
From: Luke
Sent: 9/06/2023 1:40:27 PM
To: Council Northernbeaches Mailbox
Subject: Objection submission for development application DA2023/0617
Attachments: Objection to Development Proposal DA2023 0617 (2).pdf;

Hi,

Please find attached an objection submission for development application DA2023/0617 (22/24 Angle Street, Balgowlah).

My details for the submission are as follows:

Mr Luke Westlake

6/20 Angle Street, Balgowlah, NSW, 2093



Any questions or issues with the document format please let me know,

Thank you

Luke W

To the appointed Northern Beaches Council Planning Officer, Maxwell Duncan,

I, Luke Westlake, resident of 6/20 Angle Street, object to this development proposal (DA2023/0617 - 22 & 24 Angle Street). This submission details the grounds on which I object under Manly LEP 2013 and Manly DCP 2013.

Objection Contents

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Summary

From a personal view, I believe that this non-compliant development represents an opportunistic undertaking to; create poor quality, cramped and dark housing, unsuitable for the needs of the community; develop in a way impacts on the privacy and well being of residents (both new & existing), fails to integrate with the streetscape and increases flooding risks; and creates a significant public safety hazard through poor access. I also believe that the applicant has been highly selective in their use of photographs and case law in an attempt to classify planning controls as unreasonable in their case under LEP clause 4.6, and I believe their submissions fail to cover all of the non-compliant areas and also fail to show that the development controls are unreasonable.

I have compiled this submission vs. Manly LEP 2013 (LEP) and Manly DCP 2013 (DCP), noting clause 1.3 of Manly DCP 2013 states that both should be read in conjunction. In the event of inconsistency, Manly LEP 2013 applies, but more restrictive controls (with regards to particular circumstances or constraints) under Manly DCP 2013 should not be considered an inconsistency. As this development is 3 stories high (when viewed from 3 of 4 elevations), the NSW Apartment Design Guide should also apply. The extent of the proposed development's non-compliance is significant, across multiple planning controls and ranging from small deviations to major. I submit that the development is non-compliant against the following controls:

- Manly LEP 2013:
 - 4.3 - maximum height is 8.5m. Actual is 9.2m, deviation is +8%. If allowance is made for the "excavation" referenced by the proposal, other sections of the building still reach 8.8m & 8.9m from the south elevation
 - 4.4 - floor space ratio is 0.95:1. Actual is 0.5:1, deviation is +90%
- Manly DCP 2013:
 - 4.1.1.1 - minimum residential density is 300 sqm. Actual is 102 sqm, deviation is -66%
 - 4.1.2 - height as per above LEP
 - 4.1.2.1 - wall heights deviate at various points from control

- 4.1.2.2 - development is 3 stories as viewed from 3 elevations. Actual is 2 stories.
- 4.1.2.3 - roof height, parapets deviate from controls.
- 4.1.3 - floor space ratio as per above LEP
- 4.1.4.2 - side setbacks are less than $\frac{1}{3}$ wall height in multiple locations. Balconies extend into setbacks where there are significant privacy concerns.
- 4.1.4.4 - Rear setback is 3.4m. Actual is 9m, deviation is -62%
- 4.1.5.1 - total open space is 40%. Actual is 55%, deviation is -27%
- 4.1.6.4 - d) the proposed road access does not adequately separate pedestrians from vehicles, c) the proposed road access has inadequate vision given the nature of the access, a) vehicles are highly likely to need to reverse and therefore will not always enter and exit in a forward direction
- NSW Apartment Design Guide
 - Objective 3F-1 states that properties up to 12m in height should maintain 6m of separation from habitable rooms and balconies and 3m from non-habitable rooms. The proposed design's minimum is 3.5m & 5.1m to 72A+B West Street's living room from ground and 1st floor balconies respectively and 2.37m to 72A+B West Street's stairwell from the ground floor balcony.

(NB. where possible, I have calculated heights and distances from the plan diagrams and rounded to 2 or 3 significant figures. All other measurements have been taken from the applicant's proposal)

For non-compliance against clauses 4.3 (LEP), 4.4 (LEP), 4.1.2 (DCP) & 4.1.3 (DCP) the applicant has submitted rationale for why this development should be excepted from these standards under clause 4.6 (LEP). This rationale does not demonstrate that the "objectives of the development standard are achieved notwithstanding noncompliance with the development standard". The applicant has not submitted any justification for major deviations from controls/clauses 4.1.1.1 (DCP), 4.1.4 (DCP), 4.1.5 (DCP), 4.1.6.4 (DCP) or the deviation from objective 3F-1 of the NSW Apartment Design Guide. Therefore this development application should be summarily rejected.

Summary of Additional Concerns

I have a number of additional concerns where there is either insufficient information in the submission to evaluate compliance or I have insufficient specialist knowledge to assess:

- I believe there may be a significantly negative impact on stormwater management and nearby properties have had stormwater issues recently (3.7 DCP). In addition, as evidenced by the submission by 72 West Street, appropriate easements for stormwater drains have not been secured.
- I believe there is a reasonable risk to nearby buildings (20 Angle Street, 72A+B West Street) from construction vibrations relating to excavation
- There appears to be poor site access for the necessary construction type, thereby likely to burden neighbours and the general public to a level that outweighs any public benefit of the development. I am concerned that a proposal on site access hasn't been included.
- The arborists report suggests several incursions of >10% into tree protection zones for trees that have been identified for retention, this includes several trees on public property or on neighbour's properties (72 West Street).

Non-Compliance and Clause 4.6 Argument

The applicant has submitted requests for exceptions to clauses 4.3 (LEP), 4.4 (LEP), 4.1.2 (DCP) & 4.1.3 (DCP) and has suggested in the "Statement of Environmental Effect" that non-compliance to 4.1.1.1 (DCP), 4.1.2.1 (DCP), 4.1.2.2 (DCP), 4.1.4.2 (DCP), 4.1.4.4 (DCP) and 4.1.5.1 (DCP) should be accepted on merit. They also have not addressed non-compliance for 4.1.6.4 (DCP) or objective 3F-1 (NSW Apartment Design Guide). I have grouped a number of clauses into a category of "Residential Density".

Access

I believe that the proposed development fails to development control 4.1.6.4 (DCP - Vehicular Access), specifically:

- c) Vision of vehicles entering and leaving the site must not be impaired by structures or landscaping.
- d) Particular attention should be given to separating pedestrian entries and vehicular crossings for safety.

Due to the historical closure of the Sydney Road/Angle Street junction, access to 22 Angle Street has been through a section of paving which is shared between the resident(s) of 22 Angle Street and pedestrians. Angle Street is a relatively high traffic thoroughfare (for a residential street) used for a variety of purposes, including children and adults of all ages frequenting Stocklands (Angle St is a direct route to this shopping centre), reaching local public transport connections (bus stops on Sydney Road) and travelling to School by bicycle (Balgowlah Boys). This shared paving appears to be a compromise between maintaining access to 22 Angle Street, closing the historical junction and creating a public space at the end of Angle Street.

The shared section is approximately 16.5m long and includes sections where traffic and pedestrians travel perpendicularly (entry/exit to property) and in parallel (entry/exit to street). There is currently very limited visibility. In my view, the existing development already fails the development control in that it does not separate pedestrians and vehicles. The proposed development retains this design and does not sufficiently separate a relatively high traffic pedestrian route with an access point that will be used for up to 15 vehicles across 8 units. The proposal suggests that a button/lights system will be used to control traffic into or out of the basement parking, however this would not account for approximately 16m of driveway/shared path outside of the property where vehicles entering and exiting would not have visibility of one another. It is therefore highly likely that vehicles will need to reverse to allow other vehicles out regularly. The probability of vehicles needing to reverse on a public shared path means that this proposed development significantly fails to consider controls 4.1.6.4 a) and d). It would also cause disruption for Angle Street residents in general who need to utilise the turning circle as vehicles would need to regularly reverse and wait in the turning circle. It is also highly likely to create issues with service vehicles and removalists.

Alternatives might exist, such as a re-worked design utilising access from Sydney Road (although this would likely suffer from visibility challenges and traffic disruption), or expanding the paved area to separate pedestrians. For the latter, I would be strongly against this approach as it would mean losing a vital green space area for the street (and would

impact objective 3 for control 4.1.6, regarding minimising the visual impact on the streetscape). In addition, it would not solve traffic issues created by the long single lane section, nor resolve crossing pedestrian walkways in a backwards direction (4.1.6.4 a)).

Regarding vision of vehicles, the south elevation of the proposed development shows ground floor balcony/outdoor areas and a tree line which will restrict visibility of pedestrians entering via the west for vehicles exiting the property. The sight lines indicated on the plans show that a driver would be able to see approximately 5.3m of the path to the west from approximately 3.5m away from the path (from the centre of the driveway), however at this point, the front of a large car, would likely only be 1.5-2m away from the path. This seems like a low level of visibility for a standard apartment block entrance, however in this case the shared pedestrian/car space means that users are encouraged to travel at higher speeds, i.e. children on bicycles accelerating onto the drive from the west to east, or leaving the drive and joining the path east to west, and therefore the visibility appears to be too low. I'm unable to find any guidance in the Manly DCP for this scenario, but I feel that the lower visibility reinforces that this access design is inappropriate (and I think unresolvable). Photos are included showing cyclist traffic.

The applicant also argues that the development will not adversely affect the enjoyment of adjacent public land and describes its presentation to the "unmade extension of Angle Street". This area is a public green space, which is rare in the immediate area and is heavily utilised by neighbours for a variety of purposes, including children playing. There is even an informal annual Angle Street gathering at Christmas and several neighbours are considering requesting a playground be built in this area. Because the proposed development has a driveway shared with a pedestrian pathway through this area, the addition of traffic for 8 units and visitors (15 car spaces) will substantially affect the enjoyment and safety of this area.

Residential Density

Objectives test

The applicant has relied on the 5 part test established by *Wehbe v Pittwater Council* [2007] NSWLEC 827, specifically that the objectives of the development standard are achieved despite noncompliance. This ruling has been tested (with slightly different interpretations) under other case examples, notably *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *Basten JA in Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 which state that any requests need to satisfy the consenting authority that the matters have been demonstrated, namely meeting the objectives of development controls and being in the public interest, and not just seek to demonstrate. The applicant states that through meeting the objectives of the development controls, notwithstanding non-compliance, and by being in the public interest, that they meet the test for clause 4.6 allowing exceptions to development standards and controls (LEP).

The Manly DCP defines streetscape "within a street". The applicant has not provided a complete view of the streetscape character and has included properties that are outside of the street and occupy a different dwelling size and height zoning. Whilst the LEP objective

mentions "streetscape character in the locality" 81,83 and 85 West Street should be excluded from comparison for evaluating these objectives (due to being in an area of 11m height and 150 sqm zoning), in the same way that buildings on the Balgowlah high street would not be included in comparison. The character of Angle Street (photos included) is majority single housing lots, with 2 properties (20 Angle Street & 14-18 Angle Street) containing units and larger in nature. Even with the larger properties, which were constructed many years before the current development controls in LEP/DCP 2013, they are not suitable comparisons to the development as:

- The construction of 14-18 and 20 Angle Street mimics nearby housing with brickwork and sloping roofs, the proposed development does not.
- The proposed development due to its position on the hill and flat roof has windows 1.5-2m higher than 20 Angle Street. The result is that it would significantly increase the perceived height and due to the footprint on the proposed combined lot with minimal setbacks, would also increase the perceived bulk and scale of buildings, especially for residents of West Street (east side).
- Both 14-18 Angle Street and 20 Angle Street maintain sizable vertical space and gaps between buildings, whereas the proposed development does not. For example, 20 Angle Street's buildings only occupy ~32% of the lot.
- 20 Angle Street is substantially less dense, for example the floor space ratio is approximately 0.7 (26% less than the proposed development).
- 14-18 Angle Street and 20 Angle Street's lot size per dwelling is approximately 150 sqm (compared to 102 sq m per dwelling for the proposed development, 47% greater)
- 20 Angle Street provides generous building separations to windows of habitable rooms of neighbouring properties (e.g. 12m, 16m).

For the remainder of the streetscape character, Angle Street is full of single house lots with ample space, front and rear separation and suitable scale.

The combined objectives of the non-compliant clauses that I believe the proposal fails to meet, including those where attempts to justify non-compliance have not been made by the applicant are listed below.

Clause/ Control	Objective	Comments
4.3 (LEP) Height Referenced by 4.1.2 (DCP)	<p>(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,</p> <p>(b) to control the bulk and scale of buildings,</p>	<p>a) The roof form is not consistent with the comparable properties in the streetscape (notably 20 Angle Street & 14-18 Angle Street). Because of this and despite being at a similar elevation to the highest building (20 Angle Street), the window heights will be 1.4m higher than the largest example building in the streetscape</p> <p>b) As a result of this, the development will increase the perceived bulk and scale of buildings (particularly for residents of West Street) and does not fit</p>

		<p>consistently with the character of the street. The applicant has made comments to the contrary but has not adequately demonstrated.</p> <p>In addition, the applicant has compared the profile of the proposed development to the existing buildings on the site. Whilst the existing building at 24 Angle Street is of a similar profile to the proposed development, the building at 22 Angle Street is not. From the east elevation the proposed development is 3m higher than the existing building and extends 4.3m further. This also suggests that the bulk and scale of the development is a significant deviation to the existing streetscape.</p>
4.4 (LEP) Floor space	<p>(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,</p> <p>(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,</p>	<p>a) The proposed development is substantially more bulky than the streetscape average and more so than the largest properties, evidenced by floor space ratio, dwelling size, minimal setbacks and minimal gaps between buildings. It is likely to be perceived as such, especially by the residents of West Street, especially with its "top of hill" positioning.</p> <p>The objectives clearly include the "desired streetscape character" as well as the existing. The desired future streetscape character is determined by the planning controls and by the council's recent actions in applying those controls. The applicant has not presented any evidence to demonstrate that the development fits the desired streetscape character. Applications viewable on the application portal for Angle Street in the last 20 years included addition of a second story, adding a sunroom, relocating a window/door, adding a swimming pool, ground floor extension and carport addition. Combined with the specific development controls, none of these applications indicate that the desired streetscape includes non-compliant, high density development and therefore the proposed development does not meet this objective.</p> <p>c) see comments above</p>
4.1.3 (DCP)	Objective 3) To allow adequate sunlight to penetrate both the	Whilst the applicant has demonstrated that the development will not impact

Floor space	private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.	<p>other properties' access to sunlight (at winter equinox) they have not demonstrated that the residents of the development itself will have suitable access to sunlight.</p> <p>Units G01 & G04 of the new development would likely not receive any or minimal direct sunlight through the year. Unit G01 is predominately south facing and its west facing aspect is affected by neighbouring townhouses as well as overhanging extensions from the 1st floor of the development. Unit G04 is also south facing and its east facing aspect is likely to be shadowed by neighbouring buildings and by the 1st floor balcony.</p> <p>This issue will be exacerbated by the high likelihood that east and west facing windows and doors would need privacy adjustment based on the proximity to neighbouring properties (and sightlines between habitable rooms)</p>
4.1.1 (DCP) Dwelling density	Objective 4) To maintain the character of the locality and streetscape	The proposed development is substantially more bulky than the streetscape average and more so than the largest properties, evidenced by floor space ratio, dwelling size, minimal setbacks and minimal gaps between buildings and therefore would not be maintaining the streetscape, but changing its character
4.1.4.4 (DCP) Setbacks	<p>Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.</p> <p>Objective 2) To ensure and enhance local amenity by:</p> <ul style="list-style-type: none"> ● providing privacy; ● providing equitable access to light, sunshine and air movement; and <p>facilitating view sharing and maintaining adequate space between buildings to limit impacts on views</p>	<p>1) See comments above</p> <p>2) The non-compliance with setback provisions does not create a rhythm or pattern of spaces. At its closest, the gap between the side boundary is only 1.1m and between buildings is only 2.1m. In comparison, 20 Angle Street has an approximate 15m gap to 14-18 Angle Street habitable rooms, 12m to 76 West Street and an 16m gap to buildings at 72 West Street. Other typical setbacks on the street (noting predominant habitable room windows are on the front/rear of buildings as they belong to houses) provide gaps of 15m or more in most cases. This demonstrates that the rhythm and pattern of spaces within the streetscape includes substantial building separations.</p>

	<p>and vistas from private and public spaces.</p> <ul style="list-style-type: none"> ● defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and ● facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection. 	<p>On the west elevation, Units 101 and 102 have design features that extend to within 1.7m of the side boundary (at a wall height of 6.5m) and again to within 2.14m (at a wall height of 7.4m). Based on the development control, the limits should be 2.17m and 2.46m respectively. These design features are articulations on the first floor, which have been included in the development in order to reach the minimum dwelling size of 95m² for units 101 and 102, they are not design features purely for architectural aesthetics.</p> <p>On the east elevation, Unit 103 has design features that extend to within 2.32m (aside from balcony) and 2.34m at heights of 8.04m and 8.24m (9.25m when considering excavation) respectively. Similarly, not for aesthetic reasons, but to meet minimum dwelling sizes.</p> <p>On the north elevation, there is only a 3.4m setback, vs. the required 8m. Regarding wall heights, I believe these also extend beyond limits.</p> <p>These deviations impact on privacy of surrounding neighbours, most notably bedrooms of units 1,3 & 5 20 Angle Street and Kitchen bathrooms, living spaces for 72A+B West Street and future residents of the proposed development. It should also be noted that the entrance for 72A+B runs within 1m of the balcony of unit G01 of the proposed development, providing poor privacy for future residents of the proposed development. In general the setback non-compliances fail to leave adequate space between buildings, do not provide suitable privacy and light for future tenants of the proposed development and do not follow the</p>
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		pattern and rhythm of spaces within the streetscape.
4.1.5.1 (DCP) Open Space	Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.	See comments above
3F-1 (NSW Apartment Guide)	Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy	<p>There is insufficient building separation on both sides, creating privacy concerns for neighbours and the new residents of this development. Notably there are only 3.5m +5.1m gaps between habitable areas/windows/balconies on the west elevation. On the east elevation the quantity of rooms in 20 Angle Street and the new development impacted by direct sight lines is significant, albeit just over 6m (3 units affected, likely 2 bedrooms per unit)</p> <p>There's also substantial overlook into external spaces of 20 Angle Street and external spaces for multiple residences on West Street</p>

In summary, the proposed development does not meet the objectives of the development controls where it is non-compliant and therefore cannot be considered as excepted from the development controls.

Public interest test

Clause 4.6 a) ii) is a public interest test - if the proposed development meets the development objectives (which I do not believe it does) and the zone objectives then it could be justified as being in the public interest. However, the decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 indicates that the public benefits must be particular to the circumstances of the proposed development, not merely benefits that could apply to any similar development on the site or in the vicinity. The applicant has stated "positively contribute to the housing supply in the Balgowlah area and provide additional housing for the Northern Beaches community." and "The proposed development will complement the existing supply of housing within the R1 zone, providing a premium housing product that takes advantage of the proximity of the site to the Balgowlah Town Centre and public transport services along Sydney Road. The proposed development provides a mix of generously proportioned 2 and 3 bedroom apartments."

Being generous, only two adjectives could be considered specific to this development, and they are relatively non-specific in nature; "generously proportioned" and "premium". Five of the units are <0.6 sq m above the minimum required, including one that is just 0.13 sq m above the minimum (the size of 2 sheets of A4 paper). These cannot be described as generously proportioned, nor premium. In summary, none of these statements are specific to

the circumstances of the proposed development, and therefore are not relevant for the test of public interest; the proposed development both fails to meet the objectives of the development controls and provides insufficient justification for why it fulfils the public interest.

Additional Concerns

From a brief conversation with the applicant, I understand that if they are successful they intend to jointly sell their lots to a developer to act on the proposal. Based on this, I believe it is important to resolve several of the below additional concerns as part of the development process. If these are not resolved, the risk is that the applicant sells and moves on, an issue arises pre-development, and a development is left in limbo, possibly mid-demolition. This would create a scenario very much not in the public interest and may lead to further compromises versus development standards.

Stormwater

I believe there may be a significantly negative impact on stormwater management and nearby properties have had stormwater issues recently (3.7 DCP). 20 Angle Street has experienced some minor flooding issues, which have been resolved, but I would be concerned that the density of the proposed development would increase surface run-off onto our property. And I would also be concerned about the effectiveness of stormwater controls on the proposed basement car park (1A Brighton Street and 51 Pittwater street are 2 recent car park flooding examples). The applicant has also proposed an easement for stormwater handling that would be burdened on 72 West Street. As per submissions from the residents of 72 West Street, the applicant appears to have not made reasonable attempts to obtain the easement. Based on my personal interactions with the applicant who was enquiring regarding an easement through 20 Angle Street, I believe there is a high likelihood that insufficient information will have been provided to residents of 72 West Street to make their judgement on the easement request. Under the Conveyancing Act 1919 88K 2), a court can only make an order imposing an easement if the owner of the burdened land can be adequately compensated and all reasonable efforts have been made by the applicant to obtain the easement. It does not appear that the applicant has done this and importantly for the development proposal, given some level of confidence to planning officers that adequate compensation can be agreed within the approximate development costs. These are warning signs that stormwater design has not been adequately addressed.

Construction & Vibration

The geotechnical review suggests that the use of impact hammers necessary to excavate a basement carpark could cause vibrations that damage vibration sensitive structures. I believe (but do not have the knowledge to confirm) that the upper block of 20 Angle St has a substantial section of the structure, above foundational level, in contact with rock and/or concrete surfaces, with the potential to transmit vibrations to more delicate areas of the building, and would therefore be concerned that vibrational damage is a high likelihood. The geotechnical review recommends that surveys are conducted to assess potential impacts and to establish a monitoring programme during works.

I would also request that prior to any construction approval (and not post-approval/pre-construction) that a proposal from the applicant be submitted that demonstrates how impact to residents of Angle Street (and pedestrian traffic) would be minimised during the construction. Whilst construction will always carry concerns, this site has multiple access constraints that I believe will cause significantly more disruption than a comparable development elsewhere. As a resident I would like confidence that; the parking of construction vehicles is kept to a minimum on Angle Street (already heavily utilised), no construction vehicles are parked in the turning area, the pedestrian pathway is kept open, there is no closure, damage or modifications made to the green space area and a noise management plan is presented.

Impact on Trees

The arborists report suggests several incursions of >10% into tree protection zones for trees that have been identified for retention, this includes several trees on public property or on neighbour's properties (72 West Street). I do not have the knowledge to understand the risk, but I would be concerned that there is a substantial risk to losing valuable trees, especially as the overall footprint of the building is so large and requires excavation. A very large gum tree was lost to disease from 72 West Street approximately 3 years ago and further losses would impact the streetscape.

Appendix - photographs & measurements

Cyclist use of shared pathway



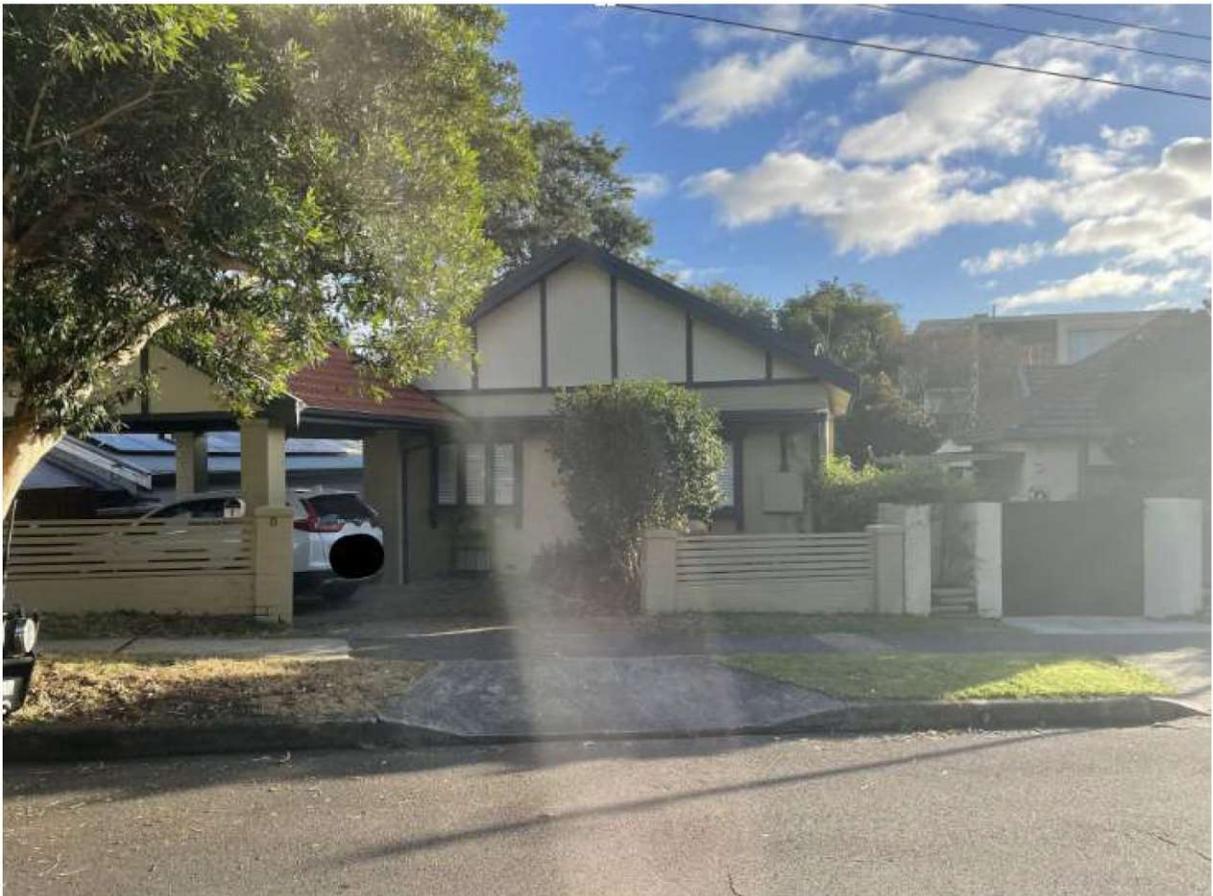
Streetscape - Angle Street



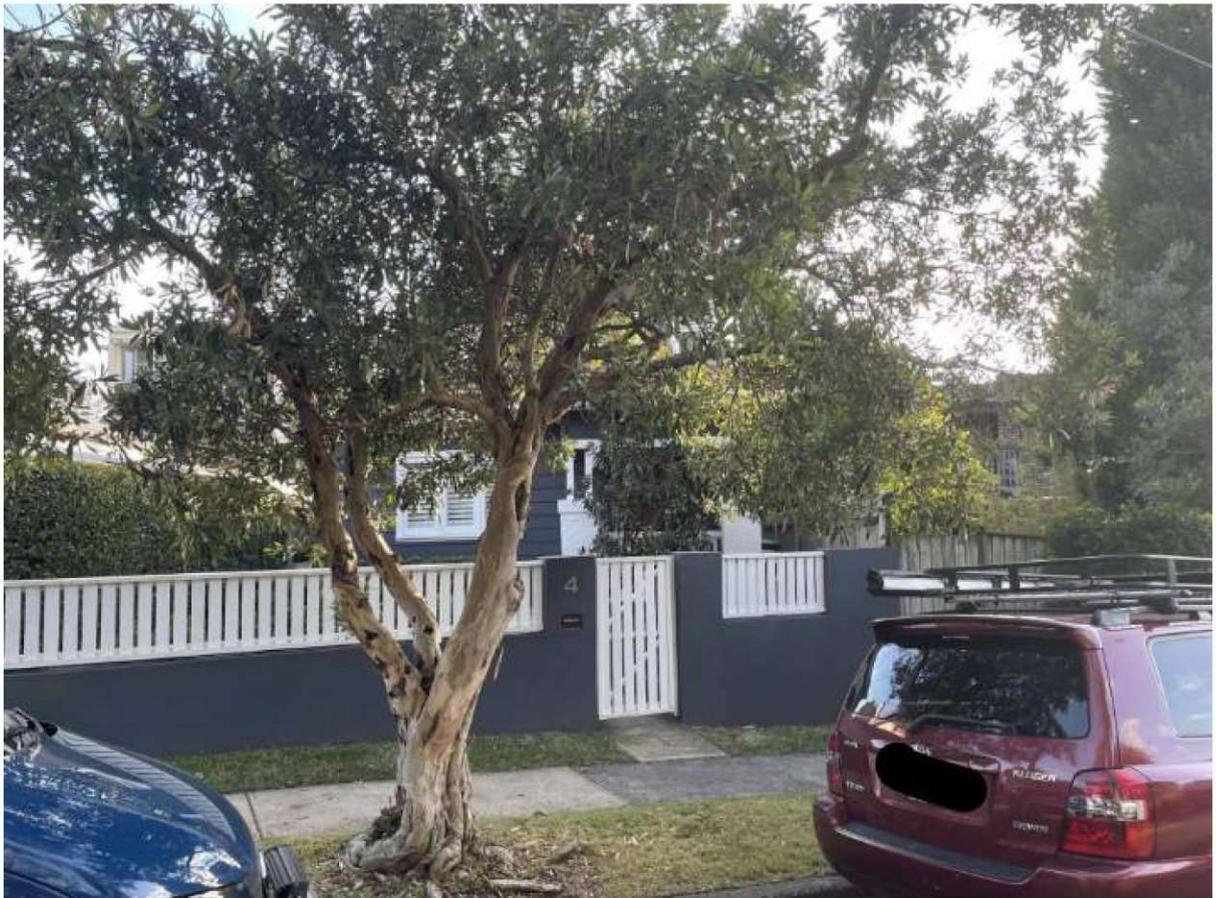
















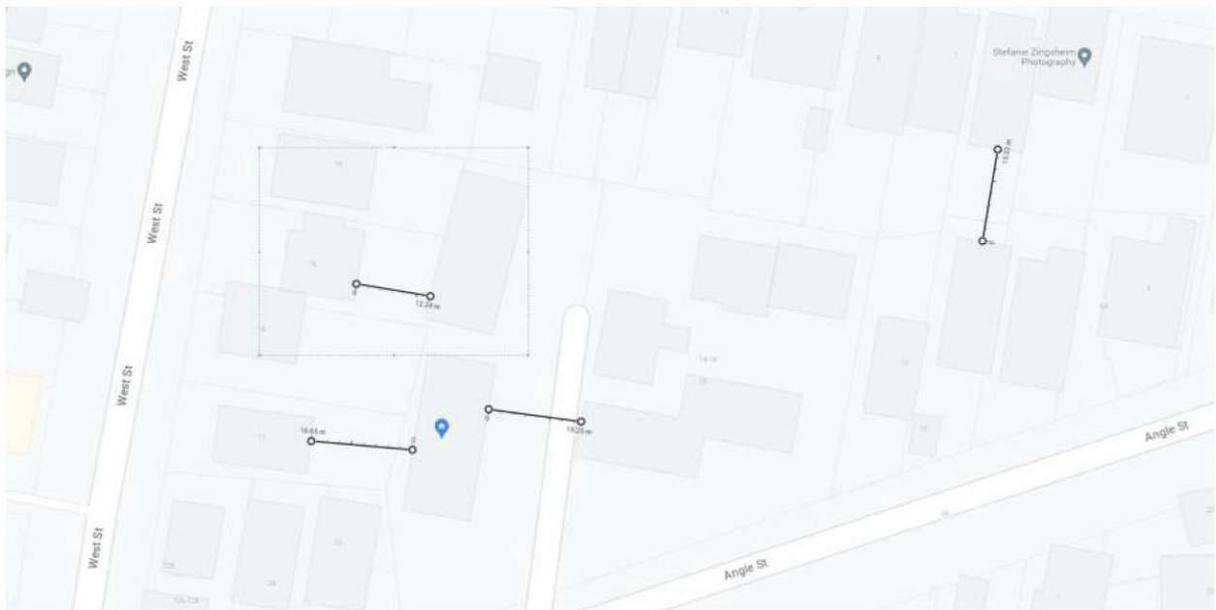
Streetscape - West Street (east side)







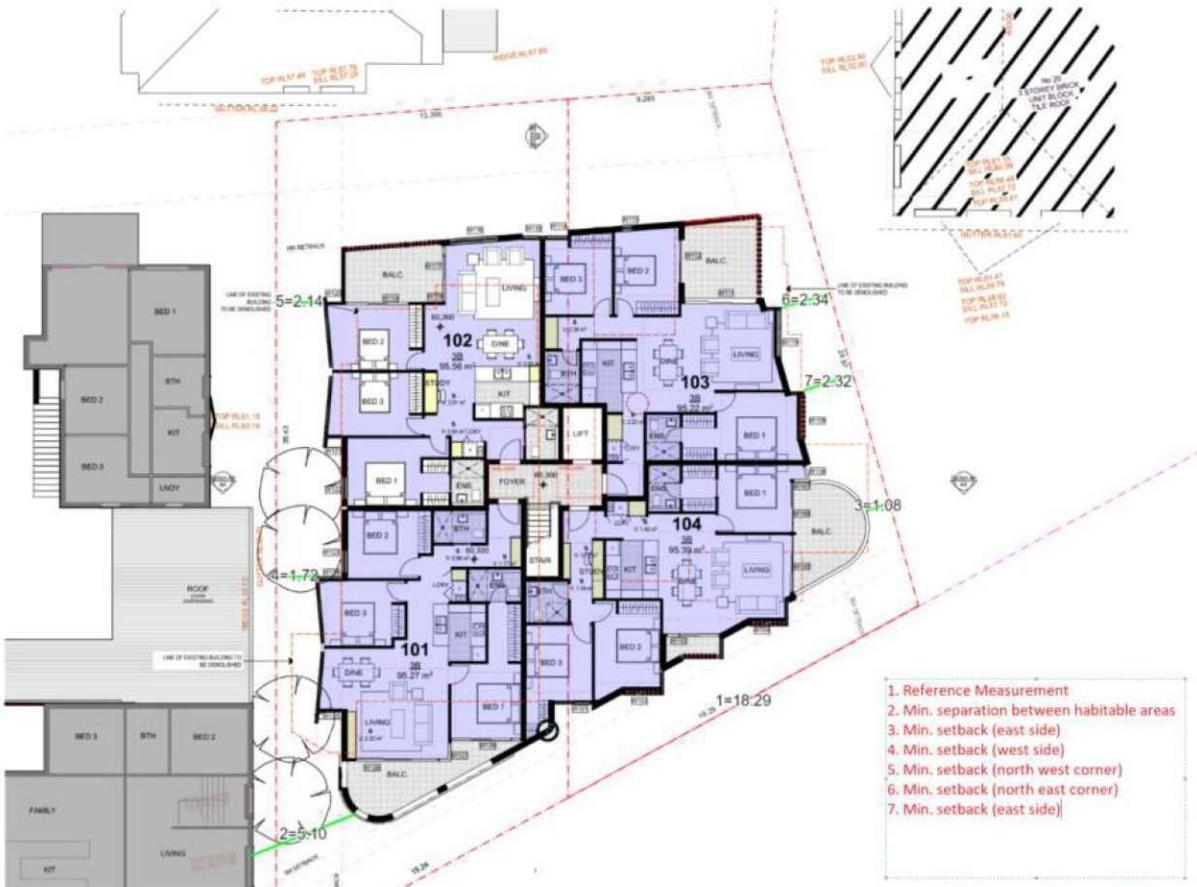
Measurements



Typical building separations demonstrating rhythm and space of Angle Street. Measurements are between walls with significant windows into habitable areas.



Ground floor measurements (N.B, basement storey not shown)



1st floor measurements



North elevation showing high non-compliance



West elevation showing height calculations at minimum setback points



East elevation showing height calculations at minimum setback points