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**Sent:** 26/05/2020 10:58:36 AM

**Subject:** 9-11 Birdwood Avenue Collaroy DA 2020/0432 WRITTEN SUBMISSION:  
LETTER OF OBJECTION Submission: Moffat

**Attachments:** S U B M I S S I O N Moffat 260520.docx;

SUBMISSION: MOFFAT  
a written submission by way of objection to DA 2020/0432

Ben Moffat & Mary-Frances Murphy

11 Brissenden Avenue  
Collaroy  
NSW 2097

26 May 2020

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

Northern Beaches Council  
[council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

Dear Chief Executive Officer,

Re:  
9-11 Birdwood Avenue Collaroy  
DA 2020/0432

WRITTEN SUBMISSION: LETTER OF OBJECTION  
Submission: Moffat

This document is a written submission by way of objection to DA 2020/0432  
lodged under Section 4.15 of the EPAA 1979 [the EPA Act]

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

*“Application for the Construction of a Seniors Living Development, and approval for Draft Strata Plan”*

*\$8.115m Cost of Work*

## Executive Summary

This Written Submission addresses my objection to the above development.

My main concern is **View Sharing**

My amenity losses are directly attributable to non-compliance of the main SEPP control, **Part 4 Division 40(c)** of the SEPP that states:

***“a building located in the rear 25% area of the site must not exceed 1 storey in height. ”***

I am very concerned that the Applicant and his Advisors have not acknowledged the non-compliance within the DA submission documents.

The height of the building is double the height within the SEPP controls to the rear of the subject site.

In the normal sense, a ‘1 storey in height’ residential envelope would be a 2.7m ceiling height, and in this case, a low-pitched roof, giving a 1 storey height of **3.1m** in overall height above existing ground levels.

What the Applicant has done, is to artificially ‘fill’ the rear boundary zones to raise the ground levels from c. RL 10.3 to RL 12.4, equating to over 2.1m of artificial ‘fill’, or more in some locations.

The Applicant has then added a building 4m in height on top of that raised level.

This then delivers a building located in the rear area of the site c. **6.1m** in height above existing ground levels, at the south-east and south west – some 3m higher than it should be, to accord with Part 4 Division 14(c) of the SEPP.

The overall combined effect caused by the non-compliance leads to a considerable unreasonable View Loss when viewed from my ocean side private entertainment decks at ground and first floor, my living, dining and kitchen room zones at ground floor, and my highly used Study and Master Bedrooms at the First Floor.

The SEE fails to carry out any Tenacity Assessment on my view loss, and fails to even recognise that I have a view, including a dynamic land/ocean interface view where we can

see people on the beach as well as people and watercraft in the water. The Site Analysis fails to consider the matter at all.

I want to emphasise the fact that I take no pleasure in objecting to my neighbour's DA.

I am objecting because the proposed DA has a very poor impact on view loss from my property and this is caused by the DA being significantly non-compliant to SEPP controls.

If the DA was fully compliant to all SEPP controls my amenity loss would be more reasonable.

It does seem unreasonable that the Applicant wishes to remove my view to improve his own, and is proposing a non-compliant SEPP outcome that would seriously adversely affect my view amenity.

The Applicant or his Advisors did not visit my property to assess my significant view loss.

Erecting retaining walls and positioning 'fill' to the boundaries is also not in accordance with controls.

The proposed roof structures also exceed front and rear setback controls.

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

The SEE has not conducted a Tenacity Assessment on greater than moderate view loss from my property.

I am greatly concerned that all neighbours to the south of the subject site have similar devastating view loss outcome, caused by the same non-compliance to SEPP controls.

The Tenacity Assessments carried out on those properties by the Applicant within the SEE are false and misleading, as no reference has been made to the non-compliance to SEPP controls, and to the devastating outcomes caused by that non-compliance.

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

I have offered a very constructive alternative to resolve my amenity view loss issues, and I do hope the Applicant submits amended plans to achieve that outcome.

## Site Description

The SEE describes the site:

*The premise is legally known as Lot 1 in DP 847020, being 9-11 Birdwood Avenue, Collaroy. The site is regular in shape with a frontage of 36.5m to Birdwood Avenue and a depth of 40.235m with an area of 1,472m<sup>2</sup>. Erected on the site is a two-storey dwelling with a timber garage located close to the front boundary.*

Council should note that the existing ground level at the 6m rear setback alignment is **RL 10.3**, as can be seen on the attached marked up sketch from the Applicant's survey.



## Proposed Development in Detail

The SEE describes the proposed development

*The proposal is for the erection of a Seniors Living Development comprising four single-level dwellings with basement car parking and approval for a Strata Plan of Subdivision.*

*The basement level comprises accommodation for eight motor vehicles, four of which have been designed to accommodate disabled parking.*

*The basement also comprises the following:*

- - Two common storage areas;
- - Utility room for cleaner with wash closet;
- - Multiple plant rooms;
- - Pool equipment room;
- - Two lifts;
- - Waste room.

### *Lower Ground Floor – Units 1 and 2*

*The lower ground floor comprises the following:*

- *Single level dwelling unit 1 (140sqm) containing the following:*
  - - three bedrooms – master bedroom with ensuite and walk-in robe;
  - - combined living/dining and kitchen;
  - - two bathrooms;
  - - separate laundry;
  - - front terrace;
  - - lift access;
  - - pond.
- *Single level dwelling unit 2 (214sqm) comprising the following:*
  - - three bedrooms with ensuites;
  - - study nook;
  - - separate WC and hand basin;
  - - lift lobby;
  - - combined living/dining and kitchen;
  - - two bathrooms;
  - - separate laundry;
  - - front terrace;
  - - landscaped garden;
  - - swimming pool 2.5 x 4.2m.

*In addition to the two units, there are two plant rooms.*

#### *Upper Ground Floor – Units 3 and 4*

*The upper ground floor plans provide for the following:*

- *Single level dwelling unit 3 (181sqm) comprising the following:*
  - *- three bedrooms – main bedroom with ensuite;*
  - *- study;*
  - *- combined living/dining and kitchen;*
  - *- separate bathroom;*
  - *- powder room;*
  - *- separate laundry;*
  - *- front terrace;*
  - *- rear landscaped garden and pool 4.5 x 2m;*
  - *- shared lift lobby.*
  
- *Single level dwelling unit 4 (181sqm) comprising the following:*
  - *- three bedrooms;*
  - *- combined living/dining and kitchen;*
  - *- separate bathroom;*
  - *- separate powder room;*
  - *- separate laundry;*
  - *- front terrace;*
  - *- rear terrace;*
  - *- rear landscaped garden and pool 4.5m x 2m;*
  - *- shared lift lobby.*



## **Misleading Information & Outstanding information**

### **Height Poles/ Templates**

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

The Height Poles will need to define:

- All Roof Forms
- Extent of all Decks
- Extent of Privacy Screens and balustrades

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

I require these height poles to fully determine view loss.

The height poles would need to be erected after the reduction of the massing envelope, to test the acceptability of the view loss, and whether any further adjustments are necessary.

It would be preferable to erect the height poles after the amended plans are submitted, and against those heights.

### **Existing Ground Levels**

I bring to the attention of Council that the Applicant has not fully surveyed my property to properly assess view sharing.

The position of my main ground and first floor windows and decks that view loss occurs has not been surveyed.

The existing ground levels that have been surveyed on the subject site are not located onto existing DA drawings in a consistent manner.

This is contrary to submission standards and requires amendment by amended plans.

### **Statement of Environmental Effects**

The Applicant has not provided a full SEE in accordance with Council controls.

The SEE has failed to adequately address View from my property. There is no Tenacity Assessment for my property.

The SEE, as submitted, cannot be relied upon.

### **Site Analysis**

Site Analysis has failed to adequately address View from my property and is contrary to DCP controls.

### **Tenacity Assessment**

There is no Tenacity Assessment for my property

## Summary of Assessment Issues

I list the main assessment issues that I will comment upon.

My main concern is view loss and I bring Council's attention to the following:

### State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

#### Chapter 1 Preliminary

The Aims of Policy is clearly stated within [1][c] that the proposal must 'be of good design'

A 'good design' is one that is informed by a thorough site analysis, and a proper response to the main envelope controls of the SEPP.

The design fails to be informed from existing views from my property.

The design fails to follow Part 4 Development Standards to be complied with Division 1 General Clause 40 Development standards—minimum sizes and building height, (c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

The building located in the rear 25% area of the site is over 6.1m above existing ground levels. This represents an envelope 3m over the SEPP controls.

This non-compliance directly leads to view loss.

The proposal is not of 'good design'.

### Part 3 Design Requirements Division 1 General

#### 30 Site Analysis

The design has not carried out a proper site analysis. There has been no consideration of view loss, contrary to [4][e] that states:

- (4) The following information about the surrounds of a site is to be identified in a site analysis*
- (e) Views and solar access enjoyed by neighbouring properties*

### 31 Design of in-fill self-care housing:

*Seniors Living Policy: Urban Design Guideline for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004.*

The Development Application has not given due consideration in designing the Senior Living Development to be compliant with the relevant Provisions of the Urban Design Guidelines for Infill Development.

The Guidelines have not been used to ensure the development has taken into consideration key issues in the urban design of the overall development particularly in reducing impacts on neighbouring properties.

The SEE falsely states:

*“The development has been designed to retain neighbours’ views and outlook where possible, having due regard to the NSW Land and Environment Court Principles for View Sharing.”*

No Tenacity Assessment has been carried out from my property. The view loss is directly attributable to non-compliance to the SEPP Control Part 4 Development Standards to be complied with Division 1 General Clause 40 Development standards—minimum sizes and building height, (c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

The building located in the rear 25% area of the site is over 6.1m above existing ground levels. This represents an envelope 3m over the SEPP controls.

I am greatly concerned that all neighbours to the south of the subject site have similar devastating view loss outcome, caused by the same non-compliance to SEPP controls.

The Tenacity Assessments carried out on those properties by the Applicant within the SEE are false and misleading, as no reference has been made to the non-compliance to SEPP controls, and to the devastating outcomes caused by that non-compliance.

### 32 Design of Residential Development

The non-compliance to SEPP Part 4 Division 1 Clause 40 that leads directly to unreasonable view loss gives significant grounds to show that consent cannot be granted unless Amended Plans are submitted reducing the upper roof to 3.1m above existing ground levels, 6m from the rear boundary:

*A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2.*

#### **Part 4 Development Standards to be complied with Division 1 General**

##### **40 Development standards—minimum sizes and building height**

The design fails to be informed from existing views from my property. The design fails to follow Part 4 Development Standards to be complied with Division 1 General Clause 40 Development standards—minimum sizes and building height, (c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

The building located in the rear 25% area of the site is over 6.1m above existing ground levels. This represents an envelope 3m over the SEPP controls.

The proposed development clearly is in breach of this clause that states:

*(4) Height in zones where residential flat buildings are not permitted If the development is proposed in a residential zone where residential flat buildings are not permitted—*

*(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.*

The non-compliance to SEPP Part 4 Division 1 Clause 40 that leads directly to unreasonable view loss gives significant grounds to show that consent cannot be granted unless Amended Plans are submitted reducing the upper roof to 3.1m above existing ground levels, 6m from the rear boundary

I am greatly concerned that all neighbours to the south of the subject site have similar devastating view loss outcome, caused by the same non-compliance to SEPP controls.

#### **WLEP 2014**

##### **R2 Zone and Zone Objectives**

In these proposals the local amenity and environmental outcomes would be challenged by non-compliance.

I contend that the proposed development does adversely affect the character or amenity of the area or its existing permanent residential population by view loss, and other amenity losses.

## **WDCP 2011**

### **B7 Front Boundary Setback**

The Clause states:

*The front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences.*

I ask that all proposed development at roof edge details at lower levels be setback the full 6m, to avoid any potential of view loss.

### **B9 Rear Boundary Setbacks**

The Clause states:

*The rear setback area is to be landscaped and free of any above or below ground structures.*

I ask that all proposed development at roof level be setback the full 6m.

### **C7 Excavation and Landfill**

The Clause states:

*Excavation and landfill works must not result in any adverse impact on adjoining land.*

I ask that no 2m high retaining wall and raised fill be positioned in the rear setback zone, as this will have an adverse impact on adjoining land.

### **D7 Views**

The clause states:

## Objectives

- *To allow for the reasonable sharing of views.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To ensure existing canopy trees have priority over views.*

## Commentary:

No assessment has been made, and there has been no consideration of this vital matter within the site analysis.

There is no reasonable sharing of views amongst dwellings.

The proposal has not been designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The proposal has not demonstrated that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.

Height Poles are urgently required due to the non-compliant envelope proposals. The view loss exceeds 'moderate' on the Tenacity scale.

My comments are as follows.

**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."*

The development breaches SEPP planning controls and is unreasonable.

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

The design fails to be informed from existing views from my property.

The design fails to follow Part 4 Development Standards to be complied with Division 1 General Clause 40 Development standards—minimum sizes and building height:

**(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.**

The building located in the rear 25% area of the site is over 6.1m above existing ground levels.

This represents an envelope 3m over the SEPP controls.

### **Application of Tenacity Planning Principle**

I have only been able to consider the impact of the proposal on the outward private domain views from my property, by visual assessment. There are no height poles erected, so my assessment is limited by their absence.

A preliminary analysis and assessment in relation to the planning principle of Roseth SC of the Land and Environment Court of New South Wales in *Tenacity Consulting v Warringah [2004] NSWLEC 140 - Principles of view sharing: the impact on neighbours (Tenacity)* is made, however I have no confidence that the assessment is fully accurate due to the previous commentary on the absence of height poles.

The steps in Tenacity are sequential and conditional in some cases, meaning that proceeding to further steps may not be required if the conditions for satisfying the preceding threshold is not met.

### **Step 1 Views to be affected**

The first step quoted from the judgement in *Tenacity* is as follows:

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

Prior to undertaking Step 1 however, an initial threshold in Tenacity is whether a proposed development takes away part of the view and enjoys it for its own benefit and would



therefore seek to share the view. In my opinion the threshold test to proceed to Step 1, I provide the following analysis;

An arc of view to the north is available when standing at a central location in the Living Rooms at Ground Floor and a highly used Study and Master Bedroom and the adjacent main entertainment decks at both Ground and First Floor. Both levels are highly used zones on my property.

The composition of the arc is constrained to the west and east either side of the subject site, by built forms.

The eastern part of the composition includes the subject site and the existing dwelling and roof forms that currently occupy the site on the subject site frame the view.

The water interface view is of significantly high value. The overall composition of the total view is significantly enhanced by the lush vegetation of the foreground and the view is substantially enhanced by the ocean interface. The loss of that view from my property would be devastating to me.

This view obviously includes scenic and valued features as defined in *Tenacity*.

The proposed development will take away views for its own benefit.

The view from my living room windows at ground floor, highly used Study at First Floor and both deck towards the ocean view, and the land-water interface will be lost.

The existing view is a 'moving landscape', rather than just a 'scenic outlook', given the activity on the water. There are regularly schools of fish, marine life and beach craft which are active along the water interface.

The extent of view loss is moderate or greater, and the features lost are considered to be valued as identified in Step 1 of *Tenacity*.

## **Step 2: From where are views available?**

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

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

The views in all cases are available across the boundary of the subject site at angles to the north, from standing and seated positions.

A wide arc of view to the north is available when standing at a central location on the living spaces, entertainment decks, and other highly used zones on my property.

In this respect I make two points:

- I have no readily obtainable mechanism to reinstate the impacted views from my existing living zones if the development as proposed proceeds; and
- All of the properties in the locality rely on views over adjacent buildings side boundaries for their outlook, aspect and views towards the ocean view

### **Step 3: Extent of impact**

The next step in the principle is to assess the extent of impact, considering the whole of the property and the locations from which the view loss occurs.

Step 3 as quoted is:

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

Step 3 also contains a threshold test. If the extent of impact is negligible or minor for example, there may be no justification for proceeding to Step 4, because the threshold for proceeding to considering the reasonableness of the proposed development may not be met. In that case the reasonableness question in Step 4 does not need to be asked and the planning principle has no more work to do.

I consider the extent of view loss in relation to my living rooms, study and decks loss to be greater than moderate using the qualitative scale adopted in *Tenacity*. I would suggest that the loss is devastating.

From my consideration of the extent of the impact:

- Views from a seated position within the Ground Floor will be completely lost
- Views from a standing position within the Ground Floor will be completely lost
- Views from a seated position within the First Floor will be completely lost
- Views from a standing position within the First Floor will be completely lost or substantially lost [subject to height pole clarification]

The view lost includes ocean views and land-water interface. As I rate the extent of view loss as greater than moderate in my opinion the threshold to proceed to Step 4 of *Tenacity* is met.

#### **Step 4: Reasonableness**

The planning principle states that consideration should be given to the causes of the visual impact and whether they are reasonable in the circumstances.

Step 4 is quoted below:

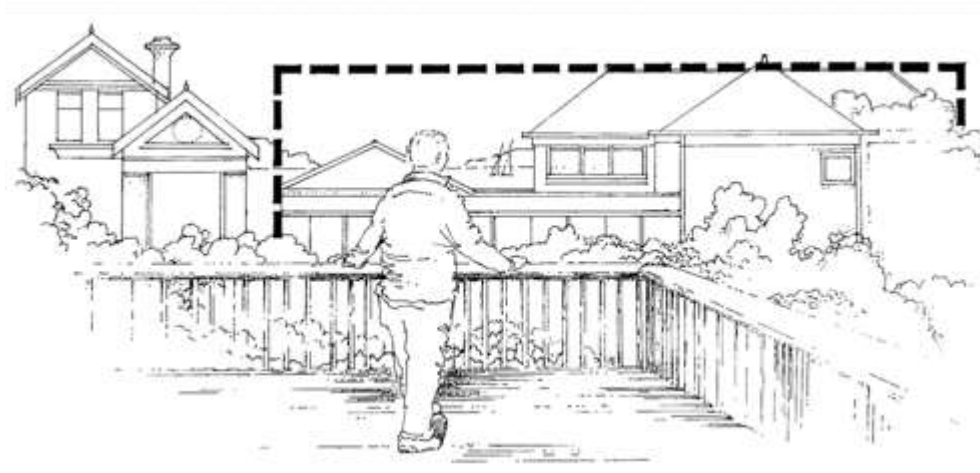
*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning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

As the proposed development does not comply with outcomes and controls, that are the most relevant to visual impacts, greater weight would be attributed to the effects caused.

In my opinion the extent of view loss considered to be greater than moderate, in relation to the views from my living rooms, study and decks of my dwelling, particularly to the east towards the land/water face view.

The view is from a location from which it would be reasonable to expect that the existing view, particularly of the land/water interface could be retained especially in the context of a development that does not comply with outcomes and controls.

Once Templates are erected, I can provide additional commentary.



*Extract from nearby Council's DCP, identifying view sharing principles.*

*Where there is a potential view loss, Council should require building height to fully comply with SEPP controls, and should consider other modifications to the design below maximum heights to achieve view sharing.*

The private domain visual catchment is an arc to the north from which views will be affected as a result of the construction of the proposed development.

The proposed development will create view loss in relation to my property.

The views most affected are from living areas, highly used study and associated decks and include very high scenic and highly valued features as defined in Tenacity.

Having applied the tests in the Tenacity planning principle and without a montage that can be relied upon, or height poles erected, I conclude that I would be exposed to greater than moderate view loss. I rate the loss as devastating.

The significant non-compliance with planning outcomes and controls of the proposed development cause this loss.

Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

The applicant should have informed the design by a complete view loss consideration that would have clearly identified that any development extending to the north on the subject site would remove my sensational and highly regarded land/water interface view.

A reduction of the roof at the 6m rear setback zone at a maximum 3.1m high with a slope of the roof to the north, and according with SEPP controls, would somewhat overcome the view loss.

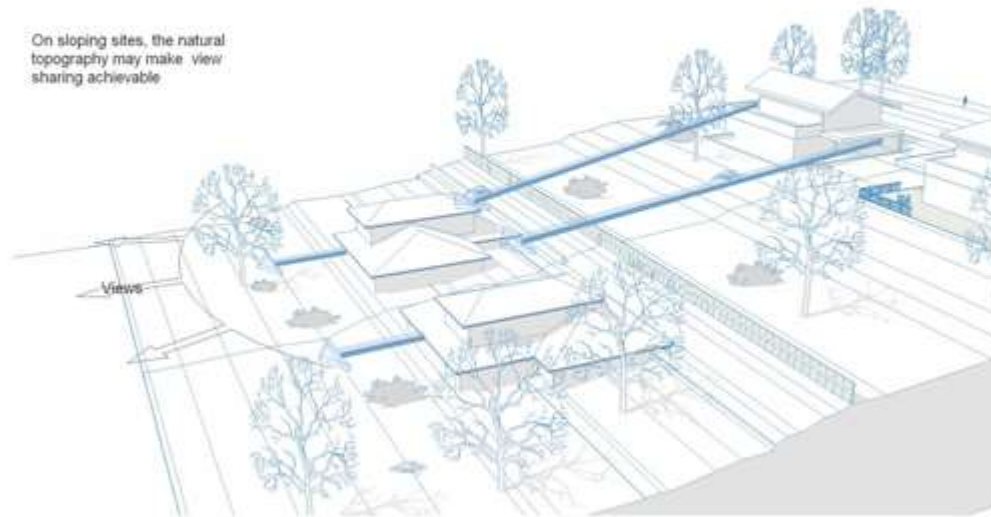
At this juncture, the proposed development cannot be supported on view loss grounds.

I do hope the Applicant will accept this amendment to resolve this issue, by submission of amended plans, so that I can remove my objection on this issue, notwithstanding that from a personal perspective we would still consider the view loss to be unreasonable in the context of a compliant review (given the certain loss of land/water interface which is devastating).

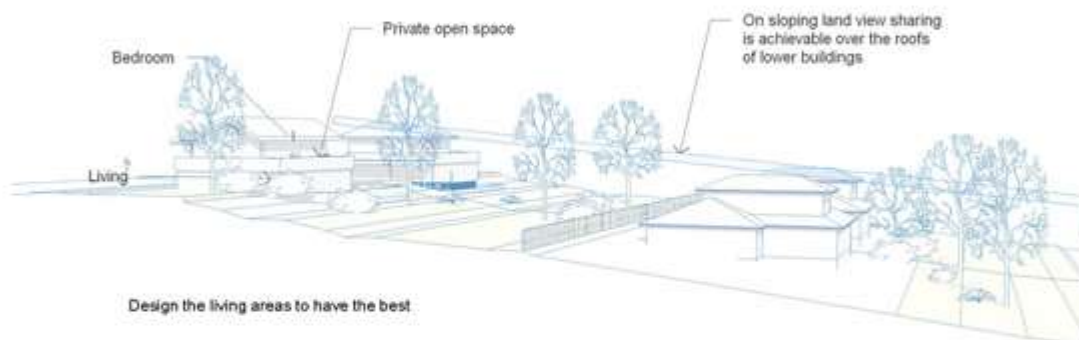
I have proposed conditions for Council to consider later in this Submission to give effect to this outcome.

I attach extracts from WDCP that gives strength to my argument that the view sharing is considered unreasonable.

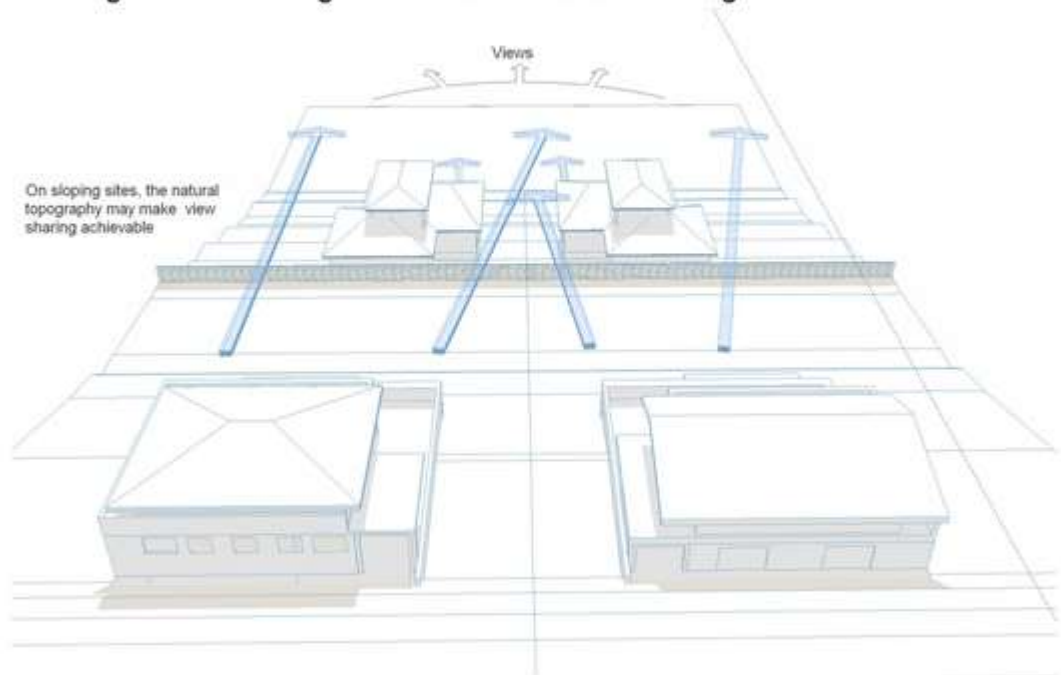
## Buildings sited and designed to accomodate view sharing



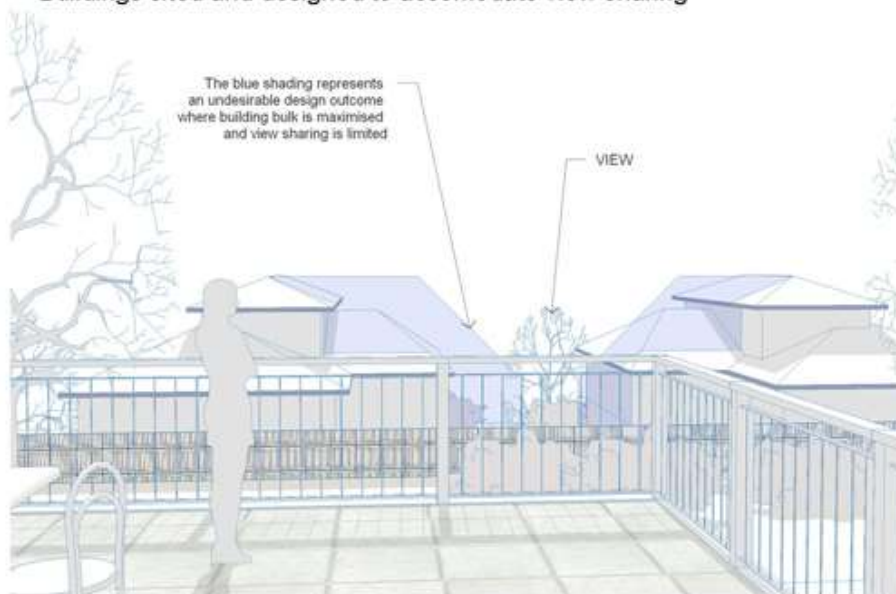
## Buildings sited and designed to accomodate view sharing



## Buildings sited and designed to accomodate view sharing



## Buildings sited and designed to accomodate view sharing



## Photographic Consideration of Views



- Views from a seated position within the Ground Floor will be completely lost





- Views from a standing position within the Ground Floor will be completely lost



- Views from a seated position within the First Floor will be completely lost





- Views from a standing position within the First Floor will be completely lost or substantially lost [subject to height pole clarification]

## Statement of Environment Effects Rebuttal

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

The SEE does not meet NBC standards for completeness.

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

The SEE fails to properly address the major non-compliances of SEPP.

The design fails to follow Part 4 Development Standards to be complied with Division 1 General Clause 40 Development standards—minimum sizes and building height, (c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

The building located in the rear 25% area of the site is over 6.1m above existing ground levels. This represents an envelope 3m over the SEPP controls.

The SEE fails to consider the poor amenity outcomes, particularly view loss.

The SEE cannot be relied upon.

## NSW LEC Planning Principles

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

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 SEPP planning controls and is unreasonable.

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

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 is due to the non-complying elements of the proposal?”*

### Commentary:

The proposals do not comply with SEPP planning controls, and the impact is totally due to the non-complying element of the proposal. The same quantum of space can be achieved by lowering the building height to 3.1m at the 6m rear setback alignment, and lowering all other floor plates to suit, achieving the same amount of floor space and amenity.

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 SEPP controls.

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

## **Proposed Conditions of Consent to any Approval**

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

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

The massing envelope reductions conditions would preferably all be dealt with under resubmission of Amended Plans. I present them for Council's consideration.

## **Massing Envelope Reductions**

### **1. Roof Height.**

The height of the roof is to be no greater than RL 13.4 at the southern end at the 6m rear setback alignment and fall at a minimum of 1:50 to the north to be a maximum top of gutter @ RL 13.1 [to match the existing top of gutter level on 15-17 Birdwood] or lower at the northern leading edge of the upper roof, in exactly the alignment as shown on the submitted drawings, being 3m to the north of Grid E. The roof, eaves, and sun control devices are not to extend within the 6m rear setback or side setback zones. There can be no other plant, equipment, solar panels or any other fixture on the roof above these levels. No raised roof in any area. The roof must be non-reflective, dark earthy tones, and emit no glare.

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

Reason: The existing ground level is shown at generally RL 10.3 on the Applicant's Survey at the 6m rear setback alignment. Allowing for a 3.1m [1 storey height to SEPP control], the resultant roof height must be a maximum RL 13.4. SEPP compliance to Part 4 Development Standards to be complied with Division 1 General Clause 40 [c]. View Loss

### **2. Other Floorplates**

All heights to be adjusted to lower levels to fit under the roof at RL 13.4. to RL 13.1. The street level is at RL 3.4 which is 10.0 m below the roof height of RL 13.4, so there is ample height to contain a three-level development, with 3m basement storey height and 3.5m storey heights at the residential floorplates, giving a very generous 3.2m ceiling heights, well above controls. A modest ramp down to the car park level could increase the very generous floor to ceiling heights even higher above 3.2m if required.

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

Reason: View Loss

### **3. Landscape**

Delete all new trees in rear and side setback zones, replace with 2m [maximum mature height] scrubs along the rear setback boundaries. Position new small trees in the front setback zone, more central to the proposed dwelling to maximum 6m mature height.

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

Reason: View Loss

### **4. Raised Fill in Rear Setback**

All retaining walls and raised fill in the rear setback zone is to be deleted. The rear setback zone must follow existing levels, with minor adjustments as required to suit adjusted upper floor level. Pool Concourse to be setback 2m from rear boundary, with privacy screening facing south. Provide new fence to boundary.

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

Reason: View Loss, Unreasonable fill to boundary.

### **5. Property Boundary Levels**

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

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

Reason: To maintain the existing profile of the boundary.



## **6. Works in close proximity to the allotment boundary**

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

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

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

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

## **7. Plant**

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

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.

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

Reason: Acoustic Privacy

## **8. 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

I ask Council to impose conditions as appropriate regarding:

- A. Stormwater Disposal
- B. Geotechnical Report Recommendations to be incorporated into design and structural plans
- C. Boundary Identification Survey
- D. Survey Certificate
- E. Vehicle Driveway Gradients
- F. Structural Adequacy
- G. Excavation Work
- H. Shoring of Neighbours boundary
- I. Protection of Adjoining Property- Excavation
- J. Soil & Water Management Program
- K. Dilapidation Report
- L. Tree Protection
- M. Road Reserve
- N. Landscape Completion Certificate
- O. Stormwater Disposal Certificate
- P. Structures located near boundary Certificate

- Q. Geotechnical Certificate
- R. Post Construction Dilapidation Certificate prior to Occupational Certificate
- S. Certification of Structures
- T. Swimming Pool Requirements
- U. Glare & Reflection
- V. No excavation within 1m of boundary
- W. Retaining walls structures near boundary to be fully designed and certified by structural engineer
- X. Compliance with Standards
- Y. Removing, Handling and disposing of Asbestos
- Z. 3m high Hoarding to be setback 5m from rear boundary, until external works commence at the end phase of the project. Hoarding to be fixed solid marine ply panel and painted facing rear boundary. 5m rear setback zone to be kept free of building material, and land kept level and clear of all material at all times. Limited access during main construction phase for security and vibration monitoring at boundary only.
- AA. Dust Control during demolition, excavation and main construction activity

## Conclusion

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

- Inconsistent with the SEPP controls
- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs

- Inconsistent with the objects of the EPAA 1979

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

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

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

The bulk and scale of the building is beyond SEPP controls, and is not consistent with a site responsive design on sloping land on a high side of the street, placing >6m high development in the rear zone of the site.

The design is not consistent with the desired future character for the locality and exhibits non-compliances with SEPP building height controls, front and rear setback controls. These non-compliances lead directly to neighbour's amenity loss.

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

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

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

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

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

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

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

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

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

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

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

As the proposed development contravenes a development standard imposed by an environmental planning instrument by more than 10% [SEPP building height; two storey height v one storey height 100% non-compliance], I ask for confirmation that the **NBLPP** will determine this DA.

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

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

There is no excuse that neighbours amenity must suffer due to non-compliance to the controls. All I seek is a fully compliant development to SEPP and 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.

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

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

The SEE has stated in numerous sections of the document that view loss has been considered: unfortunately, the reverse is true, and no one from the Applicant or his Advisors has attended my property for the purpose of assessing the issue.

An adjustment to the proposed development, as identified within my proposed Massing Envelope Reductions within this Submission, would not resolve my view loss from a personal perspective – it will still be devastating to me, however, I would have to accept that the view loss is within the realm of what may be considered reasonable by the Council. There will be ongoing significant view loss after these amendments, but as long as my main amenity issues

are satisfactorily resolved to SEPP controls, I would consider that outcome as a more reasonable outcome under the controls. However, given that the “fourth step” referred to above in this submission is to assess the reasonableness of the proposal that is causing the impact and a development that complies with all planning controls would be considered “more reasonable” than one that breaches them, it is still open for the Council to consider our view loss unreasonable even with the amendments proposed.

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

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

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

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

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

Yours faithfully,

**Ben Moffat & Mary-Frances Murphy**  
**11 Brissenden Avenue**  
**Collaroy**  
**NSW 2097**