

S U B M I S S I O N : B U C K L E
a written submission by way of further objection to DA 2019/1522

Mr & Mrs Bill & Victoria Buckle
29 Beach Road
Collaroy
NSW 2097

22 June 2020

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

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

Dear Chief Executive Officer,

Re: 41-43 Beach Road Collaroy NSW 2097
DA 2019/1522

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission #3: Buckle

This document is a submission by way of further objection to DA 2019/1522 lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

This Written Submission is in response to the submission of **Amended Plans** dated 28 May 2020.

The subject site is over 1544sqm, and there is no reason, unique or otherwise why a fully compliant solution cannot be designed on the site.

Executive Summary

This Written Submission addresses our ongoing objection to the above development.

Our main amenity concerns are:

- Visual bulk and scale created by the non-compliant side boundary envelope
- Overshadowing and solar access loss
- Privacy
- Excessive excavation

Our amenity losses are directly attributable to non-compliance of the main LEP and DCP controls:

- **Side Boundary Envelope:** Grossly Exceeds Envelope from southern boundary, with the majority of the southern wing outside of envelope control
- **Height of Buildings:** Control 8.5m v 9.44m [19.0 roof – 9.56 survey] **>11%** non-compliance at SE corner
- **Wall Height:** Control 7.2m v 8.54m [18.1 fcl- 9.56 survey] **>18%** non-compliance at SE corner

The overall combined effect caused by the non-compliant Height of Building, Wall Height, Building Envelope and other non-compliance lead to our amenity loss.

The proposed development presents significant non-compliance to multiple controls and the residential amenity outcomes we therefore consider are unreasonable.

Unless the Applicant submits further Amended Plans, as identified within Appendix A, we strongly request that Council **REFUSE** this DA for the reasons stated in this Written Submission and previous submissions.

DCP B3 Side Boundary Envelope

We are very concerned that the ongoing incorrect information regarding the existing ground levels along the southern boundary at levels shown on the DA's Registered Surveyors Survey **at RL 4.24 and RL 5.64** has not been corrected, with the **DCP B3 Side Boundary Envelope** being patently incorrect. The drawings that are incorrect are all the drawings describing the building envelope on the southern boundary:

- DA 200 rev A
- DA 210 rev A
- DA 300 rev B
- DA 310 rev B
- DA 330 rev B

There are multiple incorrect issues including, but not limited to, the following:

1. Incorrect positioning of southern boundary, on all DA sectional drawings
2. Incorrect existing ground levels at the southern boundary on all DA sectional drawings
3. Incorrect positioning of the 4m vertical **DCP B3 Side Boundary Envelope** lines on all DA sectional drawings, from grossly incorrect levels
4. Incorrect positioning of the 45-degree **DCP B3 Side Boundary Envelope** lines on all DA sectional drawings, grossly inaccurate, incorrect
5. Incorrect Maximum Building Height lines on all DA sectional drawings

We have been informed that our neighbour has commissioned Norton Survey Partners to undertake a survey of the southern boundary of the subject site.

Norton Survey Partners' Survey confirms that the principle of the LTS Survey is indeed correct.

We understand that Norton Survey Partners advised that the levels at the common boundary are:

Point M @ Southern Boundary: RL 4.60

Point J @ Southern Boundary: RL 4.85

The LTS Survey shows levels either side of these positions at **RL 4.24 and RL 5.64**. Extrapolating between the LTS survey levels, gives similar RL levels as the Norton survey.

We now use the Norton levels to identify the compliance to the DCP B3 Side Boundary Envelope control:

Point M @ Southern Boundary: RL 4.60

Point J @ Southern Boundary: RL 4.85

We refer to the DA's drawing DA 106 rev B, showing Point M. The survey level is a position between survey mark RL 4.24 and RL 5.64 on the LTS Survey. Norton Partners have surveyed this level to be **RL 4.60**. Allowing for a 4m projection from the **RL 4.60 level**, and allowing for a 45-degree envelope, the required setback from the southern boundary for Point M is **7.90m**. [16.5 - 4.00 - 4.60] The proposed development does not comply.

We refer to the DA's drawing DA 106 rev B, showing Point J. The survey level is a position between survey mark RL 4.24 and RL 5.64 on the LTS Survey. Norton Partners have surveyed this level to be **RL 4.85**. Allowing for a 4m projection from the **RL 4.85**, and allowing for a 45-degree envelope, the required setback from the southern boundary for Point J is **10.15m**. [19.0 - 4.0 - 4.85] The proposed development does not comply.

The proposed development by not complying with **DCP B3 Side Boundary Envelope** controls, also fails every objective.

WLEP 4.3 Height of Buildings

The scale of the development is excessive, and exceeds controls, and causes unreasonable amenity loss.

The proposed building heights simply refuse to accord with the LEP 8.5m control, and progresses south presenting a maximum building height of 9.44m, representing a non-compliance of over 11%.

No Clause 4.6 has been submitted, contrary to controls.

The proposed development does not comply with **WLEP 4.3 Height of Buildings** controls, and it also fails every objective.

Coupled with the substantial non-compliance with DCP B3 Side Boundary Envelope, the overall outcome is a proposed development that is jarring and unsympathetic in a highly sensitive beach side context, having regard to the built form characteristics of development within the site's visual catchment.

The buildings are clearly not compatible with the height and scale of surrounding and nearby development, as is witnessed by the DA's montage.

The amended proposed development has not minimised visual impact, disruption of views, loss of privacy and loss of solar access, with disregard to both DCP B3 Side Boundary Envelope and WLEP 4.3 Height of Buildings controls.

Of significant concern, the proposed development has not minimised the adverse impact of development on the scenic quality of Warringah's coastal environment. The massive scale facing the beach front, rising over **14.6m** [19.0 - 4.38] above our boundary zone, and the public domain is unacceptable.

WLEP 4.6 Exceptions to Development Standards

Development Consent should not be granted as no Clause 4.6 has been submitted addressing the non-compliant Height of Buildings, contrary to LEP controls.

Even if a Clause 4.6 was submitted it could not address the failure to meet the objectives of the WLEP 4.3 Height of Buildings control.

DCP B1 Wall Heights

The proposed development fails to meet the Objectives and Requirements of this Clause

C7 Excavation and Landfill

We have concerns regarding the proposed extensive excavation. The concern is heightened by the apparent recent subsidence on the neighbouring property at 45 Beach Road to the north of the subject site. Proposing excavation into a zone already showing signs of stress is highly unreasonable.

We request that Council obtain a revised Geotechnical Report from the DA's Geotechnical Engineer and update the report to assess the acceptability of such a massive excavation.

We contend that the DA fails the major objectives and requirements of this control.

We are greatly concerned that the massive excavation will have an adverse effect upon the natural environment of adjoining and adjacent properties, including ours.

We are concerned on the excessive vibration risks.

We are concerned to the future health of the Norfolk Island Pines to the east

We are greatly concerned that the massive excavation will create airborne pollution, by the excessive excavation of 2250cub m of rock, and we are concerned about fine dust being emitted for extended periods whilst this massive basement is excavated, blowing not only over neighbours, but those using the public domain by the oceanfront.

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

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

The proposal includes extensive excavation of the site up to 4.5m deep, for car parking, sub floor storage, surfboard storage, cellar, 17m long storage zones, extensive driveways, plant rooms, lifts, stairs, and other uses. The extent of the excavation is vastly excessive: it exceeds 500sqm!

This is contrary to DCP controls.

The design gives the impression that the 500sqm basement will be a massive car park or some other use, and this is not in accordance with LEP & DCP controls.

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

The extensive vibration caused by this massive basement cutting through dense sandstone over 500sqm of site will cause massive disturbance, vibration risks and residential amenity disturbance, and will have a high risk to the integrity of the physical environment.

We ask the Council to condition any approval with a new double garage to be positioned under the northern wing, with a compliant front setback, all to Council controls.

Main Amenity Loss Considerations

Height and Bulk.

It is quite clear to all that the development is visually dominant by virtue of its height and bulk.

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”

The DA's montage tells the story, and surely must be an example of an "offensive, jarring and unsympathetic" built form.

We are greatly concerned at the jarring bulk and scale outcome of this proposed non-compliant envelope.



What has not been shown in this montage is the existing 3.4m high sandstone wall on the subject site, nor the 1.8m wall being proposed on top of this existing wall, creating a wall height close to the boundary of over 5m. This montage does not accurately represent the scale of these structures, for Council and neighbours to assess properly.

The design of the development does not minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

The requirements under this clause clearly have not been met, particularly to the southern boundary.

The building bulk is unreasonable, as the development on the sloping land [58% grade] facing our property, has not been contained within LEP and DCP envelope controls.

Overshadowing and Solar Access

The solar access into our property is highly compromised, and the loss is as a result of the non-compliance to **DCP B3 Side Boundary Envelope** controls. The loss of morning sunshine onto our house by this unreasonable envelope is unacceptable. The loss extends to our private open space lawn zones throughout the day.

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

“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?”

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 DA can avoid the impact by repositioning the southern wing to be maintained within the **DCP B3 Side Boundary Envelope**. A more sensitive design to accord with these controls would achieve the same amenity whilst reducing the impact. The DA has not assessed the difference between a compliant B3 Side Boundary Envelope and the non-compliant envelope in this set of amended plans.

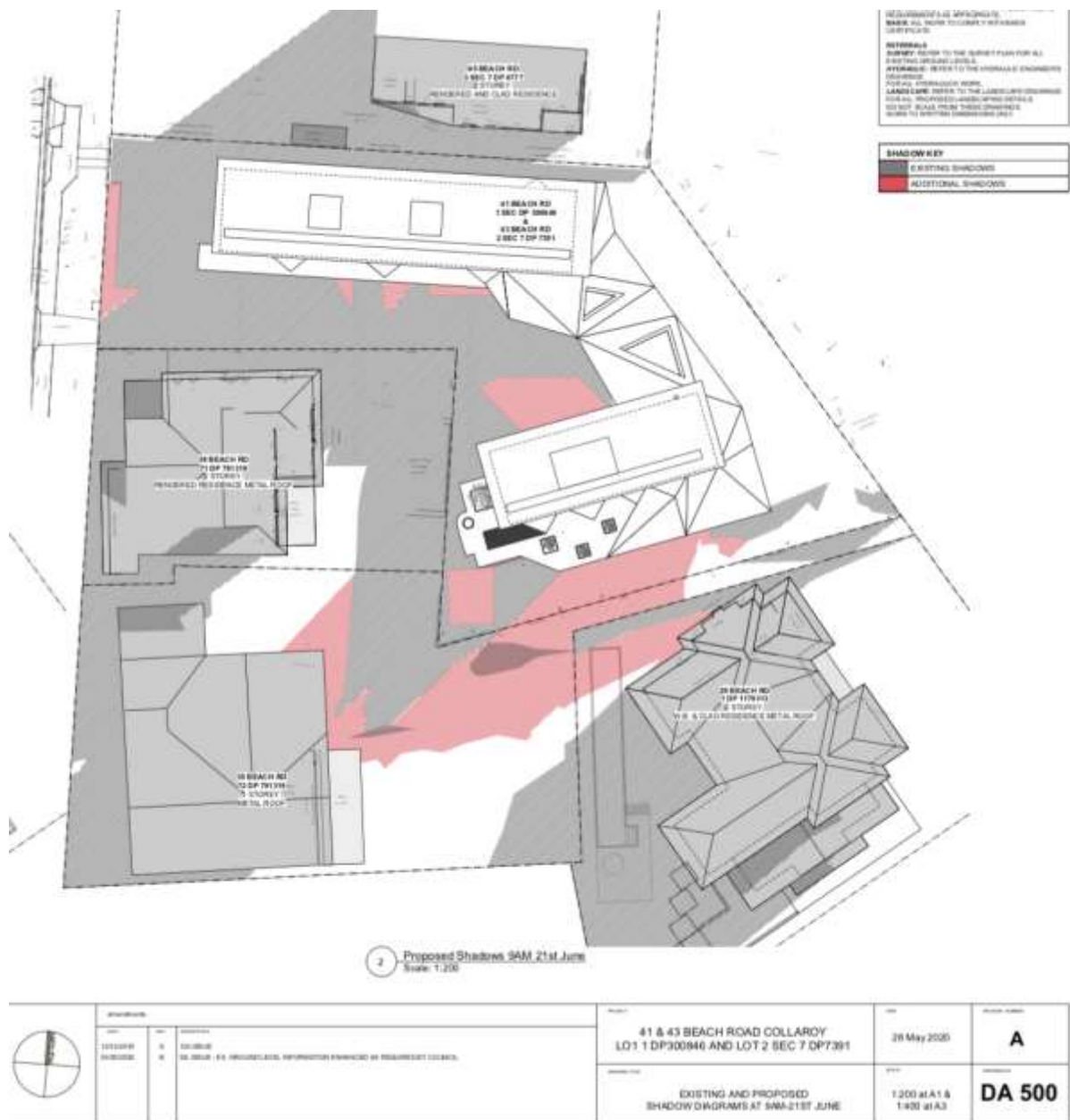
We contend that the DA fails the major objectives and requirements of this control

The proposed development does not ensure that reasonable access to sunlight is maintained. Non-compliant development is causing considerable solar loss.

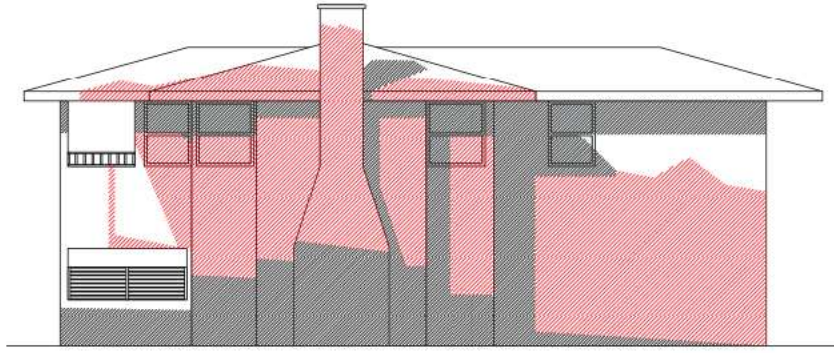
The proposed development does not encourage any innovative design solutions to improve the urban environment and public open space.

The proposed development does not promote passive solar design and the use of solar energy. In fact, it does the reverse, by taking solar access to our existing solar panels.

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

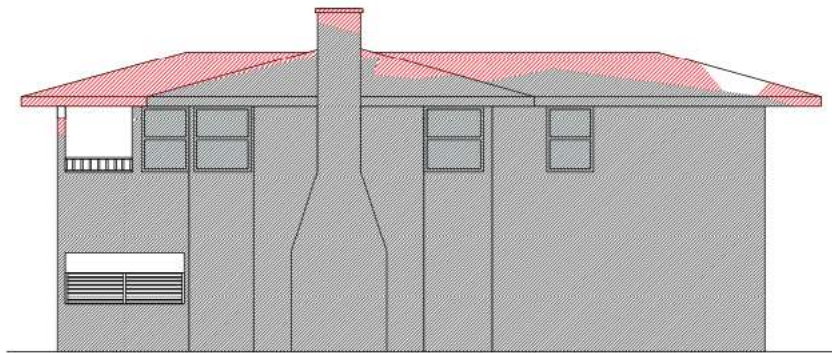


DA 500 A: Unreasonable overshadowing as a direct result of non-compliant built envelope



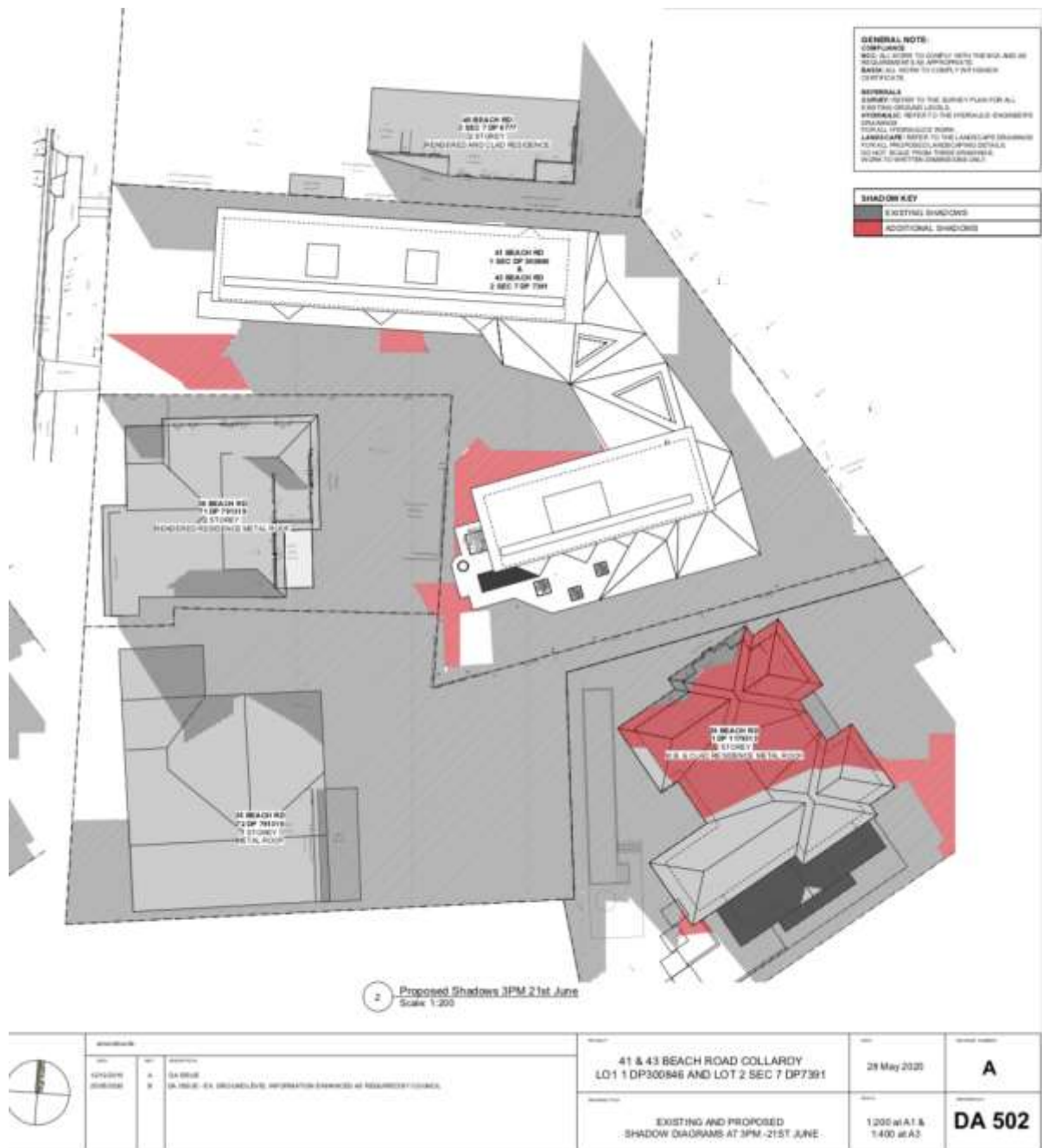
02 PROPOSED ELEVATION SHADOWS - 29 BEACH RD. NORTHERN FACADE
12 PM - 21st June

Noon 21 June: The extent of the overshadowing at Noon Winter on our north facing windows and solar panel roof is totally unreasonable, the loss caused by a non-compliant envelope



03 PROPOSED ELEVATION SHADOWS - 29 BEACH RD. NORTHERN FACADE
3 PM - 21st June

The extent of the overshadowing at 3pm Winter on our roof is totally unreasonable, the loss caused by a non-compliant envelope



DA 502 A: The extent of the overshadowing at 3pm Winter on our roof is totally unreasonable, the loss caused by a non-compliant envelope

Privacy

Our privacy is compromised by the proximity of the glazed openings to our private open space and ocean entry zones.

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

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

All windows facing our property must have **1.7m high sills**, with **obscured glass** to ensure direct overlooking does not occur. The proposed development at all levels is highly elevated above our private open space and windows, and therefore we request that Council should impose strong conditions to overcome this unreasonable amenity problem.

We contend that the DA fails the major objectives and requirements of this control.

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

The proposed building layout has not been designed to optimise privacy for occupants of the development and occupants of adjoining properties. We are concerned about the Pool Concourse opening to the south, the Playroom overlooking our property and the windows facing our property at all levels without privacy screens.

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

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

The proposed development windows provide direct or close views into the windows of our property. We are concerned on all southern windows overlooking our property.

The design of the development gives rise to unreasonable privacy outcomes by elevated decks and windows elevated within non-compliant envelope beyond controls giving direct line of sight into our neighbours' properties. The design does not ensure the siting and design of buildings to provide a high level of visual and acoustic privacy for occupants and neighbours facing our property.

The Elevated 'Green Roof' facing the southern boundary would create an elevated deck at RL 16 that would look down at our private open space and windows. We ask that this roof be non-accessible.

We are also concerned to the proposed sliding doors at FL 12.0 that open from the pool deck zone, immediately towards our private open space and windows. We ask for these sliding doors to be replaced with a non-opening solid acoustic wall.

We are concerned that the Playroom at basement level has windows looking directly at our property. These south facing windows require higher sills.

There are other glazed windows facing our property to the south and west at all levels that all require privacy screens at all levels facing south and south-west towards our property and beach entry zones.

Conclusion

Unless the Applicant submits further Amended Plans, as identified within Appendix A, we strongly request that Council **REFUSE** this DA for the reasons stated in this Written Submission and previous Submissions.

Yours faithfully,

Mr & Mrs Bill & Victoria Buckle
29 Beach Road
Collaroy
NSW 2097

APPENDIX A: Further Submission of Amended Plans

Amended Plans will need to resolve the following:

Southern Wing

1. All built elements of the Ground Floor & Basement: **7.90m** side setback from southern boundary to accord with WDCP B3, and position Point M so that the maximum building height is within control
2. All built elements of the First Floor: **10.15m** side setback from southern boundary to accord with WDCP B3, and position Point J so that the maximum building height is within control. Ensure that the saw tooth plan details are setback 10.15m.
3. Minimum 6.0m rear setback to eastern boundary to accord with WDCP B9
4. New Landscape Plan in southern 7.9m side setback zone, to provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building and to enhance privacy between buildings, all in accordance with WDCP D1, and to avoid overshadowing and view loss to all neighbouring dwellings
5. No excavation in southern 7.9m side setback zone
6. No additional wall added to existing sandstone wall that is setback c.400mm from southern boundary

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

Once these amendments are made and new height poles erected, against the above six items, Council and neighbours can reassess the acceptability of this amended envelope.

Submit 3D model with correct boundary levels to show strict compliance with WDCP B3.

Dimensional set out of the proposed development needs to occur from the SE and SW corners of the subject site, with a clear dimensional set out of all floorplates and roof configurations.

The DA will need to provide photomontages from our property and from the public domain to the east of our property. Provide solar access diagrams at hourly intervals of all neighbours' windows. Any loss from non-compliant envelope will be unacceptable.

Privacy

- Raise window sills to 1.7m height above internal FFLs to all windows facing our boundary at all levels. W 1.22 to W 1.27 incl at First Floor; W G.04 to 08 incl, WG.14 at Ground Floor; WB 02, WB 03 and DB 02 at Lower Ground Floor
- Obscured glass or privacy screens to all windows facing our boundary
- The Elevated 'Green Roof' to the south-west to be made non-accessible, with all windows W 1.22 to W 1.27 to have window sills to 1.7m height above internal FFLs to all windows facing our boundary.
- The proposed sliding doors at FL 12.0 that open from the pool deck zone, be deleted, this wall to be replaced with a solid, full height, acoustic wall.

- Main access to Playroom to be from the east, with 1.7m sill height windows facing neighbours to southern boundary. No excavation in 7.5m southern side setback zone.
- All south facing windows to have full height privacy screens at all levels facing south.

Reason: Privacy

Landscaping

New Landscape Plan in southern 7.9m side setback zone, to provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and trees of a size and density to mitigate the height, bulk and scale of the building and to enhance privacy between buildings, in accordance with WDCP D1, and to avoid overshadowing and view loss to all neighbouring dwellings

Landscape Architect to provide 3D model to identify envelope of landscaping to southern side setback zone, to protect views and solar access whilst mitigating the built form and providing better privacy. Landscape Architect to locate trees and shrubs to better fill the maximum envelope potential. Maximise the landscape content, with no neighbour amenity loss. Submit 3D Model in Amended Plans.

Reason: Landscape

Structural Adequacy, Excavation Work, Retaining Wall

New Geotechnical Report to consider new 2020 subsidence to neighbor to the north. All neighbours surrounding the proposed massive excavation may experience similar problems.

Existing Sandstone Block Retaining Wall setback from the southern boundary be rebuilt to ensure structural adequacy.

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls, including the sandstone wall along the southern boundary, are to be structurally adequate for the intended purpose, shall be certified as compliant with all relevant Australian Standards and Codes, designed and certified by a Structural Engineer.

Reason: Public and Private Safety

Sub-Soil Seepage

Submit plans demonstrating that all sub-soil seepage drainage, particularly along the southern boundary, is discharged via a suitable silt arrester pit in accordance with relevant Australian Standards.

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

Property Boundary Levels

Maintain the property boundary levels. Insist that no approval is granted for any change to existing property alignment levels to accommodate the development. Reason: To maintain the existing profile of the boundary.

Works in close proximity to the allotment boundary

Maintain existing ground levels within 1m to the allotment boundary. That no approval be granted for any change to existing ground levels and all works within 1m to the allotment boundary to accommodate the development. No fence to be added to top of the existing sandstone wall to the south.

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

Vibration

Reduce Peak particle velocity to be less than **2.5mm/sec** at the common boundary, with warning alarms on site to stop work if thresholds are exceeded at **2.0mm/sec**. The level at **2.0mm/sec** can be normally easily achieved by making attenuation cuts into the upper siltstone strata and sandstone, prior to bulk excavation, and always ensuring the attenuation cuts are 0.5m lower than the excavated surfaces at all times. Other precise methods are to be specified by the Geotechnical Engineer. Details to include method statement of excavation works, monitoring of boundary levels, halt signals, notifications on site and to PCA, and attenuation methods to reduce vibration risks.

Reason: To reduce risk of vibration damage to property and nuisance and stress to us and to our neighbours.

Plant

AC Plant & Pool Plant not to be positioned along boundary to neighbour's property, and to be positioned in a dedicated acoustic rated plant room. Noise from combined operation of all mechanical plant and equipment must not generate noise levels that exceed the ambient background noise by more than 5dB(A) when measured in accordance with the *NSW Industrial Noise Policy* at the receiving boundary of residential and other noise sensitive land uses.

Reason: Acoustic Privacy

Lighting

No external lighting facing our property or internal lighting causing lighting nuisance to our property.

Reason: Lighting Nuisance