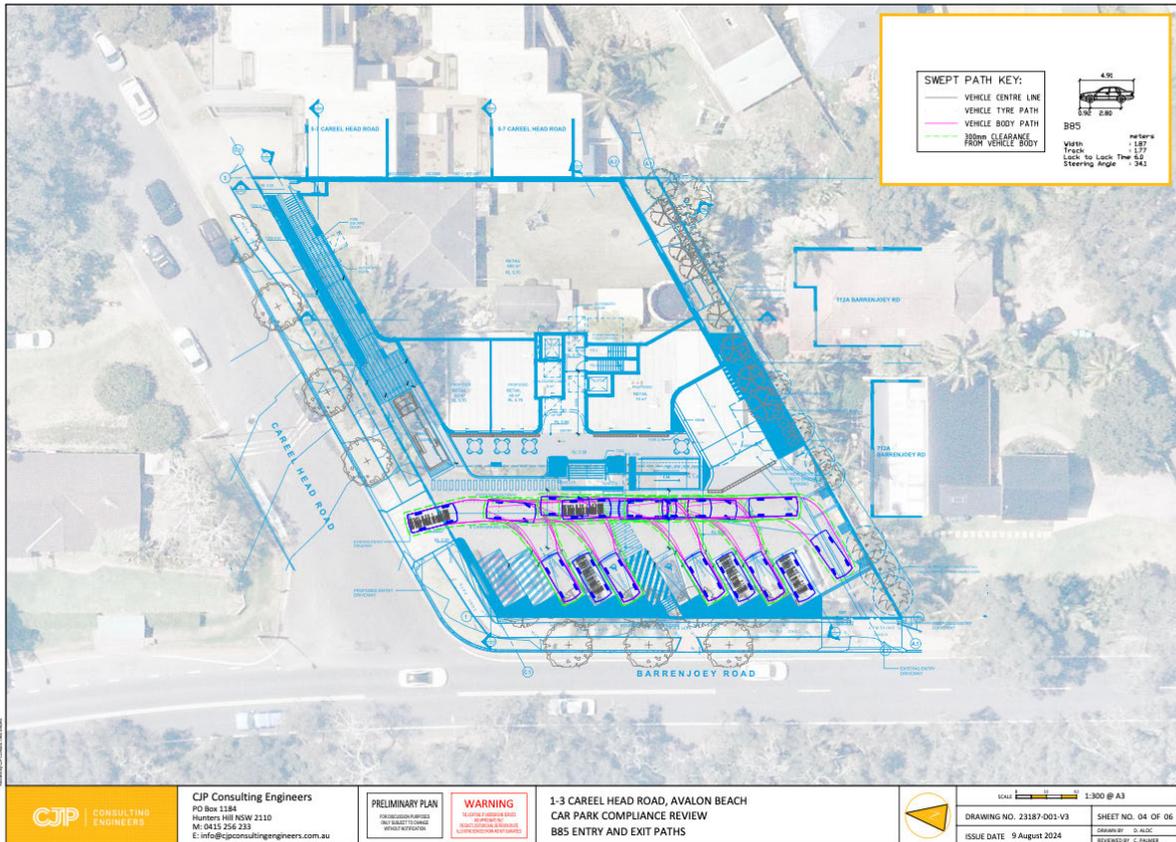
MRV Entry & Exit

- Would be blocked if traffic queues on Careel Bay Road exiting onto Barrenjoey Road, forcing the MRV to block east bound traffic on Careel Bay Road, causing Barrenjoey Road to be blocked;
- Requires the MRV to reverse against the incoming cars, and across the parked cars at angled parking
- Reverses across a pedestrian crossing from Careel Bay Road
- MRV exit requires a significant widening of the crossing to Barrenjoey Road, creating a wider pedestrian zone to cross
- The proposed development is expected to generate in the order of 62-73 vehicle trips during the weekday AM/PM and Saturday peak periods when compared to the existing local shopping village on the site, the proposed development is expected to result in a nett increase of 20-46 trips during the week. This increased intensity of vehicle trips and servicing trips is a very obvious concern, particularly to the proposed entry and exit either close to or direct to Barrenjoey Road and the intersection.
- Adequate Queuing Analysis not provided to prevent vehicle encounters on the entry



Car Park entry from Careel Bay Road

- Would be blocked if traffic queues on Careel Bay Road, forcing the entering cars to block east bound traffic, causing Barrenjoey Road to be blocked;
- Cars parked at splayed spaces requires reversing across a pedestrian crossing form Barrenjoey Road
- MRV exit requires a significant widening of the crossing to Barrenjoey Road
- The proposed development is expected to generate in the order of 62-73 vehicle trips during the weekday AM/PM and Saturday peak periods when compared to the existing local shopping village on the site, the proposed development is expected to result in a nett increase of 20-46 trips during the week. This increased intensity of vehicle trips and servicing trips is a very obvious concern, particularly to the proposed entry and exit either close to or direct to Barrenjoey Road and the intersection.
- Queuing Analysis not provided to prevent vehicle encounters on the entry



Splayed Car Park entry from Careel Bay Road

- Would be blocked if traffic queues on Careel Bay Road, forcing the entering cars to block east bound traffic, causing Barrenjoey Road to be blocked;
- Cars parked at splayed spaces requires reversing across a pedestrian crossing form Barrenjoey Road and incoming traffic
- Cars parked at splayed spaces requires reversing across MRV reversing
- The proposed development is expected to generate in the order of 62-73 vehicle trips during the weekday AM/PM and Saturday peak periods when compared to the existing local shopping village on the site, the proposed development is expected to result in a nett increase of 20-46 trips during the week. This increased intensity of vehicle trips and servicing trips is a very obvious concern, particularly to the proposed entry and exit either close to or direct to Barrenjoey Road and the intersection.
- Queuing Analysis not provided to prevent vehicle encounters on the entry

No Demolition Traffic Management Plan submitted.

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by a suitably accredited person and submitted to and approved by the Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – "Manual of Uniform Traffic Control Devices", RMS' Manual – "Traffic Control at Work Sites".

Implementation of Demolition Traffic Management Plan

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by

personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

No Construction Traffic Management Plan submitted

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by a TfNSW accredited person and submitted to and approved by the Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures

- proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
 - The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
 - Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
 - The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
 - Proposed protection for Council and adjoining properties
 - The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

No Implementation of Construction Traffic Management Plan submitted

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

15. IMPACTS UPON ADJOINING PROPERTIES: SOLAR ACCESS

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it will have unacceptable impacts upon the amenity of neighbours’ property, specifically with regard to solar access and excessive overshadowing by the non-compliant built form.

The proposal is inconsistent with the objectives of the DCP.

The proposed development presents unacceptable amenity impacts to adjoining properties by way of solar access impacts that arise because of the excessive bulk and scale of the proposal and numerical non-compliance.

The Applicant has not provided adequate Solar Access Diagrams, at one hourly intervals, in plan and elevation of my clients' property, to assess the loss of solar access at mid-winter, of my client's windows, private open space, and PV Solar Panels to accord with DCP controls and NSWLEC planning principles

My clients believe that further assessment of the shadow impacts through the production of elevational shadow diagrams or a "View from the Sun" assessment are critical in order to understand the potential future impacts and necessary for Council's reasonable assessment.

Shadow diagrams have not included the additional shadow cast by the non-complaint envelope, in plan and elevation. The elevational shadow diagrams must show the position of windows on adjoining properties.

The proposed development should be refused as it will have unacceptable impacts upon the amenity of adjoining properties, specifically with regard to overshadowing.

The proposed development will result in unreasonable overshadowing of the windows of my clients' property and the private open space of my clients' property, resulting in non-compliance with the provisions of DCP.

A variation to the DCP is not supported as the objectives of the clause are not achieved.

In *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 the LEC consolidated and revised planning principle on solar access is now in the following terms:

"Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours."

My clients contend that the overshadowing arises out of poor design. The design does not respect envelope controls, and must be considered 'poor design'.

The Applicant has not submitted hourly solar diagrams to fully assess the solar loss. My clients ask Council to obtain these diagrams.

The loss of sunlight is directly attributable to the non-compliant envelope.

The planning principle *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 is used to assess overshadowing for development application. An assessment against the planning principle is provided as follows:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

The density of the area is highly controlled. Building envelope controls have been exceeded.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

The solar diagrams are not complete, but what has been provided shows that the proposed development will overshadow the adjoining dwellings. The amount of sunlight that will be lost will only be able to be fully considered once solar elevational drawings are submitted. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

The proposed development has been designed without considering the amenity of the neighbouring properties. It is considered that a more skilful design, with a compliant envelope control, could have been adopted that would have reduced the impact on the neighbouring properties. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *To be assessed as being in sunlight, the sun should strike a vertical surface at a horizontal angle of 22.5o or more. (This is because sunlight at extremely oblique angles has little effect.) For a window, door or glass wall to be assessed as being in sunlight, half of its area should be in sunlight. For private open space to be assessed as being in sunlight, either half its area or a useable strip adjoining the living area should be in sunlight, depending on the size of the space. The amount of sunlight on private open space should be measured at ground level.*

This can only be fully assessed once elevational solar drawings at hourly intervals are submitted. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

There is no major overshadowing as a result of vegetation

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

The area is not currently undergoing change, the LEP and DCP controls have not altered for many years.

The assessment of the development against the planning principal results in the development not complying with the solar access controls and therefore amended plans should be requested to reduce the overshadowing impact on the adjoining neighbour. It is suggested that a more skilful design of the development, with a compliant envelope control, would result in less impact in regard to solar access. It is

requested that Council seek amended plans for the development to reduce the impact of the development, and these matters are addressed elsewhere in this Written Submission.

My clients object to solar loss to my clients' private open space, and to my clients' windows that fails to allow mid-winter solar access into highly used room by non-compliant development controls.

16. IMPACTS UPON ADJOINING PROPERTIES: PRIVACY

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to visual privacy.

The proposal is inconsistent with the objectives of the DCP.

The proposed development should be refused as it will have unacceptable impacts upon the amenity of my clients' property, specifically with regard to visual privacy.

The proposed development will result in unacceptable overlooking of the adjoining dwelling and associated private open space, resulting in inconsistency with the provisions of the DCP and the objectives of the DCP.

The location and design of the proposed balcony and terraces at the upper floor levels and the excessive glazed windows facing the side boundary will result in unacceptable visual and acoustic privacy impacts to adjoining properties.

The Applicant has not provided an adequate Privacy Impact Analysis which details the extent to which privacy at my clients' property will be adversely impacted by the proposal.

The proposed development should be refused because it will result in unacceptable visual privacy impact contrary to the DCP:

- The proposal is inconsistent with the DCP as it does not use appropriate site planning with respect to the location and design of windows and balconies, such that it results in unreasonable visual privacy impacts to the dwellings of neighbouring properties;
- The proposal does not comply with requirement set out in the DCP as it is not designed to optimise privacy for the occupants of the neighbouring dwellings
- The proposal does not comply with requirement set out in the DCP as it does not orientate living areas, habitable rooms, and windows to limit overlooking.
- The proposal orientates the living areas and main private open space to neighbours
- The floor level of the upper levels, would result in looking over and beyond. The difference in levels will result in direct viewing into the private open spaces of neighbour's dwellings.
- The proposal includes raised private open spaces to the rear, increasing opportunity for overlooking to neighbours.
- The proposal relies on landscaping to the rear to assist with privacy, which should not be used in place of good design, as per the planning principle set by *Super Studio v Waverley Council [2004] NSWLEC 91*.

- The proposal is not consistent with the following objective of the DCP, to ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.

An assessment of the privacy impact against the planning principle *Meriton v Sydney City Council* [2004] NSWLEC 313 follows:

Principle 1: The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.

Response: The development is located in a low-density area.

Principle 2: Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)

Response: The proposed development results in a privacy impact with the proposed windows facing neighbours without sufficient screening devices being provided, considering the proposed windows are directly opposite my clients' windows and balconies.

Principle 3: The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.

Response: The windows in question are windows of the main circulation zones and living areas, it is considered that the living areas will result in an unacceptable privacy breach. The proposed windows and decks face the rear private open spaces for the neighbouring dwelling and will result in an unacceptable level of privacy impact.

Principle 4: Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.

Response: The proposed development is a new development and the proposed windows have been designed without any consideration to the privacy of the neighbouring property.

Principle 5: Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.

Response: It is considered that the private open space of the neighbouring dwellings could be better protected. My clients ask Council to consider the most appropriate

privacy screening measures to be imposed on windows and decks facing my clients' property, including landscaping

Principle 6: Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.

Response: As mentioned above, the use of privacy devices would reduce the impact of the dwelling.

Principle 7: Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.

Response: Additional landscaping may assist in addition to privacy devices.

Principle 8: In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.

Response: The area is not undergoing change that would warrant privacy impact such as the one presented.

Comment: As the development is considered to result in an unacceptable privacy impact due to the design, it is requested that the proposed development be redesigned to reduce amenity impact on the neighbouring properties.

In the context of the above principles, the application can be considered to violate the reasonable expectation that the habitable rooms and private open space at my clients' property will remain private. It is therefore reasonably anticipated that the application does not comply with the DCP.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control.

17. IMPACTS UPON ADJOINING PROPERTIES: ENGINEERING

GEOTECHNICAL CONCERNS

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide minimal excavation, with excavation proposed too close to the neighbours' property.

The proposal is inconsistent with the objectives of the LEP and DCP.

Insufficient information has been submitted to demonstrate that the proposed development will not adversely impact the structural integrity of the surrounding properties.

Insufficient information has been provided to address the geotechnical impacts of the proposal. The development involves extensive excavation for the basement. A geotechnical report by a suitably qualified Geotechnical Engineer shall be submitted addressing the geotechnical impacts of the proposal. The report must address any impact to the potential impact on the neighbouring properties due to the proposed basement excavation and provide recommendations to ensure no adverse effects.

The applicant has not provided sufficient information for Council to be satisfied that the earthworks will not result in adverse impacts to the watercourse and drainage patterns on the site and the impacts on adjoining properties.

The proposed development provides excessive excavation.

The excavation should be removed within the setback zones.

The excavation should be reduced elsewhere to reduce the risks.

The Geotechnical Report has not provided adequate recommendations to protect my client's property:

- potential land slip and damage to my clients' property,
- incomplete intrusive geotechnical investigations,
- incomplete geotechnical recommendations,
- incomplete geotechnical monitor plan,
- excessive vibration limits,
- lack of full-time monitoring of the vibration,
- incomplete dilapidation report recommendations,
- incomplete attenuation methods of excavation,
- exclusion of excavation in the setback zone,
- exclusion of anchors under my clients' property,
- incomplete consideration of battering in the setback zone.
- Inadequate groundwater consideration
- insufficient mechanisms to prevent the contractor to undertake variations to the support system proposed, particularly the types of piling such as Secant Piles Continuous Flight Auger [CFA] techniques.

My clients ask for the Geotechnical Report to be updated to include all these matters, and the recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report.

Geotechnical Monitoring & Contingency Plan, including:

- geotechnical monitoring,
- monitoring requirements: inclinometer & vibration
- dilapidation surveys,
- vibration monitoring,
- vibration limits,
- proposed monitoring locations,
- vibration monitoring instrumentation,
- monitoring frequency,
- work procedure,

- temporary embankment earthworks,
- geotechnical inspection and testing authority,
- inspection and approval of material to be placed,
- observation of the placement of engineered fill,
- placement of geogrids,
- gita reporting requirements,
- perimeter shoring pile walls,
- excavation,
- installation of slabs,
- groundwater,
- behind wall services,
- visual monitoring of road pavements and stormwater drains,
- monitoring of induced movements,
- footings

An Implementation Plan, comprising the following:

- Monitoring program including various pre-set acceptable limits, location and type of monitoring systems and recommended hold points.
- Contingency Plan including details of measures to be adopted to restore groundwater level or to provide any necessary additional support.
- Construction Methodology to address all aspects of the construction process relating to the geotechnical and hydrogeological requirements. This includes:
 - A design statement and supporting drawings that shows the design measures proposed to minimise risks and to ensure that no adverse impacts will occur;
 - Structural report of the proposed support and retention measures that confirms the structural adequacy of any adjacent structure including any necessary additional support for the structure;
 - All the above reports shall be prepared by a suitably qualified and experienced structural engineer based on the findings of the geotechnical investigation report. In summary, the reports shall include the following details:
 - Location of nearby foundations/footings (site and neighbouring properties) including any existing boundary walls and structures - the engineer must provide design solutions showing that the footings of all existing structures will not be disturbed or undermined by the proposed excavation;
 - Recommendations on methods of excavation and appropriate construction techniques, to ameliorate any potential adverse impacts to adjoining properties;
 - Recommendations as to appropriate temporary and permanent site support and retention measures – all support and retention measures shall be wholly located within the subject site;

- Prediction of ground settlements in areas adjacent to the development site resulting from temporary and permanent site support and retention measures – the engineer shall demonstrate that the proposed settlement will have no adverse impact on the surrounding properties and infrastructure;
- Prediction of potential vibration caused by methods of excavation and recommendations on appropriate plant, equipment and construction methods to limit vibration.
- Permanent earth or rock anchors will not be consented by my client on or below their property
- Method and rate of dewatering where required;
- Certification to confirm that the structural adequacy of all adjoining structures will not be adversely affected and compromised.
- Should underpinning works be determined to be carried out to the footing of any neighbouring structures including any boundary walls, details and procedures of such underpinning works shall be included in the reports. In addition, written owner consent from the adjoining property owners is also required to be submitted in order for these works to be carried out.
- Alternatively, the structural engineer shall provide an engineering solution to preclude the necessity to underpinning works caused by the proposal and certify that underpinning works to neighbouring structures are not required.

STORMWATER CONCERNS

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate stormwater control outcomes.

The proposal is inconsistent with the objectives of the LEP and DCP.

My clients ask Council to consider the stormwater design and the OSD.

My clients ask Council to ensure that there are stormwater pits to collect surface and sub surface stormwater along the perimeter of the subject site.

My clients are extremely concerned that the proposed stormwater drawings do not show adequate collection of stormwater along the boundaries of the subject site, to retain the stormwater washing across the subject site onto my client's property.

I request that the onsite stormwater system is increased with large pits and large pipework to collect all stormwater on the subject site to accord with the 1% AEP.

The proposed development is not supported by sufficient information to demonstrate compliance with Council's stormwater management requirements regarding the provision of onsite stormwater detention (OSD).

A DRAINS model is required for development. The pre-existing flow condition is to be modelled as state of nature up to the 1/100 AEP storm event.

- The stormwater drainage plans are to detail all the minimum information as required by the DCP;
- The drainage catchment plan should also include the footpath catchment area that will drain into the development site and is to be included into the site OSD Drains model calculations.
- Calculations in the form of a Hydraulic Grade Line analysis are required to demonstrate that the OSD tank pipe outlet is not affected by tail water levels from the any proposed extension works. The OSD pipe outlet is free draining to demonstrate the proposed OSD storage tank volumes are not compromised.

FLOOD CONCERNS

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate flood protection.

The proposed development has not been designed to mitigate flood impacts to the subject site and adjoining land. The applicant has not provided adequate modelling to satisfy Council that the high hazard risk of flood and the severe risk to life has been appropriately reduced or addressed. In addition, the applicant has not provided sufficient information to enable a complete and proper assessment of the flood impacts on the site and adjoining properties.

The proposed development does not accord with flood control.

- My clients are concerned that there is no adequate Overland Flood Study to include: Hydrological data Hydraulics data; Catchment plan showing sub-catchments (where applicable); Computer model such as HEC-RAS showing the 1%; AEP stormwater flow over the subject site; Cross sections detailing the 20% and 1% AEP water surface levels traversing the site; Extent of water surface levels to extend upstream and downstream of the subject property; Any overland flow mitigation measures to protect the proposed development from stormwater inundation must not exacerbate flooding for adjoining properties by diverting more flows to adjoining properties.
- There appears to be no consideration of Digital Elevation Model [DEM] by the NSW Gov Spatial Services 1m contour DEM through the ICSM ELVIS web site.
- There appears to be no consideration to construct a higher resolution DEM from the LiDAR point cloud.
- There appears to be no consideration to construct a higher resolution DEM so that a Strahler Stream Order could be generated that defined flow pathways within the Study Site and surrounding catchments.
- There appears to be no consideration to access historic aerial photography is a tool that preserves changes to drainage lines and catchments of varying sizes and provides insights to the character and processes that have combined to produce the contemporary morphology. From the interrogation of historical aerial photography, it is often possible to define the character of drainage lines temporally and place the current landforms within a trajectory of change.
- There appears to be no consideration to access historic parish maps that exist back to the earliest time of European settlement are an important source of

reliable information on river character and behaviour, as well as temporal changes in planform morphology. Early parish maps are particularly reliable as a source of fluvial information due to the importance that the earlier settlers placed on creeks and rivers. Drainage patterns were particularly well recorded as the streams were an important resource for stock as well as agriculture and generally formed the boundary between adjacent landholdings and adjoining parishes. Because creeks and rivers were an important resource they were accurately surveyed.

- There appears to be incomplete information in respect to adverse flood impact mapping to specifically compare against the Adverse Impacts definition in the DCP.

I am concerned that the Flood Prone Land will have Adverse Impacts:

- Will result in less than 0.02m increase in the 1% AEP
- Will result in less than a 0.05m increase in the PMF
- Will result less than a 10% increase in PMF peak velocity
- Will have no loss in flood storage or flood way in the 1% AEP

If there are any exceedances of the allowed impacts on public or neighbouring properties, then a full suite of impacts mapping should be provided, including depth, level, velocity and VD difference caused by the development in the 20%, 1% and PMF events.

The flood model used for adverse impact modelling must be compared to the flood results of other Council studies. Noticeable differences in the modelling results should be reviewed and explained, with preference given to use the higher results.

As the development is for a vulnerable land use, the floor levels and basement carpark crest for the development are required to be at or above the FPL or PMF, whatever is higher. The FPL must include a 0.5m freeboard due high sensitivity in the flood modelling.

My clients ask Council to address the following:

- Council is to ensure that the works proposed on the site are capable of accommodating all storm events including the 1 in 100 year design storm with no adverse impacts to my clients' property.
- Council is to ensure that the overland flow path provided is capable of accommodating all reasonable development and redevelopment in the catchment draining to the proposed overland flow path.
- Council is to ensure that the development will not result in a net loss in flood storage or floodway in 1% AEP flood. These calculations must be provided and mapping of the floodway in relation to the proposed building must also be provided.
- Council is to ensure that my clients' property will have no increase in PMF levels and PMF peak velocity on neighbouring properties.

18. PRECEDENT

The Development Application should be refused because approval of the proposal will create an undesirable precedent for similar inappropriate development in the area.

19. PUBLIC INTEREST

Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not within the public's interest.

The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest.

The proposed development is contrary to the provisions of relevant environmental planning instruments, development control plans and design guidelines. The proposed development represents numerous non-compliances and inconsistencies with State and Council policy. No circumstances exist that would justify the non-compliances and inconsistencies with these policies.

C. CONTENTIONS THAT RELATE TO INSUFFICIENT & INADEQUATE INFORMATION

The applicant has not submitted sufficient and/or adequate information under Part 6, Division 1 Clause 54 of the EPA Regulation 2000 to enable a reasonable assessment under the applicable legislation.

The application lacks sufficient detail to make an informed assessment particularly with respect to determining the extent of the following matters and the relationship and impact to adjoining neighbours.

CLAUSE 4.6 VARIATION REQUEST

HOB Cl4.6 Not submitted.

CONSTRUCTION AND DEMOLITION - TRAFFIC MANAGEMENT PLAN

Not submitted.

HEIGHT

I ask Council to request that the applicant superimpose the Registered Surveyors plan detail with all spot levels and contours onto the Roof Plan, with all proposed RLs shown, so that a full assessment can be made on HOB. The survey is incomplete as it has not recorded the existing ground levels within the lowest floor, nor shown the extent of the lowest floor, nor existing levels under the existing building. Height plane blanket is to be provided for LEP & DCP non-compliances

SOLAR ACCESS DIAGRAMS

The application fails to provide sufficient information to demonstrate that the neighbouring dwellings will receive the minimum number of hours set out within the DCP of direct sunlight to windows and private open space areas on 21 June.

The Applicant has not provided adequate Solar Access Diagrams, at 30-minute intervals, in plan and elevation of my clients' property, to assess the loss of solar access at mid-winter, to accord with DCP controls and NSWLEC planning principles.

The proposed development provides insufficient information to adequately assess whether the development complies or otherwise with the controls. The solar and shadow diagrams appear to be incorrect and do not adequately demonstrate the shadow cast over the site and neighbouring property. The length of the winter shadows appears to be underestimated and the solar diagrams do not appear to take into consideration the topography of the site. In order to properly calculate the solar access to the proposed development and any overshadowing impacts to neighbouring sites 3-D modelling of views from the sun at 30-minute intervals must be submitted illustrating the overshadowing impacts of the neighbouring residential units.

My clients believe that further assessment of the shadow impacts through the production of elevational shadow diagrams or a "View from the Sun" assessment are critical in order to understand the potential future impacts and necessary for Council's reasonable assessment.

PRIVACY IMPACT ANALYSIS

The Applicant has not provided an adequate Privacy Impact Analysis, to accord with DCP controls and NSWLEC planning principles.

The architectural drawings do not provide side setback dimensions nor identify the nature of the rooms on the adjoining properties to enable a proper assessment of the impacts of the proposed development and consequently the application has failed demonstrate that the development is suitable for the site and that it will have acceptable environmental impacts on the built environment. Additional dimensions are required to be provided with adequate level of information clearly indicated depicting the separation of buildings and internal layouts of rooms on adjoining properties in order to confirm compliance with objectives and controls.

VISUAL BULK ANALYSIS

The Applicant has not provided adequate montages from my clients' property to assess the visual bulk assessment from the proposed non-compliant envelope.

SURVEY.

Details of neighbouring/surrounding properties, including window/door openings to determine if there will be any privacy, overshadowing or amenity impacts. Registered Surveyors levels transferred to all DA drawings. Incomplete dimensioning on DA plans, and incomplete levels on all elevations to all elements. Council should note that spot survey levels and contour lines from the Registered Surveyors drawings have not been adequately transferred to the proposed DA drawings of plans, sections, and elevations to enable an assessment of height and the relationship and impact to adjoining neighbours. Neighbour's dwellings have not been accurately located on plans, sections and elevations, including windows and decks, to enable a full assessment of the DA. The plans and documentation are misleading as they do not clearly portray the true extent of works proposed. The plans include inaccuracies and inconsistencies and insufficient information has not been provided in order to enable a detailed assessment, including incomplete dimensional set-out and incomplete levels on drawings to define the proposed building envelope. There is incomplete analysis provided including view loss, solar loss and privacy loss. I ask Council to request that the applicant superimpose the Registered Surveyors plan detail with all spot levels and contours onto the Roof Plan, with all proposed RLs shown, so that a full assessment can be made on HOB.

Spot levels and contour lines from the Registered Surveyors drawings have not been transferred to the proposed DA drawings of plans, sections, and elevations to enable an assessment of height and the relationship and impact to adjoining neighbours. Neighbour's dwellings have not been accurately located on plans, sections and elevations, including windows and decks, to enable a full assessment of the DA.

GEOTECHNICAL

The Applicant has not provided adequate protection to my clients' property from excessive excavation and potential land slip and damage to my clients' property, including excessive vibration limits, lack of full-time monitoring of the vibration, incomplete dilapidation report recommendations, incomplete attenuation methods of excavation, exclusion of excavation in the setback zone, exclusion of anchors under my clients' property, and incomplete consideration of battering in the setback zone. The geotechnical requirements referred to earlier must be added to the Geotechnical Report. My clients ask for the Geotechnical Report to be updated to include these matters, and the recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report are to be incorporated into the construction plans.

EXTERNAL PLANT

Details of all external plant and equipment including air conditioning units/condensers has not been provided.

Air conditioning units to the façade, roof or balconies of the building will not be acceptable.

SITE CONTAMINATION

The application fails to satisfactorily address site contamination.

FLOOD & STORMWATER

The application does not provide adequate information in respect to flood &/or stormwater drainage

D. REQUEST FOR AMENDED PLANS TO BE SUBMITTED TO BETTER ADDRESS IMPACTS UPON ADJOINING PROPERTIES

A compliant building design would reduce the amenity impacts identified.

Prepare and submit further supporting information and amendments to the assessing officer directly addressing the issues.

Reduce the proposed development as follow:

1. REDUCTION OF BUILT FORM

- Reduce the Height of Building to LEP standards
- Reduce the Wall Height to DCP controls
- Increase Setback to 3m to all neighbours' boundaries
- Increase 3m deep soil zone along all neighbour's boundaries, and ensure full 3m wide deep soil along neighbour's boundaries from Barrenjoey Road. Relocate OSD detention. Ensure that the deep soil area is gated, so to ensure no public access.
- Decrease Excavation, with no excavation or fill in the side setback zone
- Materials to southern boundary to be stone to match remainder of development

2. PRIVACY DEVICES

- Acoustic Barrier to Child Care Outdoor Area to increase from 1.5m to 2.0m high, facing south, and increase acoustic specification. Setback 6m from southern boundary.
- Acoustic Barrier to Southern Boundary to be offset from boundary so as not to cause the Acoustic Barrier to become a Dividing Fence. Increase from 2.0m to 2.2m high, facing south, and increase acoustic specification
- Additional Acoustic Barrier to 2.2m height to setback 3m from Southern Boundary, and extend from the ground floor wall, to Barrenjoey Road. Delete 'Hit & Miss Brick' details, create solid wall to reduce noise from car ramp to adjoining neighbours
- All windows facing my client's property to have window sills increased to a minimum height of 1.8m measured from the FFL level.

3. LANDSCAPING

- Increase deep soil garden width to full width of the 3m side setback zone to the entire southern side boundary of the adjoining property to adequately support columnar shrub screen planting to 8m high, through to Barrenjoey Road
- Additional 8m high planting for screening along the entire southern boundaries adjacent to the proposed built form, to reduce the built form
- New trees and screening trees be increased to 400 L bag size, so that a more mature landscape outcome is achieved.

4. CONDITIONS OF ANY CONSENT

My client asks for a complete set of Conditions to be included within any consent, including, but not limited to, the following:

Conditions which must be satisfied prior to the demolition of any building or construction

- Acoustic Certification of Mechanical Plant and Equipment
- Arborists Documentation and Compliance Checklist
- BASIX Commitments
- Checking Construction Certificate Plans – Protecting Assets Owned by Sydney Water
- Construction Certificate Required Prior to Any Demolition
- Electric vehicle circuitry and electric vehicle charging point requirements
- Engineer Certification
- Establishment of Tree Protection Zone (TPZ) Fence
- Geotechnical and Hydrogeological Design, Certification and Monitoring
- Ground Anchors
- Identification of Hazardous Material
- Light and Ventilation
- No Underpinning works
- Noise Control - Acoustic Protection of adjoining residential units-Operation of Air Conditioning Plant
- Noise Control - equipment
- Parking Facilities
- Payment of Long Service Levy, Security, Contributions and Fees
- Professional Engineering Details
- Public Road Assets Prior to Any Work/Demolition
- Road and Public Domain Works
- Soil and Water Management Plan – Submission and Approval
- Stormwater Management Plan
- Tree Management Plan
- Ventilation - Internal Sanitary Rooms
- Utility Services Generally
- Waste Storage – Per Single Dwelling

Conditions which must be satisfied prior to the commencement of any development work

- Adjoining Buildings Founded on Loose Foundation Materials
- Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)
- Compliance with Building Code of Australia and insurance requirements
- Dilapidation Reports for Existing Buildings: A photographic survey and dilapidation report of my clients adjoining property detailing the physical condition of the property, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, MUST BE submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person and a copy to be given to the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Principal Certifier, prior to the issue of any Construction Certificate.
- Geotechnical Report: Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following: a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum; b) the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended; c) the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the

subject site); d) the existing groundwater levels in relation to the basement structure, where influenced; e) the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a "dam" for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and f) recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages. The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/ hydrogeological engineer with previous experience in such investigations and reporting. It is the responsibility of the consulting geotechnical/ hydrogeological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate. The design principles for the geotechnical report are as follows: a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure; b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure; c) no changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure; d) vibration is to be minimised or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development; e) appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and f) an adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage. The report, satisfying the requirements of this condition, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

- Erosion and Sediment Controls – Installation
- Establishment of Boundary Location, Building Location and Datum
- Home Building Act 1989
- Notification of Home Building Act 1989 requirements
- Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection
- Site Signs
- Engineer's Certification of Plans
- Structural adequacy & Excavation work
- Toilet Facilities
- Works (Construction) Zone – Approval and Implementation

Conditions which must be satisfied during any development work

- Asbestos Removal Signage
- Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum
- Classification of Hazardous Waste
- Compliance with Australian Standard for Demolition
- Compliance with BCA and Insurance Requirements under the Home Building Act 1989
- Compliance with Council's Specification for Roadworks, Drainage and
- Compliance with Geotechnical / Hydrogeological Monitoring Program
- Miscellaneous Works, Road Works and, Work within the Road and Footway
- Critical Stage Inspections
- Disposal of Site Water During Construction
- Disposal of Asbestos and Hazardous Waste
- Dust Mitigation
- Erosion and Sediment Controls – Maintenance
- Footings in the vicinity of trees
- Hand excavation within tree root zones

- Hours of Work –Amenity of the Neighbourhood
- Installation of stormwater pipes and pits in the vicinity of trees
- Level changes in the vicinity of trees
- Notification of Asbestos Removal
- Maintenance of Environmental Controls
- Placement and Use of Skip Bins
- Prohibition of Burning
- Public Footpaths – Safety, Access and Maintenance
- Replacement/Supplementary trees which must be planted
- Requirement to Notify about New Evidence
- Site Cranes
- Site Waste Minimisation and Management – Construction
- Site Waste Minimisation and Management – Demolition
- Support of Adjoining Land and Buildings
- Tree Preservation
- Vibration: Monitoring Construction Vibration. Vibrations associated with demolition, excavation and construction works are limited to a tolerance of 3mm/s PPV (peak particle velocity) at the property boundaries (or at sea cliff or cliff adjacent to the subject property). Vibration monitoring equipment is to be installed by a registered Geotechnical Engineer throughout the site and along the boundaries to verify that vibration is within the limits of the maximum tolerance. The vibration monitoring equipment must include a light/alarm, so the site foreman and equipment operator are alerted to the fact that vibration limits have been exceeded. Where the vibration tolerances have been exceeded, works shall cease until a change in construction / excavation methodology are implemented to ensure compliance. It also must log and record vibrations throughout the excavation and construction works so that compliance may be verified. Any monitoring devices are to be installed at the footing level of any adjacent structures. Reason: To restrict vibration impacts.

Conditions which must be satisfied prior to any occupation or use of the building (Part 6 of the Act and Part 8 Division 3 of the Regulation)

- Amenity Landscaping
- Certification of Electric Vehicle Charging System
- Commissioning and Certification of Public Infrastructure Works
- Commissioning and Certification of Systems and Works
- Occupation Certificate (section 6.9 of the Act)
- Letter Box

Conditions which must be satisfied prior to the issue of the Occupation Certificate for the whole of the building

- Fulfillment of BASIX Commitments – clause 154B of the Regulation
- Landscaping
- Positive Covenant and Works-As-Executed Certification of Stormwater Systems
- Removal of Ancillary Works and Structures
- Road Works (including footpaths)

Conditions which must be satisfied during the ongoing use of the development

- Maintenance of BASIX Commitments
- Noise Control
- Noise from mechanical plant and equipment, including swimming pool plant
- Ongoing Maintenance of the Onsite Stormwater Detention (OSD) System, Rain Garden and Rainwater Tank
- Outdoor Lighting – Residential
- Outdoor Lighting – Roof Terraces
- Hours of Operation

Advising

- Asbestos Removal, Repair or Disturbance
- Builder's Licences and Owner-builders Permits

- Building Standards - Guide to Standards and Tolerances
- Commonwealth Disability Discrimination Act 1992
- Criminal Offences – Breach of Development Consent and Environmental Laws
- Dial Before You Dig
- Dilapidation Report
- Dividing Fences
- Lead Paint
- NSW Police Service and Road Closures
- Pruning or Removing a Tree Growing on Private Property
- Pruning or Removing a Tree Growing on Private Property
- Recycling of Demolition and Building Material
- Release of Security
- Roads Act 1993 Application
- SafeWork NSW Requirements
- Workcover requirements

E. REASONS FOR REFUSAL

My clients ask Council to refuse the DA as the proposal is contrary to the Environmental Planning and Assessment Act:

Contentions that the application be refused as listed within this submission.

1. Council is not satisfied that under clause 4.6 of the LEP seeking to justify a contravention of the development standard that the development will be in the public interest because it is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
2. The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy objectives and planning controls of LEP:
 - o Aims of Plan
 - o Zone Objectives
 - o Height of Buildings
 - o Exceptions to Development Standards
 - o Flood
 - o Earthworks
 - o Stormwater
 - o Geotechnical Hazards
3. The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy objectives and planning controls of DCP:
 - o Desired Future Character
 - o Excessive Wall Height
 - o Unacceptable Setbacks
 - o Insufficient Landscape Areas
 - o Excessive Removal of Native Trees
 - o Poor Traffic Design
 - o Excessive Excavation & Geotechnical Concerns
 - o Stormwater Concerns
 - o Flood Concerns
 - o Poor Streetscape Outcomes
 - o Impacts Upon Adjoining Properties: Overshadowing
 - o Impacts Upon Adjoining Properties: Privacy
 - o Impacts Upon Adjoining Properties: Visual Bulk
4. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the plans and documentation are misleading as they do not clearly portray the true extent of works proposed. The plans include inaccuracies and inconsistencies and insufficient information has been provided in order to enable a detailed assessment. Dimensions to boundaries

have not been shown in all locations of all proposed built elements. Levels on all proposed works have not been shown.

5. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the proposal would not satisfy the matters for consideration under Biodiversity & Conservation SEPP 2021 and Resilience & Hazards SEPP 2021
6. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that it will have an adverse impact through its bulk, scale and siting on the built environment, and through lack of landscape provision, and adverse impact on the natural environment. The proposed development will have a detrimental impact on the visual amenity of the adjoining properties by virtue of the excessive building bulk, scale and mass of the upper floor and its associated non-compliant envelope.
7. The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* in that this area of the site is unsuitable for a development of such excessive bulk and scale.
8. The proposals are unsuitably located on the site pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
9. The proposal does not satisfy Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not adequately address the amenity of neighbours
10. The proposal is contrary to the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*. The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest. The proposed development will have a detrimental impact on the amenity of adjoining residential properties, and for this reason is contrary to the public interest.

F. CONCLUSION

The proposed dwelling is not consistent with the intent of the LEP standards and DCP controls as they are reasonably applied to the proposal.

The variations to LEP standards and DCP controls are considered unreasonable in this instance. The cumulative effect on these non-compliances causes considerable amenity loss to my clients' property.

The development will not sit well within the streetscape with non-compliance to LEP standards and DCP controls causing considerable concern. In this regard, the proposal is considered excessive in bulk and scale and would be considered jarring when viewed from the public domain.

Commissioner Moore revised the NSWLEC planning principle for assessing impacts on neighbouring properties within *Davies v Penrith City Council* [2013] NSWLEC 1141

"The following questions are relevant to the assessment of impacts on neighbouring properties:

How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?

How reasonable is the proposal causing the impact?

How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?

Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?

Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?"

I contend that the proposed development severely impacts my clients' property, and in terms of amenity, there is excessive sunlight, view or privacy loss. The loss is unreasonable. My clients' property is not vulnerable to the loss that is presented. The loss arises out of poor design, either through non-compliance to envelope controls or poorly located built form.

It is considered that the proposal is inappropriate on merit and unless amended plans are submitted, this DA must be refused for the following reasons:

- The application has not adequately considered and does not satisfy the various relevant planning controls applicable to the site and the proposed development.
- The proposed dwelling is incompatible with the existing streetscape and development in the local area generally.
- The proposed dwelling will have an unsatisfactory impact on the environmental quality of the land and the amenity of surrounding properties.
- The site is assessed as unsuitable for the proposal, having regard to the relevant land use and planning requirements.

It is considered that the public interest is not served.

The proposed development does not follow the outcomes and controls contained within the adopted legislative framework.

Having given due consideration to the matters pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended, it is considered that there are multiple matters which would prevent Council from granting consent to this proposal in this instance.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts all of which would result in adverse impacts on my clients' property. Primarily,

- o The development compromises amenity impacts on neighbours
- o The development does not minimise visual impact

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- o Inconsistent with the zone objectives of the LEP
- o Inconsistent with the aims of the LEP
- o Inconsistent with the objectives of the DCP
- o Inconsistent with the objectives of the relevant EPIs
- o Inconsistent with the objects of the EPAA1979

The proposed development does not satisfy the appropriate controls. Furthermore, the proposal would result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community, and is therefore not in the public interest. The proposal therefore must be refused. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have not been satisfactorily addressed.

I ask that if Council in their assessment of this application reveals unsupported issues, which prevent Council from supporting the proposal in its current form, and writes to the applicant describing these matters, I ask for that letter to be forwarded to me.

My clients trust that Council will support my clients' submission and direct the proponent to modify the DA plans, as outlined above. My clients ask Council Officers to inspect the development site from my clients' property so that Council can fully assess the DA.

It is requested that Council inform both myself, and my clients directly, of any amended plans, updates or Panel meeting dates. My clients request that they present to the Panel, should the DA proceed to the LPP.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, my clients' ask Council to REFUSE this DA.

Yours faithfully,

Bill Tulloch

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