

S U B M I S S I O N : S Y M O N S
a written submission by way of further objection to DA 2019/1463

Ms Meredith Symons
97 Gurney Cr.,
Seaforth

3 July 2020

Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
Dee Why
NSW 2099

Northern Beaches Council
council@northernbeaches.nsw.gov.au

RE:
DA 2019/1463
Address: 95 Gurney Cr., Seaforth

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission - Symons

This document is a written submission by way of further objection to **DA 2019/1463** lodged under Section 4.15 of the EPAA 1979 [the EPA Act]

I refer Council to my Written Submission dated **18 May 2020** that I attach.

Unfortunately, the latest Submission does not deal with any matter raised within the 18 May 2020 Submission, so I simply refer Council to the attached Submission and reconfirm my Objection based upon that Submission.

The latest Submission does now attach a Landscape Plan dated **1 July 2020**.

I ask Council to include the following landscape condition to any Consent.

I am concerned that the proposed landscape design does not mitigate the bulk and scale of the proposed development.

Landscape has not been provided to provide for complete privacy, including the external pool and deck zones, particularly along the common boundary zones.

Erecting a pool fence on the common boundary is also unacceptable as it would preclude me to provide landscape along this zone in the future, as well as privacy issues.

The proposed condition is as follows:

Landscape Condition:

Provide a continuous, uninterrupted, shrub screen hedge along the northern boundary to 4m minimum mature height, to extend from the eastern boundary of the subject site to the western edge of the proposed pool gutter on the subject site. Delete Swimming Pool fence on common boundary and relocate at least 1.5m from boundary. Provide a new fully rendered masonry fence, painted monument/dark grey, to 1.8m height along the common boundary. Plant mature plants to a minimum of 2m in height, at 0.6m centres, to ensure an immediate landscape screen. Delete all other hard surfaces in a 1m side setback zone, to allow for 1m deep soil planting along these zones. Provide drip irrigation.

Yours faithfully,

Ms Meredith Symons
97 Gurney Cr.,
Seaforth NSW 2092

[attachment: 18 May 2020 Written Submission]

Ms Meredith Symons
97 Gurney Cr.,
Seaforth

18 May 2020

Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
Dee Why
NSW 2099

Northern Beaches Council
council@northernbeaches.nsw.gov.au

RE:
DA 2019/1463 & BC 2019/0284
Address: 95 Gurney Cr., Seaforth

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission - Symons

This document is a written submission by way of further objection to **DA 2019/1463 & BC 2019/0284** lodged under Section 4.15 of the EPAA 1979 [the EPA Act]

I ask Council to post this Written Submission on both **DA 2019/1463 & BC 2019/0284**.

I refer Council to my original objection dated 1 January 2020.

As the Amended Plan submission dated 12 May 2020 proposes minimal amendments, and does not resolve any of my amenity loss concerns, my objection of 1 January 2020 remains unaltered, and **gives Council very clear grounds to REFUSE this DA**.

The non-compliance to residential controls still represents considerable overdevelopment, averaging well over 200% above controls. This is a staggering overdevelopment to controls, that perhaps has no precedent within the MLEP and MDCP determinations in the past few decades:

- Building Height: >185% non-compliance [15.7m v 8.5m]
- FSR: >210% non-compliance [0.84 v 0.40]

- Wall Height: >191% non-compliance [15.3m v 8.0m]
- Number of Storeys: >250% non-compliance [5 v 2]
- Side Setback: >1000% non-compliance [Level 4 & 5, 300mm v 3000mm]

The proposed non-compliant development causes direct amenity loss:

- Privacy
- View Loss from Public Domain and Neighbours
- Overshadowing to neighbours
- Poor Streetscape
- Visual Bulk
- Poor privacy to proposed Pool
- Unreasonable General Impact
- Unreasonable Height, Bulk & Scale
- Structural Adequacy, Excavation Work, Retaining Wall
- Noise/Vibration

There are multiple outstanding matters as far as I can assess:

- The Applicant has not provided a Survey to accord with the MLEP & MDCP submission requirements, and NBC DA Lodgement Requirements 19/20 controls. The ground level [existing] of the site in 1999 as defined by the MLEP has not been provided by the Applicant by way of survey. The Applicant has once again presented DA drawings based upon survey levels that do not correspond with the submitted Registered Surveyors drawing. There is no justification that the 'Ground Levels Existing' that are presented are indeed factual.
- Structural Adequacy of the works completed remain unresolved, with no further Structural Reports submitted to deal with this matter.
- Insufficient drawings are posted on NBC website to fully describe the external works.
- Shadow diagrams have not been submitted based upon the existing dwelling pre the 1999 consent. Currently the overshadowing drawings simply show the 'creep' of additional shadows over past DAs. This is not in accordance with Council controls.
- Excavation and Demolition drawings have still not been submitted
- Stormwater Plans showing all sub surface drainage, ag pipes, and surface drainage, with onsite detention, including all work built to date, contrary to NBC DA Lodgement Requirements 19/20 controls.

- Height Poles have not been erected to show the proposed development that exceeds multiple envelope controls.
- Landscape Plans are not available on NBC website
- Plans, Sections, and Elevation are not sufficiently dimensioned to define the proposed development
- Crossover Plan has not been submitted contrary to NBC DA Lodgement Requirements 19/20 controls.
- Construction traffic plans have not been submitted
- No Tenacity Assessment has been submitted
- No Rose Bay Marina Assessment has been submitted

Council may consider in light of the absence of these matters, and in light of the substantial non-compliance to LEP and DCP controls, to **REFUSE** the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.

I refer Council to the **Byron Shire Businesses for the Future Inc v Byron Council [the Club Med Case]**, showing that absence of relevant detail invalidates the very decision-making process.

I ask Council to ensure that any consent ensures, that as a minimum, the proposed development accord with the following:

Massing Envelope Reductions

1. The proposed building at Level 5 & Roof is not to extend beyond the previous approval. The garage is to be deleted, and the consented carport design be reinstated.
2. The proposed building and any associated deck at Level 4 is not to extend beyond the alignment of #97 Gurney to avoid view loss, privacy, overshadowing and visual bulk
3. The Roof over Level 3, at Level 4, to the west of the alignment of #97 Gurney, is to be non-trafficable, so as to avoid view loss, direct privacy loss, overshadowing and visual bulk to #97 Gurney.
4. The Northern Elevation at all levels is to delete all windows facing north towards #97 Gurney Private Open Space and #97 Principal Living Decks and Living Rooms, or have sills raised to 1.7m in height with obscured fixed glazing. All Decks facing north

towards #97 Gurney are to be protected by full height and full width fixed privacy screens to avoid poor privacy outcomes

I also ask that Council adequately condition the following:

1. Stormwater Disposal
2. Geotechnical Report Recommendations incorporated within design and structural engineering plans
3. Boundary Identification Survey
4. Structural Adequacy & Excavation work
5. Soil & Water Management Program
6. Compliance with Standards
7. Tree protection
8. Road Reserve
9. Removing, Handling and Disposing of Asbestos
10. Survey Certificate
11. Protection of Adjoining Property: Excavation
12. Landscape Completion Certificate
13. Stormwater Disposal
14. Certification of Structures
15. Geotechnical Certification prior to Occupational Certificate
16. Dilapidation Survey of Neighbours Property prior to Construction Certificate
17. Post Construction Dilapidation Survey of Neighbours Property prior to Occupational Certificate
18. Swimming Pool Requirements
19. Noise Nuisance controls from plant and occupants
20. Lighting Nuisance from internal and external light sources
21. Vibration to be below 2.5mm/sec on boundary
22. No excavation within 1m of boundary
23. Retaining wall structures near boundary to be fully designed and certified by structural engineer
24. Glare and Reflection

I am also concerned that works are proceeding on site that do not have consent.

I am greatly concerned that the land, west of the proposed pool line, was previously native bushland and the oak trees along the water's edge. This land has been now cleared in the last 6 or so weeks, with what appears to be no prior approval from Council.

The site is now barren, and any native wildlife has been displaced.

After a wholly unhelpful submission of amended plans, that resolves not one single item of my amenity concerns, I now ask for Council to **REFUSE** this DA for the reasons stated in my 71-page Written Submission dated 1 January 2020.

In consideration of the proposal and the merit consideration of the development, I contend that the proposals are considered to be:

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

The design of the proposals and the poor amenity outcomes render the proposal inappropriate and unsuitable for the site and the location.

The Applicant has not adequately addressed neighbour's amenity loss issues.

The built form of the development does not provide an outcome that is compatible with the controls.

The bulk and scale of the building is substantially beyond controls, and is not consistent with a site responsive design on sloping land on the low side of the street.

The design is not consistent with the desired future character for the locality and exhibits non-compliances with building height controls, wall heights, number of storey, FSR, front and side setback controls. These non-compliances lead directly to neighbour's amenity loss.

The proposed development does not satisfy the appropriate controls. All processes and assessments have not been satisfactorily addressed.

I ask Council, that unless the Applicant addresses these matters completely within a further Amended Plan resubmission, and completes amendments as listed above, then Council must **REFUSE** Development Consent to the Development Application for the reasons outlined as follows:

Section 4.15[1] [a][i] Provisions of any Environmental Planning Instrument, the development is inconsistent with LEP 2014

Section 4.15[1] [a][iii] Provisions of any DCP, the development is inconsistent with DCP,

Section 4.15[1] [b][i] Likely Impacts of the development.

The proposal will have a detrimental impact on both the natural and built environments pursuant to Section 4.15(1)(b)(i) of the *Environmental Planning and Assessment Act 1979*.

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

The site is not suitable for the proposal pursuant to Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*.

The proposal is not in the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.

For the reasons set out above the Development Application should be refused by Council.

I request these matters be closely considered in the assessment of the proposed development.

I expect that on such a large site, the Applicant should be charged by Council to deliver a totally compliant scheme to LEP and DCP controls.

There is no excuse that neighbours amenity must suffer due to non-compliance to the controls. All I seek is a fully compliant development to Council's controls, and for the envelope controls to be drawn accurately based upon the 1999 boundary survey levels and other survey marks across the site.

Council has made it very clear to the Applicant, pre submission, that neighbours amenity loss should be properly considered. Unfortunately, this did not take place in the site analysis, and did not inform the design process.

The Applicant did not visit my property to assess my amenity, nor any of his Advisors.

The SEE has stated in numerous sections of the document that amenity has been considered: unfortunately, the reverse is true, and no one from the Applicant or his Advisors has even bothered to set foot on my property to assess the issues.

An adjustment to the proposed development, as identified within my proposed Massing Envelope Reductions within this Submission, would generally resolve my amenity loss. There might be ongoing amenity loss after these amendments, but as long as my main amenity issues are satisfactorily resolved to controls, I would consider that outcome as a more reasonable outcome under the controls.

I do hope Council will appreciate that not only am I presenting the problems, but I am also presenting the solutions to those problems.

I am being more than reasonable and helpful to try to reach a compromised solution that resolves my amenity, but allows the Applicant to achieve most of what he wishes to gain from the development, all in a reasonable way.

It is very unfortunate that the Applicant chose not to have any discussions with me prior to submission, to avoid this objection. Council strongly recommends for pre-consultation with neighbours should occur, but on this occasion this was not the case, and I am left to respond as best that I can in the circumstances.

I do hope the Applicant submits a further set of Amended Plans to resolve these matters, erects Height Poles after the amended plan submission on the reduced envelope, and other matters identified within this Submission.

If a further resubmission of Amended Plans does not occur to resolve these matters, I ask Council to **REFUSE** this DA.

Yours faithfully,

Ms Meredith Symons
97 Gurney Cr.,
Seaforth NSW 2092

Appendix: 1 January 2020 Written Submission

Ms Meredith Symons
97 Gurney Cr.,
Seaforth

1 January 2020

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cc. The Commissioner, NSWRFSS: Section 79BA Referral [see page 43-46]

Jo-Anne.Robson@rfs.nsw.gov.au

cc. Andrew Caponas NBC Building Inspector [see page 8-11]

cc. Anne-Marie Young NBC Planning Officer

RE:
DA 209/1463 & BC 2019/0284
Address: 95 Gurney Cr., Seaforth

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission - Symons

Dear Sir,

We write to submit our Written Submission to object to the above DA and BC.

We wish NBC to post this objection against **DA 209/1463 & BC 2019/0284**.

This Written Submission will address the following matters:

1. Introduction
2. Site Description
3. Previous Development Applications and Consent
4. Proposed Development
5. Misleading Information & Outstanding information

6. Statutory Planning Framework:

Non-Compliance to Controls

- Building Height
- Setbacks
- Floor Space Ratio
- Landscaping
- Pool
- Sloping Sites
- Bushfire
- Engineering issues

Residential Amenity Impacts

- Privacy
- View Loss
- Parking
- Streetscape
- Overshadowing
- Landscaping
- Noise/Vibration
- Pool
- General Impact
- Height, Bulk & Scale
- Structural Adequacy, Excavation Work, Retaining Wall
- Sub-Soil Seepage
- On-Site Stormwater Management Details
- Stormwater Disposal
- Property Boundary Levels
- Works in close proximity to the allotment boundary
- Plant
- Lighting
- Bushfire

7. Statement of Environment Effects Rebuttal

8. Clause 4.6 Rebuttal

9. NSW LEC Planning Principles

10. Proposed Conditions of Consent to any Approval

- Massing Envelope Reductions

- Privacy Measures
- Landscaping
- Pool
- Structural Adequacy, Excavation Work, Retaining Wall
- Sub-Soil Seepage
- On-Site Storm water Management Details
- Stormwater Disposal
- Property Boundary Levels
- Works in close proximity to the allotment boundary
- Vibration
- Plant
- Lighting
- Bushfire

11. Conclusion

Introduction

The proposed development is considered to be inconsistent with the outcomes and objectives of the relevant legislation, plans and policies.

The DA scheme submitted requires to be amended, and we ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, then we ask Council to either heavily condition any approval, or simply issue a refusal.

In this Written Submission we list the conditions that we wish Council to consider in any approval.

Our main concerns are:

- Privacy
- View Loss
- Parking
- Streetscape
- Overshadowing
- Landscaping
- Noise/Vibration
- Pool
- General Impact
- Height, Bulk & Scale
- Structural Adequacy, Excavation Work, Retaining Wall
- Sub-Soil Seepage
- On-Site Stormwater Management Details
- Stormwater Disposal
- Property Boundary Levels
- Works in close proximity to the allotment boundary
- Plant
- Lighting
- Bushfire

Prior to the submission of the DA by the Applicant, the Applicant did not have any prior detailed consultation with us.

The Applicant briefly showed the plans, in passing, a few days before the DA was submitted. We had only a brief glance of the drawings that we were shown, and we expressed our concern.

We would have been happy to discuss our concerns with the Applicant prior to submission, should they have been open to discuss the DA in a more detailed manner. Unfortunately the Applicant did not address the matter with us.

Unfortunately the SEE:

- Fails to address the absence of a 1999 Survey with the previous dwelling and original site contours clearly articulated to NBC Submission standards;
- Fails to undertake a view loss from the street and from neighbours windows to planning controls from the proposed non-compliant development;
- Fails to address a privacy review of direct sight lines between proposed windows and decks to neighbours habitable rooms and private open space decks from the proposed non-compliant development
- Fails to identify unreasonable overshadowing between the prior dwelling on the subject site pre 1999 to the proposed non-compliant development
- Misrepresents issues in relation to description of the Site, Previous Approvals, Proposed Development, Development Controls in Building Height, under stating FSR, incorrectly assessing Overshadowing, Privacy, View Loss and Parking.

The SEE ultimately fails to:

- provide justification for any areas of non-compliance with relevant objectives, standards or controls,
- discuss any likely impacts and identify any mitigation measures to reduce those impacts.

This is all contrary to NBC Submission standards.

The Clause 4.6 is similarly flawed.

In accordance with the SEE, the non-compliance to residential controls represents considerable overdevelopment:

- **Building Height: >145% non-compliance [12.4m v 8.5m]**
- **Wall Height: >150% non-compliance [12.0m v 8.0m]**
- **Number of Storeys: >250% non-compliance [5 v 2]**
- **Side Setback: >1000% non-compliance [multiple non compliance particular Level 4 & 5, eg. 300mm v 3000mm]**
- **FSR: >210% non-compliance [0.84 v 0.40]**

No evidence has been submitted to support the stated building height and wall height above.

Considering the survey submitted, the substantial overdevelopment from ground level [existing] shown on the DA Survey [Hill & Blume 2019], would represent:

- **Building Height: >185% non-compliance [15.7m v 8.5m]**
- **Wall Height: >191% non-compliance [15.3m v 8.0m]**

Very little of the building envelope is in compliance, and most of the envelope is well above 8.5m, with non-conforming side and front setbacks.

The subject site is significantly different than other sites in the street, in that to the south of the subject site sits a residence that is built generally to MLEP & MDCP controls.

The dwelling on #93 is not underdeveloped, as it complies with the main controls of building height and FSR, maximising both 8.5m building height and 0.40 FSR. The #93 Ridge is shown at RL 23.02 @ c.8.5m building height.

The particular issue is that the Applicant is proposing a wildly non-compliant development immediately to the north of a generally compliant development.

Every DA must be considered on its own merits, and every site has its own unique and distinct issues.

The Applicant has stated in simple terms:

“other sites in other areas exceed controls, so why shouldn’t we’.

The Applicant has failed to address the poor amenity outcomes of privacy, view loss, and overshadowing from the non-compliant development positioned next to a compliant development to the south.

The Applicant has under forecast the amenity losses, and has used false and misleading information contrary to NBC Lodgement requirements, in an attempt to justify the massive overdevelopment on the subject site.

The extent of the changes to the original DA warrant the DA to be considered a New Build DA, and not an alteration and addition. We refer to our comments referring to **LEC PP Coorey** later in this objection.

This letter of objection will detail our concerns, and our amenity losses that have arisen as a direct result of the non-compliance to controls. The SEE States:

“The development has no significant adverse environmental effects and no persons would be prejudiced by its approval.”

We strongly disagree with the SEE’s contention.

Site Description

The site is described within the Applicant's SEE.

We bring to Council attention:

The ground level [existing] of the site as defined by the MLEP has not been substantiated by the Applicant by way of survey.

The original 1999 approved DA must have had a Survey that defines the existing ground levels, along with the dwelling that existed on the subject site.

It is imperative that Council ensures that this Survey is submitted as part of the DA, as without that survey, the DA is incomplete to NBC Submissions controls.

All analysis on natural ground levels, maximum building height planes, and other level analysis, including overshadowing diagrams is heavily compromised, and could easily lead to false and misleading assumptions.

Without any other evidence provided by the Applicant to define ground level [existing], Council can only consider the survey submitted by the Applicant in this DA. [Hill & Blume 2019]

The SEE fails to state that the existing dwelling to the south is predominantly compliant to envelope and FSR controls.

The SEE also fails to state that the redevelopment to the north was an alteration and addition to an existing dwelling, compromising of an existing garaged residence facing the street.

The SEE fails to identify all the other open carports to Gurney Crescent. No 85, 87, 89, 93 & 95 Gurney all have open carports. Five of the six [83%] dwellings between 85 Gurney and the subject site have open carports. It is the dominant parking arrangement along the street close to the subject site.

Previous Development Applications and Consent

The Previous Development Applications and Consent is described within the Applicant's SEE.

We bring to Council attention:

The SEE states:

The site consists of 4 storey structure plus a carport on the street level with parapet walls. As this was not originally approved, subsequent S96 approval drawings and documents indicate that this has been accepted. In addition the structural adequacy, stability of the site and excavation and the siting of the building to the boundaries have all been inspected and certified by the respective engineers and surveyors in 2010 which was acknowledged and approved by the council in 2011. Boundary fence and retaining wall along neighbour's boundary were inspected and certified as in stable condition.

We are greatly concerned that the structural adequacy of the existing structure was considered 10 years ago.

The report submitted by Crozier Report [November 2019] in this application simply considers the visual inspection of these works from a geotechnical point of view.

The Report is a Geotechnical Assessment not a Structural Engineering Assessment of Structural Adequacy.

The drawings considered by the Crozier Report were simply the incomplete CC drawings by Loupis [undated], the Alternate Retaining Wall base for rock by Mitsopoulos [2000], and a Geotechnical Report by Dickson [2008].

No consideration of the Gergich [undated] shotcrete drawings submitted under the 2011 consent has been considered by Crozier.

As far as we understand the Applicant has never submitted a Structural Engineering Report that clearly sets out all structural engineering drawings, calculations, and inspections against the construction work carried out on the subject site.

What is very concerning within the Crozier Report is the structural defects now apparent within the retained structure.

We have numerous structural failures of multi-storey structures across Sydney. Council must not take this situation lightly, nor simply rely upon documents written 10 or 20 years ago, when obvious structural defects are apparent in the structure to be retained.

Vertical cracks are noted on page 8 of the Crozier Report.

Of concern Crozier states in relation to the cracks:

“...however no evidence indicated they were due to a geotechnical issue”

This potentially suggests that these cracks are either structural design errors or workmanship errors, or potentially both.

In Photograph 8 the vertical crack appears to be directly under a large steel section, giving the possibility that the loads being emitted exceed the wall strength, or the structure is moving or unstable.

In photograph 9 the vertical crack appears to be near another large beam section, giving the possibility that the loads being emitted exceed the wall strength, or the structure is moving or unstable.

In photograph 10 more cracks around load bearing block work are shown.

To be blunt, and to paraphrase, the Crozier Report simply suggests *“well it looks OK from a geotech’ point of view, but there are these numerous structural cracks”*.

There is no reference in the Crozier Report to structural drawing, calculation, or confirmation of inspection of the works whilst these works are under construction.

This is not Crozier’s fault, but the fault of the Applicant.

The Applicant should have submitted a detailed Structural Engineering Report containing structural drawings, calculations, inspections reports, and all necessary information to give the Council, Neighbours, and indeed themselves, total confidence that what is built will not collapse from previous poor design, poor workmanship, poor inspection processes, or a combination of two or more.

This Applicant is taking an enormous risk relying solely on the visual appearance of the works in 2019, and the only Report that is offered is the Crozier Report.

We ask Council to insist that the Applicant submit a detailed Structural Engineering Report, detailing structural drawings and calculations identifying that what is built is structurally adequate, and complies with all relevant building codes. It cannot be a simple visual inspection.

This detailed structural analysis and review must occur for all retaining wall structures, and the complete structural frame that is currently constructed and intended to be retained.

The Report should address why these uncontrolled cracks are appearing under major loading bearing structural beams.

We also ask Council to insist that the Applicant submit detail subsurface and surface drainage drawings to identify that what is built is hydraulically adequate, and complies with all relevant building codes.

These works are over 20 years old, and an internal survey of all pipework is necessary to ensure adequacy, as after 20 years the pipes may well be past their use by date or blocked.

The Applicant must furnish the structural engineering drawings, and confirmation of a thorough inspection process of these works during construction by a registered structural engineer.

Council must insist on other structural measures, other than a pure visual inspection, to ensure structural adequacy.

- Who designed the works and who inspected the construction of these works, who certified them?
- What are the structural reasons of the defects with the multiple cracks under structural supports referred to with the Crozier Report? ?
- How does the Applicant or Council know what the design loads of the structure are built to?
- Does the Applicant or Council know what floor slabs are designed to: is it a roof load, a deck load, or an internal living load?
- Does the Applicant or Council know the structural column or load bearing wall structural details? Where they designed correctly, were they inspected by an engineer during the building work process, were they certified correctly at the time of the construction?
- How does the Applicant or Council know the constructional details of all retaining walls? These retaining walls would give support to the public highway, so it is vitally important that Council can assure the public that the road is safe from collapse.
- Are the boundary retaining walls constructed to ensure structural stability of neighbouring dwellings? Are mechanical anchors needed?
- How does the Applicant or Council know what true condition the structures are after 20 years exposed to salt environments?
- What latent defects exist in steelwork exposed to the elements for 20 years? Does the Applicant or Council actual know?
- Is there sufficient sub soil drainage behind the massive retaining walls, is the Ag Pipe system functioning, do they work, are they blocked? Is there a hydrostatic problem? Does the Applicant or Council actual know?
- Is there sufficient above ground drainage, are the stormwater pipes adequate, have they deteriorated? Does the Applicant or Council actual know?
- Has a 'Peer Review' been carried out to reassess any of these matters?

These are but a few of the unknowns!

A Structural/Hydraulic Engineer would provide a substantially greater list.

The structural concerns are many, and to date we have not seen any document or report, other than visual inspection reports, that give any grounds of comfort.

Council should be extremely concerned.

The Applicant should be extremely concerned. The Applicant would need to fully disclose the list of structural unknowns to any future Buyer.

If Council does not follow these measures to obtain a full Structural Report in 2020 to assess these issues, then If the dwelling structurally fails and causes damage to our property, or to the roadway, we will have to look to Council to remedy our loss.

If a loss of life occurs, unfortunately a much more serious outcome would emerge.

We raise this as our duty of care.

We see no reason why Council should not require the Applicant after 20 years since construction begun, to furnish this certainty.

If the Applicant cannot provide such Reports, then the structures built without these structural certainties should simply be demolished and rebuilt.

Proposed Development

The proposed development is described within the Applicant's SEE:

We bring to Council attention to a number of matters raised within the SEE:

In respect to the Building Certificate [Unauthorized Building Works], as stated above, we are very concerned on the structural adequacy of the retaining walls and the built structure on the site.

Poor attention has been given to the topography and environmental value of the land with the dwelling failing to step down the steep slope.

The design and built form outcome is not responsive to context and unacceptable built form and poor amenity outcomes.

When assessed against the prescribed outcomes of the various built form controls the overall outcome presents poor performance of the proposed development.

We are concerned that no proper assessment has been carried out against the prior original approval and the 2011 approval to assess the structural adequacy, the additional amenity loss particularly of overshadowing, privacy and view loss.

We are concerned that no demolition or excavation drawing has been prepared, when clearly both are intended to occur, as stated within the SEE.

It is bewildering that Council could register this DA, without ensuring basic information, that is of structural importance, is not submitted by the Applicant.

The list of outstanding and misleading information is simply overwhelming.

We are uncertain as to the extent of the concrete frame demolition, or of the future excavation.

The SEE states that the Level 5 setback is designed to:

".... prevent shadow impact and privacy issue with the neighbours. "

We strongly reject this statement. We refer to these matters later, as the overshadowing drawings are false and misleading. Level 4, 5 & the extended Roof will create devastating solar loss from non-compliant building envelope.

The SEE fails to mention that the proposed development substantially extends Level 5 and the roof above, well beyond the 8.5m building height control, and presenting non-compliant

side setbacks. The proposals also totally enclose Level 5 and the roof above to the streetscape, totally obscuring views from the street to the harbour. The proposed development also presents non-compliant development into the solar access angles to #93 Gurney. Privacy is affected as windows have not been offset to neighbours windows, decks and private open spaces.

“.....the master bedroom’s southern wall is completely enclosed with no windows facing 97 Gurney Crescent. As this was raised in the past as a concern of privacy, the main window opening is located at the rear side(west) of the room providing the best view of the middle harbour.”

This statement is incorrect as there is a large window proposed to the north that causes significant privacy issues to #97 Gurney.

The SEE fails to mention that the proposed development substantially extends level 4, well beyond the 8.5m building height control, and presenting non-compliant side setbacks. The proposed development also obscures views from the street. The proposed development also presents non-compliant development into the solar access angles to #93 Gurney causing obvious additional solar loss over what has already been lost by the approval of the 2011 envelope.

This is an additional amenity loss by ‘creep’.

The first original 1999 Consent DA caused harm to our amenity, the 2011 increased the building envelope, and this DA attempts to take one more devastating swipe, without any consideration to the totality of the cumulative amenity loss.

The SEE fails to mention that at Level 3, Level 2 and Level 1 that windows and side details have altered, creating significant privacy issues. The original 1999 and 2011 Consent presented a very vague idea of what was being proposed facing the neighbour’s properties. Considering the lapse of time and LEC PP Coorey, it is essential now to ensure that MLEP & MDCP Controls on amenity loss are properly resolved.

Misleading Information & Outstanding information

1. Missing Drawings

The NBC website does not contain DA drawings;

- A101
- A102
- A103
- A104
- A105
- A106
- A221
- A222
- SK07-12
- Survey Drawings have not loaded correctly onto the website, and appear not to NBC standards

There are other drawings that are incorrect or simply missing. These are urgently required to be amended and reposted on NBC website.

2. Amended Shadow Diagrams with plans and elevations

Amended overshadowing drawings do not accord with NBC DA Lodgement Requirements 19/20 controls.

Drawings should have been based upon 1999 survey showing the existing dwelling pre 1999 Consent. Shadows to be cast of the proposed development should include all roof structures and eaves over proposed decks.

Elevations of north and east elevations of #93 should have been prepared to show additional shadow cast at 30-minute intervals.

Plan of east facing open space of #93, with hourly study on available sunlight must be prepared.

All these drawings must be uploaded to NBC website, as without them, it is impossible to provide a complete analysis for this objection.

Certification of the Shadow Diagrams is not in accordance with Council controls.

The Applicant has not provided Shadow Diagrams of the existing residence pre demolition of the dwelling on the subject site from the 1999 Consent, and has not shown the overshadowing due to the non-compliant envelope now proposed.

The Applicant is showing the shadow loss between an existing structural frame in 2011 and the 2019 proposed non-compliant envelope.

This presentation is obviously aimed to provide a misleading representation to Council and to Neighbours.

The Applicant has failed to show the compliance to controls on all affected north and east elevation windows of #93 Gurney and private open space to the east of #93 Gurney.

Half Hourly shadow diagrams between the prior dwelling on the subject site, and the proposed development must be submitted.

The difference between a compliant envelope [8.5m building height, with minimum 3m side setback] and the proposed non-compliant envelope has not been assessed, and this also needs to be completed.

Currently the DA submission does not accord with Council policy and standard.

We are very concerned that the Overshadowing drawings look to be false and misleading.

Shadows cast at Winter Noon, generally appear to be vertical on the plan, running north/south. If Council looks at the Winter Noon Shadow drawing on SK15, it clearly shows the large additional new roof projection has not been included within the shadows cast. If it had been included the outcome would be considerable more impact for the wall and the roof of the neighbouring dwelling.

All other shadows drawings have not included shadows from the projecting roof structures, eaves and canopies at every level.

Equinox shadows are equally misrepresented.

On the shadow drawings submitted, the existing window on the northern elevation of #93 at the upper eastern end is significantly affected. The overshadowing drawings show this window receives no sun from 9am to Noon, and therefore it is expected not to receive sufficient sunlight to accord controls. This shadow is under forecast as mentioned above, so the situation will even be worse.

On the drawings submitted it is clear that due to the existing shadow cast by the existing carport on #93, coupled with the new shadow from the proposed development, no sun will penetrate the open space to the east from 9am through to noon and into the afternoon. The eastern private open space will receive next to no sun, compared with a situation pre 1999 approval, where sun was plentiful.

The east facing windows to #93 will equally be affected.

The roof lights on #93 have not been surveyed or considered in this analysis. Solar access

looks to be removed from these roof lights.

Council must obtain amended and corrected overshadowing drawings that show the complete roof structures proposed.

Council must also obtain, at ½ hour intervals, elevation drawings of the north and east of #93, with shadows shown with the former dwelling shown pre the 1999 Consent and compare that with this 2019 proposed non-compliant DA envelope.

3. Excavation and Demolition Drawings

Excavation and demolition is referred to within the SEE, but no drawings exist to define the scope contrary to NBC DA Lodgement Requirements 19/20 controls.

4. Stormwater Plans

Plans showing all sub surface drainage, ag pipes, and surface drainage, with on site detention, including all work built to date, contrary to NBC DA Lodgement Requirements 19/20 controls.

5. Structural Engineering Plans

Detailed Engineering Plans showing all structure to be maintained, with plan, section, and elevation detail. A Structural Engineering Report to give absolute certainty to the Structural Adequacy with structural drawings and calculations.

6. Driveway Plans

Crossover Plans to NBC standard, contrary to NBC DA Lodgement Requirements 19/20 controls.

7. Missing Reports

The NBC website does not contain DA Reports;

- Structural Engineering Report. Structural Adequacy Report with structural drawings and calculations on retained structures.
- Construction Traffic: how is construction traffic to be managed, where are building materials stored
- Engineering Plans of Crossover
- Stormwater Plans & Report
- Flora & Fauna
- Cost Summary

All these Reports require to be uploaded to NBC website, as without them, it is impossible to provide a complete analysis for this objection. This is contrary to NBC DA Lodgement Requirements 19/20 controls.

8. Survey Plans: Existing Ground Levels

We bring to the attention of Council that the Applicant has not provided a Survey to accord with the MLEP & MDCP submission requirements, and NBC DA Lodgement Requirements 19/20 controls.

The ground level [existing] of the site in 1999 as defined by the MLEP has not been provided by the Applicant by way of survey.

The original 1999 Consent must have had a Survey that defines the existing ground levels, along with the dwelling that existed on the subject site.

It is imperative that Council ensures that this 1999 Survey is submitted as part of the DA, as without that survey, the DA is incomplete to NBC DA Lodgement Requirements 19/20 controls.

All analysis on natural ground levels, maximum building height planes, and other level analysis, including overshadowing diagrams is heavily compromised, and could easily lead to false and misleading assumptions.

We ask that Council insist that the Applicant positions, on each Elevation and Section, the precise Existing Ground Levels from the 1999 Consent Applicant's Survey and to adjust the maximum height envelope accordingly. These drawings must be submitted by the Applicant as soon as possible.

Council's Lodgement requirements state: *"All plans/documents must be consistent with any other plan/document presented as part of your application."*

Without any evidence provided by the Applicant to the contrary the ground level [existing] must be taken from the survey submitted [Hill & Blume: 14 August 2019]

9. Height Poles

We ask Council to request that the Applicant position 'Height Poles' to define the non-compliant building height and building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor. [Hill & Blume]

Heights and dimensions of the proposed development from side boundaries will need to be stated on drawings, prior to the surveyors work.

The absence of any original Survey gives us great concern.

We require these height poles to determine view loss, privacy, solar access, visual bulk, and height/bulk/scale issues.

10. Site Analysis

The Site Analysis Plan does not refer to the direct line of sight privacy issues to neighbouring sites, nor to the solar access to #93 Gurney, nor to the view loss from the street.

No analysis has been carried out to identify the particular concerns, contrary to NBC DA Lodgement Requirements 19/20.

11. Site Plan

A Site Plan has been submitted however the Site Plan is missing the very important details required under NBC DA Lodgement Requirements 19/20.

Currently the limited dimensions offered will not allow NBC to enforce the built envelope on this development.

There are no dimensions to boundaries, corners of boundaries, setbacks, and many leading edges are not defined by dimension or level.

This will leave the Applicant with an 'open season' on what he actually will build.

NBC DA Lodgement Requirements 19/20 control are very clear. This Applicant has chosen to ignore them:

- boundary locations and all site measurements (length, width and area, both existing and proposed),
- dimensioned distances of the new and existing works in relation to site boundaries,
- any minimum setbacks/building lines (shown dotted/dashed) as prescribed by the relevant plan or policy,
- location and levels of all buildings/structures on adjoining land (including any openings or decks/ balconies facing the site),

- location and dimensions of all existing and/or proposed impervious areas/hard surfaces (including driveways, decks, paved areas etc.),
- location of any existing or proposed swimming pool,
- location of any existing and/or proposed fences and landscaping features (including retaining walls, paths etc.),
- vegetation and natural features (including canopy trees, rock outcrops etc.),
- location and capacity of any existing and/or proposed rainwater tanks,
- location of existing and/or proposed car parking, pedestrian and vehicle access (indicating gradients),
- location of existing and/or proposed stormwater infrastructure and/or easements (Council and private), both within the site and the adjacent road reserve,
- location of all existing and/or proposed utilities, including any associated easements, both within the site and the adjacent road reserve,
- location of any utility manholes and power poles, street trees, driveway crossovers and bus stops in the adjacent road reserve,
- location of any existing and/or proposed flue/chimney/exhaust and dimensioned distance from the nearest openings of adjoining buildings,
- contours at 1m intervals,
- north point (true north),
- width of road reserve.

12. Floor Plans

Floor plans are not sufficiently dimensioned to accurately dimension the proposed works contrary to NBC DA Lodgement Requirements 19/20 controls:

- boundary locations and all site measurements,
- dimensioned distances of the new works in relation to site boundaries,
- any minimum setbacks/building lines (shown dotted) as prescribed by the relevant plan or policy,
- location and levels of all buildings/structures on adjoining land (including any openings or decks/ balconies facing the site),

- floor levels and steps in floor levels (RLs)(metres AHD),
- proposed room names, areas and dimensions,
- locations and size of windows and doors,
- wall structure type and thickness,
- location of plumbing fixtures,
- existing floor plan approved in 2011

13. Elevations & Sections

Elevations & Sections are not sufficiently dimensioned to accurately dimension the proposed works contrary to NBC DA Lodgement Requirements 19/20 controls:

- proposed levels (RLs) (metres AHD) for all ridge lines, ceilings, floors and ground,
- existing ground levels, including street levels (metres AHD),
- outline of existing buildings/development on site (shown dotted),
- the maximum applicable building height,
- the side boundary building envelope (on elevations),
- window size and location,
- any chimneys, flues, exhausts etc., including levels (RLs)(metres AHD) at their highest point,
- location of all buildings/structures on adjoining land,
- roof pitch and eave width,
- materials and finishes,
- room names/uses (sections only).

14. Bush Regeneration Landscape Plan

The applicant is to submit a Bush Regeneration Landscape Plan for all works west of the proposed pool.

Statutory Planning Framework

The statutory planning framework is generally described within the Applicant's SEE.

We do not intend to repeat every clause from Council's LEP & DCP, but wish to emphasize the main non-compliances to the planning controls, and identify the amenity losses that are directly attributable to that non-compliance.

As NSW LEC Planning Principles state:

How much of the impact is due to the non-complying elements of the proposal?

Are the impacts consistent with impacts that may be reasonably expected under the controls?

This Written Statement will attempt to address the impacts due to non-complying elements within the proposal, and identify if the impacts are consistent with impacts that may be reasonably expected under the controls.

As the proposed development is a significant overdevelopment to Council controls, particularly to all major control measures of Building Height, Wall Height, Number of Stories, Front Setback, Side Setback, and FSR, the impacts are extensive and our position is that the impacts are not consistent with impacts that may be reasonably expected under the controls.

Non-Compliance to Controls

Building Height

The general principles of Manly DCP Clause 4.1.2 Height of Buildings has not been met, principally [a] :

- a) *LEP Zones where numeric height controls in this DCP apply*
Height controls under paragraph 4.1.2 of this plan apply to development in LEP Zones R1, R2, R3, E3 and E4.

The objectives of MLEP Clause 4.3 Height of Buildings has not been met:

(1) The objectives of this clause are as follows:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
(b) to control the bulk and scale of buildings,
(c) to minimise disruption to the following:
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),
(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.
(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Commentary:

The non-compliant building height to 12.4m, as submitted by the Applicant, significantly impacts street views and fails to provide adequate solar access to adjoining owners windows and roof lights to habitable rooms, and private open space to the east of the dwelling.

The excessive height with excessive elevated windows having direct sight lines into neighbours windows adds to privacy concerns.

The dwelling to the south accords with FSR and maximum building height, so cannot be considered as under developed and vulnerable.

Unfortunately the Applicant has not submitted the 1999 Survey to justify the ground level [existing] levels. The Applicant's suggestion that the building is 12.4m high is purely guesswork.

The MLEP states within dictionary:

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

building height (or height of building) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

Without any other evidence, the ground level [existing] can only be assessed against the survey submitted in this DA. [Hill & Blume 2019]

The ground level [existing] along the southern boundary is shown at RL 14.19 in the alignment 12.5m from the SE corner of the site.

The ground level [existing] along the northern boundary is shown at RL 14.31 in the alignment 9.5m from the NE corner of the site.

The Building Height of the proposed development would therefore be assessed at **well over 15.7 m** from ground level [existing] from the DA Survey. [29.95 – 14.19 = 15.76m]

The proposed development allows direct sight lines from proposed windows directly into habitable rooms and private open space without any screening.

The proposed development obscures harbour views from the public domain street, and side views across side boundaries.

The proposed development takes valuable solar access to habitable rooms and private open space, contrary to planning controls.

Wall Height

MDCP states:

“Within the LEP Height of Buildings development standard, the maximum external wall height is calculated based on the slope of the land under the proposed wall.”

The proposed Wall Height is 12.0m according to the SEE, and this greatly exceeds to control at 8m. [8m on land steeper than 1:4]

This non-compliance leads directly to amenity loss of privacy, solar loss, and view loss.

Without any other evidence, the ground level [existing] can only be assessed against the survey submitted.

The Wall Height of the proposed development would therefore be assessed at well over **15.4m**.

Number of Storeys

The number of storeys is 5, when the control is 2.

The general principles of Manly DCP Clause 4.1.2.2 Number of Storeys has not been met, principally [a] and [c]:

4.1.2.2 Number of Storeys

- a) *Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.*
- c) *Variation to the maximum number of storeys may be considered:*
 - i) *where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and*
 - ii) *to allow an additional understorey where that storey satisfies the meaning of basements in the LEP.*

Commentary:

The introduction of two additional storey above the existing three storey approved envelope is totally unreasonable.

The variation over two storey does not meet the requirement that the:

“the development must still fully comply with other numerical height controls”.

FSR, Building Height and Wall Height are substantially non-compliant.

This non-compliance leads directly to amenity loss of privacy, solar loss, and view loss.

The proposed development allows direct sight lines from proposed windows directly into habitable rooms and private open space without any screening.

The proposed development obscures harbour views from the public domain street, and side views across side boundaries.

The proposed development takes valuable solar access to habitable rooms and private open space, contrary to planning controls.

Setbacks

Relevant DCP objectives have not been met in relation to this part include:

Objective 1)

To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Objective 2)

To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

See also objectives at paragraph 3.4 Amenity.

Note: *In addition to the setbacks required in this plan, residential development subject to the Residential Apartment Code is subject to additional setback requirements for adequate building separation to achieve reasonable levels of privacy e.g. 12m separation between habitable rooms and balconies between buildings up to 4 storeys either on the same site or across a site boundary to a neighbouring building.*

Commentary:

Privacy, view sharing, overshadowing and streetscape have not been considered in presenting non-compliant setbacks.

Side Setback

Relevant DCP objectives have not been met in relation to this part include:

Clause 4.1.4.2 Side setbacks

Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building

Projections into the side setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, and the like, if it can demonstrate there will be no adverse impact on adjoining properties including loss of privacy from a deck or balcony.

All new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries;

Side setbacks must provide sufficient access to the side of properties to allow for property maintenance, planting of vegetation and sufficient separation from neighbouring properties. See also paragraph 4.1.4.3.b.vi. of this plan.

Commentary:

The proposed side setback is not recorded on any drawing.

At Level 5, the side setbacks appear to be <1000mm to the north, extending to c.2000mm to the non-compliant Office. The proposed wall height is 12.0m stated by the Applicant, and the compliant side setback should be 1/3 wall height, equating to **4.0m**. Level 5 does not comply.

At Level 5, the side setbacks appear to be <300mm to the south, extending further to the non-compliant Office. The proposed wall height is 12.0m, and the compliant side setback should be 1/3 wall height, equating to **4.0m**. Level 5 does not comply.

At Level 4, the side setbacks appear to be <1000mm to the north, extending to c.2200mm to the non-compliant Master Bedroom. The proposed wall height is 9.3m, and the compliant side setback should be 1/3 wall height, equating to **3.1m**. Level 4 does not comply.

At Level 4, the side setbacks appear to be <100mm to the south, extending further to 1.9m to the non-compliant Master Bedroom. The proposed wall height is 9.3m, and the compliant side setback should be 1/3 wall height, equating to **3.1m**. Level 4 does not comply.

At Level 3, the side setbacks appear to be <100mm to the north, extending to c.1600mm. The proposed wall height is 9.0m, and the compliant side setback should be 1/3 wall height, equating to **3.0m**. Level 3 does not comply.

At Level 3, the side setbacks appear to be <100mm to the south, extending further to 1.9m to the non-compliant Master Bedroom. The proposed wall height is 9.0m, and the compliant side setback should be 1/3 wall height, equating to **3.0m**. Level 3 does not comply.

There is no valid reason why the building cannot be contained within side setback controls, particularly at Level 4 and Level 5. The side setback controls must adhere to the controls on any additional proposed development over the 2011 approval.

The simple solution is to control the side setback to the 1/3 rule, and to reduce the floor plates, to achieve a compliant envelope. There is an ample oversupply of FSR to deal with this issue.

If the building is reduced in height we request a compliant side setback.

There should be a minimum of 3m side setback to deal with the requirements under privacy controls. The proposed highly used Study and Master Bedroom is of particular concern.

Taking the ground levels within the Applicant's DA Survey [2019], these setbacks would increase even further, as Wall Heights to 15.4m would require a side setback to **5.1m**.

The proposed development allows direct sight lines from proposed windows directly into habitable rooms and private open space without any screening.

The proposed development obscures harbour views from the public domain street, and side views across side boundaries.

The proposed development takes valuable solar access to habitable rooms and private open space, contrary to planning controls.

Floor Space Ratio [FSR]

The general objectives of Manly DCP Clause 4.1.3 Floor Space Ratio [FSR], have not been met:

“Objective 1)

To ensure the scale of development does not obscure important landscape features.

Objective 2)

To minimise disruption to views to adjacent and nearby development.

Objective 3)

To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.”

The scale of development obscures important landscape features particular the view to the Harbour from the street and nearby development. Sunlight into private open space is heavily compromised, and windows to adjacent residential development severely affected.

FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply.

In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:

Objective 1) To ensure the scale of development does not obscure important landscape features.

Objective 2) To minimise disruption to views to adjacent and nearby development.

The general objectives of MLEP Clause 4.4 Floor space ratio have not been met:

(1) The objectives of this clause are as follows:

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

Commentary:

The FSR calculations are severely under forecast by the Applicant.

The SEE states:

“...unenclosed space that do not count at FSR”

The calculation of FSR under MLEP & MDCP controls has always included areas that are generally closed by a roof, and generally enclosed on three sides. Level 1 of this proposed development is clearly an area that should be measured as FSR. It is clearly obvious that the Applicant will fully enclose these areas at some point in the future by simply adding a few windows.

Level 1 clearly adds to the bulk and scale of the area, and a large part of this volume sits above existing ground levels, and now sits fully exposed as the massive excavation now is on show to the full impact of Level 1 from the harbor and neighbouring sites.

Council must review the entire calculation of FSR as clearly there are other zones that should be included within FSR. As a very conservative count, we consider the FSR to be:

Level 5: 60 sqm [note garage is way beyond 36sqm standard]

Level 4: 90 sqm

Level 3: 120 sqm

Level 2: 115 sqm

Level 1: 115 sqm

Total: **500sqm**

Site Area: 594.4 sqm

Proposed FSR: 0.84:1 [>210% noncompliance]

Permissible FSR to Controls: 0.40:1

The Applicant is possibly claiming the MDCP Clause 4.1.3.1 Exceptions to FSR for Undersized Lots. That is unclear.

The proposed FSR at 500sqm is 200sqm over the Exception requirement.

Manly Council's prior consideration in respect to the 'Exceptions to FSR for Undersized Lots', was to secure the 300 sqm Exception, the Applicant had to show that there was absolutely no amenity loss to neighbours. That was the custom and practice of Manly Council Senior Planner Officers in dealing with this Exception rule.

This Applicant is attempting to secure a 500 sqm outcome, way beyond the Exception, whilst ignoring the impacts that the massive overdevelopment is delivering. To make matters worse Shadow Diagrams are not correct, and unfortunately it does not appear that this is a mistake. This is adversely affecting neighbours in a devastating manner in their senior years. That is totally unreasonable.

The relevant LEP objectives and the provisions of this DCP are not satisfied

Compliance with the standard is reasonable and necessary in the circumstances of the case.

There is insufficient environment planning grounds to justify contravening the development standard under LEP clause 4.6(3).

The proposed development is grossly over the FSR, and the resultant privacy, overshadowing, and view loss is directly attributable to the FSR non-compliance.

A reduction of the FSR at Levels 4 and Level 5 would significantly improve privacy, overshadowing, and view loss.

A more complaint envelope at 8.5m building heights and compliant side setbacks would be considered more reasonable. Further erosion of the southern edges of the envelope would be needed to ensure overshadowing compliance to #93. There is ample available excessive non-compliant FSR to achieve this outcome.

The proposed development allows direct sight lines from proposed windows directly into habitable rooms and private open space without any screening.

The proposed development obscures harbour views from the public domain street, and side views across side boundaries.

The proposed development takes valuable solar access to habitable rooms and private open space, contrary to planning controls.

Parking Design

Relevant DCP objectives have not been met in relation to these paragraphs include:

*4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas
See also paragraph 3.1.1 Streetscape.*

- a) The design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.*

b) Garage and carport structures forward of the building line must be designed and sited so as not to dominate the street frontage. In particular:

i) garages and carports adjacent to the front property boundary may not be permitted if there is a reasonably alternative onsite location;

Commentary:

The design of the garaging presenting a 3.0 high wall to the street, and built with minimal or no side setbacks, does not minimise the visual impact on the streetscape and neighbouring properties. It is not the desired character of the street.

The design represents a very hard urban outcome, rather than a more open design to bring the harbour view to the street.

The garage is forward of the building line and dominates the street frontage.

The previous approval by Council insisted that the parking must be by means of an open carport to reflect the character of many other carports in the street. Side setbacks followed the side backs of the approved development below, to ensure a view corridor from the street to the harbour down both side passages.

The garage at 97 Gurney was an existing garage that was built decades ago, and simply extended in 2015.

The proposed design totally obscures the view of the harbour from the street.

An open carport as previously designed and insisted upon by Council, minimises the visual impact in the streetscape, neighbouring properties, and maintains the desired character in the area.

Five out of six residences, including the subject site, south of the subject site [83%] have open carports, and Council has been consistent in ensuring Applicant's retain open carports were they exist.

Development on Sloping Sites

Relevant DCP objectives have not been met in relation to these paragraphs include:

Requirements

- a) The design of development must respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.*
- b) Developments on sloping sites must be designed to:*

- i) *generally step with the topography of the site; and*
- ii) *avoid large undercroft spaces and minimise supporting undercroft structures by integrating the building into the slope whether to the foreshore or a street.*

Commentary:

The development does not generally step with the slope at 8.5m building height, but presents an elevation and sectional profile that increases in non-compliant building height and wall height the further west the development progresses. There has been no attempt to position the new build below the 8.5m maximum building height, and there is no logically reason for this not to occur. There is no significant cross slope that would give grounds for any increase in any location.

The increase in building height, has simply added considerable more non-compliant FSR.

Our proposed conditions of consent present a stepping envelope that follows the 8.5m maximum wall height.

Large undercroft areas are evident at Level 1, that add to the bulk. In our more skilful design [Appendix A], Level 1 is used for an additional family room and secondary bedrooms.

Residential Amenity Impacts

Objective 1 of Manly DCP Clause 3.4 Amenity have clearly not been met.

Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts

The general principles of Manly DCP Clause 3.4 Amenity, principally [a] and [b]:

Designing for Amenity

- a) Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property. This is especially relevant in higher density areas, development adjacent to smaller developments and development types that may potentially impact on neighbour's amenity such as licensed premises.*
- b) Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.*

Commentary:

Privacy, View Loss, Overshadowing and Visual Bulk have not been addressed in these proposals.

The proposed development allows direct sight lines from proposed windows directly into habitable rooms and private open space without any screening.

The proposed development obscures harbour views from the public domain street, and side views across side boundaries.

The proposed development takes valuable solar access to habitable rooms and private open space, contrary to planning controls.

View Loss

Objectives 1, 2, and 3 of Manly DCP Clause 3.4.3 Maintenance of Views have clearly not been met.

- Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.*
- Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*
- Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

The general principles of Manly DCP Clause 3.4.3 Maintenance of Views, principally [a] and [b] and [c] have clearly not been met.

- a) The design of any development, including the footprint and form of the roof is to minimise the loss of views from neighbouring and nearby dwellings and from public spaces.*
- b) Views between and over buildings are to be maximised and exceptions to side boundary setbacks, including zero setback will not be considered if they contribute to loss of primary views from living areas.*
- c) Templates may be required to indicate the height, bulk and positioning of the proposed development and to assist Council in determining that view sharing is maximised and loss of views is minimised. The templates are to remain in place until the application is determined. A registered surveyor will certify the height and positioning of the templates.*

Commentary:

The Applicant has not carried out a view sharing analysis between the previously approved development and the proposed development.

Clearly views from the public domain would be totally eradicated, with a devastating consequence.

Council has previously demanded an open carport design with a generally compliant envelope to address these matters on the subject site.

Side views from #97 Gurney would also be lost.

The view loss is extended due to non-compliant development, including building height, side setback and FSR.

Templates are urgently needed to be erected. The site is vacate and there is no excuse that the Applicant could offer not to erect templates.

We are concerned that the losses are a direct result of non-compliance to building height, wall height, number of storeys, side setback, and FSR controls.

A more compliant development would improve the outcomes.

We believe it is totally unreasonable to present a non-compliant development that takes the streets and our own iconic harbour views.

LEC ***Tenacity*** states:

“A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.”

The proposed development does not comply with the main planning controls, and the impact on views directly arises as a result of total non-compliance with numerous planning controls. The impact of losing iconic views is devastating to us, and therefore it is totally unreasonable.

We ask for full compliance to the LEP & DCP controls. The proposals are extremely unreasonable.

We have offered alternative solutions that would resolve the issue in our more skilful design in Appendix A.

We ask for building templates to be erected and surveyed, due to the non-compliant building height, wall height, and setback proposals.

LEC PP **Rose Bay Marina** develops a planning principle setting out a process for assessing the acceptability of the impact of private developments on views from the public domain in the vicinity of the development.

The first step of this stage is to identify the nature and scope of the existing views from the public domain. This identification should encompass (but is not limited to):

- *the nature and extent of any existing obstruction of the view;*
- *relevant compositional elements of the view (such as is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);*
- *what might not be in the view - such as the absence of human structures in the outlook across a natural area (such as the view from Kanangra Walls);*
- *is the change permanent or temporary; or*
- *what might be the curtilages of important elements within the view.*

Comment: The existing obstruction is limited by the built form existing, and the extent of obstruction within the 2011 Consent. That obstruction is very limited.

The view is generally static, other than watching the movement of water craft along Middle Harbour. The absence of structures is significant as the outlook is generally of bushland and harbour. The proposed DA would be a permanent loss. The curtilages would be the view available between neighbouring dwellings.

45. The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed.

Comment: Gurney Road, a public highway.

46 The third step is to identify the extent of the obstruction at each relevant location.

Unlike Tenacity (which adopts the proposition that sitting views are more difficult to protect than standing views), the impact on appreciation of a public domain view should not be subject to any eye height constraint. A public domain view is one that is for the enjoyment of the whole population, old or young and whether able-bodied or less mobile. It is not appropriate to adopt some statistically derived normative eye height for the assessment of such views (such as the conventionally adopted 1.6m eye height for the assessment of overlooking privacy impacts). Indeed, some views (such as that from Mrs Macquarie's Chair toward the Opera House and Harbour Bridge) may well be ones likely to be enjoyed frequently from a seated position.

Comment: The impact would be by people walking along Gurney Crec as well as people at vehicle seat height driving along the road.

47 The fourth step is to identify the intensity of public use of those locations where that enjoyment will be obscured, in whole or in part, by the proposed private development.

Comment: Gurney Crescent is open to the public, so the intensity reflects the residential control in the area

48. The final step to be identified is whether or not there is any document that identifies the importance of the view to be assessed.

This will encompass specific acknowledgment of the importance of a view (for example, by international, national, state or local heritage recognition) or where the relevant planning regime promotes or specifically requires the retention or protection of public domain views.

Comment: NBC Controls do call for the maintenance of views

49. However, the absence of such provisions does not exclude a broad public interest consideration of impacts on public domain views.

Comment: There is a broad public interest in maintaining these street views as witnessed by 5 out of 6 sites, including the subject site, having open carports to maintain the view.

In this **Rose Bay Marina assessment**, we give strong grounds for the open carport concept to remain, and the 2011 Consent to be retained.

There are other non-compliant building envelope controls that need to be factored in to the broader considerations within this DA.

Overshadowing

As stated earlier, Certification of the Shadow Diagrams with Plans is not in accordance with Council controls.

The Applicant has not provided Shadow Diagrams of the existing residence pre demolition of the dwelling on the subject site, and shown the overshadowing due to the non-compliant envelope.

The Applicant is showing the shadow loss between an existing structural frame and the proposed non-compliant envelope.

This presentation is obviously aimed to provide a misleading representation to Council and to Neighbours.

The Applicant has failed to show the compliance to controls on all affected windows and private open space to the east of #93 Gurney.

A compliant building height to 8.5m maximum building height would clearly allow sunlight into the eastern private open space, and eastern windows prior to Winter Noon. It would also allow sunlight to both upper level windows.

Half Hourly shadow diagrams between the prior dwelling on the subject site in 1999, and the proposed development must be submitted.

Currently the DA submission does not accord with Council policy and standard.

The Applicant is trying to suggest that adding two storeys to a development that is to the north east of the affected dwelling has no real effect. This is plainly ridiculous.

The loss would be devastating to both windows, roof lights, and to the private open space to the east of the dwelling.

The clock should be stopped until this material is submitted.

Privacy

Objective 1 of Manly DCP Clause 3.4.2 Privacy & Security have clearly not been met.

- Objective 1)* *To minimise loss of privacy to adjacent and nearby development by:*
- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;*
 - *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

The general principles of Manly DCP Clause 3.4.2.1 Window Design & Orientation, principally [a] and [b]:

3.4.2.1 Window Design and Orientation

- a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.*
- b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.*

The general principles of Manly DCP Clause 3.4.2.2 Balconies & Terraces, principally [a] and [b]:

3.4.2.2 Balconies and Terraces

- a) *Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.*
- b) *Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.*

The general principles of Manly DCP Clause 3.4.2.3 Acoustical Privacy [Noise Nuisance] principally [a] and [b] and [c]:

3.4.2.3 Acoustical Privacy (Noise Nuisance)

- a) *Consideration must be given to the protection of acoustical privacy in the design and management of development.*
- b) *Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.*
- c) *Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures.*

Commentary:

The proposed elevations to the northern façade of the dwelling presents large glazed windows looking directly into the habitable rooms and private open decks of #97 Gurney.

The rooms in the proposed development would be highly used living rooms, family rooms, office, bedrooms, master bedrooms and an entertainment deck.

Occupants of the proposed dwelling would be directly looking into #97 Gurney bedrooms and directly looking into #97 Gurney private main living spaces.

Most of the Applicant's rooms on the north side facing #97 Gurney will also all still benefit from windows on at least one other elevation and therefore there is no reason why the Applicant needs to have full windows that directly look into #97 Gurney.

The Applicant has not taken #97 Gurney privacy into account in the initial design.

As Council will undoubtedly understand, all northern windows will need to have privacy screens to ensure that there is no overlooking of any of our internal rooms and deck areas.

Decks facing north require full height high privacy screens.



All northern windows and decks have direct line of sight into #97 Gurney windows and decks. Privacy screens to windows and decks are essential on all Level 1-5. The Pool also requires privacy control measures.

Noise/Vibration

As demolition and excavation is proposed, we ask that Reduce Peak Particle Velocity to be less than 2.5mm/sec at the common boundary, with alarms to stop work if thresholds are exceeded.

Streetscape

The proposals have non-compliant building height, setbacks, FSR and parking that contribute to the unacceptable streetscape outcomes.

Landscaping

We are concerned that there is no landscaping plan for the area west of the pool. This area is covered in weeds, and generally is a complete mess. We ask Council to require the applicant to submit a Bush Regeneration landscape plan to deal with this matter.

We are concerned that the height of the landscaping along the boundary to #97 Gurney should be higher to provide a greater level of privacy. We ask that planting at a mature height of 6m be provided to mask the non-compliant 15m high proposed development.

Pool

We are concerned that the height of the landscaping along the boundary to #97 Gurney adjacent the proposed pool should be higher to provide a greater level of privacy. We ask that planting at a mature height of 6m be provided.

General Impact

Davies [LEC PP] suggests that Council should consider:

“Would it require the loss of reasonable development potential to avoid the impact?”

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?”

None of these questions answered correctly, help the Applicant’s cause.

The impact is totally from the non-complying development.

The same amount of floor space is not a consideration, as the proposals are >200% over FSR controls, and therefore the amendments required would not be considered a reasonable development potential.

Height, Bulk & Scale

The overall impact of the development with non compliant building height, side setback, front setback and excessive FSR gives rise to an unacceptable visual bulk from our dwelling,

from the streetscape, and from the harbour. The building now rises 15.7m above the readjusted ground levels, and presents buildings height above 12.4m. The proposed development dwarfs over #93 Gurney.

Bushfire Rating

We are very concerned that the Applicant is proposing a very low BAL 40/BAL 29 development within a very high-risk bushfire zone.

We ask Council to refer the matter to the NSWRFs for a full Section 79BA Referral review.

We believe that as per the NSW Environmental Planning and Assessment Act 1979 and the RFS document known as 'Planning for Bush Fire Protection 2006' that the development site should be rated as Flame Zone, and the development be built to AS 3959 2009 Section 9 Flame Zone facing the hazard.

There is considerable 'forest' within 19m of the subject site that would warrant a BAL FZ rating.

There is a downslope to the harbor, with the land falling from 14m to the harbor edge, some 55m away. [1:3.57 c. 14-15 degree slope]

The connected forest canopy to the threat to the north extends close to the proposed development.

The downslope to the harbor edge tree canopy would increase the 19m zone to 39m along the harbor edge. There is significant 'forest' within 39m of the proposed development, along the harbor foreshore.

Council will note that there has been a number of NSWRFs Section 79BA reviews in similar situations in Clontarf and all have been rated at Flame Zone by the NSWRFs or rated by independent bushfire consultants to Flame Zone standards.

We have a duty of care to raise this with you, not only for our family's safety as an adjoining owner, for the future inhabitants of the proposed dwelling, and for other neighbours.

Furthermore, with the recent fires in NSW and the catastrophic fire warning issued in November 2019 and in December 2019, we draw attention to the fact that nearby areas were identified by the NSWRFs as being one of the most at risk places on the Northern Beaches. This reinforces our request to reassess the classification as being classified as Flame Zone.

We are concerned that ember attack could land in very dry, highly flammable vegetation and starting new fires very, very easily getting an exponential growth of the fire front and acceleration of the fire front moving across the landscape towards the subject site.

The proposed development extends beyond the neighbour dwelling to the north, fully exposing the proposed northern and western glazed facades to the threat.

The proposed development has roof lights and glazed areas facing east, and the high-risk hazard.

Considering the dual threat from all sides, east, north and west, the entire proposed development should be classed as BAL FZ, as there is no safe 'opposite side'.

Our consideration is that in studying Table 1; Reference AS3959: 2009 Table 2.4.2 the assessment that we wish NSWRFs to consider is based upon the following:

- Direction: North & North East & East
- Distance to APZ: <19m [Level] + <39m [>10-15 deg to harbour edge, 1:3.73]
- Vegetation Classification: Forest
- Assessment of Effective Slope: Level or Upslope + Downslope Slope >10-15 deg to Harbour
- Anticipated Radiant Heat: >40w/m²
- BAL: Flame Zone FZ

95 Gurney Crescent SEAFORTH NSW 2092



Extract from NBC Website: Forest extends north and east of the subject site.

95 Gurney Crescent SEAFORTH NSW 2092



Extract from NBC Website: Forest extends north and east, with significant forest vegetation within 19m of the subject site, and additional forest within 39m on the 14m downslope towards the harbor to the north.



VIEW 04

FOR DEVELOPMENT APPLICATION ONLY

NEW DWELLING ON EXISTING STRUCTURE
95 GURNEY CRESCENT SEAFORTH

SK04 A

WTS

Monday, 16 December 2019

All windows to north and west, as seen in the above DA drawing SK 04, will be facing the threat from a bushfire from the north. Land falls from RL 14 in a 15 degree downslope to the north towards the harbour.

Structural Adequacy, Excavation Work, Retaining Wall

As stated earlier we require a current 2020 statement from a qualified structural engineer that they have reviewed the structural calculations, structural drawings and inspection records to assess the structural adequacy on all structures, retaining walls, and any other built form.

Sub-Soil Seepage

Objectives 1, 2, 3 and 4 of Manly DCP Clause 3.7 Stormwater Management may not been met.

As stated earlier we require a current 2020 statement from a qualified drainage engineer that they have reviewed the drainage calculations, drawings and inspection records to assess the drainage adequacy on all elements of the project.

On-Site Stormwater Management Details

Objectives 1, 2, 3 and 4 of Manly DCP Clause 3.7 Stormwater Management may not been met.

As stated earlier we require a current 2020 statement from a qualified drainage engineer that they have reviewed the drainage calculations, drawings and inspection records to assess the drainage adequacy on all elements of the project, in relation to On-Site Stormwater Management Details

Stormwater Disposal

Objectives 1, 2, 3 and 4 of Manly DCP Clause 3.7 Stormwater Management may not been met.

As stated earlier we require a current 2020 statement from a qualified drainage engineer that they have reviewed the drainage calculations, drawings and inspection records to assess the drainage adequacy on all elements of the project, in relation to Stormwater Disposal

Property Boundary Levels

We ask that a condition of consent limits any further reduction of levels to Property Boundary Levels within 1m of the boundary.

Works in close proximity to the allotment boundary

We ask that a condition of consent limits any further reduction of levels to Works in close proximity to the allotment boundary

Mechanical Plant Equipment: AC Plant & Pool Plant

The general principles of Manly DCP Clause 3.9.3 Noise from Mechanical Plant, principally [a] and [b] and [c] have clearly not been met.

3.9.3 Noise from Mechanical Plant

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.

See also paragraph 3.4.2.4 Acoustical Privacy.

Note: *Excessive noise from the operation of mechanical plant such as air conditioning units, swimming pool pumps, and ventilation and refrigeration systems can disturb residents, disrupt sleep, interfere with normal daily activities or significantly impact on people's health*

Commentary:

Any AC Plant & Pool Plant positioned along boundary will cause excessive noise nuisance. We wish all plant to be located away from our boundary in a dedicated acoustic rated plant room.

Lighting

We are concerned on external lighting facing our property and internal lighting from the proposed development causing lighting nuisance to bedrooms and living spaces. Internal lighting will need to be designed to ensure that there is no light spill to the north.

Statement of Environment Effects Rebuttal

There are numerous non-factual matters stated within the Applicant's SEE.

The SEE has failed to quantify:

‘the difference between the impacts of a complying and a non-complying development’

The SEE has failed to identify any environmental planning ground, unique or otherwise, that justifies the contravention of non-compliance to controls.

The SEE has failed to address:

- Fails to address the absence of the 1999 Survey with the previous dwelling and site contours clearly articulated to NBC Submission standards;
- Fails to undertake a view loss from the street to planning controls from the proposed non-compliant development
- Fails to address a privacy review of direct sight lines between proposed windows and decks to neighbours habitable rooms and private open space decks from the proposed non-compliant development
- Fails to identify unreasonable overshadowing between the prior dwelling to the proposed non-compliant development
- Misrepresents issues noted earlier in relation to description of the Site, Previous Approvals, Proposed Development, Development Controls in Building Height, under stating FSR, incorrectly assessing overshadowing, privacy, view loss and parking.

The SEE ultimately fails to:

- provide justification for any areas of non-compliance with relevant objectives, standards or controls,
- discuss any likely impacts and identify any mitigation measures to reduce those impacts.

These matters are all contrary to NBC Submission standards.

Clause 4.6 Rebuttal

There are numerous non-factual matters stated within the Applicant's Clause 4.6 Applications: Height of Building & FSR.

Council must note that in *Randwick City Council v Micaul Holdings Pty Ltd [2016]*, Chief Judge Preston noted in respect to Clause 4.6 that:

"...the Court need not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather 'only indirectly by being satisfied that the applicant's written request has adequately addressed'.

We suggest that the Clause 4.6 does not satisfactorily address what environmental planning grounds exist to justify contravening the standard.

Nowhere within the Applicant's Clause 4.6 is there identification of any environmental planning ground, unique or otherwise, that justifies the contravention. There is no basis upon which the variation can be granted. Accordingly, consent must be refused on that basis.

There is no power to grant development consent because (a) the request to vary the control did not identify an environmental planning ground that justifies the contravention; and (b) the proposal is inconsistent with the objectives of the standard.

We refer Council to *Whittaker v Northern Beaches Council [2017]* that defines a similar situation.

The Clause 4.6:

- Fails to address the absence of the 1999 Survey with the previous dwelling and site contours clearly articulated to NBC Submission standards;
- Fails to undertake a view loss from the street to planning controls from the proposed non-compliant development
- Fails to address a privacy review of direct sight lines between proposed windows and decks to neighbours habitable rooms and private open space decks from the proposed non-compliant development
- Fails to identify unreasonable overshadowing between the prior dwelling to the proposed non-compliant development

The Clause 4.6 Applications fail on numerous levels.

The proposed development allows direct sight lines from proposed windows directly into habitable rooms and private open space without any screening.

The proposed development obscures harbour views from the public domain street, and side views across side boundaries.

The proposed development takes valuable solar access to habitable rooms and private open space, contrary to planning controls.

NSW LEC Planning Principles

We bring to the attention of Council numerous **NSW LEC Planning Principles** that have relevance to this DA.

In **Davies**, [Davies v Penrith City Council 2013], NSW LEC considered General Impact. Davies suggest that Council should consider:

“Would it require the loss of reasonable development potential to avoid the impact?”

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?”

Commentary:

In this objection we have clearly showed that the same amount of floor space and amenity can be achieved while reducing the impact. The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal.

The proposed development allows direct sight lines from proposed windows directly into habitable rooms and private open space without any screening.

The proposed development obscures harbour views from the public domain street, and side views across side boundaries.

The proposed development takes valuable solar access to habitable rooms and private open space, contrary to planning controls.

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.”

Commentary:

The impacts are not consistent with the impacts that would be reasonably expected under the controls. The proposals are non-compliant in multiple areas, and the Applicant has not quantified the difference between the impacts of a complying and a non-complying development.

The proposed development allows direct sight lines from proposed windows directly into habitable rooms and private open space without any screening.

The proposed development obscures harbour views from the public domain street, and side views across side boundaries.

The proposed development takes valuable solar access to habitable rooms and private open space, contrary to planning controls.

In **Meriton**, [**Meriton v Sydney City Council 2004**], NSW LEC considered Privacy. Meriton suggest that Council should consider:

“When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.”

Commentary:

The freedom of neighbour’s property from being overlooked simply has not been properly considered.

The proposed development allows direct sight lines from proposed windows directly into habitable rooms and private open space without any screening.

In **Tenacity**, [**Tenacity Consulting v Warringah Council 2004**], NSW LEC considered Views. Tenacity suggest that Council should consider:

“A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.”

Commentary:

The development breaches multiple planning controls and is unreasonable. The impact on views arises as a result of non-compliance with one or more planning controls, and the moderate to devastating impact is considered unreasonable.

No assessment by the Applicant has been made, contrary to controls.

The proposed development obscures harbour views from the public domain street, and side views across side boundaries.

In Rose Bay [Rose Bay Marina Pty Limited v Woollahra Municipal Council [2013] NSWLEC 1046]
NSW LEC considered View from Public Spaces.

Commentary:

As Tenacity, mentioned above, the development breaches multiple planning controls and is unreasonable. The impact on views arises as a result of non-compliance with one or more planning controls, and the moderate to devastating impact is considered unreasonable.

No assessment by the Applicant has been made, contrary to controls.

An assessment under Rose Bay Marina was made earlier in this Statement, giving strong grounds for an open carport and significant reduction of building envelope to occur.

The proposed development obscures harbour views from the public domain street, and side views across side boundaries

**In Coorey [Coorey v Hunters Hill Council [2013] NSWLEC1187
4 October 2013 – NSW Land and Environment Court – Moore SC and Sullivan AC]**, the LEC considered the question whether the proposal is for alterations and additions, regard should be had to such of the following matters as are relevant in the particular circumstances.

My comments noted below:

Qualitative:

- *“How is the appearance of the existing building to be changed when viewed from public places? The appearance will significantly change from public places. Comment: The streetscape will substantially change from an open carport to a fully enclosed structure, with little to no side setbacks.*
- *To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places? Comment: The setting will change as the existing landscaped view of Middle Harbour will be lost to view from the street. The massive additional bulk and increased height will obscure landscape to the east of the subject site, from the harbour and neighbouring sites*
- *To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area? Comment: Not applicable*
- *What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved? Comment: Level 5 structure is to be*

demolished, and every level altered with significant increase of non-compliant Building Height and FSR

- *What is the extent, if any, of any proposed change to the use of the building?* Comment: The use will change as the size of the dwelling will substantially increase with added uses
- *To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?* Comment: The streetscape will substantially change, from an open carport to a closed urban boundary to boundary defensive enclosure.
- *To what extent, if any, are the existing access arrangements for the building proposed to be altered?* Comment: Access to parking is altered, and pedestrian access is altered.
- *To what extent, if any, will the outlook from within the existing building be altered as a consequence of the proposed development?* Comment: The outlook will substantially change as the outlook at Level 4 & 5 will be completely altered
- *Is the proposed demolition so extensive as to cause that which remains, to lose the characteristics of the form of the existing structure?"* Comment: Demolition is planned, but no demolition plan has been submitted.

Quantitative:

- *"To what extent is the site coverage proposed to be changed?* Comment: The floor plates increase substantially at Levels 4 & 5.
- *To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?* Comment: The non-compliances have substantially increased from generally compliant, to substantially non-compliant in FSR, Building Height, Setbacks, etc
- *To what extent is the building envelope proposed to be changed?* Comment: substantially at Level 4 & 5.
- *To what extent are boundary setbacks proposed to be changed?* Comment: substantially at Level 4 & 5
- *To what extent will the present numerical degree of landscaping on the site be changed?* Comment: not relevant
- *To what extent will the existing floor space ratio be altered?* Comment: Substantial increase to FSR
- *To what extent will there be changes in the roof form?* Comment: Substantial increase in roof forms over Level 5, 4 & 3.
- *To what extent will there be alterations to car parking/garaging on the site and/or within the building?* Comment: Parking alters significantly from carport to garage
- *To what extent is the existing landform proposed to be changed by cut, and/or fill to give effect to the proposed development?* Comment: excavation is proposed, but no plan exists
- *What relationship does the proportion of the retained building bear to the proposed new development?"* Comment: Level 5 is demolished, the remainder of the frame is substantially extended and altered to rearrange stair and lift configurations

Considering Coorey, and the above commentary, we ask Council to consider this DA as a New Build.

We contend that the description of the DA as "Alterations and additions to a dwelling house" is incorrect.

We ask Council to pass judgement on this matter.

The original Consent is now over 20 years old, and we ask Council to determine whether the 1999 Consent can be relied upon.

Proposed Conditions of Consent to any Approval

We ask Council to impose the following conditions to any consent.

We ask that Council request that the Applicant submit Amended Plans to resolve these matters in full, prior to determination.

ANS 01 Massing Envelope Reductions

Deferred Commencement:

Roof:

- Revert to approved 2011 building envelope
- Reduce maximum height to RL 29.0, as approved.
- Slope roof to the west to reduce overshadowing and scale.
- Southern Side Setback to align with Level 3 southern wall side setback, as approved, to maintain street view
- Northern Side Setback to be 885mm, as approved, to maintain street view.
- Western extent of Roof not to extend past 10m from NE corner of property, to maintain street view, overshadowing, more compliant envelope
- Width not to exceed 9.12m, as approved.
- Delete Roof Light for bushfire concerns
- Reduce roof to reduced Level 5 below

Level 5

- Revert to approved 2011 building envelope
- Position open carport, entry, stair and lift within envelope previously approved.
Leave maximum clear opening to the west to enable through views from the street to the harbour
- Southern Side Setback to align with Level 3 southern deck side setback, as approved.
- Northern Side Setback to be 885mm, as approved.
- Western extent of Level 5 not to extend past 10.0m from NE corner of subject site boundary, as approved.
- Width not to exceed 9.12m, as approved.
- Reduce roof to cover reduced Level 4 below

Level 4

- Reduce western extent of room to Grid 4, to accord generally with 8.5m building height
- Increase side setbacks to 3m, and further reduce to the south to ensure absolutely no loss of solar access over prior approved envelope. Overshadowing.
- No deck at Level 4, provide non-accessible roof over Level 3. Privacy.
- No windows to north or south elevations. Privacy.
- Delete additional new roof/sun device over deck. Overshadowing.
- Reduce roof to cover reduced Level 3 below

Level 1, 2, and 3

- Revert to approved 2011 building envelope
- Obscured Glass or privacy screens to windows facing north
- Increase privacy screens to all decks facing north to full height.
- Delete new canopy above windows facing west

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

Reason: View Loss, Overshadowing, Privacy, Streetscape, General Impact, Height/Bulk/Scale, and Visual Bulk

Note:

The resultant distribution of use, could then be:

Level 5: Carport, Entry

Level 4: Study/Office

Level 3: Living/Dining/Kitchen/Deck

Level 2: Master Bedroom/deck + Secondary Bedrooms

Level 1: Family Room facing Pool Deck + Secondary Bedrooms

This would deliver a development generally compliant to Building Height & Side Setback

controls, would still far exceed the 300sqm 'Small Site' provision, but would considerably reduce privacy concerns, view loss, and overshadowing. In LEC terms, this layout and configuration would represent a *'more skilful design'*.

ANS 02 Privacy

Deferred Commencement:

Obscured glass or privacy screens to all windows facing the neighbour's boundary

Privacy screens to all decks windows facing neighbour's boundary to be full height

Increase number of screening trees and bushes along neighbour's boundary to create a continuous vegetated barrier between windows on subject site and neighbours windows to a height of 6m mature.

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

Reason: Privacy

ANS 03 Landscaping

Deferred Commencement:

The Applicant is to submit a Bush Regeneration Landscape Plan west of the proposed pool.

Increase screening trees and bushes along neighbour's boundary to a height of 6m mature.

Provide protection to the Structural Root Zone and Tree Protection Zone to the trees on neighbours property adjacent to the common boundary.

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

Reason: Privacy

ANS 04 Pool

Deferred Commencement:

Screening vegetation to 6m mature height above height of pool, along edge of pool and neighbours boundary.

Pool Plant not to be positioned along boundary to neighbour's property, and to be positioned in a dedicated acoustic rated plant room central to the site.

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

Reason: Pool compliance to controls, privacy

ANS 05 Structural Adequacy, Excavation Work, Retaining Wall

Deferred Commencement:

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 underpinning, shoring, retaining walls and support where required.

Submit detail structural drawings and calculations identifying that what is built is structurally adequate, and complies with all relevant building codes.

All retaining walls are to be structurally adequate for the intended purpose, shall be certified as compliant with all relevant Australian Standards and Codes, designed and certified by a Structural Engineer.

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

Reason: Public and Private Safety

ANS 06 Sub-Soil Seepage

Deferred Commencement:

The Applicant is to submit plans demonstrating that all sub-soil seepage drainage is discharged via a suitable silt arrester pit in accordance with relevant Australian Standards.

Submit detail drawings and calculations identifying that what is built is adequate, and

complies with all relevant building codes.

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

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

ANS 07 On-Site Stormwater Management Details

Deferred Commencement:

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention

Submit detail drawings and calculations identifying that what is built is adequate, and complies with all relevant building codes.

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

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

ANS 08 Stormwater Disposal

Deferred Commencement:

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

Submit detail drawings and calculations identifying that what is built is adequate, and complies with all relevant building codes.

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

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

ANS 09 Property Boundary Levels

Deferred Commencement:

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the boundary.

ANS 10 Works in close proximity to the allotment boundary

Deferred Commencement:

The Applicant is to maintain existing ground levels within 1m to the allotment boundary.

No approval is granted for any change to existing ground levels and all works within 1m to the allotment boundary to accommodate the development.

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

Reason: To maintain the existing profile of the natural ground levels adjacent neighbours boundary.

ANS 11 Vibration

Reduce Peak particle velocity to be less than 2.5mm/sec at the common boundary, with alarms to stop work if thresholds are exceeded.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority, to include method statement of excavation and demolition works, monitoring of boundary levels, halt signals, notifications on site and to PCA, and attenuation methods to reduce vibration risks.

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

Reason: To reduce risk of vibration damage to neighbours property.

ANS 12 Plant

AC Plant & Pool Plant not to be positioned along boundary to neighbour's property, and to be positioned in a dedicated acoustic rated plant room.

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

Insert Council's acoustic condition.

Reason: Acoustic Privacy

ANS 13 Lighting

No external lighting facing neighbour's property or internal lighting causing lighting nuisance to neighbour's property.

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

Reason: Lighting Nuisance

ANS 14 Bushfire

As per the NSW Environmental Planning and Assessment Act 1979 and the RFS document known as 'Planning for Bush Fire Protection 2006' that the development site should be rated as Flame Zone, and the entire development is to be built to AS 3959 2009 Section 9 Flame Zone.

Deferred Commencement:

The house has not been designed to BAL FZ standards. If NSWRFs recommend BAL FZ, then the Applicant must submit Amended Plans, prior to consent, adjusting the external envelope to suit BAL FZ.

Reason: Inadequate Bushfire Rating

Conclusion

The proposed development does not satisfy the relevant objectives of the LEP and the relevant outcomes and controls contain in DCP as they are reasonably applied to an application proposing a new dwelling.

The outcome is a building that cause poor amenity outcomes including privacy, view loss, overshadowing, streetscape, vibration and other concerns due to non-compliance to multiple residential controls including building height, FSR, wall height, number of storey, front setback, side setbacks, pool, landscaping, parking, garage, ground works and other concerns.

The development does not satisfy the objectives of the standard and will give rise to any adverse streetscape and residential amenity consequences.

The identified non-compliances have not been appropriately justified having regard to the associated objectives.

The Clause 4.6 fails on multiple levels and there are not sufficient environmental planning grounds to justify the departure. The development does not satisfy the objectives of the standard and gives rise to adverse streetscape and residential amenity consequences. The clause 4.6 variation is not well founded.

The identified non-compliances have not been appropriately justified having regard to the associated objectives.

Such variations do not succeed pursuant to section 4.15 of the Act. The solutions have not achieved the objects of DCP standards for dealing with that aspect of the development.

Having given due consideration to the relevant considerations pursuant to 4.15 of the Environmental Planning & Assessment Act 1979 (as amended) it has not been demonstrated that the proposed development is appropriate for approval.

This application results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

In consideration of the proposal and the merit consideration of the development, the proposal is not considered to be consistent with the objectives of the DCP and objectives of the LEP.

The resultant over-development is representative of an envelope well above the maximum

built form outcome anticipated on the site under the provisions of LEP and DCP.

The resultant development is not considered to be an appropriate outcome for the site as it fails the balance between the development of the site and the retention of significant natural features and the maintenance of a reasonable level of amenity for adjoining properties.

The proposed development does not satisfy the appropriate controls.

The processes and assessments have not been satisfactorily addressed.

The DA scheme submitted requires to be amended, and we ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, that we do hope he will, then we ask Council to either heavily condition any approval, or simply issue a refusal.

We expect that the determination will be carried out by the LPP, due to the numerous excessive non-compliances.

Yours faithfully,

Ms Meredith Symons
97 Gurney Cr.,
Seaforth NSW 2092

[Attached]

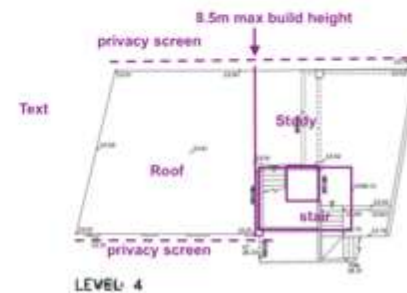
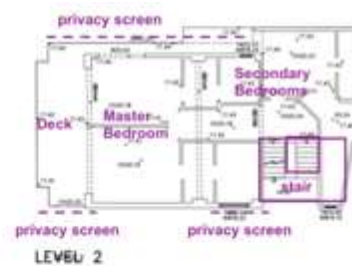
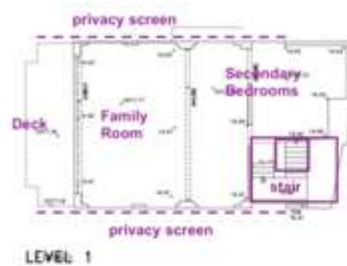
Appendix A: More Skillful Design

Plans showing a building envelope that delivers a general arrangement that provides a New Residence consisting 4/5 Bedroom + Study/Office + 3 independent Living Spaces + Pool.

A new stair to wrap around the proposed new lift.

The amended Building Envelope generally accords with 2011 Consent envelope, with Level 4 projected to 8.5m building Height & 3.0m side setbacks.

FSR would still be significantly over FSR at c. 400sqm, and 133% over the 'Exceptions to FSR for Undersized Lots' provision. Most neighbours are at the 300 sqm mark, or slightly above.



- Level 5: 20 sqm [carport @ 36 sqm outside of FSR]
- Level 4: 30 sqm
- Level 3: 115 sqm
- Level 2: 115 sqm
- Level 1: 115 sqm

Total: c. **400sqm**

In LEC terms, this layout and configuration would represent a *'more skilful design'*, and to be more compliant to building height, wall height, side setback and front setback controls. Further reductions to the envelope may be necessary to satisfy fully the objectives of the LEP and DCP.