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**From:** Sebastian De Brennan  
**Sent:** 13/08/2023 10:30:44 PM  
**To:** Council Northernbeaches Mailbox  
**Subject:** REV2023/0016: RE DEVELOPMENT APPLICATION DA2022/2270 AT 166 PITTWATER ROAD MANLY NSW 2095  
**Attachments:** Submission re extension re 166 Pittwater Rd Manly NSW 2095.pdf;

Dear Northern Beaches Council,

I confirm my family owns 168 Pittwater Rd at Manly, the adjoining semi-detached property to which the DA relates.

I refer to the further amendments that are relied upon by the applicants (REV2023/0016) and reiterate the concerns enumerated in my written submission to Mr Miles, Planner, dated 21 March 2023. For completeness, a copy of that submission is **attached**.

I trust that these concerns will be taken into account in respect of the applicants' review.

Our family reserves all rights.

Please do not hesitate to contact me should you wish to discuss this matter.

Sincerely,

**Sebastian De Brennan**

**Barrister**



Seventh Floor Garfield Barwick Chambers  
53 Martin Place  
Sydney NSW 2000



W: [www.7gbc.com.au](http://www.7gbc.com.au)

21 March 2023

Northern Beaches Council  
c/o Kye Miles, Planner

**By email: [kye.miles@northernbeaches.nsw.gov.au](mailto:kye.miles@northernbeaches.nsw.gov.au)**

Dear Mr Miles,

**DEVELOPMENT APPLICATION DA2022/2270 AT 166 PITTWATER ROAD MANLY NSW 2095**

1. Thank you for granting an extension to furnish a submission in this matter.
2. I confirm my family owns 168 Pittwater Rd (L.M. Tomlinson), the adjoining semi-detached property to which the DA relates.
3. As with any DA proposing the erection of a second story on a dwelling and consistent with legislation, we respectfully request that the Council take into account:
  - Any statutory provisions relating to environmental planning and development control plan;
  - The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
  - The suitability of the site for the development;
  - Submissions made; and
  - The public interest.
4. In respect of specific concerns, we note that the following:

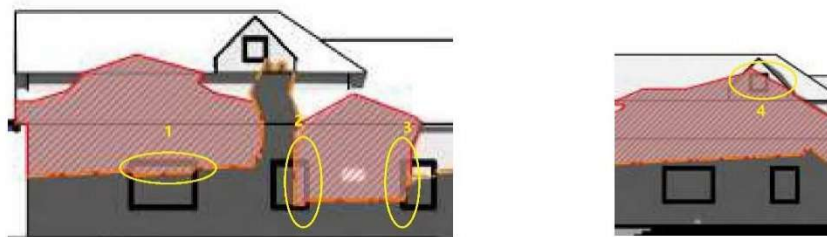
**Overshadowing and Solar Access**

5. According to the Manly Development Control Plan 2013 ('the DCP'), in relation to sunlight to the windows or glazed doors to living rooms of adjacent properties, for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice, and for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.<sup>1</sup>
6. A perusal of the shadow diagrams provided by Tony Robb,<sup>2</sup> gives rise to a concern that the that the DA will contravene the rules stipulated by the DCP.

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<sup>1</sup> *Manly Development Control Plan 2013*, r 3.4.1.2(b)-(c).

<sup>2</sup> Tony Robb, Statement of Environmental Effects ('**the Report**'), p. 20.



7. These two shadow diagrams are used to simulate the solar access between noon and 3:00 pm in mid-winter.<sup>3</sup> The concern is that the solar access of the adjoining property, as marked on the diagrams above, could be significantly compromised. Further, such a design is potentially at odds with the DCP which seeks to promote equitable access to light and sunshine.<sup>4</sup>
8. Although the Report contends that the proposed development will not create any significant additional overshadowing to windows to the property,<sup>5</sup> it is submitted that overshadowing of even a minor kind is not something that the Council should allow. In *Archiworks Architects Pty Ltd v Marrickville Council* [2005] NSWLEC 164 (**Archiworks**), the Land and Environment Court found:

With respect to overshadowing Mr Wang has indicated to the Court that even a single-storey development would create overshadowing and yes, I agree given the orientation/subdivision pattern that this property is to the north of No. 27, there would be some overshadowing caused by even a single-storey development but nonetheless a far more sensitive development must be provided in order to maintain reasonable amenity for the dwelling at No. 27 Garnet Street (emphasis added).<sup>6</sup>

9. It is the writer's position that any DA should ensure that it maintains reasonable amenity for the dwelling on the adjacent property. Simply because it is suggested that there has been some shading of the windows in question, does not convert to the proposition that further overshadowing should be seen as acceptable. To the contrary, it is submitted that the applicant has an obligation to maintain and promote reasonable amenity for the limited sunlight available.

### Common Boundary, Wall Height, and Safety Considerations

10. The development proposal intends to provide for roughly 6.59 m high wall on the common wall, thereby affecting our semi-detached house.<sup>7</sup> The immediate concerns associated with the erection of this structure is interference with amenity, as well as safety considerations.

<sup>3</sup> Tony Robb, Statement of Environmental Effects ('the Report'), p. 20.

<sup>4</sup> *Manly Development Control Plan 2013*, r 3.4.1.

<sup>5</sup> Tony Robb, Statement of Environmental Effects ('the Report'), p. 20-21.

<sup>6</sup> *Archiworks Architects Pty Ltd v Marrickville Council* [2005] NSWLEC 164, at [8], available at: <https://www.caselaw.nsw.gov.au/decision/549f86443004262463ac5c42>.

<sup>7</sup> Tony Robb, Statement of Environmental Effects ('the Report'), p. 21.



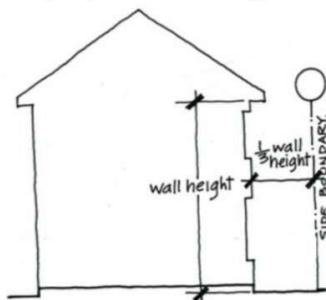
11. The protection of reasonable amenity is one of the paramount considerations set out by the DCP.<sup>8</sup> In *Archiworks*, the development plan proposed to build a 5 to 6 m high brick wall on the boundary with the adjoining semi-detached house. However, the Court found:

The proposal would provide for approximately a 5 to 6 m high brick wall on the boundary with the adjoining semi. The impacts are not only in terms of overshadowing but in terms of the bulk and scale of the proposal directly on the boundary extending some 20 m in length. In the Court's assessment the development would be one that would be overwhelming and over-imposing and create unreasonable amenity for the adjoining property at No. 27 (emphasis added).<sup>9</sup>

12. It is noteworthy that the common wall in the middle of the semi-detached house is not one that was built in recent decades. Absent further information being provided, it is simply not known whether the common wall can withstand a development of this magnitude. According to rule 3.10 of the DCP, the safety of any development is a critical issue that needs to be considered carefully.<sup>10</sup> In these circumstances, it is submitted that further expert opinion as to weighting and safety considerations should be obtained from a structural engineer.

#### Insufficient Side Setbacks

13. According to the development proposal, there is no side setbacks between two semi-detached houses. According to rule 4.1.4.2 of the DCP, 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 in the following way:<sup>11</sup>



14. In complying with the side setbacks requirements, a **2.196 m** for side setbacks should be allowed for. However, of concern to the writer is that the development proposal ostensibly fails to provide any such leeway. This will adversely impact on the reasonable amenity of the adjoining property at 168 Pittwater Road. In particular, light, solar access, and air movement are likely to be affected by the design.

<sup>8</sup> *Manly Development Control Plan 2013*, r 3.4.

<sup>9</sup> *Archiworks Architects Pty Ltd v Marrickville Council* [2005] NSWLEC 164, at [7], available at: <https://www.caselaw.nsw.gov.au/decision/549f86443004262463ac5c42>.

<sup>10</sup> *Manly Development Control Plan 2013*, r 3.10.

<sup>11</sup> *Manly Development Control Plan 2013* r 4.1.4.2.

**Sewage considerations**

15. It is noted that the DA seeks to add an additional bathroom. In circumstances where there have been issues around sewage piping in the past, including the demarcation of Sydney Water versus private assets, it is submitted that the commissioning of a qualified hydraulic engineer (to assess the impact of an extra bathroom) would be of utility.
16. The opportunity to provide a submission is appreciated.
17. Please do not hesitate to contact the writer should you require any further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. De Brennan', with a stylized, flowing script.

Sebastian De Brennan