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Subject: 17 Ernest Street Balgowlah Heights NSW 2093 DA 2021/0381 WRITTEN
SUBMISSION: LETTER OF OBJECTION Submission: Coulter

Attachments: Coulter Submission .docx;

SUBMISSION: COULTER
a written submission by way of objection to DA 2021/0381

Dean A. Coulter & Penelope A. Coulter
15 Ernest Street
Balgowlah Heights
NSW 2093

4 May 2021

Chief Executive Officer
Northern Beaches Council
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Northern Beaches Council
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Dear Chief Executive Officer,

Re:
17 Ernest Street Balgowlah Heights NSW 2093
DA 2021/0381

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission: Coulter

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:

Addition to the Ground Floor of the residence forming a new Covered Entry Porch and steps to the front of the residence and an attached Double Garage to the side of the residence to replace a detached Carport that is to be removed. Addition of a First Floor to the residence, forming an open plan Living, Dining and Kitchen; a Master Suite with Ensuite and Walk in Robe and a Balcony; a Study; a powder room and a stairwell. Addition of a covered Entertaining area to the rear coming off the First Floor Kitchen and giving stair access to the rear yard. Internal alterations to the ground floor of the existing residence to open up the ceiling for a new stairwell and void; to form a new Entry; 2 new

bedrooms and a powder room, convert an existing Bedroom to a Guest Bedroom, renovate the existing Laundry to form a new Bathroom and convert an existing sitting room into a new Laundry with shower and separate toilet. The proposal is also for a new in-ground swimming pool with paved concourse and timber deck and steps to access the rear yard.

Construction Cost: \$0.7m

The subject site 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 seek amended plans to resolve the issues raised in this Submission, and failing a submission of amended plans to **REFUSE** this DA.

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

The proposed development is a clear case of overdevelopment, as represented by the main envelope controls:

- Height of Building 9.35m, **10%** non-compliance
- Western Side Setback **40%** non-compliance 2.45m control v 1.84m [first], 1.40m control v 0.99m [ground]

- Front Setback 3.25m, **50%** non-compliance
- FSR exceeds control: No GFA drawings.

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

Our main concerns are:

- Overshadowing
- Overlooking/Privacy
- Visual Bulk
- Streetscape

This Written Submission will document a very clear case for Council to REFUSE this DA, or to impose a series of conditions for the Applicant to amended by Amended Plans to reduce the impact of the non-compliant envelope.

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 multiple controls.

It does seem very unreasonable that the Applicant wishes to remove our amenity to improve his own, and is proposing a catalogue of 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.

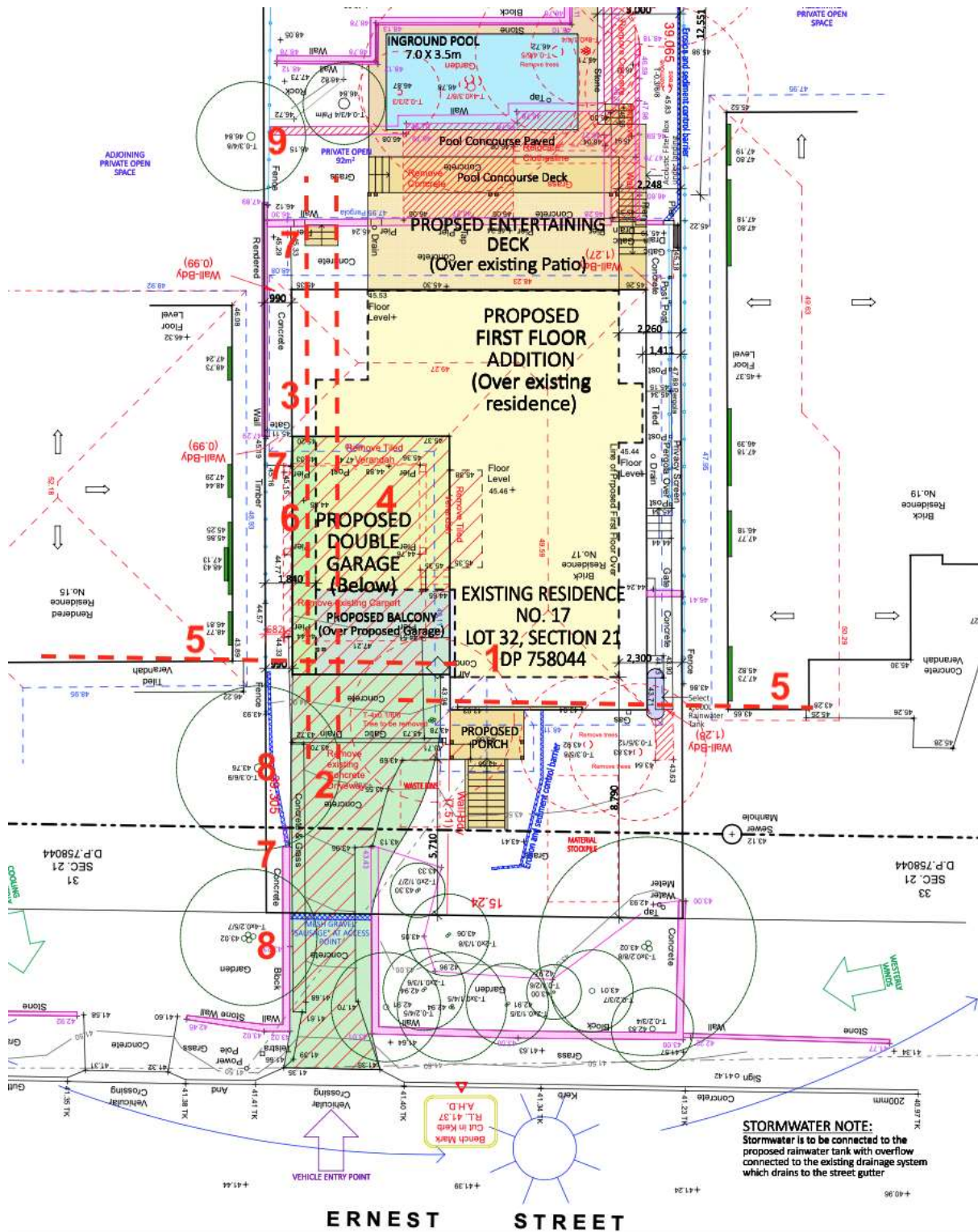
The DA scheme submitted requires to be substantially amended due to the non-compliant setback, height and other issues, and we ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, then we ask Council to refuse the DA or condition the consent.

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

- 1.2 Aims of Plans
- Zone R2 Low Density Residential
- 4.3 Height of Buildings
- 4.4 Floor Space Ratio
- 4.6 Exceptions to Development Standards

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



These matters can easily be addressed by Amended Plan submission.

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 non-compliant envelope

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 west of our property.

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

SITE DESCRIPTION, LOCATION AND CONTEXT

The SEE states:

The subject site is a rectangular shaped block with an area of 594.4m² and a frontage of 15.24m to Ernest Street. The site slopes from the southern rear boundary to front northern boundary. Erected on the property is a single dwelling house and detached Carport.

DEVELOPMENT PROPOSAL

The SEE states:

The alterations and additions will be made up as follows:

Addition to the Ground Floor of the residence forming a new Covered Entry Porch and steps to the front of the residence and an attached Double Garage to the side of the residence to replace a detached Carport that is to be removed.

Addition of a First Floor to the residence, forming an open plan Living, Dining and Kitchen; a Master Suite with Ensuite and Walk in Robe and a Balcony; a Study; a powder room and a stairwell.

Addition of a covered Entertaining area to the rear coming off the First Floor Kitchen and giving stair access to the rear yard.

Internal alterations to the ground floor of the existing residence to open up the ceiling for a new stairwell and void; to form a new Entry; 2 new bedrooms and a powder room, convert an existing Bedroom to a Guest Bedroom, renovate the existing Laundry to form a new Bathroom and convert an existing sitting room into a new Laundry with shower and separate toilet.

The proposal is also for a new in-ground swimming pool with paved concourse and timber deck and steps to access the rear yard.

Coorey v Municipality of Hunters Hill

We ask Council to consider whether this DA should be better described as a New Build.

We contend that under Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187, that this proposed development must be considered a New Build Development and not an Alteration & Addition.

The Coorey Planning principle commences with a question:

The first question to be considered is "what is the purpose for determining whether this application should be characterised as being for additions and/or alterations to an existing structure rather than an application for a new structure?"

The answer to this fundamental question will frame the approach to be undertaken to the analytic framework set out below.

Qualitative issues:

How is the appearance of the existing building to be changed when viewed from public places?

To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places?

To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area?

What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?

What is the extent, if any, of any proposed change to the use of the building?

To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?

To what extent, if any, are the existing access arrangements for the building proposed to be altered?

To what extent, if any, will the outlook from within the existing building be altered as a consequence the proposed development?

Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?

Quantitative issues

To what extent is the site coverage proposed to be changed?

To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?

To what extent is the building envelope proposed to be changed?

To what extent are boundary setbacks proposed to be changed?

To what extent will the present numerical degree of landscaping on the site be changed?

To what extent will the existing floor space ratio be altered?

To what extent will there be changes in the roof form?

To what extent will there be alterations to car parking/garaging on the site and/or within the building?

To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?

What relationship does the proportion of the retained building bear to the proposed new development?

Obviously, the greater the overall extent of departure from the existing position, the greater the likelihood the proposal should be characterised as being for a new building.

It is not intended that the above lists should be regarded as exhaustive. Other matters may well arise for consideration in the facts and circumstances of a particular application or the reason why the analysis is being undertaken. However, having considered all of the listed matters (together with any other additional matters that may be relevant in the particular circumstances of the application), an evaluation can then be made as to whether or not a proposal would correctly be characterised as additions and/or alterations to an existing structure or whether the proposal should be characterised as an application for an entirely new structure.

Commentary

We contend that the qualitative and quantitative issues all point to the fact that this DA should not be considered as an Alteration & Addition, but a New Build.

The first consideration for Council is whether the retained structure is so tokenistic to be irrelevant compared with the changed scope of the new works.

The proposed demolition is so extensive to cause that which remains to lose the characteristics of the form of the existing structure.

The extensive nature of the development is a considerable departure to the existing small-scale situation.

The dwelling is extensively extended, raised, and has a completely new roof structure.

There are multiple new structures proposed that changes the environment completely.

As Coorey states: *“Obviously, the greater the overall extent of departure from the existing position, the greater the likelihood the proposal should be characterised as being for a new building”.*

We contend that this is a New Build and we would ask Council to consider this matter closely.

OUTSTANDING INFORMATION

Overshadowing Diagrams

The Applicant is required to submit hourly solar access diagrams on our western windows to assess compliance, caused by non-compliant building height and non-compliant side setback.

We ask Council to obtain from the Applicant hourly overshadowing drawings 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);*
- *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.*

Height Poles

We ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor.

The Height Poles will need to define:

- All Roof Forms, and all items on the roof
- Extent of all Decks
- Extent of Privacy Screens

The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

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 large 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.
Part 4 Principle Development Standards		
4.3 Height of Buildings	No	A maximum height of 8.5m is permitted. A height greater than 8.5m is proposed

		10% non-compliance
4.4 Floor Space Ratio	No	No GFA drawings are included within the Plan Set. Workshop zones in the garage will need to be included within GFA figures. No Clause 4.6 submitted.
4.6 Exceptions to development standards	See discussion	

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 multiple non-compliances to development standards, that cause direct amenity harm to our property.

Height of Buildings

The proposed development does not provide for building heights that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality. The proposed development does not control the bulk and scale of buildings.

We contend that the DA fails the objectives of this control as follows:

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.

We contend that the non-compliance leads directly to our amenity loss:

(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: There are no roof forms to this height in this immediate area.

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

Comment: There are no buildings that present such excessive built form in this area

(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: The loss of solar access to our windows is of extreme concern to us. The outcome does not accord with DCP requirements. We will lose considerable solar access to all our habitable rooms, and we will lose unreasonable solar access to our private open space, directly from the proposed non-compliant development, with non-compliant height and side setback

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied.

The clause 4.6 variation request has been prepared by the Applicant, however the request does not demonstrate that the development is consistent with the objectives of the zone, and consistent with the objectives of the building height standard.

Strict compliance is reasonable and necessary, to ensure amenity outcomes.

There are insufficient environmental planning grounds exist to justify the variation sought.

The 4.6 variation request is not well founded.

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.

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 the proposed non-compliant building height and non-compliant side and front setbacks, would have most observers finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context’*

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
Streetscape	No	No
3.1.1. Streetscape	No	No
3.1.1 Landscape Design	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 Privacy & Security	No	No
3.4.2 Privacy and Security	No	No
4.1.2 Height of Buildings (incorporating wall height, number of storeys and roof height)	No	No
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No

4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.7 First Floor Additions	No	No
4.1.8 Development on Sloping Sites	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 multiple non-compliances to development standards, that cause direct amenity harm to our property.

Streetscape

3.1.1.1 Complementary Design and Visual Improvement

- a) *Development in the streetscape (including buildings, fences and landscaping) should be designed to:*

- i) *complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
- ii) *ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*
- iii) *maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;*
- iv) *avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;*
- v) *address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;*
- vi) *visually improve existing streetscapes through innovative design solutions; and*
- vii) *incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design.*

Setback Principles in Low Density Areas

- b) *In lower density areas including LEP Zones R2, E3 & E4, setbacks should be maximised to enable open space to dominate buildings, especially on the foreshore.*

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.

The non-compliant building height and non-compliant side setback is clearly visible from the street, and that is unacceptable.

3.1.1.3 Roofs and Dormer Windows

The non-compliant building height and non-compliant side setback that is the outcome of the roof design is unacceptable.

3.3.1 Landscaping Design

The landscaping area is non-compliant to controls, and we ask Council to ensure that the proposed development is brought back into compliance.

We are concerned over the TPZ of our trees near the boundary.

- Limit excavation to Tree 2 and 6 to 200mm to accord with Arborist Report
- Provide tree protection fencing around the TPZ of Tree 21

We ask for 4m high screening trees along the entire eastern boundary.

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

- 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.*
- 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.*
- 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 multiple non-compliances to development standards, that cause direct amenity harm to our property. The excessive, non-compliant envelope reduces sunlight to our western windows, and positions windows much closer to our western windows 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 multiple non-compliances to development standards, that cause direct amenity harm to our property.

We ask for a more compliant outcome:

- Reduce Building Height, particularly the roof facing north, to be below 8.5m
- Increase Eastern First Floor Setback to 2.4m and 1.4m at ground floor
- Reduce eaves to 300mm facing east
- Reduce roof pitch to winter 3pm sun angle
- Setback garage, external entry stair and upper level so that full street setback alignment is achieved with the external wall alignment of 15 Ernest Street

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 of 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 above solar access diagrams that our western windows will lose sun from the non-compliant envelope.

We ask for a more compliant outcome:

- Reduce Building Height, particularly the roof facing north, to be below 8.5m
- Increase Eastern First Floor Setback to 2.4m at first floor and 1.4m at ground floor
- Reduce eaves to 300mm facing east
- Reduce roof pitch to winter 3pm sun angle
- Setback garage, external entry stair and upper level so that full street setback alignment is achieved with the external wall alignment of 15 Ernest Street

We ask Council to obtain from the Applicant hourly overshadowing elevational drawings of our western 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);*
- *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.*

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.

We ask for a more compliant outcome:

- Reduce Building Height, particularly the roof facing north, to be below 8.5m
- Increase Eastern First Floor Setback to 2.4m at first floor and 1.4m at ground floor
- Reduce eaves to 300mm facing east
- Reduce roof pitch to winter 3pm sun angle
- Setback garage, external entry stair and upper level so that full street setback alignment is achieved with the external wall alignment of 15 Ernest Street

This outcome will allow greater privacy outcome from the proposed first floor windows by the increase of distance.

We ask for all windows facing the side setback zone to have 1.6m high sills.

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.

EAST ELEVATION

We ask for all windows facing the side setback zone to have 1.5m high sills, and be redesigned to be offset to our windows.

Part 4 Development Controls and Development Types

4.1 Residential Development Controls

4.1.2 Height of Buildings (incorporating wall height, number of storeys and roof height)

Clause 4.3 of the LEP restricts the height of any development on the subject site to 8.5 metres.

The proposed additions result in non-compliance to 10%, which significantly varies the development standard.

The DCP permits a maximum wall height of 7.2 metres. The proposal exceeds those controls.

The non-compliance leads directly to amenity loss.

4.1.4.2 Side setbacks and secondary street frontages

We dispute the Statements made within the SEE

We require a full 1/3 wall height side setback at the ground floor and the first floor.

The proposed non-compliant side setback facing our property

- A negative presentation to the streetscape
- Privacy, solar access, is not retained for neighbours
- Streetscape character is not maintained and improved

We ask for a more compliant outcome:

- Reduce Building Height, particularly the roof facing north, to be below 8.5m
- Increase Eastern First Floor Setback to 2.4m at first floor and 1.4m at ground floor
- Reduce eaves to 300mm facing east
- Reduce roof pitch to winter 3pm sun angle
- Setback garage, external entry stair and upper level so that full street setback alignment is achieved with the external wall alignment of 15 Ernest Street

The proposal would not be compatible with the desired future character with regard to building height and roof form.

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.

4.1.5 Open Space and Landscaping

4.1.5.1 Minimum Residential Total Open Space Requirements

The DCP requires a total of 55% of the site to be open space with a minimum 35% of that open space to be landscaped area. The development proposal does not precisely accord with this provision, and we ask Council to check the area calculations.

4.1.7 First Floor Additions

The proposed upper floor addition is not complementary to the site and streetscape and is not appropriate with its impact on neighbouring properties.

The DCP states:

4.1.7.1 First Floor Additions

- a) *First floor additions must complement the architectural style of the ground floor and where possible retain existing roof forms. Notwithstanding setback provisions, the addition may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues.*
- b) *The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of the former Manly Council area. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure.*

We contend that the first-floor additions must fully accord with side setback and building height controls to avoid excessive amenity loss.

We ask for a more compliant outcome:

- Reduce Building Height, particularly the roof facing north, to be below 8.5m
- Increase Eastern First Floor Setback to 2.4m at first floor and 1.4m at ground floor
- Reduce eaves to 300mm facing east
- Reduce roof pitch to winter 3pm sun angle
- Setback garage, external entry stair and upper level so that full street setback alignment is achieved with the external wall alignment of 15 Ernest Street

4.1.8 Development on Sloping Sites

The DCP states:

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

- Objective 1) To ensure that Council and the community are aware of, and appropriately respond to all identified potential landslip & subsidence hazards.*
- Objective 2) To provide a framework and procedure for identification, analysis, assessment, treatment and monitoring of landslip and subsidence risk and ensure that there is sufficient information to consider and determine DAs on land which may be subject to slope instability.*
- Objective 3) To encourage development and construction this is compatible with the landslip hazard and to reduce the risk and costs of landslip and subsidence to existing areas.*

Requirements

- a) The design of development must respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.*
- b) Developments on sloping sites must be designed to:*
- i) generally step with the topography of the site; and*
 - ii) avoid large undercroft spaces and minimise supporting undercroft structures by integrating the building into the slope whether to the foreshore or a street.*

The fundamental problem with the design concept is that the design does not step with the sloping topography, and presents large gable ends facing the street.

The main height controls of building height, and setback are significantly breached.

In this respect, a better design option, a more skilful design, would be to present a design solution as follows. We ask for a more compliant outcome:

- Reduce Building Height, particularly the roof facing north, to be below 8.5m
- Increase Eastern First Floor Setback to 2.4m at first floor and 1.4m at ground floor
- Reduce eaves to 300mm facing east
- Reduce roof pitch to winter 3pm sun angle
- Setback garage, external entry stair and upper level so that full street setback alignment is achieved with the external wall alignment of 15 Ernest Street

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 height, front setbacks, side setbacks, would have most observers finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context’*

AMENDED PLANS: PROPOSED CONDITIONS OF CONSENT TO ANY APPROVAL:

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

These conditions would preferably all be dealt with under resubmission of Amended Plans, or by a withdrawal of this DA and a submission of a new DA.

We present them for Council’s consideration.

- Reduce Building Height, particularly the roof facing north, to be below 8.5m
- Increase Eastern First Floor Setback to 2.4m at first floor and 1.4m at ground floor
- Reduce eaves to 300mm facing east
- Reduce roof pitch to winter 3pm sun angle
- Setback garage, external entry stair and upper level so that full street setback alignment is achieved with the external wall alignment of 15 Ernest Street
- Raise sills to 1.5m high to windows of First Floor Study facing east
- Privacy screening trees to 4m height in eastern side setback zone along entire eastern boundary
- Limit excavation to Tree 2 and 6 to 200mm to accord with Arborist Report
- Provide tree protection fencing around the TPZ of Tree 21

We ask Council to consider all conditions within Appendix A

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 a new 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 a large 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.

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

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 4.3 Height of Buildings**
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 4.4 FSR & no 4.6 Submitted**
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 4.1.4 Setbacks (front, side and rear) and Building Separation**
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 3.3.1 Landscaping Design**
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 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)**
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 3.4.1 Sunlight Access and Overshadowing**
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 3.4.2 Privacy and Security**
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.

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

We will welcome the opportunity to further expand on any of the issues once Amended Plans are submitted, identified within this Submission.

If this does not occur the Development Application should be **REFUSED** by Council.

Yours faithfully,

Dean A. Coulter & Penelope A. Coulter
15 Ernest Street
Balgowlah Heights

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