
From: BT
Sent: 13/01/2022 3:19:21 PM
To: Council Northernbeaches Mailbox
Cc: Anita Christie
Subject: RE: DA 2021 2405 14 ERNEST STREET BALGOWLAH HEIGHTS
NSW 2093 WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: CHRISTIE
Attachments: Christie 2022.docx;

SUBMISSION: CHRISTIE

a written submission by way of objection

Anita Catherine & Brett David Christie
12 Ernest Street
Balgowlah Heights
NSW 2093

13 January 2022

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RE: DA 2021 2405 14 ERNEST STREET BALGOWLAH HEIGHTS NSW 2093

WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: CHRISTIE

Dear Sir,

This document is a written submission by way of objection lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, we ask Council to REFUSE this DA.

We are being assisted by a very senior experienced consultant in the preparation of this Written Submission.

CONTENTS

EXECUTIVE SUMMARY

FACTS

1. The Proposal
2. The Site
3. The Locality & Our Property
4. The Controls

CONTENTIONS THAT WARRANT THE REFUSAL OF THE APPLICATION

1. Lack of statutory power
2. Character
3. Floor Space Ratio
4. Wall Height
5. Setback
6. Impacts Upon Adjoining Properties: Privacy
7. Impacts Upon Adjoining Properties: Overshadowing
8. Impacts Upon Adjoining Properties: Excessive Bulk
9. Impacts Upon Adjoining Properties: Landscaping
10. Contentions that may be resolved by amended plans
11. Contentions that relate to a lack of information
12. Reasons For Refusal

CONCLUSION

EXECUTIVE SUMMARY

The design of the dwelling does not ensure that the existing high levels of amenity to our property is retained.

The proposal is considered to be inappropriate within the streetscape.

The subject site is zoned R2 Low Density Residential under the LEP, and there is no reason, unique or otherwise why a fully compliant solution to LEP and DCP controls cannot be designed on the site.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts that result in adverse impacts on our property.

- Visual Privacy
- Solar Loss
- Excessive Bulk
- Tree Protection

The proposed development fails to meet Council's planning controls, the objectives and the merit assessment provisions relating to:

- Wall Height 8m v 7m control @ 1:12 slope [14% non-compliance to 4.1.2]
- Front Setback [Non-compliance to 4.1.4.1: Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity]
- Rear Setback [Non-compliance to 4.1.4.4 d: Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy]
- FSR [no FSR calculation drawings; >0.45:1]

The proposed development represents an unreasonably large dwelling house design, for which there are design alternatives to achieve a reasonable development outcome on the site without having such impacts.

A compliant building design would reduce the amenity impacts identified.

We agree with Roseth SC in *NSWLEC Pafbum v North Sydney Council*:

"People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime."

The '*legitimate expectation*' that we had as a neighbour was for a development that would not result in very poor amenity outcomes caused directly from the non-compliance to building envelope controls.

Our significant concern is Excessive Bulk, Visual Privacy, and Solar Loss.

We want to emphasise the fact that we take no pleasure in objecting to our neighbour's DA.

We are objecting because the proposed DA has a poor impact on the amenity of our property, and the urban design outcomes within the streetscape, and this is caused by the DA being non-compliant to controls.

If the DA was fully compliant to all controls our amenity loss would be more reasonable.

It does seem unreasonable that the Applicant wishes to remove our amenity to improve his own, and is proposing non-compliant outcomes that would seriously adversely affect our amenity.

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, the subject of this Submission, does not succeed on merit and is not worthy of the granting of development consent.

We ask Council to seek modifications to this DA as the proposed development does not comply with the planning regime, by non-compliance to development standards, and this non-compliance leads directly to our amenity loss.

If any Amended Plan Submission is made by the Applicant, and re-notification is waived by Council, we ask Council to inform us immediately by email of those amended plans, so that we can inspect those drawings on the Council website.

FACTS

1. THE PROPOSAL

The development application seeks approval for the demolition of the existing dwelling and construction of new two storey dwelling. There is some confusion in other descriptions that state it is an alteration and addition.

2. THE SITE

The subject site is legally described as Lot 15A in DP 31138 and is known as 14 Ernest Street, Balgowlah Heights. The site has an area of 875sqm and is a regular shaped allotment with a front South facing boundary of 15.24m; rear North facing boundary of 15.24m; and ostensibly parallel side boundaries of 57.44m.

3. THE LOCALITY & OUR PROPERTY

The site is located in the R2 Zone of the LEP. The existing character of the local area, including the immediate visual catchment (generally within 150 metres of the site) is of a well-established neighbourhood, made up of a heterogeneous mix of dwelling types within domestic landscaped settings.

Our property shares a common boundary with the subject site.

4. THE CONTROLS

The following Environmental Planning Instruments and Development Control Plans are relevant to the assessment of this application:

- Environmental Planning and Assessment Act 1979.
- Environmental Planning and Assessment Regulation 2000.
- SEPPs
- LEP
- DCP

CONTENTIONS THAT WARRANT THE REFUSAL OF THE APPLICATION

1. LACK OF STATUTORY POWER

The development application should be refused as the proposal exceeds the maximum floor space ratio development standard prescribed by the LEP and it has not been supported by a request to vary pursuant to clause 4.6 of the LEP. No GFA and FSR drawings have been included to validate the Applicant's measurement.

2. CHARACTER

The proposed development should be refused as it is inconsistent with the character of the local area contrary to the provisions of the LEP and DCP.

The proposal does not achieve the desired character of the locality.

The proposed development should be refused due to its excessive bulk and scale and impacts on the character of the locality, adjoining properties and the surrounding environment.

The form and massing of the proposal does not appropriately respond to the low-density character of the surrounding locality

The form and massing of development is also inconsistent with the provisions of the LEP and DCP which prescribe that new development should complement the predominant building form in the locality.

The proposed development is non-compliant to:

- Wall Height 8m v 7m control @ 1:12 slope [14% non-compliance to 4.1.2]
- Front Setback [Non-compliance to 4.1.4.1: Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity]
- Rear Setback [Non-compliance to 4.1.4.4 d: Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy]
- FSR [no FSR calculation drawings; >0.45:1]

The proposed development is outside the envelope controls.

The proposed development fails to accord with the wall height controls under DCP 4.1.2.

The slope is 1:12, and therefore the wall height must not exceed 7m in height. The wall height exceeds the control and is significantly higher than neighbours wall heights. The LEP objectives for the Height of Buildings at clause 4.3 are particularly applicable to controls at paragraph 4.1.2 of the DCP. The proposed development fails to accord with the objectives at LEP Clause 4.3 a, b, and d:

- (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,*
- (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,*

The proposed development fails to accord with the front setback and rear setback controls.

The proposed development fails to accord with the Front Setback control Clause 4.1.4.1, that states '*Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity*'. The setback does not relate to our dwelling, and fails the main objectives of Clause 4.1.4 Setbacks in objective 1 and 2.

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:

- o providing privacy;*
- o providing equitable access to light, sunshine and air movement; and*
- o defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces;*

The proposed development fails to accord with the Rear Setback control Clause 4.1.4.4 d that states '*Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy*'. The setback does not relate to our dwelling, and fails the main objectives of Clause 4.1.4 Setbacks in objective 2.

Objective 2) To ensure and enhance local amenity by:

- o providing privacy;*
- o providing equitable access to light, sunshine and air movement*

The proposed development is higher and larger than the immediate neighbours.

The bulk and scale of the development is inconsistent with existing development in the visual catchment.

The level of stepping proposed in the development is inadequate to sufficiently integrate with the landform.

The proposal is not of a height and scale that seeks to achieve the desired future character, does not maintain or enhance local amenity, does not maintain the general dominance of landscape over built form, and does not satisfactorily minimise the adverse effects of bulk and scale of buildings. The proposal is excessive in height, bulk and scale; and does not have adequate regard for the maintenance of existing residential amenity.

The proposal would not be appropriate to the environmental constraints of the site and would not maintain the existing level of residential amenity. The proposal would

not recognise, protect, or enhance the natural or visual environment qualities of the locality. The proposal would not protect or conserve the existing landform in order to maintain the landscaped amenity of the locality.

The proposal would not be of a height and scale which is in keeping with the context of the locality, and would not maintain a general dominance of landscape over built form. The proposal would not maintain or enhance local amenity or minimise the adverse effect on bulk and scale.

In *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, NSW LEC considered character:

“whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site’s visual catchment”.

The non-compliant elements of the proposed development, particularly caused from non-compliant standards and controls would have most observers finding ‘*the proposed development offensive, jarring or unsympathetic*’.

A more skilful design would deliver a compliant 7m wall height, coupled with a compliant front and rear setback. This more skilful design outcome would overcome the considerable amenity outcomes, of visual bulk, overshadowing, and privacy outcomes that we would suffer if the current DA proposal would be approved.

3. FLOOR SPACE RATIO

The proposed development should be refused due to its excessive FSR and failure to comply with the FSR set out in the LEP.

The development application should be refused as the proposal exceeds the maximum floor space ratio development standard prescribed by the LEP and it has not been supported by a request to vary pursuant to clause 4.6 of the LEP.

The adverse impacts of the proposed development, including on the amenity of neighbouring property and public property, are directly attributable to the exceedance of the FSR development standard.

The proposal is inconsistent with the objectives of the FSR development standard pursuant to LEP.

The proposal is inconsistent with the LEP as there is a public benefit in maintaining the FSR development standard in this particular case.

We contend that the proposal fails to adequately demonstrate that compliance with each standard is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening each of the standards. Variation of the development standards is not in the public interest because the proposed development is not consistent with the objectives of each development standard nor the objectives of the zone. The proposed development has not sought

adequate variations to development standards. The proposal is excessive in bulk and scale, and is inconsistent with the desired future character of the area resulting in adverse impacts on the streetscape. The proposal results in an unacceptable dominance of built form over landscape. The proposal fails to minimise the adverse effects of bulk and scale resulting in adverse amenity impacts.

4. WALL HEIGHT

The proposed development should be refused due to its excessive height and failure to comply with the Wall Height set out in the controls.

The proposed development is inconsistent with the objectives of the zone and the objectives that underpin the wall height.

The proposal is inconsistent with the objectives of the Wall Height control.

There are insufficient environmental planning grounds to justify its contravention.

The proposed development fails to accord with the wall height controls under DCP 4.1.2.

The slope is 1:12, and therefore the wall height must not exceed 7m. The wall height exceeds the control and is significantly higher than neighbours wall heights. The LEP objectives for the Height of Buildings at clause 4.3 are particularly applicable to controls at paragraph 4.1.2 of the DCP. The proposed development fails to accord with the objectives at LEP Clause 4.3 a, b, and d:

(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,

(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,

The adverse impacts of the proposed development, including on the amenity of neighbouring property and public property, are directly attributable to the exceedance of the wall height control.

The failure of the SEE to demonstrate the outcomes required by the wall height control means that the variation cannot be supported and, therefore, by necessity, the development application should be refused.

The proposal is inconsistent with the LEP and DCP as there is a public benefit in maintaining the Wall Height control in this particular case.

The proposed portion of the building above the maximum wall height is not 'minor'.

We contend that the proposal fails to adequately demonstrate that compliance with each standard or control is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening each of the

standards. Variation of the development standards or control is not in the public interest because the proposed development is not consistent with the objectives of each development standard or control nor the objectives of the zone. The proposed development has not sought adequate variations to development standards or controls. The proposal is excessive in bulk and scale, and is inconsistent with the desired future character of the area resulting in adverse impacts on the streetscape. The proposal results in an unacceptable dominance of built form over landscape. The proposal fails to minimise the adverse effects of bulk and scale resulting in adverse amenity impacts.

5. SETBACK

The proposed development should be refused as it is significantly non-compliant with front setback of the DCP. The development application proposes major non-compliances with the front and rear setback on our boundary.

The proposed development fails to accord with the front setback and rear setback controls.

The proposed development fails to accord with the Front Setback control Clause 4.1.4.1, that states '*Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity*'. The setback does not align to our dwelling, and fails the main objectives of Clause 4.1.4 Setbacks in objective 1 and 2.

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*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces;*

The proposed development fails to accord with the Rear Setback control Clause 4.1.4.4 d that states '*Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy*'. The setback does not align to our dwelling, and fails the main objectives of Clause 4.1.4 Setbacks in objective 2.

Objective 2) *To ensure and enhance local amenity by:*

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement*

The proposed development does not provide appropriate front setbacks. This leads to inconsistency with the character of the area and unreasonable privacy impacts.

The proposal will result in an unsatisfactory scale of built form that will be disproportionate and unsuitable to the dimensions of the site and neighbouring residential development.

The height and bulk of the development will result in unreasonable impacts upon the amenity of neighbouring properties with regard to visual dominance and amenity loss.

The excessive built form of the proposal results in a development where the building mass becomes visually dominant and imposing, particularly when viewed from the visual catchment of neighbouring properties

The cumulative effect of the non-compliances with setback, wall height and other development standard result in an over development of the site with the site being not suitable for the scale and bulk of the proposal.

6. IMPACTS UPON ADJOINING PROPERTIES: PRIVACY

The proposed development should be refused as it will have unacceptable impacts upon the amenity of our property, specifically with regard to visual privacy.

The proposed development will result in unacceptable overlooking of the adjoining dwelling and associated private open space, resulting in inconsistency with the provisions of the DCP and the objectives of the DCP.

The Applicant has not provided an adequate Privacy Impact Analysis which details the extent to which privacy at our property will be adversely impacted by the proposal.

An assessment of the privacy impact against the planning principle Meriton v Sydney City Council [2004] NSWLEC 313 follows:

Principle 1: The ease with which privacy 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 private open space will remain private. At high-densities it is more difficult to protect privacy.

Response: The development is located in a low-density area.

Principle 2: Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)

Response: The proposed development result in a privacy impact with the proposed windows facing neighbours without sufficient screening devices being provided, considering the proposed windows are directly opposite our windows.

Principle 3: The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.

Response: The windows in question are windows of the main circulation zones and living areas, it is considered that the living areas will result in an unacceptable privacy breach. The proposed windows facing the private open spaces for the neighbouring dwelling and will result in an unacceptable level of privacy impact.

Principle 4: Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.

Response: The proposed development is a new development and the proposed windows have been designed without any consideration to the privacy of the neighbouring property.

Principle 5: Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.

Response: It is considered that the private open space of the neighbouring dwellings could be better protected. We ask Council to consider the most appropriate privacy screening measures to be imposed on windows facing our property, including landscaping

Principle 6: Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.

Response: As mentioned above, the use of privacy devices would reduce the impact of the dwelling.

Principle 7: Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.

Response: Additional landscaping may assist in addition to privacy devices.

Principle 8: In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.

Response: The area is not undergoing change that would warrant privacy impact such as the one presented.

Comment: As the development is considered to result in an unacceptable privacy impact due to the design, it is requested that the proposed development be redesigned to reduce amenity impact on the neighbouring properties.

In the context of the above principles, the application can be considered to violate the reasonable expectation that the habitable rooms and private open space at our property will remain private. It is therefore reasonably anticipated that the application does not comply with the DCP.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control.

7. IMPACTS UPON ADJOINING PROPERTIES: OVERSHADOWING

The proposed development should be refused as it will have unacceptable impacts upon the amenity of adjoining properties, specifically with regard to overshadowing.

The proposed development will result in unreasonable overshadowing of the windows of our property and the private open space of our property, resulting in non-compliance with the provisions of DCP.

A variation to the DCP is not supported as the objectives of the clause are not achieved

In *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 the LEC consolidated and revised planning principle on solar access is now in the following terms:

"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."

We contend that the overshadowing arises out of poor design. The design does not respect envelope controls, and must be considered 'poor design'.

The Applicant has not submitted hourly solar diagrams to fully assess the solar loss. We ask Council to obtain these diagrams.

The loss of sunlight is directly attributable to the non-compliant envelope.

The planning principle *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 is used to assess overshadowing for development application. An assessment against the planning principle is provided as follows:

- *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.*

The density of the area is highly controlled. Building envelope controls have been exceeded.

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

The solar diagrams are not complete, but what has been provided shows that the proposed development will overshadow the adjoining dwellings. The amount of sunlight that will be lost will only be able to be fully considered once solar elevational drawings are submitted. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *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.*

The proposed development has been designed without considering the amenity of the neighbouring properties. It is considered that a more skilful design, with a compliant envelope control, could have been adopted that would have reduced the impact on the neighbouring properties. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *To be assessed as being in sunlight, the sun should strike a vertical surface at a horizontal angle of 22.5 degrees or more. (This is because sunlight at extremely oblique angles has little effect.) For a window, door or glass wall to be assessed as being in sunlight, half of its area should be in sunlight. For private open space to be assessed as being in sunlight, either half its area or a useable strip adjoining the living area should be in sunlight, depending on the size of the space. The amount of sunlight on private open space should be measured at ground level.*

This can only be fully assessed once elevational solar drawings at hourly intervals are submitted. What has been submitted gives the very clear indication that the outcome is not in accordance with controls.

Of great concern, the applicant's solar drawings is considering the sun striking a vertical surface at a horizontal angle less than 22.5 degrees, as being an acceptable consideration. The applicant needs to prepare sun diagrams of the existing situation where sun is available at 22.5 degrees or more, between 9am and 3pm mid-winter. The applicant has not done so.

- *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.

There is no major overshadowing as a result of vegetation

- 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.*

The area is not currently undergoing change, the LEP and DCP controls have not altered for many years.

The assessment of the development against the planning principal results in the development not complying with the solar access controls and therefore amended plans should be requested to reduce the overshadowing impact on the adjoining neighbour. It is suggested that a more skilful design of the development, with a compliant envelope control, would result in less impact in regard to solar access. It is requested that Council seek amended plans for the development to reduce the impact of the development, and these matters are addressed elsewhere in this Written Submission.

We object to solar loss to our rear private open space, and to our windows that allow mid-winter solar access into a highly used room by non-compliant development controls.

8. IMPACTS UPON ADJOINING PROPERTIES: EXCESSIVE VISUAL IMPACT

The proposed development should be refused due to its excessive visual impact and impacts on the character of the locality, adjoining properties and the surrounding environment.

The form and massing of the proposal does not appropriately respond to the low-density character of the surrounding locality

The form and massing of development is also inconsistent with the provisions of the DCP which prescribe that new development should complement the predominant building form in the locality.

The proposal would not recognise or protect the natural or visual environment of the area, or maintain a dominance of landscape over built form. The proposal has not been designed to minimise the visual impact on the surrounding environment.

9. IMPACTS UPON ADJOINING PROPERTIES: LANDSCAPING

The landscape component of the proposal must not be supported due to the impacts of proposed works on existing trees and vegetation.

An alternative building design and site layout must be sought, exploring the retention of key native trees.

Any encroachment into the TPZ of existing trees by greater than 10%, or any encroachment into the SRZ, is deemed to be major, and therefore requires a tree root investigation in accordance with AS4970-2009.

Trees in neighbouring properties are considered prescribed, irrespective of species and height, and must therefore be protected and retained throughout proposed works. Any negative impacts towards the short-term and long-term health of these trees must not be supported. Neighbouring trees within 5m of the development and are required to be assessed by an AQ5 Arborist to determine impacts to TPZ and feasibility of retention.

We contend that the trees in neighbouring properties have not had adequate tree root investigation in accordance with AS4970-2009.

An alternative design layout must be sought ensuring that proposed buildings are located at least 2 metres from trees to be retained. Should the plans be approved with the current layout, trees within 2m on the proposed works may all be removed without approval under the tree removal provisions.

The proposed development does not provide sufficient landscaping, including 4m high privacy planting facing our property

The landscape component of the proposal is unacceptable due to the significant impacts of proposed works on trees to be retained, as well as insufficient canopy trees proposed to compensate the removal of significant trees within the site.

Excavation works and the proximity of existing trees to proposed building and structures will place ongoing issues with the arboricultural preservation of existing trees in the long term.

10. CONTENTIONS THAT MAY BE RESOLVED BY AMENDED PLANS: DESIGN ALTERNATIVES

A compliant building design would reduce the amenity impacts identified.

Reduce the proposed development as follow:

- Reduce the Wall Height to DCP controls to 7.0m on the East Elevation. The objectives to DCP 4.1 have not been met, due to excessive bulk, and excessive solar loss
- Increase Front Setback to DCP controls, *Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity.* Align proposed development with 12 Ernest Street. Delete Guest Bedroom at Ground Floor, and realign built form to align with 12 Ernest Street.
- Reduce First Floor to align with 12 Ernest Street, at the street frontage
- Reduce the proposed development to accord with the Rear Setback control Clause 4.1.4.4 d that states '*Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy*'.

- Delete built form at either end of external decks, and maintain Balcony with 1.65m high privacy screens at either side of the Balcony.
- Reduce eaves to be 0.5m from external wall line facing north and south, and not to extend over the entire Balcony to reduce visual bulk
- Decrease FSR to LEP standards
- Privacy: 1.65m privacy screens to all decks facing our property, shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- Privacy: Windows in Eastern Elevation to have 1.65m high sills, with obscured glass
- Landscaping: 6m high privacy planting facing 12 Ernest Street along the side boundary
- consider a more skilful design that reduces the impact upon visual bulk, solar loss and privacy loss to neighbours.

11. CONTENTIONS THAT RELATE TO A LACK OF INFORMATION

INCONSISTENCY WITH DESCRIPTION OF PROPOSED DEVELOPMENT

New Build or Alteration & Addition – this is unclear

DRAWINGS INCORRECTLY LABELLED ON DWELLING ADDRESSES THROUGH OUT THE DA DOCUMENT

Corrections required in all documentation

FSR & GFA Calculations

The Applicant has not provided FSR & GFA Calculations, and plan detail to define that the FSR complies.

Privacy Impact Analysis

The Applicant has not provided an adequate Privacy Impact Analysis, to accord with DCP controls and NSWLEC planning principles.

Solar Access Diagrams

The Applicant has not provided adequate Solar Access Diagrams, at one hourly intervals, in plan and elevation of our property, to assess the loss of solar access at mid-winter, to accord with DCP controls and NSWLEC planning principles

Of great concern, the applicant's solar drawings is considering the sun striking a vertical surface at a horizontal angle less than 22.5 degrees, as being an acceptable consideration. The applicant needs to prepare sun diagrams of the existing situation where sun is available at 22.5 degrees or more, between 9am and 3pm mid-winter. The applicant has not done so.

Visual Bulk Analysis

The Applicant has not provided adequate montages from our property to assess the visual bulk assessment from the proposed non-compliant envelope.

Arborist Report

Outstanding to assess neighbours trees within 5m of the boundary.

12. REASONS FOR REFUSAL

We ask Council to refuse the DA as the proposal is contrary to the Environmental Planning and Assessment Act:

Council is not satisfied that under clause 4.6 of the LEP seeking to justify a contravention of the development standard that the development will be in the public interest because it is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

MANLY LEP

- 1.2 Aims of Plans
The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the aims (2a), (2b), (2f), and (2g) under the LEP.
- 2.3 Zone Objectives
The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the objectives of the R2 Low Density Residential zone of the LEP as it fails to provide for the housing needs of the community within a low-density residential environment.
- 4.4 Floor Space Ratio
The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to comply with the FSR development standard under the LEP, and does not meet the objectives in relation to minimising disruption to views and other environmental impacts on the use and enjoyment of adjoining land
- 4.6 Exceptions to Development Standards
The written requests submitted pursuant to clause 4.6 of *Local Environmental Plan* fails to justify contravention

MANLY DCP

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy objectives and planning controls of DCP:

- 1.7 Aims and Objectives of this Plan
- 3.1.1 Streetscape (Residential areas)
- 3.3.2 Preservation of trees
- 3.4.1 Sunlight Access & Overshadowing
- 3.4.2 Privacy and Security
- 4.1.2.1 Wall Height
- 4.1.3 Floor Space Ratio (FSR)
- 4.1.4 Setbacks (front, side and rear) and Building Separation
- 4.1.4.1 Front Setback
- 4.1.8 Development on Sloping Sites

The proposal is contrary to Section 4.15(1)(a) (iv) of the *Environmental Planning and Assessment Act 1979* in that there is insufficient information has been submitted to enable the assessment of the application

The proposal is contrary to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that it will have i) an adverse impact through its bulk, scale and siting on the built environment, (ii) through its potential use, adverse social impact in the locality and (iii) through lack of landscape provision, including there being no indigenous tree plantings, adverse impact on the natural environment.

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* in that this area of the site is unsuitable for a development of such excessive bulk and scale.

The proposal is unsuitably located on the site pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

The proposal does not satisfy Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not adequately address the amenity of neighbours

The proposal is contrary to the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*. The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest.

CONCLUSION

The proposed dwelling is not consistent with the intent of the LEP standards and DCP controls as they are reasonably applied to the proposal.

The variations to LEP standards and DCP controls are considered unreasonable in this instance. The cumulative effect on these non-compliances cause considerable amenity loss to my property.

The development will not sit well within the streetscape with non-compliance to LEP standards and DCP controls causing considerable concern. In this regard, the proposal is considered excessive in bulk and scale and would be consider jarring when viewed from the public domain.

It is considered that the proposal is inappropriate on merit and unless amended plans are submitted, this DA must be refused for the following reasons:

- The application has not adequately considered and does not satisfy the various relevant planning controls applicable to the site and the proposed development.
- The proposed dwelling is incompatible with the existing streetscape and development in the local area generally.
- The proposed dwelling will have an unsatisfactory impact on the environmental quality of the land and the amenity of surrounding properties
- The site is assessed as unsuitable for the proposal, having regard to the relevant land use and planning requirements.

It is considered that the public interest is not served.

The proposed development does not follow the outcomes and controls contained within the adopted legislative framework.

Having given due consideration to the matters pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended, it is considered that there are multiple matters which would prevent Council from granting consent to this proposal in this instance.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts of which would result in adverse impacts on our property.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, we ask Council to REFUSE this DA.

Yours faithfully,

Anita Catherine & Brett David Christie
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