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Subject: 10 Jamieson Pde Collaroy NSW 2097 DA 2021/0006 WRITTEN
SUBMISSION: LETTER OF OBJECTION Submission: Tattersall

Attachments: Tattersall Submission.docx;

S U B M I S S I O N : T A T T E R S A L L
a written submission by way of objection to DA 2021/0006

Brigitte and Brad Tattersall
12 Jamieson Pde
Collaroy
NSW 2097

6 February 2021

Chief Executive Officer
Northern Beaches Council
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Dee Why
NSW 2099

Northern Beaches Council
council@northernbeaches.nsw.gov.au

Dear Chief Executive Officer,

Re:
10 Jamieson Pde Collaroy NSW 2097
DA 2021/0006

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission: Tattersall

This document is a written submission by way of objection to DA 2021/0006
lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

The DA seeks development consent for the carrying out of certain development, namely:

the demolition of the existing structures and construction of a new two storey dwelling with lower-level parking and a new swimming pool on Lot 14, Section 22 in DP 12012 which is known as No. 10 Jamieson Parade, Collaroy.

Construction Cost: \$1.8m

The subject site is zoned R2 pursuant to the LEP, and as this is a new build development, there is no reason, unique or otherwise, why a fully compliant solution to pursuant to the provisions of the LEP and DCP controls, cannot be designed on the site.

We are being assisted by a very senior experienced consultant assisting us in the preparation of this Written Submission.

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SECTION 1: EXECUTIVE SUMMARY

This Written Submission asks Council to request that the Applicant submits Amended Plans to resolve the matters raised within this Submission, and failing a comprehensive set of amendments undertaken by the Applicant as identified within this Submission, to ask the Applicant to withdraw the DA, or if that is not forthcoming, to **REFUSE** this DA.

The bulk and design of the proposed works are not compatible with neighbouring development and will be a negative contribution to the scenic amenity of the area when viewed from surrounding viewpoints, particularly our property.

The development is of poor design quality which does not respond appropriately to the constraints of the site. The proposed development fails to maintain appropriate levels of amenity to the adjoining and nearby residential properties.

The multiple areas of non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. The proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

The proposed development is a clear case of overdevelopment.

- LEP Height 10.06 v 8.5m [18.3% non-compliance] stated height of 9.345m incorrect
- DCP B1 Wall Height 8.33m v 7.2m [15.7% non-compliance] stated wall height of 8.1m incorrect
- DCP B3 Side Boundary Envelope grossly exceeds controls by 2.2m
- DCP B7 Front Boundary 4.05m v 6.5m [60.5% non-compliance]
- DCP D11 Roofs: dominates the skyline
- DCP D13 Front fences & Front Walls >1.2m

These non-compliances lead directly to our amenity loss:

- DCP D8 Privacy
- DCP D9 Building Bulk
- Overdevelopment
- Poor Streetscape Outcomes,
- Unreasonable Building Bulk,
- Unreasonable Bulk & Scale,
- Poor General Impact.

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 the non-compliant building height, wall height, front setback, side boundary envelope, and fences would have most observers finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context’*

The extent of non-compliance contributes to the bulk and scale of the building form which is considered inconsistent with the character of the locality both established and future character.



".....offensive, jarring or unsympathetic in a streetscape context"

We want to emphasise the fact that we take no pleasure in objecting to our neighbour's DA.

The Applicant has had no prior adequate discussion with us regarding to this DA.

We are objecting because the proposed DA has a very poor impact on the amenity of our property and this is caused by the DA being non-compliant to multiple controls.

It does seem very unreasonable that this proposed development will remove our amenity to improve the amenity of the proposal, and is proposing a catalogue of non-compliant outcomes that would poorly affect our amenity

The proposed development is considered to be inconsistent with the outcomes, controls and objectives of the relevant legislation, plans and policies.

The DA scheme submitted requires to be substantially amended due to the non-compliant Building Height, Wall Height, Side Boundary Envelope and Front Setback.

We ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, then we ask Council to refuse the DA.

We agree with Roseth SC in NSWLEC Pafbum 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 we had as a neighbour was for a development that would not result in outcomes as noted above in respect to non-compliant building height, wall height, front setback, side boundary envelope, and fences and other non-compliances leading to poor amenity outcomes.

The ‘*legitimate expectation*’ that we had as a neighbour was for the bulk and scale of the proposed development and in accordance with the locality, to be under 8.5m building height, under 7.2m wall height, a compliant 6.5m front setback, and strictly accords with side boundary envelope requirements, and 1.2m high front fences

The ‘*legitimate expectation*’ that we had as a neighbour was for a development that integrates with the landscape character of the locality, and an expectation that the proposal would support landscape planting of a size that is capable of softening the built form.

The ‘*legitimate expectation*’ that we had as a neighbour was for the bulk and scale of the proposed development and in accordance with the locality, to be a requirement to incorporate and enhance the built form through planting to mitigate the impacts of the building bulk and scale.

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, the subject of this Submission, does not succeed on merit and is not worthy of the granting of development consent.

We ask Council to **REFUSE** this DA as the proposed development does not comply with the *planning regime*, by multiple non-compliance to development standards, and this non-compliance leads directly to our amenity loss.

SECTION 2: CHARACTERISTICS OF OUR PROPERTY

Our property shares a common boundary with the subject property.

The subject site lies to the south of our property.

We enjoy good levels of privacy and daylight and view sharing over the subject site.

Our property is shown on the attached map 'red starred'. The subject site is shown 'edged in red'.



Council should note that our dwelling has maximum ridge heights at RL 32.9, with a compliant maximum build height to LEP controls.

The proposed development is presenting non-compliant ridge heights 2.1m higher than our own dwelling.

Council should note that our dwelling has maximum wall heights at RL 30.9, with a compliant maximum wall height to DCP controls.

The proposed development is presenting non-compliant wall heights 2.1m higher than our own dwelling.

Council should note that our dwelling has compliant front setback and side setback to DCP controls.

The proposed development is presenting non-compliant front setbacks.

Council should note that our dwelling has a generally compliant side boundary envelope to DCP controls.

The proposed development is presenting substantial side boundary envelope non-compliance.

SECTION 3: SITE DESCRIPTION & LOCATION

The SEE states:

The subject site is identified as Lot 14, Section 22 in DP 12012 which is known as 10 Jamieson Parade, Collaroy. The site is located at the western side of Jamieson Parade with a street frontage of 15.24. The site has an area of 696.7m² with a depth of 45.720m.

SECTION 4: DESCRIPTION OF PROPOSED DEVELOPMENT

The SEE states:

This proposal seeks approval for the demolition of the sites existing structures followed by the construction of a new two storey dwelling with lower-level parking. A new swimming pool and front fence are also proposed. The dwelling is to be constructed of brickwork to the lower level, external lightweight cladding to the upper levels with a colourbond pitched roof.

The proposal provides for a setback of 6.5m to the street frontage as measured from the wall of the dwelling with the balcony/deck setback 4.05m from this boundary. Setbacks of 1.2m and 1.29m to the sites northern and southern boundaries, respectively. These setbacks are replicated to the first-floor level.

A new swimming pool is proposed in the rear yard and provides for a setback of 1.29m to the southern boundary and 5.529m to the rear northern boundary.

The proposal also provides for a new front fence which is to comprise of brick base and pier and timber picket infills. The fence height varies from 1.2m to 1.6m due to the slope of the site.

The proposal also provides for stormwater disposal to discharged to the street gutter via a combined rainwater/OSD tank in accordance with Council controls.

SECTION 5: OUTSTANDING INFORMATION

Height Poles

We ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor.

The Height Poles will need to define:

- All Roof Forms, and all items on the roof

- Extent of all Decks, Balustrades, Privacy Screens

The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

Survey Levels

The Applicant has not adequately located the registered surveyor's levels on plans, sections or elevations, particularly along the western boundary.

The drawings presented are false and misleading in this respect. The DA drawings must locate and identify existing ground levels from the registered surveyor's drawings on the Plans, Sections and Elevations at the levels shown at RL 24.30, 24.92, 25.06, 25.46, 25.75, 26.16, 26.23, 26.63 along the northern boundary.

We are greatly concerned that the Applicant has modified the Registered Surveyors Plan to misrepresent neighbours' dwellings. We ask Council to ensure that the Registered Surveyors drawing is shown precisely as drawn by the Registered Surveyor. The applicant's drawings have been altered in these respects so as not to clearly define external wall zones, decks, and eaves, and in doing so presents false and misleading drawings to Council. We ask that Council obtain amended plans to clearly define neighbour's dwellings precisely as the Registered Surveyor has presented them, to ensure proper consideration of the DA.

SEE Misrepresentations

We ask Council to ensure that the SEE and Clause 4.6 Review are corrected to show the actual maximum building heights, wall heights, and excesses over the side boundary envelope.

Council will note that:

- Building Height is 10.1m. The proposed ridge is at RL 35.00, and that is positioned over the existing garage at RL 24.90 [garage survey]
- Wall Height is 8.33m. The proposed wall height at the north-eastern corner is at RL 32.92, whilst the survey level adjacent is RL 24.59
- Side Boundary Envelope at a 6.5m setback from the street boundary along the northern boundary, has a survey at 24.79. Projecting the envelope shows the envelope to be 2.2m beyond the envelope control.

Landscape Areas

The internal Courtyard that is covered with a roof, and enclosed on three sides cannot be included within landscape area. Landscape does not accord with controls

SECTION 6: STATUTORY PLANNING FRAMEWORK

WLEP 2011

1.2 Aims of Plan

We are concerned that the proposed development does accord with Clause 1.2 Aims of the Plan, namely paragraph 1, 2[d], and 2[f].

(1) This Plan aims to make local environmental planning provisions for land in that part of Northern Beaches local government area to which this Plan applies (in this Plan referred to as Warringah) in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.

(2) The particular aims of this Plan are as follows

(d) in relation to residential development, to

- (i) protect and enhance the residential use and amenity of existing residential environments, and*
- (ii) promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and*
- (iii) increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah,*

(f) in relation to environmental quality, to—

- (i) achieve development outcomes of quality urban design, and*
- (ii) encourage development that demonstrates efficient and sustainable use of energy and resources, and*
- (iii) achieve land use relationships that promote the efficient use of infrastructure, and*
- (iv) ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment, and*
- (v) protect, conserve and manage biodiversity and the natural environment, and*
- (vi) manage environmental constraints to development including acid sulfate soils, land slip risk, flood and tidal inundation, coastal erosion and biodiversity,*

Zone R2 Low Density Residential

We are concerned that the proposed development does accord with the objectives of the Zone R2.

1 Objectives of zone

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

4.3 Heights of Buildings

We contend that the proposed development does not accord with this clause.

The Building Height is 10.1m. [18.3% non-compliance]

The proposed development represents a three-storey building with a substantial roof facing the streetscape, with non-compliant street setbacks, wall heights, and non-compliant side boundary envelope all being expressed to the streetscape and the neighbours. Neighbouring developments are generally compliant to controls.

The proposed ridge is at RL 35.00, and that is positioned over the existing garage at RL 24.90 [survey]

The objectives of the LEP are clearly expressed:

4.3 Height of buildings

(1) The objectives of this clause are as follows:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

The proposed development does not ensure that buildings are compatible with the height and scale of surrounding and nearby development.

There are no dwellings that are over 10m in height in the area. The non-compliant building height and coupled with the non-compliant wall height, side boundary envelope, and front setback only add to the lack of compatibility to surrounding and nearby development.

The proposed development does not minimise visual impact, disruption of views, loss of privacy and loss of solar access

The proposed development does not minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments.

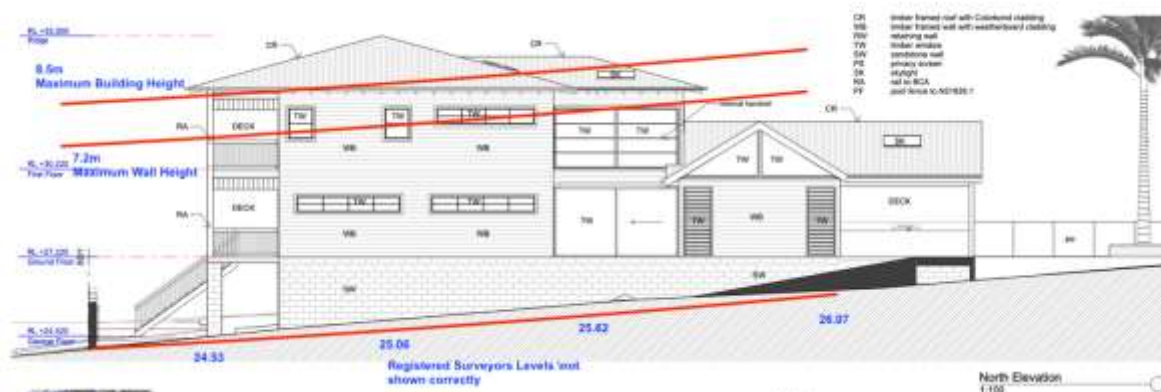
The proposed development does not manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

The Clause 4.6 Request submitted does not demonstrate that the development is consistent with the objectives of the zone, and consistent with the objectives of the building height standard.

Strict compliance is reasonable and necessary, to ensure amenity outcomes.

There are insufficient environmental planning grounds exist to justify the variation sought.

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. These issues warrant refusal of the application.



Non-Compliant Building Height & Wall Height. Registered Surveyors levels incorrectly shown

WDCP 2011

DCP B1 Wall Height

The proposed wall height is 8.33m high set against the control at 7.2m, representing a 15.7% non-compliance. The wall height stated within the SEE of 8.1m is incorrect.

The proposed wall height at the north-eastern corner is at RL 32.92, whilst the survey level adjacent is RL 24.59

The objectives of the DCP are clearly expressed:

Objectives

- To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.
- To ensure development is generally beneath the existing tree canopy level.
- To provide a reasonable sharing of views to and from public and private properties.
- To minimise the impact of development on adjoining or nearby properties.
- To ensure that development responds to site topography and to discourage excavation of the natural landform.
- To provide sufficient scope for innovative roof pitch and variation in roof design.

The proposed development does not minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes. The visual impact from our property is jarring and offensive, with non-compliant wall heights, coupled with non-compliant side boundary, front setbacks, and building height making the overall composition *“offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site’s visual catchment”*

The proposed development does not ensure development is generally beneath the existing tree canopy level, the wall height sits well above the canopy.

The proposed development does not provide a reasonable sharing of views to and from public and private properties. Views are restricted by non-compliant envelopes, including wall height.

The proposed development does not minimise the impact of development on adjoining or nearby properties. The impact on our property is predominantly privacy and visual bulk problems, that are not minimised by the non-compliance.

The proposed development does not ensure that development responds to site topography and to discourage excavation of the natural landform. Excavation to form the garage is unwelcomed, and excavates the natural landform unreasonably.

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. These issues warrant refusal of the application.

DCP B3 Side Boundary Envelope

Grossly exceeds controls by 2.2m

The objectives of the DCP are clearly expressed:

Objectives

- To ensure that development does not become visually dominant by virtue of its height and bulk.
- To ensure adequate light, solar access and privacy by providing spatial separation between buildings.
- To ensure that development responds to the topography of the site.

The proposed development does not ensure that development does not become visually dominant by virtue of its height and bulk. The non-compliant side boundary envelope is fully expressed to the street frontage, presenting non-compliance by over 2.2m. The proposed development would become visually dominate, making the overall composition “*offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site’s visual catchment*”

The proposed development does not ensure adequate light, solar access and privacy by providing spatial separation between buildings. Our privacy would be severely affected as windows in the upper levels would look directly into our dwelling and private open space. Daylight would also be greatly affected to the winter sky.



Non-Compliant Side Boundary Envelope

The proposed development does not ensure that development responds to the topography of the site. The proposed development does not step with the topography but simply presents non-complaint outcomes in every major control.

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. These issues warrant refusal of the application.

DCP B7 Front Boundary

The front boundary is proposed at 4.05m, representing a 60.5% non-compliance.

Council will note that both neighbour's dwellings accord with the 6.5m control.

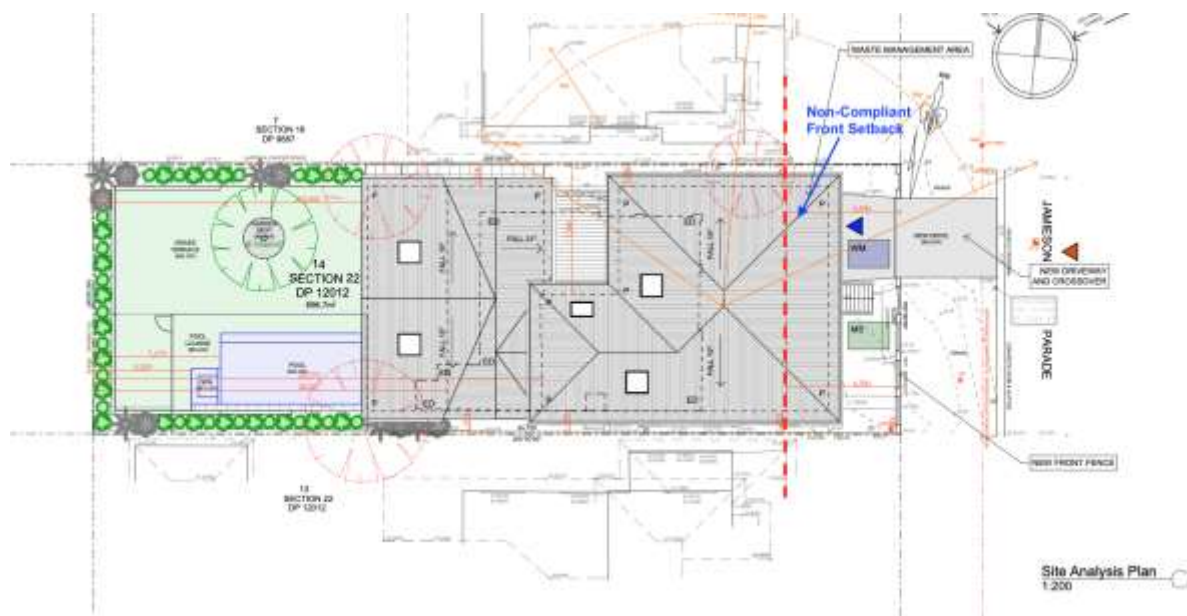
The objectives of the DCP are clearly expressed:

Objectives

- To create a sense of openness.
- To maintain the visual continuity and pattern of buildings and landscape elements.
- To protect and enhance the visual quality of streetscapes and public spaces.
- To achieve reasonable view sharing.

Requirements

1. Development is to maintain a minimum setback to road frontages.
2. The front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences.



Non-Compliant Front Setback

The proposed development does not create a sense of openness.

The proposed development does not maintain the visual continuity and pattern of buildings and landscape elements. Both neighbours are setback 6.5m for all wall zones and decks.

The proposed development does not protect and enhance the visual quality of streetscapes and public spaces.

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. These issues warrant refusal of the application.

DCP D8 Privacy

The objectives of the DCP are clearly expressed:

Objectives

- To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.
- To encourage innovative design solutions to improve the urban environment.
- To provide personal and property security for occupants and visitors.
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- To provide personal and property security for occupants and visitors.
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- To encourage innovative design solutions to improve the urban environment.
- To provide personal and property security for occupants and visitors.

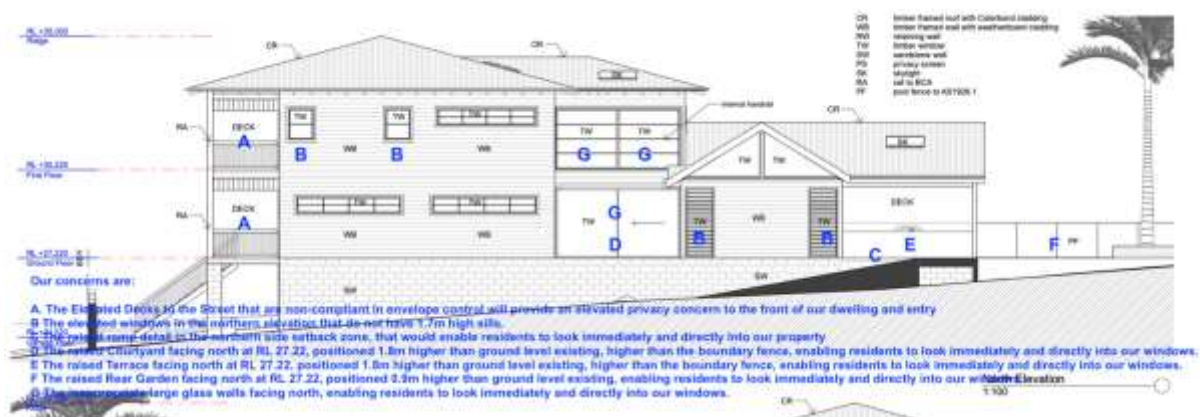
Requirements

1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.
2. Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.
3. The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.
4. The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.

5. Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.

Our concerns are:

- A. The Elevated Decks to the Street that are non-compliant in envelope control will provide an elevated privacy concern to the front of our dwelling and entry, enabling residents to look immediately and directly into our windows, and private open space.
- B. The elevated windows in the northern elevation that do not have 1.7m high sills, enabling residents to look immediately and directly into our windows, and private open space.
- C. The raised ramp detail in the northern side setback zone, enabling residents to look immediately and directly into our windows, and private open space.
- D. The raised Courtyard facing north at RL 27.22, positioned 1.8m higher than ground level existing, higher than the boundary fence, enabling residents to look immediately and directly into our windows, and private open space.
- E. The raised Terrace facing north at RL 27.22, positioned 1.8m higher than ground level existing, higher than the boundary fence, enabling residents to look immediately and directly into our windows, and private open space.
- F. The raised Rear Garden facing north at RL 27.22, positioned 0.9m higher than ground level existing, enabling residents to look immediately and directly into our windows, and private open space.
- G. The inappropriate large glass walls facing north, enabling residents to look immediately and directly into our windows, and private open space.



An assessment of the visual and acoustic 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, with height, setback, and side boundary envelope control.

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.

Response: The proposed development result in visual and acoustic privacy impact

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: We are greatly concerned to the privacy of living areas, including kitchens. We are concerned to the overlooking from proposed living area, and decks, and that is more objectionable

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 poor design and the proposed windows, decks, terraces, garden have been designed without any consideration to the visual and acoustic 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 protected through the provision of complaint heights and setbacks.

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, adequate separation would reduce the impact of the development.

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: We prefer adequate separation, as well as to landscaping. Neither has been adequately addressed.

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.

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

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. These issues warrant refusal of the application.

DCP D9 Building Bulk

The objectives of the DCP are clearly expressed:

Objectives

- To encourage good design and innovative architecture to improve the urban environment.
- To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.
- To encourage good design and innovative architecture to improve the urban environment.
- To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

Requirements

1. Side and rear setbacks are to be progressively increased as wall height increases.
2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.

3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular: The amount of fill is not to exceed one metre in depth. Fill is not to spread beyond the footprint of the building. Excavation of the landform is to be minimised.
4. Building height and scale needs to relate to topography and site conditions.
5. Orientate development to address the street.
6. Use colour, materials and surface treatment to reduce building bulk.
7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.
8. Articulate walls to reduce building mass.

The proposed development does not encourage good design and innovative architecture to improve the urban environment, does not minimise the visual impact of development when viewed from adjoining properties and streets, does not encourage good design and innovative architecture to improve the urban environment.

The requirements list above have not been addressed.

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. These issues warrant refusal of the application.

DCP D11 Roofs

The design of the roof is not designed to complement the local skyline. The 10m height roof height, with non-compliant wall heights and side boundary envelope ensure that the roof will dominate the skyline, in non-compliance to this clause.

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. These issues warrant refusal of the application.

DCP D13 Front fences & Front Walls

Front fences and walls are to be no higher than 1.2 metres. The proposed development does not accord.

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. These issues warrant refusal of the application.

NSW LEC PLANNING PRINCIPLES

We bring to the attention of Council numerous **NSW LEC Planning Principles** that have relevance to this DA.

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.”

Commentary:

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

In **Davies**, [**Davies v Penrith City Council 2013**], NSW LEC considered General Impact. Davies suggest that Council should consider:

“Would it require the loss of reasonable development potential to avoid the impact?”

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?”

Commentary:

The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal.

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.”

Commentary:

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”

Commentary:

The non-compliant elements of the proposed development, particularly caused from the non-compliant setbacks, and the non-compliant pool, would have most observers finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context’*

SECTION 4.14 [1] OF EPAA 1979

Environmental Planning and Assessment Regulation 2000

Applicable regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia and *Home Building Act 1989*, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection may be addressed by appropriate consent conditions in the event of an approval.

Likely Impacts of the Development

This assessment has found that the proposal will have a detrimental impact on the natural and built environments pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.

Suitability of the Site

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

Public Interest

The proposal is not in the public interest because it results in a development of excessive bulk and scale which has adverse amenity impacts on adjoining properties and the broader locality.

SECTION 7: AMENDED PLANS

We ask that Council request that the Applicant submit Amended Plans to resolve these matters in full, prior to determination.

These conditions would preferably all be dealt with under resubmission of Amended Plans, or by a withdrawal of this DA and a submission of a new DA.

We present them for Council's consideration. We do hope that Council will advise the Applicant that unless an amended plan submission is promptly forwarded, that refusal may be the outcome.

In this Written Submission we ask Council to request the Applicant to submit Amended Plans to bring the proposed development back into a more generally compliant envelope including:

1. Reduce LEP 4.3 Building Height to be under 8.5m, and does not exceed 8.5m above existing garage at RL 24.90 [survey] with a maximum ridge height at RL 33.4. [Reason: Streetscape, Visual Bulk, Bulk & Scale]
2. Reduce DCP B1 Wall Height to be under 7.2m facing north, and does not exceed 7.2m above survey spot level at RL 24.79 at northern elevation with 6.5m front setback alignment, with a maximum wall height at RL 32.0 [Reason: Streetscape, Visual Bulk, Bulk & Scale, Privacy]
3. Increase DCP B7 Front Boundary controls to 6.5m to alignment of any part of the dwelling, including proposed Decks. [Reason: Streetscape, Visual Bulk, Bulk & Scale, Privacy]
4. Reduce Envelope to fit within DCP B3 Side Boundary Envelope, from registered surveyor's levels as identified along northern boundary, particularly adjacent 6.5m front setback zone, RL 24.53, 25.06, 25.62, 26.07, and 26.78. Prepare 3D model to clearly show full compliance. Minimum 3m side setback to upper floor. [Reason: Streetscape, Visual Bulk, Bulk & Scale, Privacy]
5. All windows facing north to have 1.7m high sills, and delete full width/full height glazing facing north [Reason: Privacy]

6. All decks, raised courtyards, and terraces to have 1.7m high privacy screen [Reason: Privacy]
7. No raised structures or fill or excavation in northern side setback zone. Delete ramp in northern setback. Delete all raised garden beds, fill, and any in any item, other than screening trees at existing ground levels. [Reason: Privacy]
8. Increase number of screening trees at 3m centres in northern side setback zone to reach, at maturity, the proposed head of the upper-level windows, and 1.7m above all upper-level decks, with additional imposed 'ongoing condition that must be complied with at all times' regarding 'landscape maintenance' to these trees. [Reason; Privacy, Landscaping]
9. Front Fences to be <1.2m at any location [Reason: Streetscape, Visual Bulk, Bulk & Scale]
10. Correct and show all registered surveyor's levels on all drawings, and show neighbours dwellings as precisely drawn by the surveyor in all plans. Show dotted on northern elevation the profile and window locations of neighbours dwelling [Reason: Misleading drawings]

SECTION 8: CONCLUSION

The proposal is not in conformity with the aims and implicit objectives of the LEP and DCP and the subordinate standards and controls applicable to this form of development on this particular site. The proposed height and density are not as anticipated for this form of development with the building form ensuring that it will be discernible as viewed from the street and not complimentary and not compatible with its context.

The proposed development does not satisfy the the statutory regime applicable to the application and does not demonstrates that the proposed land use provides for an outcome that is consistent with the aims and objectives of the applicable controls.

The outcome is a building that causes poor amenity outcomes and other amenity loss concerns due to non-compliance to multiple residential outcomes and controls.

The development does not satisfy the objectives of the standard and will present poor residential amenity consequences and does not maintain appropriate levels of amenity to the adjoining and nearby residential properties.

The identified non-compliances have not been appropriately justified having regard to the associated objectives, outcomes and controls.

The subject site is of a large size, and there is no reason, unique or otherwise, why a fully compliant solution cannot be designed on the site, to avoid amenity loss.

The proposed development is inconsistent with the conclusions reached by the Senior Commissioner in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191. We contest that most observers would find the proposed development offensive, jarring or unsympathetic to the

streetscapes or having regard to the built form characteristics of development within immediate proximity of the site.

Having given due consideration to the relevant considerations pursuant to 4.15 of the Environmental Planning & Assessment Act 1979 (as amended) it has not been demonstrated that the proposed development is appropriate for approval.

This application results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

In consideration of the proposal and the merit consideration of the development, the proposal is not considered to be consistent with the objectives, outcomes and controls of the LEP and DCP.

The resultant development is not considered to be an appropriate outcome for the site as it fails the balance between the development of the site and the retention of significant natural features and the maintenance of a reasonable level of amenity for adjoining properties.

The processes and assessments have not been satisfactorily addressed.

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 is inappropriate on merit and is not worthy of the granting of development consent for the following reasons:

- The application has not been adequately considered and does not satisfy the various relevant planning controls applicable to the site and the proposed development.
- The proposed development is not consistent with the desired future character of the locality.
- 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 considerations pursuant to the LEP & DCP

In assessing the impact of a development proposal upon a neighbouring property, what was said by Roseth SC in *Pafbum v North Sydney Council* [2005] NSWLEC 444 (16 August 2005), at [19]-[24], is extremely helpful:

19 Several judgments of this Court have dealt with the principles to be applied to the assessment of impacts on neighbouring properties. Tenacity Consulting v Warringah [2004] NSWLEC 140 dealt with the assessment of views loss; Parsonage v Ku-ring-gai Council [2004] NSWLEC 347 dealt with the assessment of overshadowing; while Meriton v Sydney City Council [2004] NSWLEC 313 and Super Studio v Waverley Council [2004] NSWLEC 91 dealt with the assessment of overlooking.

20 Five common themes run through the above principles. The first theme is that change in impact may be as important as the magnitude of impact.

21 The second theme is that in assessing an impact, one should balance the magnitude of the impact with the necessity and reasonableness of the proposal that creates it.

22 The third theme is that in assessing an impact one should take into consideration the vulnerability of the property receiving the impact.

23 The fourth theme is that the skill with which a proposal has been designed is relevant to the assessments of its impacts. Even a small impact should be avoided if a more skilful design can reduce or eliminate it.

24 The fifth theme is that an impact that arises from a proposal that fails to comply with planning controls is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.

In the case of the present development proposal:

1. the magnitude of impact upon the amenity, use and enjoyment by us of our property is certainly not insignificant, in that:
 - the visual and acoustic privacy loss, and visual bulk impacts from the proposed development into our property well above controls,
 - The extent of the proposed building envelopes
 - The siting and extent of the proposed dwelling without having sufficient consideration for maintaining amenity, with non-complaint height, wall height, side boundary envelope, and front setbacks taking amenity from neighbours
2. our property is vulnerable, being directly adjacent to the subject site;
3. the lack of attention in the design of the development proposal as regards the impacts of the proposed development on our property in terms of height, bulk, visual privacy, visual and acoustic privacy, visual bulk, is relevant to the assessments of those impacts, such that even a small impact should be avoided if a more skilful design can reduce or eliminate it;
4. the fact that the proposal fails to comply with a number of important planning controls is much more difficult to justify than would otherwise be the case with a complying proposal; and
5. the proposal involves non-compliance with a number of principal planning control and this is an indicator of overdevelopment of the site.

In summary, we have, as Roseth SC pointed out in Pafbum, a legitimate expectation that the development to take place on the subject property '*will comply with the planning regime*' in the present circumstances.

We contend that the Development Application should be refused on the following grounds.

Council is not satisfied that non-compliance to Building Height is adequately addressed within the SEE and fails to demonstrate that:

- compliance with the development standard is reasonable or necessary in the circumstances of the case;
- there are insufficient environmental planning grounds to justify contravening the development standard.
- the applicant's written request has not adequately addressed the matters in this respect as the request has not addressed the significant under forecast of GFA
- the proposed development is not in the public interest because it is inconsistent with the objectives of the particular standard and the objectives for development within R2 Low Density Residential zone

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the LEP:

- 1.2 Aims of Plans
- 2.3 Zone Objectives Zone R2 Low Density Residential
- 4.3 Height of Buildings

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the DCP

- DCP B1 Wall Height
- DCP B3 Side Boundary Envelope
- DCP B7 Front Boundary
- DCP D8 Privacy
- DCP D9 Building Bulk
- DCP D11 Roofs: dominates the skyline
- DCP D13 Front fences & Front Walls

The proposed development is contrary to the Environmental Planning and Assessment Act 1979 NSW having regard to s 4.15 (1)(b), (c), (d) and (e) given the insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts that would be caused.

The proposal is contrary to Section **4.15(1)(b)** of the *Environmental Planning and Assessment Act 1979* in that it will have an adverse impact on the natural and built environments in the locality.

The proposals are unsuitably located on the site pursuant to Section **4.15(1)(c)** of the *Environmental Planning and Assessment Act 1979*.

The proposal is contrary to the public interest pursuant to Section **4.15(1)(e)** of the *Environmental Planning and Assessment Act 1979*.

The DA scheme submitted requires to be amended, and we ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, then we ask Council to simply issue a refusal.

We will welcome the opportunity to further expand on any of the issues once Amended Plans are submitted, identified within this Submission.

If this does not occur the Development Application should be **REFUSED** by Council.

Yours faithfully,

Brigitte and Brad Tattersall
12 Jamieson Pde
Collaroy
NSW 2097

APPENDIX

We ask Council to consider the appropriate conditions of consent as identified within appendix A.

Conditions of Consent

Compliance with other Departments, Authority or Service Requirement

Prescribed Conditions

General Requirements

Approved Land Use

Nothing in this consent shall authorise the use of the site as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, as defined within the LEP. Any variation to the

approved land use and/occupancy beyond the scope of the above definition will require the submission to Council of a new DA.

Conditions to be satisfied prior to the issue of the CC

Amendments to the approved plans [**see attached list in body of written submission*]

All windows and doors facing neighbours to have obscured glazing

All privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.

Pre-commencement Dilapidation Report

Compliance with standards [demolition]

Compliance with standards

Boundary Identification Survey

Structural Adequacy & Excavation Work

Geotechnical Report Recommendations to be incorporated into designs and structural plans

Engineering Assessment

Engineers Certification of Plans, including all retaining walls

Tanking of Basement Level

Installation & Maintenance of Sediment & Erosion Control

Demolition Traffic Management Plan

Construction Traffic Management Plan

Waste Management Plan

Waste & Recycling Requirements

Soil and Water Management Program

Vehicle Crossing Application

Pedestrian sight distance at property boundary

Location of security gate and intercom system

Minimum driveway width

Access driveway

On-site Stormwater Detention Details

Stormwater Disposal

Sydney Water

Water Quality Management

External finishes to Roof

Colours & Materials

New Landscaping Plan

Project Arborist

Tree Protection

Tree Trunk, Root and Branch Protection

Root Mapping

Tree Removal within the Road Reserve

Mechanical plant location
AC Condenser Units

No excavation within 1m of boundary
Protection of Neighbours assets

Pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the boundary

Noise from all plant rooms including roof top mechanical plant room, mechanical ventilation for car parks, extraction units and exhaust fans, air condition units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open.

Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

Conditions that must be addressed prior to any commencement

Pre-Construction Dilapidation Report
Installation and maintenance of sediment and erosion control

Pedestrian Sight Distance at Property Boundary
Demolition and Construction Traffic Management Plan
On Street Work Zones and Permits
Kerbside Parking Restrictions

Project Arborist
Tree Removal
Tree Removal in the road reserve
Tree Trunk, Branch, and Root Protection
Tree protection
Tree and vegetation removal from property

Conditions to be complied with during demolition and building works

Road Reserve
Removing, handling and disposing of asbestos
Demolition works – Asbestos

Property Boundary levels
Survey Certificate

Implementation of Demolition Traffic Management Plan
Implementation of Construction Traffic Management Plan
Traffic Control during Road Works
Vehicle Crossings
Footpath Construction

Geotechnical issues

Detailed Site Investigation, Remedial Action Plan & Validation
Installation and maintenance of sediment controls
Building materials
Rock Breaking
Protection of adjoining property
Vibration to reduce to 2.0mm/sec
No excavation within 1m of boundary

Waste Management during development
Waste/Recycling Requirements

Tree Protection – Arborist Supervision of Works
Tree and vegetation protection
Tree Condition
Native vegetation protection
Protection of rock and sites of significance
Aboriginal heritage

Protection of Sites of Significance
Notification of Inspections

Conditions which must be complied with prior to the issue of the OC

Post Construction Dilapidation Report

Certification of Structures
Geotechnical Certificate
Environmental Reports Certification
Landscape Completion Certification
Certification of Civil Works & Works as executed data on council land
Fire Safety Matters
Retaining Wall

Required Planting

Positive Covenant and Restriction as to User for On-site stormwater disposal structures
Positive Covenant for the maintenance of stormwater pump out facilities

Reinstating the damaged road reserve during construction

Condition of retained vegetation
Stormwater disposal
Works as executed drawings - stormwater

Installation of solid fuel burning heaters: No approval is granted for the installation of a solid/fuel burning heater. Certification of solid fuel burning heaters

Required Tree Planting
Required Planting

Acoustic treatment of pool filter
Noise Nuisance from plant

Lighting Nuisance

Swimming pool requirements
Garbage and Recycling Facilities
House number Building Number
Waste Management Confirmation
Privacy Screens
Reinstatement of Kerbs

Control of noise, odour and vibrations from equipment within plant rooms and ventilation systems connected with the building to ensure noise and vibration from this equipment does not impact on the health and well-being of persons living within the complex and other surrounding premises.

Plant room and equipment for operational conditions - Noise and vibrations. Noise from all plant rooms including roof top mechanical plant room, mechanical ventilation for car parks, extraction units and exhaust fans, air condition units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open. Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

Mechanical Ventilation certification: Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668: the use of mechanical ventilation.

Ongoing Conditions that must be complied with at all times

Approved Land Use
Maintenance of solid fuel heater
Operation of solid fuel heaters
Landscape maintenance
Landscaping adjoining vehicular access
Maintenance of stormwater treatment measures
Retention of Natural Features
No additional trees or scrub planting in viewing or solar access corridors of neighbours
Environmental and Priority Weed Control
Control of weeds
No planting environmental weeds
Maintain fauna access and landscaping provisions
Noise
Noise Nuisance from plant
Swimming pool filter, pump and AC units [noise]
Outdoor lighting
Lighting Nuisance
Plant room and equipment for operational conditions - Noise and vibrations