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**From:** [REDACTED]  
**Sent:** 30/01/2023 7:37:36 PM  
**To:** Council Northernbeaches Mailbox  
**Cc:** Rebecca Overton  
**Subject:** DA 2022 2277 272 WHALE BEACH ROAD WHALE BEACH NSW 2107  
WRITTEN SUBMISSION: LETTER OF OBJECTION SUBMISSION:  
OVERTON/TULLOCH  
**Attachments:** OVERTON WS.pdf;

Kind regards,

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

# SUBMISSION

a written submission by way of objection

**BILL TULLOCH BSc [Arch] BArch [Hons1] UNSW RIBA RAIA**

prepared for

**REBECCA OVERTON, 274 WHALE BEACH ROAD WHALE BEACH NSW 2107**

30 JANUARY 2023

Northern Beaches Council  
PO Box 82  
Manly  
NSW 1655

[council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

RE: DA 2022 2277  
272 WHALE BEACH ROAD WHALE BEACH NSW 2107  
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.

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 dwelling does not ensure that the existing high levels of amenity to my clients' property is retained.

The proposal is considered to be inappropriate within the streetscape.

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.

- Excavation Risks
- Visual Privacy
- Solar Loss
- Visual Bulk

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

- Building Height: Proposed 10.28m v Control 8.5m [21% non-compliance]
- Landscape Area: No Calculations shown
- Number of Storey: Proposed Three: Control Two [50% non-compliance]
- Western Setbacks
- Basement 900mm v 2500mm control
- Lower Ground 1350mm v 2500mm control
- Ground 900mm v 2500mm control
- First 1500mm v 2500mm control
- Second 2070mm 2500mm control
- Western Side Boundary Envelope
- Ground 900mm v 3700mm control
- First 1500mm v 5300mm control
- Second 2070mm v 5700mm control
- Eastern Setbacks
- Lower Ground 1200mm v 2500mm control
- Ground 900mm v 2500mm control
- First 1500mm v 2500mm control
- Eastern Side Boundary Envelope
- Ground 900mm v 2100mm control
- First 1500mm v 4000mm control
- Second 3910mm v 5000mm control

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

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 *Patbun 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.

If the DA was fully or even substantially compliant to all development controls, they recognise that their rights with respect to any resulting amenity loss to their property would be more limited.

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'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

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.

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 construction of a dwelling house at 272 Whale Beach Rd, Whale Beach.

### **2. THE SITE**

The site is legally described as Lot 224, DP 15376, and is known as 272 Whale Beach Road, Whale Beach. The site is irregular in shape and has an area of 708.2m<sup>2</sup>. It has a street frontage of 16.29m. The site is steeply sloping with a fall of approximately 18m from the rear boundary (north) to the street frontage (south).

### **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 2000
  
- SEPP (Building Sustainability Index: BASIX) 2004;
- SEPP (Resilience and Hazards) 2021;
- SEPP (Biodiversity and Conservation) 2021.
  
- 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.

The application benefits from Clause 2D of Clause 4.3 *Height of Buildings*, which permits a 10.0m height on the site, in lieu of the standard 8.5m. As the Objectives of the clause are not met, the lesser building height of 8.5m is applicable. The proposal is not accompanied by a Clause 4.6 Variation Request in relation to building height and therefore cannot be consented.

### 2. 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.

### 3. 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.

### 4. 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.

The LEP states the following within the LEP Dictionary:

*"ground level (existing) means the existing level of a site at any point."*

The DA drawings have not adequately transferred the spot levels from the Registered Surveyors drawing onto the DA Architectural drawings to allow assessment of heights.

The topography of the site shows that the site has falls across the site.

The manner in which building height is measured has been clarified in a recent judgement of the NSW Land and Environment Court. In accordance with the

NSWLEC judgement for *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, building height is measured from the existing ground level.

My clients bring to Council's attention recent NSWLEC decisions relating to the consideration of *ground level (existing)* on sites that had not been totally built upon:

- In *Strebor Pty Ltd v Randwick City Council (No. 2)* [2017] NSWLEC 1575 ('Strebor'), Commissioner: Dickson: *'the determination of 'ground level (existing)' must bear some relationship to the overall topography and context of the site'*
- In *Gejo Pty Ltd v Canterbury-Bankstown Council* [2017] NSWLEC 1712 ('Gejo'): Commissioner Gray: *'actual height of the proposed building must first be determined by application of the [relevant] LEP definitions and that the extrapolation approach used in Bettar and Stamford was justified in circumstances where the existing ground level is not known due to extensive development on the site'*.
- In *Nicola v Waverley Council* [2020] NSWLEC 1599 ('Nicola'): Commissioner Bindon: *'where the facts and circumstances of the case make the use of the extrapolation method appropriate, the levels to be used should be taken from the closest immediate proximity where existing ground can be found, whether that be inside or outside subject site.'*
- In *Cadele Investments Pty Ltd v Randwick City Council* [2021] NSWLEC 1484 at [90]-[91]: Commissioner Bindon stated: *"the alternative method of measurement is not in accordance with the definition of building height in the RLEP, which relies on the defined term "ground level (existing)". In using the undefined "natural ground line" the Applicant relies on the concept of extrapolating the ground levels on the periphery of the site to avoid the inconvenient "variations to the landform created by the existing dwelling", and refers to Bettar v Council of the City of Sydney [2014] NSWLEC 1070 (Bettar) as providing an authority to do so.*

My clients bring to Council's attention early NSWLEC decisions relating to the consideration of *ground level (existing)* on sites that had been wholly built upon:

- *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070: Commissioner O'Neill. The Bettar extrapolation method
- *Stamford Property Services Pty Ltd v City of Sydney* [2015] NSWLEC 1189 ('Stamford'): Commissioner Pearson

Council will also note, that in October 2021, the Court decided not to apply Bettar in a particular case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. The Court did not apply the Bettar decision and instead said (at [73]) that:

- the existing level of the site at a point beneath the existing building is the level of the land at that point; and
- the 'ground level (existing)' within the footprint of the existing building is the existing excavated ground level on the site.

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 59.94. The survey spot level at the western side under the upper roof form is RL 49.66. The HOB is therefore 10.28m.

My clients contend that the Applicant has avoided locating the Registered Surveyors spot levels onto the plans, sections and elevations to falsely suggest that the heights are lower than what is truly correct.

## 5. 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* set out in the LEP which permits a maximum height of 8.5 metres.

The application benefits from Clause 2D of Clause 4.3 *Height of Buildings*, which permits a 10.0m height on the site, in lieu of the standard 8.5m. As the Objectives of the clause are not met, the lesser building height of 8.5m is applicable. The proposal is not accompanied by a Clause 4.6 Variation Request in relation to building height and therefore cannot be consented.

The submitted written variation request under cl.4.6 of the LEP seeking to justify the contravention of the height of buildings development standard is not well-founded having regard to the requirements of cl.4.6(3) and 4.6(4)(a)(i) of LEP.

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

- The development compromises private views and solar loss
- 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 of 8.5m is not 'minor'. The building does not adequately step down the slope.

The DA seeks for a substantial non-compliance with the Council permissible height as provided for in the LEP. The proposal is supported by a clause 4.6 seeking to justify the breach of the height standard.

My clients submit that the proposal is excessive and an over development and that the clause 4.6 submissions do not satisfy the pre-requisites in clause 4.6 of the LEP.

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 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 have reviewed the responses to these objectives in the applicant's Clause 4.6 and do not consider they satisfy the objectives. My clients strongly refute their arguments.

In respect of the compatibility test, unsurprisingly the applicant completely ignores multiple considerations dealing with the understanding of the site in respect of its topography, how it is viewed from neighbouring properties as well as the lack of compatibility with its form and articulation.

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'*.

## 6. EXCESSIVE WALL HEIGHT & NUMBER OF STOREY

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 private views and solar loss
- 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 wall height control.

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

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

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

My clients contend that the proposal fails to adequately demonstrate that compliance with each standard or control is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening each of the standards. Variation of the development standards or control is not in the public interest because the proposed development is not consistent with the objectives of each development standard or control nor the objectives of the zone. The proposed development has not sought adequate variations to development standards or controls. The proposal is excessive in bulk and scale, and is inconsistent with the desired future character of the area resulting in adverse impacts on the streetscape. The proposal results in an unacceptable dominance of built form over landscape. The proposal fails to minimise the adverse effects of bulk and scale resulting in adverse amenity impacts.

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'*.

## 7. INADEQUATE CLAUSE 4.6 VARIATION REQUEST

Council cannot be 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 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.

The Applicant seeks to vary the height of buildings development standard.

The request relies upon the first way identified by Preston CJ in *Wehbe*. The first way in *Wehbe* is to establish that the objectives of the standard are achieved.

My clients contend that the variation has not responded to the objective of the maximum building height standard and given adequate reasoning why compliance is unreasonable or unnecessary.

In simple terms, I contend that:

- the impacts are not consistent with the impacts that may be reasonably expected under the controls;
- the proposal's height and bulk do not relate to the height and bulk desired under the relevant controls;
- the area has a predominant existing character and are the planning controls likely to maintain it;
- the proposal does not fit into the existing character of the area;
- the proposal is inconsistent with the bulk and character intended by the planning controls;
- the proposal looks inappropriate in its context

The objectives of the standard have not been met.

The bulk and scale of the proposed development is inappropriate for the site and locality.

Strict compliance with the maximum building height is reasonable and necessary in the circumstances of this case.

In summary, the proposal does not satisfy the requirements of clause 4.6 of LEP 2014.

The variation of the standard would not be in the public interest because it would set a precedent for development in the neighbourhood, such that successive exceedances would erode the views enjoyed from other similar properties.

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.

## 8. UNACCEPTABLE BUILDING SEPARATION

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

- Western Setbacks
- Basement 900mm v 2500mm control
- Lower Ground 1350mm v 2500mm control
- Ground 900mm v 2500mm control
- First 1500mm v 2500mm control
- Second 2070mm 2500mm control
- Western Side Boundary Envelope
- Ground 900mm v 3700mm control
- First 1500mm v 5300mm control
- Second 2070mm v 5700mm control
- Eastern Setbacks
- Lower Ground 1200mm v 2500mm control
- Ground 900mm v 2500mm control
- First 1500mm v 2500mm control
- Eastern Side Boundary Envelope
- Ground 900mm v 2100mm control
- First 1500mm v 4000mm control
- Second 3910mm v 5000mm control

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

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

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

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.

## 9. BUILT FORM, BULK AND SCALE

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 bulk impact.

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-complaint building envelope will lead to unacceptable visual bulk impact to neighbours.

The multiple non-compliances arising from the proposed upper floor level 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.

As detailed above, a redesign of the proposed development is strongly recommended to improve the amenity of adjoining properties.

#### 10. 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.

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.

There is no schedule identifying how the proposed development complies with the 60% control.

#### 11. 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:

- Is built without adequate side setback to my clients' property;

My clients ask for these matters to be amended.

#### 12. 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 the neighbours' property.

The proposed development provides excessive excavation.

The excavation should be removed within the 2.5m setback zones.

The excavation should be reduced elsewhere to reduce the risks.

My clients 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 Surface Erosion
- Incomplete consideration of potential Rock Fall
- Incomplete consideration landslip of soils from excavation

My clients have concerns to 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)
- Incomplete Geotechnical Risk Management Forms

The Geotechnical report does not contain the full extent of conditions normally associated with this type of deep excavation on a steep slope. Some of these matters are partially addressed but not all.

Typical conditions are as follows:

Conditions Recommended to Establish the Design Parameters

- all existing landscaping retaining wall within the site will be replaced as part of the development.
- a geotechnical investigation of the site should be carried out to confirm the subsurface conditions prior to the start of excavation. The investigation should

be carried out following demolition to so access to the entire site for a drilling rig is possible.

- at least four boreholes be drilled, involving coring of the rock to assess its quality
- Cone Penetration Testing across the site to determine the soil profile and consistency;
- Boreholes for soil identification and collection of laboratory samples;
- Installation of groundwater monitoring wells with data loggers to measure groundwater levels before and during construction;
- Permeability testing in wells;
- Groundwater modelling to assess inflows and drawdown;
- Shoring wall analyses.
- Assess the groundwater level and fluctuations across the site and provide a detailed groundwater assessment to predict soil permeability, inflow rates, drawdown and its effect in the short and long term for the site and surrounding properties;
- Excavations are expected to encounter sandstone bedrock and where such excavation is carried out using a hydraulic rock hammer continuous vibration monitoring must be carried out during rock hammer use. Vibration monitors should be set up on the adjoining houses. The ground vibration measured as peak particle velocity must not exceed 5mm/sec at the site boundaries, or 3mm/sec on older fragile properties. Lower PPV may be necessary due to the structural design of neighbouring properties
- Subject to inspection by a geotechnical engineer temporary batters for the proposed excavation should be no steeper than 1 Vertical (V) in 1 Horizontal (H) within the soil profile and extremely weathered rock and vertical in competent rock. All surcharge and footing loads must be kept well clear of the excavation perimeter.
- Where the required batters cannot be accommodated within the site geometry, or where not preferred, a retention system would be required and should be installed prior to excavation commencing.
- proposed new retaining walls should be designed using parameters set out by the geotechnical engineer, such as: For cantilever walls, adopt a triangular lateral earth pressure distribution and an 'active' earth pressure coefficient,  $K_a$ , of 0.3, for the retained height, assuming a horizontal backfill surface. A bulk unit weight of 20kN/cubm should be adopted for the soil profile. Any surcharge affecting the walls (e.g. traffic loading, live loading, compaction stresses, etc) should be allowed in the design. Propped or anchored retaining walls may be designed based on a trapezoidal lateral pressure distribution of  $6H$  kPa, where  $H$  is the retained height in metres, assuming no structures are located within  $2H$  of the wall. The retaining walls should be provided with complete and permanent drainage of the ground behind the walls. The subsoil drains should incorporate a non-woven geotextile fabric (e.g. Bidim A34), to act as a filter against subsoil erosion. For soldier pile walls strip drains should be placed behind the shotcrete panels. Toe resistance of the wall may be achieved by keying the footing into bedrock. An allowable lateral stress of 200kPa may be adopted for design.
- No rock anchors beyond the subject site boundary
- All proposed footings must be founded in sandstone bedrock. The footings should be designed for an allowable bearing pressure of 600kPa, subject to inspection by a geotechnical engineer prior to pouring.

- The surface water discharging from the new roof and paved areas must be diverted to outlets for controlled discharge to the existing stormwater system which appears to drain to the north. Any stormwater discharge must be spread across the slope and not discharged in a concentrated manner.
- The guidelines for Hillside Construction should also be adopted.

#### Conditions Recommended to the Detailed Design to be Undertaken for the Construction Certificate

- All structural design drawings must be reviewed by the geotechnical engineer who should endorse that the recommendations contained in this report have been adopted in principle. As the construction certificate will need to be obtained prior to demolition, the structural drawings prepared for the construction certificate application will require review following completion of the geotechnical investigation and must be marked as such. The need for the geotechnical investigation following demolition must be clearly stated on the construction certificate structural drawings.
- All hydraulic design drawings must be reviewed by the geotechnical engineer who should endorse that the recommendations contained in this report have been adopted in principle.
- All landscape design drawings must be reviewed by the geotechnical engineer who should endorse that the recommendations contained in this report have been adopted in principle.
- Dilapidation surveys must be carried out on the neighbouring buildings and structures. A copy of the dilapidation report must be provided to the neighbours and Council or the Principle Certifying Authority.
- An excavation/retention methodology must be prepared prior to bulk excavation commencing. The methodology must include but not be limited to proposed excavation techniques, the proposed excavation equipment, excavation sequencing, geotechnical inspection intervals or hold points, vibration monitoring procedures, monitor locations, monitor types, contingency plans in case of exceedances.
- The excavation/retention methodology must be reviewed and approved by the geotechnical engineer.
- A Geotechnical Monitoring Plan is to be prepared which will detect any settlement associated with temporary and permanent works and structures; Will detect vibration in accordance with AS 2187 .2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity); Will detect groundwater changes calibrated against natural groundwater variations; Details the location and type of monitoring systems to be utilised; Details the pre-set acceptable limits for peak particle velocity and ground water fluctuations; Details recommended hold points to allow for the inspection and certification of geotechnical and hydro-geological measures by the professional engineer; and Details a contingency plan.
- A geotechnical investigation meeting the requirements of TfNSW Technical Direction Geotechnology GTD 2020/001 | Version No. 01 – 2 July 2020 *Excavation adjacent to Transport for NSW Infrastructure*. This investigation will relate to the proximity of the excavation to the road
- Geotechnical assessment meeting the requirements of Sydney Water, *Technical guidelines, Building over and adjacent to pipe assets*, August 2021.

This assessment will relate to the proximity of the excavation to the existing sewer main.

- A minimum of four cored boreholes extending to at least 3 m below the proposed bulk excavation level. A monitoring well is to be installed in at least one borehole the presence or otherwise of a groundwater level within the proposed depth of excavation established prior to design.
- Rock grinders are to be used for excavation. Hydraulic rock hammering is not to be used for excavation as it has the potential to provoke rock instability of the existing cliff face.
- Vibration monitoring limits are to be set at maximum Peak Particle Velocity of 5 mm/sec on neighbouring properties, or 3mm/sec to heritage or older fragile dwellings.

#### Conditions Recommended During the Construction Period

- The recommendations provided below must be reviewed and amplified following completion of the geotechnical investigation. The recommendations given below assume that good quality rock will be encountered at relatively shallow depths.
- The structural drawings must be updated following completion of the geotechnical investigation and subsequently reviewed by the geotechnical engineer to confirm that the geotechnical recommendations have been adopted.
- The approved excavation/retention methodology must be followed.
- Bulk excavations must be progressively inspected by the geotechnical engineer as excavation proceeds. We recommend inspections at 1.5m vertical depth intervals and on completion.
- The geotechnical engineer must inspect all footing excavations prior to placing reinforcement or pouring the concrete.
- Proposed material to be used for backfilling behind retaining walls must be approved by the geotechnical engineer prior to placement.
- Compaction density of the backfill material must be checked by a NATA registered laboratory to at least Level 2 in accordance with, and to the frequency outlined in, AS3798, and the results submitted to the geotechnical engineer.
- If they are to be retained, the existing stormwater system, sewer and water mains must be checked for leaks by using static head and pressure tests under the direction of the hydraulic engineer or architect, and repaired if found to be leaking.
- The geotechnical engineer must inspect all subsurface drains prior to backfilling.
- An 'as-built' drawing of all buried services at the site must be prepared (including all pipe diameters, pipe depths, pipe types, inlet pits, inspection pits, etc).
- All rock anchors must be proof-tested to 1.3 times the working load. In addition, the anchors must be subjected to lift-off testing no sooner than 24 hours after locking off at the working load. The proof-testing and lift-off tests must be witnessed by the geotechnical engineer. The anchor contractor must provide the geotechnical engineer with all field records including anchor installation and testing records. No rock anchors under neighbours property.

- The geotechnical engineer must confirm that the proposed alterations and additions have been completed in accordance with the geotechnical reports.

#### Conditions Recommended for Ongoing Management of the Site/Structure(s)

The following recommendations have been included so that the current and future owners of the subject property are aware of their responsibilities:

- All existing and proposed surface (including roof) and subsurface drains must be subject to ongoing and regular maintenance by the property owners. In addition, such maintenance must also be carried out by a plumber at no more than ten yearly intervals; including provision of a written report confirming scope of work completed (with reference to the 'as-built' drawing) and identifying any required remedial measures.
- The existing retaining walls on the western and eastern boundaries that are to remain must be inspected by a structural engineer at no more than ten yearly intervals; including the provision of a written report confirming scope of work completed and identifying any required remedial measures
- No cut or fill in excess of 0.5m (e.g. for landscaping, buried pipes, retaining walls, etc), is to be carried out on site without prior consent from Pittwater Council.
- Where the structural engineer has indicated a design life of less than 100 years then the structure and/or structural elements must be inspected by a structural engineer at the end of their design life; including a written report confirming scope of work completed and identifying the required remedial measures to extend the design life over the remaining 100 year period.

#### Other Conditions:

- It is possible that the subsurface soil, rock or groundwater conditions encountered during construction may be found to be different (or may be interpreted to be different) from those inferred from our surface observations
- Surface run-off patterns during heavy rainfall may present poor outcomes

Concern is raised that the Geotechnical report has not fully addressed these matters

- Comprehensive site mapping conducted - inadequate
- Mapping details presented on contoured site plan with geomorphic mapping
- Subsurface investigation required
- Geotechnical model developed and reported as an inferred subsurface type-section
- Geotechnical hazards identified
- Geotechnical hazards described and reported
- Risk assessment conducted in accordance with the Geotechnical Risk Management Policy; Consequence analysis & Frequency analysis
- Risk calculation
- Risk assessment for property conducted in accordance with the Geotechnical Risk Management Policy
- Risk assessment for loss of life conducted in accordance with the Geotechnical Risk Management Policy

- Assessed risks have been compared to "Acceptable Risk Management" criteria as defined in the Geotechnical Risk Management Policy
- Opinion has been provided that the design can achieve the "Acceptable Risk Management" criteria provided that the specified conditions and recommendations presented in the Report are achieved recommendations presented in the Report are adopted.
- Design Life Adopted: 100 years
- Geotechnical Conditions to be applied to all four phases as described in the Geotechnical Risk Management Policy
- Additional action to remove risk where reasonable and practical have been identified and included in the 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 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.

### 13. STORMWATER 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 adequate stormwater control outcomes.

My clients ask Council to consider the stormwater design and the OSD.

My clients ask Council to ensure that there are stormwater pits to collect surface and sub surface stormwater along the perimeter of the subject site.

### 14. POOR STREETSCAPE OUTCOMES

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 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.

## 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 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.

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 facing 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: OVERSHADOWING

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 overshadowing.

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

My clients believe that further assessment of the shadow impacts through the production of elevational shadow diagrams or a "View from the Sun" assessment are critical in order to understand the potential future impacts and necessary for Council's reasonable assessment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There is no major overshadowing as a result of vegetation

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

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

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

My clients object to solar loss to my clients' private open space, and to my clients' windows that fails to allow mid-winter solar access into highly used room by non-compliant development controls.

## 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 INFORMATION**

### Privacy Impact Analysis

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

### Solar Access Diagrams

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

My clients believe that further assessment of the shadow impacts through the production of elevational shadow diagrams or a "View from the Sun" assessment are critical in order to understand the potential future impacts and necessary for Council's reasonable assessment.

#### 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.

#### 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. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

### **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 Building Height to 8.5m
- Reduce the side setbacks to fully accord with the setback and side boundary envelope
- Western Setbacks
- Basement 900mm v 2500mm control
- Lower Ground 1350mm v 2500mm control
- Ground 900mm v 2500mm control
- First 1500mm v 2500mm control
- Second 2070mm 2500mm control
- Western Side Boundary Envelope

- Ground 900mm v 3700mm control
- First 1500mm v 5300mm control
- Second 2070mm v 5700mm control
- Eastern Setbacks
- Lower Ground 1200mm v 2500mm control
- Ground 900mm v 2500mm control
- First 1500mm v 2500mm control
- Eastern Side Boundary Envelope
- Ground 900mm v 2100mm control
- First 1500mm v 4000mm control
- Second 3910mm v 5000mm control
- Decrease excavation, with no excavation or fill in 2.5m side setback zone

## 2. PRIVACY DEVICES

- Privacy Windows: New Windows to have 1.65 high sills, measured from the internal FFL, or the window is to be fixed and non-opening and fitted with obscured glazing to 1.65m height above internal FFL, with
- Privacy Decks: 1.65m privacy screens to all decks facing my clients' property, measured from the internal FFL of the deck, shall be of fixed panels or battens or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

## 3. OTHER MATTERS/CONDITIONS OF ANY CONSENT

- Dilapidation reports, including photographic surveys, of the adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items. The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing. Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must: compare the post-construction report with the pre-construction report, clearly identify any recent damage and whether or not it is likely to be the result of the development works, should any damage have occurred, suggested remediation methods.
- The Applicant must provide a certificate to ensure 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. The certificate shall be prepared by a qualified geotechnical engineer.
- The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.
- The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Council's Water

Management for Development Policy. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

- Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.
- The development is required to be carried out in accordance with all relevant Australian Standards.
- A survey certificate prepared by a Registered Surveyor at the following stages of construction: (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details. (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid. (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.
- All plant and equipment is to be located within the basement of the building and is not to be located on balconies or the roof. Plans and specifications complying with this condition must be submitted to the Certifying Authority for Approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition. Reason: Minimise impact on surrounding properties, improved visual appearance and amenity for locality

## **F. REASONS FOR REFUSAL**

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

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 & Number of Storey
  - Unacceptable Building Separation
  - Insufficient Landscape Areas
  - Excessive Removal of Native Trees
  - Poor Strategic Positioning of Tree Canopy
  - Poor Garage Design
  - Excessive Swimming Pool Envelope
  - Excessive Excavation & Geotechnical Concerns
  - Stormwater Concerns
  - Flood Concerns
  - Poor Streetscape Outcomes
  - Heritage Conservation Concerns
  - Impacts Upon Adjoining Properties: View Loss
  - Impacts Upon Adjoining Properties: Privacy
  - Impacts Upon Adjoining Properties: Overshadowing
  - 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.
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-complaint 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 cause 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?"*

My clients 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.

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.

We 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, we ask for that letter to be forwarded to us.

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.

Yours faithfully,

*Bill Tulloch*

Bill Tulloch BSc [Arch] BArch [Hons1] UNSW RIBA RAIA  
PO Box 440 Mona Vale  
NSW 1660