
From: [REDACTED]
Sent: 25/01/2024 10:02:26 AM
To: Council Northernbeaches Mailbox
Cc: Scott Chadwick; Jaye Chadwick
Subject: DA 2023 1780 89 MARINE PARADE AVALO WRITTEN SUBMISSION:
LETTER OF OBJECTION SUBMISSION: TULLOCH
Attachments: 89 MARINE WS.pdf;

Kind regards,

Bill Tulloch BSc[Arch]BArch[Hons1]UNSW RIBA Assoc RAIA
[REDACTED]

SUBMISSION

a written submission by way of objection

BILL TULLOCH BSC [ARCH] BARCH [HONS1] UNSW RIBA Assoc RAIA

prepared for

SCOTT & JAYE CHADWICK, 91 MARINE PARADE AVALON

23 JANUARY 2024

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RE: DA 2023 1780
89 MARINE PARADE AVALON
WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: TULLOCH

Dear Sir,

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

I have been instructed by my clients to prepare an objection to this DA.

Please also reference a covering letter prepared by my clients to accompany this objection.

I have been engaged by my clients to critically review the plans and documentation prepared in support of the above development application and to provide advice in relation to policy compliance and potential residential amenity impacts.

Having considered the subject property and its surrounds and the details of the development application currently before Council, I am of the opinion that the proposal, in its present form, does not warrant support. In addition, I am of the view that amendments would need to be made to the development proposal before Council was in a position to determine the development application by way of approval.

It is requested that Council inform both myself, and my clients directly, of any amended plans, updates or Panel meeting dates. My clients request that they present to the Panel, should the DA proceed to the DDP or NBLPP.

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

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A. EXECUTIVE SUMMARY

The design of the proposed development does not ensure that the existing high levels of amenity to my clients' property are retained.

Having reviewed the documentation prepared in support of the application and determined the juxtaposition of adjoining properties I feel compelled to object to the application in its current form.

The proposal is considered to be inappropriate within the streetscape.

The bulk, scale, density and height of the proposed development is excessive and inconsistent with the established and desired future streetscape character of the locality.

The subject site is zoned C4 Environmental Living 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 my clients' property.

- The proposal fails to achieve an acceptable privacy outcome,
- The proposal fails to achieve an acceptable visual bulk and scale outcome,
- The proposal fails to achieve an acceptable landscape outcome,
- The proposal fails to achieve an acceptable engineering outcome

Furthermore, I contend that

- The proposal is inconsistent with the desired future character of the locality,
- The proposal is inconsistent with the objectives of the zone,
- No clause 4.6 variation request in support of the LEP HOB variation has been submitted

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

- Excessive Building Height [HOB]: Proposed 9.35m v Control 8.5m [10% non-compliance]
- Excessive Wall Height
- Insufficient Landscape Area
- Insufficient Northern Side Setback: Proposed 1.1m v Control 2.5m [227% non-compliance]
- Insufficient Rear Setback: Proposed 5.9m v Control 6.5m [10% non-compliance]
- Exceedance of Side Boundary Envelope [SBE] substantial zones in the upper levels exceed the controls.
- Excessive 3.50m storey height to basement, and excessive 3.15m ceiling height to upper level

- Excessive c.1700cubm excavation cut, including excavation cut up to the northern boundary, requiring retaining walls to the northern boundary
- Excessive c. 200cubm fill, including fill positioned up to the northern boundary, requiring retaining walls to the northern boundary
- Substantial excavation and fill in the 2.5m northern setback zone
- Unacceptable pool location in the northern side setback zone, pool elevated, with no pool plant shown

The site is not suitable for the proposed development pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979. The site is not considered suitable for the proposed development in terms of its size, scale and design, despite it being residential development in the zone.

Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest. The extent of issues identified with the proposed development are such that the public's interest is not served by way of approval of the development application.

The proposed development is incapable of consent, as there is a substantial list of incomplete information that has yet to be provided, including:

- Clause 4.6 Variation Request
- Height plane blanket
- Survey. Details of neighbouring/surrounding properties, including window/door openings to determine if there will be any privacy, overshadowing or amenity impacts.
- Privacy Analysis
- Details of all external plant and equipment including air conditioning units/condensers. Air conditioning units to the façade, roof or balconies of the building will not be acceptable.
- Registered Surveyors levels transferred to all DA drawings
- Incomplete dimensioning on DA plans, and incomplete levels on all elevations to all elements

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

The Applicant's has not provided a Clause 4.6 written request to adequately demonstrate that the proposal achieves the relevant objectives of the development standards. I contend there are insufficient environmental planning grounds to justify the extent of the proposed variations sought. The variations would result in undue visual bulk that would be inconsistent with the desired future character of the locality.

The proposed development does not satisfy the objectives of the zone or contribute to a scale that is consistent with the desired character of the locality and the scale of surrounding development.

A compliant building design would reduce the amenity impacts identified.

My clients 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 my clients 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.

My clients wish to emphasise the fact that my clients take no pleasure in objecting to their neighbour's DA.

The proposed DA has a deleterious impact on the amenity of their property caused by the DA being non-compliant to controls.

Council and NSWLEC Commissioners regularly concede that development standards and building envelopes provide for maximums and that there is no entitlement to achieve those maximums.

It does seem unreasonable that the Applicants wish to remove my client's amenity to improve their own, and is proposing non-compliant outcomes that would seriously adversely affect my clients' amenity.

The LEP does not include floor space ratio standards to control building bulk and scale in this residential area. Managing building bulk and scale relies on the application of controls relating to landscaped area, building height and building setbacks and building envelopes. Council will note that the proposed development is attempting to present a reasonably compliant built form to height controls and envelope controls, whilst proposing a considerable non-compliant outcome in respect to the Landscape Area control.

Council's development controls relating to managing building bulk and scale are designed to ensure that buildings are consistent with the height and scale of the desired character of the locality, are compatible with the height and scale of surrounding and nearby development, respond sensitively to the natural topography and allow for reasonable sharing of views and visual amenity.

Council's DCP with respect to the locality, requires that development respond to the natural environment and minimise the bulk and scale of buildings. The proposed development in its current form does not achieve this and provides inadequate pervious landscaped area at ground level.

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, does not succeed on merit and is not worthy of the granting of development consent.

The proposed development fails the fundamental principles of design excellence in terms of:

- Context and local character
- Built form, scale and public domain, urban design response
- Density
- Landscape integration
- Architectural expression, in terms of excessive built form
- Amenity impacts on neighbours

Council should note that spot survey levels and contour lines from the Registered Surveyors drawings have not been adequately transferred to the proposed DA drawings of plans, sections, and elevations to enable an assessment of height and the relationship and impact to adjoining neighbours. Neighbour's dwellings have not been accurately located on plans, sections and elevations, including windows and decks, to enable a full assessment of the DA. The plans and documentation are misleading as they do not clearly portray the true extent of works proposed. The plans include inaccuracies and inconsistencies and insufficient information has not been provided in order to enable a detailed assessment, including incomplete dimensional set-out and incomplete levels on drawings to define the proposed building envelope. There is incomplete analysis provided including view loss, solar loss and privacy loss.

I ask Council to request that the applicant superimpose the Registered Surveyors plan detail with all spot levels and contours onto the Roof Plan, with all proposed RLs shown, so that a full assessment can be made on HOB.

My clients 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 my clients' amenity loss.

Section E of this submission titled '*Request for amended plans to be submitted to better address impacts upon adjoining properties*', addresses the amendments that my clients seek to better resolve their amenity issues.

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

B. FACTS

1. THE PROPOSAL

The development application seeks approval for the proposed demolition of the existing dwelling and the construction of a new dwelling on land at 89 Marine Parade, Avalon Beach.

2. THE SITE

The property is located on the eastern side of Marine Parade and is generally rectangular in shape. The site has a frontage to Marine Parade of 18.315m and north-eastern and south-western side boundaries of 54.92m and 58.25m respectively. The rear, angled eastern boundary faces the bluff escarpment and measures 18.8m. The total site area is 1034sqm.

3. THE LOCALITY

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.

My clients' property shares a common boundary with the subject site.

4. STATUTORY 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 2021
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environmental Plan 2014 [referred to as LEP in this Submission]
- Pittwater 21 Development Control Plan [referred to as DCP in this Submission]

C. CONTENTIONS THAT THE APPLICATION BE REFUSED

1. LACK OF STATUTORY POWER

CLAUSE 4.6

The development application should be refused as the proposal exceeds the 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.

2. CLAUSE 4.6 VARIATION REQUEST

The development application has not been supported by a request to vary pursuant to clause 4.6 of the LEP.

The proposed development 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.

3. CONTRARY TO AIMS OF LEP

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 under the LEP.

- The development compromises amenity impacts on neighbours
- The development is not compatible with the desired future character of the locality in terms of building height and roof form.
- The development does not minimise the adverse effects of the bulk and scale of buildings

4. CONTRARY TO 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 zone of the LEP.

- The proposal is of a bulk and scale which is inconsistent with development in this location and therefore fails to achieve the desired future character of the neighbourhood.
- The development compromises amenity impacts on neighbours

5. BUILDING BULK & SCALE

The proposed development should be refused due to its excessive bulk and scale and its failure to comply with the numerical standards and controls.

The proposal will present excessive bulk and scale that is not representative of the type of development anticipated by the zone or the applicable controls.

The proposal will result in unreasonable bulk and scale for the type of development anticipated in the zone.

The proposal does not step down with the topography of the site.

The proposal does not allow for enough landscaping to suitably reduce the bulk and scale of the development.

The proposal does not provide adequate articulation of the built form to reduce its massing.

The proposal fails to encourage good design and innovative architecture to improve the urban environment.

The proposal fails to minimise the visual impact of development when viewed from adjoining properties and streets.

6. CHARACTER & STREETSCAPE

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate streetscape outcome, presenting non-compliant envelope controls that are visible from the street.

The proposed development will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to visual bulk impact.

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

The proposal does not meet the streetscape character and key elements of the precinct and desired future character.

The proposal is excessive in scale, has adverse impacts on the visual amenity of the environment, does not positively contribute to the streetscape in terms of an adequately landscaped setting. The proposal is visually dominant, and is incompatible with the desired future townscape area character.

The development has excessive bulk and scale and fails to comply with development standards set out LEP, resulting in a building which has unacceptable adverse impacts on neighbouring properties and the locality.

The non-compliant building envelope will lead to unacceptable visual bulk impact to neighbours.

The multiple non-compliances arising from the proposed upper floor level and the non-compliant setbacks indicates that the proposed development cannot achieve the underlying objectives of this control, resulting in an unacceptable building bulk when viewed from adjoining and nearby properties.

The development presents an inappropriate response to the site and an unsatisfactory response to the desired future character of the area.

7. INCORRECT CONSIDERATIONS OF 'GROUND LEVEL EXISTING'

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to present *ground level (existing)* in accordance with the LEP, and the recent decisions on *ground level (existing)* at the NSWLEC.

In accordance with recent caselaw via the NSW Land and Environment Court (*Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*), building height is to be taken from the existing ground level, whether disturbed or undisturbed.

Insufficient information has been provided to establish the exact height of building proposed. The ground level of the existing dwelling houses is not provided on sections.

My clients contend that *ground level (existing)* on the subject site has not been assessed correctly.

My clients bring to Council's attention the following issues.

The proposed ridge is at RL 43.15. Council will note that any zone below the contour zone of RL 34.65 will exceed HOB. I ask that drawings are provided to locate the contours RL 34.5 and RL 35.0 on the roof plan, so that a HOB assessment can be made.

A height plane blanket diagram needs to be provided, with proposed zones exceeding 8.5m clearly shown.

8. EXCESSIVE BUILDING HEIGHT

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 building height development standard under the LEP.

The proposed development should be refused due to its excessive height and failure to comply with the *Height of Buildings [HOB]* set out in the LEP, and in particular:

- The proposed development, by virtue of its height and scale, will not be consistent with the desired character of the locality
- The development will not be compatible with the height and scale of surrounding and nearby development.

The development application should be refused as the proposal exceeds the 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 proposed building height is excessive and does not comply with the objectives or controls in the LEP.

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

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact
- The development is not compatible with the desired future character of the locality in terms of building height and roof form.
- The development does not minimise the adverse effects of the bulk and scale of buildings

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 height of buildings development standard.

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

The proposed portion of the building above the maximum height is not 'minor'. The building does not adequately step down the slope.

In respect of the overall height control, I have considered the applicant's Clause 4.6 and I consider that, in this instance, they have not been able to establish an argument to support their assertion that it is unreasonable and unnecessary to comply with the control.

My clients submit that the submission fails on the basis of the assessment against the objectives of clause 4.3, as well as the environmental planning grounds set out. Additionally, I consider that the development does not comply with the land use objectives.

In respect of the proposed development, I submit that the built form, which also incorporates other substantial non-compliant breaches will have negative impacts on the amenity of neighbours as well as have significant impacts in respect of visual intrusion. Additionally, there is nothing provided for in this development that seeks to minimise the adverse effects of bulk and scale of the building.

My clients 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.

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.

In *Veloshin*, [*Veloshin v Randwick Council* 2007], NSW LEC considered Height, Bulk & Scale. *Veloshin* suggest that Council should consider:

"Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified."

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

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 excessive heights would have most observers finding *'the proposed development offensive, jarring or unsympathetic'*.

The planning controls are not limited to preventing offence and the like; and are concerned with establishing a certain physical and landscape character. In this instance I am not convinced that there are strong environmental planning grounds to justify a contravention of the scale proposed.

9. EXCESSIVE WALL HEIGHT

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 control.

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.

This non-compliance, as well as the other non-compliances, arising from the proposed upper level indicates that the proposal cannot satisfactorily achieve the underlying objectives of this control, ultimately resulting in an unacceptable building bulk that creates a severe amenity impact.

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact
- The development is not compatible with the desired future character of the locality in terms of building height and roof form.
- The development does not minimise the adverse effects of the bulk and scale of buildings

The impacts are very similar to the HOB impacts raised in the section above.

10. UNACCEPTABLE BUILDING SEPARATION

The proposed development should be refused as it is significantly non-compliant with setback of the DCP.

- Side
- Rear
- Side Boundary Envelope [SBE] or Building Height Plane [BHP]

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

The non-compliance fails:

- To reduce amenity impacts on neighbours
- To provide opportunities for deep soil landscape areas.
- To ensure that development does not become visually dominant.
- To ensure that the scale and bulk of buildings is minimised.

The proposed development results in an encroachment beyond the prescribed building envelope. This non-compliance is indicative of an unacceptable built form and contributes to the severe amenity loss.

The design fails to comply with the building envelope measured at the side boundary. The DCP requires that development be provided within this envelope to ensure reasonable amenity is maintained for neighbours. A significant proportion of the upper level of the proposed dwelling falls outside this building envelope. Together with the breach of the height limit, the Building Envelope breach will result in excessive bulk and scale, and significant visual impact. I note that the control considered that some flexibility in applying this control should be provided on land where the building footprint has a steeper slope. This site cannot meet the criteria for this variation. In addition, I note that any constraint of topography is ultimately overcome by the proposal given the significant cut of the land form proposed. Under these circumstances, it would be contrary to the policy and inherently unreasonable to allow such a departure from the control.

I note that flexibility in relation to DCP controls may be acceptable where the outcomes of the control are demonstrated to be achieved. In this case, the control is unable to do so because:

- The design cannot achieve the desired future character as demonstrated earlier in this submission; and,
- The width and height of the design is significantly overbearing in relation to the spatial characteristics of the natural environment, and the confronting presentation to the waterway is not sensitive to this important visual catchment.
- By virtue of the unmitigated height breach and extensive building envelope breach, it is not possible to say that the bulk and scale of the built form has been minimised.

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 gutter line facing the northern boundary is shown with a 100mm setback to the northern boundary. This is unacceptable.

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

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 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.

11. INSUFFICIENT LANDSCAPE AREAS

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate landscape area.

The proposal does not provide for adequate landscape area according to the controls. Variations to the controls cannot be allowed as the proposal does not meet the objectives of the clause.

NBC's Landscape Referral [15 January 2024] are unable to support the application. The Referral states:

Landscape Plans are submitted and it is noted that landscape area calculations are identified on these plans as a deficient 55.1% that includes the 6% allowance. Concerns are raised that identified 'landscape areas' shown on drawing C7 are unable to be defined as landscape area as they are unable to accommodate the definition of landscape area in the PLEP. the following areas are identified that Landscape Referral consider are unable to achieve planting: permeable driveway as it is a hard paved surface; landscape steps at rear of the property as no planting is possible for the selections as shown on the materials palette drawing; stepping stone areas within the front setback near northern boundary that are predominantly paved; stairs within the front setback near northern boundary; conservation pit area at rear of property

The presentation to the streetscape consisting of high walling and fencing establishes a prominent, visual elements to the streetscape that is unlike many of the properties within proximity which display a landscape setting devoid of structures in the majority. It is noted that the first wall is located away from the front boundary, whilst the second wall that supports fencing on top is narrow in garden width to support adequate planting to soften the visual impact. It is considered that the frontage to Marine Parade is a prominent element that should be further refined to reduce the built form and wider garden width between walling may assist, as will a selection of planting to screen the walling and fencing.

The proposal fails:

- To enable planting to maintain and enhance the streetscape.
- To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.
- To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low-lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.
- To enhance privacy between buildings.
- To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.
- To provide space for service functions, including clothes drying.
- To facilitate water management, including on-site detention and infiltration of stormwater.

Council's DCP with respect to the locality, requires that development respond to the natural environment and minimise the bulk and scale of buildings. The proposed development in its current form does not achieve this and provides inadequate pervious landscaped area at ground level.

I have significant concerns:

I. Major incursion into the SRZ & TPZ of Neighbours Trees

The proposed structure is likely to result in a significant loss of root volume of this tree, potentially making these trees unviable for retention.

II. Areas shown that are deep soil are in fact

- permeable driveway as it is a hard paved surface;
- landscape steps at rear of the property as no planting is possible for the selections as shown on the materials palette drawing;
- stepping stone areas within the front setback near northern boundary that are predominantly paved;
- stairs within the front setback near northern boundary;
- conservation pit area at rear of property
- Heavily excavated zones
- Zones less than 1m wide
- Overhanging structures in the setback zone

The Landscape proposal is unacceptable, and gives grounds for refusal.

12. EXCESSIVE REMOVAL OF NATIVE TREES

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to retain existing native trees.

The proposal removes the following trees:

- High Retention: T12
- Moderate Retention: T2, T3, T4, T5, T6, T7, T9 & T11

My clients ask for T12 to be retained, and as many other moderate retention trees to be retained as possible.

My clients contend that there is insufficient arboricultural reason to remove these trees.

The proposal also builds into the SRZ and TPZ of neighbour's trees. My clients ask for the development to be reduced to ensure that no more than 10% of the TPZ is affected.

13. POOR GARAGE DESIGN

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the design of the garage does not accord with the DCP provisions.

My clients are concerned that the proposed garage:

- Proposes a garage zone of 320sqm of excavation [21.5m x 14.8m], that is up to 6m deep, to house two spaces as required by the controls. A double garage should be restricted to 36sqm
- Driveway location removes high and moderate valued trees

14. EXCESSIVE SWIMMING POOL ENVELOPE

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the height, setback, and envelope of the swimming pool is unacceptable.

My clients are concerned that the proposed swimming pool:

- The Pool has excessive height above GLE
- The Pool has inadequate separation to the side boundary
- The Pool has inadequate privacy devices deployed
- The Pool Plant is positioned too close to my clients' boundary – it must be positioned towards the centre of the subject site
- The Pool Plant has not been identified to being in an acoustic enclosure, that is essential to maintain maximum noise level associated with the pool filter plant and other pool plant not to exceed 5dB[A] above ambient background level when measured from any adjoining premises including my client's property
- External mechanical plant systems (for pools, air conditioning and the like) must be acoustically enclosed and located centrally and away from neighbours living areas of neighbouring properties and side and rear boundaries.

15. IMPACTS UPON ADJOINING PROPERTIES: PRIVACY

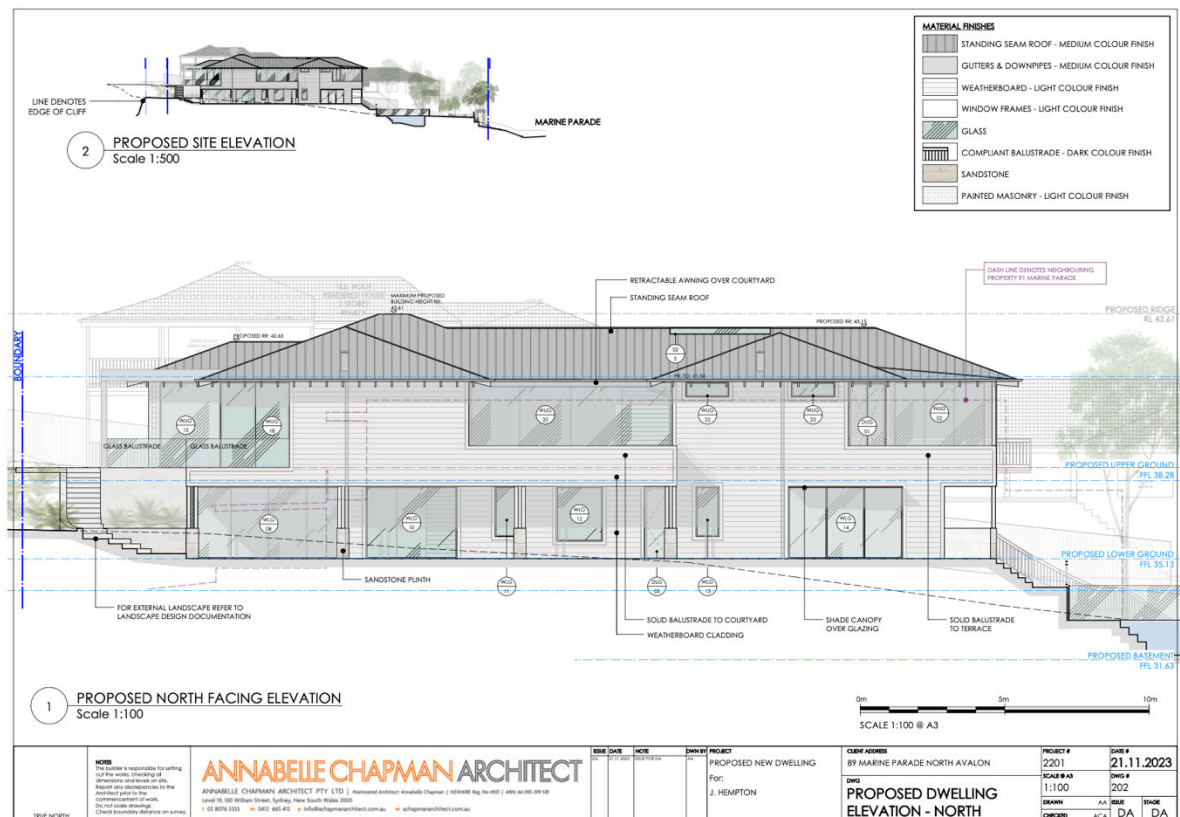
The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to visual privacy.

The proposed development should be refused as it will have unacceptable impacts upon the amenity of my clients' 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 location and design of the proposed balcony and terraces at the upper floor levels and the excessive glazed windows facing the side boundary will result in unacceptable visual and acoustic privacy impacts to adjoining properties.

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



The North Elevation shows numerous areas of concern:

- Glazed Doors WLG 14 is elevated above Existing Ground Level [EGL], such that occupants of the proposed dwelling will be able to look immediately and directly into my client's property;
- Glazed Doors WUG 13, 18, 20, 2 and Doors DUG 1 will be able to look immediately and directly into my client's property. The glazing is excessive;
- Terrace at Lower Ground that is elevated above EGL, will allow occupants to look immediately and directly into my client's property;
- Elevated Terrace, Courtyard and Deck at Upper Ground, will allow occupants to look immediately and directly into my client's property;
- The elevated proposed pool will allow occupants to look immediately and directly into my client's property;

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 results in a privacy impact with the proposed windows facing neighbours without sufficient screening devices being provided, considering the proposed windows are directly opposite my clients' windows and balconies.

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 and decks face the rear 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. My clients ask Council to consider the most appropriate

privacy screening measures to be imposed on windows and decks facing my clients' 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 my clients' 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.

16. IMPACTS UPON ADJOINING PROPERTIES: ENGINEERING

EXCESSIVE EXCAVATION & GEOTECHNICAL CONCERNS

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide minimal excavation, with excavation proposed too close to the neighbours' property.

Insufficient information has been submitted to demonstrate that the proposed development will not adversely impact the structural integrity of the surrounding properties.

The proposed development provides excessive excavation.

The piling zone identified within the Geotechnical Report has not been shown on the DA drawings.

The excavation should be reduced elsewhere to reduce the risks, particularly the extremely excessive garage zone:

- Proposes a garage zone of 320sqm excavation [21.5m x 14.8m], that is up to 6m deep, to house two spaces as required by the controls.
- The excavation should be removed within the 2.5m setback zones facing my client's property - this has not been addressed within the Geotec Report
- All fill should be removed within the 2.5m setback zones facing my client's property - this has not been addressed within the Geotec Report

The Applicant has not provided adequate protection to my clients' property from excessive excavation and potential land slip and damage to my clients' property, including:

- inadequate geotechnical investigations,
- incomplete geotechnical recommendations,
- conservative parameters for design of retention systems.
- incomplete geotechnical monitor plan,
- excessive vibration limits, maximums of 3mm/sec should be considered due to the age and fragility of neighbouring properties, and the coastal bluff
- lack of full-time monitoring and control of the vibration,
- incomplete dilapidation survey report recommendations,
- incomplete attenuation methods of excavation,
- exclusion of excavation in the setback zone,
- exclusion of anchors under my clients' property

Specific concerns are as follows:

On Page 13 of the Geotechnical Report, states:

Do the proximity of the proposed works to the rear boundary, it is recommended that the eastern cliff face be inspected by a professional geotechnical consultant using a drone to assess for any unfavorable defects, significant undercuts or potential for instability impacts. CGC can assist for this type of cliff face stability assessment and should be conducted prior to the Construction Certificate (CC).

I contend that the assessment is incomplete at DA stage without a thorough review of the 'unfavorable defects, significant undercuts or potential for instability impacts of the eastern cliff face'.

On Page 13 of the Geotechnical Report, states:

Due to the increased bulk excavation proposed, relatively minor side setbacks and potential for the intersection of variable strength bedrock, it is recommended that CGC undertake an additional site investigation prior to the CC which will include the drilling of cored boreholes to below excavation depths. Cored boreholes will provide information on the quality, type and strength of the underlying bedrock unit used for design of support systems, footings and excavation methodology.

I contend that the assessment is incomplete at DA stage without 'drilling of cored boreholes to below excavation depths to thoroughly review the quality, type and strength of the underlying bedrock unit used for design of support systems, footings and excavation methodology.'

On Page 15 of the Geotechnical Report, states:

Vibration limits of 5mm/sec to adjacent dwellings. There has been no consideration of vibration levels adjacent the unstable cliff edge. My client is also very concerned about the geotechnical matters. My client asks that the same additional conditions are added to any consent, as were imposed by NBLPP, on 13 December 2023, [NBLPP Minutes page 6/13] against DA2023/0342 in relation to:

- Engineer's Certification of Plans
- Structural Adequacy & Excavation works
- Construction Vibration

I have geotechnical concerns.

- Stability of the natural hillside slope; upslope of the proposed residence, beneath the proposed residence, downslope of the proposed residence and to all neighbour's land.
- Stability of the cliff adjacent to the site.
- Stability of existing retaining walls that will remain;
- Stability of proposed retaining walls to support the excavations for the proposed residence, and external landscaping walls.
- Incomplete consideration of landslip hazards
- Incomplete consideration of Natural Hillside Slope
- Incomplete consideration of the Cliff above the Site
- Incomplete consideration to create a Large-Scale Translational Slide
- Incomplete consideration of Existing Retaining Walls
- Incomplete consideration of Proposed Retaining Walls
- Incomplete consideration of partial excavation of large boulders
- Incomplete consideration and inadequate identification of 'floaters' across neighbour's boundary
- Incomplete consideration of Surface Erosion
- Incomplete consideration of potential Rock Fall
- Incomplete consideration of landslip of soils from excavation

I have concerns regarding the lack of extensive recommendations in respect to the following:

- Incomplete Conditions Recommended to Establish the Design Parameters

- Incomplete Conditions Recommended to the Detailed Design to be Undertaken for the Construction Certificate
- Incomplete Conditions Recommended During the Construction Period
- Incomplete Conditions Recommended for Ongoing Management of the Site/Structure(s)

The Applicant has not provided adequate protection to my clients' property from excessive excavation and potential land slip and damage to my clients' property, including intrusive geotechnical investigations, incomplete geotechnical recommendations, incomplete geotechnical monitor plan, excessive vibration limits, lack of full-time monitoring of the vibration, incomplete dilapidation report recommendations, incomplete attenuation methods of excavation, exclusion of excavation in the setback zone, exclusion of anchors under my clients' property, and incomplete consideration of battering in the setback zone.

My clients ask for the Geotechnical Report to be updated to include all these matters, and the recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report.

17. PRECEDENT

The Development Application should be refused because approval of the proposal will create an undesirable precedent for similar inappropriate development in the area.

18. PUBLIC INTEREST

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.

D. CONTENTIONS THAT RELATE TO INSUFFICIENT & INADEQUATE INFORMATION

The applicant has not submitted sufficient and/or adequate information as requested by Council under Part 6, Division 1 Clause 54 of the EPA Regulation 2000 to enable a reasonable assessment under the applicable legislation.

The application lacks sufficient detail to make an informed assessment particularly with respect to determining the extent of the following matters and the relationship and impact to adjoining neighbours.

Height

I ask Council to request that the applicant superimpose the Registered Surveyors plan detail with all spot levels and contours onto the Roof Plan, with all proposed RLs shown, so that a full assessment can be made on HOB. The survey is incomplete as it has not recorded the existing ground levels within the lowest floor, nor shown the extent of the lowest floor, nor existing levels under the existing building.

Privacy Impact Analysis

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

The architectural drawings do not provide side setback dimensions nor identify the nature of the rooms on the adjoining properties to enable a proper assessment of the impacts of the proposed development and consequently the application has failed demonstrate that the development is suitable for the site and that it will have acceptable environmental impacts on the built environment. Additional dimensions are required to be provided with adequate level of information clearly indicated depicting the separation of buildings and internal layouts of rooms on adjoining properties in order to confirm compliance with objectives and controls.

Visual Bulk Analysis

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

Existing and Finished Ground Levels

Spot levels and contour lines from the Registered Surveyors drawings have not been transferred to the proposed DA drawings of plans, sections, and elevations to enable an assessment of height and the relationship and impact to adjoining neighbours. Neighbour's dwellings have not been accurately located on plans, sections and elevations, including windows and decks, to enable a full assessment of the DA.

Geotechnical

The Applicant has not provided adequate protection to my clients' property from excessive excavation and potential land slip and damage to my clients' property, including excessive vibration limits, lack of full-time monitoring of the vibration, incomplete dilapidation report recommendations, incomplete attenuation methods of excavation, exclusion of excavation in the setback zone, exclusion of anchors under my clients' property, and incomplete consideration of battering in the setback zone. The geotechnical requirements referred to earlier must be added to the Geotechnical Report. My clients ask for the Geotechnical Report to be updated to include these matters, and the recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report are to be incorporated into the construction plans.

In Medium Strength Rock the use of better techniques to minimise vibration transmission will be required. These include: Rock sawing the excavation perimeter to at least 1.0m deep prior to any rock breaking with hammers, keeping the saw cuts below the rock to be broken throughout the excavation process; Limiting rock hammer size to 300kg, with a 5t excavator as a maximum; Rock hammering in short bursts so vibrations do not amplify. Rock breaking with the hammer angled away from the nearby sensitive structures; Creating additional saw breaks in the rock where vibration limits are exceeded; Use of rock grinders (milling head). Should excavation induced vibrations exceed vibration limits after the recommendations above have been implemented, excavation works are to cease immediately.

E. REQUEST FOR AMENDED PLANS TO BE SUBMITTED TO BETTER ADDRESS IMPACTS UPON ADJOINING PROPERTIES

A compliant building design would reduce the amenity impacts identified.

Prepare and submit further supporting information and amendments to the assessing officer directly addressing the issues.

Reduce the proposed development as follow:

1. REDUCTION OF BUILT FORM

- Reduce the Height of Building to LEP standards
- Increase Side Setback to 2.5m to the northern boundary
- Delete all built from within Side Boundary Envelope to the northern boundary to DCP controls
- Increase Rear Setback to DCP controls at all levels
- Increase Landscape Area to DCP controls
- Decrease Excavation, with no excavation or fill in the northern 2.5m side setback zone

2. PRIVACY DEVICES

- All windows facing my client's property to have windows sills increased to a minimum height of 1.5m measured from the FFL level, or All windows facing my client's property to have frosted/translucent glazing up to a minimum height of 1.5m above the FFL.
- 1.7m high louvred privacy screens added to the edge of all elated balconies, decks, and courtyards facing my clients' property. 1.7m high louvred privacy screens added to the edge of the proposed pool facing my clients' property. Louvred privacy screens shall be fixed and angled at a 20-degree acute angle to the angle of the proposed development.
- All privacy screens are to have fixed louvre blades with a maximum spacing of 25mm, and shall be constructed of materials and colours that complement the finishes and character of the building.

3. LANDSCAPING

- New trees and screening trees be increased to 400 L, so that a more mature landscape outcome is achieved.
- Additional 4m high planting for screening along the complete northern boundary adjacent to the proposed built form and pool, to reduce the built form and establish an appropriate setting where landscape is prominent
- Increase garden width between the proposed built form and the northern side boundary of the adjoining property to adequately support planting and at least 2500mm is considered necessary to support columnar small tree and shrub screen planting,
- A continuous landscape strip, of a minimum 2.5m width and a minimum soil depth of 1.0m, is to be provided along the northern boundary to enable

suitable screen planting. Detailed cross-sectional drawings through the basement projection are to be provided which complies with the requirements

4. CONDITIONS OF ANY CONSENT

My client asks for a complete set of Conditions to be included within any consent, including, but not limited to, the following:

Conditions which must be satisfied prior to the demolition of any building or construction

- Acoustic Certification of Mechanical Plant and Equipment
- Arborists Documentation and Compliance Checklist
- BASIX Commitments
- Checking Construction Certificate Plans – Protecting Assets Owned by Sydney Water
- Construction Certificate Required Prior to Any Demolition
- Electric vehicle circuitry and electric vehicle charging point requirements
- Engineer Certification
- Establishment of Tree Protection Zone (TPZ) Fence
- Geotechnical and Hydrogeological Design, Certification and Monitoring
- Ground Anchors
- Identification of Hazardous Material
- Light and Ventilation
- No Underpinning works
- Noise Control - Acoustic Protection of adjoining residential units-Operation of Air Conditioning Plant
- Noise Control - Swimming pool/spa pool pumps and associated equipment
- Parking Facilities
- Payment of Long Service Levy, Security, Contributions and Fees
- Professional Engineering Details
- Public Road Assets Prior to Any Work/Demolition
- Road and Public Domain Works
- Soil and Water Management Plan – Submission and Approval
- Stormwater Management Plan
- Swimming and Spa Pools – Backwash
- Swimming and Spa Pools – Child Resistant Barriers
- Tree Management Plan
- Ventilation - Internal Sanitary Rooms
- Utility Services Generally
- Waste Storage – Per Single Dwelling

Conditions which must be satisfied prior to the commencement of any development work

- Adjoining Buildings Founded on Loose Foundation Materials

- Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)
- Compliance with Building Code of Australia and insurance requirements under the
- Dilapidation Reports for Existing Buildings
- Erosion and Sediment Controls – Installation
- Establishment of Boundary Location, Building Location and Datum
- Home Building Act 1989
- Notification of Home Building Act 1989 requirements
- Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection
- Site Signs
- Engineer's Certification of Plans
- Structural adequacy & Excavation work
- Toilet Facilities
- Works (Construction) Zone – Approval and Implementation

Conditions which must be satisfied during any development work

- Asbestos Removal Signage
- Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum
- Classification of Hazardous Waste
- Compliance with Australian Standard for Demolition
- Compliance with BCA and Insurance Requirements under the Home Building Act 1989
- Compliance with Council's Specification for Roadworks, Drainage and
- Compliance with Geotechnical / Hydrogeological Monitoring Program
- Miscellaneous Works, Road Works and, Work within the Road and Footway
- Critical Stage Inspections
- Disposal of Site Water During Construction
- Disposal of Asbestos and Hazardous Waste
- Dust Mitigation
- Erosion and Sediment Controls – Maintenance
- Footings in the vicinity of trees
- Hand excavation within tree root zones
- Hours of Work –Amenity of the Neighbourhood
- Installation of stormwater pipes and pits in the vicinity of trees
- Level changes in the vicinity of trees
- Notification of Asbestos Removal
- Maintenance of Environmental Controls
- Placement and Use of Skip Bins
- Prohibition of Burning
- Public Footpaths – Safety, Access and Maintenance
- Replacement/Supplementary trees which must be planted
- Requirement to Notify about New Evidence
- Site Cranes
- Site Waste Minimisation and Management – Construction
- Site Waste Minimisation and Management – Demolition

- Support of Adjoining Land and Buildings
- Tree Preservation
- Vibration: Monitoring Construction Vibration. Vibrations associated with demolition, excavation and construction works are limited to a tolerance of 3mm/s PPV (peak particle velocity) at the property boundaries (or at sea cliff or cliff adjacent to the subject property). Vibration monitoring equipment is to be installed by a registered Geotechnical Engineer throughout the site and along the boundaries to verify that vibration is within the limits of the maximum tolerance. The vibration monitoring equipment must include a light/alarm, so the site foreman and equipment operator are alerted to the fact that vibration limits have been exceeded. Where the vibration tolerances have been exceeded, works shall cease until a change in construction / excavation methodology are implemented to ensure compliance. It also must log and record vibrations throughout the excavation and construction works so that compliance may be verified. Any monitoring devices are to be installed at the footing level of any adjacent structures. Reason: To restrict vibration impacts.

Conditions which must be satisfied prior to any occupation or use of the building (Part 6 of the Act and Part 8 Division 3 of the Regulation)

- Amenity Landscaping
- Certification of Electric Vehicle Charging System
- Commissioning and Certification of Public Infrastructure Works
- Commissioning and Certification of Systems and Works
- Occupation Certificate (section 6.9 of the Act)
- Letter Box
- Swimming and Spa Pools – Permanent Child Resistant Barriers and other Matters
- Swimming Pool Fencing

Conditions which must be satisfied prior to the issue of the Occupation Certificate for the whole of the building

- Fulfillment of BASIX Commitments – clause 154B of the Regulation
- Landscaping
- Positive Covenant and Works-As-Executed Certification of Stormwater Systems
- Removal of Ancillary Works and Structures
- Road Works (including footpaths)

Conditions which must be satisfied during the ongoing use of the development

- Maintenance of BASIX Commitments
- Noise Control
- Noise from mechanical plant and equipment, including swimming pool plant
- Ongoing Maintenance of the Onsite Stormwater Detention (OSD) System, Rain Garden and Rainwater Tank
- Outdoor Lighting – Residential
- Outdoor Lighting – Roof Terraces

- Swimming and Spa Pools – Maintenance

Advising

- Asbestos Removal, Repair or Disturbance
- Builder's Licences and Owner-builders Permits
- Building Standards - Guide to Standards and Tolerances
- Commonwealth Disability Discrimination Act 1992
- Criminal Offences – Breach of Development Consent and Environmental Laws
- Dial Before You Dig
- Dilapidation Report
- Dividing Fences
- Lead Paint
- NSW Police Service and Road Closures
- Pruning or Removing a Tree Growing on Private Property
- Pruning or Removing a Tree Growing on Private Property
- Recycling of Demolition and Building Material
- Release of Security
- Roads Act 1993 Application
- SafeWork NSW Requirements
- Workcover requirements

F. REASONS FOR REFUSAL

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

Contentions that the application be refused

1. LACK OF STATUTORY POWER
 2. INADEQUATE CLAUSE 4.6 VARIATION REQUEST
 3. CONTRARY TO AIMS OF LEP
 4. CONTRARY TO ZONE OBJECTIVES
 5. BUILDING BULK & SCALE
 6. CHARACTER & STREETScape
 7. INCORRECT CONSIDERATION OF 'GROUND LEVEL EXISTING'
 8. EXCESSIVE HEIGHT OF BUILDING
 9. EXCESSIVE WALL HEIGHT
 10. INSUFFICIENT SETBACKS
 11. FORESHORE BUILDING LINE
 12. INSUFFICIENT LANDSCAPE AREAS
 13. EXCESSIVE REMOVAL OF NATIVE TREES
 14. POOR GARAGE DESIGN
 15. EXCESSIVE SWIMMING POOL ENVELOPE
 16. IMPACTS UPON ADJOINING PROPERTIES: ADVERSE PRIVACY IMPACTS
 17. IMPACTS UPON ADJOINING PROPERTIES: ENGINEERING
 18. PRECEDENT
 19. PUBLIC INTEREST
-
1. 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.

2. 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 LEP:
 - Aims of Plan
 - Zone Objectives
 - Height of Buildings
 - Exceptions to Development Standards
 - Geotechnical Hazards
3. 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:
 - Excessive Wall Height
 - Unacceptable Building Separation
 - Insufficient Landscape Areas
 - Excessive Removal of Native Trees
 - Poor Garage Design
 - Excessive Swimming Pool Envelope
 - Excessive Excavation & Geotechnical Concerns
 - Poor Streetscape Outcomes
 - Impacts Upon Adjoining Properties: Privacy
 - Impacts Upon Adjoining Properties: Visual Bulk
4. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the plans and documentation are misleading as they do not clearly portray the true extent of works proposed. The plans include inaccuracies and inconsistencies and insufficient information has been provided in order to enable a detailed assessment. Dimensions to boundaries have not been shown in all locations of all proposed built elements. Levels on all proposed works have not been shown.
5. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the proposal would not satisfy the matters for consideration under Biodiversity & Conservation SEPP 2021 and Resilience & Hazards SEPP 2021
6. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that it will have an adverse impact through its bulk, scale and siting on the built environment, and through lack of landscape provision, and adverse impact on the natural environment. The proposed development will have a detrimental impact on the visual amenity of the adjoining properties by virtue of the excessive building bulk, scale and mass of the upper floor and its associated non-compliant envelope.

7. 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.
8. The proposals are unsuitably located on the site pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
9. 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
10. 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. The proposed development will have a detrimental impact on the amenity of adjoining residential properties, and for this reason is contrary to the public interest.

G. 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 causes considerable amenity loss to my clients' 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 considered jarring when viewed from the public domain.

Commissioner Moore revised the NSWLEC planning principle for assessing impacts on neighbouring properties within *Davies v Penrith City Council* [2013] NSWLEC 1141

"The following questions are relevant to the assessment of impacts on neighbouring properties:

How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?

How reasonable is the proposal causing the impact?

How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?

Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?

Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?"

I contend that the proposed development severely impacts my clients' property, and in terms of amenity, there is excessive sunlight, view or privacy loss. The loss is unreasonable. My clients' property is not vulnerable to the loss that is presented. The loss arises out of poor design, either through non-compliance to envelope controls or poorly located built form.

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 all of which would result in adverse impacts on my clients' property. Primarily,

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the DCP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the EPAA 1979

The proposed development does not satisfy the appropriate controls. Furthermore, the proposal would result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community, and is therefore not in the public interest. The proposal therefore must be refused.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have not been satisfactorily addressed.

I ask that if Council in their assessment of this application reveals unsupported issues, which prevent Council from supporting the proposal in its current form, and writes to the applicant describing these matters, I ask for that letter to be forwarded to me.

My clients trust that Council will support my clients' submission and direct the proponent to modify the DA plans, as outlined above. My clients ask Council Officers to inspect the development site from my clients' property so that Council can fully assess the DA.

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

Yours faithfully,

Bill Tulloch

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