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Subject: 1 Tabalum Road, Balgowlah Heights 2093 DA 2020/0077 WRITTEN
SUBMISSION: LETTER OF OBJECTION Submission: Bawner #2 Amended
Plans

Attachments: Bawner 091020.pdf;

S U B M I S S I O N : B A W N E R
a written submission by way of further objection to DA 2020/0077

Mrs P. A. Bawner
6 Cutler Road
Clontarf
NSW2093

9 October 2020

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

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

Dear Chief Executive Officer,

Re:
1 Tabalum Road, Balgowlah Heights 2093
DA 2020/0077

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission: Bawner #2 Amended Plans

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

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

“Demolition of Existing House, Pool and Driveways. Construction of New House, Driveway and Landscaping.”

\$2.85m Cost of Work

We refer Council to our earlier Submission dated 18 February 2020.

The subject site is zoned R2 Low Density Residential under the LEP, and there is no reason, unique or otherwise why a fully compliant solution to LEP and DCP controls cannot be designed on the site.

EXECUTIVE SUMMARY

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

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

The Developer has not addressed the fundamental overdevelopment on this important site, that is highly visible from the Harbour, the National Park, the Streetscape, and our property.

As a new build development, there is no reason unique or otherwise why a fully compliant development could not be designed on this important site. The Developer is proposing a wholesale disregard for all development standards, and the Developer has not demonstrated that compliance with the development standards would be unreasonable or unnecessary in the circumstances of the case, or that there are sufficient environmental planning grounds to justify contravening the development standard.

Our concern is the **significant overdevelopment** as best identified as follows:

- Building Height 10.42 v 8.5m control [22% non-compliance]
- FSR c.0.5 v 0.4 [25% non-compliance]
- Wall Heights 10.42m v 8.0m [30% non-compliance]
- Number of Storey 3/4 v 2 [100% non-compliance]
- Western Rear Setback 1.23 v 8.0m [650% non-compliance]
- Northern Side Setback 3.0m v 2.78m [8% non-compliance]
- Street Setback Cutler Rd 3.14m v 1.5m [109% non-compliance]
- Street Setback Tabalum 6.13m v 7.0m [14% non-compliance]
- Fences in Cutler adjacent 6 Cutler 5.62m v 1.0m [562% non-compliance]
- Excavation 6.4m v 1.0m [640% non-compliance]

The non-compliant envelope causes poor amenity outcomes:

- Unreasonable Visual Bulk
- Poor Streetscape
- Unreasonable Visual Privacy

- Unreasonable Solar Loss at Equinox
- Noise/Vibration,
- Visual Bulk/General Impact
- Height, Bulk & Scale
- Landscaping

The Applicant has not submitted any Clause 4.6 FSR Variation Request to adequately demonstrate that compliance with the standard is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening the standard.

The proposals would need to seek a variation to the Building Height, and FSR standard, and has not established that this departure is necessary for the purposes of achieving a superior planning outcome.

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 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, as the substantial non-compliance to multiple development standards proves fatal to the outcome.

We contend that it is necessary for the Developer to submit the following additional information and amended plans. This information must be requested in accordance with Clause 54 of the *Environmental Planning and Assessment Regulation 2000* (the Regulation) and pursuant to Clause 112 of the Regulation:

1. To enable Council and Neighbours to undertake an accurate and detailed assessment, the *ground level existing*, including all registered surveyors spot levels and contours, and all proposed RLs are to be accurately and clearly detailed on all the amended plans, sections and elevations.
2. The proposal exceeds standards and the proposed development is required to be amended to comply with the following controls:
 - MLEP Clause 4.3 Height of Building development standard of 8.5m;
 - MLEP Clause 4.4 Floor Space Ratio development standard of 0.4:1;
 - MLEP Clause 6.2 Earthworks
 - MDCP 4.1.2 Height of Buildings 4.1.2.1 Wall Height, 4.1.2.2 Number of Storeys and 4.1.2.3 Roof Height
 - MDCP 4.1.4 Setbacks (front, side and rear) and Building Separation; 4.1.4.1 Street Front setbacks; 4.1.4.2 Side setbacks and secondary street frontages

In this Submission we are asking for considerable modifications to bring the proposed development back into compliance:

- Reduce Building Heights to 8.5m, with the Roof to reduce to RL 80.2, above south west corner lawn area at RL 71.66 [survey]
- The Clerestory to reduce to RL 81.2, and positioned above the RL 72.7 contour, to the east of 73.04 [survey] rock outcrop adjacent southern boundary
- Reduce Wall Heights to below 7.8 [north] & 8.0m [south]
- Reduce FSR to below 0.4:1, after adding void areas and enclosed decks, stairs, massive undercroft zones, oversized storage and plant zones, and enclosed terraces, and other GFA zones into FSR calculations
- Remove above ground pool and all associated retaining wall structures, delete all built form in rear 8m rear setback zone, including new 4m high retaining wall structures, return ground levels to natural levels
- Increase Northern Setback to 3m
- Increase Cutler Road Street Setback to 1/3 building height control
- Increase Tabalum Road Front Street Setback to match No. 3 Tabalum external wall zone
- Delete Basement, new garage to be positioned under proposed dwelling off Cutler Road
- Delete Storage & Storeroom in basement
- Relocate Plant Room to the south of the stair.

The Height of Building Clause 4.6 Variation Statement does not demonstrate that compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case, or that there are sufficient environmental planning grounds to justify contravening the development standard.

No Clause 4.6 Variation statement has been submitted for MLEP Clause 4.4 Floor Space Ratio. We contend that the GFA calculation is woefully understated.

Our assessment has not identified any unique environmental constraints which would justify contravening the development standard.

We ask Council to ensure that further amended plans are to be submitted which demonstrate full compliance with the above development standards and controls.

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

- Clause 1.2 Aims of Plan
- Clause 4.3 Height of Building
- Clause 4.4 Floor Space Ratio
- Clause 4.5 Calculation of FSR and Site Area
- Clause 4.6 Exceptions to Development Standards

- Clause 6.2 Earthworks
- Clause 6.9 Foreshore Scenic protection

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

- 1.7 Aims and Objectives of this Plan
- Part 3 General Principles of Development
- 3.1 Streetscapes and Townscapes
- 3.1.1 Streetscape (Residential areas)
- 3.1.1.1 Complementary Design and Visual Improvement
- 3.1.1.2 Front Fences and Gates
- 3.1.1.3 Roofs and Dormer Windows
- 3.1.1.4 Garages, Carports and Hardstand Areas
- 3.3.1 Landscaping Design
- 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)
- 3.4.1 Sunlight Access and Overshadowing
- 3.4.1.1 Overshadowing Adjoining Open Space
- 3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties
- 3.4.1.5 Excessive Glare or Reflectivity Nuisance
- 3.4.2 Privacy and Security
- 3.4.2.1 Window Design and Orientation
- 3.4.2.2 Balconies and Terraces
- 3.4.2.3 Acoustical Privacy (Noise Nuisance)
- 3.7 Stormwater Management
- 3.9 Mechanical Plant Equipment
- 3.9.1 Plant Rooms
- 3.9.3 Noise from Mechanical Plant
- Part 4 Development Controls
- 4.1 Residential Development Controls
- 4.1.2 Height of Buildings
- 4.1.2.1 Wall Height
- 4.1.2.2 Number of Storeys
- 4.1.2.3 Roof Height
- 4.1.3 Floor Space Ratio (FSR)
- 4.1.4 Setbacks (front, side and rear) and Building Separation
- 4.1.4.1 Street Front setbacks
- 4.1.4.2 Side setbacks and secondary street frontages
- 4.1.4.4 Rear Setbacks
- 4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2
- 4.1.5 Open Space and Landscaping
- 4.1.5.1 Minimum Residential Total Open Space Requirements

- 4.1.5.2 Landscaped Area
- 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
- 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas
- 4.1.6.4 Vehicular Access
- 4.1.8 Development on Sloping Sites
- 4.1.10 Fencing
- 4.1.10.1 Exceptions to maximum height of Fences
- 4.4.5 Earthworks (Excavation and Filling)
- 4.4.5.1 General
- 4.4.5.2 Excavation
- 4.4.5.3 Filling
- 4.4.5.4 Retaining walls

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.

The proposed development is somewhat '*doomed from the start*', due to the false and misleading representation of *ground level existing*, and multiple non-compliances of development standards, leading directly to poor amenity outcomes.

The depiction of '*ground level existing*' also has concerns, in respect to *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189.

We are concerned that the FSR is well over controls, and in light of the absence of Clause 4.6 FSR application, and other misleading and outstanding information, the Council may consider the need to reject the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.

The Council as consent authority cannot be satisfied that the written request for Building Height adequately addresses the matters required by clause 4.6(3) by demonstrating that:

- (a) compliance is unreasonable or unnecessary; and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard

The excessive building height over a large portion of the building footprint, causes poor amenity outcomes.

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

CHARACTERISTICS OF MY PROPERTY

My property is located to the west of the subject site.

Key aspects of our property are as follows:

Privacy between the existing dwelling on the subject site and our property is good, with little overlooking.

Solar Access is good. We receive reasonable winter sunlight and daylight over the existing neighbours dwelling through the equinox, although the minor non-compliant envelope towards the centre of the existing building causes us some unacceptable outcome. This is compensated by a lower volume of built form between #1 Tabalum Road and #3 Tabalum Road allowing a break in the visual mass, and allowing easterly morning sunshine into our property. The lower volume of built form to Cutler Road also gives additional winter daylight, by allowing more sky to be observed.

The neighbourhood is very quiet and peaceful. There is little traffic from the neighbourhood street.

My residence sits generally 4m below the level of the existing western side of the existing dwelling on the subject site. There is a considerable level change, and within that level change the above ground pool was built.

MATTERS OF CONCERN

The proposal will result in privacy loss, visual bulk, loss of solar access and concerns over excessive vibration from excessive excavation

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 view corridors, solar access and privacy, caused by non-compliant envelope.
- Excessive vibration and other poor environmental outcomes caused by the excavation

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

My main concerns are non-compliant development leading directly to amenity losses including:

- Unreasonable Visual Bulk
- Poor Streetscape
- Unreasonable Visual Privacy
- Unreasonable Solar Loss at Equinox
- Noise/Vibration,
- Visual Bulk/General Impact,
- Height, Bulk & Scale

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

We are concerned that the SEE has failed to properly address our amenity concerns, is suggesting that the DA accords with LEP & DCP controls when it clearly does not, and does not present a Clause 4.6 FSR Application request despite non-compliance to LEP controls.

The subject site is large, and there is no reason, unique or otherwise why a fully complaint solution cannot be designed on the site.

We accept that a compliant envelope will bring changes to our amenity outcomes, but we do not consider it at all reasonable to have to accept that non-complying development will rob us of our amenity. We object most vigorously.

Our site lies 4m lower than the subject site, so the massive non-compliant building envelope will have a devastating impact on our privacy, our winter sun, and will generally be a massive uninterrupted wall of glass facing us, rising to over RL 82.73, some 14m above our entry zones at RL 68.

The massive non-compliant building envelope will represent a five [5] storey development positioned only 10m away from our single storey residence.

Coupled with the main dwelling non-compliance, the above ground pool is planned now to be removed and infilled with soil, elevated by over 4m in the air, and a non-compliant raised lawn requiring massive quantities of fill. Additionally, there is further basement excavation in rear setback zone for storage and other uses.

The amenity losses are multiple.

How this design outcome responds to Council's main controls is of bewildering concern:

- R2 Low Density Residential
- Residential Open Space Area OS4
- Foreshore Scenic Protection Area

How can a 14m high glass structure positioned only meters from us, towering over us, be considered acceptable to a R2 Low Density Residential zone?

How can a 2.7m new filled lawn positioned close to our boundary be considered acceptable to Residential Open Space Area OS4?

How can an infilled pool positioned close to our boundary, elevated 4m above our entry, with walls going even higher, be considered appropriate not only to R2 and OS4, but to all other LEP and DCP controls?

Was this the design outcomes the authors of the MLEP and MDCP had in their minds when the controls and objectives were set? We doubt it!

The envelope of the non-compliant dwelling, the infilling of the pool, and the non-compliant raising of the lawn area by non-compliant fill, will all add significant and devastating impacts onto our property.

All these non-compliant envelope forms add to the overall loss of privacy, loss of sunlight, and considerable and devastating visual bulk of a five storey volume, 14m above our entry zones,

looming over us and looking directly into our private open space, our bedrooms, and our living zones.

We are concerned that the survey incorrectly identifies the existing pool to be an 'Inground Pool'. This pool is an above ground pool. The survey level to tiled pool coping is at RL 72, whilst the land immediately to the west is at RL 69.35, a drop of over 2.7m.

Once this pool is demolished, the natural ground levels will rise from our boundary [c. RL 68.38] and the survey mark at RL 69.35 on the subject site, and will be maintained at these levels at c. RL 69.5, until it reaches the eastern edge of the existing above ground pool at RL 72 on #1 Tabalum. Generally, the existing ground levels under the above ground pool are at RL 69.5.

We are concerned that the Applicant is proposing to then raise these natural ground levels from RL 69.5 back up to RL 72.0 with a non-compliant fill height at 2.7m height. The drawings are false and misleading as the Applicant is suggesting that the fill ground levels at RL 72 shown on DA plans and sections are existing soil levels when they are clearly not.

There will need to be a substantial new structure built to retain the new raised RL 72 level. That new construction will add considerable amenity loss into the rear setback zone facing our property.

We wish for these existing ground levels under the above ground pool to remain, and be heavily landscaped with screening bushes and trees to ensure the bulk of the proposed development rising over 14m above our property is greatly reduced.

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

We also ask Council to verify that what has been built, particularly in the zone to the west of the existing dwelling has received prior planning consent.

Why do we have structures built on Council land in Cutler Road?

Did the above ground Pool ever receive planning consent?

Did the structures built to significant heights on the subject property in this zone ever receive planning consent?

We do not apologise for the length of this objection: that is purely an outcome of massive non-compliance and devastating amenity consequences that the Applicant wishes to propose, coupled with false and misleading drawings and statements.

SITE DESCRIPTION

The Applicant's SEE attempts to describes the site but there a number of false and misleading statements:

We bring to Council attention:

The SEE states:

"The land falls quite steeply from the Tabalum Road frontage at rl 76.66 centrally to the rear boundary abutting No.6 Cutler Road at rl 72 at the pool coping. There is a retaining wall adjacent to the boundary with No.6 Cutler Road. The level at the base on the abutting property being approximately rl 68.18"

This is a false and misleading statement.

Council should note that the Pool Coping does not abut the No. 6 Cutler boundary, but sits well back from the boundary.

Council should also note that #1 Tabalum rises from ground generally at RL 72 to the west of the existing dwelling, resulting in #1 Tabalum sitting over 4.0m higher than #6 Cutler at RL 68.

The existing Above Ground Pool rises 2.7m above the natural ground levels to the west as can be seen on the survey drawing. The natural ground levels under the existing Above Ground Pool are at RL 69.5, and they extend to the eastern edge of the existing pool, as the depth of the pool would generate these levels.

The SEE states:

"Abutting to the north at No.3 Tabalum is a large 2 and 3 storey dwelling house with an upper roof level of rl 83.45 and an overall height of 10.67m (refer profile north elevation)".

This is a false and misleading statement.

The existing ground level under the roof at #3 Tabalum at RL 83.45 [survey] is RL 74.26 [survey], giving a height of 9.19m. The zone above 8.5m is very minimal.

Council should also note that there is a 1.0m drop across the boundary, and the survey shows that drop from RL 74.28 [adjacent SW corner of #3 Tabalum] on #3 Tabalum to RL 73.26 on #1 Tabalum.

Further to the west the level difference becomes even greater, rising to 1.7m near our boundary, adjacent to existing pool filter.

Council should also note that the #1 Tabalum rises from ground generally at RL 72 to the west of the existing dwelling, resulting in #1 Tabalum positioned over 2.25m lower than #3 Tabalum down the slope.

Despite this considerably difference in existing ground levels between the two sites, the proposed development is requesting a building height as high as #3 Tabalum, resulting in massive non-compliance.

Council should also note the survey level under the South West corner of the proposed Pool, shown on the survey at **RL 68.18**.

Council should also note the survey level under the South West corner of the proposed Clerestory, shown on the survey at **RL 72.31**.

Council should also note the survey level under the South West corner of the proposed Main Roof, shown on the survey at **RL 71.68**.

PROPOSED DEVELOPMENT

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

The SEE states:

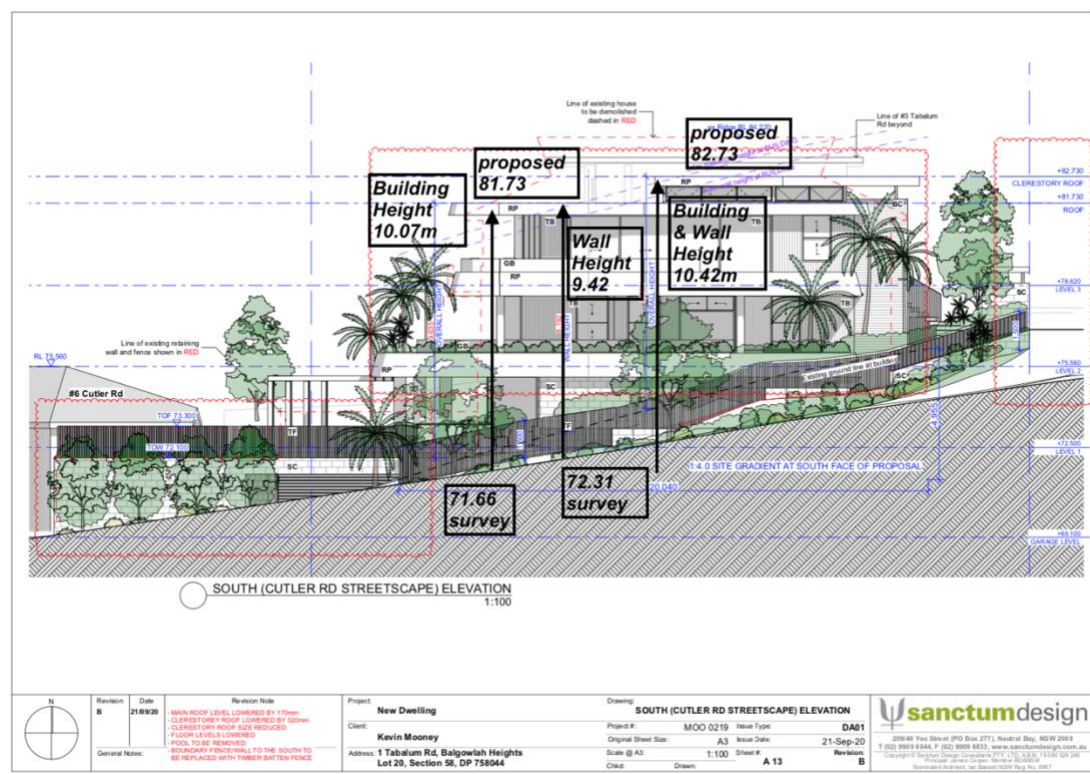
"The form and presentation are balanced in proportion and utilises a contemporary roof form, balconies, steps and projections to create well-articulated elevations further modulated by variety in materials and finishes."

The proposed development does not step with the topography of the land.

The proposed building heights simply refuses to accord with the **8.5m control**, and progresses westwards presenting a maximum building height of **10.42m** for the clerestory, and **10.07m** for the main roof at the south west corner.

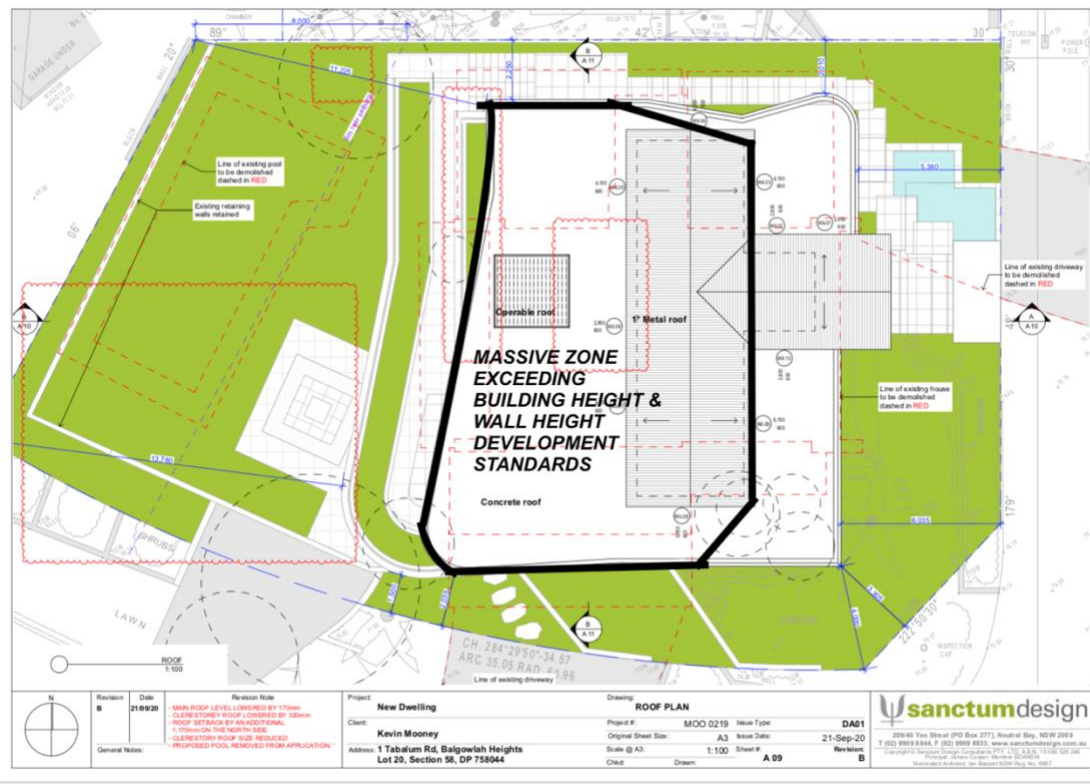
The proposed wall heights exceed at heights of 10.42m and 9.42m, exceeding controls by over **2.42m**.

The proposed development presents as a building in excess of three storey to the south west corner, as building heights are at **10.07m** and **10.42m**



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

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



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

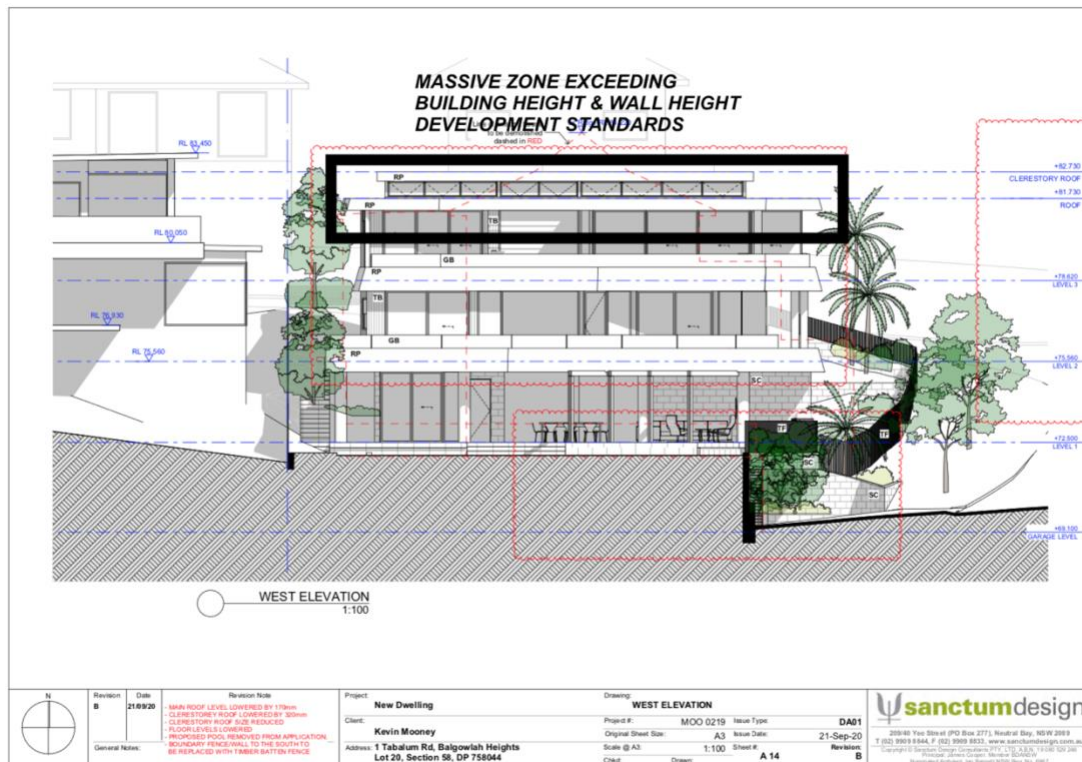
The SEE fails to state that the proposed development presents substantial non-compliance of Height of Building, FSR, Wall Height, Setback controls.

The SEE fails to adequately address amenity impacts of the non-compliance.

The SEE fails to justify the deep basement, and the obvious poor environment outcomes.

The SEE states:

“The scale responds positively to the site context whilst the height, form and footprint is assessed as appropriate pursuant to the LEP, DCP and also from a merit assessment.”



Massive zone facing #6 Cutler that exceeds building height and wall height. Note false and misleading existing grounds levels to #3 Tabalum that do not accord with the Applicant's survey. #3 Tabalum land sits up to 1.7m higher than the subject site, however the Applicant is trying to suggest that it is lower. False and Misleading.

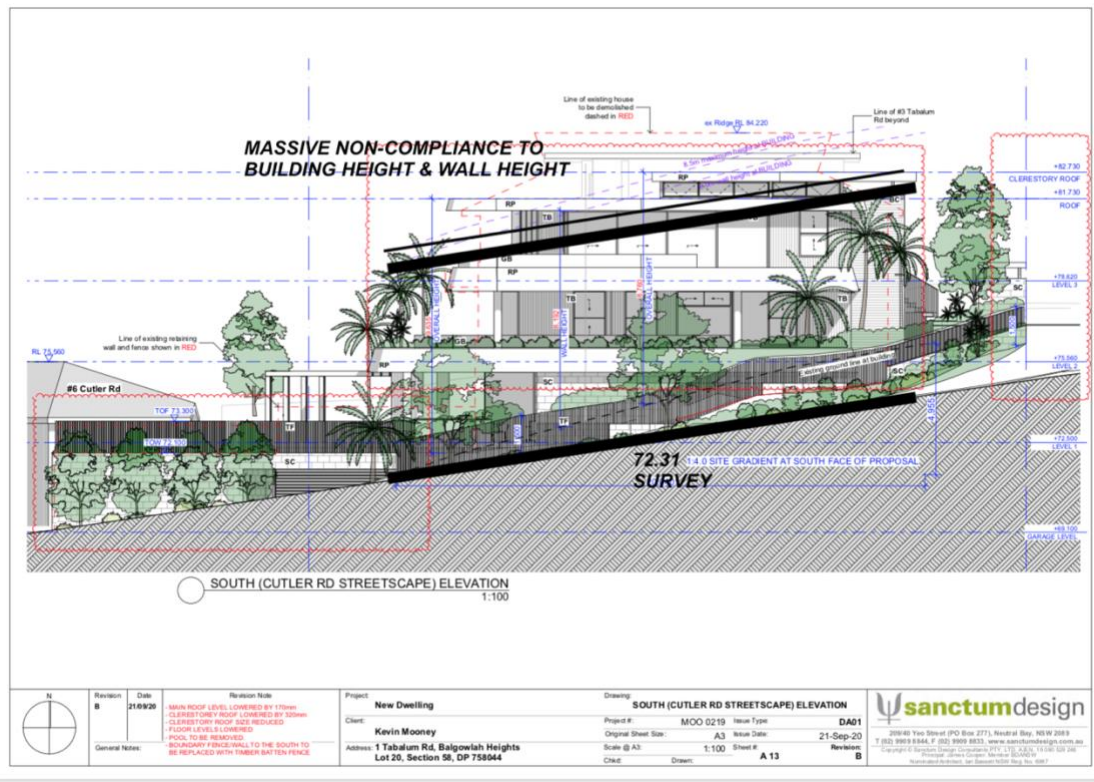
The Height, Form and Footprint all exceed LEP and DCP controls.

Clause 4.6 FSR assessment has not been submitted against a non-compliant FSR. Amenity loss occurs, and that is considered a totally unreasonable outcome.

Recent approvals in the immediate area, both from NBLPP and LEC, have restricted new build developments to building envelope controls.

Council will note also that on all recent DAs in neighbouring sites in Barrabooka Street and Ogilvy Road [#3, #5, #7, #11, & #13], strict compliance to the 8.5m maximum building height has been demanded by NBC, NBLPP and LEC.

The only recent new build DA approved by the NBLPP & LEC in the area was on #11 Barrabooka, [DA 371/2016, approved 2017 & 2018] and that approval required the Applicant to reduce building heights under the 8.5m level, and to accord with setback controls. The existing building was significantly higher than the controls, however NBLPP & LEC restricted building heights below 8.5m.



It is incorrect to state that recent DA approvals allowed new builds to exceed maximum building height controls. The reverse is true. The NBC custom and practice is to follow the maximum building height control in an absolute fashion on new builds in this immediate area.

The Clause 4.6 does not satisfactorily address what environmental planning grounds exist to justify contravening the standard. Nowhere within the Applicant's Clause 4.6 is there identification of any environmental planning ground, unique or otherwise, that justifies the contravention.

MISLEADING INFORMATION & OUTSTANDING INFORMATION

“Ground Level (Existing)” [Gle]

We are very concerned that the “*ground level (existing)*” has not been accurately shown on the Applicant’s DA drawings.

We refer Council to the NSWLEC case that considered the definition of “*ground level (existing)*” *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 [O’Neill]. This decision was followed in the following year in *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189. Cl. 284-294 [Pearson & Smithson]

In *Stamford Property Services*, the Court maintained the principles as *Bettar*, and restated that “*ground level (existing)*” must relate to the levels of the site, and not to the artificially modified levels of the site as reflected by the building or built form presently located on the land.

The decision confirmed that the proposed height be measured from the natural ground levels of the site where known, such as undisturbed levels at the boundary, and from adjacent undisturbed levels.

These levels could then be extrapolated across the subject site reflecting the pre-development sloping topography of the land. The *Stamford* decision was totally consistent with the approach adopted in *Bettar*.

Both *Stamford* and *Bettar* have confirmed that the definition of “ground level (existing)” from which building height should be measured:

- *is not to be based on the artificially modified levels of the site such as the floor levels of an existing building, or other built form.*
- *is not to include the basement floor or the soil beneath the basement following construction of the building.*
- *is to be based on the existing undisturbed surveyed surface of the ground. For sites where access to the ground surface is restricted by an existing building, natural ground levels should be determined with regard to known boundary levels based on actual and surveyed levels on adjoining properties including within the public domain (footpaths).*

It is on the basis of these Court cases, and from the survey levels, and the Applicant’s DA drawings, that we contend that the “*ground level (existing)*” has not been portrayed in the correct method.

Council should consider that the extrapolation of levels may need further reduction.

In respect to *Stamford*, it can be easily seen that the site has been significantly adjusted by massive retaining walls and massive zones of fill through its life.

There is a substantial structural retaining wall surrounding the street boundaries to a height over 3.8m.

The site has been substantially altered, and in these respects a detailed consideration under *Stamford* is necessary to establish *ground level existing*.

The subject site has been heavily artificially modified, and the Applicant is using tops of existing retaining walls, rather than a *Stamford* outcome.

In this respect Council cannot rely upon any DA drawing showing Building Heights, Wall Heights, and Ground Levels Existing. All are false and misleading.

Both *Stamford* and *Bettar* have confirmed that the definition of “ground level (existing)” from which building height should be measured “*is not to be based on the artificially modified levels of the site*”.

Unfortunately, the Applicant in this case has done exactly that: they have used the artificially modified levels of the site, and projected heights from those locations. All drawings are false and misleading.

We bring to the attention of Council that the Applicant has not represented the Existing Ground Levels from the Applicant’s Survey, correctly onto the DA drawings, in particularly Plans, Elevations and Sections.

The misrepresentation of Existing Ground Levels from the Applicant’s Survey has led to the maximum building height, wall heights, side boundary envelopes being shown in a misleading way.

We ask that Council insist that the Applicant positions on each Plan, Elevation and Section the precise Existing Ground Levels from the Applicant’s Survey and to adjust the maximum height envelope accordingly.

If the Applicant relies upon false and misleading information, then we reserve our position on the validity of any future approval, and We reserve our right to challenge the validity at any time. There are also very severe penalties and enforcement powers under the Environmental Planning and Assessment Amendment (Offences and Enforcement) Regulation 2015 (Amending Regulation) that the Applicant and his Consultants should be mindful to.

The levels shown on the southern elevation are incorrect.

Council should also note the survey level under the South West corner of the proposed Clerestory, shown on the survey at **RL 72.31**.

Council should also note the survey level under the South West corner of the proposed Main Roof, shown on the survey at **RL 71.66**.

Height Poles

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

The Height Poles will need to define at the non-compliant envelope:

- All Roof Forms
- Extent of all Decks
- Extent of Privacy Screens
- Extent of Pool and Pool enclosure wall heights

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

The incorrectly represented Existing Ground Levels gives us great concern that other 3D montages could be equally shown as incorrect.

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

Statement of Environmental Effects

There are multiple inaccuracies, particularly relating to non-compliant elements that have not been addressed.

There has not been any adequate privacy consideration, and overshadowing analysis at hourly intervals to address equinox loss by non-compliant development.

Request to Vary a Development Standard

Development Consent cannot be granted as no Clause 4.6 has been submitted addressing the non-compliant FSR, contrary to LEP controls.

There are large areas of voids through the proposed building that add to the bulk that could easily be filled in by further submission. These areas must be included within the FSR calculation as they are enclosed on all four sides and a roof.

There are massive undercroft areas at the lower level, and on decks, that are covered by a roof and generally enclosed on three sides. These areas also add to the bulk of the building, and these areas must be included within the FSR calculation

Site Analysis

Overshadowing and privacy loss has not been properly addressed within the Site Analysis, contrary to DCP controls.

Excavation and/or Fill Plan

These plans are not fully dimensioned, and require full dimensions to common boundaries to ensure future compliance, contrary to DCP controls.

Filling exceeds 1m above natural ground level, contrary to controls.

The proposed development is proposing to fill by over 2.7m along the western boundary, after removing the above ground pool. This is not shown on the DA drawings. False and Misleading drawings.

Site Plan

The site plan does not adequately dimension every proposed built form to the common boundary, and requires full dimensions to ensure future compliance. This is contrary to DCP controls.

Floor Plans

The floor plans and roof plans do not adequately dimension every proposed built form to the common boundary, and requires full dimensions to ensure future compliance. This is contrary to DCP controls.

Elevations & Sections

There are roof forms that do not have RL levels, to accurately record what is being proposed.

All drawings require full dimensions and levels on every extremity to ensure future compliance. This is contrary to DCP controls.

Certified Shadow Diagrams

An elevation and plan study is outstanding at hourly intervals at the equinox on 6 Cutler, caused by non-compliant envelope.

Landscape Plan & Landscape Design Statement

The precise detail of the planting along the boundary is unclear.

Survey

The survey incorrectly identifies the existing pool to be an 'Inground Pool'. This pool is an above ground pool.

The survey level to the existing tiled pool coping is at RL 72, whilst the land immediately to the west is at RL 69.35, a drop of over 2.7m.

Once this pool is demolished, the natural ground levels will rise from the survey mark at RL 69.35 to RL 72 adjacent the existing dwelling on #1 Tabalum. Generally the existing ground levels under the above ground pool are at RL 69.5.

ENVIRONMENTAL PLANNING INSTRUMENTS

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

NBC Website states the following Zoning and Overlays apply:

- R2 Low Density Residential
- Bushfire Prone
- Residential Open Space Area OS4
- Foreshore Scenic Protection Area

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

As NSW LEC Planning Principles state:

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

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

There is very significant non-compliance:

- 4.1.2 Height of Buildings
 - 4.1.2.1 Wall Height
 - 4.1.2.2 Number of Storeys
 - 4.1.2.3 Roof Height
- 4.1.3 Floor Space Ratio (FSR)
 - 4.1.3.2 Exceptions to FSR for Plant Rooms
 - 4.1.3.3 Exceptions to FSR for Open Balconies
- 4.1.4 Setbacks (front, side and rear) and Building Separation
 - 4.1.4.1 Street Front setbacks
 - 4.1.4.2 Side setbacks and secondary street frontages
 - 4.1.4.4 Rear Setbacks

The amenity loss is directly attributable to the non-compliance

The subject site is large, and the proposal is for a new build, and there is no reason, unique or otherwise why a fully compliant solution cannot be designed on the site.

MLEP

Principal Development Standards:

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

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	<p>A maximum height of 8.5m is permitted.</p> <p>A height greater than 8.5m is proposed.</p> <p><i>Stamford Property Services Pty Ltd v City of Sydney & Anor</i> [2015] NSWLEC 1189.</p>
4.4 Floor space ratio	No	<p>A maximum FSR of 0.4:1 is permitted.</p> <p>FSR greater is proposed.</p>
4.6 Exceptions to development standards	See discussion	The application is not accompanied by written requests pursuant to Clause 4.6 to vary FSR development standards.

Part 6 Additional local provision		
6.9 Scenic Protection	No	The proposal does not reinforce the dominance of landscape over built form.
6.2 Earthworks	No	The earthworks are excessive in cut and fill

Matters requiring further consideration are discussed below:

Clause 1.2 Aims of Plan

In these proposals the local amenity and environmental outcomes would be severely challenged by non-compliant envelope, excessive basement, and poor outcomes to neighbours and to the coastal environment.

We contend that the proposed development does not promote a high standard of urban design that responds to the existing or desired future character of areas, and does not ensure all development appropriately responds to environmental constraints and does not adversely affect the character or amenity of the area or its existing permanent residential population.

We contend that the proposed development does not ensure high quality landscaped areas in the residential environment.

We contend that the proposed development does not protect existing landforms and natural drainage systems and minimise the risk to the community in areas subject to environmental hazards, bush fires and landslip.

We contend that the proposed development does not in relation to the areas unique harbour setting to preserve and enhance the amenity of public places and areas visible from navigable water around the area.

This is contrary to DCP controls.

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

1.2 Aims of Plan

(1) This Plan aims to make local environmental planning provisions for land in Manly in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.

(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

(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

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

(f) in relation to the natural environment—

(iv) to protect existing landforms and natural drainage systems and minimise the risk to the community in areas subject to environmental hazards, particularly flooding, bush fires, acid sulfate soils, sea level rise, tsunami and landslide, and

(g) in relation to Manly's unique harbour, coastal lagoon and ocean beach setting—

(i) to preserve and enhance the amenity of public places and areas visible from navigable water around Manly.

The requirements under this clause clearly have not been met.

The proposal is excessive in height, bulk and scale; and does not have adequate regard to the maintenance of residential amenity. The assessment finds that the development standards contraventions do not satisfy the public interest, that the building envelope is excessive, and inadequate spatial separation is afforded to adjoining properties. The proposal does not protect, conserve or enhance the existing landform with substantial cut and fill proposed.

Zone R2 Low Density Residential

The proposed development exceeds the street setback, building height, wall height, and floor space ratio development standards. The proposal also exceeds the number of storeys control (two above ground) by proposing up to four storeys above ground. The proposal is excessive in bulk and scale, is inconsistent with the desired future character of the area and will have

adverse impacts on the streetscape. Its built form will dominate the site and will cause adverse amenity impacts.

Clause 4.3 Height of Building

Control 8.5 m

Proposed 10.42 m [clerestory at SW corner, survey RL 72.31] and 10.07m [roof at SW corner, survey RL 71.68]

The proposed development does not 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. The proposed development does not control the bulk and scale of buildings.

The proposed development does not minimise disruption to the views to nearby residential development from public spaces (including the harbour and foreshores), views from nearby residential development to public spaces (including the harbour and foreshores), and views between public spaces (including the harbour and foreshores).

The proposed development does not maintain adequate solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and maintain adequate to habitable rooms of adjacent dwellings.

The proposed development does not 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.

The height of the building is over 15m above our entry areas, but less than 10m away.

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

4.3 Height of buildings

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

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following—*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*

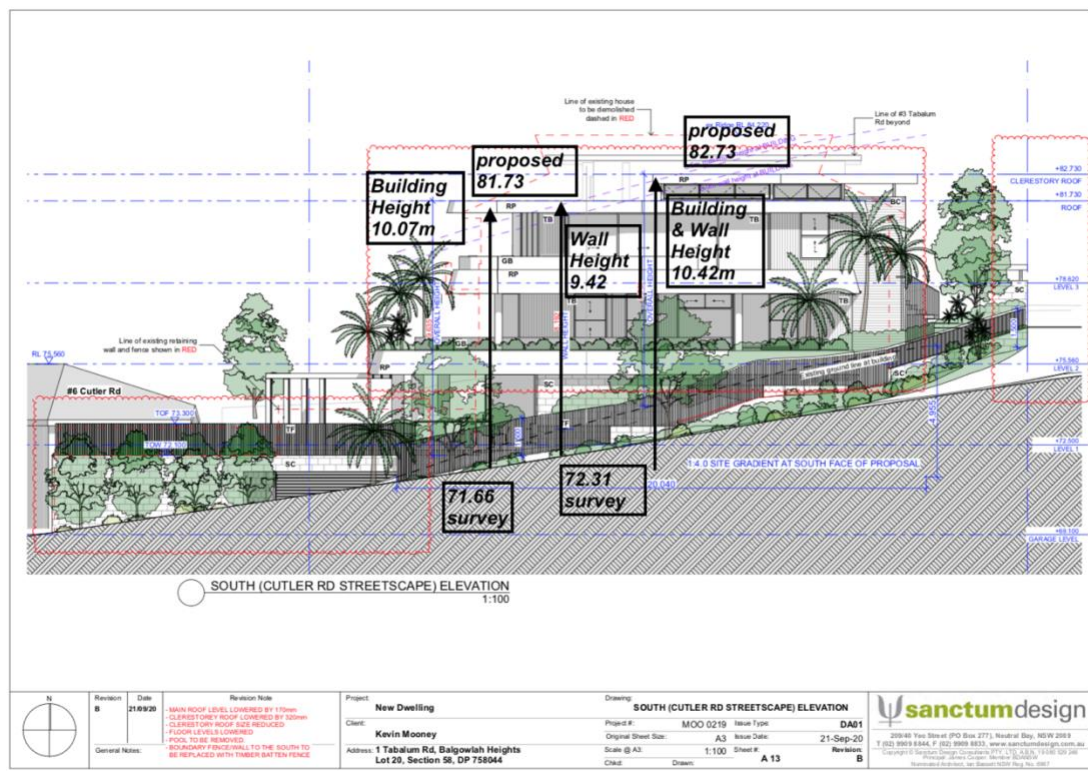
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
 (iii) views between public spaces (including the harbour and foreshores),
 (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
 (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

No Clause 4.6 Exceptions to Development Standards request has been submitted for the excessive FSR.

The Clause 4.6 Exceptions to Development Standards submitted for the Building Height grossly understates the numerical non-compliance.

View loss, overshadowing and privacy loss that is a direct result of a non-compliance should not be supported by Council.



Clause 4.4 Floor Space Ratio

We contend that the proposed development does not ensure the bulk and scale of development is consistent with the existing and desired streetscape character.

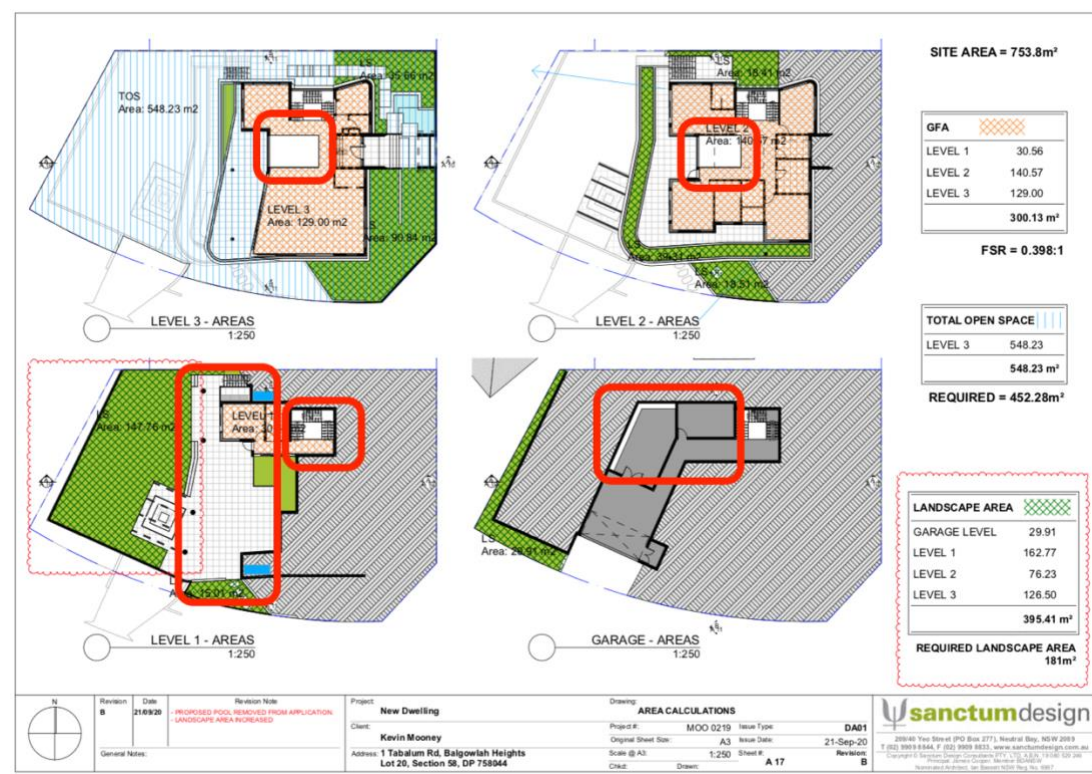
We contend that the proposed development does not control building density and bulk in relation to the site area to ensure the development does not obscure important landscape and townscape features.

We contend that the proposed development does not maintain an appropriate visual relationship between new development and the existing character and landscape of the area.

We contend that the proposed development does not minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.

The FSR is under calculated as there are numerous void areas, undercroft areas enclosed on three sides, and excessive plant that when included within the FSR calculation, render the FSR grossly in excess of LEP and DCP controls.

In light of the absence of Clause 4.6 FSR applications, and other outstanding information, Council may need to reject the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.



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

4.4 Floor space ratio

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

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
 - (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
 - (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
 - (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The calculation of FSR is understated.

No Clause 4.6 FSR Exceptions to Development Standards request has been submitted.

Overshadowing and privacy loss that is a direct result of a non-compliance should not be supported by Council.

Clause 4.5 Calculation of FSR and Site Area

We contend that the Applicant has under forecast the calculation of FSR. We bring to Council's attention the following:

- numerous large void areas, that add considerably to bulk
- undercroft areas enclosed on three sides, that add considerably to bulk
- excessive plant zones

In *Parking Station Pty Ltd v Bayside Council* [2019] NSWLEC 1268 the Court held that the floor area of car parking provided above the quantity required by the relevant Council DCP was to be INCLUDED in the calculation of GFA (at [23]). This again is straightforward, meaning that if a developer chooses to provide extra parking space, such as this Developer, they will be utilising their available GFA.

In *Glenn McCormack v Inner West Council* [2017] NSWLEC 1559 the Court held that the floor area of waste management and storage areas contained within a basement; but in an area of the basement 1m or more above the ground level, were to be INCLUDED in the calculation of GFA (at [103]). In reaching its decision, the Court took into consideration the definition of 'basement' as defined by the relevant LEP to confirm if the exclusion at (e) was enlivened. Put simply, areas more than 1m above ground level are not a 'basement' as defined.

In *Dwyer v Sutherland Shire Council* [2018] NSWLEC 1543 the Court held that the floor area of storage under stairs: on the ground floor; and greater than 1.4m in height, was to be INCLUDED in the calculation of GFA (at [35] and [60]).

In *Landmark Group Australia Pty Ltd v Sutherland Shire Council* [2016] NSWLEC 1577 the Court held that internal garbage storage areas not within a basement were to be INCLUDED in the calculation of GFA (at [63]).

In *Chami v Lane Cove Council* [2015] NSWLEC 1003 the Court held that the floor area of stairs and a lift well inside of a dwelling house; at each habitable level; and which were not shared between multiple occupancies; were to be INCLUDED in the calculation of GFA (at (273) – [280]).

We contend that the additional bulk caused by the excessive FSR is extremely apparent on the proposed Top Floor, where the additional FSR unreasonably takes harbour views to other neighbours, and creates poor streetscape outcomes and visual bulk concerns.

A written request from the applicant has not been made pursuant to Clause 4.6(3) to seek to justify contravention of the floor space ratio development standard prescribed under Clause 4.4 of MLEP 2012.

The written request should have identified the proposal as having a floor space ratio exceeding development standards.

No written request has been made in a form that accords with subclauses 4.6(3)(a) and (b).

Clause 4.6(4)(a)(i) assessment:

Any written request would fail to adequately address the matters contained in Clause 4.6(3)(a) and (b) as follows:

- The proposed development results in a dominance of bulky built form over landscape;
- The assessment does not agree with the applicant's stating that the bulk and scale of the dwelling is compatible with adjoining properties.
- The assessment does not agree with the applicant's argument that the development will not be visually dominant from adjoining properties. The proposed development will be visually dominant to properties to the rear and sides of the site and visually dominant in the streetscape.
- The assessment does not agree with the applicant's statement that the additional gross floor area does not result in any unreasonable loss of views, visual or acoustic privacy to neighbouring properties. The assessment finds that the proposal will have an adverse impact on the privacy of adjoining properties and properties at the rear. The proposed development will result in a loss of views from an adjoining property;
- The applicant states that the excavation is required as a result of the topography of the site to create a more suitable dwelling footprint. This is not agreed with.
- A more skilful design would respond to the site constraints and deliver a dwelling house that is compliant with the relevant development standards;
- The proposed development is out of character with the area;
- The proposed development will result in adverse amenity impacts on adjoining properties;
- The environmental planning grounds put forward to justify contravening the floor space ratio development standard are insufficient.

Clause 4.6(4)(a)(ii) assessment:

Clause 4.6(4)(a)(ii) requires the consent authority to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone in which the development is proposed to be carried out.

The proposed development is considered against the objectives of the **Floor Space Ratio Development Standard**, as described below:

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

Consideration:

- The proposed development is an over development of the site and the resultant bulk and scale is not compatible with the desired future character of the area;
- The proposed dwelling does not comply with the required side setbacks nor the front setback; and
- The proposed development results in adverse bulk and scale impacts on the streetscape and surrounding properties.

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

Consideration:

- The proposed development results in a dominance of built form over landscape;
- The proposal does not provide a suitable balance of landscaping and built form;
- The proposed landscaped area of the site is well below the minimum requirement; and
- The built form of the proposal is considered to be excessive and detrimental to the surrounding properties.

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

Consideration:

- The proposed development does not minimise the effects of its bulk and scale;
- The proposed development results in adverse amenity impacts on adjoining properties;
- The proposed development is of a bulk and scale that is not compatible with the area;
- The proposed development has not provided sufficient side setbacks and has failed to provide a sufficient front setback; and
- Having regard for the site constraints.

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

Consideration:

- The proposal results in loss of view, loss of solar access, loss of privacy, poor visual bulk, poor streetscape, and other adverse amenity impacts on adjoining properties
- The proposal results in an excessive amount of cut and fill and has failed to limit excavation of the site; and
- The proposal has not demonstrated how it complies with Council's Stormwater Management Policy.

Statement as to satisfaction:

The assessment of this request for variation against the objectives of the development standard finds that the objectives of the development standard are not satisfied.

The proposed development is considered against the objectives of the **R2 Low Density Residential Zone**, as described below:

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

Consideration: The proposed development does not provide for the housing needs of the community within a low density residential environment. The proposed development results in a floor space ratio which is more akin to that of a medium density residential zone, not a low-density residential zone.

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

Consideration: The proposal comprises a three/four storey built form that is not congruent with the single dwelling character of this environmentally sensitive residential area. The proposal does not maintain a general dominance of landscape over built form. The proposed development results in a built form dominance and has a number of adverse amenity impacts on surrounding properties. The proposal does not provide adequate landscaping on the subject site, nor does it retain the natural topography. The proposed development is of a height and scale that is not compatible with the desired future character of the area. The proposed development would be an over development of the site. The proposed development does not maintain or enhance local amenity. The proposal results in the loss of public views from the street and the loss of private views from an adjoining property. The proposed development has not minimised the adverse effects of its bulk and scale. The proposal has failed to provide adequate compliance to development standards and this contributes to unacceptable built form dominance and adverse amenity impacts on surrounding properties.

Statement as to satisfaction:

The assessment of any request for variation against the objectives of the zone finds that the objectives of the zone are not satisfied.

We contend that the additional bulk caused by the excessive FSR is extremely apparent on the proposed Top Floor, where the additional FSR unreasonably takes neighbours harbour views, unreasonably removes sunlight, and creates privacy and visual bulk concerns.

Clause 4.6 Exceptions to Development Standards

We suggest that the DA should be withdrawn by the Applicant, and resubmitted when the design has been modified to deal with the false and misleading information.

Currently, the Council has no power to grant development consent because **no Clause 4.6 FSR** has been submitted on the above LEP controls.

Council may consider they cannot continue considering the DA, and if the Applicant does not withdraw, they may have no other option than to immediately refuse the DA.

The Council should immediately consider refusing the DA, and perhaps is precluded from proceeding any further with its assessment and consideration of the DA.

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

4.6 Exceptions to development standards

No Clause 4.6 Exceptions to Development Standards request has been submitted for non-compliant FSR, only Building Height.

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

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

- The height of the building is in excess of 8.5m.
- There are insufficient environmental planning grounds to justify contravening the height of buildings development standard nor has it been established as reasonable or unnecessary;

- The assessment does not agree with the applicant's statement that excavation is limited and is an appropriate response to the topography of the site. The assessment finds that the proposal involves excessive cut and fill which is not appropriate for the site or its surrounds;
- The bulk and scale of the proposed development is out of character with the area;
- The proposed development would result in adverse amenity impacts for the surrounding area;
- The proposed development results in a dominance of built form over landscape; and
- The proposal results in view loss for an adjoining property

Clause 4.6(4)(a)(ii) assessment:

Clause 4.6(4)(a)(ii) requires the consent authority to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone in which the development is proposed to be carried out.

The proposed development is considered against the objectives of the **Height of Buildings Development Standard**, as described below:

[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

Consideration:

The proposed dwelling would be highly visible from the Harbour, the National Park, and Street; The proposed dwelling is poorly designed so as to not minimise its visual impact.

[b] to control the bulk and scale of buildings

The proposed dwelling has not been skilfully designed to minimise adverse bulk and scale impacts;

The proposal has not minimised the adverse effects of bulk and scale;

The proposal does not provide adequate spatial relief to adjoining properties;

The proposal results in a dominance of built form over landscape; and

The proposal includes substantial departures from the building height, wall height and floor space ratio development standards which contribute to excessive bulk.

The proposal is excessive in height, and includes a departure from the heights of buildings and wall height development standards;

The proposed new dwelling is poorly designed and is not compatible with the desired future character of the area in terms of building height and roof form;

The proposal would have an adverse impact on its surrounds.

[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)

Consideration:

The proposal does not share private views. Through height departure the proposal does not achieve satisfactory private view sharing.

[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,

Consideration:

The proposed dwelling includes substantial departures from the FSR, building height, wall height, and number of storey and the combined effect causes loss of solar access and daylight to neighbours

[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.

Consideration:

The proposed dwelling has not been skilfully designed to minimise adverse bulk and scale impacts;

The proposal has not minimised the adverse effects of bulk and scale;

The proposal does not provide adequate spatial relief to adjoining properties;

The proposal results in a dominance of built form over landscape; and

The proposal includes substantial departures from the building height, wall height and floor space ratio development standards which contribute to excessive bulk.

The proposal is excessive in height, and includes a departure from the heights of buildings and wall height development standards;

The proposed new dwelling is poorly designed and is not compatible with the desired future character of the area in terms of building height and roof form;

The proposal would have an adverse impact on its surrounds.

Statement as to satisfaction:

The assessment of any future request for variation against the objectives of the development standard finds that the objectives of the development standard are not satisfied.

The proposed development is considered against the objectives of the **R2 Low Density Residential Zone**, as described below:

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

Consideration: The proposed development does not provide for the housing needs of the community within a low density residential environment. The proposed development results in a floor space ratio which is more akin to that of a medium density residential zone, not a low-density residential zone.

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

Consideration: The proposal comprises a three/four storey built form that is not congruent with the single dwelling character of this environmentally sensitive residential area. The proposal does not maintain a general dominance of landscape over built form. The proposed development results in a built form dominance and has a number of adverse amenity impacts on surrounding properties. The proposal does not provide adequate landscaping on the subject site, nor does it retain the natural topography. The proposed development is of a height and scale that is not compatible with the desired future character of the area. The proposed development would be an over development of the site. The proposed development does not maintain or enhance local amenity. The proposal results in the loss of public views from the street and the loss of private views from an adjoining property. The proposed development has not minimised the adverse effects of its bulk and scale. The proposal has failed to provide adequate compliance to development standards and this contributes to unacceptable built form dominance and adverse amenity impacts on surrounding properties.

Statement as to satisfaction:

The assessment of this request for variation against the objectives of the zone finds that the objectives of the zone are not satisfied.

This is contrary to LEP controls.

Clause 6.2 Earthworks

The substantial extent of the earthworks will have a detrimental impact on environmental functions and processes, neighbouring uses, and features of the surrounding land.

We are concerned on the vibration risks associated with this quantity of excavation close the neighbours boundaries.

The continuous vibration from many, many months of excavation would be intolerable, and totally unreasonable. Vibration would make many neighbours house unliveable during this extensive excavation period. We are concerned to the damage to our house.

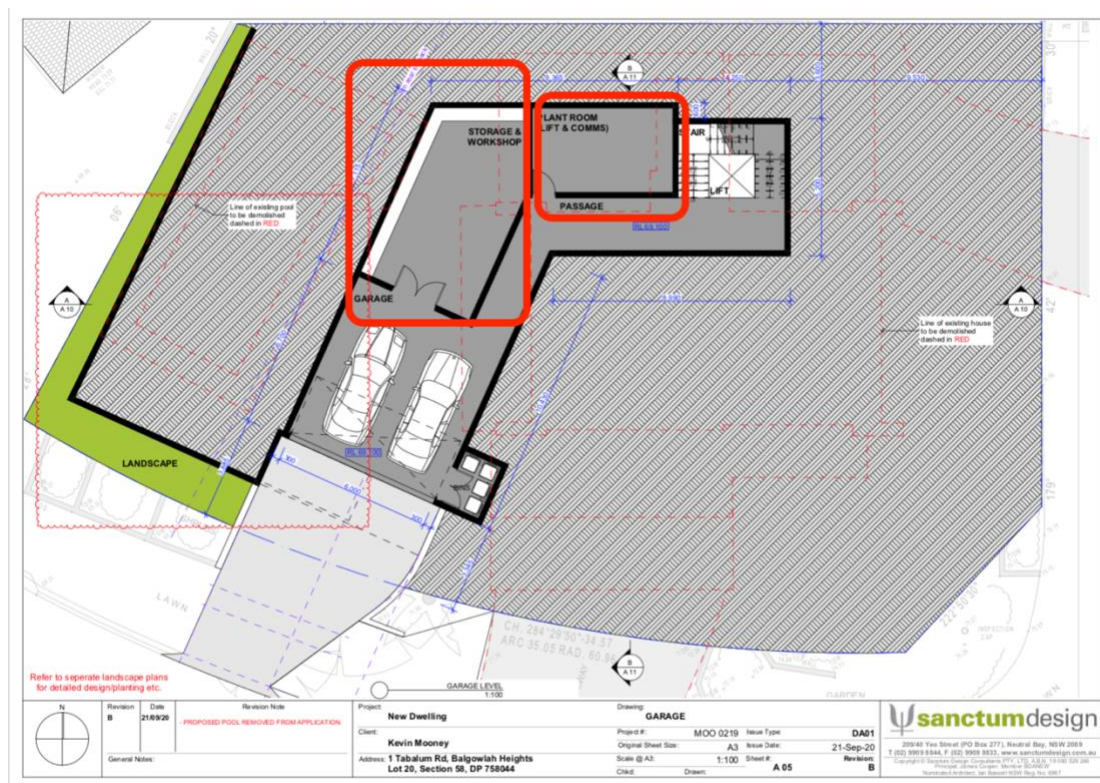
The noise would be horrendous, and not only affect neighbours, but also the amenity of those at the nearby public domain zones.

We are concerned on the likely disruption, or any detrimental effect on, existing drainage patterns and soil stability in the locality.

We are concerned that the changed water flows through the property, we are concerned that no extensive study commissioned to assess the issue, and to adjoining trees in adjoining land that will be significantly threatened by changed outcomes.

We are concerned that altered subsoil water flows will damage our property.

We are concerned on the intensity and extended programme to extract and recover excavated material and bedrock from the proposed development, and the number of truck movements to extract this considerable amount of spoil.



The Applicant is suggesting that the area west of the proposed garage is existing soil. This is false and misleading.

Once the pool is demolished, the ground levels will be at levels at RL 69.5, and that will require the zone to the west to have a new >2.5m retaining wall, along with >2.5m of fill. This is not shown on these drawings.

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

6.2 Earthworks

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

(a) to ensure that earthworks and associated groundwater dewatering for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,

(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,

(d) the effect of the development on the existing and likely amenity of adjoining properties,

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Consideration:

The proposed development will have a detrimental impact on environmental functions and processes, neighbouring uses, or features of the surrounding land.

The proposed development will have a detrimental effect of the development on the existing and likely amenity of adjoining properties, particularly vibration, and disruption to neighbours, and risk of property damage

The proposed development appropriate measures proposed to avoid, minimise or mitigate the impacts of the development, by not substantially lowering the vibration levels to 2mm/sec or below

Clause 6.9 Foreshore Scenic protection

We contend that the proposed development does not meet the objective of this clause to protect visual aesthetic amenity and views to and from Sydney Harbour.

We contend that the proposed development produces impacts that are of detriment to the visual amenity of the harbour and loss of views from a public place to the foreshore.

The overdevelopment represented by excessive FSR, building height, wall height, number of storey, and setback clearly gives grounds for concern.

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

6.9 Foreshore scenic protection area

(1) The objective of this clause is to protect visual aesthetic amenity and views to and from Sydney Harbour, the Pacific Ocean and the foreshore in Manly.

(2) This clause applies to land that is shown as “Foreshore Scenic Protection Area” on the Foreshore Scenic Protection Area Map.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters—

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

(b) measures to protect and improve scenic qualities of the coastline,

(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

The proposed development has not been designed to minimise visual impacts in the scenic protection area. The landscaped provision results in an unacceptable dominance of built form. The proposed development is excessive in bulk and scale resulting in adverse impact on the streetscape and on the visual amenity of the surrounding environment.

DEVELOPMENT CONTROL PLANS

Residential Development Control Plan (MDCP)

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
Part 3 General Principles of Development	No	No
3.1 Streetscapes and Townscapes	No	No
3.1.1 Streetscape (Residential areas)	No	No
3.1.1.1 Complementary Design and Visual Improvement	No	No
3.1.1.2 Front Fences and Gates	No	No
3.1.1.3 Roofs and Dormer Windows	No	No
3.1.1.4 Garages, Carports and Hardstand Areas	No	No
3.3.1 Landscaping Design	No	No
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	No	No
3.4.1.1 Overshadowing Adjoining Open Space	No	No
3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties	No	No
3.4.1.5 Excessive Glare or Reflectivity Nuisance	No	No
3.4.2 Privacy and Security	No	No
3.4.2.1 Window Design and Orientation	No	No
3.4.2.2 Balconies and Terraces	No	No
3.4.2.3 Acoustical Privacy (Noise Nuisance)	No	No
3.7 Stormwater Management	No	No
3.9 Mechanical Plant Equipment	No	No
3.9.1 Plant Rooms	No	No
3.9.3 Noise from Mechanical Plant	No	No

Provision	Compliance with Control	Compliance with Objectives
4.1.2 Height of Buildings	No	No
4.1.2.1 Wall Height	No	No
4.1.2.2 Number of Storeys	No	No
4.1.2.3 Roof Height	No	No
4.1.3 Floor Space Ratio (FSR)	No	No
4.1.3.2 Exceptions to FSR for Plant Rooms	No	No

4.1.3.3 Exceptions to FSR for Open Balconies	No	No
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.4.1 Street Front setbacks	No	No
4.1.4.2 Side setbacks and secondary street frontages	No	No
4.1.4.4 Rear Setbacks	No	No
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	No	No
4.1.5 Open Space and Landscaping	No	No
4.1.5.1 Minimum Residential Total Open Space Requirements	No	No
4.1.5.2 Landscaped Area	No	No
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	No	No
4.1.6.4 Vehicular Access	No	No
4.1.8 Development on Sloping Sites	No	No
4.1.10 Fencing	No	No
4.1.10.1 Exceptions to maximum height of Fences	No	No
4.4.5 Earthworks (Excavation and Filling)	No	No
4.4.5.1 General	No	No
4.4.5.2 Excavation	No	No
4.4.5.3 Filling	No	No
4.4.5.4 Retaining walls	No	No

Matters requiring further consideration are discussed below:

1.7 Aims and Objectives of this Plan

We contend that the proposed development does not ensure that development contributes to the quality of the natural and built environments does not ensure that development contributes to the quality of the natural and built environments.

We contend that the proposed development does not encourage development that contributes to the quality of our streetscapes and does not ensure future development has consideration for the needs of all members of the community.

We contend that the proposed development does not ensure development positively responds to the qualities of the site and its context and character of the surrounding area.

The overdevelopment represented by excessive FSR, building height, wall height, number of storey, and setback clearly gives grounds for concern. Amenity is affected by all these non-compliances and is unreasonable.

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

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.*

3.1 Streetscapes and Townscapes

We contend that the proposed development does not minimise any negative visual impact of walls, fences, elevated pools and carparking on the street frontage.

We contend that the proposed development does not ensure development generally viewed from the street complements the identified streetscape

We contend that the proposed development does not encourage soft landscape alternatives when front fences and walls may not be appropriate

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

Relevant DCP objectives to be met include the following:

Streetscape

- Objective 1) *To minimise any negative visual impact of walls, fences and carparking on the street frontage.*
- Objective 2) *To ensure development generally viewed from the street complements the identified streetscape.*
- Objective 3) *To encourage soft landscape alternatives when front fences and walls may not be appropriate.*

3.1.1 Streetscape (Residential areas)

We contend that the proposed development does not recognise predominant streetscape qualities, such as building form, scale, and patterns which contributes to the character of the local area.

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

Streetscape is defined (see Dictionary in this plan) and represents the inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character. Development should recognise predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area.

The proposal fails to satisfy objective which aims to have development that is not excessive in scale. The proposal is poorly sited and has significant departures from the street setback, height of buildings, wall height and floor space ratio development standards.

The proposal fails to satisfy objective which aim to have front setbacks complement the existing setbacks in the street. The proposed dwelling is forward of building alignment and is not appropriately set back from the street. This exacerbates the bulk and scale of the development as it presents to the street.

The proposal fails to satisfy objective which require buildings to be sited having regard to topographical features and for the building footprint to be designed to minimise cut and fill. The proposal does not minimise cut and fill.

Numerical compliance with setbacks, height and FSR would deliver a more appropriate building envelope.

3.1.1.1 Complementary Design and Visual Improvement

We contend that the proposed development does not complement the predominant building form in the locality, ensure the bulk and design of development does not detract from the scenic amenity of the area, 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. Setbacks have not been maximised to enable open space to dominate buildings.

The overdevelopment represented by excessive FSR, building height, wall height, number of storey, and setback clearly gives grounds for concern.

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

- 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;*

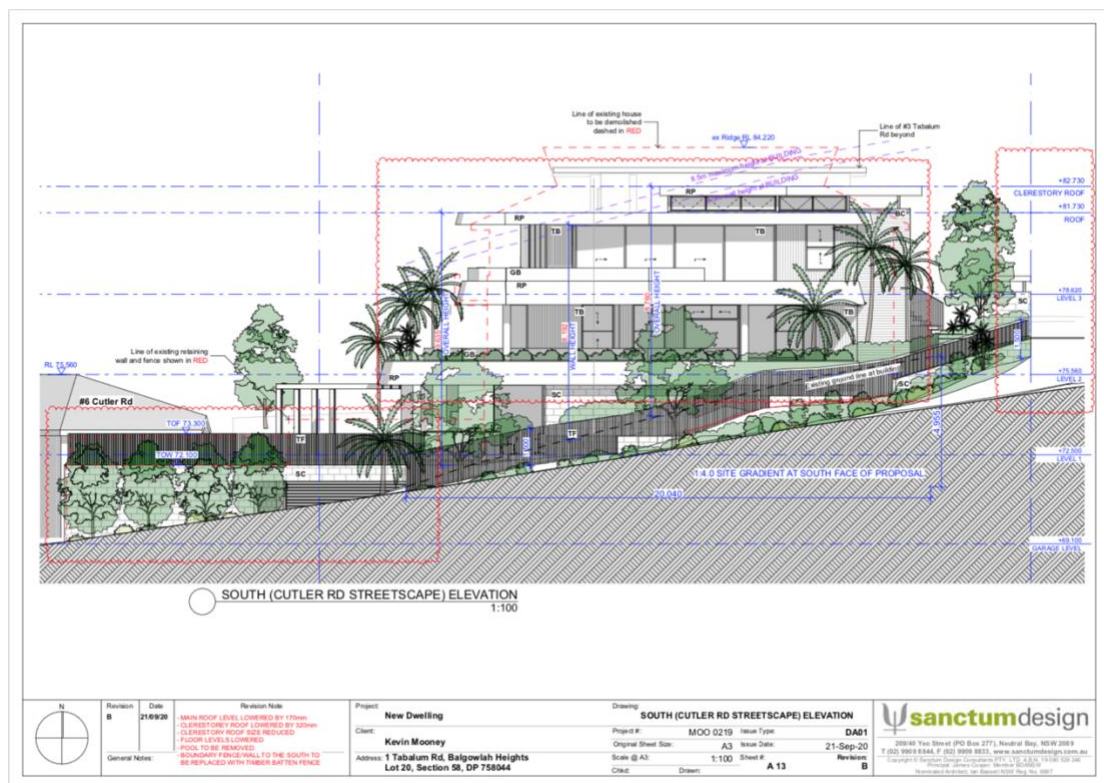
Setback Principles in Low Density Areas

- 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.*

3.1.1.2 Front Fences and Gates

The siting, height and form of boundary fences and walls does not reflect the fencing characteristic of the locality, particularly those of adjacent properties.

The garage entry structure is exceeding excessive, with fence heights the same level as our eaves!



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

- Notwithstanding maximum height provisions for fencing at paragraph 4.1.10; the siting, height and form of boundary fences and walls should reflect the fencing characteristic of the locality, particularly those of adjacent properties. All fencing and wall materials must be compatible with the overall landscape character and the general appearance of the building and the streetscape.
- Boundary fences or walls must not be erected where they would conflict with the local character.
- Front fences and gates must be constructed in materials that complement the architectural style and period of the dwelling and improve the streetscape. In particular, fencing adjacent to a public road or place must not be constructed in metal cladding, powder coated or otherwise.
- Gates must not encroach on public land when opening or closing.

3.1.1.3 Roofs

Roofs have not been designed to avoid or minimise view loss and reflectivity.

The design of the roofs that grossly exceed the maximum building height and wall height is unreasonable.

The overdevelopment represented by excessive FSR, building height, wall height, number of storey, and setback clearly gives grounds for concern.

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

See also paragraph 3.4.3 Views regarding roof forms to minimise view loss.

- Roof forms should complement, but not necessarily replicate the predominant form in the locality and in particular those of adjacent buildings.*
- a) *Roofs should be designed to avoid or minimise view loss and reflectivity.*

3.1.1.4 Garages, Carports and Hardstand Areas

The Garage has been designed and sited in a manner that does dominate the street frontage by not being compatible with the streetscape and the location in relation to front setback criteria

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

- a) *Garages, carports and hardstand areas must be designed and sited in a manner that does not to dominate the street frontage by:*
 - i) *its roof form, material choice and detailing by being subservient to the associated dwelling; and*
 - ii) *being compatible with the streetscape and the location in relation to front setback criteria.*

3.3.1 Landscaping Design

Setbacks of buildings from open space have not been maximised to enable open space to dominate buildings, especially when viewed to and from Sydney Harbour and the National Park.

The proposed landscape design is based upon removing an above ground pool, excavating the remainder of the western zone for basement storage and other uses, then building a new structure 3m to 4m high, with walls above, to house a new lawn that will require fill of over 2.5m rising over 4m from boundary.

All of these zones are non-compliant to controls.

The amenity loss to our property from visual bulk, privacy and overshadowing will be devastating.

The built form will dominate the environment, with little to no canopy trees to screen the non-compliant envelope.

The landscape along the western boundary is totally ineffective to screen the massively non-compliant built forms of highly raised lawn zones built very close to our boundary, and the non-compliant dwelling rising 15m above our property.

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

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

- Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.*
- Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.*

Landscape Character

[a] The design, quantity and quality of open space should respond to the character of the area. In particular

In low density areas: (including LEP Zones R2 Low Density, E3 Environmental Management and E4 Environmental Living) open space should dominate the site. Setbacks of buildings from open space should also be maximised to enable open space to dominate buildings, especially when viewed to and from Sydney Harbour, the Ocean and the foreshore.

In areas adjacent to native vegetation: the design of development should be sympathetic to the natural environment in order to protect and enhance the area as habitat for native fauna.

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

The proposed development does not protect the amenity of existing and future residents and minimise the impact of new development, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.

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

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.*

3.4.1 Sunlight Access and Overshadowing

We contend that the proposed development does not provide equitable access to light and sunshine, and does not allow adequate sunlight to penetrate private open spaces and windows to the living spaces and habitable rooms of the adjoining properties in the early mornings up to the equinox.

We contend that the proposed development does not maximise the penetration of daylight

into the habitable rooms by the non-compliant envelope, reducing considerably the available winter sky.

We contend that the proposed development does not maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas at the equinox by encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and does not maximise setbacks to encourage solar penetration into properties.

This is caused by the envelope of the non-compliant dwelling, and the non-compliant raising of the lawn area by non-compliant filling of an above ground pool.

All these non-compliant envelope forms add to the overall loss of sunlight.

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

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.

3.4.1.1 Overshadowing Adjoining Open Space

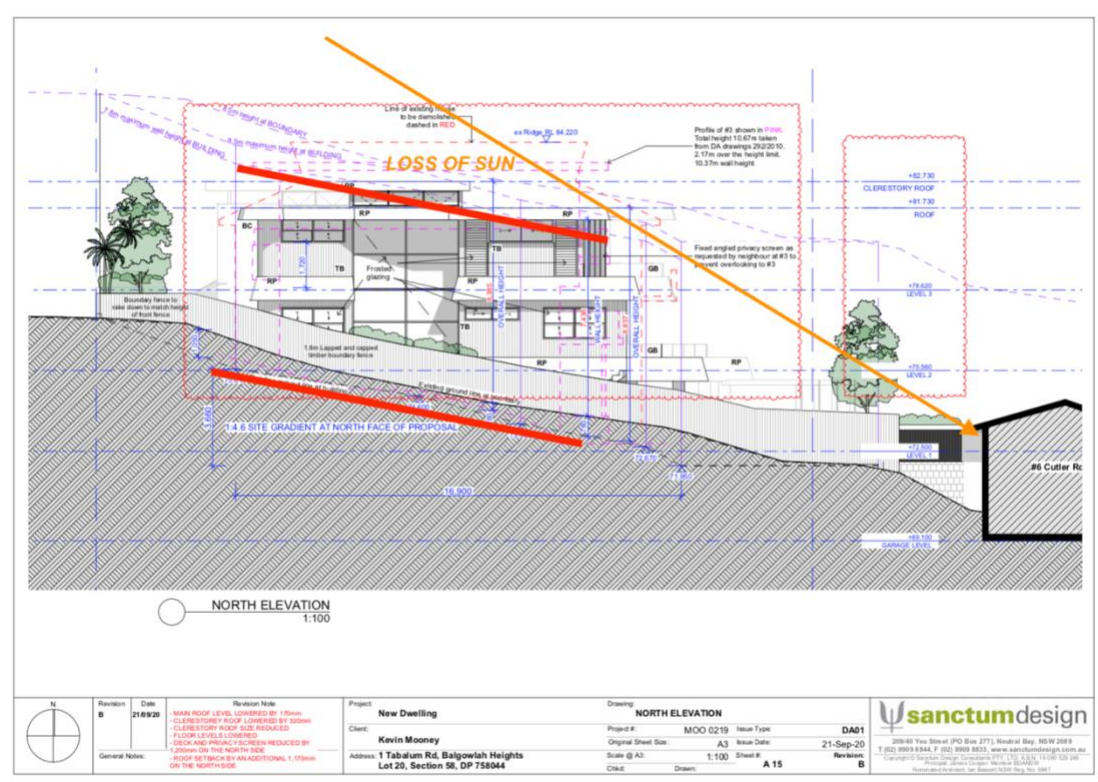
The proposed development does not ensure that reasonable access to sunlight is maintained, particularly at the equinox.

Non-compliant development is causing solar loss.

The proposed development does unreasonably overshadow the public open space, by proposing non-compliant development casting additional shadow into the public open space.

The non-compliant building envelope will cause unreasonable solar loss at the equinox to the adjoining windows and open space of neighbours.

Any solar loss beyond a fully compliant envelope is considered totally unreasonable to the adjoining open space.



3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

The proposed development does not ensure that reasonable access to sunlight is maintained in the early mornings up to the equinox.

Non-compliant development is causing solar loss.

The non-compliant building envelope will cause unreasonable solar loss to living rooms in the mornings up to the equinox, when solar access is vital to warm the house.

Any solar loss beyond a fully compliant envelope is considered totally unreasonable to the living rooms in the early mornings up to the equinox.

Reduce the envelope forms to be compliant to all controls.

We wish to ensure that We have sufficient hours of winter sunshine between 9am and 3pm unaffected up to the equinox. The Applicant has not demonstrated that his non-compliant built forms will achieve that outcome, by preparing elevation studies of our windows through the winter months.

3.4.1.3 Overshadowing Solar Collector Systems

The proposed development does not ensure that reasonable access to sunlight is maintained in the mornings up to the equinox.

Non-compliant development is causing solar loss.

The proposed development does not promote passive solar design and the use of solar energy.

The proposed development does unreasonably overshadow the roof zones, by proposing non-compliant development casting additional excessive shadow into the roof forms.

The non-compliant building envelope will cause unreasonable solar loss to neighbours.

Any solar loss beyond a fully compliant envelope is considered totally unreasonable to the private open rear garden, but also to the windows and decks.

Reduce the envelope forms to be compliant to all controls.

We contend that the DA fails the major objectives of this control to the future installation of solar collectors on our property as follows:

A minimum of 6 hours solar access be retained to solar collectors on neighbouring properties.

We wish to ensure that We have 6 hours of winter sunshine between 9am and 3pm unaffected up to the equinox. The Applicant has not demonstrated that his non-compliant built forms will achieve that outcome to our future installation of solar panels.

3.4.1.5 Excessive Glare or Reflectivity Nuisance

We are concerned on the glare from excessive use of glass, and the reflectivity of roof finishes and other wall finishes.

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

All external material and finishes incorporated into the development must consider and mitigate any excessive glare or reflectivity nuisance.

3.4.2 Privacy and Security

The proposed development does not ensure that the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours. The siting of the non-compliant development is positioned too close to the boundary, and will not provide acoustic or visual privacy to our dwelling.

The proposed building layout has not been designed to optimise privacy for occupants of the development and occupants of adjoining properties.

The proposed development has not orientated all the living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking. Some of these windows face our property, and that creates the problems.

The windows facing our property at all levels must have privacy screens, and need to be reduced in size.

The proposed development has not properly considered the effective location of doors, windows and balconies to avoid overlooking. We prefer the use of screening devices, high sills or obscured glass to these areas, and for Council to carefully consider all these matters.

The proposed development windows provide direct or close views into the windows of our property. We are concerned on all windows overlooking our dwelling, private open space and deck.

The design of the development gives rise to unreasonable privacy outcome by elevated decks and windows elevated within non-compliant envelope beyond controls giving direct line of sight into neighbours property.

The design does not ensure the siting and design of buildings to provide a high level of visual and acoustic privacy for occupants and neighbours facing our property.

The artificially raised lawn, on 2.7m of fill, will also create serious privacy issue, with residents being able to look immediately down on us, and directly into our bedroom.

The non-compliant height of the upper decks is of particularly great concern, as these non-compliant decks will provide a direct line of sight into our windows and private open space. These decks are perhaps 2m higher than they should be, considering the non-compliant wall height and building height across the entire western facade facing us.

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

Note: *Consideration of privacy are typically balanced with other considerations such as views and solar access. The degree of privacy impact is influenced by factors including the use of the spaces where overlooking occurs, the times and frequency theses spaces are being used, expectations of occupants for privacy and their ability to control overlooking with screening devices.*

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.*

An assessment of the privacy impact against the planning principle *Meriton v Sydney City Council* [2004] NSWLEC 313 follows:

Principle 1: The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.

Response: The development is located in a low-density area.

Principle 2: Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)

Response: The proposed development result in a privacy impact with the proposed windows facing neighbours without any screening devices being provided.

Principle 3: The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.

Response: The windows in question are windows of the main circulation zones and living areas, it is considered that the living areas will result in an unacceptable privacy breach. The proposed windows facing the rear private open spaces for the neighbouring dwelling and will result in an unacceptable level of privacy impact.

Principle 4: Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.

Response: The proposed development is a new development and the proposed windows have been designed without any consideration to the privacy of the neighbouring property.

Principle 5: Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.

Response: It is considered that the private open space of the neighbouring dwellings could be protected through the provision of highlight windows and the provision of privacy screens.

Principle 6: Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.

Response: As mentioned above, the use of highlight windows and privacy screens would reduce the impact of the dwelling.

Principle 7: Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.

Response: The landscaping should ensure no loss of harbour view.

Principle 8: In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.

Response: The area is not undergoing change that would warrant privacy impact such as the one presented.

Comment: As the development is considered to result in an unacceptable privacy impact due to the design, it is requested that the proposed development be redesigned to reduce amenity impact on the neighbouring properties.

3.4.2.1 Window Design and Orientation

The proposed development has used extensive glass facades facing our property without any privacy screening device.

We ask privacy screening devices to protect direct overlooking to our property.

3.4.2.2 Balconies and Terraces

Architectural or landscape screens has not been provided to balconies and terraces to limit overlooking of our property. Architectural screens must be fixed in position and suitably angled to protect visual privacy.

Where the proposed development has provided screens they grossly exceed wall height and building height controls.

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

- a) *Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.*

3.7 Stormwater Management

We are concerned that stormwater will create problems for our property.

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

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

Objective 1) To manage urban stormwater within its natural catchments and within the development site without degrading water quality of the catchments or cause erosion and sedimentation.

Objective 2) To manage construction sites to prevent environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation.

- Objective 3) To promote ground infiltration of stormwater where there will be no negative (environmental) impacts and to encourage on-site stormwater detention, collection and recycling.*
- Objective 4) To make adequate arrangements for the ongoing maintenance of stormwater facilities.*

The following consideration and requirements apply to the management of stormwater:

- a) In support of the purposes of LEP clause 6.4(3), all developments must comply with the Council's 'Stormwater Control Policy' (see Council Policy Reference S190). The standards to achieve the controls contained in the Stormwater Control Policy are provided in Council's "Specification for On-site Stormwater Management 2003" and "Specification for Stormwater Drainage". Stormwater management measures are to be implemented and maintained in accordance with the Specification for Stormwater Management;*
- b) Stormwater disposal systems must provide for natural drainage flows to be maintained;*
- c) Pervious surfaces and paving will be used for driveways, pathways and courtyards where practical;*
- d) Notwithstanding the prevailing BASIX water conservation targets, the collection of rainwater/run-off for non-potable uses exceeding the target is encouraged; and*
- e) A qualified drainage/hydraulic engineer will design all stormwater controls, devices and water storage systems; and*

3.9 Mechanical Plant Equipment

We are concerned that the plant equipment including air conditioning (both heating and cooling systems and ventilation), and other mechanical systems will create excessive noise.

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

Mechanical Plant Equipment refers to the necessary infrastructure to support and maintain services or operations including air conditioning (both heating and cooling systems and ventilation), swimming pool filtration and other mechanical systems. Plant may also maintain other systems, such as plumbing and lighting for larger developments.

3.9.1 Plant Rooms

We request that the floor area must be no larger than the actual area which the plant and/or machinery occupies plus the equivalent of a 0.5m access and maintenance area surrounding the plant/machinery item for access and ventilation.

We are concerned over excessive excavation for plant rooms, creating excessive vibration.

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

- a) *Plant rooms are generally required to accommodate mechanical plant systems for commercial buildings or major residential development and used exclusively for that purpose. The design and size of these rooms will vary depending on the technical specifications of the systems and other factors such as access and ventilation.*
- b) *The provision of plant equipment in low density residential development rarely demands exclusive rooms for the occupation of plant i.e. a 'plant room', but where an exclusive plant room is proposed, the floor area must be no larger than the actual area which the plant and/or machinery occupies plus the equivalent of a 0.5m access/maintenance area surrounding the plant/machinery item for access and ventilation*. Plant rooms are not to be used for other purposes such as for storage and laundry and the overall size of the plant room should generally be less than a size of habitable rooms and must not add to building bulk or result in excessive excavation. In considering the location of mechanical plant equipment in dwelling houses, the use of an otherwise non-habitable location/ space or under storey that is well ventilated and which minimise noise impacts are preferred.*

***Note:** *While additional space around plant equipment may be required for occupational, health and safety reasons, (i.e. more than 0.5m around the plant) then the floor area will be calculated as gross floor area for the purposed of the FSR calculation.*

4.1 Residential Development Controls

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

This section of the plan provides controls for development generally in LEP Zones R1, R2, R3, E3 and E4. These paragraphs may also apply to residential development elsewhere in Manly and are to be read in conjunction with development standards in the LEP.

Relevant DCP objectives to be met in relation to residential development include the following:

- Objective 1) To delineate by means of development control the nature and intended future of the residential areas of the former Manly Council area.*

- Objective 2) To provide for a variety of housing types and densities while maintaining the exiting character of residential areas of the former Manly Council area.*
- Objective 3) To ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residences, the existing environmental quality of the environment or the aesthetic quality of the former Manly Council area.*
- Objective 4) To improve the quality of the residential areas by encouraging landscaping and greater flexibility of design in both new development and renovations.*
- Objective 5) To enable population growth without having adverse effects on the character, amenity and natural environment of the residential areas.*
- Objective 6) To enable other land uses that are compatible with the character and amenity of the locality.*
- Objective 7) To ensure full and efficient use of existing social and physical infrastructure and the future provision of services and facilities to meet any increased demand.*

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Control 8.5 m

Proposed 10.42 m

We refer to comments under the MLEP, made previously.

The proposed development does not 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. The proposed development does not control the bulk and scale of buildings.

The proposed development does not minimise disruption to the views to nearby residential development from public spaces (including the harbour and foreshores), views from nearby residential development to public spaces (including the harbour and foreshores), and views between public spaces (including the harbour and foreshores).

The proposed development does not maintain adequate solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and maintain adequate to habitable rooms of adjacent dwellings.

The proposed development does not 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 DA fails the major objectives of this control as follows:

While the LEP contains Height of Buildings development standard and special height provisions, these paragraphs control the wall and roof height and the number of storeys within and in support of the LEP provisions in relation to residential development.

LEP objectives for the Height of Buildings at clause 4.3 are particularly applicable to controls at paragraph 4.1.2 of this DCP.

4.1.2.1 Wall Height

Control 7.8m and 8.0m

Proposed 10.42m clerestory; 10.02m Roof

The objectives have clearly not been met.

The visual impact from adjoining properties and from the public recreational zones is one of visual bulk. The roof forms will dominate the views from the public recreational zones, from the street, other neighbours properties and the view from our property.

The proposed wall heights are 400mm below the maximum building height.

The proposed development does not minimise the impact of development to our property as it creates solar loss, privacy loss, and considerable visual bulk.

The proposed development does not respond to site topography and does not discourage excavation of the natural landform.

The site topography has not been properly addressed, leading to non-compliance and poor visual bulk.

The design has not discouraged excavation of the natural landform: it has taken one enormous hole out of the natural landform that could never be replaced.

This is contrary to DCP controls.

The extent of the non-compliance is clear on the northern elevation, but under forecast on the southern elevation.

This non-compliance in conjunction with the side boundary non-compliance will result in a significant bulk and scale imposing on the private open space of neighbours, public domain, and our property.

There is a significant concern over overshadowing and privacy loss as a result of this element.

Overshadowing and privacy loss that is a direct result of a non-compliance should not be supported by Council.

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

Within the LEP Height of Buildings development standard, the maximum external wall height is calculated based on the slope of the land under the proposed wall. Figures 26, 27 and 28 provide guidelines for determining the maximum height of external walls based on the particular slope of the land along the length of these proposed walls. The maximum wall height control will also vary from one building, elevation or part elevation to another depending on the slope of land on which the wall is sited. Within the range of maximum wall heights at Figures 26 and 28, the permitted wall height increases as the slope of the land increases up to a gradient of 1 in 4, at which point the permitted maximum wall height is capped according to Figure 26.

[b] For the purpose of determining maximum wall height, the slope of the land is calculated at natural ground level along the full length of the proposed wall expressed as a ratio that is applied in Figure 27 - Interpretation of Wall Height based on Slope. The slope of land on which the wall is sited will differ from one building to another and from one elevation of that building to another elevation and will be used in Figure 28 below to determine the maximum wall height in each case.

- The wall height has been measured as being in excess of 7.8m & 8.0m.
- The applicant's calculation of building and wall height is in error to the extent that the submitted justification cannot be relied upon to satisfy Council as the consent authority.
- The environmental planning grounds put forward are insufficient to justify contravening the wall height development standard;
- The assessment does not agree with the applicant's statement that excavation is limited and is an appropriate response to the topography. The assessment finds that the proposal involves an excessive amount of cut and fill;
- The proposed development is out of character with the area;
- The proposed development has insufficient side and street setbacks;
- The proposed development would result in adverse amenity impacts for the surrounding area;

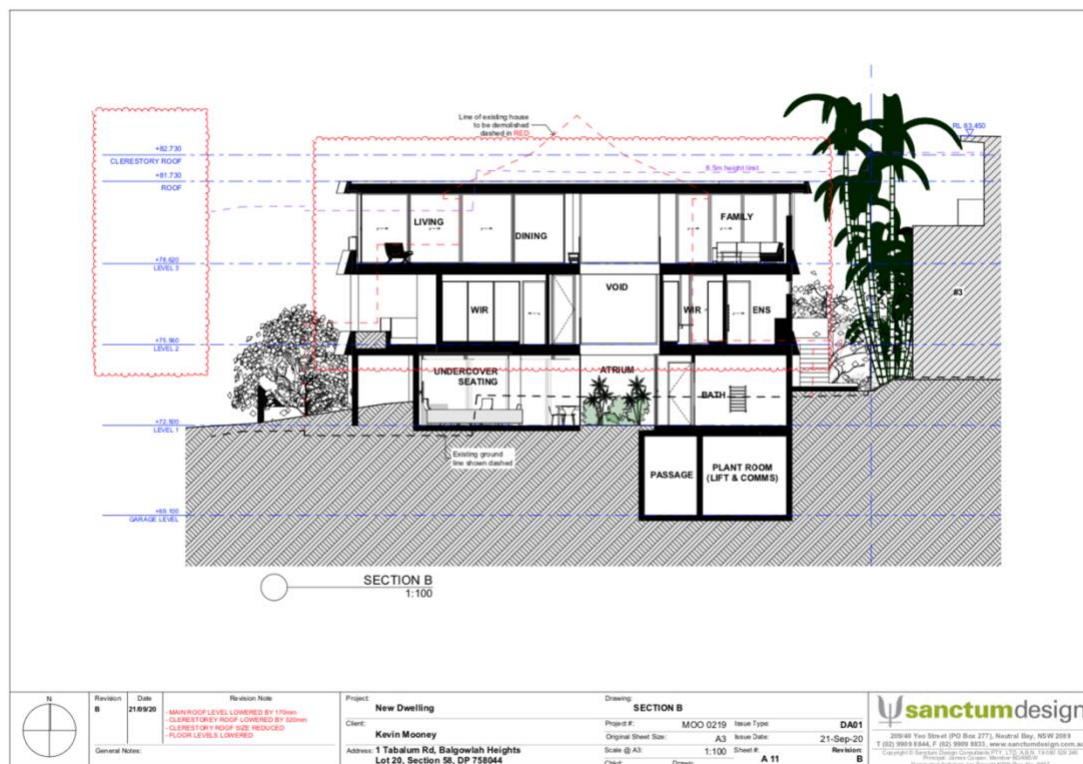
- The proposed development results in a dominance of built form over landscape;
- A more skilful design would have lesser impacts on surrounding properties;
- The proposal results in view loss for an adjoining property and loss of public views from the street.

4.1.2.2 Number of Storeys

Control: Two Storey

Proposed: Four Storey

The majority of the proposed development is three storey, and the section shows zones over the garage entry as four storey.



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

[a] Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.

[b] Variation to the maximum number of storeys may be considered:

where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height, and to allow an additional understorey where that storey satisfies the meaning of basements in the LEP.

4.1.2.3 Roof Height

Control 8.5 m

Proposed 10.42m

We contend that the DA fails the major requirement of this control:

Roofs should complement the roof pitch and forms of the existing buildings in the streetscape

The proposed roofs do not complement the roof pitch and forms of the existing buildings in the streetscape or by the public domain to the east.

We are concerned that all these roof structures are pushed well into zones facing the National Park, making the outcome every more concerning.

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

Roof parapets may extend up to 0.6m above the actual wall height where Council considers that a parapet is considered to be appropriate to the design of the development and satisfies the objectives of this DCP and the LEP. For example, a parapet roof should not result in the appearance of lift structures and the like that protrude above the roof.

Note: As the LEP definition 'Building Height' incorporates plant and lift overruns, these structures must be similarly contained and not protrude above the maximum roof height.

4.1.3 Floor Space Ratio (FSR)

Control 0.4

Proposed 0.5 or more

- Objective 1) To ensure the scale of development does not obscure important landscape features.*
- Objective 2) To minimise disruption to views to adjacent and nearby development.*
- Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.*

- The height of the building is in excess of 8.5m.
- There are insufficient environmental planning grounds to justify contravening the height of buildings development standard nor has it been established as reasonable or unnecessary;
- The assessment does not agree with the applicant's statement that excavation is limited and is an appropriate response to the topography of the site. The assessment finds that the proposal involves excessive cut and fill which is not appropriate for the site or its surrounds;
- The bulk and scale of the proposed development is out of character with the area;
- The proposed development would result in adverse amenity impacts for the surrounding area;
- The proposed development results in a dominance of built form over landscape; and
- The proposal results in view loss for an adjoining property

4.1.3.2 Exceptions to FSR for Plant Rooms

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

In calculating the gross floor area under the LEP dictionary meaning for the purpose of calculating FSR, consideration must be given to paragraph 3.9 Plant Equipment of this plan with regard to the design and maximum area of plant equipment and plant rooms.

4.1.3.3 Exceptions to FSR for Open Balconies

The balconies that are enclosed by roof structures, and many are enclosed on three sides by wall heights exceeding 1.4m high, adding to the bulk, and they should not be included into the LEP definition of Gross Floor Area.

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

Objective 1) To maintain open balconies which contribute to the articulation of building facades without adding to the building bulk and provide an amenity of open space for occupants.

In calculating the Gross Floor Area under the LEP dictionary meaning for the purpose of calculating FSR, balconies that are enclosed will not be excluded from the LEP definition of Gross Floor Area i.e. will be included in FSR when the balcony is:

- i) enclosed to the extent that it is part of the building envelope as defined by the Building Code of Australia; and
- ii) considered by Council to have the character of a habitable room.

Note: In this regard it is noted that the LEP only excludes balconies from the Gross Floor Area when the outer walls are less than 1.4m high.

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

The proposed development does not maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

The proposed development does not 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.

The proposed development does not define and add character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and facilitate safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.

The proposed development does not enhance and maintain natural features by accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees; does not ensure 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 does not ensure the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.

The proposed development does not assist in appropriate bush fire asset protection zones

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

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

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

- 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.*
- 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.*
- 3. To promote flexibility in the siting of buildings.*
- 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.*
- 5. To assist in appropriate bush fire asset protection zones*

4.1.4.1 Street Front setbacks

Tabalum Street Setback

Control #3 Tabalum at 7.0m

Proposed 6.13 m

We ask for a compliant front setback that relates to 3 Tabalum.

Note: Reference to 'prevailing building lines' in this paragraph means the building lines determined in undertaking the context and site analysis required to accompany all DAs (see Council's Administrative Guidelines) including, in this case, demonstrated survey of all building lines and street frontages in the vicinity i.e. the visual catchment along the street.

4.1.4.2 Side setbacks and secondary street frontages

Northern Elevation Setback

We request that the Side setback be increased to 3m to increase solar access between properties.

This will allow sunlight to penetrate between #1 Tabalum and #3 Tabalum to our property.

The development does become visually dominant by virtue of its height and bulk, and will present a visually dominant outcome, purely by virtue of its height and bulk.

The development does not ensure adequate light, solar access and privacy by providing spatial separation between buildings.

The development does not respond to the topography of the site.

The proposed development does not accord with the control that states that all new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries.

The proposed development does not accord with the control that states that for secondary street frontages of corner allotments, the side boundary setback control will apply unless a prevailing building line exists. In such cases the prevailing setback of the neighbouring properties must be used. Architecturally the building must address both streets.

The proposed wall height mentioned earlier, in respect to wall heights, to the south west corner is **9.42m**.

The Setback to Cutler Road should therefore be 1/3 of 9.42m, being **3.14m**.

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

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

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

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

[d] For secondary street frontages of corner allotments, the side boundary setback control will apply unless a prevailing building line exists. In such cases the prevailing setback of the neighbouring properties must be used. Architecturally the building must address both streets.

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

[f] In relation to the setback at the street corner of a corner allotment the setback must consider the need to facilitate any improved traffic conditions including adequate and safe levels of visibility at the street intersection. In this regard Council may consider the need for building works including front fence to be setback at this corner of the site to provide for an unobstructed splay. The maximum dimension of this triangular shaped splay would be typically up to 3m along the length of the site boundaries either side of the site corner. See also paragraph 5.5 Road Widening and Realignment and the former Manly Council's Corner Splay Policy (C150) for instances where the corner splay may be acquired by Council at intersections in the public interest and in the circumstances of the particular case.

4.1.4.4 Rear Setbacks

Control 8 m

Proposed 1.23 m

We are concerned that a major new build element of the proposed development, namely the elevated lawn is built into the rear setback zone.

The new structure is part of the building considering that the built form rises to RL 73.9 over the adjacent levels at the south-west corner at RL 68.18. This represents wall heights of up to 5.72m, which is effectively a two storey structure, built into the rear setback zone.

This structure is built only 1.23m from the western boundary, and 1.685m from the southern street boundary.

No consideration to privacy, additional overshadowing, and visual bulk has been considered in this respect.

We contend that Council must consider this element as proposed development within the rear setback.

We contend that the entire structure west of the proposed dwelling is to be considered under this clause, as it will require the construction of enclosing walls over 5m in height to contain very deep fill raised lawn.

The proposed development does not maintain the distance between any part of a building and the rear boundary must not be less than 8m. The proposed development does not maintain rear setbacks to allow space for planting of vegetation, including trees, other landscape works and private and/or common open space.

On sloping sites, particularly as this new development is uphill and in sensitive locations, no consideration has been given to the likely impacts of overshadowing, visual privacy and view loss. Rear setbacks have not minimised overshadowing, visual privacy and view loss.

The amenity of the adjacent National Park will be compromised, as a major raised zone overlooking the public land will make any casual user of the National Park feel like they are being watched and overlooked. The privacy of casual users to enjoy the space will be poorly affected.

The visual continuity will be broken, and the landscape elements totally controlled by built form.

The form in the rear setback built will dominate the landscape, and that is a very unwelcome outcome of the non-compliant rear setback.

The scenic amenity of the area is heavily compromised.

- The Development fails to maintain a minimum setback to rear boundaries.
- The Development fails to ensure that the rear setback area is to be landscaped and free of any above or below ground structures. Built form dominates the zone.
- The Development fails to ensure that where there is a compliant rear boundary setback, above and below ground structures and private open space, including basement carparking, balconies, terraces, pools and the like

The development fails the objectives and the requirements.

The proposed dwelling and proposed deck adjoining the proposed Living zones is significantly non-compliant.

This is contrary to DCP controls.

The proposed raised associated areas, built into the rear setback zone, will be jarring to the natural environment.

This design will result in a significant built form within the rear setback area.

This element is not consistent with the rear setback objectives of the DCP.

The proposed development will present non-compliant building heights and wall heights adjacent to this zone, adding to the concern.

Views, overshadowing and privacy to the adjoining public and private domains are not reasonably maintained.

View loss, overshadowing and privacy loss that is a direct result of a non-compliance should not be supported by Council.

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

- 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.*

4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2

We are concerned to the raised lawn proposed to be positioned immediately adjacent the E1 National Park. There is no common boundary, but the setting to an entry area of the National Park will be affected by the visual bulk of the development.

This area is not designed to complement the natural or landscape character of the adjacent LEP Zones.

We refer to earlier dimensional concerns.

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

- a) *Buildings, swimming pools and garden sheds on sites with a common boundary to land zoned in the LEP as Zones RE1 Public Recreation, RE2 Private Recreation, E1 National Parks and E2 Environmental Conservation must be set back at least 6m from this common boundary and in the case of rear setbacks, the minimum 8m setback prevails (see paragraph 4.1.4.4 of this plan). However, gazebos, barbeques, child play equipment and the like may be permitted within this setback provided they are designed to complement the natural or landscape character of the adjacent LEP Zones.*
- b) *Remnant native vegetation must be protected on land particularly within the minimum required setback area adjacent to land zoned in the LEP as Public or Private Recreation (Zones RE1 & RE2), National Parks (Zone E1) and Environmental Conservation (Zone E2). The design of development generally adjacent to native vegetation should be sympathetic to the natural environment in order to protect and enhance areas as habitat for native fauna.*

4.1.5 Open Space and Landscaping

The proposed development does not maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

The proposed development does not maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

We are concerned that the entire structure of wall heights over 5m in height to contain these zones will create devastating amenity outcomes. The non-compliant lawn raised above our property is totally unreasonable.

The proposed development does not maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

The proposed development does not retain and augment important landscape features and vegetation including remnant populations of native flora and fauna. The proposed development does not maximise wildlife habitat and the potential for wildlife corridors. The 70% coverage of hard finishes, with a token amount of soft creates a poor setting for these matters.

Council should note that in September 2019 Sydney University conducted a limited study in the front and backyard of #3 Tabalum to see what animals live in our neighbourhood. Ringtail and bushtail possums were found.

We ask Council to consider the need to submit a Flora and Fauna Assessment, Terrestrial Biodiversity Report and a Species Impact Assessment, and other reports as required.

Threatened Species have been observed in nearby sites, and Council must consider individual assessments carried out in accordance with Section 5A of EPAA.

Consideration also must be given to the MLEP 2013 Clause 6.3[3] and [4] relating to terrestrial biodiversity.

In recent assessments in the area there has been recordings of numerous specie, and most are protected [p].:

Mammalia

Long-nosed Bandicoot [p]

Common Brushtail Possum [p]

White Striped Freetail Bat [p]

Goulds Wattled Bat [p]

Eastern Bent wing Bat [p]

Grey Headed Flying Fox [p]

Reptila

Eastern Water Skink [p]

Delicate Skink [p]

Southern Leaf Tailed Geoko [p]

Eastern Water Dragon [p]

Common/Eastern Blue-Tongue [p]

Amphibian

Common Eastern Froglet [p]

Aves

Australian Brush Turkey [p]

Sulphur Crested Cockatoo [p]

Australian raven [p]

Pied Butcherbird [p]

Laughing kookaburra [p]

Eastern Yeloow Robin [p]

Noisy Miner [p]

Eastern Whipbird [p]

Pied Currawong [p]

Rainbow Lorikeet [p]

Most neighbours observe most of these species regularly in the area.

My concern is that the design has not taken any consideration of the protection of the habitats for these species, nor created zones for their habitat.

Core refuge habitat for Bandicoots and Possums has not been considered, despite the fact that they appear in Reports on nearby development. We know from the Sydney University that Possums inhabit the area, and this is well known. Bandicoots have been observed in many local studies. Skinks, Geckos, Water Dragons and Blue-Tongues are also well reported.

My concern is to the disturbance of the habitat by excessive excavation, and the extension of the basement zones beyond the building footprint, will produce a poor outcome.

My main concern is the location, size, and height of the raised structure, the raised lawn zones by 2.7m, and the massive hard surface zone around the zone that extends to a massive undercroft.

This 8m rear setback zone should have been a deep soil landscaping zone at natural ground levels, leaving a large zone to the rear boundary for a more responsive landscape solution towards the National Park.

A zone along the western boundary should be established to allow native animals to have a corridor along the rear of properties to Tabulam. These zones should be at natural ground levels, not by barriers raised 4m to 5m in the air, but natural grades running from the Council verge in Cutler to the north-west corner of the subject site, in the setback zone facing our property. Once the above ground pool is removed a native vegetation solution to provide better habitat, with screening bushes and trees must be considered by Council.

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

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

- 1. To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna*
- 2. To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*
- 3. To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*
- 4. To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*
- 5. To minimise the spread of weeds and the degradation of private and public open space.*

6. *To maximise wildlife habitat and the potential for wildlife corridors*

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

We contend that the garage should be positioned under the proposed dwelling, to avoid excessive excavation. The existing garage in Cutler Road has been used for decades without concern. A similar garage in a similar location would be the option to better reduce amenity impacts on neighbours.

The proposed development does not ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

The proposed development does not ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

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

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

- Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).*
- Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.*
- Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.*
- Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.*
- Objective 5) To ensure the width and number of footpath crossings is minimised.*

- Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.*
- Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.*

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas

The design and location of the garage does not minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality

Garage structures are forward of the building line and are designed and sited so as to dominate the street frontage.

The entry wall is set back less than 1.5m from the Cutler Road frontage.

There is a reasonably alternative onsite location to this massive streetscape entry, by simply maintaining a garage entry under the proposed dwelling at existing entry grade, with a compliant setback.

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

- a) The design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.*
- b) Garage and carport structures forward of the building line must be designed and sited so as not to dominate the street frontage. In particular:*
 - i) garages and carports adjacent to the front property boundary may not be permitted if there is a reasonably alternative onsite location;*
 - ii) carports must be open on both sides and at the front; and*
- c) the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.*

The design of development does not respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.

The large undercroft area at the lower level is cavernous.

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



Objective 1) To ensure that Council and the community are aware of, and appropriately respond to all identified potential landslide & 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.*

Driveways on sloping sites

- c) On steep sites, driveways must be designed so they do not dominate the street frontage, by:*
- i) limiting their height above existing ground level to avoid the need for elevated ramps and similar structures to access car parking areas, especially those which may encroach on public land;*
 - ii) limiting their width;*
 - iii) using materials that do not visually detract from the natural surroundings; and*
 - iv) retaining significant trees.*

4.1.10 Fencing

Freestanding walls and fences between the street boundary and the building are more than 1m high above ground level at any point.

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

Freestanding walls and fences between the front street boundary and the building are to be no more than 1m high above ground level at any point.

4.1.10.1 Exceptions to maximum height of Fences

Freestanding walls and fences between the street boundary and the building are more than 1m high above ground level at any point, and still more than 1.5m relating to this clause.

We contend that the walls and fence structures along Cutler Road, with minimal setback, are totally unreasonable.

These wall heights are at RL 73.30, set against survey levels at the Council footpath zone at RL 67.88 to 70.11. **These fences are up to 5.4m high.**

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

- a) *In relation to stepped fences or walls on sloping sites (see paragraph 4.1.8), the fence and/or wall height control may be averaged.*
- b) *In relation to open/ transparent fences, height may be increased up to 1.5m where at least 30 percent of the fence is open/ transparent for at least that part of the fence higher than 1m.*

4.4.5 Earthworks (Excavation and Filling)

The proposed development does not limit excavation as required by Council controls, and does not limit “cut and fill” and other earthworks.

The proposed excavation would discourage the alteration of the natural flow of ground and surface water. No detailed engineering study has been commissioned to consider these issues.

We are greatly concerned that the excavation will have an adverse effect upon the natural environment or adjoining and adjacent properties, such as mine. We are concerned on the excessive vibration risks.

We are greatly concerned that the excavation will create airborne pollution, by the excessive excavation of substantial volume of rock, and We are concerned about fine dust being emitted for extended periods whilst this massive basement is excavated, blowing not only over neighbours, but those using the National Park adjoining the harbour.

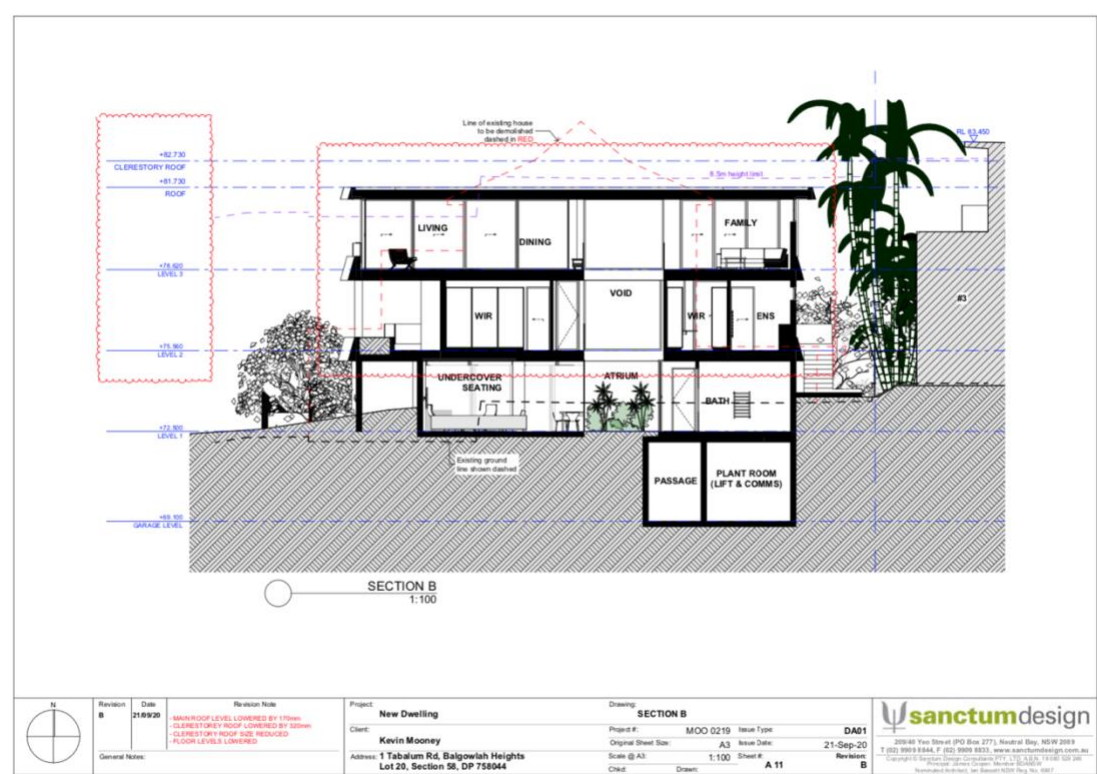
We are greatly concerned that the excavation will have an adverse effect upon preserving the integrity of the physical environment, and significantly the structural concerns to our property.

We are greatly concerned that the massive excavation will have an adverse impact our adjoining land, with excessive vibration and structural instability.

We are concerned on the massive fill of over 2.7m to create the elevated lawn area close to our boundary.

The proposal includes extensive excavation of the site up to **6.4m deep**, for a multitude of uses. [RL 75.1 survey above north-east corner - RL 69.1 - less structural slab 68.7]

This is contrary to DCP controls.



The extent of the basement will cut through the upper watercourse layers of sandy and silty clay soils, very stiff clay layers, to siltstone, and then well below to dense sandstone bedrock levels forming a complete barrier to the feed of water to the vegetation below. This is a concern.

The extensive vibration caused by this massive basement cutting through dense sandstone over the site will cause massive disturbance, vibration risks and residential amenity disturbance, and will have a high risk to the integrity of the physical environment.

We ask the Council to condition any approval with a new double garage to be positioned under the proposed building off Cutler Road, with a complaint setback, all to Council controls. Delete the basement and the basement ramp.

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

Note: *Before granting development consent for earthworks, consideration must be given to the matters listed in LEP clause 6.2(3)(a)-(h).*

Relevant DCP objectives in this plan in relation to these paragraphs include:

Objective 1)

To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, “cut and fill” and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

4.4.5.1 General

Earthworks have not been limited to that part of the site required to accommodate the building, but has extended well beyond the building alignment to the west.

We are concerned on the massive fill of 2.7m close to our boundary, and the earthworks required for the pool and the deep basements.

We are concerned that natural and undisturbed ground level has not been maintained within 0.9m of side and rear boundaries.

The controls state that on steeply sloping sites, pier and suspended slab or an equivalent non-invasive form of construction technique must be used to minimise earthworks and vegetation loss and retain natural features. These techniques are not being used.

Excavation under the canopy of any tree, including those trees on our property, is being planned, without any justification providing its long-term survival and stability is not jeopardised.

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

[a] Earthworks must be limited to that part of the site required to accommodate the building and its immediate surrounds to protect significant natural features of the site including

vegetation and prominent rock outcrops.

[b] Natural and undisturbed ground level must be maintained within 0.9m of side and rear boundaries

[c] On steeply sloping sites, pier and suspended slab or an equivalent non-invasive form of construction technique must be used to minimise earthworks and vegetation loss and retain natural features.

[d] Excavation under the canopy of any tree (including those on neighbouring properties) will only be permitted providing its long-term survival and stability is not jeopardised. Such excavation must be supported by an Arborist report.

[e] Approved sediment, siltation and stormwater control devices must be in place (and maintained) prior to and during the carrying out of any earthworks and other works on the site.

4.4.5.2 Excavation

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

Excavation is not generally limited to 1m below natural ground and not contained within the footprint of the building.



Dilapidation survey reports will be required.

[a] Excavation is generally limited to 1m below natural ground level with the exception of basement parking areas (which will be contained within the footprint of the building) and swimming pools;

[b] A dilapidation survey report and geotechnical assessment may be required for excavation works exceeding 1m. Dilapidation survey reports are to include photographic survey of the physical condition of adjoining properties, both internally and externally, including walls ceilings, roof, structural members and other such items. Such records are to provide proper record in relation to the proposed development to particularly assist in any dispute over

damage to adjoining proposed arising from the works. It is in the interests of applicants and adjoining landowners for it to be as full and as detailed as necessary commensurate with the nature of the proposed development

4.4.5.3 Filling

Filling exceeds 1m above natural ground level, contrary to controls.

The proposed development is proposing to fill by over 2.7m along the western boundary, after removing the above ground pool. This is not shown on the DA drawings. The drawings are false and misleading.

- a) *Filling must not exceed 1m above natural ground level.*
- b) *Only natural rock, gravels or sand material (not builder's waste or demolition materials), obtained from sources, must be used as filling.*

4.4.5.4 Retaining walls

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

Retaining walls within 1m of the front boundary must not exceed 1m above natural ground level.



STATEMENT OF ENVIRONMENT EFFECTS REBUTTAL

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

The SEE has failed to quantify *'the difference between the impacts of a complying and a non-complying development'*

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

The SEE fails to address the major non-compliances of

MLEP

4.3 Height of Building [incorrect height stated]

4.4 Floor Space Ratio

MDCP

4.1.2 Height of Buildings [incorrect height stated]

4.1.2.1 Wall Height

4.1.2.2 Number of Storeys

4.1.2.3 Roof Height

4.1.3 Floor Space Ratio (FSR)

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

4.1.4.1 Street Front Setbacks

4.1.4.2 Side Setbacks and Secondary Street Frontages

4.1.4.4 Rear Setbacks

4.1.5 Open Space and Landscaping

The SEE fails to consider the poor amenity outcomes particularly from view loss, overshadowing and privacy.

The SEE fails to identify the need for Clause 4.6 Applications for FSR.

CLAUSE 4.6: FAILURE TO SUBMIT

The Applicant has failed to submit Clause 4.6 Applications for FSR.

The Applicant has failed to identify the correct Building Heights within the Clause 4.6 Applications submitted.

The Council as consent authority cannot be satisfied that the written request for Building Height adequately addresses the matters required by clause 4.6(3) by demonstrating that:

- (a) compliance is unreasonable or unnecessary; and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard

The excessive building height over a large portion of the building footprint, causes view loss, solar loss, privacy issues, streetscape issues, and other poor outcomes.

The Council should immediately consider refusing the DA, and perhaps is precluded from proceeding any further with its assessment and consideration of the DA.

Council does not have before it a Statement of Environmental Effects that it can rely upon.

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

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

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

We suggest that even if a Clause 4.6 was submitted for FSR it could not satisfactorily address what environmental planning grounds exist to justify contravening the standard.

There is no identification of any environmental planning ground, unique or otherwise, that justifies the contravention.

There is no basis upon which any variation can be granted.

Accordingly, consent must be refused on that basis.

Currently, there is no power to grant development consent because no Clause 4.6 for FSR has been submitted.

If a Clause 4.6 for FSR was submitted it would still be highly unlikely to succeed as (a) the request to vary the control could not identify any environmental planning ground that justifies the contravention, and does not exist; and (b) the proposal is inconsistent with the objectives of the standard in any event due to significant amenity loss.

The Council as consent authority cannot be satisfied that the written request for FSR would adequately address the matters required by clause 4.6(3) by demonstrating that:

(a) compliance is unreasonable or unnecessary; and

(b) there are sufficient environmental planning grounds to justify contravening the development standard

The excessive building height over a large portion of the building footprint, causes view loss, solar loss, privacy issues, streetscape issues, and other poor outcomes.

Accordingly, consent must be refused on that basis.

Currently, there is no power to grant development consent because no Clause 4.6 for FSR has been submitted.

If a Clause 4.6 for FSR was submitted it would still be highly unlikely to succeed as (a) the request to vary the control could not identify any environmental planning ground that justifies the contravention, and does not exist; and (b) the proposal is inconsistent with the objectives of the standard in any event due to significant amenity loss.

We also refer Council to *Whittaker v Northern Beaches Council [2017]*

NSW LEC PLANNING PRINCIPLES

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

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

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

Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?

Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?”

Commentary:

In this objection we have clearly showed that the FSR is over controls, and reducing the FSR would assist in reducing the impact.

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.

The proposals are non-compliant in multiple areas, and the Applicant has not quantified the difference between the impacts of a complying and a non-complying development.

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

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

Commentary:

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

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

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

Commentary:

The development breaches multiple planning controls and is unreasonable.

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

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 front setbacks, the excess height, and the 5m boundary walls, would have most observers finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context’*

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.

Massing Envelope Reductions

[The first series of conditions would preferably all be dealt with under resubmission of Amended Plans, as they may be too extensive for conditional approval. We present them for Council's consideration]

- Reduce Building Heights to 8.5m, with the Roof to reduce to RL 80.2, above south west corner lawn area at RL 71.66 [survey]
- The Clerestory to reduce to RL 81.2, and positioned above the RL 72.7 contour, to the east of 73.04 [survey] rock outcrop adjacent southern boundary
- Reduce Wall Heights to below 7.8 & 8.0m
- Reduce FSR to below 0.4, after adding void areas and enclosed decks, massive undercroft zones, oversized storage and plant zones, and terraces into calculations
- Increase Tabalum Road Front Setback to match No. 3 Tabalum to 7m
- Increase Northern Setback to 3m
- Increase Cutler Road Setback to 1/3 building height control
- Delete Basement, garage under proposed dwelling off Cutler Road
- Delete Storage & Storeroom in basement
- Relocate Plant Room to the south of the stair.
- Delete all fill to the western boundary, remove all built form in rear setback, and return ground levels to natural levels.

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

Privacy

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

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

Reason: Privacy

Landscaping

- Increase screening trees and bushes along neighbour's boundary.
- Provide protection to the Structural Root Zone and Tree Protection Zone to the trees on neighbours property adjacent to the common boundary.

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

Reason: Privacy

Vibration

Reduce Peak particle velocity to be less than **2.5mm/sec** at the common boundary, with warning alarms on site to stop work if thresholds are exceeded at **2.0mm/sec**.

Lower level of vibration is to be conditioned to avoid and/or reduce the risk of damage to the neighbour's property.

The level at **2.0mm/sec** can be normally easily achieved by making attenuation cuts into the upper siltstone strata and sandstone, prior to bulk excavation, and always ensuring the attenuation cuts are 0.5m lower than the excavated surfaces at all times. Other precise methods are to be specified by the Geotechnical Engineer.

The removal of the pool slab and the existing dwelling slab will need careful consideration, as these activities will lead to very elevated vibration outcomes and risk of substantial damage if not carefully controlled.

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

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

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

Plant

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

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

Noise from combined operation of all mechanical plant and equipment must not generate noise levels that exceed the ambient background noise by more than 5dB(A) when measured in accordance with the *NSW Industrial Noise Policy* at the receiving boundary of residential and other noise sensitive land uses.

Reason: Acoustic Privacy

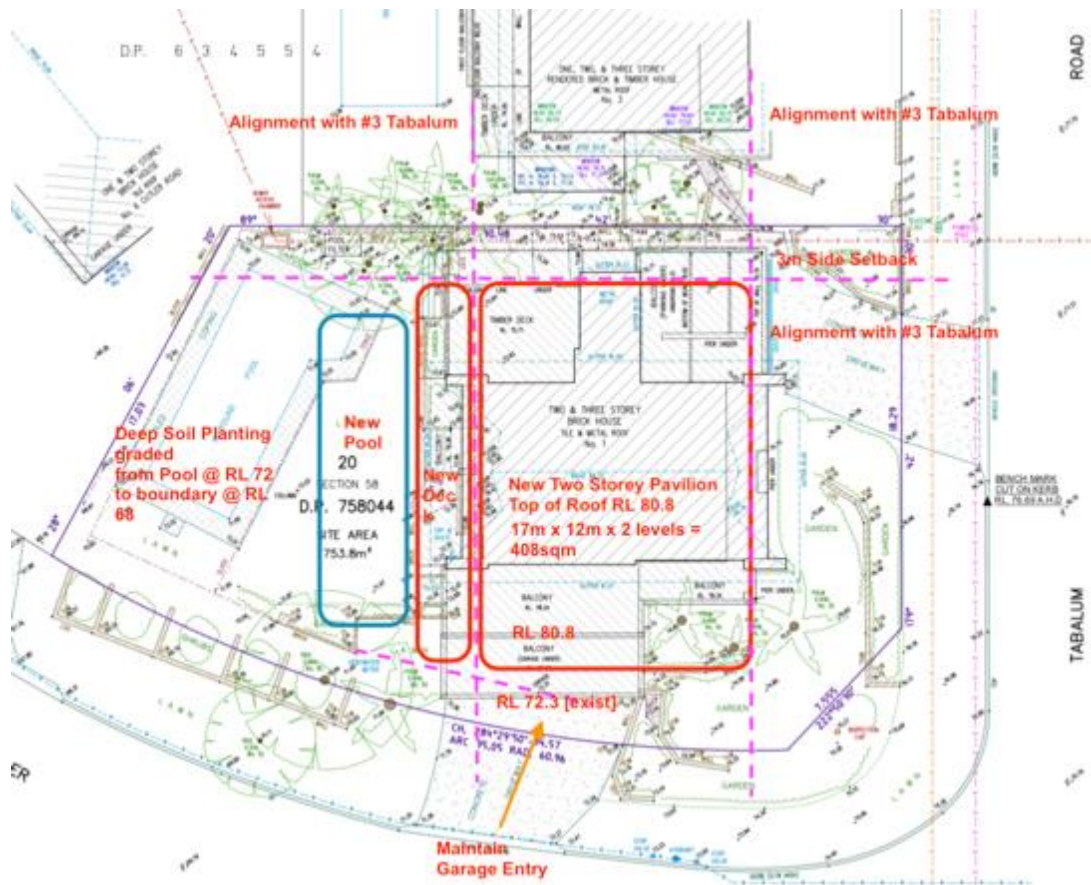
Lighting

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

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

Reason: Lighting Nuisance

We ask Council to consider the detailed list of Conditions of Consent within Appendix A



A MORE SKILFUL DESIGN:

It is not the case that design options exist to achieve the same amenity [GFA] whilst complying with controls. This alternative should give the Applicant a greater GFA at a lower cost, due to the omission of the 6.5m deep basement. Neighbours amenity impacts would be greatly reduced.

- Alignment with #3 Tabalum
- Side Setback 3m
- Maximum Building Height 8.5m from existing garage crossover level at RL 72.3
- Two Storey Pavilion, levels at RL 80.8 [eaves], 77.6 [first], 74.4 [ground], and garage under 71.6
- Available Internal Area c 400sqm + garage + decks + pool [301.5sqm GFA permissible]
- Compliant Building Height, Wall Height, Number of Storey, Setbacks, Pool, Fences, Landscape.
- Lower Cost: Less extensive deep basement

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 cause poor amenity outcomes including privacy, view loss, overshadowing, streetscape, vibration, landscaping, native tree loss and other concerns due to non-compliance to multiple residential controls including building height, FSR, wall height, side setback, rear setback, landscaping, parking, garage, fencing, ground works and other concerns.

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.

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

The Applicant has not submitted a Clause 4.6 for excessive FSR, and even if it was submitted, it would fail on multiple levels as there are not sufficient environmental planning grounds to justify the departure. The development does not satisfy the objectives of the standard and gives rise to adverse residential amenity consequences.

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

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

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

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

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

The resultant over-development is representative of an envelope above the maximum built form outcome anticipated on the site under the provisions of LEP and DCP.

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

The proposed development does not satisfy the appropriate controls.

The processes and assessments have not been satisfactorily addressed.

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

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

Alternatively Council may consider in light of the absence of Clause 4.6 FSR applications, and other outstanding information, to reject the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.

We expect that the final determination will be carried out by the LPP, due to the numerous excessive non-compliances, if not refused earlier.

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

We expect that on such a very large site, the Applicant should be charged by Council to deliver a totally compliant scheme to LEP and DCP controls. There is no excuse that neighbours amenity and the public domain amenity must suffer due to non-compliance to the controls. All We seek is a fully compliant development to Council's controls, and for the envelope controls to be drawn accurately based upon the boundary survey levels and other survey marks across the site.

The proposed development represents considerable over development.

We will welcome the opportunity to further expand on any of the issues above once height poles are erected.

Yours faithfully,

Mrs P. A. Bawner
6 Cutler Road
Clontarf 2093

Appendix A

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*]

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

Compliance with Ecologists Recommendations pre construction

Tanking of Basement Level

Installation & Maintenance of Sediment & Erosion Control

Demolition Traffic Management Plan

Construction Traffic Management Plan

Waste Management Plan

Waste & Recycling Requirements

Public Domain Plan

Soil and Water Management Program

Shoring of Council's Road Reserve

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

Project Arborist
Tree Protection
Tree Trunk, Root and Branch Protection
Root Mapping
Tree Removal within the Road Reserve
On slab landscape planting and associated works

Mechanical plant location
AC Condenser Units

Design Impact on processes and public/private amenity
No excavation within 1m of boundary
Protection of Neighbours assets

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.

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
No excavation within 1m of boundary

Ecologists Recommendations during construction
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

Contamination Remediation, Validation and Site Audit Statement

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

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

Compliance with ecologists recommendation

Works to cease if heritage item found

Dead or injured wildlife

Noise

Noise Nuisance from plant

AC units [noise]

Outdoor lighting

Lighting Nuisance

Plant room and equipment for operational conditions - Noise and vibrations