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**From:** karen Buckingham  
**Sent:** 18/02/2022 11:37:40 AM  
**To:** Council Northernbeaches Mailbox  
**Cc:** andre karemacher  
**Subject:** FAO: Megan Surtees - Objection letter re: DA2021/2146 - 35 Kangaroo Street, Manly  
**Attachments:** Objection letter - DA20212146 - 35 Kangaroo St Manly.pdf;

Dear Megan,

Please find attached an objection letter prepared for Andre and Elizabeth Karemacher of 33 Kangaroo Street, Manly regarding DA2021/2146 for development proposed at 35 Kangaroo Street, Manly.

Please could you confirm receipt by return e-mail.

Kind regards,

Karen Buckingham  
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18 February 2022

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

By e-mail: [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

FAO: Megan Surtees

Dear Megan

**Submission with regard to Development Application DA2021/2146  
Alterations and Additions to a dwelling house –  
35 Kangaroo Street, Manly, NSW**

I write regarding the above Development Application DA2021/2146 (subject DA) to make a submission on behalf of Andre and Elizabeth Karemacher of 33 Kangaroo Street, Manly (my clients).

This submission is prepared further to the assessment of the plans, reports and Statement of Environmental Effects (SEE) submitted as part of the subject DA against the relevant EPIs and Planning Controls and with the benefit of a site visit to assess the impact of the proposed development on my clients.

The subject DA seeks consent for alterations and additions to the existing dwelling house, including two new balconies at the front / eastern elevation and rear / western elevation of 35 Kangaroo Street, Manly (subject site). No. 35 Kangaroo Street is located on the western side of Kangaroo Street. My client's property is located directly to the south of the subject site.

I have reviewed submitted DA plans and reports and considered the impacts on my clients at 33 Kangaroo Street, to arise by virtue of the proposed development against the relevant planning controls and in accordance with Section 4.15 of the Environmental Planning & Assessment Act

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(the Act). Additional information is required to fully assess the proposed development as detailed in this submission.

In summary the additional information required includes:

- Floor Space Ratio calculations in accordance with the Clause 4.4 of the Manly LEP
- Amended shadow diagrams to include the window and door locations of no. 33 Kangaroo Street. For reference, the principal front living area is located off the front terrace serving no. 35 Kangaroo Street.
- Height poles should be erected to fully demonstrate the physical location and overall height of the proposed front / eastern balcony.
- Council records regarding DA40/2000.

A summary of the impacts and non-compliance of the subject DA as determined from the information submitted is set out below.

### **Summary of submission**

- Proposed development is a non-compliant development with Manly LEP Clause 4.4 – Floor Space Ratio (potentially – further information required) and Manly DCP Controls 3.1.1 – Streetscape; 3.4.1 Sunlight Access & Overshadowing; 3.4.2 – Visual and acoustic privacy; 4.1.3 Floor Space Ratio (potentially – further information required); 4.1.4 Setbacks – Front and Side Setbacks and 4.1.5 Open Space and Landscaping.
- Significant loss of visual privacy by virtue of the proposed balconies, sited in close proximity, at first floor level directly overlooking private open space serving no. 33 Kangaroo Street, contrary to DCP Controls 3.4.2 and 4.1.4
- Loss of acoustic privacy by virtue of the proximity of the proposed balconies that would result in unacceptable noise levels brought about by everyday living, contrary to DCP Control 3.4.2
- Unreasonable impact on the sunlight access and overshadowing to adjoining open space and the principal living rooms of no. 33 Kangaroo Street contrary to DCP Control 3.4.1. It should be noted that the impact would be exacerbated further if privacy screens are required to address the significant privacy impacts.

- Overbearing impact of the extended balcony to the front/eastern elevation and new balcony to the rear/western elevation due to non-compliance with DCP Control 4.1.4 and potentially LEP Cl. 4.4 and DCP Control 4.1.3.
- Impact on amenity of neighbouring occupiers – cumulative impact of the above.
- Impact on the visual amenity and character of the area contrary to DCP control 3.1.1 and 4.1.4
- Impact on precedent already set and planning conditions to be overridden by virtue of the proposed development.

On the information submitted, it is recommended that the subject DA be refused for the reasons summarised above and provided in greater detail in this submission.

Should additional information or amended plans be submitted, my client requests the opportunity to provide further comments.

### **Detail of submission**

#### **Site details and character of the area**

The subject site is located on the western side of Kangaroo Street, Manly. The boundary identification survey shows the site area as 251 sqm. The southern boundary of the subject site abutting my client's property at 33 Kangaroo Street is approximately 43.10 metres. The front boundary facing Kangaroo Road is 5.645 metres and rear boundary facing Augusta Lane is 6.02 metres. The subject site is a narrow lot, regular in size as shown in figure 1. The gradient of the subject site is relatively flat but situated upon higher ground than Kangaroo Street, and accessible via stone and concrete stairs.

Surrounding development is predominantly made up of single and two storey detached dwellings which generally complement the low density and well landscaped environment in the R1 – General Residential zone.

An important aspect of the surrounding environment is the low density residential dwellings, uniform front street setbacks to Kangaroo Street and views towards the Pittwater Road Heritage Conservation Area and Manly Beach.

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**Figure 1 – Aerial photo of location of subject site outlined in red and proximity to my client's property**



Source: Northern Beaches Council Planning Maps – Aerial view – own annotation added

### Relevant Planning History

**DA230/2011** – Alterations and Additions to an existing dwelling including balcony extension and vergola over the balcony – approved with conditional consent on 27/10/2011

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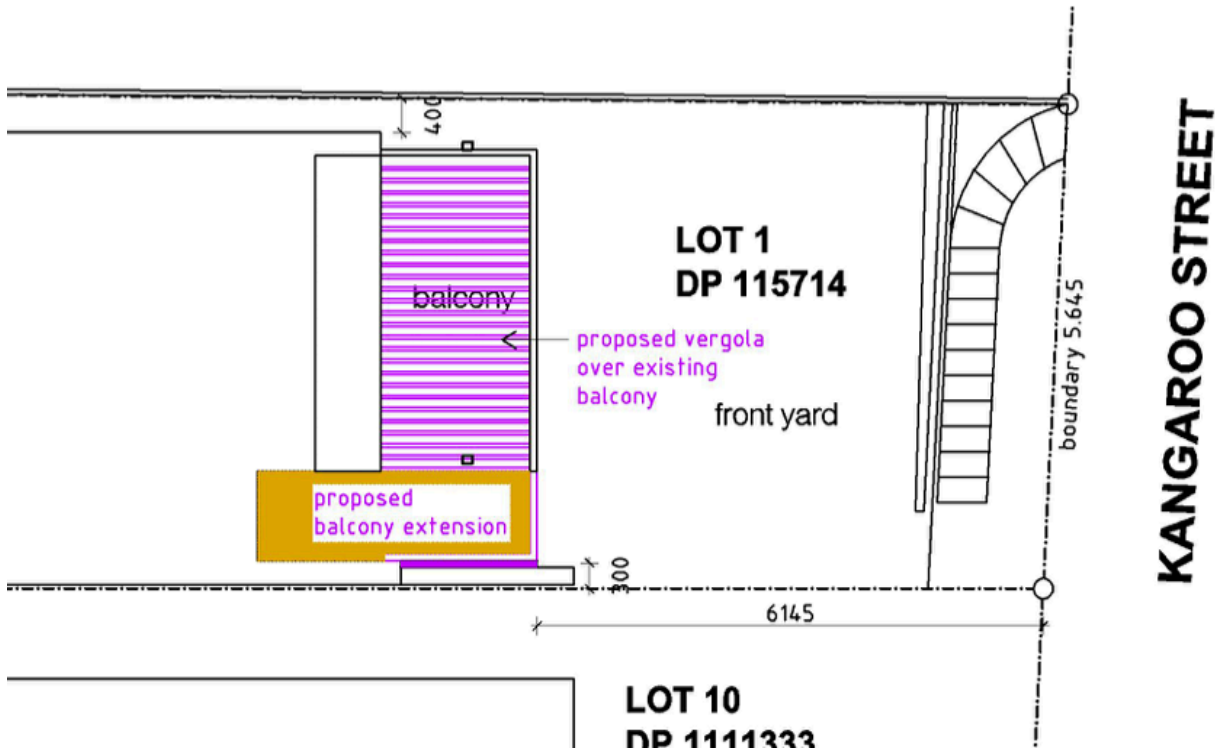
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**Comment:** The above DA sought to extend the front/eastern elevation balcony, 300mm off the southern boundary, as shown in figure 2 and 4.

**Figure 2 – DA230/2011 – Extract from Architectural Plans – previously proposed balcony extension**



Source: Northern Beaches Council DA tracker

DA230/2011 was approved subject to conditions, including a condition to retain a 1 metre side setback to the southern boundary as opposed to the 300mm proposed. The extracted condition and supporting assessment report extract is shown in figure 3.

A comparison of the 300mm setback proposed and refused (via condition) under DA230/2011 with the proposed setback of 680mm under the subject DA is shown in figure 4. It is requested that Council check the scaled dimensions proposed as the setbacks of 300mm and 680mm as shown in figure 4, appear to look the same. Notwithstanding the fact, that 680mm is significantly under the 1 metre required side setback established under DA230/2011.

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### Figure 3 – DA230/2011 – Condition and assessment report extract regarding proposed balcony extension

#### Extract of Condition ANS01

That Development Application No. 230/11 for alterations and additions to an existing dwelling including balcony extension and vergola over the balcony at 35 kangaroo Street, Manly be **Approved** subject to the following conditions:-

#### **ANS01**

**The balcony extension is to maintain a 1 metre setback to the Southern boundary. Plans are to be amended accordingly and submitted to Council/ Accredited Certifier prior to the issue of a Construction Certificate.**

**Reason: To maintain a suitable setback to the side boundary.**

#### Extract from Assessment Report

##### **Comment:**

##### *Southern Side setback*

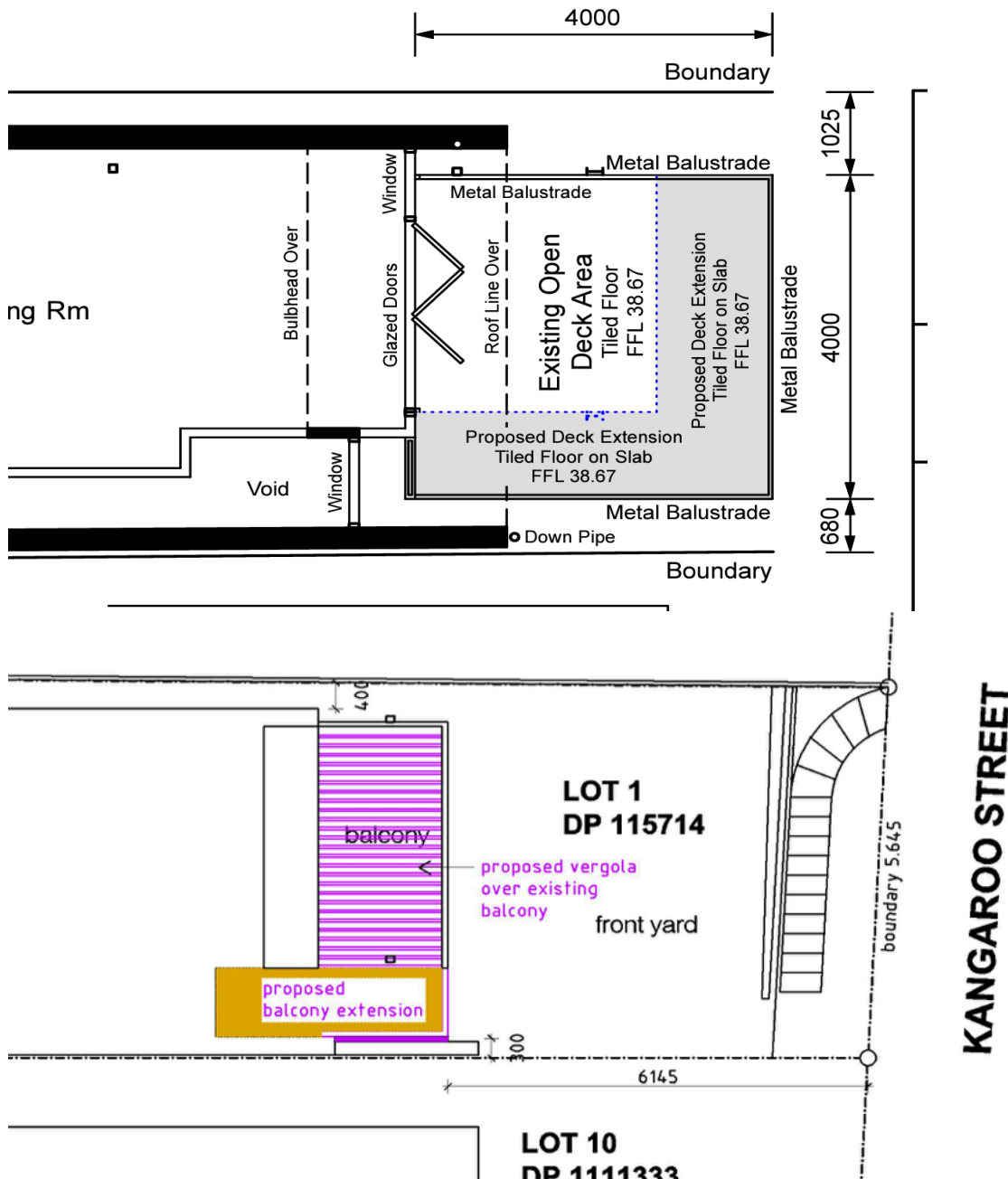
The setback of the balcony extension to the Southern boundary is 300mm to the boundary line. The setback of the balcony extension is not considered to be consistent with Council's objectives for setbacks in accordance with the Manly DCP for the Residential Zone and as such a condition of consent has been included to ensure setback of 1 metre is maintained to the Southern Boundary.

##### *Privacy*

The proposed first floor balcony extension in close proximity to the southern boundary is considered not to be required and will have undesirable impact upon the bulk of the building and the extension into the side setback of the first floor deck is not supported as it will detract from the privacy of the adjoining neighbour. A condition of consent has been included to reflect this.

Source: Northern Beaches Council DA tracker

**Figure 4 – Comparison between the proposed extension to the existing balcony under the subject DA and the proposed balcony extension conditioned to be removed and set back 1 metre off the northern side boundary under DA230/2011.**



Source: Extracted Architectural Plans and Council's DA tracker

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**DA40/2000** – Demolition / Erect new 2 storey dwellings – Appeal upheld (approved at appeal)

**Comment:** No records are available to view under DA40/2000 on Council's DA tracker. However, my clients have been informed that a condition of the DA consent was that the rear flat roof area at the rear/western elevation was required to be a non-trafficable space to ensure the privacy of neighbouring occupiers. On reviewing related submissions, my client is not alone in the view that the flat roof area is conditioned to be non-trafficable to retain privacy to rear gardens, principal outdoor living spaces and living areas.

It is requested that Council obtain the DA records relating to DA40/2000 and the associated appeal hearing findings.

### Proposed development

Development Application DA2021/2146 seeks consent for alterations and additions to the existing dwelling house to include two new balconies at first floor level at 35 Kangaroo Street which includes the following:

- Construction of a new balcony at first floor level on the rear / western elevation on the flat roof area (potential conditioned non-trafficable under DA40/2000)
- Extension to existing balcony at first floor level on the front / eastern elevation to 4 x 4 metres (16 sqm).
- The existing balcony is 7.83 sqm. The proposed extended balcony would more than double the existing balcony by 8.17 sqm. Set 4.78 metres off the front boundary and 680mm off the southern side boundary contrary to condition ANS01 of DA230/11.
- Replacement of existing glazed louvred windows with new glazed aluminium door on western elevation at first floor level
- Installation of metal framed balustrade to enclose rear/western elevation balcony at first floor level
- Installation of metal framed and wire balustrade to front/eastern elevation balcony

## **Impacts and non-compliance of proposed development**

### **Relevant legislation and Planning Controls**

In preparing this submission, I have carefully considered the following legislation and planning controls:

*Environmental Planning & Assessment Act 1979 (the Act)*  
*Environmental Planning and Assessment Regulation 2000 (the Regulations)*  
*State Environmental Planning Policy (BASIX) 2004*  
*Manly Local Environmental Plan 2013 (LEP)*  
*Manly Development Control Plan (DCP)*

### **Local Environmental Plan (LEP)**

**Land use zone:** The subject site is zoned R1 General Residential under the LEP.

### **Clause 4.4 - Floor Space Ratio**

- (1) *The objectives of this clause are as follows—*
- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
  - (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
  - (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
  - (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
  - (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).*

**Comment:** The building on the subject site is not to exceed a floor space ratio (FSR) of 0.6:1 in accordance with the Manly LEP Floor Space Ratio Map. FSR calculations have not been submitted as part of the subject DA. It is requested that Council require FSR calculation to assess the proposed development against the Manly LEP, Clause. 4.4 (Cl 4.4).

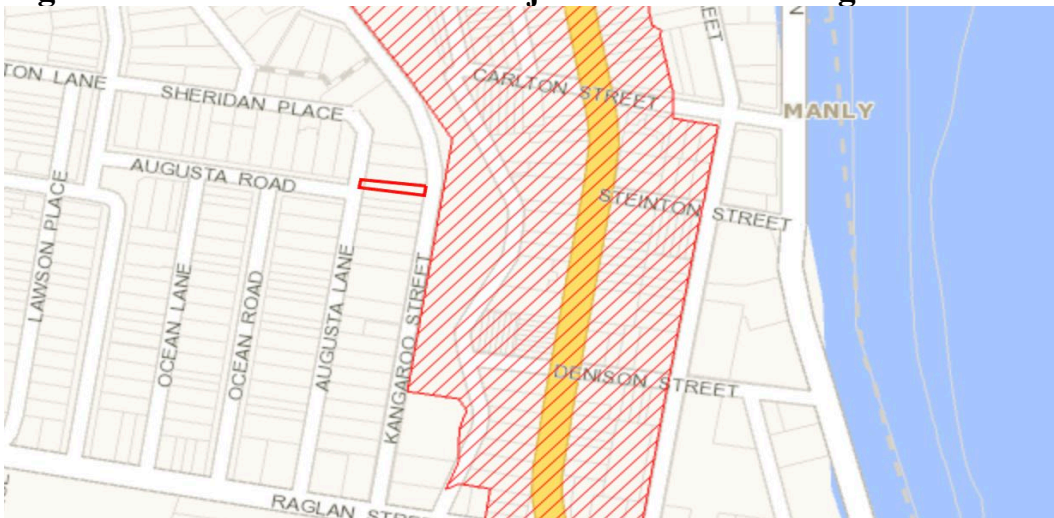
Given the existing scale of development and floor space area on the subject site, it would appear likely that the FSR has already been exceeded and any further increase in floor area would deem the proposal contrary to the development standards of Cl.4.4.

Should the proposed development fail to meet the development standards of Cl. 4.4, a Cl. 4.6 Variation Request will need to be submitted to Council as part of the subject DA and assessed accordingly.

### Clause 5.10 – Heritage Conservation

The subject site is located adjacent to the Pittwater Road Heritage Conservation Area (HCA), as shown in figure 5. It is noted that the Heritage Referral response does not include any objection to the proposed development. However, this submission cites concerns regarding the bulk and scale of the proposed balcony on the front/eastern elevation facing the HCA. A Heritage Management document has not been submitted as part of the subject DA.

**Figure 5 – Location of the site adjacent to the Heritage Conservation Area**



Source: Northern Beaches Council – Planning Maps

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## Development Control Plan (DCP) - Non-compliant development and amenity impacts

### DCP Control 3.1.1 – Streetscape (Residential areas)

DCP control 3.1.1.1, Complementary Design and Visual improvement sets requirements and controls to ensure that development in the streetscape does not detract from the surrounding environment.

Control 3.1.1.1 (ii) seeks to, *ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land; ... and (iv), avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like.*

**Comment:** The proposed extended balcony to the front/eastern elevation is proposed to be an elevated structure on extended columns that, by virtue of the extended area, would appear as a large, incongruous structure when viewed from the streetscape and dominate the adjoining property at no. 33 Kangaroo Street. It is acknowledged that the columns to support the existing balcony are in situ, as existing. However, it is the extended bulk, scale and set backs of the proposed (extended) balcony which would give rise to the harm.

Further to this, the proposed extended balcony will significantly encroach into the street front setback, as discussed under DCP Control 4.1.4.1, by 1.3 metres resulting in a reduced setback of only 4.78 metres as opposed to the 6 metre general requirements. The encroachment in to the front setback would be contrary to the established front set back in the immediate vicinity of the site, as shown in photo 2.

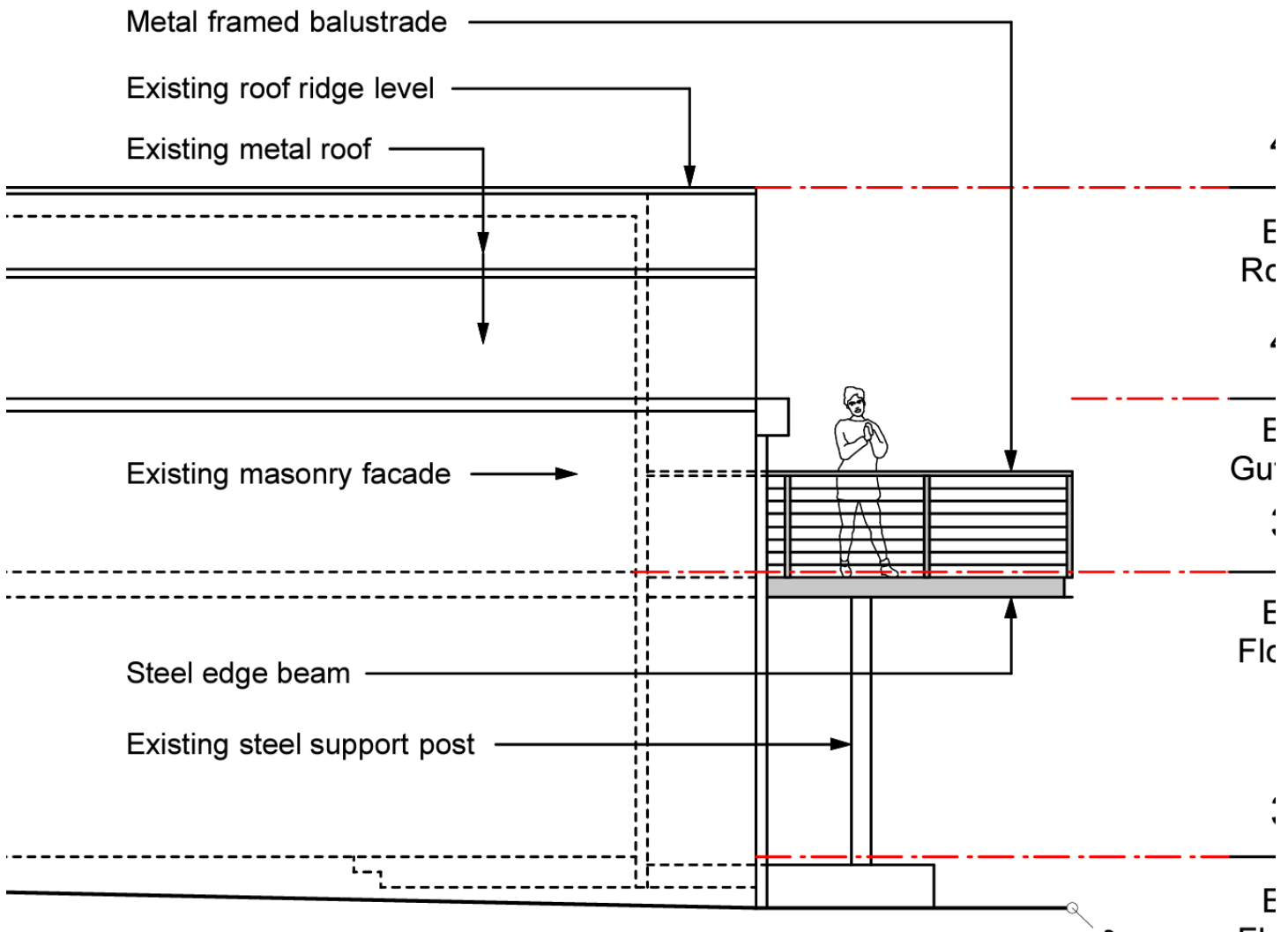
**Photo 2 – Established front set back fronting Kangaroo Street of 6 metres**



Source: Site photo showing existing balcony at No. 35 as viewed from the veranda serving No. 33 Kangaroo Street.



**Figure 6 – Extract from Architectural plans showing proposed extended balcony**



Source: Extract from Architectural Plans

### DCP Control 3.4.1 – Sunlight Access and Overshadowing

**Comment:** The proposed development at the subject site is situated to the north of my client's property. The proposed extended balcony to the front/ eastern elevation would create further detrimental impact on sunlight access and overshadowing on my client's property.

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Shadow diagrams have been submitted as part of the subject DA but do not include the window and door locations of No. 33 with regard to the assessment against DCP control 3.4.1.2.

However, it is clear from the shadow diagrams submitted that the impact on the principal adjoining open space will result in a further overshadowing to more than one-third of the existing sunlight available to the open space area contrary to DCP Control 3.4.1.

It is also evident that the impact of overshadowing will extend to result in a loss of sunlight to the living room located to the front of my client's property and the additional shadow diagrams requested should include this detail.

Further to this, as detailed below, should privacy screens be attached to either or both of the front or rear balconies proposed, the degree of overshadowing would be substantially greater still.

### **DCP Control 3.4.2 – Privacy and Security**

*Relevant DCP objectives to satisfy in relation to this part include the following:*

*Objective 1) To minimise loss of privacy to adjacent and nearby development by:*

- appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;*
- mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

*Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.*

*Objective 3) To encourage awareness of neighbourhood security.*

### 3.4.2.2 *Balconies and Terraces*

- a) *Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.*
- b) *Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.*

**Comment:** DCP Control 3.4.2 seeks to address loss of privacy and consider options to mitigate against the harm. As shown in the stated control, privacy screens are a recognised design approach to address privacy impacts. However, as set out in objective 2, privacy should be increased (or at least maintained) without compromising access to light.

A condition or amendments to erect privacy screens to the proposed balconies on both the front and rear elevations, would have a further detrimental impact on sunlight and create a more oppressive outlook from my client's property.

As shown in figure 2 of this submission, condition ANS01 of DA230/11 required that the existing balcony on the front/eastern elevation be set back 1 metre off the southern boundary to protect the privacy of the neighbouring occupiers at No. 33 Kangaroo Street.

It is also highlighted that the flat roofed area where the proposed rear balcony is proposed was also said to be conditioned to be a non-trafficable area to protect the privacy of neighbouring occupiers.

This DA seeks to override those conditions, with a side set back of 680mm, extending out a further 1.3 metres along the southern boundary resulting in a total 4 metres and a rear balcony over an area which is considered to be a non-trafficable space.

The loss of privacy to arise from both balconies would be unreasonably harmful and enable direct views at a close proximity in to my client's front principal terrace, living rooms and rear private garden, including terrace area.

It is the physical built form and proposed siting of the development which creates the harm.

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Given the stated reasons above, the harm cannot be mitigated by amendments or condition and the subject DA should be refused given that it is contrary to DCP Control 3.4.2, as well as the other stated controls.

**Photo 3 - principal outdoor living space (terrace area) in the private rear garden of my client's property which would be overlooked by the proposed balcony to the rear/western elevation.**



Source: Site photo



**Photo 4 – View from the living room of no. 33 Kangaroo Street towards the existing front balcony. The proposed development seeks to extend the existing balcony to within 680mm of the southern boundary and project out 4 metres**



Source: Site photo

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**DCP Control 3.4.2.3 – Acoustic Privacy**

**Comment:** The proposed development includes proposed balconies in close proximity to my client's principal living areas. The noise arising from the proposed siting of the new dwelling would result in unacceptable levels of noise and have an impact on my client's acoustic privacy contrary to DCP Control 3.4.2.3.

**DCP Control 4.1.3 – Floor Space Ratio**

**Comment:** The subject site is 251 sqm and the minimum lot size as per the LEP Lot Size Map is 250 sqm. The subject site does not fall below the size of the minimum lot size and is therefore not exempt from compliance with the FSR development standards of the LEP or requirements of the DCP for Undersized Lots.

In considering whether an exception to FSR for Open Balconies should apply, it is noted that the objectives of this control is *to maintain open balconies which contribute to the articulation of building facades without adding to the building bulk and provide an amenity of open space for occupants.*

As discussed, the open balconies proposed do not contribute to the articulation of the building façade and create significant bulk which would encroach into the front and side setbacks. Given that the proposed balconies do not meet the objectives for exception to FSR for Open Balconies, the stated exemption should not apply. FSR calculation are requested.

**DCP Control 4.1.4 – Setbacks and Building Separation****4.1.4.1 Street Front setbacks**

**Comment:** As previously discussed, the front setback of the prevailing building line or 6 metres (where a front building line is not established) is required in accordance with the stated DCP Control. The relevant street front setback to the subject DA is as established which accords with the 6 metre setback.

The proposed development looks to extend the first floor balcony at the front/ eastern elevation by 1.3 metres to encroach into the street front setback resulting in a 4.78 metre setback.

It is noted that, as per requirement 4.1.4.1 d) projections into the front setback may be accepted for unenclosed balconies. However, the requirement clearly states that unenclosed balconies may project into front setbacks only where there is no adverse impact on the streetscape or adjoining properties.

As repeated in this submission, the proposed development would have a significantly adverse impact on the streetscape by virtue of the bulk, scale and siting and an unreasonable harm impact on neighbouring amenity, including significant loss of privacy and overshadowing impacts.

The proposed extension to the front/eastern elevation balcony should not be permitted given the clear non-compliance with the stated DCP control.

#### **4.1.4.2 Side setbacks**

Comment: In accordance with requirement 4.1.4.2, the side setback for the subject site should be 2.10 metres which equates to one third of the adjacent external wall of the proposed building.

However, condition ANS01 of DA230/11 set the precedent that a 1 metre side set back to the southern boundary should be maintained for the existing balcony to protect the privacy of the neighbouring occupiers to the south at No. 33 Kangaroo Street. A balcony extending a further 1.3 metres should be set back to 2.10 metres.

The proposed development seeks to encroach into the established side set back by extending the existing front balcony to 680mm off the southern boundary.

It is acknowledged that 4.1.4.2 b) states that projections into the side setback may be accepted for unenclosed balconies but as already determined under DA230/11, such projections would result in an unacceptable adverse impact on the adjoining property, including loss of privacy from a balcony.

**DCP Control 4.1.5 – Open Space and Landscaping**

Comment: The subject site is located with Open Space area OS4 which requires 60% of the lot to be Total Open Space and 40% of the Total Open Space to be Landscaped Area.

The proposed development results in 47% Total Open Space and 33.5% Landscaped Area. It is requested that Council check these calculations as my clients have calculated the landscaped area to be 28.9%. Nevertheless, in numerical terms, the proposed development does not comply with DCP Control 4.1.5.

In addition to this, 4.1.5 c) iii) states that total open space above ground may be refused where privacy is an issue and iv) roof terraces are not permitted unless designed for privacy.

The balcony proposed to the rear is tantamount to a roof terrace and for the reasons set out in this submission, has not been designed for privacy. The resulting impact of the rear roof terrace / balcony is the introduction of a loss of privacy which doesn't currently exist.

**DCP Control 3.7 – Stormwater Management**

The proposed extended balcony to the front /eastern elevation would result in a result ground area for onsite infiltration and result in an increase in stormwater run-off. The existing access to my client's property and the subject site from Kangaroo Street is via stone and concrete steps. The existing access already experiences stormwater run-off which makes the surface unsafe for passage in rain events and prone to slip hazards. The proposed development is likely to increase the existing stormwater run-off and it is requested that Council's Stormwater Engineers consider this impact.

**Photo 5 – Stormwater impacts on existing access**

Source: Photo supplied

**Impact on amenity of neighbouring occupiers**

The proposed development would clearly have a materially significant impact on neighbouring amenity. The extended balcony to the front/eastern elevation would exacerbate and unreasonably increase the existing privacy issues by virtue of the design and siting of the proposed extension.

The proposed balcony to the rear would form a roof terrace which would introduce a significant impact on privacy into the rear garden of No. 33 Kangaroo Street which is currently enjoyed a principal private open space.

The Development Application fails to comply with the DCP controls referred to in this submission. The impact on neighbouring amenity by virtue of the bulk, scale and siting of the proposed development and non-compliance would create an unacceptable overbearing impact, loss of privacy and overshadowing impact.

It is recommended that the proposed development be refused given the objections raised.

Amendments and conditions are not considered sufficient in this case to mitigate against the harm discussed and have the potential to increase the impacts raised.

## Recommendations

- **Request additional information be submitted as follows:**
  - Floor Space Ratio calculations in accordance with the Clause 4.4 of the Manly LEP
  - Shadow diagrams to include the window and door locations of no. 33 Kangaroo Street
  - Height poles to be erected
  - Council records regarding DA40/2000.

It is requested that Council provide my client with the opportunity to comment on any additional information submitted.

- It is requested that a site visit be conducted from my client's property to consider the privacy issues discussed.
- **Refuse the proposed development given the objections raised in this submission.**
- Although it is expressly stated that, in this case, it is not considered that amendments or conditions will assist in mitigating the harm to arise from the proposed development, should Council receive amended plans, it is requested that my client be given the opportunity to provide an additional submission.

## Conclusion

This submission sets out my client's concerns regarding the proposed development under Development Application DA2021/2146.



The proposed development would have a materially detrimental impact on the amenity of neighbouring occupiers (my clients) and amenity of the streetscape.

This Development Application is a non-compliant development with Manly LEP Clause 4.4 – Floor Space Ratio (potentially – further information required) and Manly DCP Controls 3.1.1 – Streetscape; 3.4.1 Sunlight Access & Overshadowing; 3.4.2 – Visual and acoustic privacy; 4.1.3 Floor Space Ratio (potentially – further information required); 4.1.4 Setbacks – Front and Side Setbacks and 4.1.5 Open Space and Landscaping.

It is respectfully requested that the proposed development be refused to address the concerns outlined in this submission. Amendments or conditions are not considered sufficient in this case to mitigate the unreasonable harm expressed.

However, should additional and or amended plans be submitted to address concerns expressed, my clients request that they be given an opportunity to comment accordingly.

I thank you in advance for your consideration of the concerns raised in this submission.

Kind regards,

*Karen Buckingham on behalf of Andre and Elizabeth Karemacher of 33 Kangaroo Street,  
Manly*

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**Planning Progress**

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