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**Sent:** 7/05/2021 2:55:35 PM

**Subject:** 9 Glade Street Balgowlah Heights NSW 2093 DA 2021/0365 WRITTEN  
SUBMISSION: LETTER OF OBJECTION Submission: Christie

**Attachments:** Christie Submission 9 Glade.docx;

S U B M I S S I O N : C H R I S T I E  
a written submission by way of objection to DA 2021/0365

Anita Catherine & Brett David Christie  
12 Ernest Street  
Balgowlah Heights  
NSW 2093

4 May 2021

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

Northern Beaches Council  
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Dear Chief Executive Officer,

Re:  
9 Glade Street Balgowlah Heights NSW 2093  
DA 2021/0365

**WRITTEN SUBMISSION: LETTER OF OBJECTION**  
**Submission: Christie**

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

The DA seeks development consent for the carrying out of certain development, namely:

*The proposed work seeks approval for alterations and additions to the existing dwelling at 9 Glade Street, Balgowlah Heights, also known as Lot15B DP31138. It includes demolition of the existing atrium to the south to be replaced with a new single storey extension, a new pool and decks. The addition includes a new master bedroom, walk in robe and second living area. New decks are proposed from the existing and proposed living areas and around the proposed pool.*

Construction Cost: \$0.4m

The subject site is zoned is zoned R2 pursuant to Manly Local Environmental Plan 2013 (“MLEP 2013”), and there is no reason, unique or otherwise why a fully compliant solution to LEP and DCP controls cannot be designed on the site.

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## EXECUTIVE SUMMARY

This Written Submission asks Council to **REFUSE** this DA.

We are being assisted by a very senior experienced consultant assisting us in the preparation and assessment of this Written Submission.

The proposed development is a clear case of overdevelopment, as represented by the main envelope controls in relation to the Rear Setback, presenting a proposed 1.08m setback in a zone that requires a setback of 8.0m.

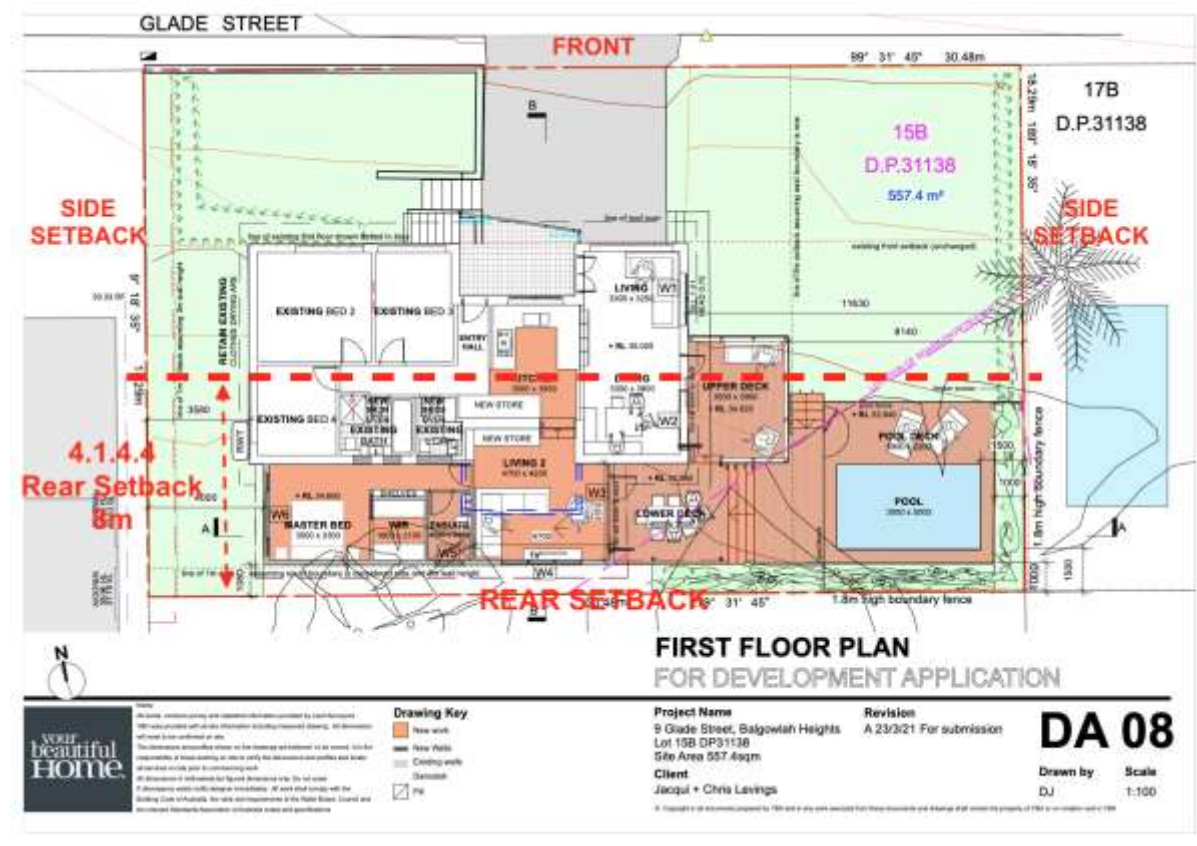
This presents a **740%** non-compliance to a main envelope control.

The boundary of 9 Glade Street facing our property is a **‘REAR SETBACK’** and not, as the SEE states, a **‘SIDE SETBACK’**.

The basis of the design assumes this setback to somehow be a side setback, when clearly it is a rear setback.

The non-compliance to numerical standards leads directly to our amenity loss.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is not suitable and appropriate development for the subject site.



**Sketch Overlay:** The entire development is proposed in the Rear Setback zone, and this is unreasonable and unacceptable, and causes direct amenity loss.

The assessment has found that the proposed bulk and scale of the development is excessive, and will have unacceptable impacts. The proposal is non-compliant with the Rear Setback development control, and overall, the proposal will have unreasonable impacts on the visual impacts, privacy impacts, and overshadowing impacts caused by the overall bulk and scale, and will be generally inconsistent with the desired future character of the area.

Our main concerns are:

- Overdevelopment in the REAR SETBACK ZONE
- Overshadowing
- Overlooking/Privacy
- Visual Bulk
- Excavation for a Pool next to SRZ and TRZ of our trees
- Preservation of our Trees

This Written Submission will document a very clear case for Council to REFUSE this DA

We want to emphasise the fact that we take no pleasure in objecting to our neighbour's DA.

The Applicant has had no prior discussion with us regarding to this DA.

We are objecting because the proposed DA has a very poor impact on the amenity of our property and this is caused by the DA being non-compliant to a major control.

It does seem very unreasonable that the Applicant wishes to remove our amenity to improve his own, and is proposing non-compliant outcomes that would poorly affect our amenity

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

The DA scheme submitted is required to be withdrawn and a redesign to occur, to comply with the rear setback control.

If the Applicant does not withdraw this DA, then we ask Council to refuse the DA.

We are concerned to the non-compliance of the LEP:

- 1.2 Aims of Plans
- Zone R2 Low Density Residential

We are concerned to the non-compliance of the DCP:

The non-compliance to LEP and DCP outcomes and controls forms the basis of our objection. Our loss of amenity will suffer from these non-compliances to outcomes and controls.

- 1.7 Aims and Objectives of this Plan
- 3.3.1 Landscaping Design
- 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)
- 3.4.1 Sunlight Access and Overshadowing
- 3.4.2 Privacy and Security
- 4.1.4 Setbacks (front, side and rear) and Building Separation
- 4.1.9 Swimming Pools, Spas and Water Features

We agree with Roseth SC in NSWLEC **Pafbum** v North Sydney Council:

***“People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.”***

The ‘*legitimate expectation*’ that we had as a neighbour was for a development that would not result in outcomes of significant non-compliance to envelope controls.

The '*legitimate expectation*' that we had as a neighbour was for a development that would not result in very poor amenity outcomes caused directly from the significant non-compliance to a massive non-compliant rear setback

The '*legitimate expectation*' that we had as a neighbour was for a development that integrates with the landscape character of the locality, and an expectation that the proposal would support landscape planting of a size that is capable of softening the built form.

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, the subject of this Submission does not succeed on merit and is not worthy of the granting of development consent.

We ask Council to refuse this DA as the proposed development does not comply with the *planning regime*, by multiple non-compliance to development standards and controls, and this non-compliance leads directly to our amenity loss.

#### **CHARACTERISTICS OF OUR PROPERTY**

Our property shares a common boundary with the subject property.

The subject site lies to the north of our property.

We enjoy good levels of solar access, and privacy over the subject site.

We attach photography from our rear private open space looking towards the subject site to the north.





## SITE DESCRIPTION

The SEE states:

*The site falls from south to north with a change in level of approximately 2.5m.*

*The site is rectangular with a street frontage and south boundary of 30.48m and east and west boundary dimensions of 18.29m.*

## DEVELOPMENT PROPOSAL

The SEE states:

*The proposed work seeks approval for alterations and additions to the existing dwelling at 9 Glade Street, Balgowlah Heights, also known as Lot15B DP31138. It includes demolition of the existing atrium to the south to be replaced with a new single storey extension, a new pool and decks. The addition includes a new master bedroom, walk in robe and second living area. New decks are proposed from the existing and proposed living areas and around the proposed pool.*

## OUTSTANDING INFORMATION

### Overshadowing Diagrams

The Applicant is required to submit hourly solar access diagrams to assess compliance, caused by non-compliant rear setback.

We are very concerned that the overshadowing diagrams appear to be 'cropped' at the southern extent, and are therefore false and misleading.

The concern we have is that the overshadowing will arise from non-complaint development in the rear setback zone, and therefore should be considered as 'poor design', and the solar loss unreasonable and unacceptable.

## MATTERS OF CONCERN

We are concerned that these impacts will negatively impact the level of amenity currently enjoyed.

The following aspects of the proposal are of concern:

- The extent of the proposed building envelopes



- The siting and extent of the proposed dwelling without having sufficient consideration for maintaining amenity

We provide further details of these matters below and request Council's close consideration of these in the assessment of the application.

We are concerned that the SEE has failed to properly address our amenity concerns, and is suggesting that the DA accords with LEP & DCP outcomes and controls when it clearly it does not.

The non-compliance to LEP and DCP outcomes and controls forms the basis of our objection.

The subject site is of a reasonable size, and there is no reason, unique or otherwise why a fully complaint solution to all outcomes and controls cannot be designed on the site.

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

## STATUTORY PLANNING FRAMEWORK

### Manly Local Environmental Plan 2013

The following matters are relevant to the development under the MLEP 2012:

Provision	Compliance	Consideration
Part 1 Preliminary		
1.2 Aims of Plan	No	The proposal does not comply with the aims of the plan.
Land Use Table		
Zone R2 Low Density Residential	No	The proposal is defined as a dwelling house and is permissible with consent in the R2 Low Density Residential zone. The proposal does not satisfy the zone objectives.

### Aims of the Plan

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property.

*(2) The particular aims of this Plan are as follows:*

*(a) in relation to all land in Manly:*

*(i) to promote a high standard of urban design that responds to the existing or desired future character of areas, and*

*(ii) to foster economic, environmental and social welfare so that Manly continues to develop as an accessible, sustainable, prosperous, and safe place to live, work or visit, and*

*(iii) to ensure full and efficient use of existing social and physical infrastructure and the future provision of services and facilities to meet any increase in demand, and*

*(iv) to ensure all development appropriately responds to environmental constraints and does not adversely affect the character, amenity or heritage of Manly or its existing permanent residential population,*

*(b) in relation to residential development:*

*(i) to provide and maintain a diverse range of housing opportunities and choices that encourages affordable housing to cater for an ageing population, changing demographics and all socio-economic groups, and*

*(ii) to ensure high quality landscaped areas in the residential environment, and*

*(iii) to encourage higher density residential development to be located close to major transport nodes, services and employment opportunities, and*

*(iv) to maintain active retail, business and other non-residential uses at street level while allowing for shop top housing in centres and offices at upper floors in local centres,*

## **Zone and Objectives**

The subject property is zoned R2 pursuant to Manly Local Environmental Plan 2013 ("MLEP 2013")

### *Objectives of zone*

*To provide for the housing needs of the community within a low density residential environment.*

*To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

We contend that the proposed development does not accord with this clause due to the major rear setback non-compliances to controls, that cause direct amenity harm to our property.

## Manly Development Control Plan 2013

The following matters are relevant to the development under MDCP:

Provision	Compliance with Control	Compliance with Objectives
1.7 Aims and Objectives of this Plan	No	No
3.3.1 Landscaping Design	No	No
3.3.2 Preservation of Trees	No	No
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)		
3.4.1 Sunlight Access & Overshadowing	No	No
3.4.1.2 Maintaining Solar access into living rooms of adjacent properties	No	No
3.4.2 Privacy & Security	No	No
<u>4.1.4 Setbacks (front, side and rear) and Building Separation</u>	No	No
4.1.19 Swimming Pools, Spas and Water Features	No	No

### 1.7 Aims and Objectives of this Plan

The General Aims of this plan are to:

- a) Ensure that development contributes to the quality of the natural and built environments.
- b) Encourage development that contributes to the quality of our streetscapes and townscapes.
- c) Ensure that development is economically, socially and environmentally sustainable and to require the principles of ecologically sustainable development to be taken into consideration when determining DAs.

- d) Ensure future development has consideration for the needs of all members of the community.
- e) Ensure development positively responds to the qualities of the site and its context.
- f) Ensure development positively responds to the heritage and character of the surrounding area

We contend that the proposed development does not accord with this clause due to the non-compliances to development standards, that cause direct amenity harm to our property.

### 3.3.1 Landscaping Design & 3.3.2 Preservation of Trees

We are very concerned that the large gum trees on our property, have not been assessed by the Applicant, with appropriate Arborist Report, and considering SRZ and TPZ exclusion zones.

We note the Landscape Officers unsupported Referral dated 26 April 2021:

*Concern is raised regarding the proposed excavation required for the new swimming pool, as this appears to fall within the Tree Protection Zone (TPZ) of a significant native gum tree located on the adjoining property to the south. As this tree is located on another property, it is required to be retained and protected. Any impacts to its short and long-term health and vitality would not be supported. It is recommended that a tree root investigation take place to ensure the proposed excavation required for the swimming pool shall not compromise the health and structural integrity of this tree. Should significant roots be found, it is recommended that the proposed pool be relocated further north, ensuring all significant tree roots are avoided. It is noted no Arboricultural Impact Assessment has been provided with the application.*

*The retention of this significant native tree, as well as other trees and vegetation on adjoining properties is necessary to satisfy control 3.3.2, as key objectives of this control include "to protect and enhance the urban forest of the Northern Beaches", "to effectively manage the risks that come with an established urban forest through professional management of trees", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide".*

*The Landscape Plans provided indicate proposed new screen planting surrounding the proposed pool. This screen planting is vital as it will provide valuable screening between the proposed site and its neighbours to the east and south. The completion of these landscape works is necessary to satisfy control 4.1.5, as a key objective of this control includes "to maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area". In order to further satisfy controls 3.3.1 and 4.1.5, at least two native canopy trees are required to be planted within the site.*

The large 1.1m diameter Tree, would present a TPZ of over 13m. This tree is set only 4m from the rear boundary. The Tree Protection Zone (TPZ) of our significant native gum tree located on our property, 4m from the boundary, must be fully protected.

The diameter is in excess of 1.1m, so a TPZ of 14m should be provided. Refer the following sketch.



The large gum on our property of >1.1m diameter has a TPZ of 14m.

Another large gum on our property of 0.5m diameter has a TPZ of 6m.

There are two trees on neighbours to the west, that have their TPZ well into the proposed development zone in the non-compliant rear setback

We object to the development within these TPZ.

### 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

The DCP states:

*Relevant DCP objectives to be met in relation to these paragraphs include the following:*

*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.*

*Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.*

*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.*
- c) *The use of material and finishes is to protect amenity for neighbours in terms of reflectivity. The reflectivity of roofs and glass used on external walls will be minimal in accordance with industry standards. See also Council's Administrative Guidelines regards DA lodgement requirements for materials and finishes.*

We contend that the proposed development does not accord with this clause due to the non-compliances to development standards, that cause direct amenity harm to our property.

The excessive, non-compliant envelope reduces sunlight to our property, and positions windows much closer to our Home Study causing privacy concerns.

### **3.4.1 Sunlight Access & Overshadowing**

*Relevant DCP objectives to be met in relation to this part include the following:*

- Objective 1) To provide equitable access to light and sunshine.*
- Objective 2) To allow adequate sunlight to penetrate:  
private open spaces within the development site; and  
private open spaces and windows to the living spaces/ habitable rooms  
of both the development and the adjoining properties.*
- Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:  
encouraging modulation of building bulk to facilitate sunlight  
penetration into the development site and adjacent properties; and  
maximising setbacks on the southern side of developments to encourage  
solar penetration into properties to the south.*

We contend that the proposed development does not accord with this clause due to the non-compliances to development standards, that cause direct amenity harm to our property.

We contend that the proposed development does not accord with this control.

The proposed development in the Rear Setback zone causes direct amenity problems.

### 3.4.1.2 Maintaining Solar access into living rooms of adjacent properties

*In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:*

- a) *for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);*
- b) *for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);*
- c) *for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.*

Council will note from the solar access diagrams there is insufficient detail to assess the Home Study windows in our rear garden area.

We ask Council to obtain from the Applicant hourly overshadowing elevational drawings of our windows to confirm compliance with the DCP:

- *for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);*

We contend that the proposed development does not accord with this control.

The proposed development in the Rear Setback zone causes direct amenity problems.

### 3.4.2 Privacy & Security

Relevant DCP objectives to satisfy in relation to this part include the following:

- 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.



Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Objective 3) To encourage awareness of neighbourhood security.

We contend that the proposed development does not accord with this control.

The proposed development in the Rear Setback zone causes direct amenity problems.

### **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.

We contend that the proposed development does not accord with this control.

The proposed development in the Rear Setback zone causes direct amenity problems.

## **Part 4 Development Controls and Development Types**

### **4.1 Residential Development Controls**

#### **4.1.4 Setbacks (front, side and rear) and Building Separation**

We dispute the Statements made within the SEE.

The boundary of 9 Glade Street facing our property is a 'REAR SETBACK' and not, as the SEE states a 'SIDE SETBACK'

The DCP clause 4.1.4 and 4.1.4.4 states:

#### *4.1.4 Setbacks (front, side and rear) and Building Separation*

*Note: This section addresses the buildings' setback from its various property boundaries.*

*Relevant DCP objectives to be 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.*
- Objective 3) To promote flexibility in the siting of buildings.*
- Objective 4) To enhance and maintain natural features by:*  
*accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*  
*ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*  
*ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

#### *4.1.4.4 Rear Setbacks*

- a) The distance between any part of a building and the rear boundary must not be less than 8m.*
- b) Rear setbacks must allow space for planting of vegetation, including trees, other landscape works and private and/or common open space. The character of existing natural vegetated settings is to be maintained. See also paragraph 3.3 Landscaping.*
- c) On sloping sites, particularly where new development is uphill and in sensitive foreshore locations, consideration must be given to the likely impacts of overshadowing, visual privacy and view loss.*
- d) Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy and view loss.*



- c) *On sloping sites, particularly where new development is uphill and in sensitive foreshore locations, consideration must be given to the likely impacts of overshadowing, visual privacy and view loss.*

Comment: There is no consideration e given to the likely impacts of overshadowing and visual privacy caused by the non-compliant rear setback

- d) *Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy and view loss.*

Comment: *There is no prevailing pattern of setbacks, and we contend that the existing rear setback of the existing main dwelling that represents a 4.6m rear setback, should be the minimum rear setback for any new works.*

The proposed development fails the main Objectives:

*To ensure and enhance local amenity by:*

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement;*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces;*

*To enhance and maintain natural features by:*

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*

The proposal does not demonstrate that the variation minimises the adverse impacts of bulk and scale of buildings. The proposal has not adequately demonstrated that areas of noncompliance will not result in the loss of amenity to neighbours. The proposal results in adverse effects of bulk and scale in terms excessive visual impact on neighbours.

#### **4.1.19 Swimming Pools, Spas and Water Features**

The proposed swimming pool is inappropriate in regards to the excavation required adjacent large gum trees on our property.

### **NSW LEC PLANNING PRINCIPLES**

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

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.

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:**

The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal.

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.

In **Project Venture Developments v Pittwater Council (2005) NSW LEC 191**, NSW LEC considered character:

*“whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site’s visual catchment”*

**Commentary:**

The non-compliant elements of the proposed development, particularly caused from the non-compliant rear setbacks, would have most observers finding *‘the proposed development offensive, jarring or unsympathetic’*

## **MORE SKILFUL DESIGN**

We ask that Council to direct the Applicant to withdraw this DA due to the totally inappropriate rear setback.

We contend that there is ample opportunity to extend the house to the east, maintaining existing 4.6m rear setback for any new development in a single storey configuration

The rear setback to be deep soil planting with screening trees along the rear boundary to 4m high.

Any second storey would need to have a compliant rear set back of 8m.

The pool could be positioned on the northern side of the dwelling.

## **ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000**

Applicable regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia and *Home Building Act 1989*, PCA appointment, notice of

commencement of works, sign on work sites, critical stage inspections and records of inspection may be addressed by appropriate consent conditions in the event of an approval.

### **LIKELY IMPACTS OF THE DEVELOPMENT**

This assessment has found that the proposal will have a detrimental impact on the natural and built environments pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.

### **SUITABILITY OF THE SITE**

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

### **PUBLIC INTEREST**

The proposal is not in the public interest because it results in a development of excessive bulk and scale which has adverse amenity impacts on adjoining properties and the broader locality.

### **CONCLUSION**

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

The outcome is a building that causes poor amenity outcomes and other amenity loss concerns due to non-compliance to multiple residential outcomes and controls.

The development does not satisfy the objectives of the standard and will present poor residential amenity consequences.

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

The subject site is of an adequate size, and there is no reason, unique or otherwise, why a fully compliant solution cannot be designed on the site, to avoid amenity loss.

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, outcomes and controls of the DCP and objectives, aims, outcomes and controls of the LEP.

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 processes and assessments have not been satisfactorily addressed.

In assessing the impact of a development proposal upon a neighbouring property, what was said by Roseth SC in *Pafbum v North Sydney Council* [2005] NSWLEC 444 (16 August 2005), at [19]-[24], is extremely helpful:

*19 Several judgments of this Court have dealt with the principles to be applied to the assessment of impacts on neighbouring properties. Tenacity Consulting v Warringah [2004] NSWLEC 140 dealt with the assessment of views loss; Parsonage v Ku-ring-gai Council [2004] NSWLEC 347 dealt with the assessment of overshadowing; while Meriton v Sydney City Council [2004] NSWLEC 313 and Super Studio v Waverley Council [2004] NSWLEC 91 dealt with the assessment of overlooking.*

*20 Five common themes run through the above principles. The first theme is that change in impact may be as important as the magnitude of impact.*

*21 The second theme is that in assessing an impact, one should balance the magnitude of the impact with the necessity and reasonableness of the proposal that creates it.*

*22 The third theme is that in assessing an impact one should take into consideration the vulnerability of the property receiving the impact.*

*23 The fourth theme is that the skill with which a proposal has been designed is relevant to the assessments of its impacts. Even a small impact should be avoided if a more skilful design can reduce or eliminate it.*

*24 The fifth theme is that an impact that arises from a proposal that fails to comply with planning controls is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.*

In the case of the present development proposal:

1. the magnitude of impact upon the amenity, use and enjoyment by us of our property is certainly not insignificant, in that:

- the visual and acoustic privacy, solar loss, and visual bulk impacts from the proposed development into our property well above controls,
- The extent of the proposed building envelopes,
- The siting and extent of the proposed dwelling without having sufficient consideration for maintaining amenity, with non-compliant Rear Setbacks and other issues.

taking amenity from neighbours

2. our property is vulnerable, being directly adjacent to the subject site;
3. the lack of attention in the design of the development proposal as regards the impacts of the proposed development on our property in terms of visual privacy, acoustic privacy, visual bulk, and loss of winter sun, is relevant to the assessments of those impacts, such that even a small impact should be avoided if a more skilful design can reduce or eliminate it;
4. the fact that the proposal fails to comply with a number of important planning controls is much more difficult to justify than would otherwise be the case with a complying proposal; and
5. the proposal involves non-compliance with a number of principal planning control and this is an indicator of overdevelopment of the site.

In summary, we have, as Roseth SC pointed out in Pafbum, a legitimate expectation that the development to take place on the subject property *'will comply with the planning regime'* in the present circumstances.

We contend that the Development Application should be refused on the following grounds.

#### Reasons for Refusal

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is **inconsistent with the aims of the plan** of the Local Environmental Plan.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is **inconsistent with the provisions of the R2 Zone** of the Local Environmental Plan.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of **Clause 1.7 Aims and Objectives of this Plan**
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of **Clause 4.1.4 Setbacks (front, side and rear) and Building Separation**

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of **Clause 3.3.1 Landscaping Design**
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of **Clause 3.3.2 Preservation of Trees**
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of **Clause 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)**
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of **Clause 3.4.1 Sunlight Access and Overshadowing**
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of **Clause 3.4.2 Privacy and Security**
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of **Clause 4.1.9 Swimming Pools, Spas and Water Features**
11. The proposal is contrary to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that the proposal has a **detrimental impact** on both the natural and built environments in the locality of the development.
12. The development is **not suitable** for the site pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
13. The proposal is not in the **public interest** pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* because it results in a development that breaches development standards and controls. The proposed development would result in a development that is of excessive bulk and scale which results in adverse impact on the streetscape, adjoining properties and the broader locality.

The DA scheme submitted requires to be withdrawn due to the incorrect assessment of the rear setback.

If the Applicant does not withdraw the DA, then we ask Council to simply issue a refusal.

We ask for this DA to be **REFUSED** by Council.

Yours faithfully,

Anita Catherine & Brett David Christie

12 Ernest Street  
Balgowlah Heights  
NSW 2093

## **Appendix:**

### **Conditions of Consent**

Compliance with other Departments, Authority or Service Requirement

Prescribed Conditions

General Requirements

### **Approved Land Use**

*Nothing in this consent shall authorise the use of the site as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, as defined within the LEP. Any variation to the approved land use and/occupancy beyond the scope of the above definition will require the submission to Council of a new DA.*

### **Conditions to be satisfied prior to the issue of the CC**

Amendments to the approved plans [*\*see attached list in body of written submission*]

All windows facing neighbours to have obscured glazing

All privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.

Pre-commencement Dilapidation Report

Compliance with standards [demolition]

Compliance with standards

Boundary Identification Survey

Structural Adequacy & Excavation Work

Geotechnical Report Recommendations to be incorporated into designs and structural plans

Engineering Assessment

Engineers Certification of Plans, including all retaining walls

Tanking of Basement Level

Installation & Maintenance of Sediment & Erosion Control

Demolition Traffic Management Plan

Construction Traffic Management Plan

Waste Management Plan

Waste & Recycling Requirements  
Soil and Water Management Program

Vehicle Crossing Application  
Pedestrian sight distance at property boundary  
Location of security gate and intercom system  
Minimum driveway width  
Access driveway

On-site Stormwater Detention Details  
Stormwater Disposal  
Sydney Water  
Water Quality Management

External finishes to Roof  
Colours & Materials

New Landscaping Plan  
Project Arborist  
Tree Protection  
Tree Trunk, Root and Branch Protection  
Root Mapping  
Tree Removal within the Road Reserve

Mechanical plant location  
AC Condenser Units

No excavation within 1m of boundary  
Protection of Neighbours assets

Pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the boundary

Noise from all plant rooms including roof top mechanical plant room, mechanical ventilation for car parks, extraction units and exhaust fans, air condition units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open.

Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

**Conditions that must be addressed prior to any commencement**

Pre-Construction Dilapidation Report  
Installation and maintenance of sediment and erosion control

Pedestrian Sight Distance at Property Boundary  
Demolition and Construction Traffic Management Plan  
On Street Work Zones and Permits  
Kerbside Parking Restrictions

Project Arborist  
Tree Removal  
Tree Removal in the road reserve  
Tree Trunk, Branch, and Root Protection  
Tree protection  
Tree and vegetation removal from property

#### **Conditions to be complied with during demolition and building works**

Road Reserve  
Removing, handling and disposing of asbestos  
Demolition works – Asbestos

Property Boundary levels  
Survey Certificate

Implementation of Demolition Traffic Management Plan  
Implementation of Construction Traffic Management Plan  
Traffic Control during Road Works  
Vehicle Crossings  
Footpath Construction

Geotechnical issues  
Detailed Site Investigation, Remedial Action Plan & Validation  
Installation and maintenance of sediment controls  
Building materials  
Rock Breaking  
Protection of adjoining property  
Vibration to reduce to 2.5mm/sec  
No excavation within 1m of boundary

Waste Management during development  
Waste/Recycling Requirements



Tree Protection – Arborist Supervision of Works  
Tree and vegetation protection  
Tree Condition  
Native vegetation protection  
Protection of rock and sites of significance  
Aboriginal heritage

Protection of Sites of Significance  
Notification of Inspections

**Conditions which must be complied with prior to the issue of the OC**

Post Construction Dilapidation Report

Certification of Structures  
Geotechnical Certificate  
Environmental Reports Certification  
Landscape Completion Certification  
Certification of Civil Works & Works as executed data on council land  
Fire Safety Matters  
Retaining Wall

Required Planting

Positive Covenant and Restriction as to User for On-site stormwater disposal structures  
Positive Covenant for the maintenance of stormwater pump out facilities

Reinstating the damaged road reserve during construction

Condition of retained vegetation  
Stormwater disposal  
Works as executed drawings - stormwater

Installation of solid fuel burning heaters: No approval is granted for the installation of a solid/fuel burning heater. Certification of solid fuel burning heaters

Required Tree Planting  
Required Planting

Acoustic treatment of pool filter  
Noise Nuisance from plant

## Lighting Nuisance

Swimming pool requirements  
Garbage and Recycling Facilities  
House number Building Number  
Waste Management Confirmation  
Privacy Screens  
Reinstatement of Kerbs

Control of noise, odour and vibrations from equipment within plant rooms and ventilation systems connected with the building to ensure noise and vibration from this equipment does not impact on the health and well-being of persons living within the complex and other surrounding premises.

Plant room and equipment for operational conditions - Noise and vibrations. Noise from all plant rooms including roof top mechanical plant room, mechanical ventilation for car parks, extraction units and exhaust fans, air condition units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open. Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

Mechanical Ventilation certification: Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668: the use of mechanical ventilation.

## Ongoing Conditions that must be complied with at all times

Approved Land Use  
Maintenance of solid fuel heater  
Operation of solid fuel heaters  
Landscape maintenance  
Landscaping adjoining vehicular access  
Maintenance of stormwater treatment measures  
Retention of Natural Features  
No additional trees or scrub planting in viewing or solar access corridors of neighbours  
Environmental and Priority Weed Control  
Control of weeds  
No planting environmental weeds  
Maintain fauna access and landscaping provisions  
Noise  
Noise Nuisance from plant  
Swimming pool filter, pump and AC units [noise]  
Outdoor lighting

Lighting Nuisance

Plant room and equipment for operational conditions - Noise and vibrations