
Sent: 29/06/2022 9:28:43 AM
Subject: FAO: Alex Keller - Objection letter re: DA2022/0646 at 122-124 Queenscliff Road, Queenscliff
Attachments: Objection letter 122-124 Queenscliff Road Queenscliff- DA20220646.pdf;

Hi Alex,

Please find attached an objection letter regarding the above DA.

Please can you confirm receipt by return e-mail and don't hesitate to contact me should you require any further information or need to arrange a site visit.

Kind regards,

Karen Buckingham
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29 June 2022

The Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
Dee Why NSW 2099

By e-mail: council@northernbeaches.nsw.gov.au

Attention: Alex Keller

Dear Alex,

**Submission raising objection to Development Application DA2022/0646
Demolition works and construction of a residential flat building at 122-124 Queenscliff
Road, Queenscliff**

I write regarding the above Development Application to raise objection to DA2022/0646 on behalf my client Kristina Vikman, owner of 120 Queenscliff Road, Queenscliff. 120 Queenscliff Road is sited directly adjacent and to the east of the subject site.

This submission is prepared with the benefit of a site visit to assess the impact of the proposed development on my client and further to the assessment of the plans, reports and Statement of Environmental Effects (SEE) submitted as part of the subject DA against the relevant EPIs and Planning Controls, in accordance with Section 4.15 of the Environmental Planning & Assessment Act (the Act).

DA2022/0646 (subject DA) seeks consent for the demolition of the existing structures and the construction of residential flat building to create a four storey residential flat building including basement parking and fully assessable roof top gardens as designated amenity space. The proposed development would have a significantly detrimental impact on my client for the reasons set out overleaf and discussed in greater detail in this submission.

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Summary of objection

- Non-compliant development contrary to SEEP 65 and Apartment Design Guide, potential non-compliance with Warringah LEP R2 zone, and Warringah DCP 2011, Controls B1 – Wall Heights; B3 – Side Boundary Envelope; B7 Front Boundary Setbacks; D6 – Access to sunlight; D7 -Views; D8 - Privacy and D9 -Building Bulk.
- Unreasonable loss of solar access with less than 50% solar access to private open space for 3 hours between 9am-3pm at 21 June.
- Significant concerns regarding the loss of privacy to arise by virtue of the proximity of the eastern elevation and useable flat roofed terrace areas as designated amenity space contrary to DCP Control D8.
- Severe loss of highly valued views of Manly Lagoon and district views as per the VIA assessment included at Attachment A of this submission.
- Overbearing and visual impact, given the proximity of the proposed development from the side boundary of my client's property given the bulk and scale arising from non-compliance with the built form controls.
- Impact on amenity of neighbouring occupiers – cumulative impact of the above.

Additional information /clarification is also required to support in the assessment of the subject DA, as follows:

- Height poles need to be erected and surveyor certified to fully assess height, view loss and overbearing impacts on my clients
- Side boundary envelope plans need to be submitted
- Certification of shadow diagrams
- Location of air conditioning units and mechanical plant and acoustic conditions attached, if required.

Requested amendments and conditions are detailed on page 23.

Site details

The subject site is located at 122-124 Queenscliff Road, Queenscliff. The combined site, as outlined in the SEE is 950.6sqm. The site is located to the south of Queenscliff Road and to the west of my client's property which is located to the east of the subject site. The side boundary with my client's property extends for approx. 36.545m.

Figure 1 - Aerial photo of location of subject site outlined in red and proximity to my client's property



Source: – Extract from Masterset plan – Location Plan – own annotation added

Character of the area and streetscene

Surrounding residential environment is made up of detached dwellings and some examples of residential flat buildings fronting the streetscene.

Proposed development

Development Application DA2022/0646 seeks consent for demolition works and construction of a residential flat building which includes the following:

- Demolition of the existing two modest building containing 4 apartments within two older style dwelling houses (as set out in the SEE).
- Construction of a 4 storey new residential flat building containing:
 - 6 x 3 bedroom apartment (total 18 bedrooms),
 - Basement level car parking for 12 car parking spaces (2 per dwelling)
 - A mechanical lift
 - Two swimming pools
 - Additional expansive roof top terrace areas with two spa areas above Level 3 (Level 01 on plans. Note that the plan are annotate as Basement, Ground 1, Ground, Level 01, Roof)

Relevant legislation and Planning Controls

In preparing this submission, I have carefully considered the following legislation and planning controls

Environmental Planning & Assessment Act 1979 (The Act)
Environmental Planning and Assessment Regulation 2000 (The Regulations)
State Environmental Planning Policy 65 and Apartment Design Guide (ADG)
Warringah Local Environmental Plan 2011 (LEP)
Warringah Development Control Plan 2011 (DCP)

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Matters for consideration

The subject site is zoned R2 Low Density Residential under the LEP. Residential Flat Buildings are prohibited within the zone and would be contrary to the objectives of the zone.

The Statement of Environmental Effects (SEE) puts forward that the proposed Residential Flat Building on the subject site falls under existing use rights. Should Council determine that the proposed development does not fall under existing use rights, the subject DA should be refused given that it is prohibited in the zone and does not meet the zone objectives.

The SEE refers to the established Land & Environment Court (LEC) Planning Principles, *Fodor Investments v Hornsby Shire Council (2005) 141 LGERA 14* and *Stromness Pty Limited v Woollahra Municipal Council [2006] NSWLEC 587*.

This submission refers to the same established planning principles. However, it is important to note that *Stromness Pty Limited v Woollahra Municipal Council [2006] NSWLEC 587* sets out that, 'Consideration of the Fodor planning principles requires a consideration of what is the appropriate approach to a merits review of a development application for rebuilding relying on existing use rights' (Extract para.86).

In the consideration of the Fodor planning principle, *Stromness Pty Limited v Woollahra Municipal Council [2006] NSWLEC 587* the following point is relevant:

- 1) 89 Principle 1 in Fodor states that it is acceptable to consider the relevant planning instruments as these apply to the area surrounding the proposed development because these determine the nature of development in that area. That principle is not inconsistent with s108(3) as the Applicant submitted. Care must be exercised, however, against the possibility that such an assessment leads to a de facto application of standards in environmental planning instruments to the existing use rights site. Failure to comply with standards in an environmental planning instrument cannot be a consideration in the assessment of the application based on existing use rights. The same can be said in relation to Principles 3 and 4 but these can clearly otherwise apply to assist in the merit review under s79C.

90 I do not agree that matters such as the context of the proposed development cannot be

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taken into account as the Applicant argued when submitting that Mr Ingham's approach was incorrect. If the assessment under s 79C is to be adequate it must consider the proposal in its surroundings, and that is clearly a fundamental part of any analysis required under s79C(1)(b) and (c). In this case the primary issue is the bulk and scale of the development and consideration of the proposal in its surroundings which would appear necessary given the requirement of s79C(1)(b) and (c).

Comment: The standards of an Environmental Planning Instrument (EPI) include standards within Local Environmental Plans (LEPs) and State Environmental Planning Policies (SEPPs). A Development Control Plan (DCP) is not an EPI and the planning principle above does not refer to the objectives or numerical controls of a DCP. The assessment of the subject DA against the relevant DCP controls is a matter for consideration. The subject DA is a non-compliant development contrary to DCP controls B1 – Wall Heights; B3 – Side Boundary Envelope; B7 Front Boundary Setbacks; D6 – Access to sunlight; D7 -Views; D8 - Privacy and D9 -Building Bulk, as set out in further detail in this submission.

Merit review consideration in accordance with the established planning principles

The proposed development seeks consent for a residential flat building on a consolidation of the two existing lots under existing use rights. As outlined above, if Council is fully satisfied that existing use rights exist, the assessment of the subject DA should have regard to the following, in addition to the above referred matters for consideration:

How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

As outlined above, and in detail in this submission, the proposed development fails to accord the stated relevant DCP Controls. This proposed development would result in an impact on neighbouring amenity by virtue of the bulk, scale and siting.

The level of non-compliance would create an unacceptable impact on visual and acoustic privacy, severe loss of highly valued view, loss solar access and result in a significant overbearing impact on my client.

It is further highlighted that in accordance with consideration of the Fodor planning principles, the DCP controls in their objectives, outcomes and requirements seek to ensure that the proposed development meets the requirements of Section 4.15 of the Act.

What is the relevance of the building in which the existing takes place?

The existing buildings are proposed to be demolished and construction of a new residential flat building proposed resulting in unreasonable, harmful impacts to neighbouring occupiers as assessed under Section 4.15 of the Act.

What are the impacts on adjoining land?

As detailed within this submission, the impact to neighbouring occupiers is significant given the unacceptable impacts on visual and acoustic privacy, severe loss of highly valued view, overbearing and visual amenity and loss of solar access.

What is the internal amenity?

No comments applicable.

SEPP 65 and Associated Apartment Design Guide (ADG)

Contrary to Part 2F – Building separation

The aims of the ADG building separation control is as follows:

Aims

- *ensure that new development is scaled to support the desired future character with appropriate massing and spaces between buildings*
- *assist in providing residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook*
- *provide suitable areas for communal open spaces, deep soil zones and landscaping*

Part 2F of the ADG sets the building separation controls as shown at figure 3 to meet the above aims.

Figure 2 – Apartment Design Guide Building separation requirement

Building height	Separation distance
9 storeys and above	12-24m
Up to 8 storeys	9-18m
Up to 4 storeys	6-12m

Source: Extract from Part 2F – ADG

The proposed development is 3-4 storeys Inc., 1 storey basement levels (total 4 storeys) and therefore is a building height of up to 4 storeys, requiring a separation distance of between 6-12 metres.

The consent authority, in its assessment will need to ensure compliance with the following, as per Part 2F of the ADG, including the key test of compliance with the building separation distances which are used to inform Part 3F of the ADG:

Contrary to Part 3F-1 – Minimum separation as per Part 3F-1 is as follows:

Figure 3 – Design criteria of objective 3F-1 of ADG– Visual privacy

Building height	Habitable rooms and balconies	Non-habitable rooms
up to 12m (4 storeys)	6m	3m
up to 25m (5-8 storeys)	9m	4.5m
over 25m (9+ storeys)	12m	6m

Source: Extract form ADG

Visual privacy as per non-compliance with Part 3F-1. The distance between habitable rooms and balconies is approx. 4 metres.

Contrary to Part 3F-2, A privacy screen or planter boxes on the terraces would further impact on the view corridors from 120 Queenscliff Road.

The bedroom window at Level 01 is in a direct line of sight with the bedroom window on the western elevation of 120 Queenscliff Road.

Contrary to Part 4A-1 Solar and Daylight Access.

This objection letter has not assessed compliance with SEPP 65 and associated ADG where the impacts relate to the future users of the development or other neighbouring occupiers, over and above my client.

However, as detailed under DCP Control D6, the proposed development will have a significantly detrimental impact on the solar and daylight access of the neighbouring occupiers at 120 Queenscliff Road.

Local Environmental Plan (LEP)

Land use zone: The subject site is zoned R2 Low Density Residential under the LEP.

The zone objectives are as follows:

- *To provide for the housing needs of the community within a low density residential environment;*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents;*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment: The proposed development is for the construction a Residential Flat Building. Residential Flat Buildings are not listed as a specified development and are therefore prohibited within the zone.

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The applicant's reliance on Existing Use Rights and consolidation of the lots to accommodate the proposed Residential Flat Building needs to be fully assessed by Council. It is the proposed bulk, scale and siting of the proposed development and the resulting impacts on neighbouring amenity to which this submission relates.

Clause 4.3 Height of Buildings – 8.5 metres

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

Comments: The proposed development is shown to extend to the 8.5 metre maximum height limit as required under Clause 4.3 of the LEP. It is requested that Council fully assess the plans submitted and check the dimensions shown against the 8.5 metre height limit.

For this reason, it is requested that height poles be erected and surveyed to confirm compliance. Given the height, siting and flat roofed design of the proposed RFB, the additional bulk at the third story would result in significant visual impacts, disruption of views, loss of privacy and loss of solar access, contrary to objective (1) (b).

It is therefore requested, as included on page 23, that the third storey element be removed and the side setback pulled back as the wall height increases.

Development Control Plan (DCP)

DCP Control B1 – Wall Heights

Comments: The third storey element of the proposed development (Level 01 on submitted plans) results in a non-compliant wall height. Figure 18 of the SEE appears to read a 7.36 non-compliant wall height. It is requested that Council fully assess the degree of non-compliance in their assessment. As per the numerical requirements of the control, wall heights are not to exceed 7.2 metres.

As detailed in this submission, the proposed development gives rise to impacts to neighbouring amenity in terms of loss of privacy, loss of solar access, visual amenity (overbearing impacts) and severe loss of lagoon and district views. The proposed development, by virtue of the non-compliant wall height, which adds to the inappropriate bulk and scale of the proposed development, does not meet the objectives of the stated control.

As previously outlined, it is requested that the third level (Level 1) be removed, and the side setbacks stepped back as the wall height increases to address the level of non-compliance proposed.

DCP Control B3 - Side Boundary Envelope

Comments: The proposed development looks to exceed the side boundary envelope. It is requested that a side boundary envelope plans be submitted and shown on the southern elevation (rear – noted as west elevation in the Masterset plans). Figures 20-21 of the SEE demonstrate the non-compliance with the side setback from the east and western elevations with some 2.2m non-compliance.

The one of the objectives of this stated controls is to ensure that development does not become visually dominant by virtue of its height and bulk. As previously set out in this submission, the third storey (Level 01), results in a form of development which would be read as visually prominent and overbearing on neighbouring amenity.

DCP Control B7 – Front Boundary Setbacks

Comments: The Front Boundary Setback requirements for the subject site is 6 metres minimum setback to front boundaries, as per the DCP Setbacks Map. The proposed development is non-compliant with the stated control given the proposed 6 metre front setback.

DCP Control D3 – Noise

Comments: It is requested, that any associated plant, mechanical equipment or air conditioning units be located at a distance from my client's boundary and a condition attached to ensure compliance.

DCP Control D6 – Access to sunlight

Objectives

- *To ensure that reasonable access to sunlight is maintained.*
- *To encourage innovative design solutions to improve the urban environment and public open space.*
- *To promote passive solar design and the use of solar energy.*

Requirements

1. *Development should avoid unreasonable overshadowing any public open space.*
2. *At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.*

The SEE sets out that compliance with DCP Control D6 is achieved in reference to the following table and shadow diagrams submitted:

Figure 4 – Information detailed to demonstrate compliance with DCP Control D6

■ 120 QUEENSCLIFF ROAD_SOLAR ACCESS TO PRIVATE OPEN SPACE_TOTAL POS: 275M2

SOLAR ACCESS	09:00	10:00	10:30	11:00	11:30	12:00	12:30	15:00	TOTAL HOURS
PROPOSED POS AREA	66m ²	67m ²	77m ²	59m ²	49m ²	48m ²	54m ²	44m ²	6 HOUR

MINIMUM TOTAL PRIVATE OPEN SPACE - 60m²

MINIMUM REQUIRED SOLAR TO PRIVATE OPEN SPACE - 30m² (50% OF TOTAL POS)

Source: Extract from page 44 of SEE

Comment: DCP Control D6 requires that at least 50% of the private open space (POS) of adjoining dwellings are to receive a minimum of 3 hours sunlight between 9am and 3pm on June 21.

To demonstrate compliance, the applicants have incorporated the front garden area of my client's property which is not used as private open space but for access to the dwelling house.

The overshadowing impact to my client's private open space is as follows:

Figure 5 – Objection letter calculations to demonstrate solar impacts on POS

SOLAR ACCESS	09:00	10:00	10:30	11:00	11:30	12:00	12:30	15:00	TOTAL HOURS
PROPOSED POS AREA	45%	35%	40%	22%	10%	8%	13%	14%	0 HOURS OF 50%

Source: own calculations from submitted shadow diagrams

The proposed development fails to meet with the numerical requirements or objectives of the stated DCP Control. This is further clarified in the application of the planning principal established in the *Benevolent Society v Waverley Council* (2010) NSWLEC 1082 noted to assist in the assessment of sunlight.

The Planning Principle established by the NSWLEC for the assessment of solar access and overshadowing is, *The Benevolent Society v Waverley Council [2010] NSWLEC 1082*, as shown in the extract below:

Where guidelines dealing with the hours of sunlight on a window or open space leave open the question what proportion of the window or open space should be in sunlight, and whether the sunlight should be measured at floor, table or a standing person's eye level, assessment of the adequacy of solar access should be undertaken with the following principles in mind, where relevant:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

Comments: The subject site is located in a low-density residential environment zoned R2. The density at the site is low density where there is a reasonable expectation that existing dwellings and some of its open space will retain its existing sunlight.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

Comments: As shown on the shadow diagrams submitted, the amount of sunlight proposed to be lost to the POS would equate to a significant reduction of sunlight between the hours of 11:30 am to 3pm where the maximum amount of sunlight retained would only be a max. of 14% at 3pm on 21 June.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

Comments: The design of the proposed development could be amended by a more sensitive design to mitigate against the loss of amenity to my clients from overshadowing.

Recommended amendments to reduce the bulk, scale and massing of the proposed development to reduce the impact on neighbouring amenity, including loss of solar access, include removing the level 3 (Level 01) and stepping the side setback as the wall height increases to comply with DCP Wall Height and Building Envelope. These amendments would be more sensitive and result in a considerable reduction in the degree of solar impacts.

A more sensitive design would assist in mitigating some of the overshadowing impacts and my client would, as previously requested, welcome discussion over amended plans.

- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*

Comments: Numerical impacts to windows are not provided in the submitted plans or reports.

- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.*

Comments: The POS is located to the rear of my client's property. The assessment of solar impacts and justification for compliance with the stated DCP control rely on the inclusion of the front garden. The front garden of my client's property is used for access to the dwelling house and cannot be included as POS.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

Comments: N/A

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

Comments: The subject site is located in a low density residential environment zoned R2. There are no adopted or draft strategic planning documents that support the area undergoing significant built form change.

DCP Control D7 -Views

Objectives

- *To allow for the reasonable sharing of views.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To ensure existing canopy trees have priority over views.*

Requirements

1. *Development shall provide for the reasonable sharing of views.*

Comments: The proposed development, by virtue of the height, bulk, scale and siting of the built form on site, would obscure high value lagoon and district views currently enjoyed from the living room, kitchen, dining room, balconies and bedrooms of my client's property.

It is requested that the third storey (Level 01) be removed, and the side setback graduated as the wall height increases. To support view sharing, it is also requested that the rear elevation at the south eastern corner of the proposed development be pulled back.

A Visual Impact Assessment has not been submitted with the subject DA. In light of this, a VIA has been conducted as part of this submission and is contained at Attachment A.

The VIA concludes that the proposed development will result in a severe loss of highly valued views contrary to the objectives and requirements of DCP Control D7.

DCP Control D8- Privacy

Objectives

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

Requirements

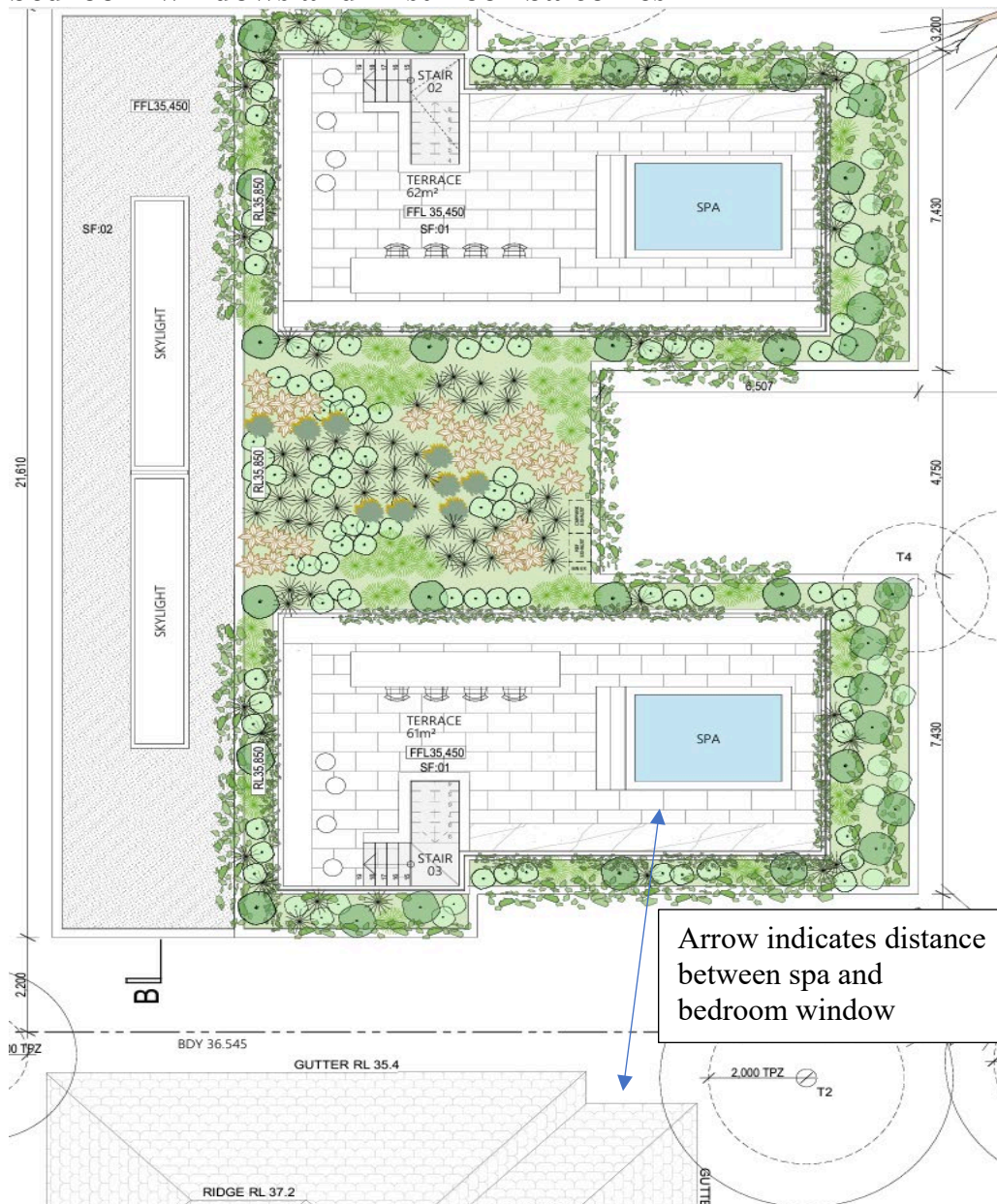
- 1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.*
- 2. Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.*
- 3. The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.*
- 4. The windows of one dwelling are to be located so they do not provide direct or close views (i.e., from less than 9 metres away) into the windows of other dwellings.*
- 5. Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.*

Comment: The proposed development would have a significantly detrimental impact on my client's privacy by virtue of overlooking from the following aspects of the proposed development:

Roof top terrace and spa area

Comment: The proposed roof terrace and spa area will directly overlook my client's bedroom windows and on to the rear balcony area. The degree of harm to visual privacy will be significantly detrimental. Acoustic impacts will create further harm, particularly by virtue of the proximity of the spa from my client's bedroom windows.

Figure 6 – Proposed roof terrace and spa area only approx. 4 metres from client's bedroom windows and first floor balconies



Source: Extract from Masterset plans (own annotation)

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Level two (Ground) floor terrace direct overlooking to deck

The terrace serving apartment G02 is located approx. 4 metres from my client's private rear deck. The submitted plans show a solid treatment to the western elevation of the deck at no. 120 Queenscliff Road. However, the side treatment to the deck is an open balustrade, as shown in the photo below.

Photo 1 – Open balustrade to the western boundary of the deck at 120 Queenscliff Road



Source: Own site photo

Significant loss of privacy will result between the terrace area and my client's deck to the detriment of both my client and the future occupiers. The degree of overlooking would likely result in the new occupiers of apartment G02 erecting a privacy screen or planter at the eastern elevation of the terrace which would further impact my client's view corridor. Should the south eastern corner of the proposed development be pulled back, the impact would be reduced.

The building layout of the proposed development needs to be amended to overcome the visual and acoustic privacy impact to arise given the non-compliant built form.

DCP Control D9 – Building Bulk

Objectives

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

Requirements

- 1. Side and rear setbacks are to be progressively increased as wall height increases.*
- 2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*
- 3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:*
 - The amount of fill is not to exceed one metre in depth.*
 - Fill is not to spread beyond the footprint of the building.*
 - Excavation of the landform is to be minimised.*
- 4. Building height and scale needs to relate to topography and site conditions.*
- 5. Orientate development to address the street.*
- 6. Use colour, materials and surface treatment to reduce building bulk.*
- 7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.*
- 8. Articulate walls to reduce building mass.*

Comment: As previously outlined in this submission, the proposed development does not comply with the maximum wall height limit or building envelope requirements. By virtue of this, the built form would present a significant visual impact when viewed from my client's

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property. It is recommended that the proposed development be reduced in height by removing the third storey (Level 01) and the side setback stepped back as the wall height increases, including pulling back the south east corner of the proposed development.

Impact on amenity of neighbouring occupiers

The proposed development would clearly have a materially significant impact on neighbouring amenity. The Development Application fails to comply with the DCP controls referred to in this submission. The impact on neighbouring amenity is a result of a height, bulk, scale and siting of the proposed built form and creates an unacceptable impact on privacy, view loss, visual amenity and overbearing impact for my client.

Amendments to the submitted plans are requested to address the level of non-compliance and resulting impacts discussed.

Requested amendments

- Pull back the side setbacks at the eastern elevation of the proposed development as the wall height increases and pull back the south eastern corner to assist with view sharing.
- Remove the roof terrace and spa area proposed over the third storey (over Level 01).
- Remove Level 01 or reduce the height to reduce the identified impacts.
- Should Council approve the proposed development without requiring that Level 01 be removed, the internal layout of apartment 1.02 at Level 01 needs to be amended to remove the bedroom window.

Request conditions

- Condition that the roof area be non-trafficable in perpetuity.
- No windows on the eastern elevation.
- No privacy screens or planters on the eastern elevation of the rear terraces.
- No plant, mechanical equipment or air conditioning units on the roof area or on the eastern side elevation.

Conclusion

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This submission sets out my client's concerns regarding the proposed development under Development Application DA2022/0646.

The proposed development would have a materially detrimental impact on the amenity of neighbouring occupiers (my clients) in terms of privacy loss, visual amenity, view lost and overbearing impact.

This Development Application is non-compliant with SEEP 65 and Apartment Design Guide, potential non-compliance with Warringah LEP R2 zone, and Warringah DCP 2011, Controls B1 – Wall Heights; B3 – Side Boundary Envelope; B7 Front Boundary Setbacks; D6 – Access to sunlight; D7 -Views; D8 - Privacy and D9 -Building Bulk.

Additional information is requested to enable the full assessment of the proposed development. Amendments and conditions are also requested to help mitigate the impacts discussed.

It is requested that my client be notified of any additional information or amended plans submitted and be given the opportunity to provide additional comments.

I thank you in advance for your consideration of the concerns raised in this submission.

Kind regards,

Karen Buckingham *on behalf of Kristina Vikman*
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Attachment A – Visual Impact Assessment

DCP Control D7 - Views sets out that the assessment of applications will refer to the Land and Environment Court's Planning Principles for view sharing established in *Tenacity consulting v Warringah [2004] NSWLEC 140*.

Tenacity consulting v Warringah [2004] NSWLEC 140 adopted a four step assessment process. This approach is the view loss assessment established by the Land & Environmental Court. The following assessment is relevant to the assessment of the subject DA.

A site visit was conducted on 17 June 2022 and site photos taken from 120 Queenscliff Road. This VIA should be read in conjunction with the detailed submission letter given the level of non-compliance with the DCP.

Figure 1 – Affected view Corridor



Source: Extract from Northern Beaches Council Planning Maps (with own annotation).

First step: Assessment of views to be affected.

'Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.'

View 1 – Highly valued views of Manly Lagoon and Hinkler Park from Kitchen window



Source: Own site photo

View 2 – Highly valued views of views of Manly Lagoon and Hinkler Park from living room window



Source: Own site photo

The views to be affected are of the whole views of Manly Lagoon and Hinkler Park and district views of the surrounding area from the kitchen window, living room window, dining room, balcony / deck) and bedroom windows of 120 Queenscliff Road.

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The views to be affected by the proposed development are assessed a **loss of highly valued views**.

Second step: From what part of the property the view are obtained

[T]he protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views.

The views to be affected are across a side boundary.

Third step: Assess the extent of the impact.

The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them) ... It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

The photo in view 1 and 2 are taken from the kitchen and living room windows. The living area has large glazed doors onto deck which also shares the same views.

Views affected from the kitchen areas, living areas terraces and balconies are **highly valued**.

The loss of **highly valued**, views from the kitchen areas, living areas and balconies are considered **severe**.

Fourth step: Assess the reasonableness of the proposal that is causing the impact

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.

The proposed development fails to comply with SEEP 65 and Apartment Design Guide, potential non-compliance with Warringah LEP R2 zone, and Warringah DCP 2011, Controls B1 – Wall Heights; B3 – Side Boundary Envelope; B7 Front Boundary Setbacks; D6 – Access to sunlight; D7 -Views; D8 - Privacy and D9 -Building Bulk.

In light of the above, the impact of the proposed development on the affect units would be a **severe impact on highly valued views** caused by an unreasonable proposal arising due to non-compliance with DCP controls.

With regard to the loss of highly valued views across a side boundary, as set out in the established Planning Principle, where a development is non-compliant, even a moderate view loss is unacceptable.

The severe impact on the highly valued views currently enjoyed by my clients should warrant the refusal of the proposed development. It is recommended that the proposed development be significantly amended, as detailed on page 23, to address the impacts identified, including the principles of view sharing.