

---

**Sent:** 4/12/2019 11:42:27 PM  
**Subject:** 1 Tabalum Road, Balgowlah Heights 2093 DA 2019/1180 Mrs P. A. Bawmer  
LETTER OF OBJECTION  
**Attachments:** Bawner LOO 021219.docx;

**Northern Beaches Council**

**RE: 1 Tabalum Road, Balgowlah Heights 2093**

**DA 2019/1180**

**LETTER OF OBJECTION**

Please find attached a Letter of Objection on the above DA.

We have copied this Objection to NSW RFS in respect to our request of a Section 79BA Referral from NBC to the RFS. We hope NBC will refer the matter to RFS. We refer to the Bushfire issue within Appendix A.

**Mrs P. A. Bawmer**

**6 Cutler Road**

**Clontarf 2093**

**Northern Beaches Council**

[council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

**cc Alex Keller**

[alex.keller@northernbeaches.nsw.gov.au](mailto:alex.keller@northernbeaches.nsw.gov.au)

**cc. The Commissioner, NSWRFSS:** Section 79BA Referral

[Jo-Anne.Robson@rfs.nsw.gov.au](mailto:Jo-Anne.Robson@rfs.nsw.gov.au)

Mrs P. A. Bawner  
6 Cutler Road  
Clontarf 2093

2 December 2019

**Northern Beaches Council**

**Northern Beaches Council**  
[council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

**cc Alex Keller**  
[alex.keller@northernbeaches.nsw.gov.au](mailto:alex.keller@northernbeaches.nsw.gov.au)

**cc. The Commissioner, NSWRFSS: Section 79BA Referral**  
[Jo-Anne.Robson@rfs.nsw.gov.au](mailto:Jo-Anne.Robson@rfs.nsw.gov.au)

**RE:**  
**1 Tabalum Road, Balgowlah Heights 2093**  
**DA 2019/1180**

**LETTER OF OBJECTION**

**Dear Sir,**

We write formally to most strongly object to the above DA.

The DA scheme submitted requires to be heavily 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 either heavily condition any approval, or simply issue a refusal.

Prior to the submission of the DA by the Applicant, the Applicant did not have any prior consultation with us.

We are concerned that the SEE has failed to properly address our amenity concerns, is suggesting that the DA accords with Manly LEP 2013 & DCP 2013 when it clearly does not, and presents a Clause 4.6 request that fails on numerous levels as identified below. The SEE & the Clause 4.6 fails to identify the misleading *Ground Levels [Existing]*, and relies upon the drawings as being accurate. There has not been a simple check by the author of the

SEE and Clause 4.6 to assess the accuracy of what he relies upon. The SEE and Clause 4.6 are therefore hopelessly flawed, and present further misleading information, based upon the misleading drawings.

All sketches and perspective artwork is therefore not to be believed, as clearly there is a very real intent to deceive the casual observer.

The non-compliance to residential controls is an example of breathtaking overdevelopment:

- Building Height: >26% non-compliance [10.7m v 8.5m]
- Wall Height: >53% non-compliance [10.4m v 7.0m]
- Number of Storeys: >100% non-compliance [4 v 2]
- Rear Setback of 5.6m high deck [6 Cutler]: >87%: 1m setback v 8m setback
- Side Setback [#3 Tabalum]: >32% non-compliance [2.25m v 3.1m]
- Front Setback [Tabalum]: >23% non-compliance [5.38m v 7m]
- Front Setback [Cutler]: > 40% non-compliance [2.035m v 3.4m]
- FSR: >5%++ non-compliance [0.423++ v 0.4]
- Pool: Height>460% non-compliance [5.6m high above NGL v 1.0m],
- Pool Setback >460% non-compliance [5.6m v 1.0m]
- Pool Front Setback: >72% non-compliance [1.7m front setback v 6.0m],
- 6m deep basements

This letter of objection will detail our concerns namely:

## **SUMMARY**

### **1. Misleading Information & Outstanding information p.4**

- Natural Ground Level
- Building Height
- Height Poles not erected
- Stormwater Plans

### **2. Residential Development Controls: Non Compliance p.8**

- Building Height,
- Wall Height
- Number of Storeys

- Rear Setback
- Side Setback
- Front Setback
- FSR
- Development on Sloping Sites
- Pool
- Garage
- Fencing
- Earthworks

### **3. Amenity Concerns p.27**

- Visual Bulk
- Privacy
- Overshadowing
- Bushfire Rating
- Excessive Excavation & Vibration Risk
- Stormwater
- Structural Adequacy Retaining Wall: boundary

### **4. Amended Plans or Proposed Conditions of Consent to any Approval p.36**

- ANS 01 Building Height
- ANS 02 Rear Setback
- ANS 03 Side Setback
- ANS 04 Front Setback
- ANS 05 FSR
- ANS 06 Bushfire: AS 3959 2009 Section 9 Flame Zone
- ANS 07 Excavation
- ANS 08 AC Plant & Pool Plant
- ANS 09 Lighting
- ANS 10 Stormwater
- ANS 11 Retaining Wall

### **Appendix A: NSWRFs: Section 79BA Referral Review p. 54 - 63**

A detailed consideration of these matters follows:

## 1. Misleading Information & Outstanding information

### Ground Level [Existing]

We are greatly concerned that the Applicant's drawings appear to be incorrectly representing the *Ground Levels [Existing]* on the DA drawings.

The MLEP states within dictionary:

*ground level (existing) means the existing level of a site at any point.*

*building height (or height of building) means—*

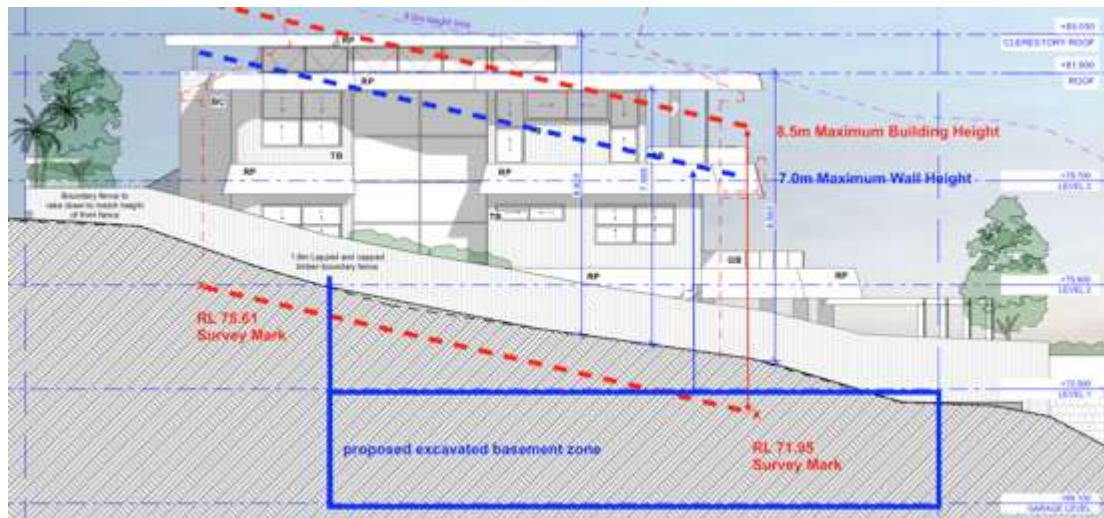
- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

We bring to Council's attention that the *Ground Levels [Existing]* to the west of the proposed dwelling is shown on the Applicant's Survey as 71.95 [survey level of existing western lawn], and RL 72.58 at the NW corner. These *Ground Levels [Existing]* are not represented in the DA drawings. The proposed building height at the NW corner is 9.32m [81.90-72.58 = 9.32m]. The proposed height to the SW corner is 10.24m [81.90 – 71.66 palm survey mark]

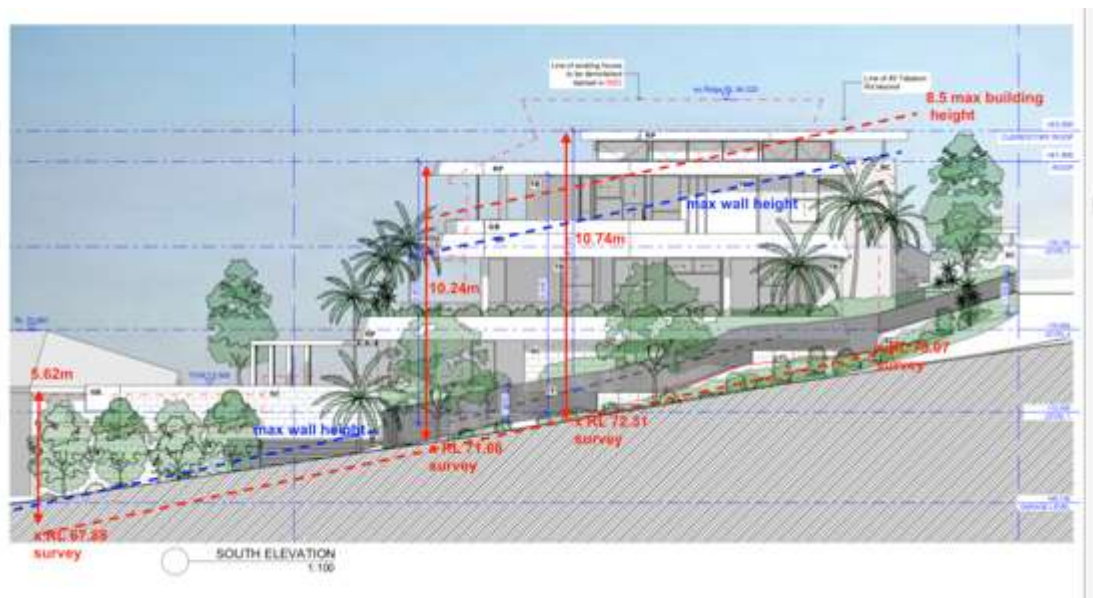
We bring to Council's attention that the *Ground Level [Existing]* under the southern zone of the clerestory roof detail is 72.31 [survey]. This level is not represented in the DA drawings. The proposed building height at the SW corner of this higher roof is 10.74m [83.05-72.31 existing garage level = 10.74m]

The indication of the natural ground level along the boundary and in other areas is false and misleading.

This is unacceptable.



**Actual 8.5m Max Build Height [red dot] & 7.0m Max Wall Heights [blue dot], massive basement in solid blue close to boundary.**



**Actual 8.5m Max Build Height [red dot] & 7.0m Max Wall Heights [blue dot],**

## Building Height

The proposed building heights rise to 10.74m [clerestory roof] and 9.32m [NW] and 10.24m [SW] along the western façade, as noted above. This is substantially higher than the drawings suggest, and indeed substantially higher than the SEE states.

From the above sketch overlay to the northern elevation, we have positioned from the Applicant's Survey the survey mark heights at the corners of the existing dwelling of the *Ground Levels [Existing]* and superimposed those heights onto the northern elevation.

Council can easily see that the existing house is shown by the Applicant in a light dotted red line, and the two *Ground Levels [Existing]* survey marks at RL 75.61, RL 72.58 & RL 71.95 at the corner of the existing house are then superimposed on the sketch drawing.

All other indications of *Ground Levels [Existing]*, and maximum building heights are equally incorrect, false and misleading.

The SEE has simply relied upon the drawings, and the author has not carried out any checks from the survey of *Ground Levels [Existing]* to the DA drawings contained within his SEE report.

Council must consider whether it is appropriate for Council to continue to assess this DA, when the basis of the drawings is so fundamentally false and misleading.

If the Applicant relies upon false and misleading information, then we reserve our position on the validity of any future approval, and we reserve our right to challenge the validity at any time. There are also very severe penalties and enforcement powers under the Environmental Planning and Assessment Amendment (Offences and Enforcement) Regulation 2015 (Amending Regulation) that the Applicant and his Consultants should be mindful to.

The building height of the deck facing our property rises from RL 68.38 [survey mark on 6 Cutler] to a proposed top of balustrade height of RL 73.5, representing a **wall height of 5.12m**. The height of the proposed deck is higher than the gutter line to our dwelling, and the proposed deck is proposed to sit immediately adjacent our property.

To design a new build scheme to MLEP & MDCP controls and suggest that a raised pool deck 5.12m above the subject sites rear boundary, in a rear setback zone, higher than the neighbours house, and facing the street with minimum front setback is outrageous.

This situation is far from acceptable.

## **Height Poles**

Based upon these heights being incorrectly presented, we ask Council to request that the Applicant position 'Height Poles' to define the non-compliant building height and building envelope to both the east and west, and to have these poles properly measured by the surveyor.

Height poles must be erected to define the top of balustrade to the proposed western deck facing 6 Cutler.

We are of the view that all 3D sketches are potentially incorrect and they cannot be relied upon.



If the Applicant has used grossly misleading *Ground Levels [Existing]*, we strongly suspect that all images are distorted to give a more favourable outcome to the Applicant.

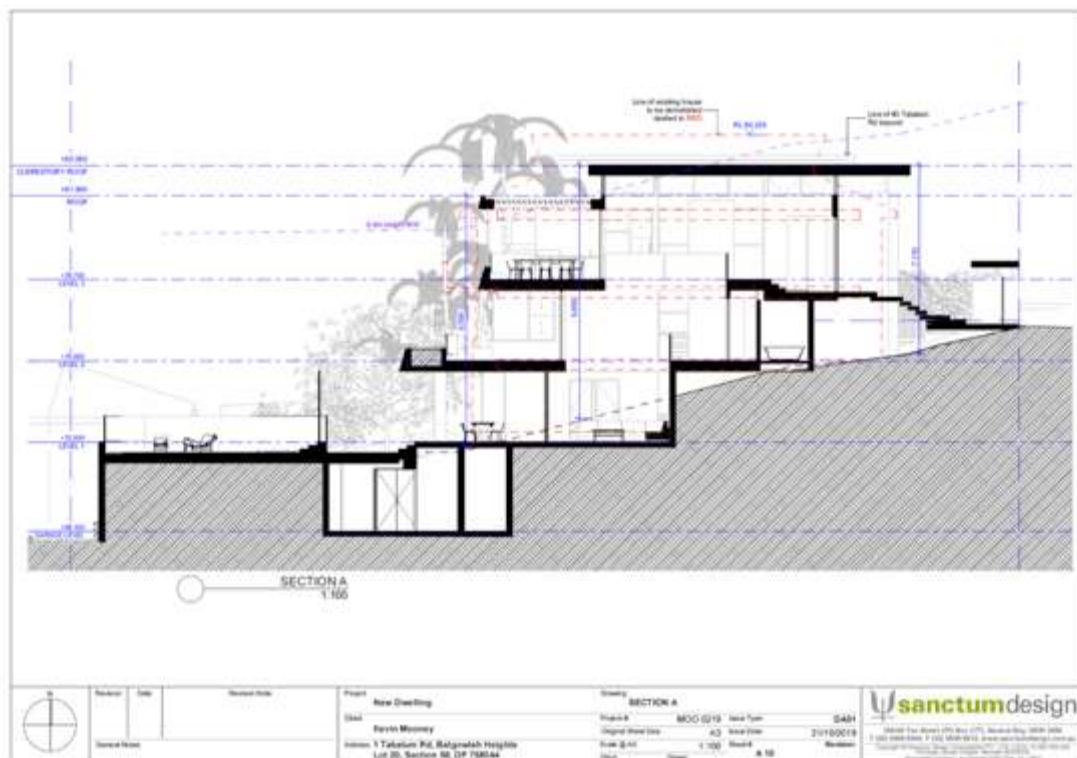
This is unacceptable.

## Missing Drawings

Stormwater Plans are missing from the NBC website.

Drawing A10 Section A & A11 Section B are missing from notified drawings, but appear in the SEE.

These Sections show incorrect *Ground Levels [Existing]*, incorrect and non compliant building height, setback, wall height, 6m deep excavation, and 5m high decks in the rear setback, built 1m from the boundary.





## 2. Residential Development Controls: Non Compliance

Relevant DCP objectives have not been met in relation to residential development include the following:

- Objective 1)* *To delineate by means of development control the nature and intended future of the residential areas of the former Manly Council area.*
- Objective 3)* *To ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residences, the existing environmental quality of the environment or the aesthetic quality of the former Manly Council area.*

*Objective 5)*

*To enable population growth without having adverse effects on the character, amenity and natural environment of the residential areas.*

**Commentary:**

The non-compliance to residential controls is breathtakingly poor:

- Building Height: >26% non-compliance [10.7m v 8.5m]
- Wall Height: >53% non-compliance [10.4m v 7.0m]
- Number of Storeys: >100% non-compliance [4 v 2]
- Rear Setback of 5.6m high deck [6 Cutler]: >87%: 1m setback v 8m setback
- Side Setback [#3 Tabalum]: >32% non-compliance [2.25m v 3.1m]
- Front Setback [Tabalum]: >23% non-compliance [5.38m v 7m]
- Front Setback [Cutler]: > 40% non-compliance [2.035m v 3.4m]
- FSR: >5%++ non-compliance [0.423++ v 0.4]
- Pool: Height>460% non-compliance [5.6m high above NGL v 1.0m],
- Pool Setback >460% non-compliance [5.6m v 1.0m]
- Pool Front Setback: >72% non-compliance [1.7m front setback v 6.0m],
- 6m deep basements

The objectives have not been met.

The nature of development is not consistent to delineate by means of development control the nature and intended future of the residential areas, highlighted by other new build consents in the area particularly at nearby #11 Barrabooka. The building form degrades the amenity of surrounding residences, the existing environmental quality of the environment and the aesthetic quality by over development. There are adverse effects on the character, amenity and natural environment of the residential areas. This will be detailed below.

**Building Height**

The general principles of Manly DCP Clause 4.1.2 Height of Buildings has not been met, principally [a] :

- a) *LEP Zones where numeric height controls in this DCP apply*  
*Height controls under paragraph 4.1.2 of this plan apply to development in LEP Zones R1, R2, R3, E3 and E4.*

The objectives of MLEP Clause 4.3 Height of Buildings has not been met:

*(1) The objectives of this clause are 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),*
  - (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
  - (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.*
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Commentary:

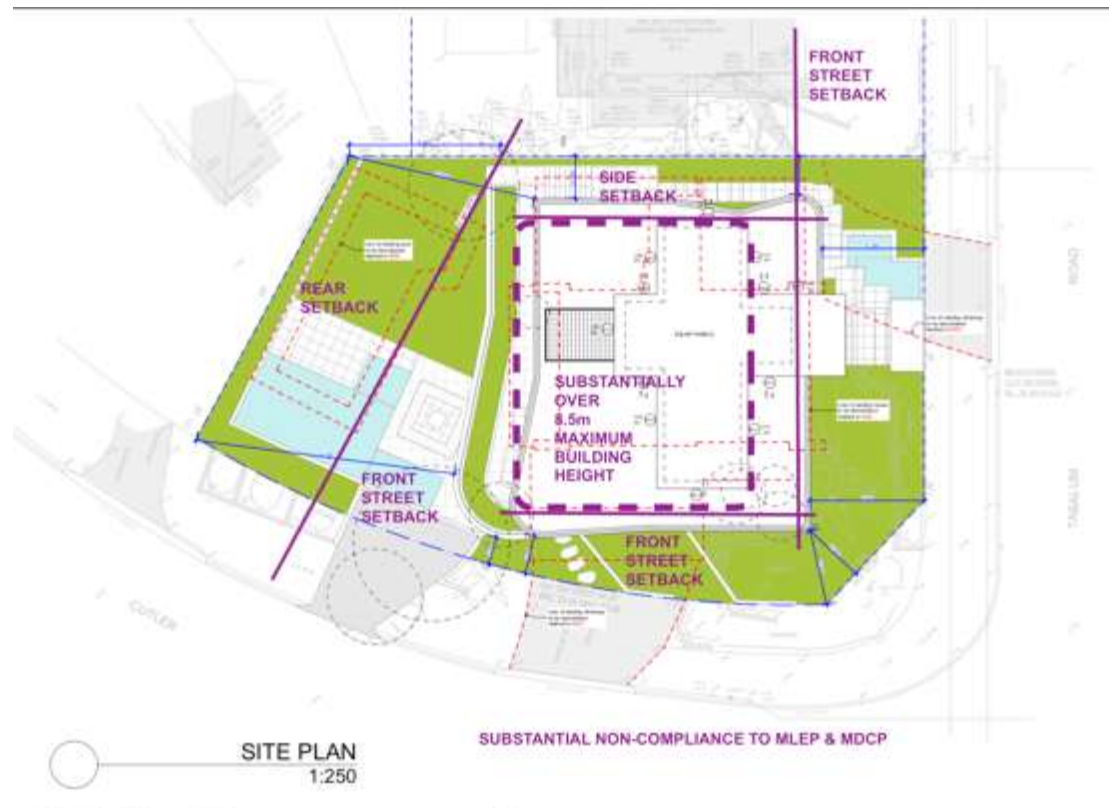
The proposals:

Present building heights, wall heights, and number of storey totally inconsistent with the controls and neighbouring development

Do not control the bulk and scale of the building

Do not ensure the height and bulk has regard to the topography

The proposals are 2.24m over the maximum Height of Buildings allowed on this site. This represents a >26% non-compliance.



## SUBSTANTIAL NON-COMPLIANCE TO MLEP & MDCP

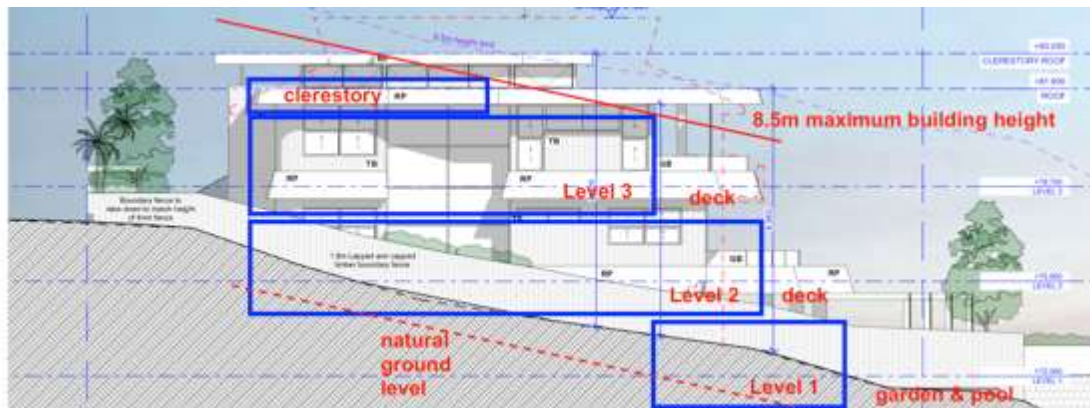
There is no valid reason why the new building cannot be contained within maximum 8.5m building heights, maximum 7m wall heights, and generally two storey rather than 4 storey.

There is no valid reason why a 5.6m high deck is proposed on the boundary to 6 Cutler and onto the Cutler st frontage contrary to multiple planning controls.

This DA is a wilful attempt to flaunt the controls.

The more skilful design solution should have been to control the maximum 8.5m building height to the south-western edge boundary at Level 3, and to reduce the floor plates at 3.1m storey heights, to achieve a compliant envelope. Wall heights reduced to 7m, compliant front and side setbacks, and the building profile stepped down the slope to achieve a two storey configuration. That is the expectation of a design outcome on this site, in accordance with the MLEP & MDCP.

The garden, pool and garage should have been designed in the western rear setback zone at *Ground Levels [Existing]*.



**‘More Skilful Design’:** max. 8.5m building height, three stepped floor plates following the slope, 2 storey configuration, maximises FSR. Garage under the dwelling. Level street entry to Level 3.

## Wall Height

The general principles of Manly DCP Clause 4.1.2.1 Wall Height has not been met, principally [a]

Commentary:

Along the northern boundary adjacent to the part building profile the land falls from RL 75.61 to RL 74.43, representing a 1.18m fall over 14m of building length, with an effective gradient at 1:12. The maximum permissible wall height from Clause 4.1.2.1, Figure 28, is **7.0m**.

The proposed building wall heights rise to **10.74m and 9.32m - 10.24m along the western façade**.

The >10m high wall height facing 6 Cutler is devastating to us, as it will completely dominate over our private open space and our dwelling.

The proposals are 3.74m and 3.24m over the maximum wall height allowed on this site. This represents a >53% non-compliance.

## Number of Storeys

The general principles of Manly DCP Clause 4.1.2.2 Number of Storeys has not been met, principally [a] and [c]:



#### 4.1.2.2 Number of Storeys

- a) *Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.*
- c) *Variation to the maximum number of storeys may be considered:*
  - i) *where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and*
  - ii) *to allow an additional understorey where that storey satisfies the meaning of basements in the LEP.*

Commentary:

Drawing A10 Section A & A11 Section B are missing from the DA and notified drawings. They appear in the SEE

There are major areas of the floor plates that are **four storey**, where the basement, and level 1, 2 and 3 overlap.

There are major areas of the floor plates that are **three storey**, where the basement, and level 1, and 2 overlap, and where level 1, 2 and 3 overlap.

The vast majority of the building floor plate grossly exceeds 2 storey, and a considerable area is at 3 storey, and a considerable area is at 4 storey contrary to this Clause.



**4 storey component extends from Basement @ RL 69.10 through to Roof @ RL 83.05, representing a four storey zone of 14m in height!**  
**Other zones are 3 Storey outside of the basement zone. *Ground Levels [Existing]* shown incorrectly, and incorrect maximum building heights. Wall Heights not shown.**

This is totally unacceptable.



## Setbacks

Relevant DCP objectives have not been met in relation to this part include:

### *Objective 1)*

*To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*

### *Objective 2)*

*To ensure and enhance local amenity by:*

- providing privacy;*
- providing equitable access to light, sunshine and air movement; and*
- facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

*See also objectives at paragraph 3.4 Amenity.*

**Note:** *In addition to the setbacks required in this plan, residential development subject to the Residential Apartment Code is subject to additional setback requirements for adequate building separation to achieve reasonable levels of privacy e.g. 12m separation between habitable rooms and balconies between buildings up to 4 storeys either on the same site or across a site boundary to a neighbouring building.*

*Objective 3) To promote flexibility in the siting of buildings.*

*Objective 4) To enhance and maintain natural features by:*  
*accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*  
*ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks;*  
*and*  
*ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

*Objective 5) To assist in appropriate bush fire asset protection zones.*

Commentary:

Privacy, view sharing, overshadowing and streetscape have not been considered in presenting non-compliant setbacks.

## **Rear Setback**

Relevant DCP objectives have not been met in relation to this part include:

### **4.1.4.4 Rear Setbacks**

- a) *The distance between any part of a building and the rear boundary must not be less than 8m.*
- b) *Rear setbacks must allow space for planting of vegetation, including trees, other landscape works and private and/or common open space. The character of existing natural vegetated settings is to be maintained. See also paragraph 3.3 Landscaping.*
- c) *On sloping sites, particularly where new development is uphill and in sensitive foreshore locations, consideration must be given to the likely impacts of overshadowing, visual privacy and view loss.*
- d) *Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy and view loss.*

## **Commentary**

The expectation in designing a new residence is to design an outcome that accords with the MLEP & MDCP. It is not to recreate poor architectural outcomes, or poor amenity outcomes, of an existing development.

The MDCP in this insistence is explicit that the rear setback zone is to be:

- 8m
- generally deep soil planting at *Ground Levels [Existing]*
- no impacts on privacy
- reflect the pattern of setbacks

The proposed development does not satisfy any of the stated aims of MDCP.

Built form extends to 1m from the boundary with a 5.6m high deck.

The impacts from privacy are devastating as residents on the proposed development deck would be positioned well over 5.6m above the private open space and dwelling of 6 Cutler, which result in a horrendous outcome.

The entire concept of building a new deck over 5.6m above our eastern garden is not acceptable.

The development at Level 1 shows the proposed Pool @ RL 72.1, <1.7m from Cutler Road frontage, <1.0m from 6 Cutler boundary, and elevated 4m above *Ground Levels [Existing]* at the SE corner of 6 Cutler @ RL 68.1

The entire rear garden to the development needs to follow the *Ground Levels [Existing]* that generally fall from RL 71.66 [south survey mark] RL 71.92 [north survey mark] to run to the existing natural boundary ground levels at c. RL 68.87 [survey] on the subject site.

Any new pool must follow the MDCP provision with height above ground, and side & front setback provision. It is totally unacceptable to position a pool 5.6m above our boundary.

The non-compliant 5.6m raised deck structure built close to our boundary with a non compliant pool is totally unreasonable and unacceptable.

We ask that all works to the west of the proposed dwelling be conditioned such that:

Deferred Commencement Condition:

- No works to the west of the proposed dwelling is approved.
- The garden is to follow *Ground Levels [Existing]* from RL 71.66 [south survey] RL 71.92 [north survey] or from revised Level 1 at RL 70.8 [ANS 01] to slope to boundary to 6 Cutler at c. RL 68.87 [survey on subject site], with obscured glass privacy screens at 1.8m high along the 17m boundary with #6 Cutler,
- The pool to be positioned at natural ground level with setbacks and maximum heights above ngl as MDCP, with obscured glass privacy screens at 1.8m high facing the 17m boundary with #6 Cutler,
- Along the 17m boundary with #6 Cutler, plant mature 75 lit pot size, 9 no. native screening trees (*Acmena smithii Firesreen*), at 2m centers, prune annually to align viewing sightline from proposed Level 3 upper level deck viewing height at 1.4m above FFL to window head at #6 Cutler, organic slow release fertiliser during growing season, with drip irrigation.
- Along the 17m boundary with #6 Cutler, at the boundary line, build a solid 1.8m high boundary fence, with the finished side facing #6 Cutler
- The garage to be positioned under the proposed dwelling at Level 1, Garage at RL 70.8 and accessed from SW corner of property, with existing crossover at RL 71.28 [survey] location.

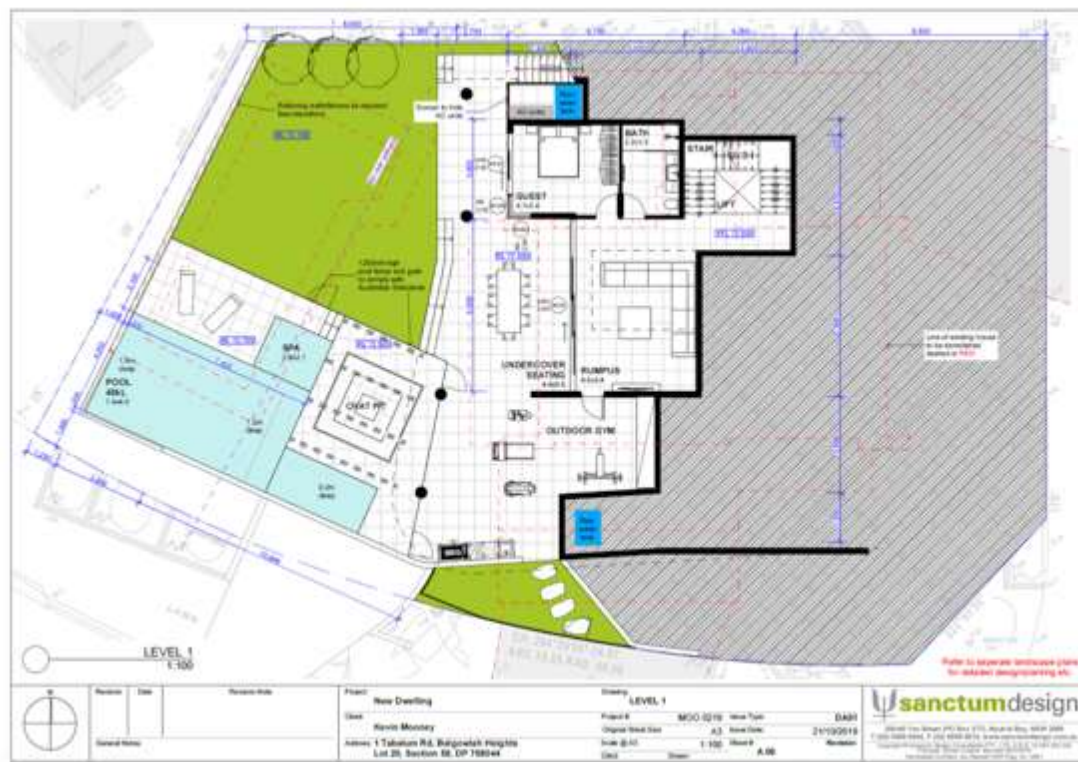
- New details to be submitted to NBC for approval.

We are somewhat astounded that the Applicant would propose a > 5.6m high deck onto the streetscape and our property, with an elevated pool, causing our property to suffer from visual bulk blight, massive privacy issues, and excessive mid season equinox overshadowing, rather than a soft landscape zone at *Ground Levels [Existing]* to soften the interface between our residence and the proposed residence.

This is a devastating impact on our property, and we ask Council to have the Applicant submit Amended Plans to completely change the concept that he is following or refuse the DA.

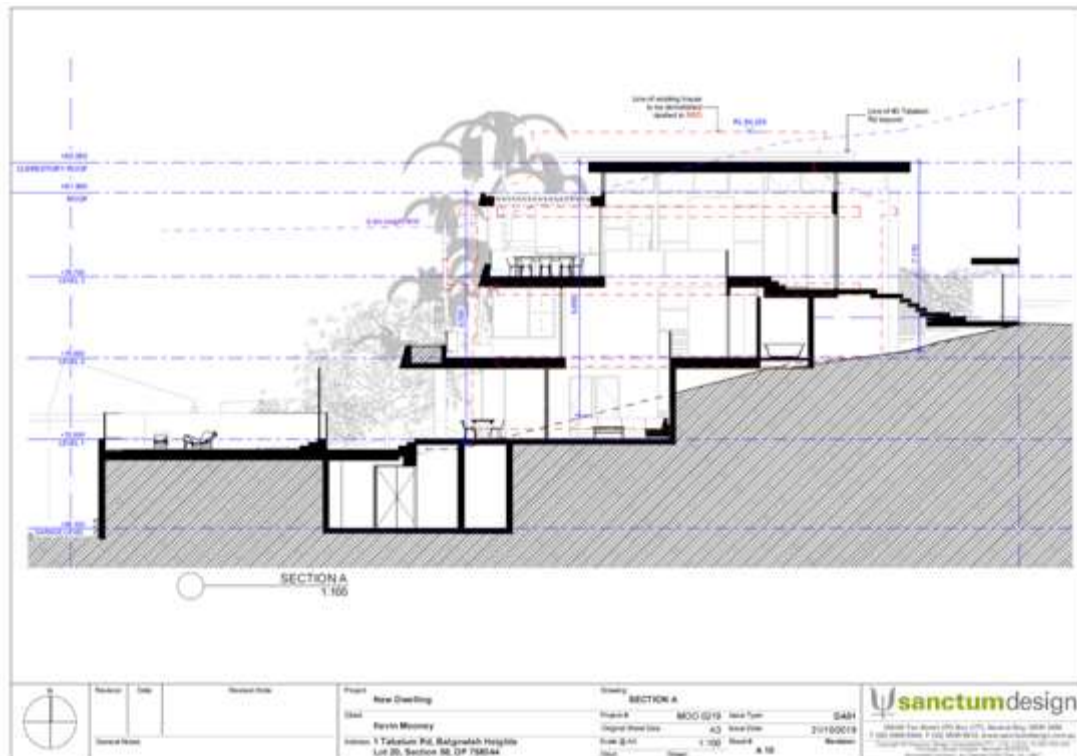
The purpose of new development is to remove blight from the streetscape and from neighbours amenity, and to accord with the MLEP & MDCP. These proposals simply wish to reinstate the unacceptable situation, and to make the amenity outcomes even worse, and present non-compliant development.

There is no valid reason why the landscaping and pool within the rear setback zone should not follow the MLEP & MDCP planning controls.



**Level 1: showing Pool @ RL 72.1, <1.7m from Cutler Road frontage, <1.0m from 6 Cutler boundary, and elevated 4m above *Ground Levels [Existing]* @ RL 68.18**





5m high Deck set <1m from 6 Cutler boundary in the rear setback zone



Alternative New Landscape Garden to follow *Ground Levels [Existing]*. Pool to MDCP controls set within landscape at ngl grades from Level 1 to RL 68.87. Garaging at Level 1 is similar location to existing. New stair entry passageway from garage. Delete entire 6m deep basement and 4m high pool and 4m+ high decks adjacent 6 Cutler. New crossover.

## Side Setback

Relevant DCP objectives have not been met in relation to this part include:

### *Clause 4.1.4.2 Side setbacks*

*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*

*Projections into the side setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, and the like, if it can demonstrate there will be no adverse impact on adjoining properties including loss of privacy from a deck or balcony.*

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

*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.*

Commentary:

The proposed side setback facing the north west is 2.25m.

The proposed building height as mentioned above is 9.32m at the north west corner of the proposed development. The compliant side setback needs to increase to 3.1m. This represents a >32% non-compliance.

There is no valid reason why the building cannot be contained within side setback controls. This DA is a wilful attempt to flaunt the controls. The simple solution is to control the side setback to the 1/3 rule, and to reduce the floor plates, to achieve a compliant envelope.

If the building is reduced in height we request a compliant side setback.

The lack of a compliant side setback adds further to the overall visual bulk facing our property, and decreases solar access from the east between 1 & 3 Tabalum at the equinox.

## Street Front Setback

Relevant DCP objectives have not been met in relation to this part include:

*a) Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity.*

*b) Where the street front building lines of neighbouring properties are variable and there is no prevailing building line in the immediate vicinity i.e. where building lines are neither consistent nor established, a minimum 6m front setback generally applies. This street setback may also need to be set further back for all or part of the front building façade to retain significant trees and to maintain and enhance the streetscape.*

Commentary:

The proposed front setback is 5.38m to the NE, 3.3m to the SE, and 1.5m & 2.0m to the SW.

This represents a >75% non-compliance.

Cutler Road street setbacks do not accord with the DCP planning controls. The wall heights to the Roof at the SW corner are 10.24m [81.90-71.66], so the setback should be 3.4m to met DCP controls.

There is no valid reason why the building cannot be contained within front setback controls of 7m. There is no established front setback, the proposals do not accord with the controls.

There are 7m front setbacks proposed elsewhere, and therefore we see no reason not to accord with the 7m front setback control in all locations.

## FSR

The general objectives of Manly DCP Clause 4.1.3 Floor Space Ratio [FSR], principally [a] and [b] have not been met:

*FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply.*

*In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:*

*Objective 1) To ensure the scale of development does not obscure important landscape features.*

*Objective 2) To minimise disruption to views to adjacent and nearby development.*

The general objectives of MLEP Clause 4.4 Floor space ratio have not been met:

*(1) The objectives of this clause are 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,*

*(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

Commentary:

The proposals present non compliance in building height, wall height, number of storeys, front setback, rear setback and side setback that all contribute to excessive FSR, and the non compliance to the objectives above, principally a, b, c and d.

Council should also consider areas excluded from FSR calculation that should be included, including areas around the Gym area at Level 1 that have walls greater than 1.4m in height on three sides.

The proposed dwelling is over FSR, so there is ample scope to reduce the built form to achieve a compliant side setback and front setback, whilst maximising the allowable FSR.

Amenity losses of privacy, overshadowing, visual bulk and poor landscaping in the rear setback are the devastating outcomes for our property.

This DA is a wilful attempt to flaunt the controls.



## Development on Sloping Sites

Relevant DCP objectives have not been met in relation to these paragraphs include:

### *Requirements*

- a) *The design of development must respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.*
- b) *Developments on sloping sites must be designed to:*
  - i) *generally step with the topography of the site; and*
  - ii) *avoid large undercroft spaces and minimise supporting undercroft structures by integrating the building into the slope whether to the foreshore or a street.*

### Commentary:

The development does not generally step with the 1:12 slope, but presents an elevation and sectional profile that increases in non-compliant building height and wall height the further west the development progresses. There has been no attempt to position the new build below the 8.5m maximum building height, and there is no logical reason for this not to occur. There is no significant cross slope that would give grounds for any increase in any location.

The 8.5m maximum building height is incorrectly drawn, as mentioned earlier. It has been significantly drawn falsely and misleadingly.

The 7.0m maximum wall height has not been shown on the DA drawings.

The rear setback zone has not been designed to follow the natural slope, but presents a massive 5m high deck that clearly does not accord with the planning requirements and objectives of designing on sloping sites.

## Swimming Pools, Spa & Water Features

Relevant DCP objectives have not met in relation to these paragraphs include:

- Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;*
- Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;*

Objective 3) *To integrate landscaping*

#### **4.1.9.1 Height above ground**

- a) *Swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. Consideration of any exception to exceed the height above ground must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse more than 1m above natural ground level:*
  - i) *would not detract from the amenity or character of the neighbourhood; and*
  - ii) *is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.*

#### **4.1.9.2 Location and Setbacks**

##### **4.1.4.6 Setback adjacent LEP Zones RE1, RE2, E1 and E2.**

- a) *Swimming pools and spas must not be located within the front setback i.e. between the front boundary of the lot and the building line. Consideration of any exception to the required location must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse:*
  - i) *does not detract from the amenity or character of the neighbourhood; and*
  - ii) *is a minimum distance from the front boundary equivalent to at least twice the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.*

Commentary:

The design of the Pool & Spa area does not met any of the objectives or numerical controls:

**Objective 1, 2, & 3 have simply not been met.**

The Pool has been located and designed to ensure that the privacy (visually and aurally) of neighbouring properties is not maintained, and has not minimised the impact of filter noise on neighbouring properties. The occupants at this zone will be able to look directly down from a 5.6m high structure down into our property, and directly into our residence.

Mrs Bawner's Bedroom faces directly towards the proposed 5.6m high pool zone, and occupants using the pool will be able to look directly into Mrs Bawner's bedroom. The proposals are totally unreasonable and totally unacceptable.

The Pool has not been appropriately located so as not to adversely impact on the streetscape or the established character of the locality. The pool setback only 1.7m from the front boundary with 5.6m wall heights will adversely affect the streetscape. There are no other such pools in Tabalum or Cutler that present such a poor non-compliance to the streetscape.

Landscaping has not been integrated from Council's nature reserve through to the open landscape zone to the west of the proposed residence.

The Pool contravenes the height above ground.

The Pool is elevated to wall heights of 5.62m [RL 73.50 over the SW corner level of RL 67.88 survey]. The Pool is 4.62 above the numerical control at 1m.

The Pool is not at the numerical control of side setback to equal pool height being 5.62m. The side setback reduces to 1m side setback.

The Pool detracts from the amenity and character of the area. The pool faces a pathway through the National Park. The pool is highly visible from the streetscape.

Approval of a 5.6m high pool in this area will allow others in the area to seek the same, and claim Council now approves 5.6m high pools in front setback zones, positioned 1m from neighbours boundaries! The streetscape outcome would result in a 'wall' 5.6m running along the 'high side' of most streets!

The pool is positioned within the front setback zone of Cutler Road, contrary to controls.

## **Garage**

Relevant DCP objectives have not been met in relation to these paragraphs include:

### ***4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas***

*See also paragraph 3.1.1 Streetscape.*

- a) The design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.*
- b) Garage and carport structures forward of the building line must be designed and sited so as not to dominate the street frontage. In*

*particular:*

- i) *garages and carports adjacent to the front property boundary may not be permitted if there is a reasonably alternative onsite location;*

**Commentary:**

The design of the garaging presenting a 5.6m high wall to the street, independent to the dwelling does not minimise the visual impact on the streetscape and neighbouring properties. It is not the desired character of the street.

The garage is forward of the building line and dominates the street frontage.

There is an obvious, simple, reasonable alternative to position the garage under the house in a similar location as the present garage, that avoids 5.6m high walls to the streetscape, avoids 6m deep basements next the neighbours property.

**Fencing**

MDCP 4.1.10 states:

*Freestanding walls and fences between the front street boundary and the building are to be no more than 1m high above ground level at any point.*

The Applicant is proposing fencing heights up to 5.6m at the SW, and along Cutler Road. This is unacceptable, and unreasonable.

**Earthworks**

MDCP 4.4.5 states:

*Objective 1)*

*To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:*

- Limiting excavation, “cut and fill” and other earthworks;*
- Discouraging the alteration of the natural flow of ground and surface water;*
- Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

It is clear that the proposals do not meet the objectives, in that the excavation has not been limited, excavating for a deep 6m basement when a clear alternative exists to position the garage under the residence.

The excavation has the potential to alter the natural flow of ground and surface water.

The height of retaining walls is excessive considering alternatives exist to completely delete the need, by positioning the garaging under the residence.

The earthworks extend beyond the zone to accommodate the new residence.

*Ground Levels [Existing]* within 0.9m are to be disturbed and excavated in various areas.

Excavation is occurring under tree canopy.

Excavation is not limited to 1m below natural ground level, but over 6m.

Filling is proposed up to 5m on the rear setback boundary, well beyond the 1m control.

### **3. Amenity Concerns**

Objective 1 of Manly DCP Clause 3.4 Amenity have clearly not been met.

*Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts*

The general principles of Manly DCP Clause 3.4 Amenity, principally [a] and [b]:

#### Designing for Amenity

a) *Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property. This is especially relevant in higher density areas, development adjacent to smaller developments and development types that may potentially impact on*

- b) *neighbour's amenity such as licensed premises. Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.*

**Commentary:**

Privacy and Visual Bulk have not been addressed in these proposals.

The 5.6m high boundary wall deck, the non-compliant pool, along with the non-compliant dwelling presents a visual bulk to our property that will be present a devastating outcome.

The overall concept is totally unacceptable.

**Privacy**

Objective 1 of Manly DCP Clause 3.4.2 Privacy & Security have clearly not been met.

- Objective 1)* *To minimise loss of privacy to adjacent and nearby development by:*
- appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;*
  - mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

The general principles of Manly DCP Clause 3.4.2.3 Acoustical Privacy [Noise Nuisance] principally [a] and [b] and [c]:

**3.4.2.3 Acoustical Privacy (Noise Nuisance)**

- a) *Consideration must be given to the protection of acoustical privacy in the design and management of development.*

- b) *Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.*
- c) *Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures.*

Commentary:

The proposed 5.6m high deck will present obvious privacy problems both aural and visual.

The proposed pool positioned 5.6m above the SE corner of our property, adjacent our entry, is plainly absurd. The users in the pool, on the pool deck, and on the lawned area will look directly into our property. The noise from the pool will be totally unacceptable. The pool is designed with an external Chat Fire Pit. This will encourage late night use, bringing an even greater unacceptability to a 5.6m high deck adjacent to our private open space, entry and dwelling. It is totally inappropriate to have a Chat fire Pit in a high risk bushfire zone.

Mrs Bawner's Bedroom faces directly towards the proposed 5.6m high pool, pool deck and lawn area and occupants using the pool will be able to look directly into Mrs Bawner's bedroom. The proposals are totally unreasonable and totally unacceptable.

The Obscured Glass Balustades facing our property would need to be raised 1.8m above the finished surface at RL 72.5m to overcome this privacy outcome to RL 74.3m. However, this would be totally unacceptable as the wall would increase in height above the SW corner at RL 67.88 to over 6.4m in height.

Privacy will be horrendous. Visual Bulk would be devastating.

The proposed non-compliant dwelling will create added privacy problems as the main living decks are raised by approximately 1.8m above the location that they should be, considering the western elevation sits approximately at a maximum building height of 10.3m rather than 8.5m height.

This gives the occupants of the proposed dwelling an even more commandeering view over our property and added privacy issues than the MLEP & MDCP would have otherwise allowed.

The proposal is totally unacceptable.

This DA is a wilful attempt to flaunt the privacy controls.

### **Visual Bulk**

The overall impact of the development with a 5.6m high boundary wall, with pool and pool deck, and with a dwelling with non compliant building height, side setback, front setback, rear setback and excessive FSR gives rise to an unacceptable visual bulk from our dwelling, from the streetscape, from the National Park, and from the harbour.

### **Overshadowing**

A compliant rear setback, deleting the 5.6m rear deck set 1m from our boundary, increasing northern side setbacks, and reducing the proposals back to 8.5m building heights would deliver a significant better outcome for solar access at the equinox.

The MDCP planning controls, if properly administered, would achieve an outcome that allows solar access when the sun is in the easterly direction at the equinox.

Sun would filter between #1 Tabalum and #3 Tabalum from the east at the equinox giving welcome morning sunshine.

Reducing the bulk of the proposed development back to the planning control complaint envelope, would enhance morning sunshine considerably.

The Applicant has failed to consider the differences from a complying development to the proposed non-complying development through the mid season equinox.

It is plainly obvious that a compliant development would substantially improve our mid season equinox solar access position.

The Applicant and the SEE has carefully avoided the obvious benefits between a compliant and non-compliant development and has not addressed the matter at all in the SEE.

It is totally unreasonable for a non-compliant development to take away our solar access at the equinox that a compliant development would deliver.



## **Streetscape**

The proposals present 5.6m high wall decks and pools positioned 1.7m from the street frontage. The design has not minimised the negative visual impact of walls on the street frontage. This outcome does not compliment the identified street frontage.

At no other property in Cutler or Tabalum does the casual observer be confronted with a 5.6m high wall, and a pool set only 1.7m from the boundary.

Soft landscape should be positioned to the rear south-western area facing Cutler at *Ground Levels [Existing]*, to soften the edge between the street, the National Park and the proposed development.

In all respect the design fails the provisions of 3.1.1 of the DCP, and 3.1.1.2.

The design does not accord with the 6m control front setbacks.

The commentary within the SEE is quite ridiculous to state:

*“that the proposed new swimming pool is better located in terms of relationship with the neighbour.”*

The pool sits 5.6m above existing ground levels, and less than 1m from the boundary of 6 Cutler.

The streetscape will have an appalling outcome.

## **Bushfire Rating**

We are very concerned that the Applicant is proposing a very low BAL 29 development within a very high-risk bushfire zone. Refer to Appendix A.

We ask Council to refer the matter to the NSWRFs for a full Section 79BA Referral review.

The advice we have received is that the development should be rated as Flame Zone, and the development be built to AS 3959 2009 Section 9 Flame Zone facing the hazard.

Of particular concern is that the Bushfire Assessment has assessed the vegetation to the south of the property as ‘Scrub’. It is very clear from the photographs within Appendix A that the vegetation consists of tall forest vegetation of 10m in height, at a distance of <12m from the subject site. As the land has a downslope of >10-15 degrees or perhaps even greater, and as the vegetation is ‘forest’ or ‘woodland’, this would constitute that the highest Bushfire Attack Level to the proposed dwelling is determined from table 2.4.2

of AS3959 – 2009 to be Flame Zone.

Council will note that there has been a number of NSWRFs Section 79BA reviews in nearby Barrabooka St and Ogilvy Rd that have all been rated at Flame Zone by the NSWRFs or rated by independent bushfire consultants to Flame Zone standards [1 Barrabooka, 5 Barrabooka, 7 Barrabooka, 11 Barrabooka, 13 Barrabooka, 19 Barrabooka, 3 Ogilvy, etc].

We have a duty of care to raise this with you, not only for our family's safety as an adjoining owner, for the future inhabitants of the proposed dwelling, and for other neighbours.

## **Excavation**

The general principles of Manly DCP Clause 4.4.5.2 Excavation, principally [a] and [b] have clearly not been met.

### **4.4.5.2 Excavation**

- a) *Excavation is generally limited to 1m below natural ground level with the exception of basement parking areas (which will be contained within the footprint of the building) and swimming pools;*
- b) *A dilapidation survey report and geotechnical assessment may be required for excavation works exceeding 1m. Dilapidation survey reports are to include photographic survey of the physical condition of adjoining properties, both internally and externally, including walls ceilings, roof, structural members and other such items. Such records are to provide proper record in relation to the proposed development to particularly assist in any dispute over damage to adjoining proposed arising from the works. It is in the interests of applicants and adjoining landowners for it to be as full and as detailed as necessary commensurate with the nature of the proposed development.*

Commentary:

We are very concerned that excavation is proposed 6m deep excavation.

We are very concerned that 6m deep excavation is proposed within close proximity of our boundary.

We are concerned to the excessive basement construction, and request that a 6m x 6m garage to be provided at street level near the existing garage, avoiding the excessive deep basement.

[illegible]

We are also concerned that the Geotechnical Engineer must provide precise methods of excavation and improved attenuation to avoid vibration damage to our property.

The excessive excavation depth to below RL 69 with *Ground Levels [Existing]* above at RL 75, gives significant added concern. We ask for considerably lower vibration limits to 2.5mm/sec, better attenuation methods to reduce the vibration risk to our property, and strict monitoring and inspection by the engineer.

*Natural and undisturbed ground level must be maintained within 0.9m of side boundaries.*

33

## Other issues:

### Mechanical Plant Equipment: AC Plant & Pool Plant

The general principles of Manly DCP Clause 3.9.3 Noise from Mechanical Plant, principally [a] and [b] and [c] have clearly not been met.

#### *3.9.3 Noise from Mechanical Plant*

*External mechanical plant systems (for pools, air conditioning and the like) must be acoustically enclosed and located centrally and away from neighbours living areas of neighbouring properties and side and rear boundaries.*

*See also paragraph 3.4.2.4 Acoustical Privacy.*

**Note:** *Excessive noise from the operation of mechanical plant such as air conditioning units, swimming pool pumps, and ventilation and refrigeration systems can disturb residents, disrupt sleep, interfere with normal daily activities or significantly impact on people's health*

#### Commentary:

We wish all plant to be located away from our boundary in a dedicated acoustic rated plant room at the southern zone near the existing garage.

### Stormwater

Objectives 1, 2, 3 and 4 of Manly DCP Clause 3.7 Stormwater Management have clearly not been met.

*Objective 1) To manage urban stormwater within its natural catchments and within the development site without degrading water quality of the catchments or cause erosion and sedimentation.*

*Objective 2) To manage construction sites to prevent environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation.*

*Objective 3) To promote ground infiltration of stormwater where there will be no negative (environmental) impacts and to encourage on-site stormwater detention, collection and recycling.*

*Objective 4) To make adequate arrangements for the ongoing maintenance of stormwater facilities.*

**Commentary:**

We are concerned that no stormwater drawing has been provided showing the required above ground and below ground stormwater drainage along the boundary. We are concerned that on site detention scheme is not shown contrary to Council controls.

We are very concerned that the proposed deep excavation will change the substrata watercourse, and cause damage to our property.

We ask Council to ensure that the most stringent conditions are placed on the sub surface, surface and on site detention systems to ensure that all relevant, best practice, engineering solutions are carried out to avoid any problems arising from the ingress of any water onto our property from this development.

**Structural Adequacy: Retaining Wall, boundary to 6 Cutler**

We are concerned that the boundary to our property has not been addressed for structural adequacy to resolve new altered ground conditions. We ask Council to condition a suitable adequacy clause to cover this issue.

**Lighting Nuisance**

We are concerned on external lighting facing other property and internal lighting from the proposed development causing lighting nuisance. Internal lighting will need to be designed to ensure that there is no light spill to the west, as our bedroom windows are immediately adjacent.

#### **4. Amended Plans or Proposed Conditions of Consent to any Approval**

We ask that Council request that the Applicant modify the DA drawings by Amended Plans, and failing that, Council impose the following conditions on any consent.

##### **ANS01 Building Height**

Deferred Commencement Condition:

Reduce Roof Height to RL 80.1m, and reduce floor levels to Level 3: 77.0, Level 2: 73.9, Level 1: 70.8 to ensure that the proposed building does not exceed the maximum building height of 8.5m, at the western profile, above *Ground Levels [Existing]* at 71.66 SW corner [tree] and the RL 71.6 contour.

Clerestory roof to reduce to RL 81.9m to fall above the RL 73.4 contour.

Garage at RL 70.8 and accessed from SW corner of property, with existing crossover at RL 71.28 [survey] location.

Reason: Privacy, Visual Bulk, Overshadowing

##### **ANS 02 Rear Setback**

Deferred Commencement Condition:

Delete proposed 5.6m high deck and pool to accord with DCP controls.

- No works to the west of the proposed dwelling is approved.
- The garden is to follow *Ground Levels [Existing]* from RL 71.66 [south survey] RL 71.92 [north survey] or from revised Level 1 at RL 70.8 [ANS 01] to slope to boundary to 6 Cutler at c. RL 68.87 [survey on subject site], with obscured glass privacy screens at 1.8m high along the 17m boundary with #6 Cutler,
- The pool to be positioned at natural ground level with setbacks and maximum heights above natural ground levels as MDCP, with obscured glass privacy screens at 1.8m high facing the 17m boundary with #6 Cutler,
- Along the 17m boundary with #6 Cutler, plant mature 75 lit pot size, 9 no. native screening trees (*Acmena smithii Firescreen*), at 2m centres, prune annually to align viewing sightline from proposed Level 3 upper level deck viewing height at 1.4m above FFL to window head at #6

Cutler, organic slow release fertiliser during growing season, with drip irrigation.

- Along the 17m boundary with #6 Cutler, at the boundary line, build a solid 1.8m high boundary fence, with the finished side facing #6 Cutler
- The garage to be positioned under the proposed dwelling at Level 1, Garage at RL 70.8 and accessed from SW corner of property, with existing crossover at RL 71.28 [survey] location.
- New details to be submitted to NBC for approval.

Reason: Privacy, Visual Bulk, Streetscape, Overshadowing

### **ANS 03 Side Setback**

Deferred Commencement Condition:

Increase side setback to accord with MDCP controls. Increase to 3.1m to northern boundary or to 1/3 wall height of revised wall height after ANS 01.

Reason: Visual Bulk, Overshadowing

### **ANS 04 Front Setback**

Deferred Commencement Condition:

Increase front setback to accord with DCP controls. Increase to 7.0m, to accord with established street setback of #3 Tabalum, and remove side walls to entrance, with no built form in front setback zone.

Front setback to Cutler Road increased to 3.4m.

Reason: View Loss, Visual Bulk, Streetscape

### **ANS 05 FSR**

Deferred Commencement Condition:

Reduction in FSR to achieve setback requirements

Reason: Excessive FSR, Privacy, Overshadowing

### **ANS 06 Bushfire**

Deferred Commencement Condition:



The development is to be designed and built to AS 3959 2009 Section 9 Flame Zone facing the hazard, or to NSW RFS recommendations.

Delete Chat Fire Pit.

Reason: Unreasonable Bushfire Assessment

### **ANS 07 Excavation**

Deferred Commencement Condition:

Garage Level @ RL 69.1 to be fully deleted.

Natural and undisturbed ground level must be maintained within 0.9m of side boundaries.

The garage to be positioned under the proposed dwelling at Level 1, Garage at RL 70.8 and accessed from SW corner of property, with existing crossover at RL 71.28 [survey] location.

A new access to Level 1 stair from the repositioned garage to be provided to the south of the dwelling.

Proposed main stair to complete at Level 1.

Geotechnical Engineer to provide precise method of excavation and enhanced attenuation to avoid vibration damage.

Reduce Peak particle velocity to be less than 2.5mm/sec at the common boundary to #6 Cutler, with alarms to stop work if thresholds are exceeded.

Inspections as identified in White Geotec Report 22 October 2019 to be carried out.

Reason: Excessive Excavation, Vibration risk

### **ANS 8 AC Plant & Pool Plant**

Deferred Commencement Condition:

AC Plant & Pool Plant not to be positioned along boundary to 6 Cutler, and to be positioned to south side of dwelling in a dedicated acoustic rated plant room at Level 1.

Reason: Acoustic Privacy

### **ANS 09 Lighting**

No external lighting facing 6 Cutler or internal lighting causing lighting nuisance to 6 Cutler bedrooms and living spaces.

Reason: Lighting Nuisance

### **ANS 10 Stormwater**

Stormwater Management plan, Stormwater Plans, & On Site Stormwater Detention [OSD] to Engineers details. Above ground and below ground stormwater drainage, along boundary to 6 Cutler to engineers detail. Water Table Report to define groundwater movements from deep excavation.

Reason: Stormwater compliance

### **ANS 11 Retaining Wall**

New retaining wall along boundary to 6 Cutler to resolve new altered ground conditions.

Reason: Structural Adequacy

### **Sketch of Main Issues: More Skilful Design**



We ask Council to heavily condition the DA or refuse the DA if these conditions of consent are beyond acceptability to Council.

Our amenity would be devastatingly affected by this non-compliant development. We find it totally unreasonable of a new build development to offer design solutions with:

- Building Heights at 10.7m rather than the planning control at 8.5m;
- Wall Heights at 10.4m rather than the planning control of 7.0m;
- Number of Storeys at 4 storey with 14m voids rather than the planning control of 2 storey;
- Rear Setback at 1m rather than the planning control of 8m;
- Side Setbacks at 2.25m rather than the planning control of 3.1m;
- Front Setback at 1.5m rather than the planning control of 6.0m;
- FSR exceeded and under calculated by the Applicant.
- Pools 5.6m high above NGL, and positioned 1m from our boundary and 1.7m from the street frontage
- 6m Deep Basements rather than the planning control

We have identified false and misleading information that has attempted to mislead us, other neighbours, and also Council. This is far from being acceptable.

Despite not being consulted pre submission of this DA, we have offered within this letter of objection of a 'more skilful design' solution that would be totally compliant to planning controls, would maximise FSR, and would substantially reduce the residential amenity impacts to us. The solution would be at a lower build cost, as it would avoid the need of an excessive and very costly basement construction at RL 69.1.

It is not the case that other design solutions are not available to the Applicant that can totally avoid our devastating amenity losses, which have arisen directly by non-compliance to planning controls.

## SEE

There are numerous non-factual matters stated within the SEE.

We raise a few:

*The SEE states: "The land falls quite steeply from the Tabalum Road frontage at rl 76.66 centrally to the rear boundary abutting No.6 Cutler Road at rl 72 at the pool coping. There is a retaining wall adjacent to the boundary with No.6 Cutler Road. The level at the base on the abutting property being approximately rl 68.18"*

This is incorrect. The Pool is an above ground pool, and the coping level is a coping to an above ground pool. The level of the subject site falls to **RL 68.87** on the western boundary to #6 Cutler boundary as shown on the survey. The natural ground level rises across the rear setback from RL 68.87 to the

existing lawn level adjacent the existing dwelling at c. RL 71.94.

#### p.14 Height of Building

*The SEE states: ‘The majority if the proposed addition is under the 8.5m control as apparent in the elevation drawings. There is an area of minor non-compliance to an absolute maximum of 1.15m through the middle of the building as evidenced by the accompanying diagram. The part of the building over the height standard consists of the clerestory and roof over the upper level balcony. A request for variation pursuant to Cl. 4.6 is enclosed at Annexure 2. ‘*

The proposals are for a new build, not a proposed addition. The majority of the new build is well over 8.5m. The non-compliance rises to 10.74m [clerestory roof] and 9.32m [NW] and 10.24m [SW] along the western façade. The part of the building over the height standard consists of the clerestory, the roof over the upper level balcony, **and** the upper floor zones over the contour 8.5m below the proposed roof at 81.9. An analysis of the DA drawings show that all zones below the RL 73.4 contour [RL 81.9 - 8.5m] are beyond the 8.5m control. The SEE is therefore incorrect, and the non-compliance represents a considerable area of the floor plate at the upper level.

The Clause 4.6 does not satisfactorily address what environmental planning grounds exist to justify contravening the standard. Nowhere within the Applicant’s Clause 4.6 is there identification of any environmental planning ground, unique or otherwise, that justifies the contravention.

#### p.14 Streetscape

No consideration or argument has been offered to identify why a 5.6m high walled fence to Cutler Road is an acceptable outcome.

No consideration or argument has been offered as to why the car parking is not under the proposed dwelling.

No consideration or argument has been offered as to why street setbacks, side setbacks, and rear setbacks are non-compliant to the streetscape consideration.

No consideration or argument has been offered as to why a building height of over 10.7m is a preferred solution than to a 8.5m compliant height to the streetscape, when all other buildings in the area follow a 8.5m building height, and all new development approved by NBC, NBLPP & LEC has only been approved to 8.5m building height.

#### p.15 Complementary Design

No consideration or argument has been offered as to why the building height is substantially higher than the 8.5m building heights within the immediate area.

#### p.15 Pool

THE SEE states: "*The proposed new swimming pool is better located in terms of relationship with the neighbour than the existing structure.*" The SEE fails to identify the horrendous privacy issues, and considerable non-compliance of every pool control.

#### p.15 Fencing

The SEE states: "*Contextual fencing to the street frontages and neighbouring properties have been proposed.*" The SEE fails to identify how a 5.6m high fence is contextual to Cutler Road!

#### p.15 Garages

The SEE states: "*The proposed car parking provision is recessive*". The SEE fails to identify that the garage door sits within a 5.6m high structure to the Cutler Road street frontage, and is anything but recessive. It is jarring and offensive.

#### p.15 Overshadowing.

The SEE fails to address the equinox loss of sun by non-compliant building envelope, and 5.6m high boundary walls.

#### p.15. Privacy.

The SEE states: '*The north elevation to the abutting house in Tabalum Road has little glazing*'. The reverse is true, in that the entire elevation is proposed to be predominantly glass looking directly into #3 Tabalum rooms.

The SEE states: '*The proposed balconies are also well removed from the rear and front yard located private open space areas of No.6 Cutler road*'. The SEE fails to mention that the height of the balconies are significantly higher than what the MLEP & MDCP would have considered reasonable, as the building heights rise to 10.24m, representing balcony heights 1.74m higher [10.24-8.5] than control standards. This will give the occupants of the development an even greater viewing corridor into the neighbours property than currently exists.

The SEE states: '*Removal of the existing large swimming pool and replacement with deep soil landscaping actually improves the relationship with*

*the neighbour at this point.* The removal of the existing green wall privacy screen, and the replacement by a 1m high balustrade will allow occupants to look immediately into the neighbours property and bedroom windows from an elevated position.

#### p.16 Views

The SEE states: *'...it is considered that the views are not iconic.'* The fact is that there are views over the iconic skyline of the CBD, the iconic Balmoral Beach and Pavilion, Sydney Heads and Middle Head. These views are all 'iconic', and not just harbor/land views as the SEE suggests.

The SEE has failed to consider the view from #3 Tabalum Living Room facing Sydney Heads and Middle Head. The non-compliant front setback and non-compliant side setback at the NE corner causes a severe to devastating view loss.

The SEE states that the view to the iconic City Skyline and Balmoral Beach; *'will be changed however not to a great degree.'* The non-compliant building height and non-compliant side setback at the NW corner causes a severe to devastating view loss.

The SEE quite rightly states from Tenacity: *'A development that complies with all planning controls would be considered more reasonable than one that breaches them.'*

The non-compliance stated by the SEE is totally incorrect, in that the majority of the proposed floor plate is over the 8.5m maximum building height, and all setbacks do not comply with controls. This non-compliance leads directly to the view loss, and therefore is considered totally unreasonable.

#### p.22 Height of Buildings

Refer earlier comments. The SEE is once again presenting incorrect statements.

Slope is not 1:3.8 as stated. The fall across the northern elevation is from 75.61 to 72.58, a 3.03m fall over 15m, representing a 1:5 slope, with lower wall heights than identified.

The SEE states: *'The proposal has three levels but in reality, only presents as*



*two storeys on elevation.*' This is incorrect. The Cutler Road elevation clearly represents 3 storey with a 10.4m & 10.7m building height. The western elevation viewable from the Cutler Road shows clearly 3 storey without any stepping back to follow the slope.

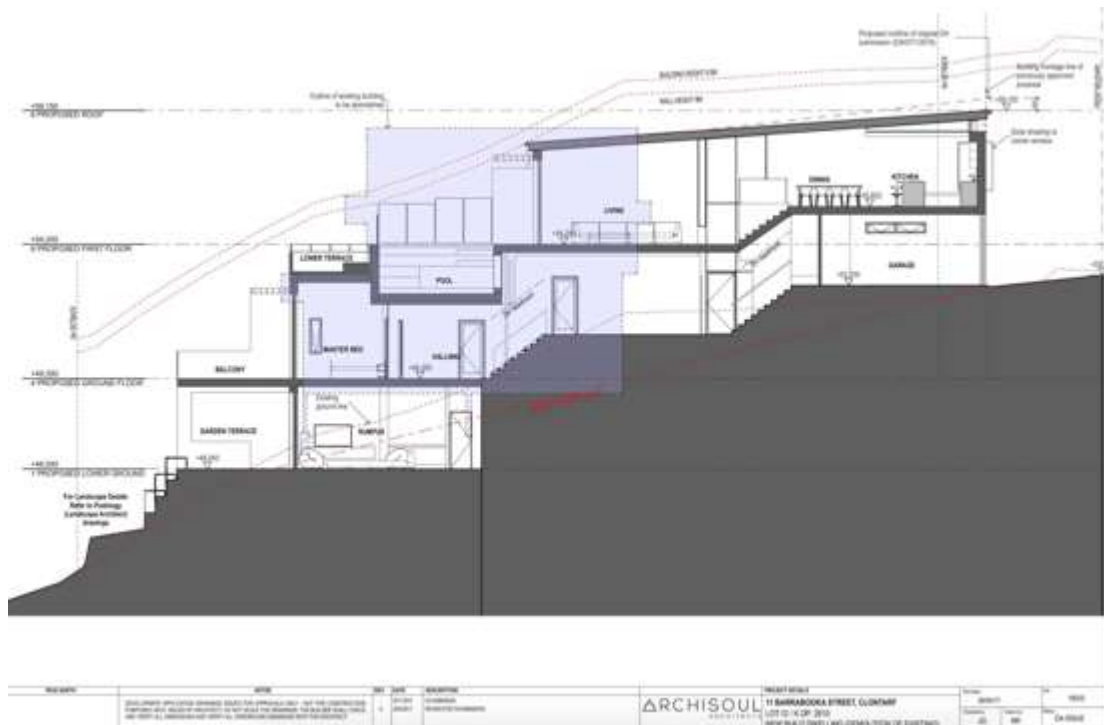
The SEE states: *'The proposed building responds the steep topography of the site and has an appropriate number of levels given the context.'*

The three/four storey configuration does not follow the topography, and presents a non-compliance across the entire site.

The properties from 6 Cutler to 20 Cutler, present single storey or two storey, with upper levels setback to maintain generally a maximum building height of 8.5m. All these properties are Alteration and Additions. The SEE failed to mention that these DAs were 'Alteration and Additions', where existing heights of the existing buildings are often retained from a period before the implementation of the current MLEP & MDCP.

Council will note also that on all recent DAs in neighbouring Barrabooka and Ogilvy, strict compliance to the 8.5m maximum building height has been demanded by NBC, NBLPP and LEC.

The only recent new build DA approved by the NBLPP & LEC in the area was on #11 Barrabooka, [DA 371/2016, approved 2017 & 2018] and that approval required the Applicant to reduce building heights under the 8.5m level, and to accord with setback controls. The existing building was significantly higher than the controls, however NBLPP & LEC restricted building heights below 8.5m.



**DA 371/2016 #11 Barrabooka St Clontarf New Build. 8.5m height control strictly enforced with complying side setbacks.**

It is incorrect to state that recent DA approvals allowed new builds to exceed maximum building height controls. The reverse is true. The NBC custom and practice is to follow the maximum building height control in an absolute fashion on new builds in this immediate area.

The Clause 4.6 does not satisfactorily address what environmental planning grounds exist to justify contravening the standard. Nowhere within the Applicant's Clause 4.6 is there identification of any environmental planning ground, unique or otherwise, that justifies the contravention.

**p.22 Setback**

*The SEE states: "Street front to be contextual at 6.63m and matches neighbouring building line. <sup>LS</sup>Side & secondary street 1/3<sup>rd</sup> external wall adjacent. Full compliance apparent to sole residential neighbour to the north.'*

This is incorrect. The predominant street setback to #3 Tabalum has not been achieved, and therefore is non-compliant. Cutler Road setbacks do not accord with 1/3 rule.

**p.23 Rear Setback.**

The SEE fails to address the non-compliant rear setback of the raised 5.6m deck structure, setback only 1m from the rear boundary and not 8m as required under the controls.

### p.23 Parking

The SEE fails to address why the parking is not under the dwelling as the MDCP requires.

### p.23 Sloping Sites.

The SEE states: '*The building design has responded to the site slope by stepping southwards.*' Clearly this is incorrect, as can be witnessed in the section detail. The dwelling does not recede as the topography falls, but continues westwards with non-compliant building heights to over 10.7m height.

### p.23 Pool

The SEE states: '*Minor non-compliance is evident*'. Clearly the non-compliance on height, rear setback, and street setback are massively non-compliant to controls. The pool looks directly into neighbours bedrooms and private open space, and creates a jarring impact to the neighbours and the streetscape.

### p.23 Fencing

The SEE fails to identify the 5.6m high fences to Cutler Road and to #6 Cutler.

The SEE states within 5.0 Conclusions the following matters in italics. My commentary refuting those matters is attached:

*Having regard to the provisions of Cl. 4.6 I am of the opinion that:*

- *the proposed height and FSR of the house are consistent with development in the locality and achieves the zone objectives;* <sup>[L]</sup><sub>[SEP]</sub>

Comment: The proposed maximum building height is based upon false and misleading *Ground Levels [Existing]*. Maximum building heights, wall heights, and storey numbers grossly exceed planning controls. The zone objectives have not been met, particularly in the adverse effects of amenity outcomes to all neighbours

- *the scale of the proposed house is not dissimilar to the existing house and contextual with the neighbouring house No.3;* <sup>[L]</sup><sub>[SEP]</sub>

Comment: The subject site is positioned at a lower level than No. 3, with the western façade having considerably more open aspect to the harbor, to Cutler and to the neighbours below. The 10m high wall heights facing south are not contextual to neighbours nor to other approvals in the area. 5.6m high walls to Cutler Road does not accord with MDCP controls. Recent LEC approvals and NBLPP approvals in the area have consistently restricted maximum building heights at the 8.5m maximum height level. NBLPP consent to #3 Ogilvy and LEC Consent to #11 Barrabooka are worthy examples.

- *The built form on the site proposes a footprint with total open space well in excess of the DCP minimum requirement indicative of a bulk scale that is appropriate for the locality;*

Comment: The total open space includes a main pool perched on a 4m high deck, built very close to 6 Cutler and Cutler Rd boundary, and is not indicative of the bulk and scale in the area. There are multiple non-compliances across every control.

- *there are sufficient circumstances to justify the non-compliance with the development standard in this case given the lack of impact associated with the breaches, the site location and design of the proposal and the character of the locality;* <sup>[L]</sup><sub>[SEP]</sub>

Comment: The breaches are totally unreasonable as they have devastating impacts on views, solar access, privacy, landscape, streetscape and other poor amenity outcomes

- *there are no adverse amenity impacts such as overshadowing, overlooking and material loss of view caused to surrounding properties by the non-compliance with the development standard;* <sup>[L]</sup><sub>[SEP]</sub>

Comment: Loss of View occurs to surrounding houses due to non compliant development. Overshadowing occurs to 6 Cutler at the Equinox. Overlooking to both 6 Cutler and 3 Tabalum is acute, and privacy is devastating

- *that having regard to the above that compliance with the FSR standard is unreasonable or unnecessary in the circumstances of the case;* <sup>[L]</sup><sub>[SEP]</sub>

Comment: Compliance with the FSR standard is unreasonable. There are areas not included within FSR at level 1 that should be included.

- *that sufficient environmental planning grounds exist to justify the variation;*

Comment: There is no justification to exceed the FSR, nor the main envelope controls of building height, setback, wall height, number of storey, and pool controls<sup>[L]<sub>SEP</sub></sup>

We suggest that the Clause 4.6 does not satisfactorily address what environmental planning grounds exist to justify contravening the standard. Nowhere within the Applicant's Clause 4.6 is there identification of any environmental planning ground, unique or otherwise, that justifies the contravention. There is no basis upon which the variation can be granted. Accordingly, consent must be refused on that basis.

There is no power to grant development consent because (a) the request to vary the control did not identify an environmental planning ground that justifies the contravention; and (b) the proposal is inconsistent with the objectives of the standard.

We refer Council to ***Whittaker v Northern Beaches Council [2017]*** that defines a similar situation.

## **NSW LEC Planning Principles**

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

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:

In this objection we have clearly showed that the same amount of floor space and amenity can be achieved while reducing the impact. 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. The proposals are non-compliant in multiple areas, and the Applicant has not quantified the difference between the impacts of a complying and a non-complying development.

In **Meriton**, [Meriton v Sydney City Council 2004], NSW LEC considered Privacy. Meriton suggest that Council should consider:

*“When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.”*

Commentary:

The freedom of neighbours property from being overlooked simply has not been properly considered.

In **Tenacity**, [Tenacity Consulting v Warringah Council 2004], NSW LEC considered Views. Tenacity suggest that Council should consider:

*“A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.”*

Commentary:

The development breaches multiple planning controls and is unreasonable. The impact on views arises as a result of non-compliance with one or more planning controls, and the moderate to devastating impact is considered unreasonable.

## **Conclusion**

The proposed development does not satisfy the relevant objectives of the MLEP and the relevant outcomes and controls contain in MDCP as they are reasonably applied to an application proposing a new dwelling.

The outcome is a building that cause poor amenity outcomes including privacy, view loss, overshadowing, streetscape, vibration and other concerns due to non-compliance to multiple residential controls including building height, FSR, wall height, number of storey, front setback, side setbacks, rear setback, pool, landscaping, parking, garage, fencing, groundworks and other concerns.

The Clause 4.6 fails on multiple levels and there is not sufficient environmental planning grounds to justify the departure. The development does not satisfy the objectives of the standard and gives rise to adverse streetscape and residential amenity consequences. The clause 4.6 variation is not well founded.

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

Such variations do not succeed pursuant to section 4.15 of the Act. The solutions have not achieved the objects of DCP standards for dealing with that aspect of the development.

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.



We expect that the determination will be carried out by NBLPP, due to the numerous excessive non-compliances, unless of course the DA is simply refused by Council based upon false and misleading information.

Yours faithfully,

**Mrs P.A. Bawmer**  
**6 Cutler Road**  
**Balgowlah Heights 2093**

DA drawings generally dated 21.10.19, with no revision letters, other than listed generally Rev A 011119 being 'section markers shown' on main general arrangement plan drawings. The drawings referred to within this objection are those uploaded onto NBC website, and any other drawings that appear in the SEE, or on other reports.

- A00 COVER PAGE<sup>[L]</sup><sub>[SEP]</sub>
- A00 SURVEY<sup>[L]</sup><sub>[SEP]</sub> [B&L 20.5.19]
- A01 SITE PLAN<sup>[L]</sup><sub>[SEP]</sub> **rev A**
- A02 SITE ANALYSIS PLAN
- A03 DEMOLITION PLAN
- A04 EXCAVATION PLAN
- A05 GARAGE<sup>[L]</sup><sub>[SEP]</sub> **rev A**
- A06 LEVEL 1<sup>[L]</sup><sub>[SEP]</sub> **rev A**
- A07 LEVEL 2<sup>[L]</sup><sub>[SEP]</sub> **rev A**
- A08 LEVEL 3<sup>[L]</sup><sub>[SEP]</sub> **rev A**
- A09 ROOF PLAN **rev A**<sup>[L]</sup><sub>[SEP]</sub>
- A10 SECTION A<sup>[L]</sup><sub>[SEP]</sub>
- A11 SECTION B<sup>[L]</sup><sub>[SEP]</sub>
- A12 EAST ELEVATION<sup>[L]</sup><sub>[SEP]</sub>
- A13 SOUTH ELEVATION
- A14 WEST ELEVATION
- A15 NORTH ELEVATION
- A16 3D VIEWS
- A17 AREA CALCULATIONS<sup>[L]</sup><sub>[SEP]</sub>
- A18 SHADOW DIAGRAMS - JUNE 21 - 9am - EXISTING<sup>[L]</sup><sub>[SEP]</sub>
- A19 SHADOW DIAGRAMS - JUNE 21 - 9am - PROPOSED
- A20 SHADOW DIAGRAMS - JUNE 21 - 12pm - EXISTING<sup>[L]</sup><sub>[SEP]</sub>
- A21 SHADOW DIAGRAMS - JUNE 21 - 12pm - PROPOSED
- A22 SHADOW DIAGRAMS - JUNE 21 - 3pm - EXISTING<sup>[L]</sup><sub>[SEP]</sub>
- A23 SHADOW DIAGRAMS - JUNE 21 - 3pm - PROPOSED
- A24 VIEW ANALYSIS FROM #3<sup>[L]</sup><sub>[SEP]</sub>
- A25 VIEW ANALYSIS FROM #2<sup>[L]</sup><sub>[SEP]</sub>
- A26 VIEW ANALYSIS FROM #4<sup>[L]</sup><sub>[SEP]</sub>
- A27 VIEW ANALYSIS FROM #6<sup>[L]</sup><sub>[SEP]</sub>
- A28 EXTERNAL FINISHES SCHEDULE<sup>[L]</sup><sub>[SEP]</sub>
- A29 WINDOW SCHEDULE 1<sup>[L]</sup><sub>[SEP]</sub>
- A30 WINDOW SCHEDULE 2<sup>[L]</sup><sub>[SEP]</sub>
- A31 WINDOW SCHEDULE 3<sup>[L]</sup><sub>[SEP]</sub>
- A32 WINDOW SCHEDULE 4<sup>[L]</sup><sub>[SEP]</sub>
- A33 WINDOW SCHEDULE 5<sup>[L]</sup><sub>[SEP]</sub>
- A34 THERMAL COMFORT INCLUSIONS<sup>[L]</sup><sub>[SEP]</sub>
- A35 NOTIFICATION PLAN<sup>[L]</sup><sub>[SEP]</sub>
- A36 NOTIFICATION PLAN

**[attached Appendix A]**

## Appendix A

### NSWRFS: Section 79BA Referral Review Photographs of Vegetation south of subject site Potential BAL FZ

The marked up image, has been taken from the Bushfire Assessment showing the inter-connected canopy structures from Grotto Point to the subject site. The text in yellow is our own. The locations of photographs taken are shown with a \*. Note the 'forest/woodland' vegetation, and the connected canopy structures towards Grotto Point.

The bushfire concern is that a major fire runs along to the ridge line to Grotto, and then a late southerly change ignites a raging bushfire straight towards the subject site, through dense vegetation, with a slope of 10-15 deg or greater pushing the fire front to explode onto Cutler Road, immediately adjacent the subject site, less than a road width away from the proposed development.

The concern is that the proposed BAL 29 is highly inadequate, and BAL FZ should be determined as the appropriate rating. All properties facing the hazard in nearby Barrabooka Street have all been rated BAL FZ by NSW RFS & Private Certifiers in recent years.



Image 01: Aerial view of the subject area courtesy Nearmap

The first series of photographs are taken from a rock outcrop to the west of the Culter Rd Lookout, looking south towards Grotto Point, before sweeping westwards along the ridge line, up to Cutler Road, and the vegetation immediately across the road from the subject site. A fire raging from Grotto Point along the ridge, with a strong southerly, up 10-15 deg slopes, through connected canopy is the significant concern.

The second series of shots are taken within the forest/woodland bushland immediately to the south and south west of the subject site, immediately behind the telegraph pole on Cutler Road. [Pole MO 31419]. Access can be obtained by walking along the fire trail to the south of #1 Cutler, and walking 50m west, until you see a child's 'swing' suspended, turn south, and you are within the vegetation zone facing the subject site. Enter the clearing to view the 6-10m tall canopy. As you head back towards the subject site, the density of the vegetation becomes inaccessible and the vegetation taller, with dense 100% canopy cover. Heading towards the east the density of the vegetation also becomes inaccessible. Trees are semi mature to mature, and canopy coverage ranges from 50% to 100%. This canopy connects with other canopy and dense vegetation that connects to the other substantial forest coverage towards Grotto Point. Other photos are taken of this area from Cutler Road looking into this densely vegetated, inaccessible area, of mature 10m high trees, with near-on 100% canopy cover in parts.

Previous Bushfire Consultants certifying in Barrabooka Street noted in respect to the vegetation to the east of Barrabooka Street, and west of the subject site: *"...with reference to PBP and the bushfire prone land map for the area the classification of vegetation for this hazard is forest."*

All ratings in Barrabooka have been to BAL FZ. The subject site would appear to be in a more hazardous position than the properties to the west of Barrabooka Street.

We are concerned that ember attack could land in very dry, highly flammable vegetation and starting new fires very, very easily getting an exponential growth of the fire front and acceleration of the fire front moving across the landscape towards the subject site.

Our consideration is that in studying Table 1; Reference AS3959: 2009 Table 2.4.2 the assessment that we wish NSWRFs to consider is based upon the

following:

- Direction: South
- Distance to APZ: <12m
- Vegetation Classification: Forest/Woodland
- Assessment of Effective Slope: Downslope Slope >10-15 deg
- Anticipated Radiant Heat: >40w/m<sup>2</sup>
- BAL: Flame Zone FZ

All 'Scrubland' <14m, all 'Woodland' <25m, and all Forest <39m would warrant a BAL FZ rating, considering the effective downslope >10-15 deg. It is difficult to imagine a firestorm less than 40w/m<sup>2</sup> hitting Cutler Road in a raging bushfire from Grotto Point.

### **Grotto Point to Subject Site**







**Dense Vegetation less than 12m from Subject Site, with connected canopy to Grotto Point**



**Dense Vegetation south of subject site, access via 'swing' passage opposite the mid point of #1 Cutler southern elevation**





**Dense vegetation immediately opposite subject site, access via fire trail to south of #1 Cutler**



**Dense vegetation immediately opposite subject site, access via fire trail to south of #1 Cutler**





**Dense vegetation immediate opposite subject site**





**Dense vegetation immediately opposite subject site**





**Dense vegetation immediately opposite subject site**



**View from Balmoral Beach showing extensive 'angophora forest' from Grotto Point to the subject site. [centre of photo on top of ridge]**