

19<sup>th</sup> August 2019

The General Manager  
Northern Beaches Council  
PO Box 82  
Manly NSW 1655

Attention: Mr Benjamin Price – Planner

Dear Mr Price,

**Development Application DA2019/0081  
Supplementary Statement of Environmental Effects  
Amended plans and associated clause 4.6 variation request – Height of  
buildings  
Construction of residential accommodation  
12 Boyle Street and 307 Sydney Road, Balgowlah**

Reference is made to Council's correspondence of 4<sup>th</sup> July 2019 pertaining to the above matter. This submission details the considered response to the issues raised and is to be read in conjunction with the following accompanying documentation:

- Amended architectural plans Architectural plans A200(B) to A205(B), A300(B) to A303(B), A400(A) to A407(A), A600(B) and A800(B) prepared by Roberts Day Architects;
- View analysis from Unit 4/ 16 Boyle Street prepared by Roberts Day Architects;
- Amended landscape plans 000(D), 101(G), 102(B) and 501(B) to 503(B) prepared by Site Image;
- Updated BASIX and NatHERS Certificates; and
- Amended clause 4.6 variation in support of the proposed height of buildings variation.

The amended plans provide for the following changes:

- A reduction in the floor space of Units 3, 6 and 8 to achieve compliance with the 0.6:1 FSR standard;
- The relocation of the western lift 3.2 metres to the west and a corresponding adjustment in the design and layout of Units 3 and 6, the adjacent circulation courtyard and the basement to maintain a view corridor between the lift and Unit 7 from Unit 4/16 Boyle Street;
- The introduction of a storage area/ plant room to the east of the relocated western lift;
- The provision of an 8 metre setback to the trafficable portion of the southern decks to Townhouses 1 and 2 with the landscape plan adjusted accordingly;
- The introduction of a planter box to the southern edge of the Unit 7 balcony to prevent direct line of sight to the north facing courtyard of Townhouses 1 and 2;
- The introduction of frosted glass screens to the outer edge of the north facing Unit 3 and 6 balconies to enhance privacy between the development and No. 14 Boyle Street.
- An increase in the ceiling height of the Boyle Street waste room to 2.1 metres;
- The nomination of wall heights on all elevations;
- A change to the nominated external wall finish;
- A minor adjustment in the Sydney Road driveway design in accordance with the RMS endorsed plans 18-11\_C1[P3] and SP. These have been forwarded to you previously; and
- An updated landscape plan to reflect the architectural changes as outlined.

The following section of this submission will detail the considered response to the various issues raised in Council's correspondence.

### **1. Clause 4.4 Floor Space Ratio**

Response: The plans have been amended to provide for a reduction in GFA to achieve compliance with the 0.6:1 FSR standard. Accordingly, this application no longer relies on a clause 4.6 variation request in relation to FSR.

The relevance of the FSR standard objectives, in circumstances where the proposal now complies with the FSR standard, is dealt with in the matter of *Wenli Wang v North Sydney Council* [2018] NSWLEC 122. In these proceedings J Robson found at paragraphs 39 to 42:

- 39 *I agree with the position of the parties' representatives in relation to the application of the objectives. Although the maximum set by a development standard is not a right, a development is taken to comply with the objectives of a standard where compliance with the standard is achieved. This is made clear by the chapeau of cl 4.3(1) which provides that what follows are the "objectives of this clause" as opposed to the objectives of the development. The clause is the development standard set by cl 4.3(2).*
- 40 *The objectives of the standard have relevance where an applicant seeks to vary the development standard by way of a request pursuant to cl 4.6. The consent authority must then be satisfied that the objectives of the clause are met notwithstanding the breach of the development standard. Such a request is not required in the present case as the proposed development complies with the 8.5 metre building height development standard.*
- 41 *Accordingly, I find that the objectives of the development standard are of limited assistance in the present case. In those circumstances it is not necessary to make a finding as to whether the objective of promoting "the retention and, if appropriate, sharing of existing views" is achieved by the proposed development.*

As such, we consider the concerns expressed in relation to the FSR variation to be resolved.

## **2. Clause 3.4.2 Privacy and Security**

Response: As previously indicated the amended plans incorporate the following additional privacy measures:

- The provision of an 8 metre setback to the trafficable portion of the southern decks to Townhouses 1 and 2 with the landscape plan adjusted accordingly;
- The introduction of a planter box to the southern edge of the Unit 7 balcony to prevent direct line of sight to the north facing courtyard of Townhouses 1 and 2;

- The introduction of frosted glass screens to the outer edge of the north facing Unit 3 and 6 balconies to enhance privacy between the development and No. 14 Boyle Street.

These privacy attenuation measures collectively address the privacy interface concerns raised. The proposal satisfies the clause 3.4.2 Privacy and Security provisions of the DCP.

### **3. Clause 3.4.3 Maintenance of Views**

We acknowledge the view loss objection received from the owner of Unit 4/16 Boyle Street which adjoins the western boundary of the subject property. We have obtained access to this property to enable photographs to be taken for the purpose of preparing a view loss analysis.

Whilst Council acknowledges that the views available across the side boundary of the adjoining property and across the flat roof of the single storey heritage listed dwelling located on the subject site towards North Head from the south facing living room windows from both a seated and standing position are highly vulnerable to impact, we are advised that Council cannot accept the complete obliteration of views from this property.

In this regard, a number of options were considered to provide for the retention of some scenic views from this property whilst not significantly altering the design of the development or the agreed design parameters associated with the works proposed to the existing heritage item located on the subject property. It was ultimately determined that the removal of the existing vegetation at the rear of No. 12 Boyle Street coupled with the relocation of the western lift 3.2 metres to the west and a corresponding adjustment in the design and layout of Units 3 and 6 and adjacent circulation courtyard would preserve a view corridor from Unit 4/16 Boyle Street towards Dobroyd Head from a standing position in the western living room and the ocean horizon from a standing position in the western living room area. Views towards Dobroyd Head will also be maintained from a standing position from the south facing bedroom window.

Such outcome is depicted in the accompanying view analysis prepared by Roberts Day Architects dated 16<sup>th</sup> August 2019.

Having regard to the clause 3.4 DCP objective to minimise the impact of development on views and the view sharing principles established by the Land and Environment Court of NSW in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140 as they relate to an assessment of view impacts from Unit 4/16 Boyle Street we have formed the following opinion:

## **First Step - Assessment of views to be affected**

*An assessment of the view to be affected. The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Comment: The view analysis prepared by Roberts Day Architects confirms that Unit 4/16 Boyle Street currently obtains a restricted, partial and filtered view in a south easterly direction from the south facing bedroom window towards the eastern tip of Dobroyd Head and the ocean horizon beyond. A small area of Dobroyd Head ridgeline is visible in a southerly direction above and between trees located on adjoining properties. The land/ water interface is not visible.

This apartment has 2 south facing living room windows hereafter referred to as the eastern and western living room windows. A restricted, partial and filtered view is available in a south easterly direction from the south facing eastern living room window towards the tip of North Head and ocean horizon beyond. A small area of Dobroyd Head ridgeline is visible in a southerly direction above and between trees located on adjoining properties. The land/ water interface is not visible.

A restricted, partial and filtered view is available in a south easterly direction from the south facing western living room window towards North Head, Middle Harbour and the ocean horizon beyond. The North Head land/ water interface is visible. A small area of Dobroyd Head ridgeline is visible in a southerly direction above and between trees located on adjoining properties.

## **Second Step - From what part of the property are the views obtained**

*The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

Comment: These views are available from the rear bedroom and living areas of the property from a standing position with seated views significantly diminished given the shallow nature of the views obtained over vegetation and across the roof of the heritage listed dwelling located on the subject property. The views available over the subject site are obtained directly across the side boundary and over the roof of the existing single storey heritage listed dwelling located on the central portion of the subject site.



**Figure 1** – Aerial photograph showing primary view lines from Unit 4/16 Boyle Street (shown with red star and arrows). The existing heritage listed dwelling on the subject site is depicted by a blue star.

### **Third Step – Assessment of extent of the impact**

*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

Comment: The view analysis prepared by Roberts Day Architects confirms that the amended scheme will totally obstruct the restricted, partial and filtered view available in a south easterly direction from the south facing bedroom window towards the eastern tip of Dobroyd Head and the ocean horizon beyond however will create a new view corridor in a southerly direction incorporating a restricted and partial view towards Dobroyd Head and its ridgeline.

The amended scheme will totally obstruct the restricted, partial and filtered view available in a south easterly direction from the south facing eastern living room window towards the tip of North Head and ocean horizon beyond however will create a new view corridor in a southerly direction incorporating a restricted and partial view towards Dobroyd Head and its ridgeline.

The amended scheme will totally obstruct the restricted, partial and filtered view available in a south easterly direction from the south facing western living room window towards North Head, its land/ water interface, Middle Harbour and the ocean horizon beyond however will maintain a restricted and partial ocean horizon view.

Based on an assessment of the totality of the views available from this property, and the vulnerability of the shallow views available across site boundaries, through vegetation and over and roof of the single storey heritage listed dwelling located on the subject property, we consider the view impact from the bedroom and eastern living room to be appropriately described as moderate and the view impact from the western living room to be severe.

#### **Fourth Step – Reasonableness of the proposal**

*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them.*

*Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

Comment: The proposed development, as amended, complies with the 0.6:1 FSR standard. It has been determined that there are 3 minor breaching roof/ pergola elements with the maximum height of the development being 9.675 metres above ground level existing. These breaches occur in the south eastern corner of Townhouse 1 and the clerestory element over Unit 6 as depicted on plan B002(A) as reproduced in Figure 2 over page. This represents a maximum non-compliance of 1.175 metres or 13.8%. The balance of the development sits comfortably below the 8.5 metre height standard. Importantly, these breaching elements do not contribute towards the view impact as outlined.





**Figure 2** – Plan extract showing 8.5 metre height breaching roof/ pergola elements

Further, the area of Unit 7 which obstructs the views towards North Head complies with the wall height control with side boundary setbacks dictated by the need to maintain the footprint and setbacks of the existing heritage listed dwelling.

Whilst the resultant view loss is acknowledged, it reflects the vulnerability of the existing shallow views which are only available because of the underdeveloped nature of No. 307 Sydney Road. View impacts have been minimised in accordance with the clause 3.4 DCP objective to minimise the impact of development on views with the amended proposal maintaining scenic views from the bedroom and living room areas within Unit 4/16 Boyle Street and in doing so addressing the Council concern regarding the potential obliteration of views.

We have formed the considered opinion that a view sharing scenario is maintained between adjoining properties in accordance clause 3.4 of the DCP and the principles established in *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140 and *Davies v Penrith City Council* [2013] NSWLEC 1141.



#### **4. Setbacks (side and rear) and Building Separation**

Response: As previously indicated, these setback and privacy concerns have been addressed as follows:

- The provision of an 8 metre setback to the trafficable portion of the southern decks to Townhouses 1 and 2 with the landscape plan adjusted accordingly;
- The introduction of a planter box to the southern edge of the Unit 7 balcony to prevent direct line of sight to the north facing courtyard of Townhouses 1 and 2;
- The introduction of frosted glass screens to the outer edge of the north facing Unit 3 and 6 balconies to enhance privacy between the development and No. 14 Boyle Street.

We consider these amendments comprehensively address the concerns raised.

#### **5. Waste comments**

Response: In response to the waste referral issues raised we note the following:

- A waste storage and collection room accommodating the waste storage requirements for 6 units is located on the southern side of the Boyle Street driveway and within 6 metres of the Boyle Street frontage.
- This waste storage room has minimum wall and ceiling heights of 2.1 metres.
- The bins for Units 7 and 8 will be stored within a waste room located adjacent the entrance to Unit 8 and will be wheeled to the Sydney Road frontage for collection by the unit owners for collection by Council waste contractors.

Having given due consideration to the matters pursuant to Section 4.15(1) of the Environmental Planning and assessment Act, 1979 as amended, it is considered that there are no matters which would prevent Council from granting consent to this proposal in this instance.

Please not hesitate to contact me to discuss any aspect of this submission.

**Yours faithfully**

Boston Blyth Fleming Town Planners

A handwritten signature in black ink, appearing to read 'Greg Boston', written in a cursive style.

Greg Boston

B Urb & Reg Plan (UNE) MPIA

B Env Hlth (UWS)

**Director**

Attachments

1. Updated clause 4.6 variation request – Height of buildings

**Clause 4.6 variation request – Height of buildings**

Pursuant to Clause 4.3 of MLEP 2013 the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control 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.*

Building height is defined as follows:

***building height (or height of building)*** means the vertical distance between ground level (existing) and 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

Ground level existing is defined as follows:

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

It has been determined that there are 3 minor breaching roof/ pergola elements with the maximum height of the development being 9.675 metres above ground level existing. These breaches occur in the south eastern corner of town house 1 and the clerestory element over Unit 6 as depicted on plan B002(A) as reproduced in Figure 1 below. This represents a maximum non-compliance of 1.175 metres or 13.8%. The balance of the development sits comfortably below the 8.5 metre height standard.



**Figure 1** – Plan extract showing 8.5 metre height breaching roof/ pergola elements

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

- a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(4) states consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
  - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

## **Claim for Variation**

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

## **Zone and Zone Objectives**

The subject property is zoned R1 General Residential pursuant to Manly Local Environmental Plan 2013 (MLEP 2013) with both dwelling houses and residential flat buildings permissible in the zone with consent. The stated objectives of the R1 General Residential zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

A residential flat building means a building containing 3 or more dwellings but does not include an attached dwelling or multi dwelling housing. The proposed development incorporates 4 detached style pavilions 3 of which are 2 storeys in height and occupied by residential apartments. Units 1 and 2 are attached and properly described as multi dwelling housing (townhouses) with both uses permissible with consent in the zone.

The proposed development meets the relevant zone objectives as it provides for the housing needs of the community through the provision of a variety of housing types on the land which contribute to the variety of housing densities in the area. The development is consistent with the zone objectives as outlined.

Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

## **Height of Buildings Standard and Objectives**

This standard and the associated objectives have been previously identified. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- (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,*



Comment: The height, bulk, scale and roof form proposed are entirely consistent with the built form characteristics established by surrounding development with the minor breaching roof and pergola elements not leading to inconsistency in this regard. The areas of non-compliance are appropriately described as minor and can be attributed to the topographical characteristics of the site which falls away adjacent to its southern boundary. This objective is satisfied.

*(b) to control the bulk and scale of buildings,*

Comment: The minor breaching roof and pergola elements do not contribute to unacceptable bulk and scale with the highly articulated and modulated pavilion style development form, which steps down the site in response to topography, achieving a contextually appropriate bulk and scale. This objective is satisfied.

*(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),*

Comment: In relation to potential view affectation from No's 10 and 16 Boyle Street we refer to the accompanying view loss analysis for No. 10 Boyle Street prepared by the project Architect from available survey information (Plans A700(A) to A705(A)) and the view analysis prepared by the project Architect dated 16<sup>th</sup> August 2019 for No. 16 Boyle Street. Such analysis is at Attachment 1.

Having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140 as they relate to an assessment of view impacts, we have formed the following opinion:

### **First Step - Assessment of views to be affected**

***An assessment of the view to be affected. The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.***

#### **No. 10 Boyle Street**

Comment: Having inspected the site and its surrounds to identified potential view corridors, and having regard to the submission previously received from a number of property owners within the adjoining residential flat building at No. 10 Boyle Street, it has been determined that the Town Houses 1 and 2 will impact district and distant harbour views currently available from the east facing bedroom windows (Bed 01 and Bed 02 as depicted on plans A201(A) to A204(A)) of the ground, first and second floor apartments in a south easterly direction across the subject site towards the harbour.

We note that the views currently obtained from the south facing principal living rooms and adjacent balcony will be preserved.

#### **No. 16 Boyle Street**

Comment: The view analysis prepared by Roberts Day Architects confirms that Unit 4/16 Boyle Street currently obtains a restricted, partial and filtered view in a south easterly direction from the south facing bedroom window towards the eastern tip of Dobroyd Head and the ocean horizon beyond. A small area of Dobroyd Head ridgeline is visible in a southerly direction above and between trees located on adjoining properties. The land/ water interface is not visible.

This apartment has 2 south facing living room windows hereafter referred to as the eastern and western living room windows. A restricted, partial and filtered view is available in a south easterly direction from the south facing eastern living room window towards the tip of North Head and ocean horizon beyond. A small area of Dobroyd Head ridgeline is visible in a southerly direction above and between trees located on adjoining properties. The land/ water interface is not visible.

A restricted, partial and filtered view is available in a south easterly direction from the south facing western living room window towards North Head, Middle Harbour and the ocean horizon beyond. The North Head land/ water interface is visible. A small area of Dobroyd Head ridgeline is visible in a southerly direction above and between trees located on adjoining properties.

**Second Step - From what part of the property are the views obtained**

***The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant.***

***Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.***

**No. 10 Boyle Street**

Comment: These views are available from the bedroom areas of the adjoining apartments from both a seated and standing position. The views are across side and/or rear boundaries and across multiple properties. They are highly vulnerable to view impacts from any complaint development on the subject site.

**No. 16 Boyle Street**

Comment: These views are available from the rear bedroom and living areas of the property from a standing position with seated views significantly diminished given the shallow nature of the views obtained over vegetation and across the roof of the heritage listed dwelling located on the subject property. The views available over the subject site are obtained directly across the side boundary and over the roof of the existing single storey heritage listed dwelling located on the central portion of the subject site.



**Figure 2** – Aerial photograph showing primary view lines from Unit 4/16 Boyle Street (shown with red star and arrows). The existing heritage listed dwelling on the subject site is depicted by a blue star.

### **Third Step – Assessment of extent of the impact**

***The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.***

#### **No. 10 Boyle Street**

Comment: The extent of view impact is depicted on plans A700(A) to A705(A) with existing views available in an easterly direction across the rear portion of the subject site totally obscured from both bedroom windows at both ground and first floor level.

That said, oblique views obtained from these windows are maintained to varying extent such that at no location are 100% of available views obscured. Scenic distant harbour views from both bedrooms on level 2 are unaffected.

We have formed the considered opinion that the view impact will range from negligible to moderate from these bedrooms areas however in the context of the totality of the views maintained, including 100% from the principal living and adjacent balcony areas of each apartment, we are of the opinion that the overall view loss, having regard to the view loss assessment criteria, is appropriately described as minor.

### No. 16 Boyle Street

Comment: The view analysis prepared by Roberts Day Architects confirms that the amended scheme will totally obstruct the restricted, partial and filtered view available in a south easterly direction from the south facing bedroom window towards the eastern tip of Dobroyd Head and the ocean horizon beyond however will create a new view corridor in a southerly direction incorporating a restricted and partial view towards Dobroyd Head and its ridgeline.

The amended scheme will totally obstruct the restricted, partial and filtered view available in a south easterly direction from the south facing eastern living room window towards the tip of North Head and ocean horizon beyond however will create a new view corridor in a southerly direction incorporating a restricted and partial view towards Dobroyd Head and its ridgeline.

The amended scheme will totally obstruct the restricted, partial and filtered view available in a south easterly direction from the south facing western living room window towards North Head, its land/ water interface, Middle Harbour and the ocean horizon beyond however will maintain a restricted and partial ocean horizon view.

Based on an assessment of the totality of the views available from this property, and the vulnerability of the shallow views available across site boundaries, through vegetation and over and roof of the single storey heritage listed dwelling located on the subject property, we consider the view impact from the bedroom and eastern living room to be appropriately described as moderate and the view impact from the western living room to be severe.

#### **Fourth Step – Reasonableness of the proposal**

***The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them.***

***Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.***

***If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.***

#### **No. 10 Boyle Street**

As previously indicated, minor areas of upper level roof and walls to townhouses 1 and 2 breach the height control however such breaching elements do not contribute, to any measurable extent, to the view loss from the adjacent bedroom areas.

Under such circumstances there can be no reasonable expectation for these bedroom views to be preserved.

#### **No. 16 Boyle Street**

Comment: The proposed development, as amended, complies with the 0.6:1 FSR standard. It has been determined that there are 3 minor breaching roof/ pergola elements with the maximum height of the development being 9.675 metres above ground level existing. These breaches occur in the south eastern corner of Townhouse 1 and the clerestory element over Unit 6 as depicted on plan B002(A) as reproduced in Figure 2 over page. This represents a maximum non-compliance of 1.175 metres or 13.8%. The balance of the development sits comfortably below the 8.5 metre height standard. Importantly, these breaching elements do not contribute towards the view impact as outlined.





**Figure 2** – Plan extract showing 8.5 metre height breaching roof/ pergola elements

Having reviewed the detail of the application we have formed the considered opinion that the breaching height elements do not contribute to view impacts from either property with a view sharing scenario maintained between adjoining properties in accordance with the principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140 and Davies v Penrith City Council [2013] NSWLEC 1141.

Council can be satisfied that the development has minimised adverse environmental impacts on the use or enjoyment of adjoining land and the public domain with no resultant public view affectation. Accordingly, the proposal is consistent with this objective.

- (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,*

Comment: As depicted on the accompanying shadow diagrams (plans A500(A) to A502(A)) we have determined that the minor breaching elements will not contribute to any unreasonable overshadowing of the public or private domains with compliant levels of solar access maintained to all surrounding residential properties. This objective is satisfied.

- (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.*

Comment: N/A

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, by virtue of the minor building height breaching elements, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

Having regard to the matter of Veloshin v Randwick City Council [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.

In the recent 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including topography of the land which makes strict compliance more difficult to achieve and the increased amenity afforded by the breaching clerestory and pergola elements.

Further, the compatibility of the proposed building height with the height and form of surrounding development, the developments compliance with the objectives of the height standard and the general paucity of adverse environmental impact also give weight to the acceptability of the variation sought.

A better environmental planning and urban design outcome is achieved through the facilitation of the building height variation proposed. The building is of good design quality and represents the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

### **Conclusions**

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such, we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Please not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

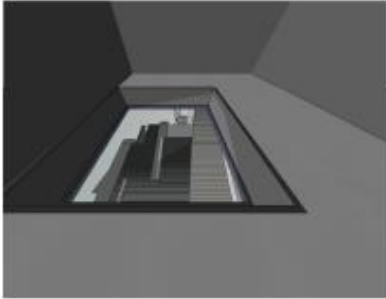
Boston Blyth Fleming



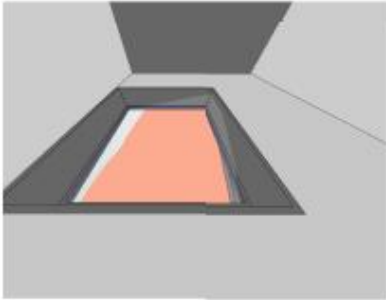
**Greg Boston**  
B Urb & Reg Plan (UNE) MPIA  
**Director**

Attachments

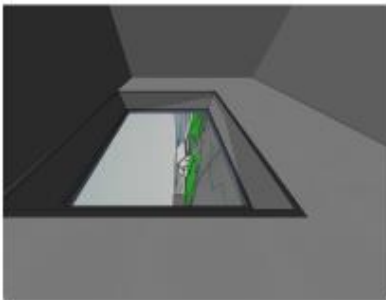
1. View analysis diagrams



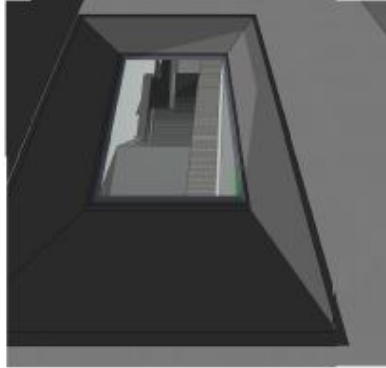
View from Window 3, Level G, 10 Boyle Street Proposed



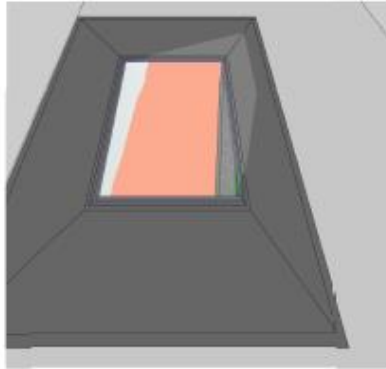
View from Window 3, Level G, 10 Boyle Street with height and setback controls in setting



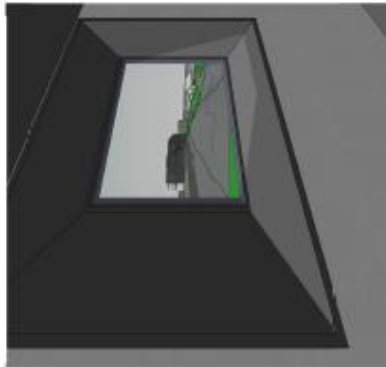
View from Window 3, Level G, 10 Boyle Street Existing



View from Window 3, Level G, 10 Boyle Street Proposed



View from Window 3, Level G, 10 Boyle Street with height and setback controls in setting




View from Window 3, Level G, 10 Boyle Street Existing



10 Boyle St  
307 Sydney Rd



10 Boyle St  
307 Sydney Rd



robertsday  
 Level 4, 17 Parkside St, Parkside VIC 3045  
 T: 03 9489 1815 F: 03 9489 3010  
 E: info@robertsday.com.au  
 4/111 COLLEGE ST, MELBOURNE VIC 3000

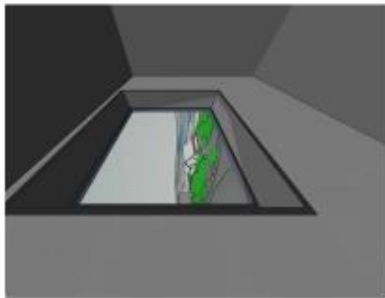
**VIEW ANALYSIS FROM 10 BOYLE STREET LEVEL G W3**  
 Sun Property Group  
 PROJECT ADDRESS  
 307 Sydney Road and 10 Boyle Street, Balgownie  
 SCALE 1:500  
 DATE 24/07/09  
 DRAWN BY ID:041  
 CHECKED BY JH  
 REF NO. 307 SRD  
 DRAWING NO. A-700  
 REV. A

| REV | DATE     | DESCRIPTION       |
|-----|----------|-------------------|
| A   | 24/07/09 | ISSUE FOR TENDERS |

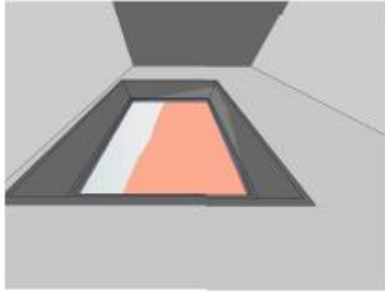
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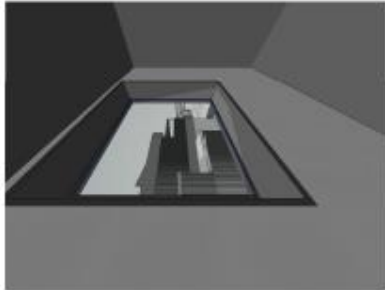
View from Window 3, Level 1, 10 Boyle Street Existing



View from Window 3, Level 1, 10 Boyle Street Existing



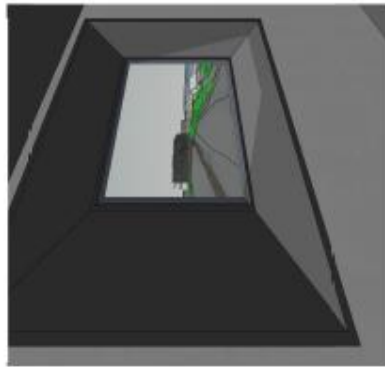
View from Window 3, Level 1, 10 Boyle Street with height and setback controlling shading



View from Window 3, Level 1, 10 Boyle Street Proposed



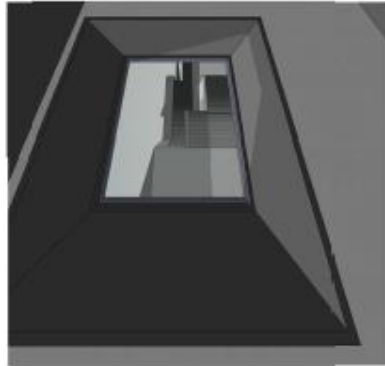
View from Window 3, Level 1, 307 Sydney Road Existing



View from Window 3, Level 1, 307 Sydney Road Existing



View from Window 3, Level 1, 307 Sydney Road with height and setback controlling shading



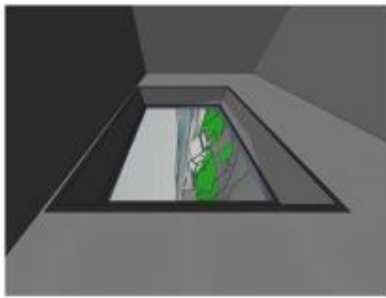
View from Window 3, Level 1, 307 Sydney Road Proposed



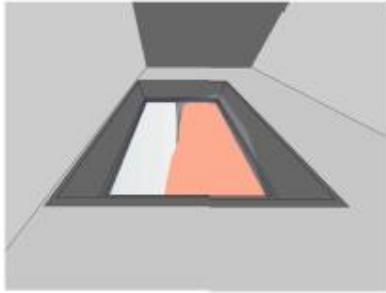
Robertson  
104-117 Boyle Street, Level 10, Melbourne  
T: +61 3 902 8000, info@rdgreatplaces.com.au  
RPN 001092335, RPN001092335, RPN001092335, RPN001092335

ISSUE NO. 01  
DATE 24/01/2019  
DESCRIPTION  
ISSUE NO. 01  
DATE 24/01/2019  
DESCRIPTION

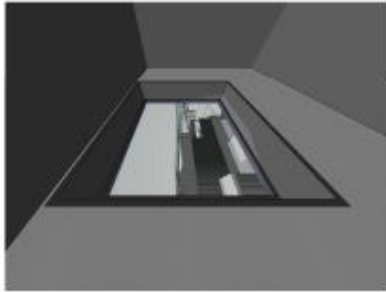
Sun Property Group  
re: 307 Sydney Road and 12 Boyle Street, Balgownie  
View Analysis from 10 Boyle Street Level 1 W3  
SCALE 1:500  
DATE 24/01/19  
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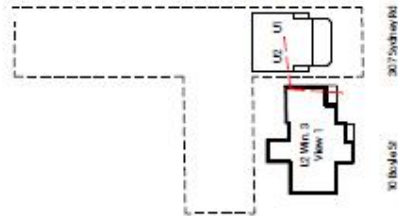
View from Window 3, Level 2, 10 Boyle Street Building



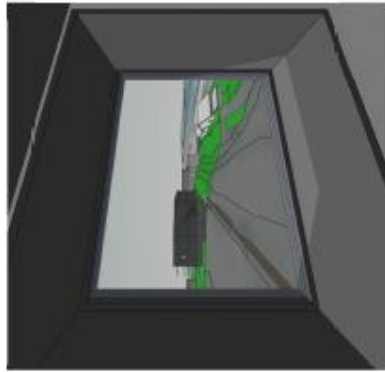
View from Window 3, Level 2, 10 Boyle Street with height and setback control missing



View from Window 3, Level 2, 10 Boyle Street Proposed



10 Boyle St  
Level 2  
View 1



View from Window 3, Level 2, 10 Boyle Street Proposed



View from Window 3, Level 2, 10 Boyle Street with height and setback control missing

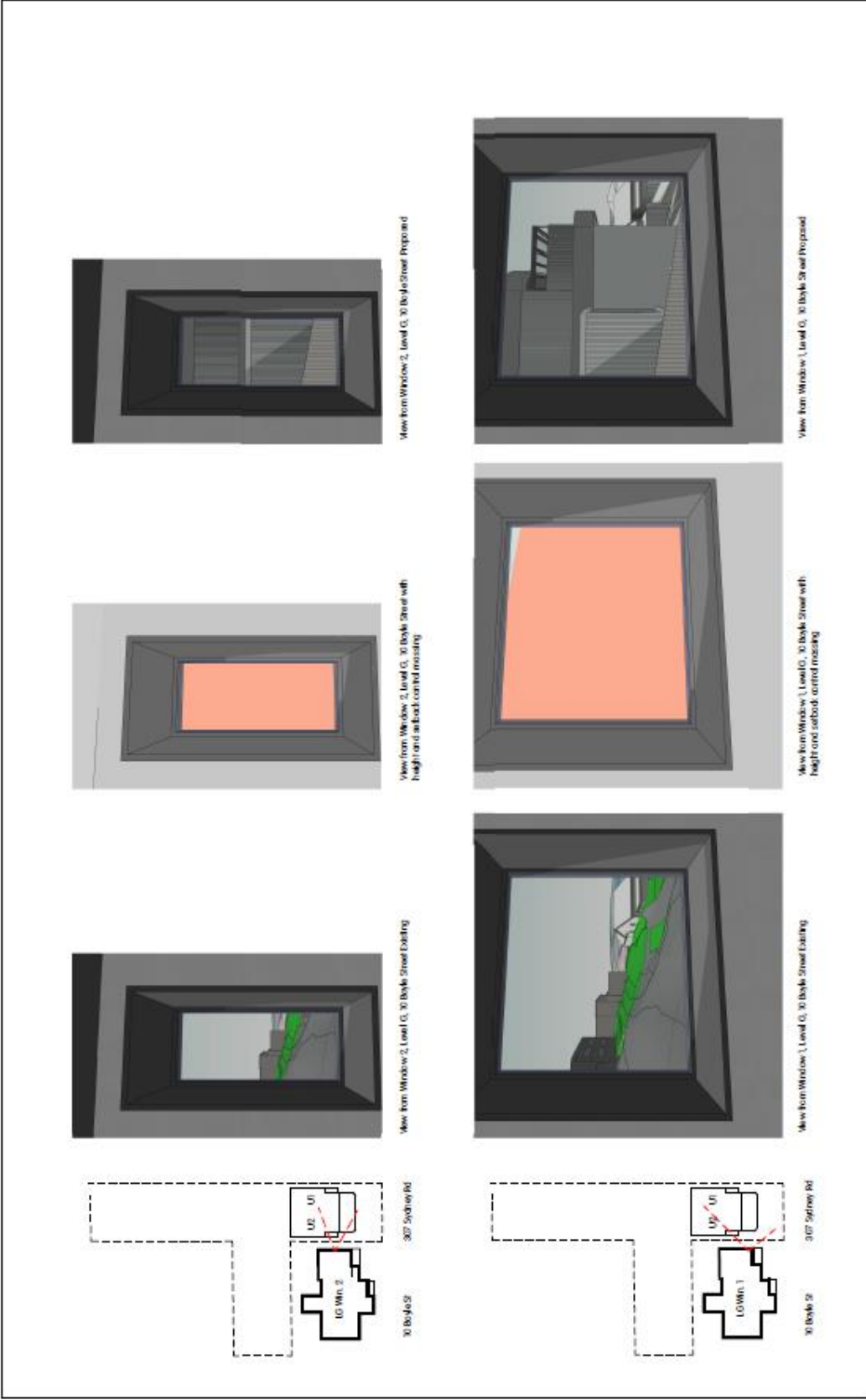


View from Window 3, Level 2, 10 Boyle Street Proposed



10 Boyle St  
Level 2  
View 2





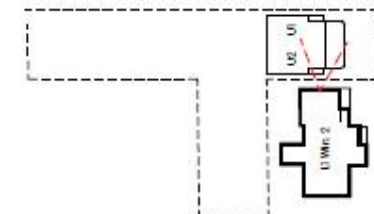
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 R: 03 92 82 02 30 03 04 00  
 R: 03 92 82 02 30 03 04 00

Sun Property Group  
 307 Sydney Road and 12 Boyle Street, Badgowlis  
 SCALE: 1:100 DATE: 24/07/19 DRAWN BY: A. TON  
 CHECKED BY: MM DATE: 24/07/19

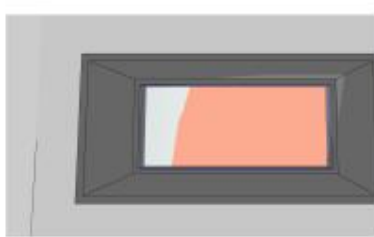
**View Analysis from 10 Boyle Street Level G, W1 & W2**



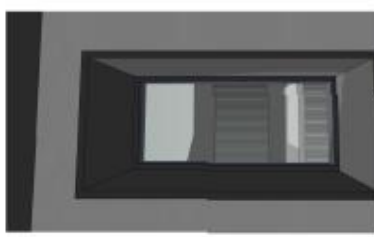
10 Boyle St  
307 Sydney Rd



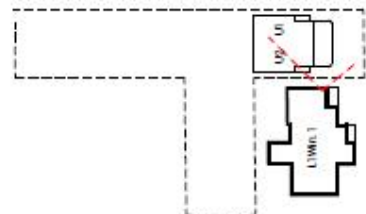
View from Window 2, Level 1, 10 Boyle Street looking



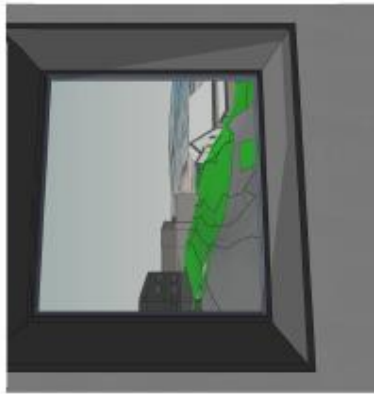
View from Window 2, Level 1, 30 Boyle Street with height and setback control zoning



View from Window 2, Level 1, 10 Boyle Street Proposed



30 Boyle St  
307 Sydney Rd



View from Window 1, Level 1, 30 Boyle Street looking



View from Window 1, Level 1, 30 Boyle Street with height and setback control zoning



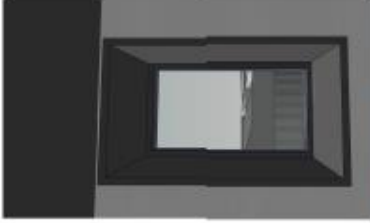
View from Window 1, Level 1, 30 Boyle Street Proposed



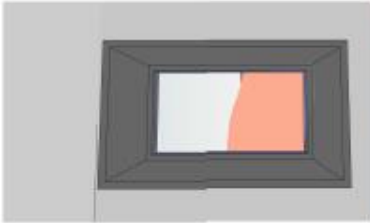
Submission  
 Level 4, 17 Bourke St Sydney NSW 2010  
 T +61 2 9252 8000 admin@robertday.com.au  
 AHA 003892335 NOWRATED ARCHITECT Adam Randall (0794)

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 View Analysis from 10 Boyle Street Level 1 W1 & W2  
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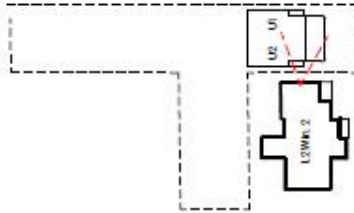
View from Window 3 Level 2, 10 Boyle Street Proposed



View from Window 3 Level 2, 30 Boyle Street with height and setback control missing



View from Window 2, Level 2, 30 Boyle Street Existing



10 Boyle St  
307 Sydney Rd



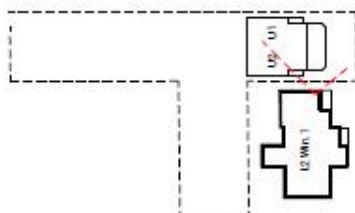
View from Window 1, Level 2, 10 Boyle Street Proposed



View from Window 1, Level 2, 30 Boyle Street with height and setback control missing



View from Window 2, Level 2, 30 Boyle Street Proposed



30 Boyle St  
307 Sydney Rd



Reference:  
Level 4, 17 Parade St SABBOTHS IS HOW 2010  
T: +61 2 9522 8000 info@robertsday.com.au  
RPH 0018992 335 HOWLAND RD PROJECT Admin Ref: 107641

| REV | DATE       | ISSUE FOR/DIA | DESCRIPTION |
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| A   | 24/01/2019 | ISSUE FOR/DIA |             |

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**TITLE**  
Sun Property Group  
View Analysis from 10 Boyle  
Street Level 2 W1 & W2

near streets  
307 Sydney Road and 12 Boyle Street, Balgowlah

| SCALE       | DATE     | DATE  | DATE | DATE | DATE | DATE | DATE |
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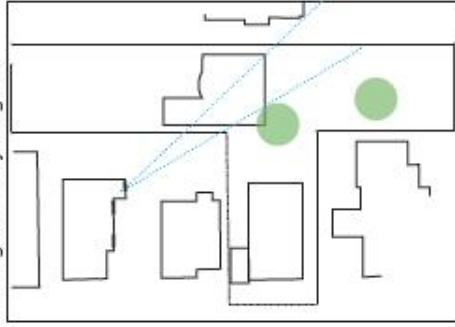
Bedroom View Analysis  
From Unit 4/16 Boyle St

16 August 2019

Existing View



Existing View Key Diagram



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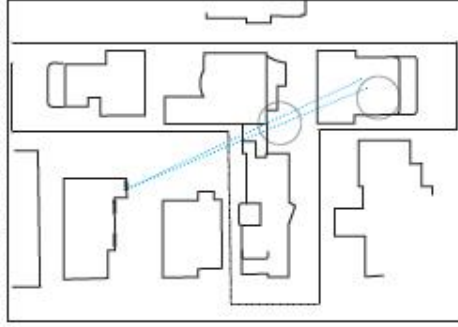
Bedroom View Analysis  
From Unit 4/16 Boyle St

Proposed DA



\*The mullions on window have been made translucent to better represent view access through the opening.

Proposed DA View Key Diagram



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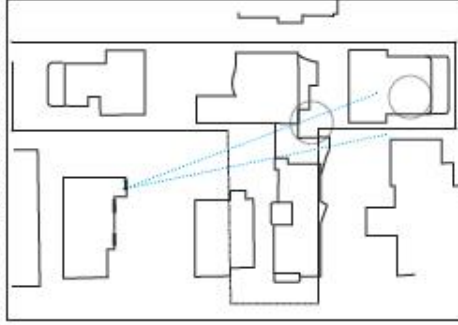
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**Proposed DA Amendment**



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Proposed Amendment View Key Diagram



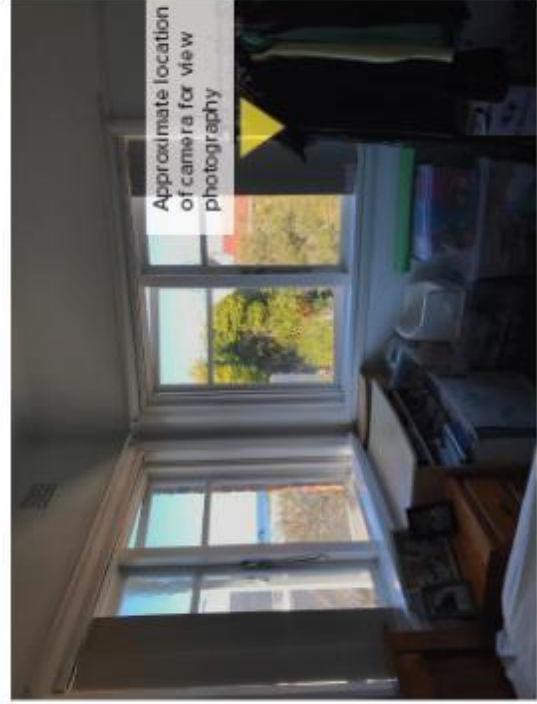
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Bedroom View Analysis  
From Unit 4/16 Boyle St

16 August 2019

**Site Visit Verification Photography**

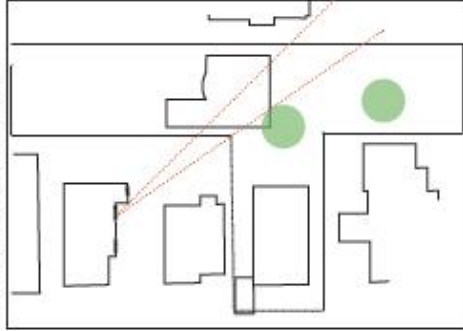




**Existing View**



Existing View Key Diagram



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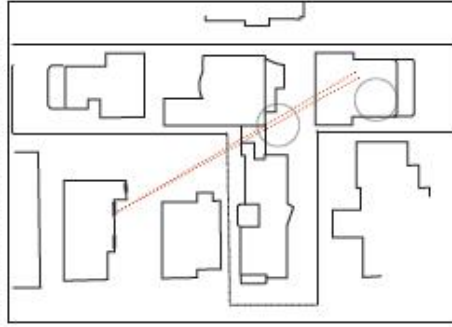
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**Proposed DA**



Proposed DA View Key Diagram



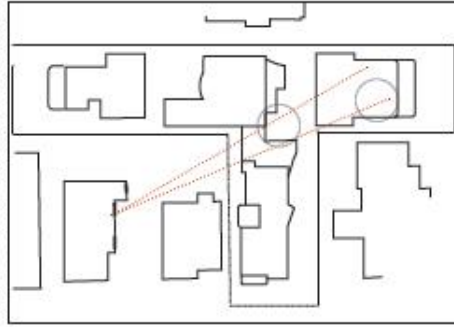
Disclaimer: The photomontages have been prepared according to the survey information provided by Geosurv and photographs provided by the client. The methodology includes using 3d modelling software to create the existing context, proposed built forms and match the photographs to the 3d model based on existing reference points.

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**Proposed DA Amendment**



Proposed Amendment View Key Diagram



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**Site Visit Verification Photography**

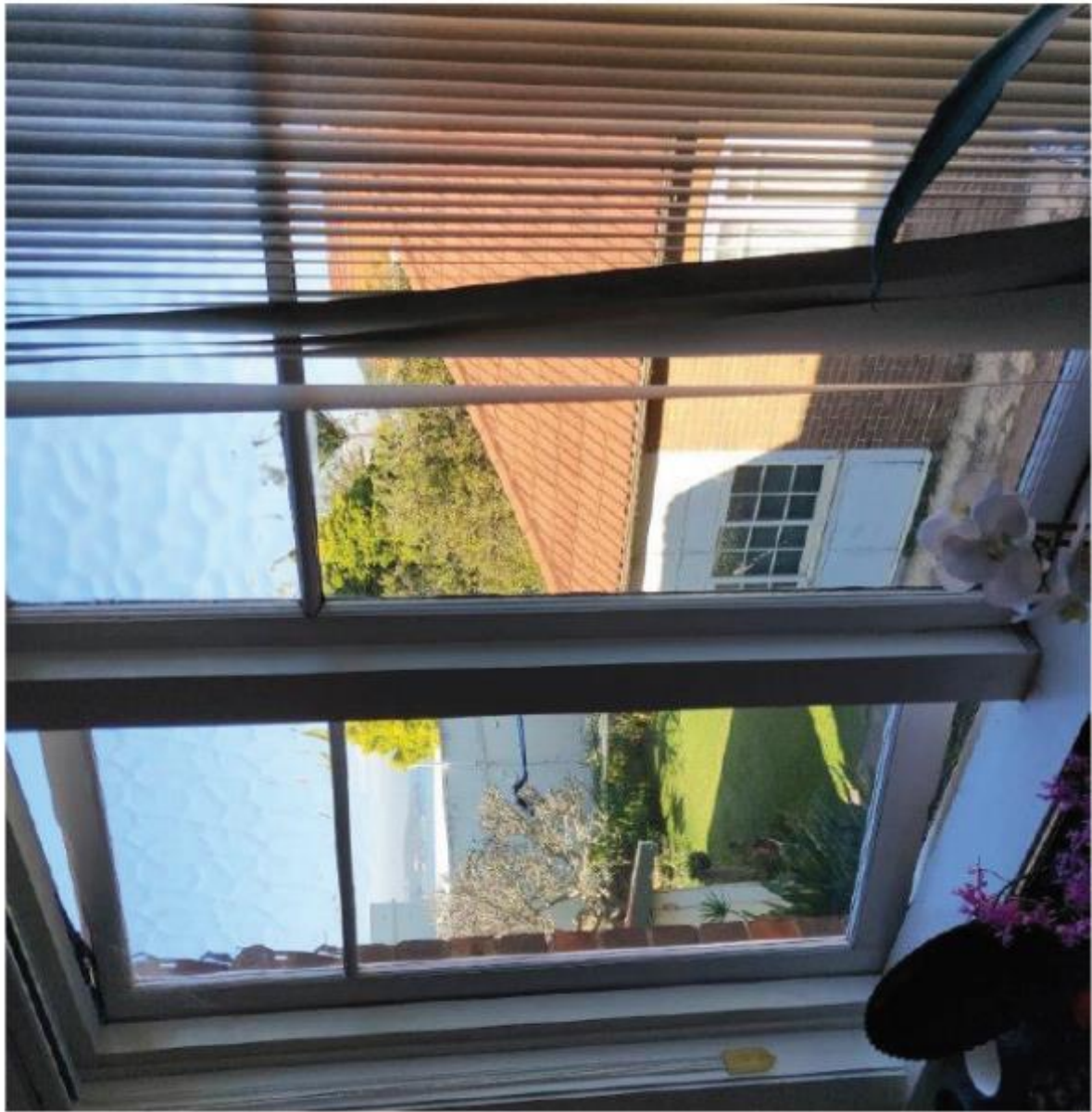




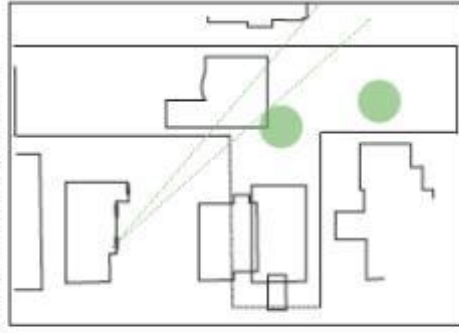
16 August 2019

Western Living Room View Analysis  
From Unit3/16 Boyle St

**Existing View**



Existing View Key Diagram



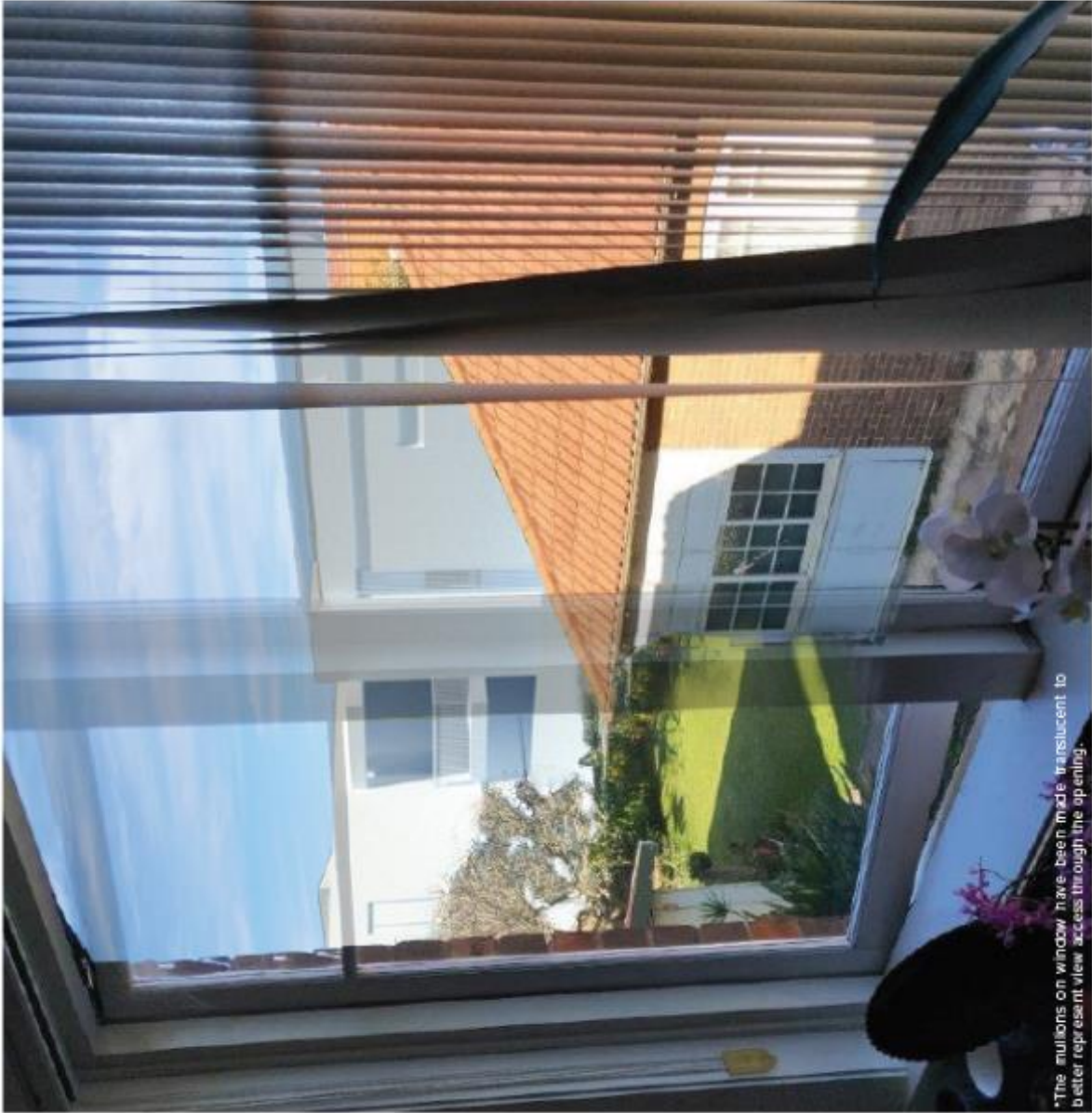
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16 August 2019

Western Living Room View Analysis  
From Unit3/16 Boyle St

Proposed DA



\*The mullions on window have been made translucent to better represent view access through the opening.

Proposed DA View Key Diagram



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16 August 2019

Western Living Room View Analysis  
From Unit 3/16 Boyle St

Proposed DA Amendment



\*The mullions on window have been made translucent to better represent view access through the opening.

Proposed Amendment View Key Diagram



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16 August 2019

Western Living Room View Analysis  
From Unit3/16 Boyle St

**Site Visit Verification  
Photography**

