
Sent: 11/07/2021 3:16:27 PM
266 Whale Beach Road, Whale Beach DA 2021 0419 WRITTEN
Subject: SUBMISSION: LETTER OF OBJECTION AMENDED PLANS 8 July 2021
Submission: Godden
Attachments: GODDEN #2 Submission July 21.docx;

S U B M I S S I O N : G O D D E N
a written submission by way of objection to DA 2021/0419

Mr & Mrs Geoff & Ann Godden
264 Whale Beach Road
Whale Beach
NSW 2107

9 July 2021

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:
266 Whale Beach Road, Whale Beach
DA 2021 0419

WRITTEN SUBMISSION: LETTER OF OBJECTION AMENDED PLANS 8 July 2021
Submission: Godden

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

We refer to our earlier submission dated 19 May 2021. We attach that submission for ease of reference. As there are minimal amendments proposed by the Applicant within the Amended Plans, the 19 May submission maintains our objection to the DA. We summarise those matters once again.

We ask the DDP to inspect our property. We wish to also present our concerns to the DDP at the meeting.

This Submission addresses the Amended Plans posted on Council Website 8 July 2021.

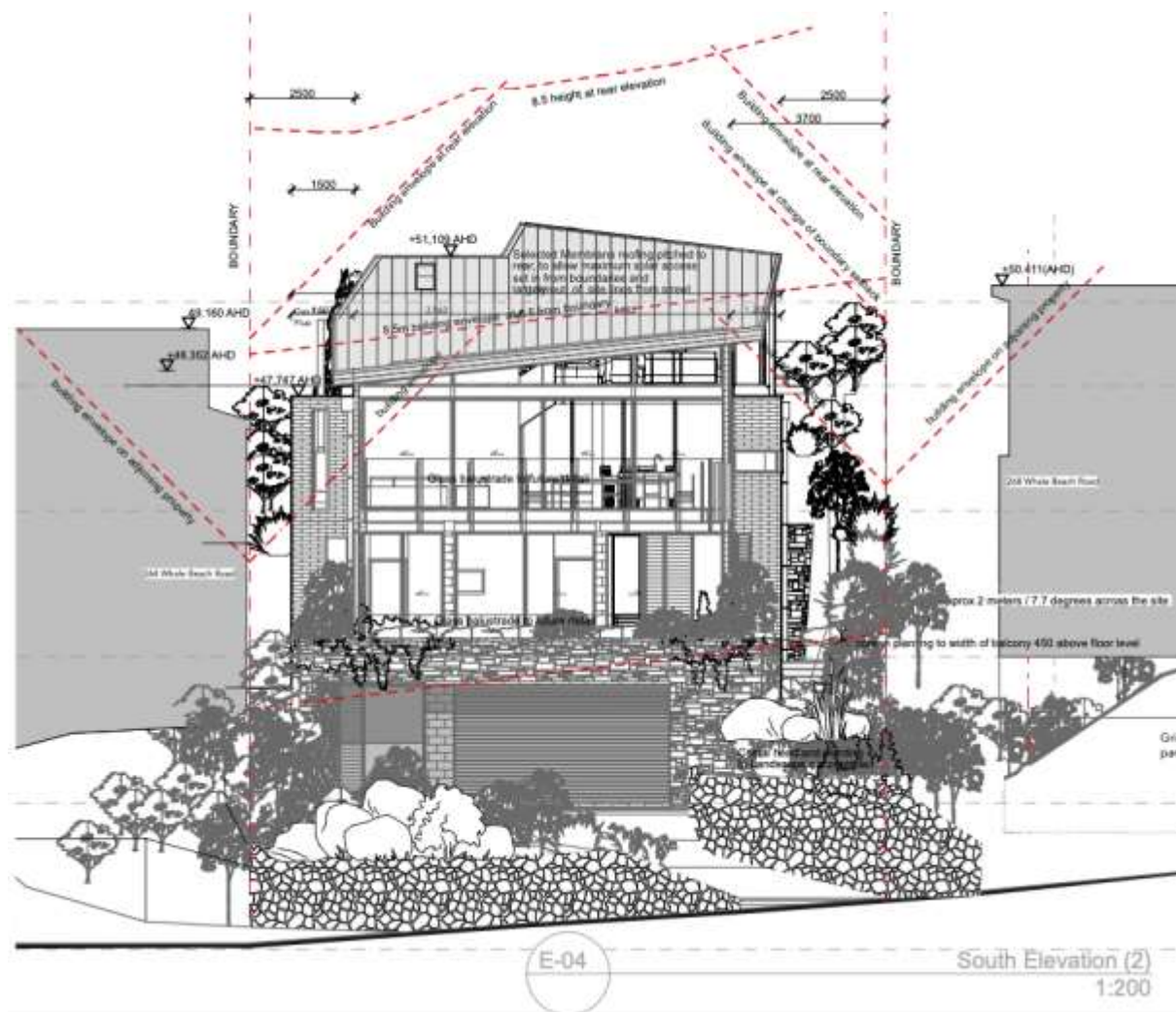
Our main concern stems from the inappropriate building separation, that leads to amenity loss. There has been no consideration on flood control.

In our 19 May Submission, we had asked for the proposed dwelling to be setback within the Side Boundary Envelope at the street elevation frontage. The Applicant has not chosen to take the opportunity to do that within the amended plans, and therefore we ask DDP to refuse this DA.

Our previous submission highlighted the fact that our residence was originally designed by **Bruce Rickard** in the 1960's. Rickard also designed the upper level 'retreat', and that was completed in 2005, not long before Bruce Rickard's death in 2010. Council must note that the setting of this very important architectural work of Bruce Rickard must be respected, and very carefully preserved. Rickard won Royal Australian Institute of Architects design awards in 1972, 1977, 1983, 1992 and 2009.

Our residence was designed in the 1960's with minimal side boundary setback. Our property is also on the low side of the slope facing the subject site. Any proper site analysis and proper design consideration would have considered that the 2.5m side boundary setback control should fall on our boundary, and that the Applicant should have designed the front elevation to fit within the **D12.8 Building Envelope controls**.

The Southern Elevation, facing the street, makes this matter clearly obvious.



To resolve this matter, the Applicant can undertake a 'very easy fix'.

- We ask that the building is shifted 1.5m to the east, to have a western side setback of 2.5m
- We ask that the building be lowered to fit within the D12.8 Building Envelope controls at Grid 2 and Grid 4, facing our property to the west, and to the neighbour to the east.

We ask for additional matters to be addressed:

1. Flood Study to be submitted. Oversized concrete stormwater interceptor trench, discharged to the stormwater system, to be positioned along the entire western boundary, to collect all flood waters. Reason. Flood control.
2. All windows facing west to neighbours to have 1.7m high sills and obscured glazing. Reason. Privacy
3. All privacy screens shall be full height and full width of horizontal louver style construction (with a maximum spacing of 20mm), fixed and overlapping, in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing to 1.7m height. Privacy screen to Level 1 Lightwell facing west from Grid 4 to 7. Privacy screen to Level 2 Courtyard facing west from Grid 4 to 7. Reason. Privacy
4. No excavation in 2.5m side setback zone facing west, for this 2.5m zone to remain at existing levels with deep soil planting, with 8 no. local native, screening trees to 6m height planted 1.25m back from the boundary, at 3m centres, 75 litre minimum, to fully screen the proposed development to the western boundary along 21m length of building. Reason. Excessive excavation. Landscape.
5. Delete Flue adjacent neighbour's window. Reason. Nuisance.
6. Update Geotechnical Report to cover following matters. Reason. Safety.

Geotechnical Issues

We refer to JK Geotechnical response dated 14 June 2021:

JK Geotechnical states within Item 1:

GHD stated that we did not consider potential impacts on adjoining properties in our risk assessment. This is not correct.

GHD stated the sum potential impacts had not adequately been considered – adequate information re the risks has not been compiled / finalised:

- The lack of simple detail (like geotechnical core testing not being complete)

- Battering as a mitigation of risk within the report
- Lack of hydraulic consideration

JK Geotechnical states within Item 2

We are not certain as to why GHD highlighted that 1V:1H batters will need to extend at least 6m horizontally for the maximum 6m excavation depth and will undermine the house at No 264. This statement by GHD is alarmist and is neither helpful nor constructive

The nature of the comment is designed to highlight the inadequacies of the “tests” applied in the conclusion ‘Acceptable Risk Management’ can be achieved. The derision of the statement as “alarmist” does not nullify it as accurate.

With the agreed position of an engineered final detail yet to be resolved, together with their suggestion of mitigation measures like ‘battering’ is fundamentally part of their original report and how they reached their conclusion

Why it was included in their report if not a suitable mitigation measure led to it being highlighted in context of how the conclusion was reached.

JK Geotechnical states within Item 3

Such details will be included in the geotechnical investigation report which will be prepared following the drilling of the nominated boreholes and more detailed subsurface information becomes available

How can we objectively assess the risks without the detail, given the nature of the build and the highlighted risks of the ground on which it is being built. It is neither considered or fair.

JK Geotechnical states within Item 4

Temporary anchors, as intended for use, will pose minimal restrictions as the anchor strands will be destressed on completion of construction at No 266, and can easily be cut if encountered during future development or improvement of No 264 without adverse effects, as is common practise in the industry

Anchors of any description will not be permitted or agreed to.

JK Geotechnical states within Item 5

We re-iterate that our report addressed geotechnical issues, and it is not appropriate to present details of a water discharge system, which is a hydraulic issue

Yet the known Hydraulic conditions will directly and knowingly have to be considered in terms on the bulk excavation and the ground in which it takes place – they are not mutually exclusive and

MUST be considered together to reach the 'Acceptable Risk Management' criteria – especially as by their own report

Such details will be included in the geotechnical investigation report which will be prepared following the drilling of the nominated boreholes and more detailed subsurface information becomes available.

This is not acceptable – or fair.

We are very concerned that the Applicant has failed to address the surface water discharge system to ensure that surface waters and sub surface water from the subject site are not discharged onto our lower lying property. The principles of the hydraulic design need to be addressed now by means of a Flood Study with appropriate measures along our boundary. This issue cannot be left to post DA stage by a hydraulic engineer as the Geotechnical Engineer suggests. We are very concerned that matter will not be addressed, and our property will flood from the subject site.

We ask that the Applicant provides:

- Complete Core Testing 2.5m from 264 Whale Beach Road boundary at Grid 2 & 4, and adjust Geotec Report accordingly
- Amend Geotec Report regarding Battering, and clearly define design requirements to 264 Whale Beach Road boundary
- Complete Hydraulic Flood Study, with mitigation to 264 Whale Beach Road boundary
- Include that no rock anchors will be allowed under 264 Whale Beach Road and adjust advice accordingly
- Reduce vibration limits to 3.0mm/sec, with a stop work warning at 2.5mm/sec due to the age of our house. Monitoring devices attached to 264 Whale Beach Road external wall.
- Update Geotec Report to accord with Amended Plans [July 2021]

CONCLUSION

We ask that these matters are addressed by means of further amended plans and amended reports, prior to the final assessment and presentation to the DDP.

If this does not occur, we ask the Development Application be **REFUSED** by the DDP.

We contend that the Development Application should be refused on the following grounds.

Reasons for Refusal

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the **aims of the plan** of the Local Environmental Plan.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is **inconsistent with the provisions of the R2 Zone** of the Local

Environmental Plan. The **bulk and scale** of the proposed development is excessive within the low-density residential setting, has **insufficient building separation to 264 Whale Beach Road**, and attributes to unacceptable impacts upon the public domain, the amenity of adjoining properties and the amenity of the dwelling proposed. In particular, the form and massing of the proposal is inconsistent with the design principles of D12.8 Building Envelope

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of **LEP 7.7 Geotechnical Hazards, in relation to flood control and other geotechnical matters**
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of DCP:
 - C1.5 Visual Privacy
 - D12.1 Character as viewed from a public place
 - **D12.8 Building Envelope**
 - D12.14 Scenic Protection Category One Areas
5. The proposal is contrary to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that the proposal has a **detrimental impact** on both the natural and built environments in the locality of the development.
6. The development is **not suitable for the site** pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
7. The proposal is not in the **public interest** pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* because it results in a development that **breaches development standards and controls**. The proposed development would result in a development that is of excessive bulk and scale, with **very poor building separation to 264 Whale Beach Road** which results in adverse impact on the streetscape, adjoining properties and the broader locality.

Yours faithfully,

Mr & Mrs Geoff & Ann Godden
264 Whale Beach Road
Whale Beach
NSW 2107

S U B M I S S I O N : G O D D E N
a written submission by way of objection to DA 2021/0419

Mr & Mrs Geoff & Ann Godden
264 Whale Beach Road
Whale Beach
NSW 2107

19 May 2021

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:
266 Whale Beach Road, Whale Beach
DA 2021 0419

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission: Godden

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

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

Demolition works and construction of a dwelling house

The subject site is zoned E4, under strict envelope controls, under the LEP and DCP, and there is no reason, unique or otherwise why a fully compliant solution to LEP and DCP controls cannot be designed on the site.

We agree with Roseth SC in NSWLEC Pafbum v North Sydney Council:

"People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime."

We ask Council to refuse this DA as the proposed development does not comply with the *planning regime*, by non-compliance to development standards, and this non-compliance leads directly to our amenity loss.

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Appendix

SECTION 1: EXECUTIVE SUMMARY

We want to emphasise the fact that we take no pleasure in objecting to our neighbour's DA.

We are objecting because the proposed DA has a very poor impact on the amenity of our property, and the urban design outcomes within the streetscape, and this is caused by the DA being non-compliant to controls.

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

It does seem unreasonable that the Applicant wishes to remove our amenity to improve his own, and is proposing non-compliant outcomes that would seriously adversely affect our amenity.

Our residence was originally designed by **Bruce Rickard** in the 1960's. Rickard also designed the upper level 'retreat', and that was completed in 2005, not long before Bruce Rickard's death in 2010. Council must note that the setting of this very important architectural work of Bruce Richard must be respected, and very carefully preserved. Rickard won Royal Australian Institute of Architects design awards in 1972, 1977, 1983, 1992 and 2009.

We are extremely concerned to the impact of the extensive excavation next to this important architectural work, and to ensure that geotechnical, flood, vibration and other concerns raised in this submission are properly addressed.

Unfortunately, the Applicant or his Advisors did not visit our property to assess our amenity loss.

Our concerns are not only our amenity loss, but the wider urban design outcomes, particularly those when viewed from the surrounding streetscape.

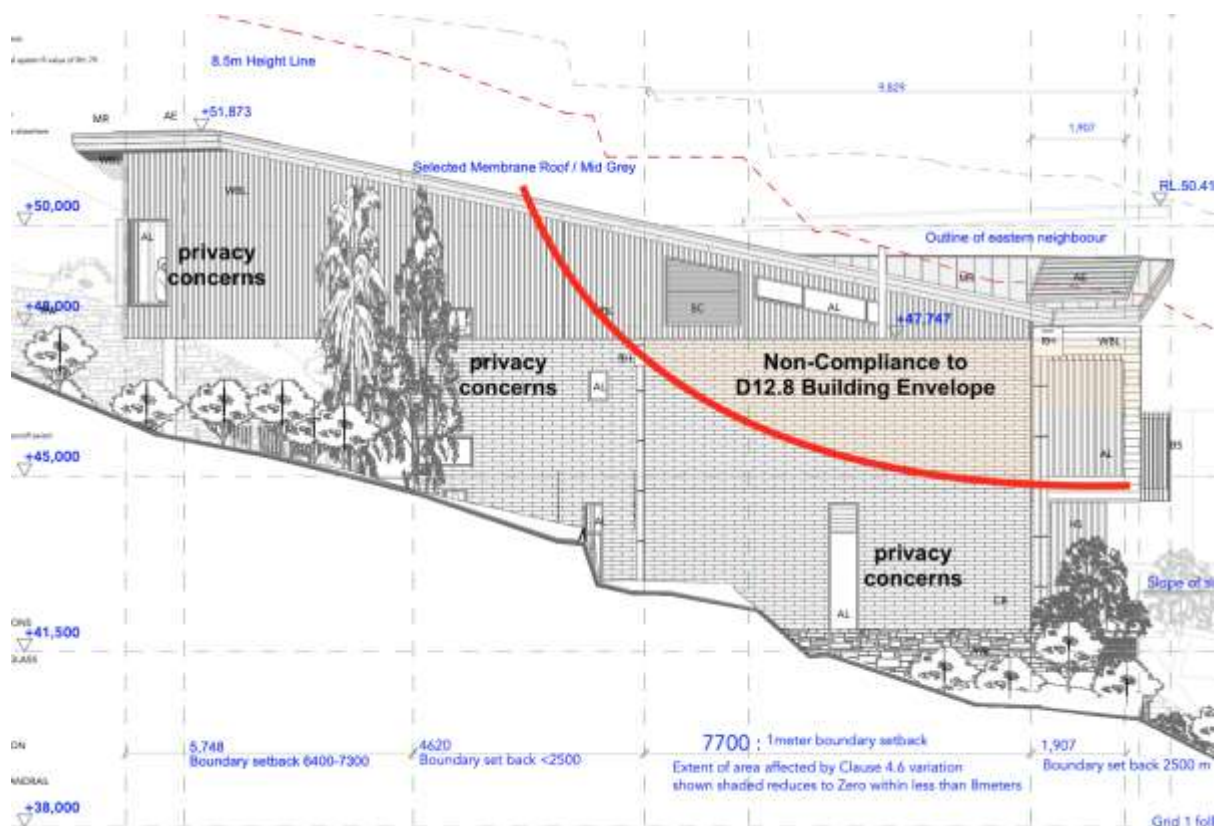
The subject site is surrounded by sensitive E4 Environmental Living Low Density Residential environment, with strict building envelope controls that are adhered to and regularly enforced by Council refusals.

The proposed development in this heavily controlled E4 Environmental Living Low Density zone, exceed building envelope controls and many other controls.

The bulk and scale of buildings has not been minimised.

We are very concerned on the proposed extensive deep excavation up to our boundary.

The major problem with the design is the failure to accord with **D12.8 Building Envelope**. The **overdevelopment** is best described by the scope of the non-compliance to **D12.8 Building Envelope**, and fails to contain envelope within control

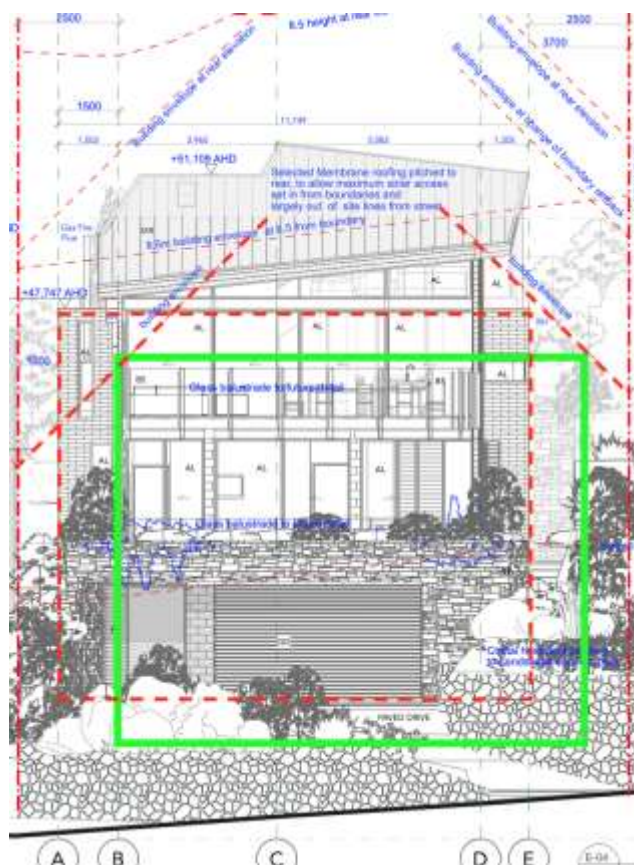


The extent of the non-compliance is vast, and the loss of solar access, loss of privacy and visual bulk is unreasonable and unacceptable.

The design unfortunately has not made any attempt to accord with **D12.8 Building Envelope**, and presents a massive non-compliance facing our dwelling, a **massive 2.35m non-compliance**

What the design should have considered within the site analysis is that the land falls steeply with a cross fall, towards our property. The resultant **D12.8 Building Envelope** consideration makes it obvious that the 2.5m side setback should fall to our boundary, to have any chance to begin to comply with the envelope that is being proposed, being a four-storey envelope onto the street.

To achieve better compliance to **D12.8 Building Envelope**, the front elevation should have been positioned to fall within the envelope 45-degree angles, and for a new build development that is easy to achieve. We attach a sketch showing that the proposed development would need to have a 2.5m side setback facing our boundary, and the entire volume of the building reduced to fit within the envelope control.



We attach the sketch showing in 'dotted red square' the proposed envelope at the street frontage, and in 'green' the required amended position. The amendments required:

1. The proposed development to be setback an additional 1.5m from the western boundary, with Grid A having a side setback of 2.5m.
2. The proposed development to be reduced in level to achieve a better compliance to D12.8 Building Envelope control, with 3.1m storey heights:
 - Entry: RL 36.7.
 - Level 1: RL 39.8
 - Level 2: RL 42.9, with roof over at **RL 46.0**
 - Level 3: RL 46.0
 - Roof over Mezz: RL 49.16 [to match existing height at #264 Ridge Height]
Reason. Solar Access, Privacy, Visual Bulk, Building Separation, better relationship to neighbours, excessive storey heights.

The Side Boundary control at the western boundary at the front alignment of the proposed development, presents a survey mark just above the RL 39.85 level at **RL 40.00**. Adding the **3.5m** Building Envelope height control, with a **2.5m** side setback [45 deg], requires the built form not to exceed **RL 46.00** at this location. Currently the proposed design is at **RL 48.35**, resulting in a **massive 2.35m non-compliance**.

We have identified that the height reductions proposed that **RL 46.00** is achievable, by ensuring that **the roof above Level 2 does not exceed RL 46.00**, at a 2.5m side setback from the western boundary.

A sloped skillion roof from **RL 46.00**, at the front building alignment, to then slope with the land to the north, would resolve the problem.

If the Owner wanted greater storey heights greater than 3.1m, then the levels below would need to further reduce. The RL 46.00 Level at the 2.5m side setback alignment, at the proposed front setback alignment at the survey mark, **must** be the maximum height of the roof to accord with **D12.8 Building Envelope**.

The reduction of height has the added advantage to the Owner, as the access to the house would have a slower ramped grade to the front entry door, avoiding extremely steep 1:4.7 grades, making access to the street more achievable for seniors living, and car access easier. The SEE states the main aim was:

‘a requirement to make the dwelling more accessible to people of all ages abilities’

The other advantage is that Level 3 Mezzanine has a more direct connection with the upper garden of the property, making better use of the north facing open landscape zone aspect to the rear.

This amended plan requirement is a ‘very easy fix’, that can be achieved by the submission of amended plans. The Architect simply needs to adjust the building envelope, down and to the east, and adjust the external works to suit.

The Owner achieves the same spatial arrangement, with an easier ramped grade to the street for seniors and for visitors, and far better accessibility to the north facing rear garden, accessed via Level 3, with lift access.

We also object to very large under-croft zones facing our property.

This '*more skilful design*' revised envelope, would resolve most of our amenity the issues.

If this redesign is not undertaken, we ask Council to refuse this DA, as there is an obvious '*more skilful design*' available to the Applicant that avoids our very poor amenity outcomes. The reasons for refusal would be:

Reasons for Refusal

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the aims of the plan of the Local Environmental Plan.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the R2 Zone of the Local Environmental Plan.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of:
 - A4.12 Palm Beach Locality
 - C1.4 Solar Access
 - C1.5 Visual Privacy
 - D12 Palm Beach Locality
 - D12.1 Character as viewed from a public place
 - D12.8 Building Envelope
 - D12.14 Scenic Protection Category One Areas of the Development Control Plan.
4. The proposal is contrary to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that the proposal has a detrimental impact on both the natural and built environments in the locality of the development.
5. The development is not suitable for the site pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
6. The proposal is not in the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* because it results in a development that breaches development standards and controls. The proposed development would result in a development that is of excessive bulk and scale which results in adverse impact on the streetscape, adjoining properties and the broader locality.

If the amended plan submission as identified above were fully complete, we will still have some solar amenity loss over the existing situation, however as the proposed development would then be more compliant to controls, we would have to accept that position.

We do have a few other concerns that hopefully can also be resolved in an amended plan submission:

- LEP 7.7 Geotechnical Hazards
- B8.6 Construction & Demolition Traffic Management Plan
- Nuisance

LEP 7.7 Geotechnical Hazards

We ask for further consideration on these matters:

1. In the amended plan submission, we ask for no excavation in the western 2.5m side setback zone. We ask for the amended plans to show no excavation in the 2.5m western setback zone, and for this zone to remain at existing levels with deep soil planting, with screening trees to 3m height planted 1.25m back from the boundary, at close centres.
2. The geotechnical report [7.1.3] refers to rock anchors, and we state that we will not give any approval to any rock anchors under our property, temporary or permanent. We ask for this to be added to the report.
3. The geotechnical report [7.1.4] confirms that *'Continuous vibration monitoring must be carried out during rock excavations. The ground vibration measured as peak particle velocity must not exceed 5mm/sec along the eastern and western site boundaries.'* As we are living permanently in our dwelling during the day, we ask that the Applicant reduce the *'peak particle velocity must not exceed 2mm/sec along the western site boundary'*. We ask the Applicant to have the geotechnical engineer detail in a revised geotechnical report the measures that are required to achieve that outcome. It is not that difficult to achieve, including attenuation cuts to the rock face, and ensuring the excavator never points the hammer to the west, and the use of non-hammer techniques close to our dwelling. Vibration Reports to be forwarded to us on a weekly basis. We ask for this to be added to the report.
4. The geotechnical engineer states: *'we have not had the opportunity to observe surface run-off patterns during heavy rainfall and cannot comment directly on this aspect.'* We suggest that a flood study report be commissioned, and a more comprehensive catchment of the stormwater running down the slope be considered, including a 500mm upstand along the western boundary, to retain stormwater/flood water on the subject site. The SEE states: *'The site is currently affected by substantial overland and subterranean water flow in times of rain'*. We ask for a Flood Study Report.
5. There are *'Considerable Hazards'* identified by the geotechnical engineer, and great care must be exercised. We ask that JK Geotechnical have a more frequent inspection role, particularly inspecting when works to the 'Existing Retaining Walls' are commenced, and prior to the excavation commencing to explain to the excavation contractor the method statement of how the demolition and excavation will be undertaken, inspecting at the

beginning of the bulk excavation, and weekly inspections through the excavation or after every 1m of dig, with further inspections at the beginning of the Proposed Retaining Wall works, and throughout that process at a minimum of weekly inspections. We ask for this be added to the report

6. Dilapidation Reports must be completed prior to any demolition on neighbours' properties. The dilapidation survey should comprise a detailed inspection of both externally and internally with all defects rigorously described and 'high res' photographed of all surfaces. The completed dilapidation report should be provided to the neighbour to allow them to confirm that the dilapidation report represents a fair record of actual conditions. No Occupational Certificate can be issued until rectification works are completed to the neighbour's full satisfaction. We ask for this to be added to the report.
7. Excavation to be carried out in dry weather, all runoff diverted from cut surfaces, no excavation in heavy or prolonged rainfall forecast, experienced excavator, and other matters. We ask for this to be added to the report.
8. The geotechnical report does not state that the structural design is to be reviewed by a geotechnical engineer prior to the Construction Certificate (Council Policy Section 6.5(g)(ii)), nor does it provide conditions for adequate ongoing management as per Section 6.5(g)(iv). We ask for this to be added to the report.
9. The Newport Formation (Narrabeen Group 'shale'), the rock can be of poor quality, heavily defected with joints and clay seams. Until subsurface investigations prove that good quality rock is present, it should be assumed that the rock will be of poor quality and shoring should be allowed for the full depth of the excavation. We ask for this to be added to the report.
10. Drawing 203 shows a steeped retaining wall system. We are asking for no excavation within the 2.5m side setback zone, however we ask for clarity from the Geotechnical Engineer on the issues relating to this type of stepped arrangement.

B8.6 Construction & Demolition Traffic Management Plan

We ask for a complete Construction & Demolition Traffic Management Plan be issued prior to any consent. Tower Cranes cannot be positioned alongside our windows or decks. There can be no oversailing of cranes on our property.

Nuisance

We ask for the 'flue' to be relocated well away from our windows and decks, or be deleted.

The proposed development fails to accord with numerous clauses within the LEP & DCP, and causes **privacy, solar, and visual bulk** concerns.

We agree with Roseth SC in NSWLEC *Pafbum v North Sydney Council*:

“People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.”

The ‘legitimate expectation’ that we had as a neighbour was for a development that respected **D12.8 Building Envelope** controls would be adhered to.

The ‘legitimate expectation’ that we had as a neighbour was for a development that did not cause amenity loss from non-compliance to these concerns, particularly privacy loss, solar loss, visual bulk, and poor streetscape outcomes.

This then all leads to the assessment on character.

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”

Unfortunately, the Applicant is proposing a significant overdevelopment of the environmental sensitive site in respect to **D12.8 Building Envelope** and in doing so causes amenity impacts to our property, and more broadly to the urban design characteristics of the area.

The overall combined effect caused by the non-compliance, lead to a considerable unreasonable visual bulk and a very poor character as viewed from a public place, in that it places a very large dwelling without adequate separation to our property. The subject site falls within a scenic protection category one area, and we contend that the overdevelopment of the site fails to meet the outcomes.

In this context we contend the proposed development will have most observers finding *“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”*

In this Submission we will identify the non-compliances to LEP & DCP controls to show that the development is totally unreasonable and unacceptable.

We have proposed a series of modifications to the proposed development to overcome the amenity issues for Council to consider. If the Applicant does not submit Amended Plans to resolve these matters, we ask Council to REFUSE the DA.

We are not only presenting our amenity problems, and the urban design and landscape concerns, but we are also presenting a potential solution to that problem, that hopefully provides a better framework to resolve the design problem on a very sensitive site. We do hope the Applicant and Council take this approach as being constructive.

The neighbouring sites are in a sensitive low-impact residential development zone, and little consideration has been given to the objectives in those zones, and to curtail overdevelopment on this subject site. The non-compliance to controls, and lack of consideration of building envelope and setback controls to marry in with neighbours, is of great concern.

The overall effect is a development that is considerably out of scale with the neighbours, particularly when viewed from the surrounding streetscape and our property, where proposed built form dominates the landscape.

We contend that a more sensitive redevelopment, and complying with **D12.8 Building Envelope** control is preferable. This type of outcome might be considerably more reasonable and considerably more preferable, than the proposed development.

The character of the proposed development when viewed from surrounding streetscape and our property is offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site's visual catchment.

SECTION 2: CHARACTERISTICS OF OUR PROPERTY

Key aspects of our property are as follows:

Our property shares a common boundary with the subject property.

The subject site lies to the east of our property.

We enjoy good levels of privacy and solar access over the subject site's boundaries.

SECTION 3: MATTERS OF CONCERN

We are concerned that these impacts will negatively impact the level of amenity currently enjoyed.

The following aspects of the proposal are of concern:

- The extent of the proposed building envelopes
- The siting and extent of the proposed dwelling without having sufficient consideration for maintaining amenity

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

We are concerned that the SEE has failed to properly address our amenity concerns, and is suggesting that the DA accords with LEP & DCP outcomes and controls when it clearly it does not.

The non-compliance to LEP and DCP outcomes and controls forms the basis of our objection.

The subject site is of a reasonable size, and there is no reason, unique or otherwise why a fully complaint solution to all outcomes and controls cannot be designed on the site.

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

SECTION 4: SITE DESCRIPTION

The SEE describes the site:

The subject site: Lot 221, Deposited Plan 15376 and is zoned E4 Environmental Living under the Pittwater Local Environment Plan 2014. The total site area is 823.8 sq m measuring;

The site is a long, narrow, rectangular block of land located on the northern side of Whale Beach Road, seven blocks [approx. 130m] west of the intersection with Norma Road. The site rises steeply, more than 25 meters over its depth, from the street to the escarpment at the northern rear boundary and is also characterised by an east west slope. In response to the typography's offset relationship with the site's boundaries, the existing house sits at an offset angle to the boundaries.

The site is currently affected by substantial overland and subterranean water flow in times of rain.

SECTION 5: PROPOSED DEVELOPMENT

The proposed development is a four-storey development.

The proposed development has a substantial non-compliance to **D12.8 Building Envelope** control.

Level 1: Entry, Garage, Plant, Tanks

Level 2: Bedrooms, Laundry, Under-croft

Level 3: Living, Dining, Kitchen, Bathroom, Courtyard Under-croft

Level 4: Living

SECTION 6: INCOMPLETE INFORMATION

Height Poles/ Templates

We ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant **D12.8 Building Envelope**, and to have these poles properly measured by the Applicant's Surveyor, and for these surveyor plans uploaded onto NBC Website.

The Height Poles will need to define the maximum built form in all zones:

- All Roof Forms
- All Plant Screens and all Plant
- All Solar panel heights
- All lift over runs
- All sun control and privacy control devices
- Extent of all Decks and Planters
- 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.

We require these height poles to fully determine amenity loss, as the building envelope is substantially non-compliant.

Overshadowing Diagrams

Overshadowing diagrams need to be presented at hourly intervals, and full elevational studies, showing the additional overshadowing caused by the non-compliance

Geotechnical Report

Incomplete report, refer to commentary within this Submission in the Executive Summary

SECTION 7: ENVIRONMENTAL PLANNING INSTRUMENTS LEP & DCP

The following matters are relevant to the development under the LEP 2012:

Provision	Compliance	Consideration
1.2 Aims of Plan	No	The proposal does not comply with the aims of the plan.

LEP Zoning E4	No	The proposal does not satisfy the zone objectives.
LEP 7.2 Earthworks	No	Concerns are raised within the Executive Summary
LEP 7.7 Geotechnical Hazards	No	Concerns are raised within the Executive Summary

LEP 1.2 AIMS OF PLAN

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

We contend that the proposed development does adversely affect the character or amenity of the area or its existing permanent residential population by amenity losses.

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

1.2 Aims of Plan

- (a) to promote development in Pittwater that is economically, environmentally and socially sustainable,*
- (b) to ensure development is consistent with the desired character of Pittwater's localities,*
- (g) to protect and enhance Pittwater's natural environment and recreation areas,*
- (i) to minimise risks to the community in areas subject to environmental hazards including climate change,*
- (j) to protect and promote the health and ill-being of current and future residents of Pittwater.*

The requirements under this clause clearly have not been met.

The proposal exceeds the envelope controls in the relevant clauses of the LEP and DCP.

The proposal therefore is of a larger building envelope than what is provided for by the existing controls and presents excessive bulk and scale onto surrounding properties in a manner which is not consistent with the desired future character of the locality. The proposed wall heights are significantly higher than neighbours, and the proposed development does not accord with **Building Envelope** controls causing direct amenity harm.

The proposal is excessive in envelope, 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.

LEP ZONING E4

1 Objectives of zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The proposed development fails to provide for low-impact residential development in areas with special ecological, scientific or aesthetic values, fails to ensure that residential development does not have an adverse effect on those value, fails to provide for residential development of a low density and scale integrated with the landform and landscape, and fails to encourage development that retains and enhances vegetation and wildlife corridors.

The proposal therefore is of a larger building envelope than what is provided for by the existing controls and presents excessive bulk and scale onto surrounding properties in a manner which is not consistent with the desired future character of the locality. The proposed wall heights are significantly higher than neighbours, and the proposed development does not accord with Building Envelope controls causing direct amenity harm.

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. The proposal would not maintain general dominance of landscape over built form as viewed from the streetscape and would not enhance local amenity.

LEP 7.2 EARTHWORKS

(1) The objective of this clause is to ensure that earthworks 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.

(2) Development consent is required for earthworks unless—

(a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or

(b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.

(3) In deciding whether to grant 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,

(b) the effect of the development on the likely future use or redevelopment of the land,

(c) the quality of the fill or the soil to be excavated, or both,

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

(e) the source of any fill material and the destination of any excavated material,

(f) the likelihood of disturbing relics,

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,

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

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

(4) In this clause—

***environmentally sensitive area** has the same meaning as environmentally sensitive area for exempt or complying development in clause 3.3.*

***Note—** The National Parks and Wildlife Act 1974, particularly section 86, deals with harming Aboriginal objects.*

The effect of the development on the existing and likely amenity of adjoining properties, has not been adequately assessed.

We are concerned over subsistence of our property, and vibration damage to our older residence.

We are extremely concerned about the impact this excavation, piling and vibration will have upon our property, both during build and excavation and then for the years post structure when additional issues frequently occur as “settling” occurs.

LEP 7.7 GEOTECHNICAL HAZARDS

(1) The objectives of this clause are to ensure that development on land susceptible to geotechnical hazards—

(a) matches the underlying geotechnical conditions of the land, and (b) is restricted on unsuitable land, and
(c) does not endanger life or property.

(2) This clause applies to land identified as “Geotechnical Hazard H1” and “Geotechnical Hazard H2” on the Geotechnical Hazard Map.

(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks—

(a) site layout, including access,
(b) the development’s design and construction methods,
(c) the amount of cut and fill that will be required for the development,
(d) waste water management, stormwater and drainage across the land,
(e) the geotechnical constraints of the site,
(f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

(4) Development consent must not be granted to development on land to which this clause applies unless—

(a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and
(b) the consent authority is satisfied that—

(i) the development is designed, sited and will be managed to avoid any geotechnical risk or significant adverse impact on the development and the land surrounding the development, or
(ii) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or
(iii) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.

We repeat the section in the Executive Summary:

We ask for further consideration on these matters:

1. In the amended plan submission, we ask for no excavation in the western 2.5m side setback zone. We ask for the amended plans to show no excavation in the 2.5m western setback zone, and for this zone to remain at existing levels with deep soil planting, with screening trees to 3m height planted 1.25m back from the boundary, at close centres.
2. The geotechnical report [7.1.3] refers to rock anchors, and we state that we will not give any approval to any rock anchors under our property, temporary or permanent. We ask for this to be added to the report.

3. The geotechnical report [7.1.4] confirms that *'Continuous vibration monitoring must be carried out during rock excavations. The ground vibration measured as peak particle velocity must not exceed 5mm/sec along the eastern and western site boundaries.'* As we are living permanently in our dwelling during the day, we ask that the Applicant reduce the *'peak particle velocity must not exceed 2mm/sec along the western site boundary'*. We ask the Applicant to have the geotechnical engineer detail in a revised geotechnical report the measures that are required to achieve that outcome. It is not that difficult to achieve, including attenuation cuts to the rock face, and ensuring the excavator never points the hammer to the west, and the use of non-hammer techniques close to our dwelling. Vibration Reports to be forwarded to us on a weekly basis. We ask for the monitoring device to be positioned on the eastern side of our dwelling. We ask for this to be added to the report.
4. The geotechnical engineer states: *'we have not had the opportunity to observe surface run-off patterns during heavy rainfall and cannot comment directly on this aspect.'* We suggest that a flood study report be commissioned, and a more comprehensive catchment of the stormwater running down the slope be considered, with an oversized trench drain with oversized stormwater pipes catching all flood/stormwater, including a 500mm upstand along the western boundary, to retain stormwater/flood water on the subject site. Substantial stormwater pits, drains, and ag pipes are required along the boundary to intercept all surface and sub surface water. The SEE states: *'The site is currently affected by substantial overland and subterranean water flow in times of rain'*. We are for a Flood Study Report.
5. There are *'Considerable Hazards'* identified by the geotechnical engineer, and great care must be exercised. We ask that JK Geotechnical have a more frequent inspection role, particularly inspecting when works to the *'Existing Retaining Walls'* are commenced, and prior to the excavation commencing to explain to the excavation contractor the method statement of how the demolition and exaction will be undertaken, inspecting at the beginning of the bulk excavation, and weekly inspections through the excavation or after every 1m of dig, with further inspections at the beginning of the Proposed Retaining Wall works, and throughout that process at a minimum of weekly inspections. We ask for this be added to the report
6. Dilapidation Reports must be completed prior to any demolition on neighbours properties. The dilapidation survey should comprise a detailed inspection of both externally and internally with all defects rigorously described and 'high res' photographed. The completed dilapidation report should be provided to the neighbour to allow then to confirm that the dilapidation report represents a fair record of actual conditions. No Occupational Certificate can be issued until rectification works are completed to our satisfaction. We ask for this to be added to the report.
7. Excavation to be carried out in dry weather, all runoff diverted from cut surfaces, no excavation in heavy or prolonger rainfall forecast, experienced excavator, and other matters. We ask for this to be added to the report.
8. The geotechnical report does not state that the structural design is to be reviewed by a geotechnical engineer prior to the Construction Certificate (Council Policy Section 6.5(g)(ii)), nor does it provide conditions for ongoing management as per Section 6.5(g)(iv). We ask for this to be added to the report.

9. The Newport Formation (Narrabeen Group 'shale'), the rock can be of poor quality, heavily defected with joints and clay seams. Until subsurface investigations prove that good quality rock is present, it should be assumed that the rock will be of poor quality and shoring should be allowed for the full depth of the excavation. We ask for this to be added to the report.
10. Drawing 203 shows a steeped retaining wall system. We are asking for no excavation within the 2.5m side setback zone, however we ask for clarity from the Geotechnical Engineer on the issues relating to this type of stepped arrangement.

Concerns have been raised by the Geotechnical Engineer.

The Owner must take extreme caution, and further investigations are required particularly along the entire boundary to ascertain the geology along the entire boundary, prior to any excavation.

We are concerned that the site may contain unseen 'floaters', that may prove to require different structural outcome, if these large 'floaters' are required to be removed. The Geotechnical Engineer has not raised this possibility but it is one obvious explanation to the varying rock strata depths. We are concerned that if 'floaters' are discovered, and that they extend across the boundary under our property, extensive damage could be caused by inappropriate excavation techniques.

We contend that a 2.5m side setback to any excavation is essential, as a minimum provision to lower the risk to our property.

We are greatly concerned that the Geotechnical report does not propose:

- any adequate recommended condition for ongoing management post completion
- conditions for detailed technical drawings review (structural engineer and geotechnical review sign off are inadequate and lack specificity)
- adequate conditions during construction.

The Report lacks specificity such as : Geotechnical engineer must inspect all footing excavations prior to placing reinforcement and concrete; all bulk excavations must be inspected by Geotechnical engineer on completion; material to be used for backfilling must be approved by the Geotechnical engineer prior to placement; hydraulic engineer to design, review and test all stormwater and also consider any impact upon neighbour; Geotechnical engineer must inspect all subsurface drains prior to backfilling ; requirement for 'as built' drawings for all buried services must be prepared.

PITTWATER DEVELOPMENT CONTROL PLAN 2014

The following matters are relevant to the development under **PDCP 2014**:

Provision	Compliance with Control	Compliance with Objectives
A4.12 Palm Beach Locality	No	No
B3.1 Landslip Hazard	No	No

B8.1 Construction & Demolition Excavation & Landfill	No	No
B8.6 Construction & Demolition Traffic Management Plan	No	No
C1.4 Solar Access	No	No
C1.5 Visual Privacy	No	No
D12 Palm Beach Locality	No	No
D12.2 Scenic Protection	No	No
D12.8 Building Envelope	No	No

A4.12 PALM BEACH LOCALITY

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the lowlands and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

The design, scale and treatment of future development within the commercial centres will reflect a 'seaside-village' character through building design, signage and landscaping, and will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy

and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Palm Beach will remain an important link to the offshore communities.

We are concerned that the proposed development does not accord with this control, particularly due to the non-compliance to:

- **D12.8 Building Envelope**

We ask Council to ensure that amended plans are submitted to resolve these matters, or failing that ask the Applicant to withdraw this DA and resubmit a new DA when these matters are fully resolved.

We are concerned that the proposed development does not accord with the Building Envelope control.

We are concerned that the overall wall height of the proposed development greatly exceeds neighbours, there is insufficient building separation, presenting an unsympathetic and jarring affect from the street.

The bulk and scale of buildings has not been minimised.

B3.1 LANDSLIP HAZARD

We are concerned on landslip caused by the proposed excavation

We ask Council to consider if there are any 'overland flow/freeboard' issues on this site.

B8.1 CONSTRUCTION & DEMOLITION EXCAVATION & LANDFILL

We are concerned on landslip caused by the proposed excavation near our boundary

B8.6 CONSTRUCTION & DEMOLITION TRAFFIC MANAGEMENT PLAN

We are concerned that no detailed TMP has been prepared at DA stage.

C1.4 SOLAR ACCESS

The DCP states:

Outcomes

Residential development is sited and designed to maximise solar access during mid-winter. (En)

A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)

Reduce usage and/dependence for artificial lighting. (En)

Controls

The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).

Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid winter.

Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.

The proposal must demonstrate that appropriate solar access is achieved through the application of the Land and Environment Court planning principle for solar access.

The proposed development takes solar access by non-compliant development, and that is totally unreasonable and unacceptable.

In **The Benevolent Society v Waverley Council [2010] NSWLEC 1082** the LEC consolidated and revised planning principle on solar access is now in the following terms:

“Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal’s design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.”

We contend that the overshadowing arises out of poor design. The design does not respect envelope controls, and must be considered 'poor design'.

The Applicant has not submitted hourly solar diagrams to fully assess the solar loss. We ask Council to obtain these diagrams.

The loss of sunlight is directly attributable to the non-compliant envelope.

The planning principle **The Benevolent Society v Waverley Council [2010] NSWLEC 1082** is used to assess overshadowing for development application. An assessment against the planning principle is provided as follows:

- *The ease with which sunlight access 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 open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

The density of the area is a highly controlled. Building Envelope controls have been vastly exceeded.

- *The amount of sunlight lost should be taken into account, as ill as the amount of sunlight retained.*

The solar diagrams are not complete, but what has been provided shows that the proposed development will overshadow the adjoining dwellings. The amount of sunlight that will be lost will only be able to be fully considered once solar elevational drawings are submitted. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

The proposed development has been designed without considering the amenity of the neighbouring properties. It is considered that a more skilful design, with a compliant envelope control, could have been adopted that would have reduced the impact on the neighbouring properties. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *To be assessed as being in sunlight, the sun should strike a vertical surface at a horizontal angle of 22.5o or more. (This is because sunlight at extremely oblique angles has little effect.) For a window, door or glass wall to be assessed as being in sunlight, half of its area should be in sunlight. For private open space to be assessed as being in sunlight, either half its area or a useable strip adjoining the living area should be in sunlight, depending on the size of the space. The amount of sunlight on private open space should be measured at ground level.*

This can only be fully assessed once elevational solar drawings at hourly intervals are submitted. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

There is no major overshadowing as a result of vegetation

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as ill as the existing development.*

The area is not currently undergoing change, the LEP and DCP controls have not altered for many years.

The assessment of the development against the planning principal results in the development not complying with the solar access controls and therefore amended plans should be requested to reduce the overshadowing impact on the adjoining neighbour. It is suggested that a more skilful design of the development, with a compliant envelope control, would result in less impact in regard to solar access. It is requested that Council seek amended plans for the development to reduce the impact of the development, and these matters are addressed elsewhere in this Written Submission.

The windows in question are our highly used rooms, and our private open space. What has been submitted gives the very clear indication that the outcome is not in accordance with controls.

C1.5 VISUAL PRIVACY

Outcomes

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)

A sense of territory and safety is provided for residents. (S)

Controls

Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

The development's design does not adequately preserve the privacy of the neighbouring properties.

There is direct overlooking into our property from the proposed development.

The zones outside of the building envelope and setback controls do not assist with achieving the privacy objectives

There are a number of windows and decks that have a direct sight line to windows and decks and private open space on our property.

We are concerned to the glazed surfaces facing our property.

We ask for these to be protected by obscured glass to 1.7m high, and privacy screens.

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, with 8.5m building height, setback, and side boundary envelope control.

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 and decks 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 living areas and circulation zones, it is considered that the living areas will result in an unacceptable privacy breach. The proposed windows facing 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 privacy screens.

Principle 6: Apart from adequate separation, the most effective way to protect privacy is by the 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 privacy screens would reduce the impact of the development.

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 light.

Response: Landscaping is proposed, but this should not be the primary privacy control

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.

As Dickson C pointed out in *Rose & Sanchez v Woollahra Municipal Council* [2016] NSWLEC 1348 (19 August 2016) at [78]:

In applying these criteria Meriton v Sydney City Council [2004] NSWLEC 313 at [45] clarifies the scope of visual privacy in the context of residential design as: the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.

That is our great concern - the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.

D12.2 SCENIC PROTECTION

Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

The proposed development does not minimise visual impact on the natural environment when viewed from the road or beach zones

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. The bulk and scale of buildings has not been minimised. Landscaping is not integrated with the building design to screen the visual impact of the built form. The buildings are not given the appearance of being secondary to landscaping and vegetation.

There is not enough building separation to the western side setback zone, and insufficient deep soil planting zone.

D12.6 SIDE & REAR BUILDING LINE

The minimum side and rear building line for built structures including pools and parking structures, other than driveways, fences and retaining walls, shall be in accordance with the following table:

Land zoned R2 Low Density Residential or E4 Environmental Living

2.5 to at least one side; 1.0 for other side

6.5 (rear) unless Foreshore Building Line

he minimum side and rear building line for built structures including pools and parking structures, other than driveways, fences and retaining walls, shall be in accordance with the following table:

Land zoned R2 Low Density Residential or E4 Environmental Living

2.5 to at least one side; 1.0 for other side

6.5 (rear)

There is not enough building separation to the western boundary.

The bulk and scale of buildings has not been minimised.

D12.8 BUILDING ENVELOPE

The DCP states:

Outcomes

To achieve the desired future character of the Locality. (S)

To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.

To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

The bulk and scale of the built form is minimised. (En, S)

Equitable preservation of views and vistas to and/or from public/private places. (S)

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties. (En, S)

Vegetation is retained and enhanced to visually reduce the built form. (En)

Controls

*Buildings are to be sited within the following envelope of **3.5m & 45 degrees** from the boundary*

We contend that the proposed development fails to maintain an appropriate envelope within the control.

The following outcomes are not achieved:

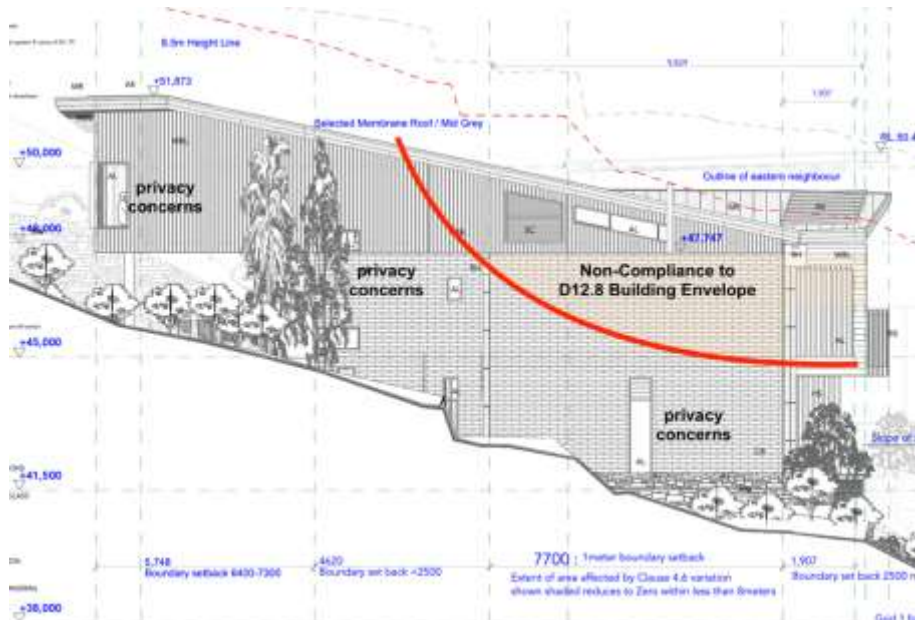
Outcomes

- To achieve the desired future character of the Locality. (S)
- To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.
- To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.
- The bulk and scale of the built form is minimised. (En, S)
- Equitable preservation of views and vistas to and/or from public/private places. (S)
- To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)
- Vegetation is retained and enhanced to visually reduce the built form. (En)



The proposed development exceeds building envelope controls facing the streetscape, and the southern boundary.

The bulk and scale of buildings has not been minimised.



We ask for the building to be setback 2.5m on this boundary, and for the proposed development to be reduced in level to achieve a better compliance to this major control.

The proposed development fails to address this control.

NSW LEC PLANNING PRINCIPLES

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

In **Veloshin, [Veloshin v Randwick Council 2007]**, NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”

Commentary:

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

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

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

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

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

Commentary:

The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal.

In **Veloshin**, [Veloshin v Randwick Council 2007], NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”

Commentary:

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

In **Project Venture Developments v Pittwater Council (2005) NSW LEC 191**, NSW LEC considered character:

“whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site’s visual catchment”

Commentary:

The non-compliant elements of the proposed development, particularly caused from the substantial non-compliance all envelope controls finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context’*

AMENDED PLANS:

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

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

We present them for Council’s consideration.

7. The proposed development to be setback an additional 1.5m from the western boundary, with Grid A having a side setback of 2.5m.
8. The proposed development to be reduced in level to achieve a better compliance to D12.8 Building Envelope control, with 3.1m storey heights:
 - Entry: RL 36.7.
 - Level 1: RL 39.8
 - Level 2: RL 42.9, with roof over at **RL 46.0**
 - Level 3: RL 46.0
 - Roof over Mezz: RL 49.16 [to match existing height at #264 Ridge Height]
Reason. Solar Access, Privacy, Visual Bulk, Building Separation, better relationship to neighbours, excessive storey heights.
9. All windows facing west to neighbours to have 1.7m high sills and obscured glazing. Reason. Privacy
10. All privacy screens shall be full height and full width of horizontal louver style construction (with a maximum spacing of 20mm), fixed and overlapping, in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing to 1.7m height. Privacy screen to Level 1 Lightwell facing west from Grid 4 to 7. Privacy screen to Level 2 Courtyard facing west from Grid 4 to 7. Reason. Privacy
11. No excavation in 2.5m side setback zone facing west, for this 2.5m zone to remain at existing levels with deep soil planting, with 8 no. local native, screening trees to 6m height planted 1.25m back from the boundary, at 3m centres, 75 litre minimum, to fully screen the

proposed development to the western boundary along 21m length of building. Reason. Excessive excavation. Landscape.

12. Reduce extent of basement to minimum carparking size, to 5.4m from Grid 2. Reduce Level 1 to Grid 5, with no under-croft. Reason. Excessive excavation.
13. Delete Flue adjacent neighbour's window. Reason. Nuisance.
14. Flood Study to be submitted. Reason. Flood control.
15. Undated Geotechnical Report. Reason. Safety.

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.

SECTION 9: CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, Council's LEP & DCP and other relevant policies.

The application must be recommended for refusal.

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 this type of development.

If the Applicant does not give Council immediate confirmation that the above matters will be rectified by resubmission of Amended Plans based upon our consideration of a more skilful design, then Council has no other option than to **REFUSE** this DA for the reasons stated in this Written Submission.

In assessing the impact of a development proposal upon a neighbouring property, what was said by Roseth SC in *Pafbum v North Sydney Council* [2005] NSWLEC 444 (16 August 2005), at [19]-[24], is extremely helpful:

19 Several judgments of this Court have dealt with the principles to be applied to the assessment of impacts on neighbouring properties. Tenacity Consulting v Warringah [2004] NSWLEC 140 dealt with the assessment of views loss; Parsonage v Ku-ring-gai Council [2004] NSWLEC 347 dealt with the assessment of overshadowing; while Meriton v Sydney City Council [2004] NSWLEC 313 and Super Studio v Waverley Council [2004] NSWLEC 91 dealt with the assessment of overlooking.

20 Five common themes run through the above principles. The first theme is that change in impact may be as important as the magnitude of impact.

21 The second theme is that in assessing an impact, one should balance the magnitude of the impact with the necessity and reasonableness of the proposal that creates it.

22 The third theme is that in assessing an impact one should take into consideration the vulnerability of the property receiving the impact.

23 The fourth theme is that the skill with which a proposal has been designed is relevant to the assessments of its impacts. Even a small impact should be avoided if a more skilful design can reduce or eliminate it.

24 The fifth theme is that an impact that arises from a proposal that fails to comply with planning controls is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.

In the case of the present development proposal:

1. the magnitude of impact upon the amenity, use and enjoyment by us of our property is certainly not insignificant, in that:
 - the visual privacy impacts from the proposed into our property and positioned within the Building Envelope control
 - the solar loss impacts from the non-compliant envelope into our property well above, and positioned within the building envelope control within the Building Envelope controls.

- the poor streetscape outcomes from a proposed building envelope that exceeds Building Envelope controls
 - an amended scheme which was more compliant with these controls would result in more reasonable amenity outcome;
2. our property is vulnerable, being directly adjacent and to the south of the subject site;
 3. the lack of attention in the design of the development proposal as regards the impacts of the proposed development on our property in terms of height, bulk, visual privacy, overshadowing is relevant to the assessments of those impacts, such that even a small impact should be avoided if a more skilful design can reduce or eliminate it;
 4. the fact that the proposal fails to comply with a number of important planning controls is much more difficult to justify than would otherwise be the case with a complying proposal; and
 5. the proposal involves non-compliance with a number of principal planning control and this is an indicator of overdevelopment of the site.

In summary, we have, as Roseth SC pointed out in Pafbum, a legitimate expectation that the development to take place on the subject property *'will comply with the planning regime'* in the present circumstances.

In addition, the close proximity of the proposed development to our property and the overall bulk of the proposed development will create an unacceptable privacy impact, as respect to the use and enjoyment of our land.

The proposed development requires significant modification so as to render it acceptable and consistent with the current planning controls.

The outcome is a building that causes poor amenity outcomes and other amenity loss concerns due to non-compliance to multiple residential outcomes and controls.

The development does not satisfy the objectives of the standard and will present poor residential amenity consequences.

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

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

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

development is appropriate for approval.

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

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

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

The processes and assessments have not been satisfactorily addressed.

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

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

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

We expect that on such a sensitive site, the Applicant should be charged by Council to deliver a totally compliant scheme to LEP and DCP outcomes and controls.

There is no excuse that neighbours amenity must suffer due to non-compliance to the controls.

We contend that the Development Application is not in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, LEP and DCP and other relevant policies.

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, LEP & DCP and other relevant policies.

We contend that the Development Application should be refused on the following grounds.

Reasons for Refusal

8. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the aims of the plan of the Local Environmental Plan.
9. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the R2 Zone of the Local Environmental Plan.
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of:

- A4.12 Palm Beach Locality
 - C1.4 Solar Access
 - C1.5 Visual Privacy
 - D12 Palm Beach Locality
 - D12.1 Character as viewed from a public place
 - D12.8 Building Envelope
 - D12.14 Scenic Protection Category One Areas of the Development Control Plan.
11. The proposal is contrary to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that the proposal has a detrimental impact on both the natural and built environments in the locality of the development.
 12. The development is not suitable for the site pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
 13. The proposal is not in the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* because it results in a development that breaches development standards and controls. The proposed development would result in a development that is of excessive bulk and scale which results in adverse impact on the streetscape, adjoining properties and the broader locality.

We will welcome the opportunity to further expand on any of the issues once Amended Plans are submitted, and once templates and height poles are erected based upon the reductions identified within this Submission.

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

Yours faithfully,

Mr & Mrs Geoff & Ann Godden
264 Whale Beach Road
Whale Beach
NSW 2107

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 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 least above in main body of Submission*]

All windows facing neighbours to have obscured glazing

All privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.

Pre-commencement Dilapidation Report

Compliance with standards [demolition]

Compliance with standards

Boundary Identification Survey

Structural Adequacy & Excavation Work

Geotechnical Report Recommendations to be incorporated into designs and structural plans

Engineering Assessment

Engineers Certification of Plans, including all retaining walls

Tanking of Basement Level

Installation & Maintenance of Sediment & Erosion Control

Demolition Traffic Management Plan

Construction Traffic Management Plan

Waste Management Plan

Waste & Recycling Requirements

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

Allocation of parking spaces

On-site Stormwater Detention Details

Stormwater Disposal
Sydney Water
Water Quality Management

External finishes to Roof
Colours & Materials

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

Mechanical plant location
AC Condenser Units

Design Impact on processes and public/private amenity
No excavation within 2.5m of boundary
Protection of Neighbours assets

Pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the boundary

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.

No further roof plant area or installation than shown on the DA drawings to be allowed to be added by Modification DA in the future under any circumstances.

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
Contamination management

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 at 2.5mm/sec with a halt at 2.0mm/sec
No excavation within 2.5m of boundary

Weekly inspection reports by the Geotechnical Engineer are submitted to the Private Certifier and to Council and neighbours, on the strict adherence to the Geotechnical Engineers requirements, and to the conditions of consent.

Waste Management during development
Waste/Recycling Requirements

Tree Protection –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

Validation for Remediation

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:

Certification of solid fuel burning heaters

Required Tree Planting
Required Planting

Acoustic treatment of pool filter
Noise Nuisance from plant

Lighting Nuisance

Swimming pool requirements
Garbage and Recycling Facilities
House number Building Number
Waste Management Confirmation
Waste and Recycling Facilities Certificate of Compliance
Waste/Recycling Compliance Documentation
Positive Covenant for Waste Services
Authorisation of legal documentation required for waste services
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 Ill-being of persons living within the complex and other surrounding premises.

Noise and vibrations. Noise from all plant 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 Weed

Maintain fauna access and landscaping provisions
Works to cease if heritage item found
Dead or injured wildlife
Noise
Noise Nuisance from plant
Swimming pool filter, pump and AC units [noise]
Outdoor lighting
Lighting Nuisance
Plant room and equipment for operational conditions - Noise and vibrations
Loading and Unloading vehicle