
Sent: 1/03/2019 4:22:47 PM
Subject: DA 80/2019 (34 Beatty St, Balgowlah Heights) - Submission
Attachments: 1916 DA 80 of 2019 Submission 1 March 19.pdf;

Attention: David Auster

Please find attached a submission in relation to the above DA at 34 Beatty St, Balgowlah Heights.

Regards

Scott Lockrey

Director

Lockrey Planning and Development Solutions Pty Ltd

P 02 9664 4050 (note new number)

M 0413 483 120

W www.lpds.com.au

'This email is intended for the use of the individual or entity named above and may contain information that is considered confidential and privileged. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this email is strictly prohibited. If you have received this email in error please notify us immediately by return email or telephone (02 9130 3860) and destroy the original message. Thank you'



1 March 2019

1901

The General Manager
Northern Beaches Council
PO Box 82
MANLY NSW 1655

Attention: Mr David Auster

**RE: DEVELOPMENT APPLICATION 2019/0080
34 BEATTY STREET, BALGOWLAH HEIGHTS**

Dear David

This submission is written on behalf of Christopher Rushton at 36 Beatty Street, Balgowlah Heights (the **neighbouring owner**) and is in respect of the above Development Application (**DA**) proposing substantial alterations and additions to the existing dwelling house and its surrounds at 34 Beatty Street, Balgowlah Heights (the **site**).

36 Beatty Street is a recently renovated part three, part four storey dwelling house that is located more to its Beatty Street frontage taking advantage of the locality's topographical characteristics. The existing dwelling and its built form utilises land that would otherwise serve no functional purposes. As a result 36 Beatty Street is provided with a large stepped and useable backyard area with associated external amenities. This property adjoins the site on its northern boundary.

Information reviewed as part of this submission includes:

- Survey Plan, by Vekta;
- Statement of Environmental Effects (**SEE**) and Clause 4.6 Exception to Development Standards Submissions (Height of Buildings and FSR), by Symons Goodyer;
- Architectural Drawings, Waste Management Plan, Shadow Diagrams, Certification of Shadow Diagrams, 3D Montage, Cut and Fill Plan, Schedule of External Materials and Finishes, all by CHROFI;
- Landscape Plans and Species List, by Libby Burley;
- BASIX Certificate, by Eco Mode;
- Arboricultural Impact Assessment, by Rain Tree Consulting;
- Terrestrial Biodiversity Report, by GIS Environmental Consultants;
- Bushfire Risk Assessment, by Bushfire Planning Services;
- Flood Risk Management Report, by Northern Beaches Consulting Engineers; and
- Geotechnical Investigation, by White Geotechnical Group.

Having reviewed the above documentation submitted with the DA, the neighbouring owner acknowledge the rights of the applicant to redevelop their land, albeit appropriately. However, the neighbouring owner **raise a strong and considered objection to the proposal as it has unacceptable impacts on their asset at 36 Beatty Street, Balgowlah Heights**. It is respectfully requested that the Northern Beaches Council (the **Council**) thoroughly consider the following issues during the assessment and determination of the DA:

- **Documentation inconsistencies / inadequate information;**
- **The proposal exhibits excessive height, bulk and scale;**

- **Having regard to the excessive height, bulk and scale and the resultant impacts, the Clause 4.6 Exception to Development Standards submissions cannot be supported;**
- **Additional considerations:**
 - **vegetation removal / retention;**
 - **visual privacy;**
 - **solar access, vistas and outlook;**
 - **acoustics;**
 - **traffic and parking;**
 - **excavation, dilapidation report and photographic survey;**
 - **management plans;**
 - **asbestos and demolition; and**
 - **stormwater management.**

A description of the proposal is provided at Section 1. The specific issues raised by the neighbouring owners follows at Section 2.

1. The Proposal

As described at Section 4 of the SEE, the proposal is described as follows:

- carry out substantial alterations and additions to the existing dwelling house and construct a swimming pool at 34 Beatty Street, Balgowlah Heights;
- the proposal has been designed to enable the retention of the existing 2-storey dwelling house and its visual connection with Forty Baskets Reserve and beach. The proposal involves creating a central courtyard framed by 2-storey buildings on the east, south and west;
- the kitchen is proposed on the southern side of the courtyard, linking to living areas within the existing dwelling house to the east and new living areas to the west. Above the bedrooms on the western side is a rumpus room. The concept provides for the changing needs of a family as the children grow older by providing separate but related living areas;
- demolition works include the removal of internal walls within the dwelling house, and removal of the western wall and western wing;
- the proposed swimming pool is located to the west of the dwelling house;
- a lift and subterranean corridor is proposed to connect the garage with the dwelling house;
- the dwelling house will provide accommodation in four bedrooms plus the existing studio room underneath the garage;
- a boat storage deck is proposed between the dwelling house and the southern property boundary; and
- the area around the building will be landscaped.

In addition to the above, the key numerical aspects include:

- a maximum height of 9.138m;
- a part two, part three storey dwelling;
- a floor space ratio (**FSR**) of 0.53:1;
- 60.2% open space (SEE) or 56% as calculated on the Landscape Plan;
- a wall height ranging from 6.1m to 7.5m;
- 2 car parking spaces (existing);
- a rear setback of 4.5m to 5.3m (existing);
- a northern boundary setback of 1m to 2.5m;
- a southern boundary setback of 1.525m to 3.22m.

2. Specific issues raised by the Neighbouring Owner

2.1 Documentation inconsistencies / inadequate information

The information provided is inadequate for the following reasons:

- numerous calculation inconsistencies are provided throughout the SEE and the consultant inputs, specifically the open space / landscaped area calculations. Confirmation of whether the proposal complies with the landscaped area / open space guidelines is required;
- in the absence of GFA calculation diagrams, it is unknown what has been included and excluded as GFA/FSR (which is acknowledged as non-complying). The calculation of GFA/FSR should strictly be in accordance with the relevant definitions in Manly Local Environmental Plan 2013 (**LEP 2013**) and that determined in the relevant NSW Land and Environment Court (**NSW LEC**) judgement – *Chami v Lane Cove Council 2015 NSW LEC 1003*. Specifically, it is questioned whether the lift corridor / horizontal circulation passage and stairs at each level have been included in the overall non-complying GFA/FSR calculation; and
- a solar screen to future detail is proposed for the first floor level northern elevation. It is to a void area, and in principle no objection is raised to its provision, however the detailed design and operational requirements of this screen should be required.

Given the above and lack of justification for such, the neighbouring owner specifically reserve their rights in this regard. Without the above information being furnished, a proper, detailed and considered assessment of the impacts of the proposal and specifically its technically non-complying elements is unable to be carried out.

2.2 The proposal exhibits excessive height, bulk and scale and therefore has an adverse visual impact

The locality slopes steeply from west to east (Beatty Street to Forty Baskets Beach). Its overall current built form provides an appropriate visual relationship with neighbouring properties. The relative consistency in allotment sizes and orientation and the already dense built form environment generates a pattern of relatively closely spaced built form with limited buffers.

A significant intensification in land use relative to built form is proposed. The desired future character of the locality is defined by the height and FSR standards contained in LEP 2013 and the complementary building envelope and design guidelines in the Manly Development Control Plan 2013 (**DCP 2013**). A rigorous merit based assessment must result in a satisfactory environmental outcome irrespective of whether a proposal complies with the maximum built form development standards.

In this regard, there appears to be no proper justification as to why the proposal cannot comply with Council's key built form standards (maximum height and FSR) in LEP 2013. The combination of excessive building height and non-compliant building envelope results in a dwelling that is of a size and scale that is incompatible with the desired future character of the locality. Furthermore, the proposed built form results in material environmental impacts to the neighbouring owners, an undesirable planning outcome.

As demonstrated in the following section(s), the departures from the height of buildings and FSR development standards unquestionably result in material environmental impacts to not only the neighbouring owners but to other adjacent properties. Additional departures from key planning guidelines within DCP 2013 include:

- number of storeys;
- wall height;
- side boundary setbacks (and resultant building envelope);
- rear boundary setback; and
- excavation.

The above is clearly an undesirable planning outcome as they principally relate to the proposed first floor level rumpus room (the highest element of the new built form). Should this area be redesigned or deleted, most of the above departures would be addressed.

Whilst the built form's architectural design appears to be generally sound, the following points relative to planning are raised:

- the proposal departs from numerous prescriptive (standards) and key (controls/guidelines) planning controls applying to the site. The community (or the neighbouring owners) has a realistic expectation that the site's redevelopment be undertaken in accordance with the applicable planning controls. The non-complying proposal results in material environmental impacts to the neighbouring owners (and other properties);
- maximum planning controls are not a right, rather an applicant must adequately demonstrate that a proposal results in a satisfactory or equitable planning outcome. In this regard, the proposal departs from the height of buildings standard in LEP 2013 and numerous development guidelines in DCP 2013. These departures and the built form generally result in material environmental impacts and a built form that proposes excessive yield at the expense of internal and external amenity;
- the proposed maximum building height is nonetheless inconsistent with the following objectives as stated at Clause 4.3(1) of LEP 2013 as follows:
 - (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,*
 - (b) to control the bulk and scale of buildings,*
 - (c) to minimise disruption to the following:*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
 - (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*
- the proposed maximum FSR is nonetheless inconsistent with the following objectives as stated at Clause 4.4(1) of LEP 2013 as follows:
 - (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
 - (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
 - (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
 - (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- the curtilage to the neighbouring properties relative to apparent built form is significantly reduced. This results in a 'continual' wall of built form presented to the shared boundary between the site and 36 Beatty Street. This walled affect is demonstrated at **Figure 1**. The limited separation accentuates the environmental impacts;
- the site's high visibility and existing built form location when viewed from Forty Baskets Beach and Reserve increases the perception of the proposal's bulk and scale and its associated departures from the key planning controls;
- the departure from the height standard (and where it is 3 storeys and departs from the wall height guideline) is exacerbated at the site's most visible and prominent elevation relative to 36 Beatty Street and is directly visible when viewed from the dwelling at 36 Beatty Street and its backyard directly adjacent;
- the proposal represents a significant intensification in use from that existing on the site and from that permitted;
- the cumulative impact of the proposal's non-compliance with the key development standards and development guidelines is a large modern and contemporary dwelling house which:

- exhibits excessive bulk and scale;
- results in material environmental impacts to neighbouring properties;
- consideration should be given to internalising the proposed rooftop plant and equipment areas so that they are located within the predominant building envelope or basement level rather than being located on the roof top. In this location they unquestionably contribute to the built form's height non-compliance and overall excessive height, bulk and scale;
- the proposed built form will be uncharacteristic and unsympathetic to, its immediately adjoining properties and the desired future character of the area. It exceeds that permitted and results in an undesirable outcome; and
- the additional building envelope beyond that technically permitted does not contribute to the building's environmental performance.

Alternative redevelopment options should be explored. A proposal which strictly complied with Council's key built form standards and guidelines would unquestionably result in a more appropriate and equitable planning outcome. That is providing required amenity for the occupants and at the same time maintaining existing amenity levels of the neighbouring owners.

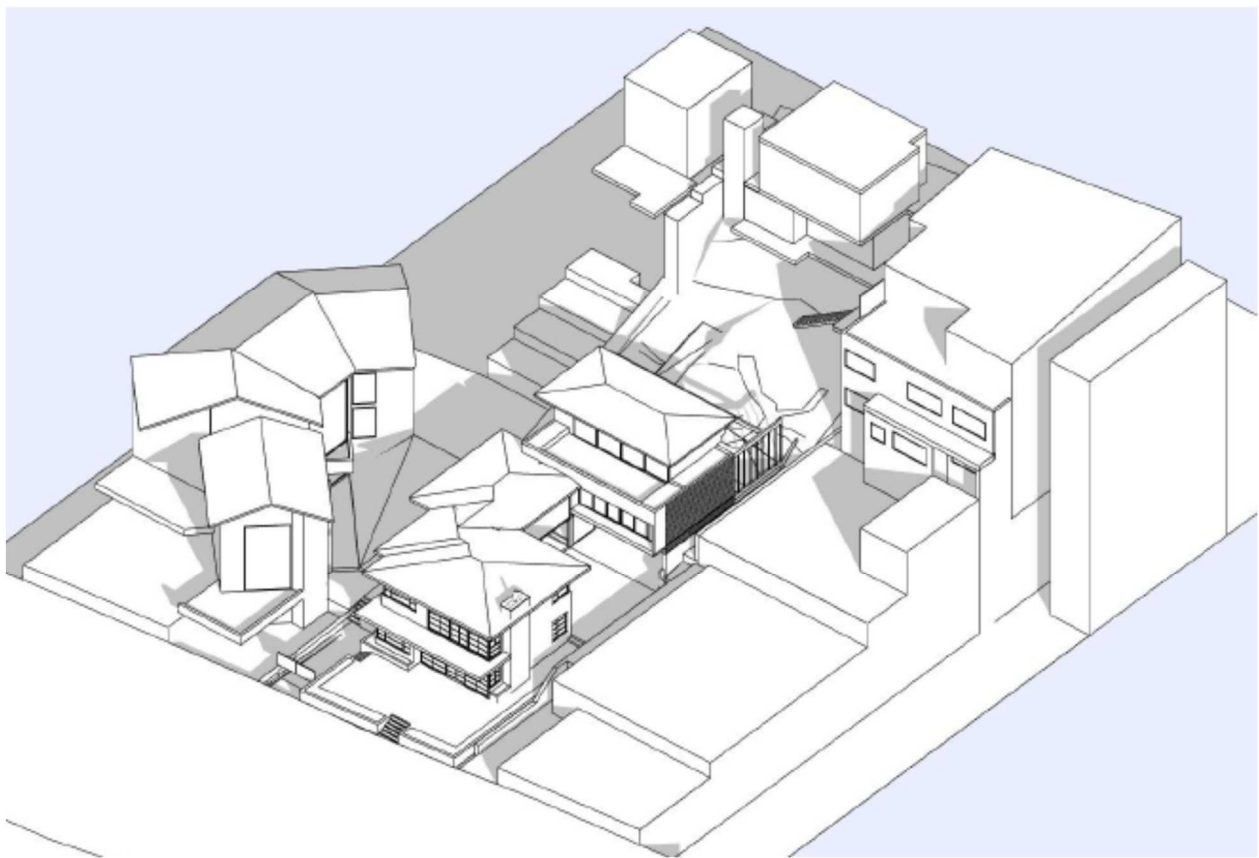


Figure 1 – Axonometric diagram of the proposed built form and its walled effect to the useable backyard of 36 Beatty Street (source CHROFI DA-901 A)

In addition to the above and generally, the overall built form should be stepped further away from the neighbouring owner, comply with the height standard, wall height and setback guidelines. Additionally alternative materials and finishes should be considered to alleviate the stark white built form outlook which would result if approved as currently proposed.

2.3 Having regard to the excessive height, bulk and scale and the resultant impacts, the Clause 4.6 Exception to Development Standards submission cannot be supported

The proposal does not comply with the key LEP 2013 built form standards relative to height and FSR. The extent of the proposed departures are:

- 0.638m or 7.5% relative to height; and

- 102.6m² gross floor area (GFA), 0.13:1 or 32.5% relative to FSR – this departure may be greater than stated, refer to Section 2.1 for further information.

The above departures give rise to material environmental impacts, an undesirable planning outcome not only for the site but for its adjacent properties. The standards followed significant consultation with the community. Compliance with them is therefore a realistic expectation of the community. The site is not so constrained that compliance with the height standard cannot be achieved.

Despite the submission of a Clause 4.6 Exception to Development Standards submission, the proposal is unable to be supported and fails the planning tests established pursuant to Clause 4.6 of LEP 2013 or the most relevant NSW Land and Environment Court judgement (*Initial Action Pty Ltd v Woollahra Municipal Council NSW LEC 118*). Compliance with the standards is required as it has not been adequately demonstrated that compliance is unreasonable and unnecessary nor has it been demonstrated that there are sufficient environmental planning grounds to justify contravening each standard.

Based on the departures from the height of buildings and FSR standards in LEP 2013 and the resultant material environmental impacts, the Clause 4.6 Exception to Development Standards submission(s) and therefore the proposal is unable to be supported as:

- there are insufficient environmental planning grounds to justify the contravention of each standard;
- there is obvious public benefit in maintaining each standard;
- the departure from each standard hinders attainment of the objects of the Act;
- the proposed development is not in the public interest as it is inconsistent with the relevant objectives of each standard;
- it has not been adequately demonstrated that compliance with each standard is unreasonable and unnecessary; and
- the objection(s) is not well founded.

2.4 Additional considerations

Vegetation retention / removal

As described within the Arboricultural Impact Assessment, a total of 21 of varying quality are found on the site. Key points within the report include:

- prescribed trees 5, 6, 8 and 21 are proposed for removal given the proposed built form location and extent of landscape / revegetation works required for the central yard between the dwelling house to the east and the existing garage / studio to the west. This is adjacent the rear building line and part of the backyard at 36 Beatty Street;
- the relocation of trees 5, 6, 8 and 21 may not be possible given their average condition (form and branch structure).

The proposed building and development will result in a very major site disturbance. This will have a significant impact on the trees within and immediately around the proposed built form location and potentially on neighbouring properties (including relevant tree protection zones). Specifically, the proposed development will involve:

- major demolition works;
- use of large scale civil and earthmoving equipment;
- access to and from the site with large trucks and construction plant;
- major site excavations;
- stockpiles of excavated material and demolition waste;
- stockpiles and storage of building materials;
- significant re-grading, cutting and filling of the surface levels;
- trenching for major services;
- major building works involving concreting and retaining walls
- general construction;
- use of large cranes and piling equipment;

- parking for site personnel and deliveries;
- paving and landscape retaining walls; and
- landscaping and planting.

Having regard to the above, it is recommended that Council impose as conditions of consent the recommendations made in the arborist's report relative to tree protection zones, construction techniques and zones.

Further points to consider include:

- existing vegetation within the site and adjacent provides an effective screening of built form. The removal of this vegetation and construction of larger built form will increase the visual impact of the new built form and reduce the scenic outlook of the neighbouring owners;
- existing screening in the form of mature vegetation is being removed. The unnecessary removal of vegetation may impact the ecosystem which, in turn, will have an adverse effect on native wildlife, including the long nosed bandicoot, brush turkeys and reptiles;
- Council has a responsibility to regulate tree removal and to ensure it assesses the potential impacts in accordance with legislation; and
- trees are an important asset for the community and they provide ecological benefits and privacy/screening. Vegetation has a direct relationship with the visual impact of properties and enhances urban, landscape and scenic character.

Visual privacy

The site is in an atypical domestic residential environment within the Northern Beach Local Government Area (LGA). The locality slopes steeply from west to east (Beatty Street to Forty Baskets Beach). Built form (included elevated external open space) and topography enables mutual overlooking of neighbouring properties. The relative consistency in allotment sizes and orientation and the already dense built form environment generates a pattern of relatively closely spaced built form with limited buffers.

Building proximity creates privacy impacts. The nature of such an urban environment is that all future development will seek to maximise levels of residential amenity and density through design (including landscaping). However, the proposal provides for an unacceptable and inequitable planning outcome relative to visual privacy for the neighbouring owner principally to its backyard (the principal area of private open space) at 36 Beatty Street from:

- the non complying setback and wall height as presented to the shared boundary between the site and 36 Beatty Street;
- eastern elevation openings (W01 and W02) at the ground floor level from the primary living room;
- eastern elevation openings (W11, W12 and W13) at the first floor level from master bedroom and ensuite. W11 and W12 could be conditioned to be constructed with obscure glazing;
- the balcony accessed from the first floor level master bedroom. Privacy screening to its sides would alleviate this issue;
- the balconies accessed from the central first floor level bedrooms;
- associated aural privacy impacts to the backyard area from the proposed swimming pool;
- overlooking **from** the backyard of 36 Beatty Street to the central courtyard and the associated external dining area and the internal ground floor level primary living rooms;
- despite the landscaping proposed near the shared boundary, there is no guarantee that the planting will survive and provide for appropriate (equitable) visual privacy. Little screen planting is proposed adjacent to the shared boundary within the central courtyard.

The resultant visual privacy impact is not an appropriate planning outcome. The utility and useability of existing external spaces (the principal area of private open space) at 36 Beatty Street are unquestionably compromised by the proposal.

Acoustics

An acoustic assessment has not been submitted with the DA, however, such a report is not considered necessary. Notwithstanding that a report is not considered necessary, it is requested that should Council be of a mind to favourably determine the DA, the following issues be considered and adequately addressed:

- the requirement for all mechanical plant and equipment (such as air conditioning and the pool pump etc) to be located within acoustically attenuated structure and appropriately setback from the shared boundary with 36 Beatty Street. This will significantly reduce the potential external acoustic impacts of such equipment and potentially its visual impact; and
- the imposition of a condition requiring all mechanical plant and equipment and internal spaces and openings of the dwelling to comply with the highest acoustic criteria, whether an Australian Standard or the BCA.

Excavation, dilapidation and photographic surveys

The following is noted in relation to the amount of excavation:

- substantial excavation (ranging from 2.9m to 12m in depth) is proposed across the that is steeply sloping to accommodate the horizontal passageway and lift, relevelling of the backyard (between the existing garage and dwelling's front building line) and for the swimming pool. It is unclear as to whether the site (and not the adjoining property) and its underground conditions are suitable to accommodate the amount of excavation proposed. The extent of excavation does not reinforce the locality's landform (topography) and landscape (vegetation) qualities;
- the geotechnical investigation identifies that excavation works range from Hazard 1 to Hazard 4. Hazards 2, 3 and 4 have unacceptable impacts to property and life;
- a stormwater easement is located along the site's southern boundary and a sewer main run centrally across the site in a north south direction. Both traverse neighbouring properties. Their locations are in proximity or directly under and adjacent to areas where substantial excavation is proposed and with identified risk to the integrity of the easement and sewer line. It is requested that Council determine whether it is acceptable to excavate and build over, through or around the easement and the sewer main and if so how such areas might be accessed within the site as/when required for maintenance etc;
- the neighbouring owners and their built form should not be subjected to the likely detrimental consequences of movement, caused by the proposed construction works. The expected excessive vibrations and any machinery noises which will be required to excavate and then reinforce the underground conditions will disturb and create a nuisance to the residents and may potentially impact the integrity of the built form. Carefully crafted conditions of consent designed to address these matters are required as well as implementing construction methodology recommendations from the Geotechnical Investigation;
- given the above extensive excavation works, it is highly recommended that the preparation and submission of a dilapidation report and photographic survey of the relevant adjoining/adjacent buildings prior (prior to the release of a construction certificate) and post construction (prior to issue of an occupation certificate) be required. It is requested that the applicant be required to provide these reports to the neighbouring owners for their records. This will ensure that if the construction works have an adverse impact on the structural integrity of the adjoining buildings, the neighbouring owners have an appropriate course of action (safety net) with the applicant/builder;
- given the extent of excavation required and the site's rock characteristics, the use of large rock breaking equipment (grinding or rock sawing and breaking and hydraulic rock hammering). This may/may not fit within the designed construction access routes? Alternative options may be required;
- more stringent vibration criteria relative to the impact on 36 Beatty Street is recommended and should be imposed as a condition of consent;
- will the level of excavation impede existing natural watercourses? How is this existing runoff and drainage pattern addressed within the submitted documentation?
- the adverse impact of the development (specifically the amount of excavation) on existing natural landforms within the site;

- the public safety impacts of the amount of excavation and the impacts on neighbouring properties;
- the proposed built form is excavated into the site rather than following the locality's contours which would result in a building that exhibits an improved human scale and which also would have reduced environmental impacts to adjacent properties.

Management plans

Given the locality's narrow street network characteristics, limited buffers between dwellings and extensive construction works proposed, it is recommended that a Construction Management Plan (**CMP**) be required prior to the issuing of any development consent and then implemented as a condition of consent. This will assist in alleviating unacceptable impacts to all neighbouring owners and the surrounding public domain during an anticipated lengthy construction process. Prior to its imposition as a condition of consent Council should be satisfied that it adequately addresses the following issues:

- the subdivision pattern and existing built form generates a pattern of closely spaced development with limited buffers and a narrow street network;
- mature vegetation is prevalent;
- restricted on street parking for residents and the community in general;
- the split and narrow carriageway of Beatty Street in the site's vicinity;
- limited sight distances given the curved intersection of the site's locality and the topography in general;
- the requirement for significant heavy vehicle movements;
- maintaining clearances to existing driveway crossings;
- the identification of traffic management techniques and work zones and the likely manoeuvring of cranes over neighbouring properties;
- identification of site access, sheds, materials and handling areas etc;
- parking requirements/locations for relevant tradesman; and
- the local street network (including existing on street car parking) will unquestionably restrict the size of trucks able to access and egress the site during construction works. This is a particularly relevant consideration/impact on amenity for the neighbouring owners. Recommendations in relation to the size of trucks used during the construction works are required.

A Construction Noise and Vibration Management Plan (**CNVMP**) should be prepared by the demolition / construction contractor(s) outlining vibration monitoring locations (at the most sensitive location) and schedules and which would be imposed as a condition of consent.

Asbestos and demolition

Substantial demolition of aged built forms are proposed. If asbestos is found to be present on the site, the following advising/condition is recommended:

'Specialised controlled demolition of the current buildings is to be carried out only by contractors licensed in asbestos removal to arrest and encapsulate airborne dust particles and dispose of such debris in a licensed hazardous waste pit in accordance with the relevant Australian Standard(s).'

The above works would be included within an Asbestos Management Plan in accordance with the Code of Practice: How to Manage and Control Asbestos in the Workplace [Safe Work Australia, 2011].

Given that demolition works are required to facilitate the proposal, it is requested that Council impose a condition of development consent requiring all demolition works (and soil and sediment erosion works) to comply with the relevant Australian Standard(s).

Stormwater management

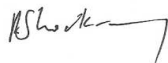
It is recommended that Council thoroughly review and consider whether the site's underground conditions are suitable for the proposal. Detailed construction methodology recommendations should be made and to assist in the adequate maintenance of runoff and water flows on/to adjoining properties and their relative structural integrity.

3. Conclusion

Following a review of the available information provided with the DA, the neighbouring owner acknowledges the rights of the applicant to redevelop their site. However, a considered objection is raised to the proposal. Given the issues raised above, amendments to the proposal are required/recommended. Should amended plans be submitted, the neighbouring owner requests to be re-notified.

Should you have any further queries, please do not hesitate to contact the undersigned.

Yours Faithfully



Scott Lockrey
Director