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**From:** Emma Rogerson  
**Sent:** 4/09/2023 3:34:07 PM  
**To:** Council Northernbeaches Mailbox  
**Cc:** Corona Projects Pty Ltd; Robert Steffan; Tracy Steffan  
**Subject:** TRIMMED: DA2022/2207 - 30 Abernethy Street, Seaforth - Submission on behalf of No. 26  
**Attachments:** Submission - 26 Abernethy Street, Seaforth.pdf;

Dear General Manager,

Please accept the attached submission in reponse to amended documentation submitted under DA2022/2207 regarding 30 Abernethy Street, Seaforth on behalf of the owners of 26 Abernethy Street, Seaforth.

Thank you,

Regards,

**Emma Rogerson**

M.Urbanism (URP) (USYD)

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4 September 2023

The General Manager  
Northern Beaches Council  
725 Pittwater Road  
DEE WHY NSW 2099

Dear Sir/Madam,

**Submission in regards to the amended DA2022/2207 Development Application  
30 Abernethy Street, Seaforth**

*“Demolition works and construction of a dwelling house including swimming pool as amended.”*

Corona Projects has been engaged by the property owners of 26 Abernethy Street, Seaforth to undertake an assessment of the amended documentation submitted under DA2022/2207 and provide a submission to Council on their behalf. 26 Abernethy Street lies to the south of the development site at 30 Abernethy Street, Seaforth. This assessment is based on a review of the amended development application plans and documents available for inspection on Northern Beaches Council’s website uploaded on 16<sup>th</sup> and 28<sup>th</sup> August 2023, and a site visit.



**Figure 1 – Site Locality Map (NearMaps, 2023)**



## 1. Introduction

The amended dwelling house proposal at 30 Abernethy Street still raises considerable concerns regarding overshadowing, overlooking, view loss, geotechnical issues and non-compliances with the Manly Local Environmental Plan (MLEP) 2013 and the Manly Development Control Plan (MDCP) 2013. Consequently, it will continue to pose an unacceptable impact on the residential amenity of 26 Abernethy Street, the geotechnical safety and quality of the site and surrounds, and the character of the locality.

It is acknowledged that the amended documentation does exhibit a reduced building envelope, however, the extent of reduction is negligible and does not address the impacts and concerns raised in the letter prepared by Corona Projects on behalf of the owners of No. 26 submitted in January 2023. Further, the amendments are also not considered to meet the requests of Council in their request for information mailed to the applicant.

A number of errors have been identified within the amended documentation submitted with DA2022/2207. It is therefore critical that Council planners and engineers carefully consider the amended proposed drawings without granting much weight to the misleading information supplied with this DA.

For example, the proposed rear-facing render provided on Drawing A501 still incorrectly depicts No. 26, by showing the rear wall of the uppermost floor to have the same rear setback as the rear wall of the floor below it. This is incorrect, as the upper-most floor features a 1.5m greater rear setback than the floor below, demonstrating a stepped built form unlike the one shown in the render. This same diagram does not show the balcony privacy screens proposed under this latest amendment.

Also, the shadow diagrams still do not depict the hourly overshadowing impact in plan or elevation, rendering it difficult to understand the true impact of shadow.



## 2. Solar Access and Overshadowing

Whilst the amended shadow diagrams presented by the applicants under this DA still fail to accurately show the solar access impact on the north-facing windows to the primary living room at 26 Abernethy, it can undoubtedly be assessed that DA2022/2207 as amended will continue to substantially decrease the amount of sunlight received by critical areas of 26 Abernethy Street given the north-south relationship between the two properties, the non-compliant excessive building height and the non-compliant inadequate southern setback (still nil for garage). These critical areas include:

- North-facing windows to the primary living/kitchen/dining space;
- Rear balcony adjoining the primary living/kitchen/dining space; and
- North-facing courtyard.



**Figure 3** – North-facing living/dining/kitchen windows (Corona Projects, 2023)





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**Figure 2** – North-facing balcony (primary private open space) directly adjoining the living/dining/kitchen (Corona Projects, 2023)





**Figure 3** – North-facing courtyard at 26 Abernethy. This space is used to sit in for rest and relaxation, to grow plants, herbs and vegetables and to dry clothes. (Corona Projects, 2023)



These primary internal and external living areas are intentionally designed to maximise northerly sunlight, provide warmth to the home at No. 26, and reduce the reliance on artificial lighting during all times of the year.

DA2022/2207 as amended is still expected to cast shadow upon all of these spaces, which will still result in a non-compliance with the applicable solar access controls under Part 4.3.1 of the Manly Development Control Plan 2013 which requires development to:

- To provide equitable access to light and sunshine.
- 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.

Senior Commissioner Moore established the planning principles to properly assess the impact of solar access to open space in *The Benevolent Society v Waverley Council (2010) NSWLEC 1082* where it is concluded that:

*“overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guideline”* and,

*“for private open space to be assessed as receiving adequate sunlight, regard should be had to the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space.”*

The overshadowing by DA2022/2207 as amended is still a direct result of “poor design” given the extent of adverse impacts resulting from it, that risks the amenity of the surrounding neighbours. Furthermore, the north-facing courtyard space, rear balcony and primary living/dining/kitchen spaces which are being overshadowed are highly used areas of the site.

In addition, Senior Commissioner Roseth concludes in *Parsonage v Ku-ring-gai (2004) NSWLEC 347* that numerical guidelines should be applied with a great deal of judgement with the following example provided:

*“Consider a dwelling that now receives sunlight all day. Taking away that sunlight from 9am till noon would satisfy most guidelines; and yet the occupants of such a dwelling are likely to perceive it as a devastating impact on their dwelling’s amenity”*

The above example is identical to the circumstances imposed by DA2022/2207 as amended on the critical spaces of 26 Abernethy Street as all morning sunlight (and likely afternoon hours too) will be eradicated.





Overshadowing the north-facing courtyard will render this space dark, unpleasant and damp. Reduced sunlight to living/dining/kitchen openings and the adjoining balcony will permanently reduce the amenity of the most used space at No. 26. **This will have a detrimental impact on the current and future residents, and cannot be supported.**

It can therefore be reasonably concluded that DA2022/2207 as amended will still impose an unjustified overshadowing impact on critical areas of 26 Abernethy that cannot be supported, in accordance with an assessment against the MDCP 2013, and the findings under *The Benevolent Society v Waverley Council (2010) NSWLEC 1082* and *Parsonage v Ku-ring-gai (2004) NSWLEC 347*.

### 3. Visual Privacy and Overlooking

Whilst a privacy screen has been implemented along the southern side of the first floor balcony, this balcony proposed under DA2022/2207 as amended will still allow for direct, unobstructed and close views into the principle private open space of 26 Abernethy Street in a south-westerly direction. Figures 4, 5 and 6 highlight the direction of overlooking and the areas of concern, facilitating views straight into the sensitive rear garden and swimming pool of the dwelling at 26 Abernethy Street, resulting in a substantial and unacceptable visual privacy breach. The ground floor balcony also poses overlooking concerns.

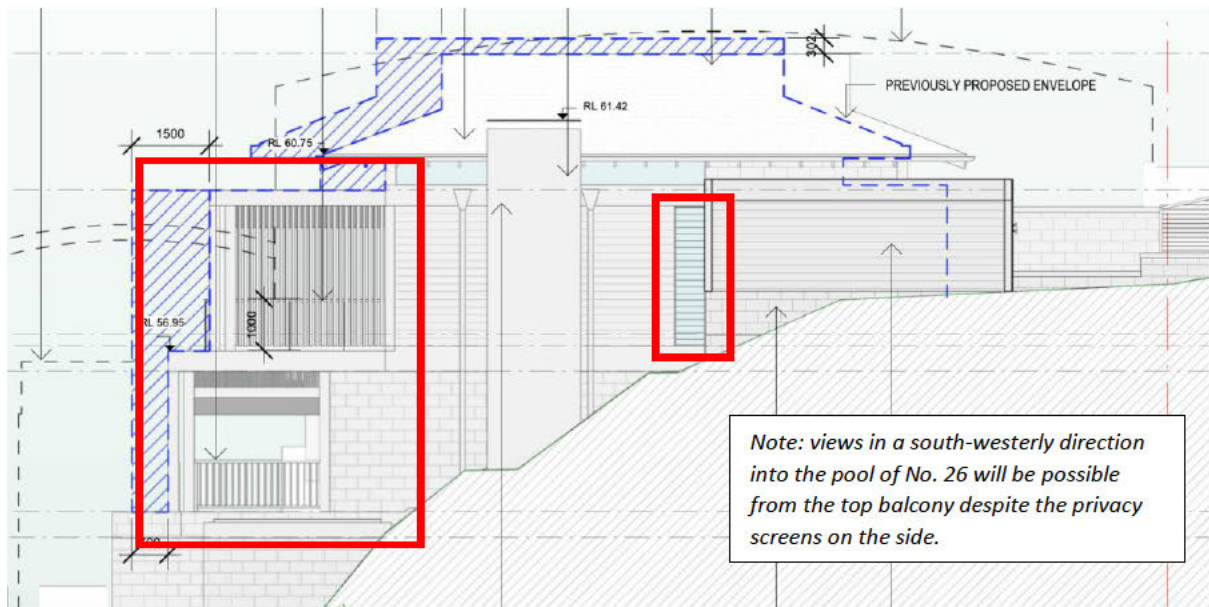


**Figure 4 – Overlooking Diagram (Corona Projects, 2023)**





**Figure 5 – Overlooking Diagram (Corona Projects, 2023)**



**Figure 6 – Areas of concern along proposed southern elevation (Corona Projects, 2023)**

The proposed overlooking is still in conflict with the Part 3.4.2 of the MDCP 2013 which states that development must “*minimise loss of privacy to adjacent and nearby development by appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings*”.

Furthermore, under *Meriton v Sydney City Council* [2004] NSWLEC 313 SC Roseth concludes that;

*“Generalised numerical guidelines such as above [Council DCP Privacy controls], need to be applied with a great deal of judgment, taking into consideration density, separation, use and design”.*





Roseth states that the principles discussed below may be applied when assessing privacy:

Assessment Principle	Comment
<b>1. Ease of Privacy Retainment</b> The ease with which privacy can be protected is inversely proportional to the <b>density</b> 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.	As the development site and the site subject to privacy loss both contain single dwelling houses, it remains a reasonable expectation that the house and POS and primary living spaces of 26 Abernethy Street should retain its privacy.
<b>2. Separation</b> Privacy can be achieved by <b>separation</b> . 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 <i>objective</i> should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)	DA2022/2207 should improve the physical separation between the position of overlooking.  Design changes detailed in the recommendations of this section provide further information.
<b>3. Use of Space</b> The <b>use</b> 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.	The proposed spaces that will facilitate the overlooking, will provide direct sightlines into spaces of identical use, where people spend the majority of waking time. Bedrooms into bedrooms. Private open space and living areas into private open space and living areas.
<b>4. Poor Design</b> Overlooking of neighbours that arises out of poor <b>design</b> 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.	An alternative design which does not sacrifice the amenity of 30 Abernethy Street and protects that of 26 Abernethy Street as suggested in the Recommendations of this report, can be very reasonably achieved.
<b>5. Hierarchy of Space</b> 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.	The most used portion of private open space (accessible from the main living area) is being impacted.  As is the most sensitive area of private open space – the swimming pool that inherently requires strong privacy.
<b>6. Additional Solutions</b> 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	Inadequate privacy screening devices have been implemented within DA2022/2207.





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.

## 7. Landscaping

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.

## 8. Change

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.

The side-facing fixed screening for the first floor balcony is considered inadequate given the substantial visual bulk and solar access impact that this would have.

Solutions acceptable to 26 Abernethy Street are detailed in the recommendations of this letter, and include a reasonable increase in upper-most floor rear setback.

The area surrounding the development site is not undergoing considerable change. In fact, future development should retain the established character of the highly valued Seaforth foreshore area, and in doing so, retain visual and acoustic privacy.

As shown in figure 7, the owners of 26 Abernethy Street have grown bamboo to provide privacy to their backyard and swimming pool area from the existing dwelling at No. 30. This landscape screening cannot be relied on to protect views between the new development at No. 30 and No. 26 under DA2022/2207 as changes to soil conditions over time could cause the bamboo to die, and the onus to provide privacy should be borne by No. 30 rather than No. 26 who are being burdened by the overlooking by DA2022/2207.



**Figure 7** – Expected view from swimming pool at 26 Abernethy (Corona Projects, 2023)





In accordance with *Meriton v Sydney City Council [2004] NSWLEC 313*, more considerate design would assist to reasonably mitigate overlooking concerns between the two properties. Without the changes proposed in the Recommendations of this letter, the development cannot be supported in its current form.

Further, a Privacy Impact Analysis should be provided by the applicants to accurately assess proposed view corridors into sensitive spaces of No. 26 Abernethy.

#### 4. Visual Bulk and ‘Sense of Enclosure’

DA2022/2207 as amended will still appear bulky and obtrusive from the primary living spaces of 26 Abernethy Street. The non-compliant extent of extrusion will provide the current and future residents of 26 Abernethy Street with a feeling of enclosure from their primary habitable spaces and principal private open space.

Figures 2, 3, 7 and 8 demonstrate the substantial change in outlook and bulk for north-facing areas of No. 26 under DA2022/2207, which is directly caused by the non-compliant height and southern setbacks proposed.

#### 5. Against the Public Interest

The MLEP 2013 and MDCP 2013 are considered to be contemporary documents. As part of the planning policy process, changes to the LEP and DCP are placed on public exhibition prior to finalisation and gazettal, in order to ensure that the documents reflect the local communities sentiments. Therefore, any non-compliance with the LEP and DCP can be considered to be **directly against the public interest**.

As such, the proposal under DA2022/2207 in its amended form is still not in the public interest, and cannot reasonably be supported as the “public interest” is a key consideration that consent authorities such as Council must consider under Clause 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

Specifically, the major non-compliances are as follows:

MLEP 2013 Non-Compliances	Comment
Clause 4.3 Building Height Maximum permitted is 8.5m	<b>Non-Compliance –</b> A non-compliant height is still proposed.  The variation cannot be supported as it is considered to be a result of a desire for high ceilings and an unstepped floorplate. Further, the objectives of the R2 Low Density Residential zone and the Clause 4.3 Building Height LEP objectives are not met given the adverse impacts on neighbouring sites that the building height





	<p>directly contributes to. Specifically the following objectives are not achieved:</p> <ul style="list-style-type: none"><li>• To provide for the housing needs of the community within a low density residential environment. (R2 zone)</li><li>• 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. (Cl 4.3)</li><li>• To control the bulk and scale of buildings. (Cl 4.3)</li><li>• To minimise disruption to the following—<ul style="list-style-type: none"><li>i. views to nearby residential development from public spaces (including the harbour and foreshores),</li><li>ii. views from nearby residential development to public spaces (including the harbour and foreshores),</li><li>iii. views between public spaces (including the harbour and foreshores). (Cl 4.3)</li></ul></li></ul> <p>Therefore in accordance with the requirements of Clause 4.6, the variation cannot be supported.</p> <p>Were a reasonably reduced height and a greater rear setback for the upper-most floor proposed then the amenity of neighbours would be improved and a much smaller variation may be acceptable.</p>
<p><b>Clause 4.4 Floor Space Ratio</b> Maximum permitted is 0.4:1</p>	<p><b>Non-Compliance –</b> A non-compliant FSR is still proposed.</p> <p>The variation cannot be supported as the objectives of the R2 Low Density Residential zone and the Clause 4.3 Building Height LEP objectives are not met given the adverse impacts on neighbouring sites that the building height directly contributes to. Specifically the following objectives are not achieved:</p> <ul style="list-style-type: none"><li>• To provide for the housing needs of the community within a low density residential environment. (R2 zone)</li><li>• To ensure the bulk and scale of development is consistent with the existing and desired streetscape character,</li><li>• To control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,</li><li>• To maintain an appropriate visual relationship between new development and the existing character and landscape of the area,</li><li>• To minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.</li></ul> <p>Therefore in accordance with the requirements of Clause 4.6, the variation cannot be supported.</p>



	Were a reasonably reduced height and a greater rear setback for the upper-most floor proposed then the amenity of neighbours would be improved and a much smaller variation may be acceptable.
<b>Clause 6.2 Earthworks</b> Development must consider “the effect of the development on the existing and likely amenity of adjoining properties”.	<b>Non-Compliance –</b> The report notes that no investigation on neighbouring sites has been carried out but acknowledges several unsecured sandstone boulders.
<b>Clause 6.9 Scenic Protection Area</b> 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.	<b>Non-Compliance –</b> As the proposal under DA2022/2207 affects harbour, cityscape and scenic landscape views from both public and private areas along Abernethy Street, and visually dominates the scenic qualities of the area, the requirements of Clause 6.9 of the MLEP 2013 cannot be considered to have been met.
<b>MDCP 2013 Non-Compliances</b>	<b>Comment</b>
<b>4.1.8 Development on sloping sites</b> The design of development must respond to the slope of the site, to minimise loss of views and amenity from public and private spaces. Developments on	<b>Non-Compliance –</b> The proposal does still not step with the sloped site, but rather consists of three storeys one above the other with negligible offsets in floor plates.  Due to the severe adverse impacts on No. 26 that this non-compliance causes, the unstepped built form cannot be supported.



sloping sites must be designed to generally step with the topography of the site.	DA-61/09 (which features a form that steps better with the terrain) has been previously approved on the development site, demonstrating that a stepped house design is possible for the site.
<b>3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)</b>	<b>Non-Compliance –</b> Non-compliances with this chapter are discussed elsewhere in this submission in relation to solar access, visual bulk and overlooking.
<b>4.1.2.1 Wall height</b> Maximum permitted is 8m	<b>Non-Compliance –</b> The proposal still exceeds the maximum 8m permitted, which cannot be supported as it has a direct adverse impact on solar access and bulk for neighbours.
<b>4.1.2.2 Number of storeys</b> 2 storeys maximum permitted.	<b>Non-Compliance –</b> The proposal still comprises of three storeys, which cannot be supported as it has a direct adverse impact on solar access, overlooking and bulk for neighbours.
<b>4.1.4 Setbacks</b> 3m side setbacks required.	<b>Non-Compliance –</b> The proposal still features a nil side setback for the garage component of the new works. This is not acceptable given the direct negative impact this non-compliance has on the solar access and bulk for No.26. See below comment on relying on existing non-compliances when demolishing.

Compliance with front setback is not a concern for the owners of 26 Abernethy if varying this mitigates overshadowing, loss of privacy and visual bulk issues.

The proposed complete demolition of existing structures on site also poses an opportunity to create a fully compliant and considerate new dwelling. Therefore a proposed non-compliance cannot be justified by relying on any non-compliance of the existing dwelling where the variation has a negative impact on neighbouring properties.

## 6. Other Concerns

The proposal also raises other concerns including but not limited to:

- **Geotechnical inadequacies** – Unstable rock walls are located on the land of No. 30 and adjoin a storage area under No. 28 near the front of the site. No. 26 have an easement to use this underground area on No. 28 for storage. Opportunity should be taken in this DA to work with the owners of No. 28 to rectify the identified instability in the rock wall on the boundary of No. 28 and No. 30.
- **Stormwater drainage inadequacies** – Genuine attempts to obtain access to a drainage easement should be actioned to prevent the flooding of properties to the west and water damage to the storage area under No. 28 which No. 26 have an easement to use. As no assessment of the subject storage space has been undertaken it is unclear how the proposal is expected to improve the drainage around this area. Only one of the numerous sites downhill of the development site has been shown to have been approached.



## 7. Recommendations

A more skilful design by way of reconfiguration can allow 26 Abernethy Street to retain their amenity, and 30 Abernethy Street to reasonably develop and achieve their building goals. Actions a – e provide a suitable scheme which solves all concerns raised within this letter and allow for alterations and additions at 30 Abernethy Street.

- a) **Action:** Prepare hourly shadow diagrams in plan and elevation (northern elevation of 26 Abernethy) during the Winter Solstice. Re-notify the DA afterwards for neighbours to provide comment whilst adequately informed.  
**Outcome:** This results in an accurate solar access assessment. Further, a Privacy Impact Analysis should be provided by the applicants to accurately assess proposed view corridors into sensitive spaces of No. 26 Abernethy.
- b) **Action:** Shift the entire building towards Abernethy Street by at least 3 metres (compared to the original DA) and step the building to respect the sloped terrain as shown in figures 10 and 11. This is more consistent with the request of Council's recent RFI letter dated 9 May 2023 to the applicants, and aligns with the approved DA-61/09 for the site.  
**Outcome:** This will assist to mitigate overshadowing and visual bulk. It will also achieve a reduction in building height.
- c) **Action:** Alongside the building being moved towards Abernethy Street by at least 3m, apply a flat roof.  
**Outcome:** This will assist to mitigate overshadowing and visual bulk. It will also achieve a reduction in building height, and assist to hide the building bulk when viewed from Abernethy Street.
- d) **Action:** Alongside the building being moved towards Abernethy Street by at least 3m, apply fixed and solid 1.8m privacy screens to any south-facing balcony edges, and frost any side-facing windows. The privacy screen design should minimise additional bulk as far as practical.  
**Outcome:** This will provide visual privacy for adjoining neighbours.
- e) **Action:** Provide a Privacy Impact Assessment report showing graphically the impact of overlooking onto No. 26.  
**Outcome:** This will allow for an accurate assessment of privacy impact.



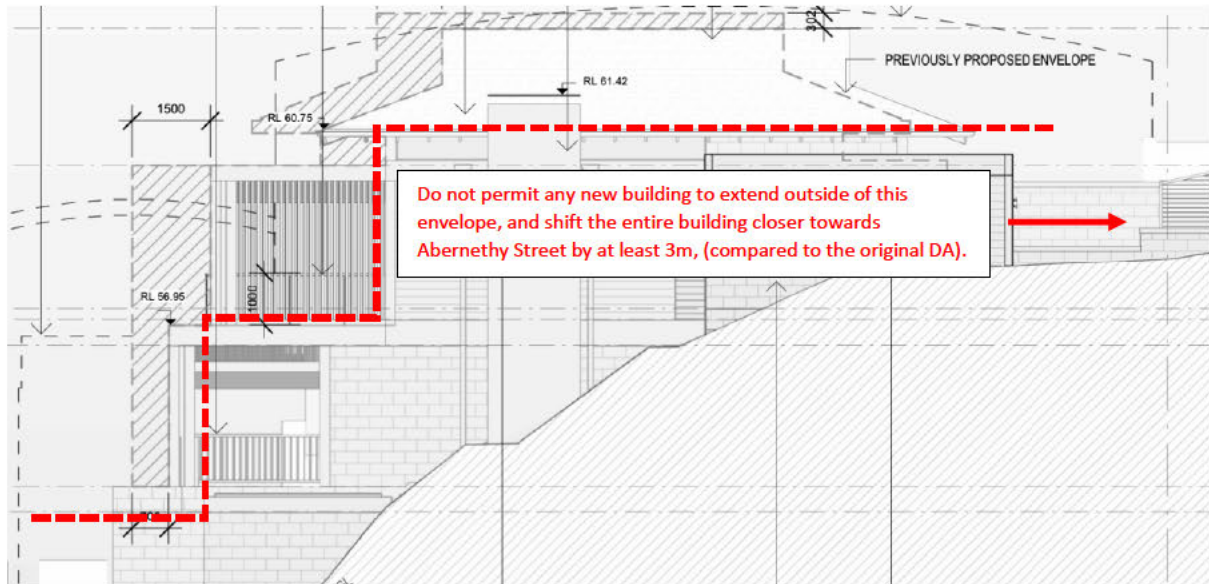


Figure 10 – Envelope recommendations

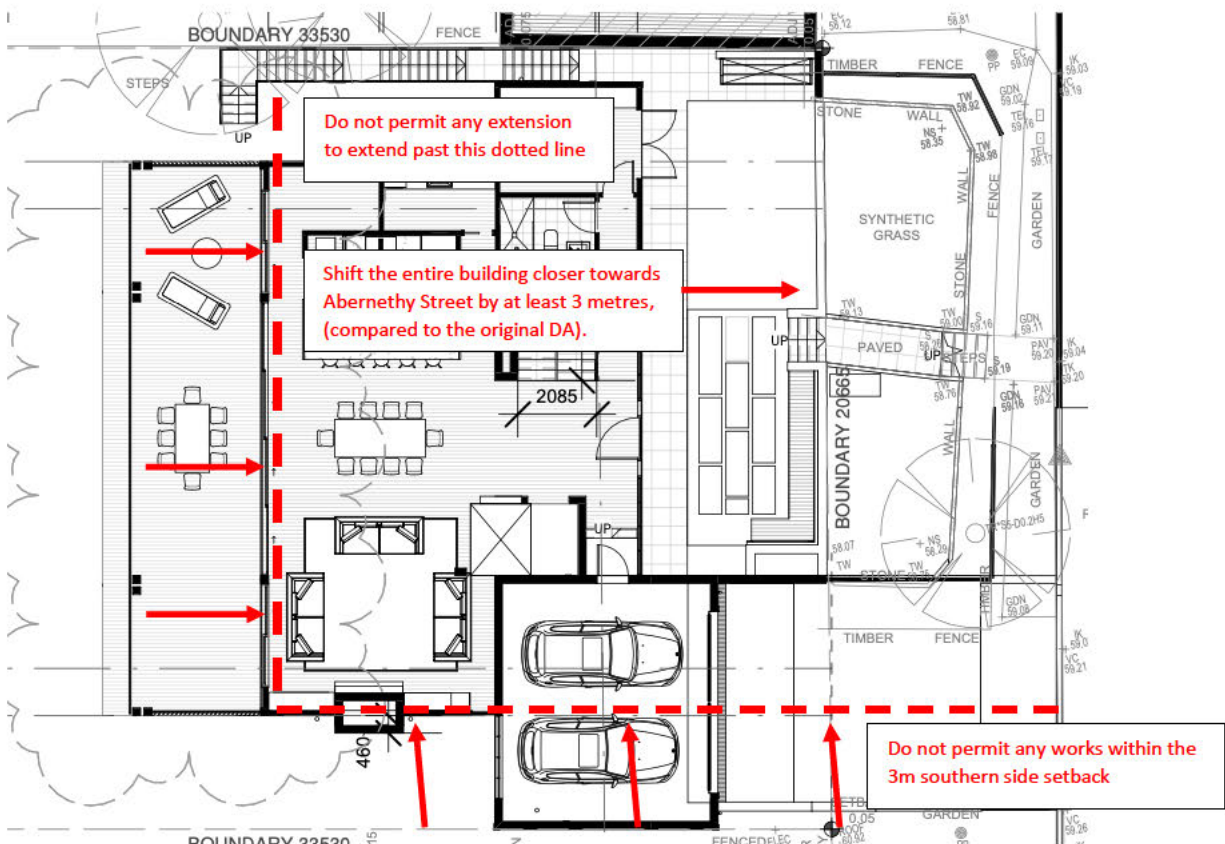


Figure 11 – Upper floor recommendations



## Conclusion

We have strong concerns about the proposed development in its amended form and believe it cannot be supported in its current form. Whilst a minor improvement compared to the original design, the development will still continue to have an adverse impact on the residential amenity of 26 Abernethy Street, the geotechnical safety and quality of the site and surrounds, and the character of the locality.

A development of this scale and configuration cannot be supported on this site. It is therefore requested that the proposed development in its current form be revised further. Any future development on the site should ensure compatibility with the local area and address the issues raised in this submission.

The owners of 26 Abernethy Street, Seaforth restate their prior invitation to the proponents of DA2022/2207 and any future Development Application relating to changes to No. 30 to meet to discuss any proposal so that an acceptable outcome can be achieved by all parties, notwithstanding that such previous invitations have been ignored.

**It is also requested that any adjusted drawings or other documentation submitted in relation to this DA be re-notified to neighbours, regardless of the extent or nature of change.**

Kind regards,

Emma Rogerson

**Master of Urbanism (Urban and Regional Planning) (USYD)**

**Bachelor of Architecture and Environments (USYD)**

**Planning Institute of Australia (Assoc.)**

**Town Planner**