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Northern Beaches Council

P.O Box 82

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Attention: Mr Maxwell Duncan, Assessing Planner

Dear Mr Duncan



**Development Application DA2019/1512**

**140 Ocean Street, Narrabeen NSW**

I am writing to object to the above development, on the basis that the proposal does not comply with the Warringah Development Control Plan 2011 in at least the following matters:

- Inadequate provision for solar access in winter to the development (significantly less than 50% stipulated)
- Severe adverse impact on solar access in winter to adjoining property at 134-138 Ocean Street (less than 10% salvaged).
- Inadequate provision of landscaped open space (33.2% underprovided)
- Inadequate rear boundary setback (14.6% underprovided)
- Inadequate front boundary setback (8.3% underprovided)
- Inadequate provision for on-site parking (1 space short)

It is considered that the proposal is:

- Non-compliant with multiple development standards
- is a significant over-development of the site, mainly due to breaching the DCP

- unreasonably and severely impacts on the overall amenity of adjoining properties
- is not in the public interest.

Details of my objection are appended to this cover letter.

I have also submitted an objection online on 23/1/20 at 1.05pm, that summarised my objection to the development as proposed and which advised that details of my objection would be separately outlined by letter.

I also formally request mediation, noting that I have requested from Council's Customer Service Centre the relevant form, and searched on Council Website. It appears that this form is unknown or unavailable.

The purpose of mediation is to formally state the objections relation to non-compliance above, and to request relocation of the access driveway and on-site parking to the applicant's northern boundary in order to ameliorate impacts on our outdoor backyard spaces from vehicle movements, noises and emissions.

Yours faithfully,



**Lauren McHugh**

24 January 2020

## Objections to DA2019/1512

### 1. Deficiencies and Inaccuracies

The Application documents contain a number of deficiencies and inaccuracies that are relevant to the Development Standards applicable to the site. Some serve to obscure the impact of these non-compliances. It is also noted that as of today's date 23 January 2020, the applicant has not displayed the required notice on-site notice regarding the proposed development.

These deficiencies are tabulated below:

Applicant's Document	Deficiency/Inaccuracy
Development Application Form, Item 2.8	<p><b>Incomplete Shadow Diagram</b></p> <p>An Applicant is required, under the fourth dot point, to provide 'shadow diagrams to indicate the shadows cast by existing buildings and structures on the site and in the surrounding area'.</p> <p>The shadow diagram provided by the Applicant fails to show the shadows from existing buildings on the site onto surrounding areas, and in particular onto the property (134-138 Ocean St) to the south of the site.</p> <p>The two existing buildings on the development site are both low level, single storey and, despite the absence of a shadow diagram, it can be interpreted that they cast minimum or no shadows on 134-138 Ocean Street. This fact is pertinent to the Development's non-compliance with the "Solar Access" provisions of the Warringah Development Control Plan 2011 (WDCP).</p> <p><b>Failure To Certify</b></p> <p>The Applicant has failed to certify compliance of the shadow diagrams.</p>
Survey Plan 8087/A, DA004/B, DA105/B and DA106/B.	<p>The Application includes incorrect information that may mislead the consent authority in regards to the vegetation that exists on the southern adjoining property (134-138 Ocean), and possibly regarding vegetation to the west. The impression created by several of the Applicant's documents is that dense, interlocking vegetation, exceeding 2 storeys in height, currently exists along the entire length of the common boundary and located on 134-138 Ocean.</p> <p>The fact is that the existing vegetation is highly variable. It is generally open shrubbery, with spindly canopies, generally never reaching 1 storey height and for much of the length of the common boundary not reaching paling fence height.</p> <p>The current vegetation is more accurately shown in photos in the Applicant's Statement of Environmental Effects (SEE), figures 3 and 5. It is evident these photos are recent and were taken during spring or summer. However it should be noted that this vegetation is composed of a series of</p>

well maintained gardens and is trimmed according to the seasons. In summer the vegetation is allowed to grow higher to provide shade, and in winter it is trimmed to admit sunshine. In addition, on the last page of this submission I have included additional photos from the perspective of Unit 22, 134-138 Ocean Street, taken on 23/1/20 at 12.40pm.

The inaccurate information is contained in the following documents:

- Survey Plan 8087/A which poorly describes the vegetation as “Line of Tall Hedges” and shows them as densely planted with interlocking canopies.
- DA004/B which repeats the description as “Line of Tall Hedges.”
- DA105/B incorrectly depicts the existing vegetation on 134-138 Ocean as a continuous line of tress with dense interlocking canopies, all well exceeding 2 storeys and approximately 7700mm in height. (It should be noted that this drawing incorrectly labels the south elevation as North, and vice versa).
- DA 106/B incorrectly depicts the existing vegetation on 134-138 Ocean, as described above. This drawing also proposes that equally tall trees will be planted as part of the development, which will have solar access implications for neighbours, which has not been modelled.

It is appreciated that solar access consideration from vegetation are not normally a consideration, but the impression created by these inaccuracies is that the open space on adjoining property at 134-138 Ocean is already shaded by its own trees, and the adverse impact of the proposed development on solar access to adjoining dwellings is of reduced consequence.

It is also relevant to note that, in its SEE, the Applicant regularly omits discussion about the adverse affect of the proposed development on solar access both on its own property, and more significantly the adverse and unreasonable impact on adjoining properties.

Those parts of the SEE where this omission is particularly obvious are:

- Environmental Assessment Clause 4.2.3
- Compliance with WDCP 2001 Table 6
- Conclusion Part 6

## 2. Non-Compliance with Development Standards

The proposed development breaches a number of Development Standards set out in the WDCP. These breaches accumulate to enable over-development of the site to the detriment of neighbouring properties, future occupants of the development and are not in the public interest.

These non compliances with the WDCP are tabulated below with reference to the Applicant’s submission.

Applicant's Document	Non-Compliance
Drawing DA006	<p><b>Access to Sunlight</b>  WDCP2011, Part D6 states:  "1. Development should avoid unreasonable overshadowing any public open space.  2. At least 50% of the required area of private open space of <i>each dwelling</i> and at least 50% of the required area of private open space of <i>adjoining dwellings</i> are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21."</p> <p>The proposed development fails to provide the required amount of sunlight to the subject site, and denies access of sunlight to the adjoining dwellings located at 134-138 Ocean Street, as described below.</p> <p><b>Denial of Sunlight on own site</b>  The Applicant's shadow diagram Drawing DA006 shows, that during the relevant times on June 21, the existing building to the north of the site (at 142 Ocean) overshadows the northern portion of the site. It also shows that the proposed new building will also overshadow the southern and eastern portions of the site. The cumulative result is that the required 50% of private open space will not receive 3 hours of sunlight as required by the DCP. The portion of the space that will receive sunlight at these times is adjacent to the 4 bedroom dwelling only, while the majority of the site will remain in shadow all day.</p> <p><b>Denial of Sunlight to adjoining Dwellings at 134-138 Ocean Street</b>  At the times stipulated in Part D6, and for most of winter, the property at 134-138 Ocean entirely relies on receiving sunlight on the open areas along its northern boundary which adjoins the development.</p> <p>This is the only part of this property capable of receiving winter sunlight. Generally throughout winter the open spaces on its eastern, western and southern sides and its internal courtyard are in shadow.</p> <p>The Applicant's shadow diagram Drawing DA006 shows that, during the relevant times on June 21, the proposed development will overshadow this neighbouring existing open space well beyond the 50% stipulated. It is assessed that the cumulative area not adversely affected would be less than 10%.</p> <p>The Applicant's proposal contravenes Part D6 of the WDCP and is considered an over-development of the site.</p>
Traffic Report, section 3.2.  Statement of Environmental Effects	<p><b>Off Street Parking</b>  In accordance Appendix 1 of WDCP, the off street parking to be provided is:</p> <ul style="list-style-type: none"> <li>● 2 spaces for the Dwelling House</li> <li>● 1.2 spaces for each of the 2 multi-dwellings</li> </ul>

<p>(SEE), Page 15, Clause 3.5 Car Parking</p>	<ul style="list-style-type: none"> <li>• 1 space for Visitors.</li> </ul> <p>This results in the requirement to provide at least 5.4 spaces, but the Applicant has proposed that the provision be reduced to 5 spaces.</p> <p>WDCP does not stipulate how a fractional space requirement should be determined, however Warringah Local Environmental Plan (WLEP) at Division 5 Section 74(a) is clear and states “...the minimum number of on-site parking spaces required in relation to a particular land use, or sets out a means of calculating that minimum number of spaces—at least that <u>minimum number of spaces must be provided,</u>”</p> <p>The Applicant’s proposal to reduce the parking provision from the calculated number 5.4 down to 5 contravenes the WLEP. Consequently, at least 6 spaces must be provided.</p>
<p>SEE Page 2, Section 1.2, Table 2. Pages 20-23 Section 4.1.5</p>	<p><b>Front Boundary Set-Back</b></p> <p>The Applicant proposes that the 6 metre set-back required in accordance with WDCP B7 be reduced to 5.5 metres. The Applicant seeks to justify the non-compliance by way of a Merit argument based on landscaping design.</p> <p>However, the setback requirements for this site are stipulated under B7, whereas the Merit argument is applicable to sites identified in accordance with B8.</p> <p>This differentiation of sites created by B7 and B8 means that the Merit argument cannot be applied and the setback must be 6 metres.</p> <p>While the consequence of this particular non-compliance is not great in itself, it is one of the contributing factors which results in over-development of the site.</p>
<p>SEE Page 2, Section 1.2, Table 2. Pages 20-23 Section 4.1.5</p>	<p><b>Rear Boundary Set-Back</b></p> <p>The Applicant proposes that the 6.5 metre set-back required in accordance with WDCP B9 be reduced to 5.05 metres at first floor level, a shortfall of 14.6%. The Applicant seeks to justify the non-compliance by way of a Merit argument based on landscaping and architectural design.</p> <p>However, the setback requirements for this site are stipulated under B9, whereas the Merit argument is applicable to sites identified in accordance with B10.</p> <p>This differentiation of sites created by B9 and B10 means that the Merit argument cannot be applied and the setback must be 6.5 metres.</p> <p>The consequences of this particular non-compliance are significant, in that the Applicant proposes to ameliorate the non-compliance by planting mature trees, growing to 7.7 metres, on the sites western and southern boundaries. The impact of such proposed vegetation on neighbouring properties is that they will be entirely denied solar access in Winter.</p>

	<p>Additionally, this non-compliance is one of the contributing factors which results in over-development of the site.</p>
<p>SEE Page 3, Section 1.2, Table 2 Pages 20-23 Section 4.1.5</p>	<p><b>Proposed Landscaped Open Space and Bushland Setting</b></p> <p>In accordance with WDCP section D1, the development requires 478.7m<sup>2</sup> of landscaped open space to comply with the 50% requirement as prescribed for the site. The development proposes 318.2m<sup>2</sup> which equates to a shortfall of 160.5m<sup>2</sup> or 33.5%, which is a significant deficiency.</p> <p>The WDCP makes it clear that this is a “requirement” and does not open the way for any Merit argument to justify a shortfall. Despite this the Applicant does seek to justify the shortfall by pointing to the quality of the proposed landscape design.</p> <p>There does not seem to be any extraordinary merit displayed by the landscape design, and is no more than would be expected from a complying design. Rather, the proposed design will in fact be detrimental to neighbouring properties (notably 134-138 Ocean) because it will contribute to, and in time become the major cause of denial of solar access in winter to 134-138 Ocean’s Landscaped Open Space.</p> <p>Additionally, this significant non-compliance in landscaped area is a major contributing factor to over-development of the site.</p>
<p>SEE Page 5 Clause 2.3 Surrounding Development</p>	<p>When describing surrounding development the Applicant states: “<b>South:</b> The development to the immediate sought consists of a two storey town house development. It provides a <i>generous setback</i> to its northern boundary where it adjoins the site. <i>Landscaping</i> is provided along this boundary and provides a buffer between the site.”</p> <p>While the Applicant refers to a <i>generous setback</i> on the neighbouring property (134-138 Ocean), this setback is merely a result of that property’s compliance with the relevant development controls. It is not generous, it is the minimum under the relevant DCP and its amenity should not be compromised by overshadowing from the proposed development, as is currently proposed.</p> <p>The Applicant refers to its landscaping proposal. The proposed tall tree planting to the common boundary will result in the total loss of solar access in Winter to 134-138 Ocean.</p>
<p>SEE Pages 20-23 Section 4.1.5 Table 6, clause</p>	<p><b>Compliance with Warringah Development Control Plan 2011</b></p> <p>The applicant provides a summary of its proposal’s compliance with the WDCP 2011, and a Conclusion. Contrary to the Applicant’s opinion, it is noted that the proposal does not comply in at least the following matters:</p> <ul style="list-style-type: none"> <li>• Inadequate provision for on-site parking (1 space short)</li> <li>• Inadequate rear boundary setback (14.6% underprovided)</li> <li>• Inadequate front boundary setback (8.3% underprovided)</li> <li>• Inadequate provision of landscaped open space (33.5% underprovided)</li> </ul>

	<ul style="list-style-type: none"><li>• Inadequate provision for solar access in winter to the development (significantly less than 50% stipulated)</li><li>• Severe adverse impact on solar access in winter to adjoining property at 134-138 Ocean (less than 10% salvaged)</li></ul> <p>It is considered that the proposal is:</p> <ul style="list-style-type: none"><li>• non compliant with multiple development standards</li><li>• is a significant over-development of the site</li><li>• unreasonably and severely impacts on the overall amenity of adjoining properties</li><li>• is not in the public interest</li></ul>
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