
From: [REDACTED]
Sent: 4/06/2025 3:58:40 PM
To: Council Northernbeaches Mailbox
Cc: Jane Neale
Subject: TRIMMED: RE: DA 2025/0433 ADDRESS: 24 NORMA ROAD, PALM BEACH WRITTEN SUBMISSION: LETTER OF OBJECTION SUBMISSION: TULLOCH
Attachments: 24 NORMA WS 2025.pdf;

Kind regards,

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

SUBMISSION

a written submission by way of objection

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

prepared for

JANE NEALE, 26 NORMA ROAD, PALM BEACH

3 JUNE 2025

CEO
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RE: DA 2025/0433
ADDRESS: 24 NORMA ROAD, PALM BEACH
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 to prepare an objection to this DA.

I have critically reviewed 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.

This submission identifies a range of matters to bring to the attention of Council addressing:

- Significant deficiencies in the material submitted with the application to enable Council to make an informed decision in terms of planning control compliance and environmental impact assessment;
- The identification of numerous areas of non-compliance in respect to the LEP and DCP provisions. Many of these areas of non-compliance are the result of excessive built form in terms of overall building height, wall heights and building massing, resulting in the overall building scale being excessive in appearance, and causing direct amenity loss;
- The suitability of the site to accommodate the proposed development.

There is inadequate information provided with the application to enable Council to make a proper assessment of the application. There are a number of matters not properly addressed that are identified in further detail in this submission. Fundamental key matters to highlight include a lack of information to accurately determine:

- Solar Access: solar loss caused by non-compliance
- Privacy Analysis: privacy devices do not stop direct overlooking
- Visual Bulk Analysis from the neighbouring property, non-compliance causing concern;
- Geotechnical with incomplete recommendations, and references to previous Alteration & Addition DA;
- Stormwater: proposed stormwater being discharged on neighbour's title.
- HOB inadequate survey

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, I 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 the neighbouring 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.

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

UNACCEPTABLE OUTCOMES

The proposal fails to achieve acceptable outcomes regarding:

- SOLAR ACCESS
- PRIVACY
- VISUAL BULK AND SCALE
- EARTHWORKS
- STORMWATER

FAILS TO MEET COUNCIL'S PLANNING CONTROLS, THE OBJECTIVES AND THE MERIT ASSESSMENT

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-10.0m v Control 8.5m [18% non-compliance] * Note – No Clause 4.6; 9.2m on eastern elevation; in adequate survey to define extent of levels at lowest level
- EXCEEDS BUILDING ENVELOPE 45deg PLANE

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

I 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 neighbouring property amenity loss. A compliant building design would reduce the amenity impacts identified.

Reduce the proposed development as follow:

A. REDUCTION OF BUILT FORM

1. Reduce the Height of Building to LEP standards, by benching the proposal into the hillside so that the proposal does not exceed 8.5m HOB – no survey provided at lowest level to identify EGL;
2. Delete all built from within Inclined Plane/Side Boundary Envelope to DCP controls
3. Decrease Excavation, with no excavation or fill in the 1.5m side setback zone, with all retaining walls and piled zones, including a 500mm zone for back wall drainage, to be setback beyond the DCP setback zone. Show adequate width for retaining walls/piling
4. Decrease Storey Heights to 3.1m, as an alternative way to reduce HOB
5. Further reductions of built form to achieve a reasonable outcome in respect to solar access
6. Stormwater: Provide stormwater pipes in an overland drainage easement through to Council drainage lines in the street below, avoiding my client's property.

B. PRIVACY DEVICES

1. All opening and fixed windows facing the neighbouring property to have windows sills increased to a minimum height of 1.7m measured from the internal floor FFL level, or are to be fitted with translucent/obscure/frosted glazing to a height of not less than 1.7m measured from the internal floor FFL level, and fixed louvred privacy screens over all openings;
2. The edge of all balconies facing neighbouring property shall have 1.7m high fixed louvred privacy screens;
3. Fixed louvred privacy screens shall be fixed and angled at a 20-degree acute angle to the angle of the proposed development. All privacy screens are to have fixed louvre blades with a maximum spacing of 25mm, and shall be constructed of materials and colours that complement the finishes and character of the building.

SITE IS NOT SUITABLE

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.

NOT IN THE PUBLIC INTEREST

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.

CLAUSE 4.6 WRITTEN REQUEST: INSUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

The Applicant has not provided a Clause 4.6 written request to adequately demonstrate that the proposal achieves the relevant objectives of the development standards. I contend there are insufficient environmental planning grounds to justify the extent of the proposed variations sought. The variations would result in undue visual bulk that would be inconsistent with the desired future character of the locality.

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.

COMPLY WITH THE PLANNING REGIME

A compliant building design would reduce the amenity impacts identified.

I agree with *Roseth SC in NSWLEC Pafburn v North Sydney Council*:

"People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime."

The '*legitimate expectation*' that neighbours, was for a development that would not result in very poor amenity outcomes caused directly from the non-compliance to building envelope controls.

Neighbours wish to emphasise the fact that they take no pleasure in objecting to their neighbour's DA.

The proposed DA has a deleterious impact on the amenity of their property caused by the DA being non-compliant to controls.

Council and NSWLEC Commissioners regularly concede that development standards and building envelopes provide for maximums and that there is no entitlement to achieve those maximums.

It does seem unreasonable that the Applicants wish to remove the neighbouring properties amenity to improve their own, and is proposing non-compliant outcomes that would seriously adversely affect neighbouring property amenity.

The LEP does not include floor space ratio standards to control building bulk and scale in this residential area. Managing building bulk and scale relies on the application of controls relating to landscaped area, building height and building setbacks and building envelopes. Council will note that the proposed development is attempting to present a reasonably compliant built form to height controls and envelope controls, whilst proposing a considerable non-compliant outcome in respect to the Landscape Area control.

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.

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, I ask Council to inform neighbours immediately by email of those amended plans, so that neighbours can inspect those drawings on the Council website.

DETAILED LIST OF CONDITIONS OF CONSENT

Section D of this submission titled '*Detailed List of Conditions of Consent*', addresses the conditions that I seek to any consent.

REASONS FOR REFUSAL

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

C. 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.

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.

ZONE C4 ENVIRONMENTAL LIVING

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.

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. 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.

I 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 the planning controls are 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.

5. NON-COMPLIANCE WITH SEPP (RESILIENCE AND HAZARDS) 2021

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 2.11 (c) of State Environmental Planning Policy (Resilience and Hazards) 2021.

The proposed development is considered to be inconsistent with the surrounding coastal and built environment, in relation to the bulk, scale and size of the proposal. The scale overly dominates the coastal environment, in a highly visually prominent area.

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. 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 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 of 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 in the 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.

Height of buildings is to be calculated from the *existing ground level* not an extrapolated natural ground level.

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

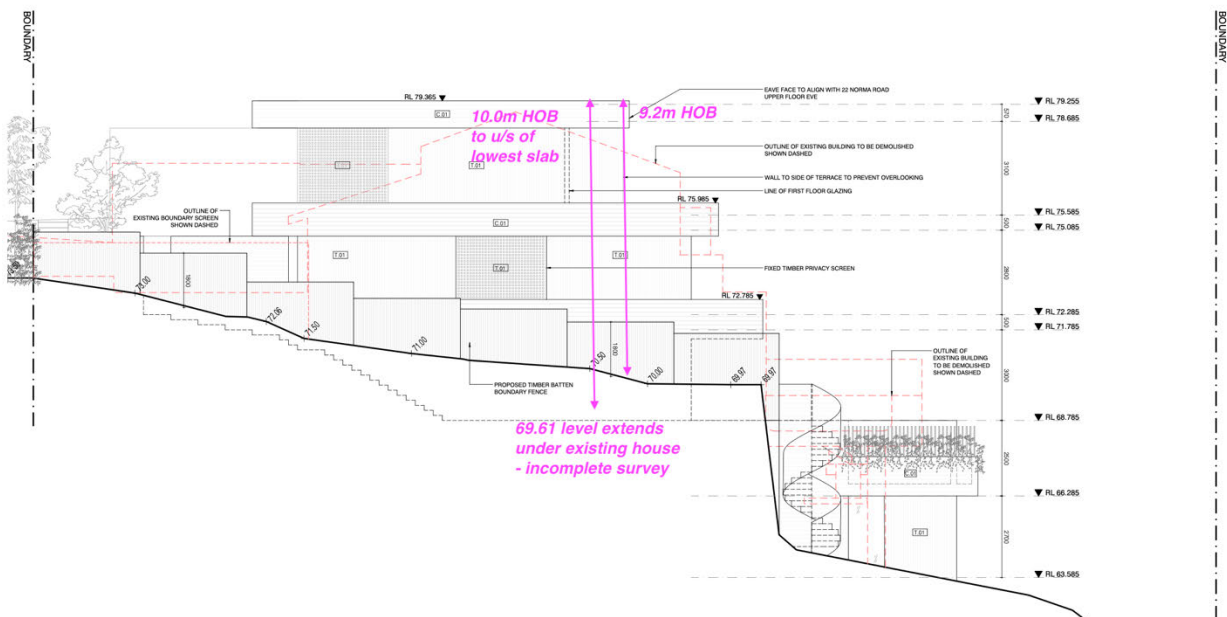
I contend that *ground level (existing)* on the subject site has not been assessed correctly.

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

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

I bring to Council's attention the following issues.

- o EXCESSIVE BUILDING HEIGHT [HOB]: Proposed 9.2m-10.0m v Control 8.5m [18% non-compliance] * Note – No Clause 4.6, no adequate survey to define extent of levels at lowest level



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 overall height control, I have considered the Applicant's Clause 4.6 and I consider that, in this instance, they have not been able to establish an argument to support their assertion that it is unreasonable and unnecessary to comply with the control. I submit that the submission fails on the basis of the assessment against the objectives of clause 4.3, as well as the environmental planning grounds set out. Additionally, I consider that the development does not comply with the land use objectives. 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.

I have reviewed the responses to these objectives in the Applicant's Clause 4.6 and do not consider they satisfy the objectives. I 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. I 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. INSUFFICIENT SETBACKS

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

- EXCEEDS BUILDING ENVELOPE 45deg PLANE

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 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.

The design fails to comply with the building envelope measured at the side boundary. The DCP requires that development be provided within this envelope to ensure reasonable amenity is maintained for neighbours. A significant proportion of the upper level of the proposed development falls outside this building envelope. Together with the breach of the height limit, the Building Envelope breach will result in view loss, excessive bulk and scale, and significant visual impact. I note that the control considered that some flexibility in applying this control should be provided on land where the building footprint has a steeper slope. This site cannot meet the criteria for this variation. In addition, I note that any constraint of topography is ultimately overcome by the proposal given the significant cut of the land form proposed. Under these circumstances, it would be contrary to the policy and inherently unreasonable to allow such a departure from the control.

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 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.

11. FORESHORE SCENIC PROTECTION

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it is inconsistent with the provisions of Foreshore Scenic Protection Area, as the built form and scale of the proposed development exceeds the expected form of new development in the foreshore scenic protection area.

The proposal does not achieve the normal outcomes expected to achieve the desired future character of the locality, and maintaining bushland or landscape as the predominant feature with the built form being the secondary component of the visual catchment. The proposal does not achieve the normal control that development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

The proposal detrimentally affects the visual or aesthetic amenity of land in the foreshore scenic area. The proposal similarly affects the views of that land, including ridgelines, tree lines and other natural features viewed from the water foreshore and adjacent public open space.

12. EXCESSIVE SWIMMING POOL ENVELOPE

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the height, setback, and envelope of the swimming pool is unacceptable.

The proposal is inconsistent with the objectives of the DCP.

I am concerned that the proposed swimming pool:

- The Pool has excessive height above GLE
- The Pool has inadequate separation to the side boundary
- The Pool has inadequate privacy devices deployed
- The Pool Plant is positioned too close to the neighbour's boundary – it must be positioned towards the centre of the subject site
- The Pool Plant has not been identified to being in an acoustic enclosure, that is essential to maintain maximum noise level associated with the pool filter plant

and other pool plant not to exceed 5dB[A] above ambient background level when measured from any adjoining premises including the neighbouring property

- External mechanical plant systems (for pools, air conditioning and the like) must be acoustically enclosed and located centrally and away from neighbours living areas of neighbouring properties and side and rear boundaries.

13. 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 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 the neighbour's property and the private open space of the neighbour's 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."

I 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. I 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 22.5° 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 principle 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.

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

14. 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 the neighbour's 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 the neighbour's 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 the neighbour's 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. I ask Council to consider the most appropriate privacy screening measures to be imposed on windows and decks facing the neighbour's 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 the neighbour's 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.

15. IMPACTS UPON ADJOINING PROPERTIES: ENGINEERING

EXCESSIVE EXCAVATION & 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.

- Geotechnical Report has incomplete recommendations, and references to previous Alteration & Addition DA, confusing the recommendations

AMENDMENTS TO DA DRAWINGS

The DA drawings do not show in plan and section adequate widths for the piling that is required. Engineering advice must be sort to ensure that the architectural drawings allow sufficient zones in plan and section for the piling requirements.

FAILURE TO RELATE TO SUBMITTED DA DRAWINGS

The Geotechnical Report refers to earlier revisions to the DA drawings, and therefore does not relate to the submitted DA plans. References are made to the earlier DA, and not this DA.

INADEQUATE RECOMMENDATIONS

The Geotechnical Report has not provided adequate recommendations to protect the neighbouring property from potential land slip and damage to the neighbour's property. The Geotechnical report requires further recommendations on the following matters:

- INCOMPLETE INTRUSIVE GEOTECHNICAL INVESTIGATIONS
The Geotechnical Report is limited by the preliminary intent of the study and the fact that no intrusive investigation has been undertaken at this stage. There is no certainty to the geotechnical model and groundwater model.
- INCOMPLETE GEOTECHNICAL RECOMMENDATIONS
The Geotechnical Report contains insufficient recommendations, relating to the excavation techniques, forms of retaining walls, and methods to reduce the risks.

- INCOMPLETE GEOTECHNICAL MONITOR PLAN
The Geotechnical Report does not include any detailed recommendations on a monitoring plan;
- LACK OF FULL-TIME MONITORING OF THE VIBRATION
The Geotechnical Report does not include any recommendations on monitoring of the vibration limits for my clients older dwelling;
- INCOMPLETE DILAPIDATION REPORT RECOMMENDATIONS
The Geotechnical Report does not include any adequate recommendations on dilapidation
- INCOMPLETE ATTENUATION METHODS OF EXCAVATION,
The Geotechnical Report does not include any recommendations on attenuation methods to reduce the risks such as rock sawing along perimeters with double attenuation cuts. To reduce the effects of vibration from hydraulic rock hammers, the work method should allow for: Rock sawing around the perimeter of the excavations; Use of rock hammers in short bursts to prevent generation of resonant frequencies; and Changing equipment or size of hammers if the vibration trial indicates that the vibrations are potentially damaging or disturbing.
- EXCLUSION OF EXCAVATION IN THE SETBACK ZONE,
The Geotechnical Report does not include any recommendations on excavating in the side setback zones
- EXCLUSION OF ANCHORS UNDER MY CLIENTS' PROPERTY,
The Geotechnical Report does not include any recommendations on excluding ground anchors under the neighbouring property
- INCOMPLETE CONSIDERATION OF BATTERING IN THE SETBACK ZONE.
The Geotechnical Report does not include any recommendations in respect to battering, considering the minimum side setback to excavation and the depth of excavation along the boundary
- INADEQUATE GROUNDWATER CONSIDERATION
The Geotechnical Report does not include any recommendations on groundwater
- 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.
The Geotechnical Report does not restrict piling to a given type.

I 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.

The Geotechnical Report is considered to be incomplete, and refers to the earlier withdrawn DA.

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.

I ask Council to consider the stormwater design and the OSD.

My client objects to the proposed stormwater being discharged on her title.

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

Due to the steepness of the slope, and the overland stormwater concerns, a cut off drain be installed across the upper reaches of the site to catch surface flows from the slope above. A suitable location for this cut off drain would be near the uphill side of the proposed new house. The captured flows from this drain should be piped to the street. As current modelling indicates weather conditions on the East Coast will become more extreme into the future all drains, pits and associated plumbing are to be oversized and designed to cope with extreme prolonged rainfall events. The drain is to be the first thing constructed on the site as part of the development and is to be designed by a stormwater or civil engineer in consultation with the geotechnical consultant.

I am 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 the neighbouring property.

I request that the onsite stormwater system is increased with large pits, cut off drains 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 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.

- I am 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.

I 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 the neighbour's 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 the neighbour's property will have no increase in PMF levels and PMF peak velocity on neighbouring properties.

16. 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.

D. 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

Not submitted.

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 the neighbour's property to assess the visual bulk assessment from the proposed non-compliant envelope.

Insufficient information has been provided to determine the visual impact of the development from the rear yards of the neighbours' properties with particular regards to the non-compliant elements

TREE MAPPING

The Applicant has not provided adequate tree root mapping by non-destructive measures, on the TPZ of the retained trees on the subject site, nor neighbour's existing trees where the neighbour's trees TPZ extends under the proposed development. The location and distribution of the roots must be demonstrated in accordance with the AS, and consideration that the trees will survive the development. This has not been provided.

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

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.

GEOTECHNICAL

Insufficient information has been provided regarding the proposed levels of earthworks (cut and fill) to all boundaries.

Insufficient information has been provided regarding the retaining walls associated with the proposed earthworks.

The Applicant has not provided adequate protection to the neighbour's property from excessive excavation and potential land slip and damage to the neighbour's 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 the neighbour's property, and incomplete consideration of battering in the setback zone. The geotechnical requirements referred to earlier must be added to the Geotechnical Report. I 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.

FLOOD & STORMWATER

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

E. DETAILED LIST OF CONDITIONS OF CONSENT

CONDITIONS OF ANY CONSENT

Deferred Commencement Conditions:

1. Complete all amendments as identified within '*Request For Amended Plans To Be Submitted To Better Address Impacts Upon Adjoining Properties*' within Executive Summary, including reductions in built form, additional privacy devices, and improved landscaping
2. Complete all amendments to achieve a reasonable solar access outcome;
3. Complete all amendments to achieve a reasonable privacy outcome;
4. Complete all amendments to achieve engineering outcomes, with all conditions noted within *Impacts Upon Adjoining Properties: Engineering* to be included in Engineering Reports, or made conditions of consent.

The neighbouring properties asks for a complete set of Conditions to be included within any consent, to those Conditions outlined within Appendix A, B & C.

F. REASONS FOR REFUSAL

I 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 Planning
 - o Stormwater
 - o Earthworks
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 Solar Access
 - o Visual Bulk
 - o Visual Privacy
 - o Acoustic Privacy
 - o Heights
 - o Setbacks
 - o Inclined Planes
 - o Visual intrusion,
 - o Resident and neighbour amenity
 - o Visual character of the site and locality
 - o Topography
 - o Site planning controls,
 - o Deep soil permeable surfaces
 - o Landscape
 - o Geotechnical
 - o Stormwater
 - o Flood
 - o Access & Parking
 - o Site Works Management
 - o Swimming Pool

- o Scenic Protection

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 considered to result in adverse environmental impacts on the built environment pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.
6. The proposal has not demonstrated that the site is suitable for the development pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
7. The proposal is not considered suitable for the site in its current form pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
8. The proposal is not considered to be in 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.

G. CONCLUSION

The proposed development 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 the neighbour's 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 the neighbour's property, and in terms of amenity, there is excessive sunlight, view or privacy loss. The loss is unreasonable. Neighbours' 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 development is incompatible with the existing streetscape and development in the local area generally.
- The proposed development 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 the neighbour's property. Primarily,

- The development compromises amenity impacts on neighbours
- 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:

- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the DCP
- Inconsistent with the objectives of the relevant EPIs
- 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.

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

It is requested that Council inform us, of any amended plans, updates or Panel meeting dates.

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

Yours faithfully,

Bill Tulloch

Bill Tulloch BSc [Arch] BArch [Hons1] UNSW RIBA Assoc RAIA
Director
DA Objection Pty Ltd
PO Box 440 Mona Vale NSW 1660

APPENDIX A

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
- 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
- Noise Control - Swimming pool/spa pool pumps and associated equipment [if consented]
- Swimming and Spa Pools – Backwash [if consented]
- Swimming and Spa Pools – Child Resistant Barriers [if consented]

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

- AC Units be to located away from the neighbouring property.
- All Solar Panels and PV systems are to be treated with antireflective glass. Solar glass is to be stippled and light-trapping, with photon-absorbent solar cell attached to the rear side. Angle of reflectivity to neighbours must be considered within final detailed design at construction certificate stage, considering the view from neighbours to the subject site.
- Adjoining Buildings Founded on Loose Foundation Materials
- Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principle 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 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/ hydrological 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
- Sites in the vicinity of a heritage item. A protection strategy for the duration of the construction works, is to be submitted to and approved by Council's Area Planning Manager prior to the issue of any Construction Certificate. The Strategy is to detail how the proposed works will ensure that the adjoining dwellings are to be suitably protected and stabilized during the construction process including from any construction waste, dust, damp, water runoff, vibration or structural disturbance or damage.
- Demolition, excavation and construction noise and vibration management plan. A site-specific noise management plan must be submitted to the council for comment and approval prior to issue of any construction certificate.

- Landscape of the site. a landscape design documentation package and technical specification for construction by a registered landscape architect, must be submitted to and approved by council's area coordinator planning assessments / area planning manager prior to the issue of a construction certificate.
- Reflectivity. Prior to issue of the Construction Certificate the Registered Certifier must ensure that the visible light reflectivity from building materials used on the facade of the building does not exceed 20%.
- Notification of excavation works or use of high noise emission appliances/plant. The immediately adjoining neighbours must be given a minimum of 48 hours' notice that excavation, shoring or underpinning works or use of high noise emission appliances / plant are about to commence.

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
- Survey. All footings, walls and floor slabs adjacent to a boundary must be set out by a registered surveyor. On commencement of brickwork or wall construction a survey and report, prepared by a Registered Surveyor, must be submitted to the Principal Certifier indicating the position of external walls in relation to the boundaries of the allotment. Any encroachments by the subject building over adjoining boundaries or roads must be removed prior to continuation of building construction work. Reason To ensure the development does not encroach onto neighbouring properties.
- 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 Miscellaneous Works,
- Compliance with Geotechnical / Hydrogeological Monitoring Program
- 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)

- Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification that the height of the building accords with the consent, to the satisfaction of the Principal Certifier. Reason: To ensure the constructed development complies with the approved height.
- 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
- Swimming and Spa Pools – Permanent Child Resistant Barriers and other Matters [if consented]
- Swimming Pool Fencing [if consented]

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)
- Compliance with the acoustic report prior to construction and or occupation certificates

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 [if consented]
- Swimming and Spa Pools – Maintenance [if consented]

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
- Recycling of Demolition and Building Material
- Release of Security
- Roads Act 1993 Application
- SafeWork NSW Requirements
- Workcover requirements

APPENDIX B

Prior to issuing the construction certificate a Construction Methodology Report (CMR) must be prepared and submitted for the review and approval of the Council

Prior to issuing the construction certificate a Construction Methodology Report (CMR) must be prepared and submitted for the review and approval of the Council

- i. The CMR must be prepared or reviewed by a senior Geotechnical Engineer/Engineering Geologist and Structural Engineer (CP Eng or equivalent and with at least 10 years relevant experience).
 - ii. The CMR must include a review of, but not be limited to, the full detailed design including the temporary and permanent excavation, shoring support systems, dewatering (if applicable), footing design, earthworks, drainage, pavements and any other relevant items.
 - iii. The CMR must include a review of the geotechnical report and advise on the need of any further assessment work such as additional geotechnical investigation, groundwater monitoring, further assessment of the stability of the slope or cliff line. The CMR must be followed in its entirety unless otherwise agreed by the authors of the CMR (or their organisation).
 - iv. The CMR must include the methodology to be adopted in undertaking excavation, measures to reduce vibrations, shoring works and measures to maintain the stability of the neighbouring structures and the slope.
 - v. The CMR must include an appropriate monitoring plan to confirm that ground surface movement on the site boundaries (and beyond) including Wilga Street Reserve and deflections of shoring systems fall within acceptable limits and identify hold points and contingency plans for any exceedances.
 - vi. The CMR must include proposed excavation techniques to be undertaken to reduce vibrations and prepare a Vibration Monitoring Plan which identifies hold points and contingency plans for any exceedances. The vibration monitoring must ensure that the peak vibration velocity (V_i , max) or Maximum Peak Particle Velocity falls within 'safe' limits as defined in the German Standard DIN 4150-3, dated 2016: Structural vibration – Part 3: Effects of vibration on structures.
 - vii. The CMR must include a statement confirming that the proposed development is suitable for the site and will maintain the stability of the site, any slopes or cliff lines and the neighbouring buildings and structures.
 - viii. The CMR must be submitted to the Principle Certifying Authority and Council for review and approval. The approved CMR is to be submitted to Council's Infrastructure Services Department for records.
- (d) Where groundwater is encountered and dewatering is expected to be required, prior to issuing the construction certificate a hydrogeological investigation must be carried out that includes a minimum of three wells to be installed for future groundwater monitoring purposes in accordance with the NSW Department of Planning, Industry and Environments (DPIE) document: 'Minimum Requirements for Building Site Groundwater Investigations and Reporting', dated October 2022 (or the current revised version).

(e) The groundwater investigation, monitoring, inflow (seepage) analysis and reporting must be in accordance with the NSW Department of Planning, Industry and Environments document, Titled 'Minimum Requirements for Building Site Groundwater Investigations and Reporting', dated October 2022, or the most recent version. Groundwater level monitoring must be carried out for a minimum of three months as required by DPIE/WaterNSW requirements.

(f) In accordance with DPIE/WaterNSW requirements, where the seepage analysis demonstrates a seepage volume of less than 3ML/year then only a Water Supply Works approval must be obtained, unless otherwise directed by DPIE/WaterNSW. Where the seepage analysis demonstrates a seepage volume in excess of 3ML/year then a Water Access Licence (WAL) will also need to be obtained from WaterNSW. This is likely to require the purchase of 'water shares' in accordance with DPIE/WaterNSW requirements.

(g) Prior to the issue of any Construction Certificate, if required based on items d and e, an application pursuant to the Water Management Act 2000 shall be made with WaterNSW to obtain Water Supply Works (WSW) approval. A copy of the aforementioned approval must be submitted to Waverley Council or details confirming (by WaterNSW) why a WSW is not required.

(h) During the bulk excavation stages, a qualified supervising engineer will be required to be present on site from time to time. A daily log is to be kept on site and submitted to the Principle Certifying Authority (PCA).

(i) Inspections of any unsupported vertical excavations into bedrock are required by a qualified geotechnical engineer/engineering geologist (tertiary qualified with at least 5 years relevant experience) and must be completed in accordance with the Monitoring Program detailed in the CMR. Inspections must be completed or reviewed by a qualified geotechnical engineer/engineering geologist (as defined in 'g' above) during shoring works to confirm socket requirements below the bulk excavation level have been achieved for the shoring and during the excavation/drilling of high level footings/pile footings to confirm that the foundation materials are in accordance with the requirements of the structural drawings and/or geotechnical report, as applicable.

Conditions of consent to cover the following matters:

DILAPIDATION REPORT – COUNCIL ASSETS

To assist with an assessment of claims for the refund of the security deposit over Council's property, a dilapidation report must be submitted to Council. The report must document and provide photographs and defect descriptions that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, street trees, street signs or any other Council assets in the vicinity of the development. The defect descriptions must describe the location, length, width shape etc of the defect. Any damage not shown in this report will be taken to have been caused as a result of the site works undertaken, unless an alternative cause can be identified. Any damage must either be rectified at the Applicant's expense or deducted from the security deposit. The Dilapidation Report must be carried out prior to the issue of the Construction Certificate. The Dilapidation Reports are to be prepared by a suitably Qualified Chartered (CPEng) Professional Civil, Structural or Geotechnical Engineer who is registered on the National Engineers Register (NER). A PDF copy of this Report must be submitted to Council as a record.

DILAPIDATION REPORT – PRIVATE ASSETS

Dilapidation Reports are to be undertaken on all the adjoining properties, and all properties within 10m of the subject site boundary. The report shall document and provide photographs and defect descriptions that clearly depict any existing damage. The defect descriptions shall describe the location, length, width, shape etc of the defect. Any damage not shown in these reports will be taken to have been caused as a result of the site works undertaken, unless an alternative cause can be identified. The Dilapidation Reports shall be carried out prior to the issue of the Construction Certificate. The Dilapidation Reports are to be prepared by a suitably Qualified Chartered (CPEng) Professional

Civil, Structural or Geotechnical Engineer who is registered on the National Engineers Register (NER). A copy of the relevant reports shall be submitted to the owners of all properties inspected and to Council as a record. Where two documented attempts have been made to gain access to a property and the owner has failed to respond, this is considered to represent refusal of access by the owner. If an owner refuses access, or is deemed to refuse access for the purposes of this condition, this condition is deemed to be satisfied in respect of that property. Condition reason: Protection of adjoining properties.

VIBRATION LIMIT THRESHOLD

The vibration limit threshold for older dwellings greater than 50yo and heritage items is to be 3mm/s Peak Particle Velocity unless alternative thresholds can be demonstrated following completion of dilapidation reports and assessment of vibration analysis. The vibration limit threshold for all other residential dwellings around the remainder of the site shall be 5mm/s Peak Particle Velocity.

SUPPORT AND PROTECTION FOR ADJOINING BUILDINGS

If an excavation associated with the approved development extends below the level of the base of the footings of a building on an adjoining allotment of land, the person having the benefit of the development consent shall, at the person's own expense, comply with the requirements of clause 74 of the Environmental Planning and Assessment Regulation 2021, articulated at Condition 4(e). Details shall be submitted to the Certifier prior to the issue of a Construction Certificate.

NUMERICAL ANALYSIS OF PROPOSED RETENTION SYSTEM

Following completion of dilapidation surveys and the Builder's Work Method Statement, if the dilapidation surveys reveal any pre-existing conditions in the adjoining buildings which are likely to be adversely impacted by predicted movements, or the Builder's work methodology assessed is different from methodologies assessed in the geotechnical reports, the numerical analysis and associated documentation must be reviewed and updated, if required. The review and any further analysis must be completed by a suitably Qualified Chartered (CPEng) Professional Structural or Geotechnical Engineer who is registered on the National Engineers Register (NER). The results of the analysis must be presented in a report and must assess the potential impact of the proposed development on adjoining structures and demonstrate the suitability of the proposed retention system and construction sequencing.

The numerical analysis and report must be carried out prior to the issue of the Construction Certificate. Condition reason: To confirm the design intent remains valid for protection of adjoining structures.

GEOTECHNICAL MONITORING AND CONTINGENCY PROGRAM

Following completion of dilapidation surveys and the Builder's Work Method Statement, if the dilapidation surveys reveal any pre-existing conditions in the adjoining buildings which are likely to be adversely impacted by predicted movements, or the Builder's work methodology assessed is different from methodologies assessed in the geotechnical reports, the Geotechnical Monitoring and Contingency Plan and associated documentation must be reviewed and updated, if required. The review and updating of the Geotechnical Monitoring and Construction Plan must be prepared by a suitably Qualified Chartered (CPEng) Professional Geotechnical Engineer who is registered on the National Engineers Register (NER). The results of the review must be presented in an updated report and take account of dilapidation survey and the Builders Work Method Statement. The review of the Geotechnical Monitoring and Construction Plan must be carried out prior to the issue of the Construction Certificate.

The Geotechnical Monitoring & Contingency Plan, must include full details relating to: 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.

The Implementation Plan, must include full details relating to: 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 the neighbouring properties 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.

RETENTION AND EXCAVATION METHODOLOGY

A retention and excavation methodology shall be prepared to clearly define the proposed retention and excavation techniques that will be adopted during construction. This methodology shall be prepared by the builder in conjunction with the retention and excavation contractors and shall clearly specify the proposed staging of the works and the equipment proposed to be used. This methodology shall also incorporate the requirements of the Geotechnical Monitoring and Construction Plan. The preparation of the monitoring program shall be carried out prior to the issue of the Construction Certificate. This is to confirm that the design sequencing will be adopted during construction and to manage the constructability risks associated with the construction of the retention system and the completion of excavation.

REQUIREMENT TO NOTIFY ABOUT NEW ACID SULFATE SOILS EVIDENCE

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifier and a report be obtained from a suitably qualified person. Any recommendations provided by the report are to be complied with during works. Reason: To protect the environment.

CONDITIONS WHICH MUST BE SATISFIED DURING ANY DEVELOPMENT WORK

Compliance with Geotechnical Monitoring and Contingency Plan
The Geotechnical Monitoring and Contingency Plan must be complied with during construction. Amendment of the program may be made where agreed to by the author and documented by the author. If amendment is required, a copy of the amendments to the Geotechnical Monitoring and Contingency Plan shall be submitted to Council. Condition reason: To confirm that construction requirements are being met.

REVIEW OF EXCAVATION AND RETENTION METHODOLOGY

The excavation and retention methodology shall be reviewed by a suitably Qualified Chartered (CPEng) Professional Geotechnical Engineer who is registered on the National Engineers Register (NER). The review and approval of the retention and excavation methodology shall be carried out prior to the issue of the Construction Certificate. Condition reason: To confirm that the design sequencing will be adopted during construction and to manage the constructability risks associated with the construction of the retention system and the completion of excavation.

GEOTECHNICAL REPORT RECOMMENDATIONS HAVE BEEN INCORPORATED INTO DESIGNS AND STRUCTURAL PLANS

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. A detailed construction methodology for the retention of the southern boundary is to be included in the structural drawings. Prior to issue of the Construction Certificate, All Council Forms is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principle Certifying Authority prior to the issue of the Construction Certificate. Reason: To ensure geotechnical risk is mitigated appropriately.

COMPLIANCE WITH GEOTECHNICAL METHODOLOGY REPORT

The Geotechnical Methodology Report must be complied with during construction. Amendment of the program may be made where agreed to by the author and documented by the author. If amendment is required, a copy of the amendments to the Geotechnical Methodology Report shall be submitted to Council (for approval prior to the works for which the amendment is proposed). Condition reason: To confirm that construction requirements are being met.

REVIEW OF EXCAVATION AND RETENTION METHODOLOGY

The excavation and retention methodology shall be reviewed by a suitably Qualified Chartered (CPEng) Professional Geotechnical Engineer who is registered on the National Engineers Register (NER). The review and approval of the retention and excavation methodology shall be carried out prior to the issue of the Construction Certificate. Condition reason: To confirm that the design sequencing will be adopted during construction and to manage the constructability risks associated with the construction of the retention system and the completion of excavation.

GEOTECHNICAL REPORT RECOMMENDATIONS HAVE BEEN INCORPORATED INTO DESIGNS AND STRUCTURAL PLANS

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Reports are to be incorporated into the construction plans. A detailed construction methodology for the retention of all boundaries and excavations is to be included in the structural drawings. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principle Certifying Authority prior to the issue of the Construction Certificate. Reason: To ensure geotechnical risk is mitigated appropriately.

STRUCTURAL ADEQUACY AND EXCAVATION WORK

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer (Qualified Chartered (CPEng) Professional Structural Engineer who is registered on the National Engineers Register (NER). Details demonstrating compliance are to be submitted to the Principle Certifying Authority prior to the issue of the Construction Certificate. Reason: To provide public and private safety.

TANKING OF BASEMENT LEVEL

The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer to the Certifier. Where temporary dewatering works are required on the development site during construction, the developer/Applicant must apply for and obtain a bore license from the NSW Office of Environment and Heritage, unless an alternate method for temporary dewatering works is proposed that does not require

a bore license. Any bore license required to be obtained must be obtained prior to commencement of dewatering works. All requirements of Water NSW are to be complied with and a copy of the approval must be submitted to the Certifier. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate. Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

COMPLIANCE WITH MONITORING PROGRAM

The monitoring program prepared shall be complied with during construction. Amendments of the program may be made where agreed and documented by the author. Condition reason: To confirm that construction requirements are being met.

COMPLIANCE WITH RETENTION AND EXCAVATION METHODOLOGY

The retention and excavation methodology prepared to fulfil Condition 47G Retention and Excavation Methodology shall be complied with during construction. Amendment of the methodology may be made where agreed and documented by a suitably Qualified Chartered (CPEng) Professional Civil, Structural or Geotechnical Engineer who is registered on the National Engineers Register (NER). Condition reason: To confirm that the methodology is being followed.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

HAZARDOUS BUILDING MATERIALS SURVEY

A clearance inspection and certificate are to be provided following the site building demolition and removal of all asbestos impacted fill

APPENDIX C

Demolition Traffic Management Plan

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.

Construction Traffic Management Plan

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 work 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 rates 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”.

Implementation of Construction Traffic Management Plan

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.

