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17/03/2024

MS Kathleen Heath
32 George ST
Manly NSW 2095

RE: DA2024/0179 - 30 George Street MANLY NSW 2095

We, Harrison Grace and Kathleen Heath, the registered proprietors of the land comprising Lot 1 in DP 556938 situated at 32 George St Manly, object to development application DA2024/0179 (Development Application) for alterations and additions to a semi-detached dwelling at 30 George St Manly (Site) for the reasons that follow. We have emailed a copy of this submission, which is formatted properly and contains images, to council@northernbeaches.nsw.gov.au and ask that it be considered in its entirety. An identical submission has been made by Harrison Grace.

By way of summary, the Council would refuse the Development Application because it does not comply with the Council's controls relating to setbacks, privacy, view loss, access to sunlight, FSR, bulk and scale and the desired future character of the area, and would have substantial unacceptable adverse impacts on the amenity of our home.

The most serious impacts on our land result from the proposed development's non-compliance with the Manly Development Control Plan 2013 (MDCP). There has been no real attempt to mitigate those impacts. The proponent has prioritised maximising floor space at the expense of compliance with Council's controls and their neighbours' amenity, which is an unacceptable approach to development.

1. Setbacks

1.1. The proposed development contravenes cl 4.1.4.2 of the MDCP and, as a direct consequence, adversely impacts on privacy and amenity (as discussed in Section 2), view loss (as discussed in Section 3), access to light and sunshine (as discussed in Section 4), and the desired future character of the area and public interest (as discussed in Section 7).

1.2. Clause 4.1.4.2 provides that "[s]etbacks 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".

1.3. According to the Statement of Environment Effects prepared by GAT & Associates dated January 2024 (SEE) (at p 20), the "new northern elevation has a maximum wall height of 7.14m; therefore, a maximum northern side setback to No. 32 George Street of 2.38m is required". However, the proponent only propose a northern setback of 965mm, which is only 40% of the required setback. This is a significant non-compliance.

1.4. The requirements of the MDCP must be a "fundamental element" in or a "focal point" of Council's determination, and the contravention, which is "directly pertinent" to the development, should be given "significant weight": *Zhang v Canterbury City Council* [2001] NSWCA 167; 51 NSWLR 589 (Zhang) at [75].

1.5. Section 4.15(3A) of the Environmental Planning and Assessment Act 1979 (EPA Act) provides that a provision of development control plan may only be applied "flexibly" if the proposed development is otherwise consistent with the objective of the controls. However, the proposed development is inconsistent with objectives of the setback controls to the extent that they are relevant, as shown in the Table below:

Objective Response

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. The non-compliant side-setback would create an intrusive visual element that would be unsympathetic with and disproportionate to the existing symmetrical semi-detached built roof form that it presently enjoys with the adjoining property, which would be visible from the street, as discussed below. It would also be inconsistent with the smaller scale of development on the adjoining property at 28 George St.

Objective 2) To ensure and enhance local amenity by:

- providing privacy; The proposed development would have an unacceptable impact on our privacy. The proposed north facing windows on the first floor would look directly into our only bathroom and directly overlook the courtyard at the side of our house, which is our primary entertaining area. The proposed mitigation measure would be ineffective and inadequate, as discussed in Section 2 below. The most severe impacts on privacy are caused by the non-compliant setback.
- providing equitable access to light, sunshine and air movement; and The proposed development would entirely block the view to the sky and associated light from all south-facing ground floor windows on 32 George St, which is our primary source of light (as discussed in Section 5 below). The loss of views and light would be primarily attributable to the non-compliant northern setback. The impacts will be particularly severe because our home is a south facing terrace with limited access to light.
- facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces. The proposed development would entirely block our views to St Patrick's Seminary and the sky (as discussed in Section 5 below). The view loss would be primarily attributable to the non-compliant northern setback.
- defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and The non-compliant setback is inconsistent with the desired future character of the locality (which is informed by the applicable planning controls: *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 (SJD) at [54]) and would, if approved, set an unacceptable precedent in area, as discussed in Section 7 below.
- facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection. Not applicable.

Objective 3) To promote flexibility in the siting of buildings. Clause 4.1.4.2 promotes "flexibility in the siting of buildings" by establishing parameters within which a development may be designed and establishing exceptions that may apply in specific circumstances: see, e.g., MDCP, cl 4.1.4.2b). However, the non-compliant setback neither complies with the controls nor falls within any of the exceptions. It falls outside the flexibility that the clause allows.

Objective 4) To enhance and maintain natural features by:

- accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees, The non-compliant setback would not enhance or maintain natural features. No plantings or vegetation are proposed as part of the proposed development and the non-compliant setback would decrease the Site's potential to accommodate 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 The Site does not adjoin any Open Space or National Parks. The proposed development is unsuited to this context for the reasons outlined in the objection.

- ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied Not applicable.

Objective 5) To assist in appropriate bush fire asset protection zones. Not applicable.

1.6. Accordingly, the Council would be satisfied that the non-compliant setback is inconsistent with the Objectives of cl 4.1.4 of the MDCP to the extent they are applicable.

1.7. It is disingenuous for the SEE to state that "development in line with the permitted development standards" would be "virtually impossible" if the proposed development was required to comply with the Council's setback controls: see, SEE, p 20. The proponent could comply with the setback controls with a more sympathetic and skilful design (e.g., distributing the massing of the first floor to reduce impacts to neighbouring properties, decreasing the widths of the bedrooms, decreasing floor to ceiling heights and siting a narrower first floor further toward George St) or simply with a less intense form of development overall.

1.8. Instead, the proponent has prioritised maximising gross floor area at the expense of compliance with the MDCP and the amenity and privacy of neighbouring properties, which is not acceptable from a planning perspective.

1.9. According to the SEE, the justification for locating the first-floor addition at the rear of the building is that "an addition to the front of the site will disrupt the symmetrical nature of an existing semi-detached built form": SEE at p 19. This lacks merit from a town planning and urban design perspective because the proposed design would be incompatible with the "symmetrical nature of an existing semi-detached built form", especially when viewed from the street, as shown below:

[Image omitted and available in submitted PDF]

Figure 1: Extract from DA 33 "Proposed | West Elevation" Rev B dated 14/11/2023 showing the incompatibility of non-compliant side setback with the symmetrical nature of the existing semi-detached built form

1.10. The proposed development does not "complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality" contrary to cl 3.1.1.1 and 4.1.7.1 of the MDCP.

2. Privacy and amenity

2.1. The proposed development would have a severe adverse impact on our privacy and amenity.

2.2. As shown below, the north-facing windows on proposed first-floor have not been sited or designed to minimise overlooking or avoid impacts on our privacy:

2.2.1. Window W03 would look directly into our bathroom on the first floor, which is our only bathroom, and our study, which we propose to convert into a nursery if we have children, which we are trying to do.

2.2.2. Window W03 would look directly into our kitchen and partially into our living room on the ground floor.

2.2.3. Windows W03 and W04 would both directly overlook our courtyard, which we use frequently for entertaining, our meals in the warmer months and showering after the beach.

2.2.4. Windows W03 and W04 would both directly overlook our rear first-floor deck.

2.3. The proposal to have a window which is 1600mm wide and 1200mm high (i.e., W03) looking directly into our only bathroom without any permanent privacy mitigation measures is demonstrative of the lack attention and concern that has been given to the impacts of the proposed development on our privacy and amenity in the design.

[Image omitted and available in submitted PDF]

Figure 2: Annotated First Floor Plan showing the extent to which W03 and W04 would look directly into our property and over our private open space.

2.4. Although the proponent is apparently unconcerned about the unsympathetic location of Windows W03 and W04, which would permit clear views from our property into the proposed first floor bedrooms, planning principles are impersonal because any development consent would "enure for the benefit of subsequent owners and occupiers": *Ryde Municipal Council v Royal Ryde Homes* (1970) 19 LGRA 321 at 324. Accordingly, the Council would be satisfied that the design is unacceptable from a planning perspective regardless of the present owners' indifference to the impact on their own property.

2.5. At this point it is also worth recalling that the adverse impact on privacy and amenity are directly attributable to and exacerbated by the non-compliant setback.

Inconsistency with cl 3.4.2.1 of the MDCP

2.6. The proposed development is inconsistent with cl 3.4.2.1 of the MDCP (MDCP), which relates to "Window design and orientation", as shown in the Table below:

Control Response

3.4.2.1a) Use narrow, translucent or obscured glass windows to maximise privacy where

necessary. Window W03, which would look directly into our only bathroom and directly overlook our private open space, is not "narrow". It is proposed to be 1600mm wide and 1200mm high and to have clear glazing: see, DA 61 "Proposed | Window Schedule" Rev B dated 14/11/23. It is also proposed to be a "Sliding Left Window", which means it would not protect visual or acoustic privacy when open.

3.4.2.1b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy. The north-facing windows on proposed first floor have not been offset to restrict direct viewing and to mitigate impacts on privacy.

- Window W03 would look directly into our only bathroom.
- Window W04 would look directly into our study, which we proposed to convert into a nursery if we have children, which we are trying to do.
- Windows W03 and W04 would both directly overlook our courtyard, which we frequently use for entertaining, our meals in the warmer months and showering after the beach.

2.7. The proposed development is also inconsistent with the objectives of clause 3.4.2, as shown in the Table below:

Objective Response

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 proposed "sliding timber privacy screen" would not minimise any loss of privacy for the reasons discussed at [2.12] to [2.13] below.

The windows have not been designed or sited to avoid direct viewing between windows or overlooking of outdoor living areas for the reasons discussed above at [2.2] to [2.5]. Windows W03 and W04 will look directly into our property.

Objective 2: To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space. The proposed development would have a severe adverse impact on our privacy, access to light (as discussed in Section 4 below) and views (as discussed in Section 3 below). Clerestory windows would better protect our privacy but are not proposed.

Objective 3: To encourage awareness of neighbourhood security. Not applicable.

2.8. The supposed justification for the non-compliance in the SEE (at 19) invites the Council into legal error. According to the SEE, "[d]ue to the constrained nature of the site, given its single-storey semi-detached nature, and the narrowness of the existing allotment, window conflict is difficult to avoid". However, the Council is required to consider "the suitability of the site for the development" under s 4.15(1)(c) of the EPA Act.

2.9. The fact that the Site is subject to constraints that make it inherently unsuitable for the type of development proposed is not a reason why the controls should be ignored or flexibly applied. On a proper application of the law, if the proposed development is incompatible with

the existing development on the adjoining property, Development Application should be refused: *Inghams Enterprises v Kira Holdings Pty Ltd* (1996) 90 LGERA 68, 77.

The inadequacy of the proposed mitigation measures

2.10. The proposed mitigation measure is inadequate. The proponent:

2.10.1. has not sited the proposed first-floor windows to avoid direct viewing into our home, including into our only bathroom, or over our private open space: proposed Window W03 and W04 would look directly into our home,

2.10.2. has not designed the proposed first-floor windows to minimise the impact on our privacy: proposed Window W03, which would look directly into our bathroom, is proposed to be 1600mm wide and 1200mm high whereas, for example, a clerestory window would provide the proponent with ample natural light and preserve our privacy,

2.10.3. has not proposed that any of the proposed first-floor windows have translucent or obscured glazing: all of the proposed first-floor windows are proposed to have clear glazing, and

2.10.4. has not proposed any fixed, permanent screening to the proposed first-floor windows.

2.11. These are all measures that the proponent could have taken to minimise the impacts on privacy and amenity but has not proposed.

2.12. The only mitigation measure that the proponent has proposed is the "sliding timber privacy screen(s)". The only description of the proposed sliding screens is in DA 60 "Proposed | External Material Palette" Rev B dated 14/11/23, which merely describes them as "Privacy screens: Timber sliding privacy screens". This inadequate description could not satisfy the Council that the proposed "sliding timber privacy screen" would resolve the adverse impacts of the proposed development on privacy and amenity.

2.13. In any event, the proposed "sliding timber privacy screen" would be an ineffective mitigation measure for at least the following reasons:

2.13.1. First, the sliding screen, by its nature, could be left open and there would be nothing requiring the occupants of 30 George St to close them. This would be unworkable in practice. For example, if the privacy screen is left open, is the expectation that we notify our neighbours if we wish to use the bathroom so that it may be closed?

2.13.2. Second, the sliding screen would only prevent occupants of our property looking into 30 George St but not occupants of 30 George St looking into our property because of the light and distance differential (in the same way that advertising on bus windows appears opaque from the outside but can be seen through from the inside).

2.13.3. Third, the screens appear to have been included for the purpose of complying with BASIX requirement to provide shading to windows rather than as a genuine privacy mitigation measure: see, BASIX Certificate dated 16 January 2024, p 4.

2.14. At a minimum, all north facing windows on the first floor should be required to:

- 2.14.1. set back from the boundary in accordance with cl 4.1.4.2 of the MDCP 2013,
- 2.14.2. be sited to avoid directly looking into 32 George St and overlooking our private open space,
- 2.14.3. have translucent glazing,
- 2.14.4. be inoperable (because the protective effect of the translucent glazing would be lost if the windows could be opened),
- 2.14.5. have a minimum sill height of 1.6m above floor level or be clerestory windows to prevent overlooking and have their dimensions (including sill heights) shown on the plans, and
- 2.14.6. have privacy screens that are:
 - (a) fixed and permanent,
 - (b) constructed of vertical louvres with openings not more than 200mm wide and angled so as to prevent the occupants of 30 George Street looking into 32 George Street, and
 - (c) made from a durable material.

2.15. No consideration appears to have been given the impact of the proposed development on the acoustical privacy of neighbouring properties, including ours, contrary to cl 3.4.2.3 of the MDCP.

3. View loss

3.1. The proposed development would result in an unreasonable loss of iconic and highly valuable views from 32 George St to the heritage listed St Patrick's Seminary, Manly (1885): MLEP, Schedule 5, Part 1, Item I132 (St Patrick's Seminary).

3.2. As shown in the image below, we currently enjoy district views to St Patrick's Seminary from the first floor living area at 32 George St and the proposed development would block this view entirely.

[Image omitted and available in submitted PDF]

Figure 3: Photograph of the view of St Patrick's Seminary from the first-floor living area at 32 George Street

3.3. Clause 3.4.3 of the MDCP requires view loss to be assessed in accordance with the principles in *Tenacity Consulting v Warringah* [2004] NSWLEC 140 at [26]-[29] (Tenacity). The proponent has not submitted a view impact assessment as part of the development application. Indeed, view loss has not been considered at all.

3.4. The proposed roof line of RL40.23 (see, DA 30 "Proposed | Northern Elevation" Rev B dated 14/11/23) will be higher than the existing chimney at RL39.31 (see, Survey prepared by Peak Surveying Services dated 19 July 2023), which is shown in the foreground of the image above. The extent of the view loss would be severe, as demonstrated on the annotated photograph below:

[Image omitted and available in submitted PDF]

Figure 4: Annotated photograph of the view of St Patrick's Seminary from the first floor living area at 32 George St showing the extent of likely view loss

3.5. The most severe effect of the view loss is directly attributable to the non-compliant northern setback discussed in Section 1 above.

3.6. The Council would be satisfied that the impact on views is unreasonable by reference to the principles in Tenacity, as shown in the Table below:

Step/Principle/Analysis

Step 1: Assessment of views to be affected The view of St Patrick's Seminary is an iconic and highly valued view. The statement of significance for the St Patrick's Estate describes it as "a site of national heritage significance".

The statement of significance describes St Patrick's Seminary aesthetic significance in the following terms:

"St Patrick's Estate is significant at state level, as an important landmark in the Manly area, experienced by both local residents and the many visitors to Manly. Its prominent location on the hill above Manly Beach has meant that it makes a striking impact on the view of the locality from many vantage points throughout Manly and the surrounding areas. This significance has been supported by the preservation of the relatively intact cultural landscape, despite subdivision and development of sections of the original site in recent years" (emphasis added).

We currently enjoy an unobstructed district view of St Patricks' Seminary.

Step 2: Part of the property from which the views are obtained The view is currently obtained from the first floor living area across the side and rear boundary. The view may be enjoyed from both standing and sitting positions.

Step 3: Extent of the impact The impact would be "devastating" or "severe" (to use the language in Tenacity). The proposed development would entirely block the view of the district and St Patrick's Seminary. We spend a lot of time in room from which the views are enjoyed because it doubles as a study, and we often work from home.

Step 4: Reasonableness of the proposal that is causing the impact In Tenacity, the Court held that "[w]here 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." In this case, view loss is directly attributable to the non-compliant northern setback discussed in Section 1 above. Alternative "more skilful designs" do not appear to have been considered. For example, a more skilful design that complied with the setback controls, reduced floor to ceiling heights and located the massing of the proposed first floor toward the front of the Site would ameliorate some of the view impacts (and privacy and solar access issues). Instead, the proponent has sought to maximise gross floor area at the expense of compliance with development controls and the views enjoyed from our property.

Impact of views of the sky and associated light

3.7. We currently enjoy views of the sky from our ground floor kitchen, living/dining room, and rear room.

3.8. As shown in the image below, the proposed development would entirely block these views:

[Image omitted and available in submitted PDF]

Figure 5: A photomontage showing the impact of the proposed development on existing views from the ground floor kitchen

[Image omitted and available in submitted PDF]

Figure 6: A photomontage showing the impact of the proposed development on existing views from the ground floor living/dining room

[Image omitted and available in submitted PDF]

Figure 7: A photomontage showing the impact of the proposed development on existing views from the ground floor back room

3.9. These views are particularly important to us because we live in south-facing terrace with limited access to sunlight. These windows are our primary source of light because we have no windows on the northern side of our property.

4. Access to light

4.1. As discussed above, the proposed development would block our views of the sky and associated light from the ground floor. We rely on the light received from these windows because we live in a terrace with no windows on the northern boundary.

4.2. The proposed development would substantially deprive our property of light, which would have obvious and severe amenity impacts. The scale of the proposed development is inconsistent with the existing development on our land.

4.3. The Council would be satisfied that the proposed development does not provide equitable access to light and sunshine.

4.4. For the foregoing reasons, the Council would be satisfied that the assertion in the SEE (p 20; see, also, p 43) that the proposed first floor addition would "not result in any adverse amenity impacts such as overshadowing, view loss, or privacy issues" is wrong. There plainly would be adverse impacts on privacy, view loss and access to light and accordingly the proposed development contravenes cl 4.1.7.1a) of the MDCP.

5. FSR

5.1. The proposed development contravenes cl 4.4(2) of the MLEP, which provides that "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". The proponent has not submitted a request under cl 4.6 of the MLEP as part of the Development Application. Accordingly, the Council does not have the power to grant consent to the development application and any consent would be liable to be set aside in Class 4 (Judicial Review) Proceedings in the Land

and Environment Court.

5.2. According to the "Floor Space Ratio Map", the maximum floor space ratio a building on the Site may have is 0.75:1.

5.3. Clause 4.5 provides that the floor space ratio of buildings on a site is the ratio of the "gross floor area" of all buildings within the site to the site area. According to the Survey prepared by Peak Surveying Services dated 19 July 2023, the "site area" is 183m². The term "gross floor area" is defined under the Dictionary in the MLEP to mean:

"means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes-

(a) the area of a mezzanine, and

(b) habitable rooms in a basement or an attic, and

(c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes-

(d) any area for common vertical circulation, such as lifts and stairs, and

(e) any basement-

(i) storage, and

(ii) vehicular access, loading areas, garbage and services, and

(f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and

(g) car parking to meet any requirements of the consent authority (including access to that car parking), and

(h) any space used for the loading or unloading of goods (including access to it), and

(i) terraces and balconies with outer walls less than 1.4 metres high, and

(j) voids above a floor at the level of a storey or storey above."

Omission of the first floor "landing" from the gross floor area calculation

5.4. Although the SEE asserts (at p 26) that the proposed development complies with cl 4.4 of the MLEP because "the proposed development results in a maximum GFA of 137m²", the architects have failed to include the first-floor landing as part of the gross floor area as shown in the extract from DA 02 "Planning Controls" Rev B below:

[Image omitted and available in submitted PDF]

Figure 8: Annotated extract from DA 02 "Planning Controls" Rev B dated 14/11/2023 - Proposed First Floor

5.5. According to DA 21 "Proposed | First Floor Plan" Rev B dated 14/11/23, this area is designated as a "LANDING". It is not an "area for common vertical circulation, such as lifts and stairs". It should have been included in the gross floor area but has been omitted.

[Image omitted and available in submitted PDF]

Figure 9: Annotated extract from DA 21 "Proposed | First Floor Plan" Rev B dated 14/11/23

5.6. Although this area is not dimensioned, is obviously larger than 0.25m². This omission alone means that the proposed development non-compliant with cl 4.4 of the MLEP.

Omission of areas inside doors and windows on the proposed ground level the gross floor

area calculation

5.7. There are various other omissions from the gross floor area calculations that are significant in this case because the proposed development seeks to achieve maximum permissible FSR with very little margin for error in FSR calculations. Collectively, these omissions mean that the proposed development does not comply with cl 4.4, which is jurisdictional pre-requisite to the granting of consent.

5.8. The proposed sill heights for all windows on the ground floor except one is lower than 1.4m. Accordingly, the gross floor area should have been measured from the proposed windows and not the proposed sills (indicated in pink in the extract below). The gross floor area calculations also omit areas near doorways (indicated in green on the extract below).

[Image omitted and available in submitted PDF]

Figure 10: Annotated extract from DA 02 "Planning Controls" Rev B dated 14/11/2023 - Proposed Ground Floor

5.9. Contrary to the assertion at p 17 of the SEE, the Council could not be satisfied that the proposed development complies with cl 4.4 of the MLEP. This is an individually sufficient basis to refuse consent. At the very least, the Council could not reasonably rely on the FSR calculations submitted as part of the Development Application because they appear to be inaccurate.

6. Bulk and scale

6.1. The proposed development represents overdevelopment of the Site.

6.2. As discussed above, the massing of the proposed first floor has not been distributed to reduce impacts to neighbouring property but instead increases them: see, *Veloshin v Randwick Council* [2007] NSWLEC 428 at [32].

6.3. The proposed development is non-compliant with the applicable planning controls. It seeks to achieve (although likely exceeds) the maximum allowable FSR under the MLEP (cl 4.4) and contravenes the MDCP's controls relating to setbacks (cl 4.1.4), privacy (cl 4.3.2), and view loss (cl 3.4.3).

6.4. The scale of the proposed first floor addition is excessive relative to the adjoining property at 28 George St, as shown in paragraph [1.9] above, and would overbear the private open space on our property.

6.5. The Site is subject to a number of constraints that make it inherently unsuitable for development of this scale. The Council is required to consider "the suitability of the site for the development" under s 4.15(1)(c) of the EPA Act.

6.6. The Council would be satisfied that the inadequate setbacks and excessive floor space, bulk and scale of the proposed development make it unsuitable for the subject site, constituting an overdevelopment in the context of the surrounding built form.

7. Desired future character and Public interest

7.1. The proposed development is contrary to the desired future character of the area and the

public interest: EPA Act, s 4,15(1)(e).

7.1.1. The proposed development contravenes the Council's controls relating FSR (MLEP, cl 4.4), setbacks (MDCP, cl 4.1.4), privacy (MDCP, cl 4.3.2), and view loss (MDCP, cl 3.4.3). The MDCP is a detailed planning document which reflects the Council's and the public's expectation for development in this area, including its desired future character: *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 (SJD) at [54].

7.1.2. The public is entitled to expect that the planning controls will be applied and only applied flexibly if the objects of the controls would otherwise be achieved (EPA Act, s 4.15(3A)) and, in this case, the proposed development would not achieve objects of the controls.

7.1.3. Consistency of decision-making must be a fundamental objective of consent authorities. That objective is assisted by the adoption of development control plans. However, that objective would not be achieved in this case unless the any decision was made in accordance with the requirements of the MDCP.

7.1.4. The proposed development does not comply with the "Minimum Residential Total Open Space Requirements" under cl 4.1.5.1 of the MDCP and does not comply with the Landscaped Area requirements under cl 4.1.5.1 of the MDCP: see, SEE, pp 40-41. Even though proposed works will occur inside the building envelope, these controls still apply and there has been no attempt to explain how the proposed development is consistent with the objectives for these controls.

7.1.5. The proposed development is inconsistent with the existing and desired future character of the area and, if approved, would set an acceptable precedent of non-compliant overdevelopment in the locality.

8. Inadequate information

8.1. The following information has not been provided and is required for a proper assessment of the development application:

8.1.1. The plans lack critical details:

- The plans do not include the RLs of the proposed northern wall/roof ridge height. The plans and Survey do not include the RLs of the existing ground level beneath the highest part of the proposed northern wall/roof ridge. Accordingly, it is not possible to ascertain the true and full extent of the non-compliance with cl 4.1.4.2 of the MDCP 2013.
- The plans do not contain any dimensions for the proposed first floor addition other than internal room dimensions. Accordingly, it is not possible to ascertain to the true extent, bulk and scale of the proposed development.
- The plans do not contain any meaningful details of the proposed "timber sliding privacy screen". These screens appear to have been included to satisfy BASIX requirements rather than as a genuine attempt to mitigate privacy issues: see, BASIX Certificate dated 16 January 2024, p 5.
- The plans do not show the proposed dimension of the proposed side setback on the

northern boundary.

- The plans do not show the height of the proposed first floor wall on the northern boundary.
- The plans do not show the sill heights of any of the proposed first floor windows.
- The plans do not show what, if any, services are proposed to be located on the northern wall, which may further decrease the proposed setback.
- The plans do not contain any floor to ceiling heights. Accordingly, it is impossible to determine whether any of the impacts identified in this objection could be attenuated by reducing the floor to ceiling heights.

8.1.2. The development application does not include any view impact assessment.

8.1.3. The plans are inconsistent, inaccurate, and incomplete:

- There are two privacy screens shown on DA 30 "Proposed | Northern Elevation" Rev B dated 14/11/23, however, there is only one privacy screen shown on DA 21 "Proposed | First Floor Plan" Rev B dated 14/11/23 and none are shown on DA 33 "Proposed | West Elevation" Rev B 14/11/23.
- The "Perspective View | Bedroom 4" in DA 71 "Perspective View | First Floor" Rev B dated 14/11/23 does not show the view that would be obtained through Windows W03. This omission appears to have been a deliberate attempt to conceal the extent of the impact on our privacy because "Perspective View | Bedroom 05" in the same plan does show the view that would be obtained.
- The "Perspective View | Balcony - Aerial View From No. 28 George Street" in DA 72 "Perspective View | External" Rev B dated 14/11/23 does not show our first floor rear deck that would be overlooked by the proposed development.

8.2. In *Skermanic Pty Limited v Blue Mountains City Council* [2024] NSWLEC 1031 the Land and Environment Court held (at [118]) that a development application may be refused if the plans are inconsistent or lack sufficient details because "the likely impacts of the development that would arise from the grant of development consent are unclear". This is an appropriate case for the application of this principle.

9. Conclusion

9.1. For the foregoing reasons, the Council would refuse the Development Application because it is non-compliant with Council's controls and would have substantial and unacceptable impacts on neighbouring properties, including ours.

9.2. If you have any questions regarding the content of this objection or would like to visit our home for the purpose of assessing any of the impacts, please feel free to contact Kathleen Heath at Maurice Byers Chambers on [REDACTED]. We also ask that we be notified of any amendments that may be made to the Development Application.