

**From:** [REDACTED]  
**Sent:** 22/10/2021 9:51 AM  
**To:** "Council Northernbeaches Mailbox"  
<Council.Northernbeaches@northernbeaches.nsw.gov.au>  
**Subject:** RE: Submission - DA2021/1756  
**Attachments:** Submission 18P Macpherson St.pdf

Please see revised submission. I have made a couple of minor changes. Please ignore previous.

Regards,

David Ridgway  
Director



[REDACTED]  
[REDACTED]  
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**From:** [REDACTED]  
**Sent:** Thursday, 21 October 2021 6:31 PM  
**To:** 'council@northernbeaches.nsw.gov.au' <council@northernbeaches.nsw.gov.au>  
**Subject:** Submission - DA2021/1756

Attention: Nick Keeler

Please find attached a submission for the development proposal at 18P Macpherson Street, Warriewood.

Regards,

David Ridgway  
Director



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Northern Beaches Council

21 Oct. 21

Attn: Nick Keeler – Assessing Officer

Re: DA2021/1756

Dear Nick,

Please find below a submission to object to the proposed Construction of New Patio Roof at 18P Macpherson Street, Warriewood.

### **1.0 Introduction**

I reside in the adjoining lot at 180 Macpherson Street. I appreciate that Uwe and Mariela want to develop their property and I have had conversations with Uwe previously expressing my thoughts about the proposed structure. I have stated to Uwe that it would need to comply with planning laws and Building Code and not negatively impact my property, otherwise I will object. I have assessed the proposed plans and Statement of Environmental Effects against:

- The Community Management Statement
- The Council LEP/DCP
- EP&A Act 1979
- National Construction Code (NCC), 2019 Volume 2

I am satisfied the Patio Roof Structure does not comply with the above planning instruments and with respect, cannot be supported by Council.

The proposed development is going to negatively impact upon the amenity currently enjoyed from my property. The adverse impacts include view sharing, solar access, visual and acoustic impacts. It will also have detrimental design and streetscape impacts for the community within the Sunland Development which arise directly from excessive bulk, scale, proximity and site coverage. The proposed patio roof contains departures from Council's built form controls.

In summary, I object to the proposed development for the following reasons:

- Excessive proximity height, bulk and scale in the streetscape
- Unreasonable amenity impacts from non-complying building
- Design is uncharacteristic of the development
- Technical and legal deficiencies with the application
- Design does not comply with the NCC for fire separation



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## 2.0 Environmental Planning and Assessment Act 1979

### Clause 1.3 Objectives of the Act

*g) to promote good design and amenity of the built environment,*

**Comment:** The proposal is not consistent with the above objective of the Act.

### Clause 4.15 Evaluation

**Matters for consideration—general** *In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—*

*(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

*(e) the public interest.*

**Comment:** The proposal will have negative impacts on both the natural and built environments due to excessive bulk and scale and will have economic impacts in the locality. Therefore, it is not in the public interest.

## 3.0 Compliance with the Community Management Statement (CMS) LEC177/15:

### Approval Process

There is an approval process whereby owners within the community are required to obtain consent from the body corporate prior to lodging Development Applications (DA) with Council or Registered Certifier (CMS Clause 1.1 & 1.19). My understanding is that this process has not been followed.

Prior to lodgement of a DA, the Community Association needs to assess a development for compliance with the development controls in the CMS. The committee needs to apply due diligence to a proposal against the development controls in the CMS to determine whether a proposal complies.

**PROPOSED WORKS** - Proposed Patio Roof assessed against CMS clauses:

**By Low 1 Building Works and Alterations**

### **Decision of Executive Committee**

*1.8 In making its decision on whether to consent to an application to carry out works, the Executive Committee must ensure that the proposed works are consistent with the essence or them of 18 Macpherson Street.*





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## **By Law 2 External Fixtures**

### **Appearance**

*An Owner or Occupier may only construct, install on or in a Lot or Community Property anything which can be seen from outside the Lot or Community Property if that Owner or Occupier first obtains the approval of the Executive Committee.*

*By Law 2. only applies if, in the reasonable opinion of the Community Association. the thing which can be seen from outside the Lot or Community Property is not in keeping with the building on or the landscaped areas of the Lot, or Community Property.*

### **Private Gardens**

*5.7. At least one canopy tree is to be maintained and replaced where necessary within the front building set back and at least one tree is to be maintained and replaced where necessary in the rear yard of each Lot.*

**Comment:** The development proposal does not comply with the CMS. The tree and landscaping have been deleted and replaced with decking and paving. The proposed new patio roof can be seen outside the lot. It will not be in keeping with the essence, streetscape and articulation of the existing dwellings in the development. Please also note the tree planting in each lot except the subject lot where the tree has been deleted. Photos below.

The Sunland development at 18 Macpherson Street is attractive and award winning due to its' design features, landscaping and streetscape. If a large roofed structure is approved in the articulation area to the public road, it will detract from the design features of the buildings and landscaping. It will also set a precedent for others to lodge applications for similar structures in the articulation area. This will ultimately devalue the whole development. As a potential buyer, I would be put off by ad-hoc, unattractive structures pockmarking the streetscape. It also gives the impression that internal development controls are lacking.

Further, each dwelling in the development has been provided with retractable awnings that cover a good proportion of allocated private open space. The proposed development is to effectively change the use of the existing internal driveway that has been deleted and replaced with a surface more resembling a patio. This has consequences for car parking which is also a matter that will need to be resolved. Cars are regularly illegally parked at the end of the public road which contravenes the CMS, interferes with swept paths for turning circles and most importantly, prevents access to a fire hydrant. You can't park within 1m of a fire hydrant or fire hydrant indicator.

<https://www.nsw.gov.au/topics/roads-safety-and-rules/parking/parking-rules>

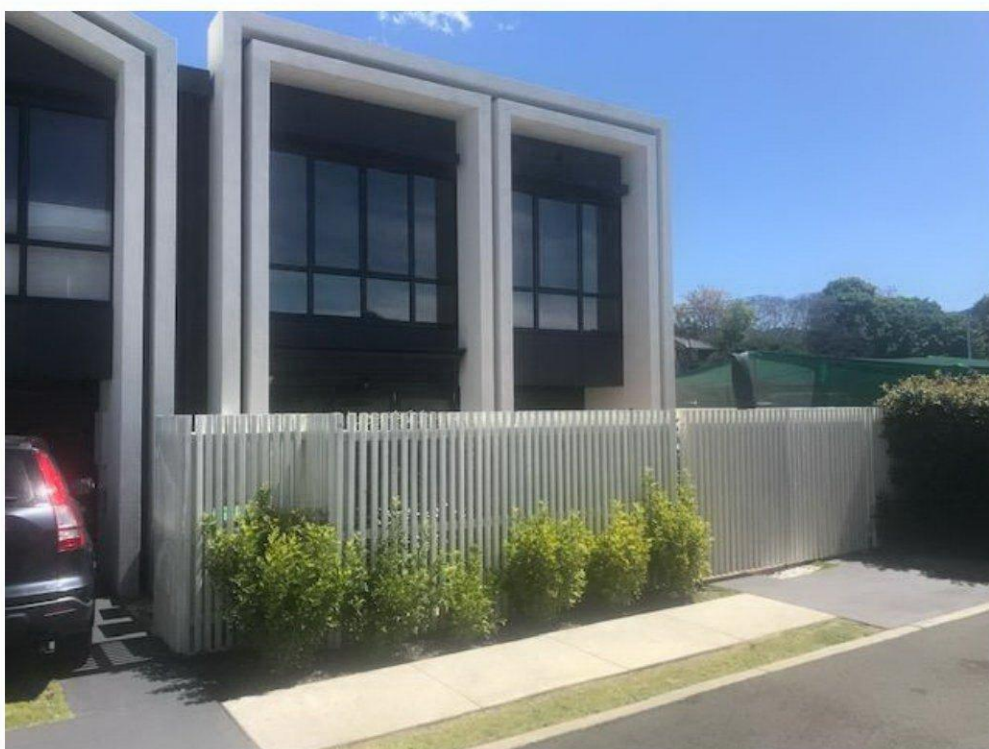
### **Open Access Way**

7.4 *An Owner, Occupier or Permitted Person must not:*

- (a) *park any vehicle, including a trailer or caravan on any part of the Open Access Way at anytime, excluding visitors in designated spaces;*
- (b) *repair any vehicle on an Open Access Way, except where a vehicle experiences an unforeseen breakdown requiring professional servicing.*



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#### 4.0 Council LEP/DCP:

Significant amenity is gained along the western side of the northern frontage of my property. Such amenity takes the form of views and winter sunlight. These will both be impacted by the proposed development.

The proposal does not comply with the objectives of the LEP Clause 4.3 Height of Buildings being:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

**Comment:** There are no dwellings in the development that have a structure like the one proposed at 18P Macpherson Street in the articulation to a public road. The rear laneway is an offshoot of Chambers Circuit and is a public road as stated in SEPP definitions:

*lane* means a public road, with a width greater than 3m but less than 7m, that is used primarily for access to the rear of premises, and includes a nightsoil lane.

#### View Impact (C1.3)

My property enjoys existing views generally in a westerly direction (towards the Ingleside Chase Reserve). These views will be adversely impacted by the proposed development. The following considers whether the proposal results in a reasonable view sharing outcome following the 4 steps within the Tenacity planning principle.

Step 1 – the character and nature of views to be affected include vegetation (the Ingleside Chase Reserve).

Step 2 – the views are obtained over the west side boundary of my property being the common boundary of the subject lot. The part of the property from which the views are obtained is the ground level private open space on the north end of the property.

Step 3 – the extent of the impact is assessed as devastating because it completely eliminates the view. It is noted that ‘moderate’ is the third (or middle) level of the five levels of impact, 1 to 5 being negligible, minor, moderate, severe, or devastating.

Step 4 – In considering the reasonableness of the proposal that is causing the impact, I have considered:



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- what effect the proposal will have, compared to what effect a compliant building would have
- the proposed building form (height, setbacks, scale) of structures adjacent to the common boundary
- The principles of Tenacity, which include the following in relation to Step 4:

*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. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

The proposal causing the impact provides an inappropriate view sharing outcome which is assessed as devastating and unreasonable in this instance because:

- Valued elements of the view will be lost completely from private open space.
- The proposal does not comply with the eastern boundary setback, landscaped area (extent of proposed development footprint) and building bulk (also expressed in the FSR/GFA planning principle) controls.

### **Acoustic Privacy (C1.6)**

The enlargement and intensification of the private open space area due to the driveway “change of use” to patio and reverberation of a metallic roofed structure will increase and amplify noise into noise sensitive rooms such as bedrooms as well as private open space.

This does not comply with the desired outcomes in the clause being:

*Noise is substantially contained within each dwelling and noise from any communal or private open space areas are limited. (S)*

*Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or private open space areas. (S)*

### **Character as viewed from a public place (D16.1)**

D16.1 is applicable to this development.

*Controls – Presentation to a Public Place:*

*For the purpose of this control “public places” is considered to be areas within the public domain that are accessible to the general public, and may include roads and streets, the creekline corridor, parks and reserves.*

*The bulk and scale of buildings must be minimised.*

*Landscaping is to be integrated with the building design to screen and soften the visual impact of the*





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*built form. The height and scale of the landscaping in the setback area to the public place must be proportionate to the height and scale of the building.*

**Comment:** The bulk, scale and placement of the structure on the boundary is excessive and there is no landscaping integrated into the design. Note: The SEE incorrectly states the rear of the site does not impact a public road. The rear laneway is a public road as stated in SEPP definitions:

*lane means a public road, with a width greater than 3m but less than 7m, that is used primarily for access to the rear of premises, and includes a nightsoil lane.*

**Comment:** The development does not comply with the any of the desired outcomes of this clause being:

- *To enhance the existing streetscapes and promote a scale and density that is at a human scale and in line with the height of the natural environment.*
- *To ensure new development responds to, reinforce and sensitively relates to the spatial characteristics of the existing built and natural environment.*
- *The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation.*
- *To enhance the existing streetscapes and promote a scale and density that is at a human scale and in line with the height of the natural environment.*
- *To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land and access to public places and spaces is clear and defined.*
- *To ensure the provision of a "sense of address" and an attractive, generously landscaped streetscape amenity where buildings are fronting onto a street.*
- *To achieve reduction in visual clutter.*

### **Side and rear building lines (D16.7)**

The Patio Roof does not comply with the outcomes and controls for side setbacks (common boundary with 180 Macpherson) as listed below.

#### **Outcomes**

*To achieve the desired future character of the Locality.*  
*The area of site disturbance is minimised and soft surface is maximised.*  
*The bulk and scale of the built form is minimised and the impact of the proposed development on the adjoining properties is minimised.*  
*To create meaningful breaks between adjoining buildings and regular rhythm of built form, particularly with regard to the built forms presentation to public places.*  
*To create usable curtilage areas around buildings for viable access, landscaping and open space.*  
*Equitable preservation of views and vistas to and/or from public/private places.*  
*Vegetation and natural features of the site is retained and enhanced within the development site design to screen the visual impact of the built form.*





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*To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties.*

## Controls

*The minimum side and rear building lines are subject to the incorporation of landscaping required under this DCP and adequate separation distances between buildings.*

*In certain circumstances, setbacks greater than the minimum requirements detailed in the table below may be necessary to retain significant vegetation or to provide acceptable separation to the adjoining existing development.*

**Comment:** The existing built to side boundary length is 15.8m or 60% or the length of the boundary. Any further built to boundary structures is excessive. There should be a minimum setback of 900mm.

## Spatial Separation (D16.8)

DCP control D16.8 Spatial Separation is applicable to the site, its objectives being:

*To encourage design initiatives that, where practical, provide spatial separation between dwellings and adjoining residential developments, and discourages the design and construction of structures that will cause bulking and diminution of the visual amenity of the locality.*

### Comment:

The proposed design has an eastern elevation that is 2.85 metres high, with insufficient visual relief, minimal setbacks and no opportunities for landscaping within the elevation.

The proposal would result in an excessive visual-bulk and scale that will have adverse visual impacts upon the amenity at 180 Macpherson St. The proposal's exceedance of the above stated built form controls, would cumulatively result in a development that:

- will not minimise the bulk and scale of the built form or minimise the impact of the proposed development on the adjoining properties
- will not create meaningful breaks between adjoining buildings and regular rhythm of built form particularly with regard to the built forms presentation to public places
- will not maintain equitable preservation of views and vistas to and/or from public/private places
- will not enhance the existing streetscape and is likely to result in an uncharacteristic bulk and scale that adversely impacts the streetscape
- will not maintain nor contribute to the site's landscaped setting
- will not minimise its environmental impact.



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- will have an inappropriate visual bulk when viewed from my property and does not satisfy the provisions of DCP control D16.8 Spatial Separation Outcomes.

### Solar Access (D16.9)

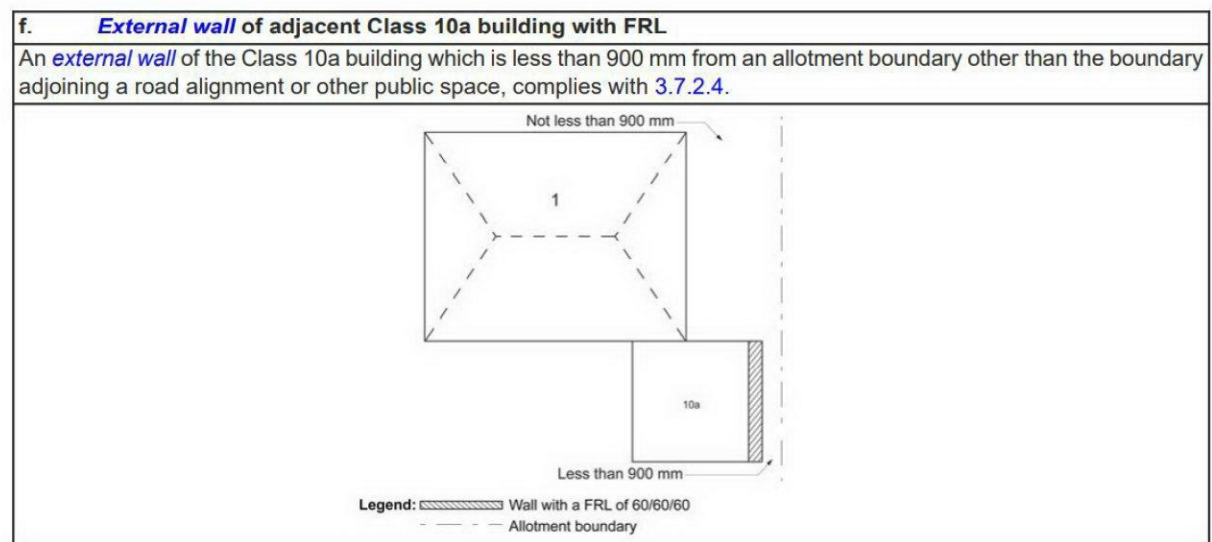
The extent of shading impact will be more significant during the winter months. There may be increased interruption to winter sun penetrating into private open space (rear courtyard) due to the close proximity of the proposed structure and roof height. No shadow diagrams have been submitted.

### 5.0 Building Code:

The proposed roofed patio is class 10a under NCC 2019 Volume 2. You can't build a class 10a structure within 900mm of a lot boundary if it is attached to a Class 1a dwelling house unless it is protected by a 'Deemed-to Satisfy' fire rated wall to FRL60/60/60: NCC Excerpt:

#### 3.7.2.5 Class 10a buildings

*(a) A Class 1 building must be protected by a method in— (i) Figure 3.7.2.4 where a Class 10a building is located between or adjacent to a Class 1 building and a boundary alignment that is not a boundary with a road alignment or other public space.*

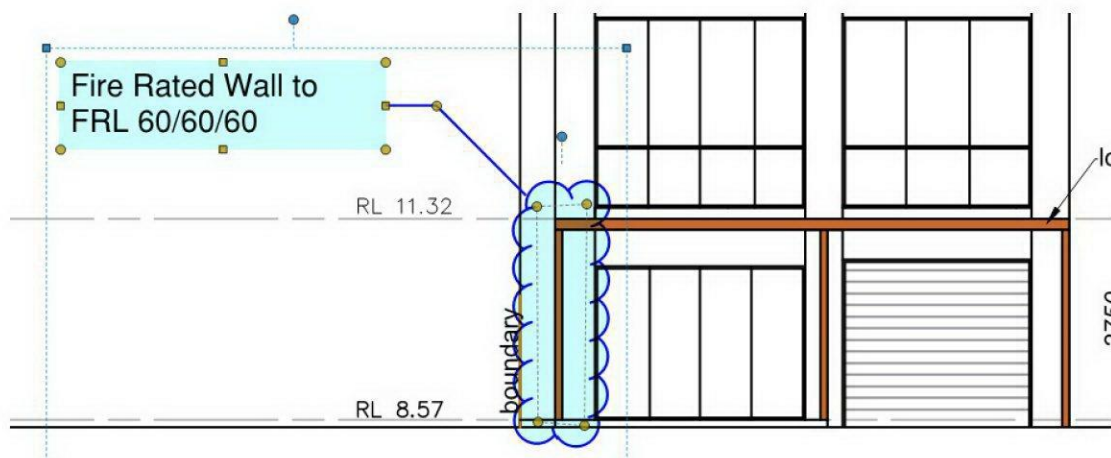
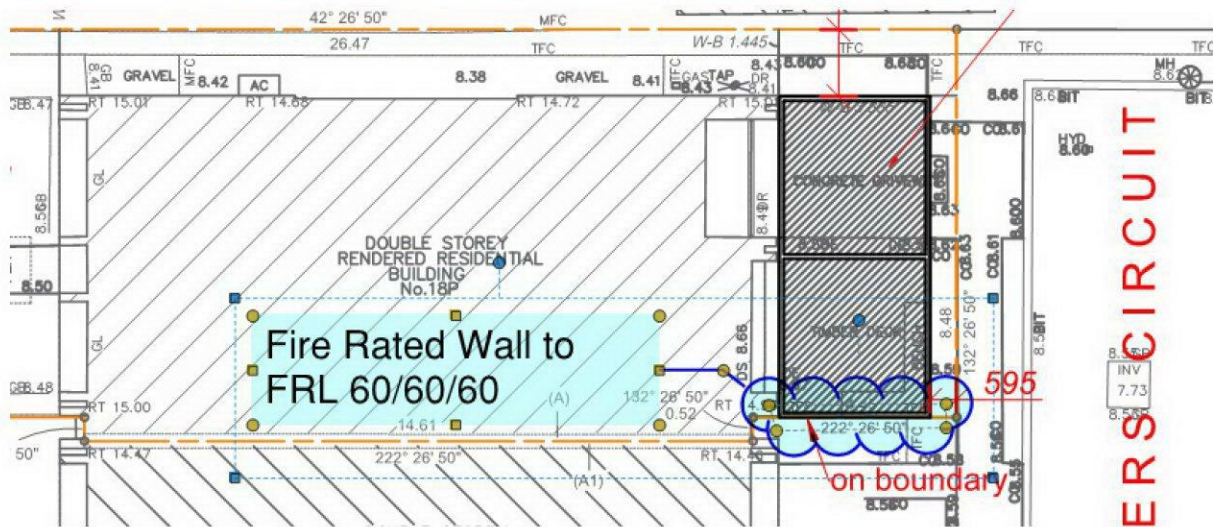


#### Explanatory information:

*The intention is to prevent the spread of fire from an allotment boundary (fire source feature) to a Class 1 building via a Class 10a building. Where a Class 10a building is not sited directly and wholly between the allotment boundary and the Class 1 building (see Figure 3.7.2.4 diagrams f. to i.), the potential of fire spreading from the allotment boundary to the Class 1 still exists. Therefore fire separation would be required.*



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**Comment:** There has been no consideration for NCC requirements in the design prior to DA lodgement which is a common mistake made by architects and designers and can often compromise the development.

A 2850mm masonry wall on the boundary will have a towering effect on my property and will not be in keeping with the streetscape. The wall would need to be built wholly within the subject lot boundary.



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## 6.0 Conclusion

For reasons outlined in this submission, the proposed development at 18P Macpherson Street will have unacceptable impacts on my property and the community within the development. My property will be unreasonably impacted by way of visual bulk and view loss. The proposed development fails to comply with numerous built form controls, resulting in a structure of excessive bulk and an overdevelopment of the site. It will have negative impacts on the natural and built environments, negative economic impacts on the locality and is not in the public interest. For these reasons, the proposed development cannot be supported and, it is respectfully requested, that the proposal be refused by Council.

It is also requested that the assessing officer inspect the site from my property to gain a better understanding of the visual and view impacts, and take a tour of the development before determining the application.

Yours faithfully,

David Ridgway