

Development Application DA2020/0061 - 59 Cutler Road CLONTARF NSW 2093

61 Cutler Road response to 59 Cutler Road DA Development Application DA2020/0061

We note that there are minor adjustments with regard to amended plan May 2020 to the DA for 59 Cutler Road. There are still major issues and concerns with regard to the impact of the proposed development on our neighbouring property (61 Cutler Road):

1. Retention of existing structural elements
2. Non-compliance with the Height of the Building and;
3. Non-compliance with the Floor Space Ratio (FSR) development standards under the Manly Local Environmental Plan 2013 (LEP) and DCP;
4. Non-compliance with the side setback in relation to wall height;
5. Amenity impacts including bulk and scale, overshadowing, visual privacy, acoustic privacy and security;
6. Deficiency in supporting documentation with respect to Statement of Environmental Effect;
7. Impact to our property of Civil works and existing sewer and retaining wall;

Development Standards

1. Retention of existing structural elements

As the conformance of the proposed development relies upon retention the existing building structure on the ground floor southern boundary we request a structural certificate to ensure the structural adequacy and safety to construct a further storey on top.

2. Height of Buildings

Non compliant building height remains the same at 9.515m despite room for improvement across all levels. Especially with 1F floor level is raised from existing. This demonstrates poor design.

While view loss maybe an issue for 57 Cutler Road, the building height of the proposal is non compliant with MDCP which has significant impacts on our property, in terms of unreasonable bulk and scale and loss of reasonable amenity, especially where the property is built on top of the retaining wall of 3m within the property according to Privacy and View Visual Analysis, adding to the overall height of the development when viewed from 61 Cutler Road and adding to the overlooking issue (dealt with in greater detail below).

See Table 1 below more detail of for proposed building heights and side setbacks.

Table1. – Wall heights

	GF	1F	2F
Ground RL	43.46	43.46	43.69
Proposed roof RL	47.072	50.295	53.205
Proposed Wall height	3.612m	6.835m	9.515m

- 1F covered balcony
- Garage as in excess of 30sqm

Thus the FSR is in excess of allowable by more than 10%. Refer Drawing No. DA16 by Action Plans. FSR should be recalculated.

4. Non-compliance with the side setback in relation to wall height and window placement

The amended plan, REV B suggests to retain South facing wall along Living and Dining.

It is very clear that the current condition of weatherboard structure will not withstand the demolition and the extension of another storey. See picture below.



New bedroom and ensuite on 1F with W6-8, is not compliant with MDCP despite planters positioned in attempt to mitigate the privacy.

Note the previous DA proposed a demolition of the wall and GF bedroom and 1F living and dining room, replacing with study, porch, bed, ensuite, living room and kitchen.

In this case, this should be seen as a new development and building compliant side setback should be applied. The proposal demonstrates significant non compliance with which has significant privacy and overshadowing impacts on our property.

Responses to MDCP as below.

4.1.4.2 Side setbacks and secondary street frontages

Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.

- a) *Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.*

Refer the table below showing noncompliance with side setback on part of the building proposing alteration and addition.

Table 2. – Side setback

	GF	1F	2F
Ground RL	43.46	43.46	43.69
Proposed roof RL	47.072	50.295	53.205
Proposed Wall height	3.612m	6.835m	9.515m
Proposed side setback	1.566m/ 1.615m * Please clarify the number as 2 different numbers been provided throughout the REV 1 and REV2.	1.566m with planter 2.514m	4.3m
Compliant setback for proposed wall height	3m with windows	3m with windows	3.172m
Note	Existing bedroom on GF is also to be demolished and be replaced with a covered porch.	New 1F addition of bedroom over GF bedroom, causing further overshadowing and privacy impact.	New 2F addition of bedrooms cause impact on amenity, overshadowing and privacy to all neighbouring properties.

4.1.4.2 Side setbacks and secondary street frontages

c) *All new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries*

- The new bedroom, ensuite on 1F demonstrates 4 large windows (W06,W07,W08,W09) on southern facing wall despite 4 west facing windows (W10,W11,W12,W13). This southern facing wall is located at 2.514m to the side boundary. This is within 3m from the side boundary. Therefore should not be allowed.

- Again, we do not believe that the southern facing wall of 1F is capable of withstanding the demolition of surrounding walls and extension of another storey above. Previous proposal showed a demolition of the wall, replacing with a new wall at the same location with extensive glazing facing the side boundary with less than 3m side setback. This cause extreme privacy impact on 61 Cutler Road, directly looking into 3 bedrooms, dress room, living, kitchen and open private area. This is exacerbated with no boundary fence on ground floor.

e) Side setbacks must provide sufficient access to the side of properties to allow for property maintenance, planting of vegetation and sufficient separation from neighbouring properties. See also paragraph 4.1.4.3.b.vi. of this plan.

- REV 2 have failed to address the issue.
- Unmanaged obnoxious weed impacting neighbouring properties has been an ongoing issue due to insufficient access. Despite current 1.606m side setback, poor access to maintain the plant and property due to the retaining wall.
(See photo provided)

4.1.4.3 Variations to Side Setback in Residential Density Areas D3 to D9 (see paragraph 4.1.1 of this plan)

The property is located in D7 area.

ii) The wall protruding into the minimum setback must not provide windows facing the side boundary.

- According to Drawing No. DA05 by Action Plans, existing southern facing floor walls on GF, 1F will remain despite the poor condition. If this is not the case, the distance to the side boundary over the length of the wall is less than required setback control. Refer table 2. above.
- Again, the proposal shows extensive demolition of existing southern walls on GF,1F and reconfiguration of the GF, 1F with new addition of the 2F. The proposal shows extensive glazing across all floors.
- Given the southern facing wall on GF and 1F is located into the minimum setback as per Table 2 above. Therefore the walls protruding into the minimum setback must not provide windows facing the side boundary. This includes the new bedroom and ensuite on 1F.

Also any wall over 3m high must comply with the setback requirements irrespective of whether the wall contains windows or not.

Despite the increased side setback of 2F, with our currently proposed development, we have been requested by council to have the following offsets on our southern boundary for the privacy and acoustic impacts of our neighbour (6 Castle Rock Crescent), noting we do not directly overlook any windows of their property:

	From Southern boundary to balcony	From Southern boundary to building structure
Ground	N/A	2.5/3.0m
First	2.0m	4.9m
Second	3.2m	4.9m

We request that the above setbacks (as imposed on our development) are the same. Noting that the overlooking impact is greater between 59 and 61, than 61 to 6 Castle Rock Crescent.

This can be achieved through better design by deleting (or relocating to void) bedroom and ensuite on 1F and positioning the 2F bedrooms in the proposed void area.

5. Amenity impacts including bulk and scale, overshadowing and visual and acoustic privacy Bulk and Scale

With both excessive wall height, FSR and insufficient side setbacks to southern boundary poses significant bulk and scale to our property, in particular the new addition of 1F bedroom and 2F.

As explained above, the amenity impact is a direct cause of non compliances with development standards and design seeks to gain maximum amenity for the development site with no regard for our property.

Overshadowing

The proposal is non-compliant with the sunlight and overshadowing objectives of Part 3.4.1 of MDCP.

Overshadowing of our private open space is significantly increased by the proposed development. Due to the topography this area is always damp and requires as much sunlight as possible to allow use of the space to avoid mould and mildew.

Drawing DA18 demonstrates the extensive loss in direct northern solar access to 2 living rooms, 3 bedrooms and kitchen directly caused by the extension of 1F bedroom and ensuite as well as the extension of 2F. The increased overshadowing impacting on private open space.

3.4.1.1. a) states that ‘..New Development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice).

The proposal does not comply with MDCP clause 3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties, 3.4.1.3 Overshadowing Solar Collector Systems, 3.4.1.4 Overshadowing Clothes Drying Areas.

The shadow diagram is not certified. The shadow diagrams as per DA 19 and DA20 seem to underestimate the current shadow at 12pm and 3pm.

Visual and Acoustic Privacy

Note the amended plan proposes minimal screening at 1.6m with very poor privacy and view visual analysis.

This clearly demonstrates poor design with front porch directly facing 61 Cutler Road impacting both visual and acoustic privacy.

This failed to note that they are facing directly into 1st floor the 3 bedrooms, dress rooms and ground floor living room and kitchen of 61 Cutler Road.

The proposal has 19 large windows and 2F balcony on all three levels facing directly into our living room, kitchen, 3 bedrooms, dress room and all open space area including laundry hanging area.

We request that a boundary fence be erected on top of the retaining wall of 1.8m in height with no gaps. This will reduce the impact of the ground floor windows overlooking our property.

For the first floor we request that the windows are screened to avoid looking into our garden and bedrooms directly.

Responses to MDCP as below.

This is a photo attached in the assessment report of DA REV2018/0018 for 61 Cutler Road.

This photo was taken from 59 Cutler Road Clontarf.



The photo demonstrates the 1F extension of the bedroom and ensuite, 2F extension results a detrimental impact on 61 Cutler in regards to visual and acoustic privacy.

A photo was submitted by the applicant for the DA of 61 Cutler Road. This was taken from the roof level and demonstrates the 3rd floor extension results a detrimental impact on 61 Cutler in regards to visual and acoustic privacy to. **The photo will be submitted separately.**

3.4.2 Privacy and Security

3.4.2.1 Window Design and Orientation

a) Use narrow, translucent or obscured glass windows to maximise Privacy where necessary

- Window glazing on all southern boundary demonstrates in excess of 60% of the wall. Again no windows allowed with above setback non compliance.

- All southern walls are located into the minimum side set back.



The property is built on top of the retaining wall within the property, adding to the overall height of the development when viewed from 61 Cutler Road and adding to the overlooking issue.

This is exacerbated with 19 extensive glazing, causing unacceptable privacy impact to 61 Cutler Road, looking directly into living room, kitchen, 3 bedrooms and dress room and all open space area including laundry hanging area.

Please note Basix issued on 13/05/2019 is not current and requires an update.

Previous response in regards to the excessive bulk and scale is direct cause from non-compliant building height of 9.515m, side setback, FSR remains the same in REV B. The existing 2 storey house sits on 3m retaining wall as per the Privacy and View Visual Analysis. is not considered in the REV B.

This privacy and view visual analysis does not demonstrate the true scale of the impact. Also it does not provide the photographic imagery that can be taken from the existing structure of 59 Cutler Road.

Security

Proposal does not provide boundary fence to mitigate the security issue to our property.

Currently there's no fence between 61 Cutler Road, and residence of 59 Cutler Road requires to seek consent to gain access or trespassing to the side of the property to maintain the garden and 4m tall hedges on top of retaining wall. This is a great security impact on 61 Cutler Road.

6. Statement of Environmental Effect not updated

Statement of Environmental Effect requires an update, as well as clause 4.6 for the non compliant height and FSR.

7. Civil works and existing sewer and retaining wall

Require a dilapidation report on existing retaining wall to ensure the structural adequacy and safety during construction.

Existing retaining wall should be assessed for condition and ability to support the new larger structure as this structure and building structure are to remain.

Retaining wall on the southern boundary in excess of 2m



Condition of existing retaining wall



Lack of access for maintenance due to lack of side setback



Conclusion

As raised above, the proposal will have significant amenity impacts on our property in terms of excessive bulk, scale and overbearing, overshadowing, privacy and security due to the non compliant height, FSR, setbacks,. The proposal fails to minimise the impact of the new development and does not represent careful design in contravention of objective 1 and control a) of clause 3.4 of the DCP.

An appropriate development, based on a good site analysis, would locate the bulk of the dwelling away from the southern boundary and utilise the void area for 2F to relocate the 1F bedroom, ensuite as well as the 2F bedroom on Eastern side for example, and provide reasonable opportunities for gaining views without such major amenity impacts on adjoining properties.