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31/10/2022

MS Sez Cardis  
55 Cutler Road RD  
Clontarf NSW 2093  
[REDACTED]

**RE: DA2022/1675 - 57 Cutler Road CLONTARF NSW 2093**

Objection to Development Application - DA2022/1675 proposed for  
57 Cutler Road, Clontarf NSW 2093

Draft submission re: DA2022/1675 for 59 Cutler Road Clontarf

We ask that Council refuse to approve the Proposed development (DA2022/1675) for alterations and additions to 57 Cutler Rd, Clontarf. The proposed development is noncompliant with both LEP and DCP controls, requires extensive modifications to comply with applicable development standards, and has unacceptable impacts on the amenity of neighbouring residences on Cutler Rd, principally no 55 Cutler Rd.

The proposed development does not accord with planning controls that reasonably constrain development to accord with desired planning outcomes of the Clontarf locality statement for a R2 Low-Density Residential area and is not in the public interest.

The reasons for our strong objections to the nature and scope of Proposed development are as follows:

Noncompliance with LEP and DCP controls:

- Exceeds No. of Storeys control with 3 instead of 2 max. storeys.
- Exceeds Building Height in Control of 8.5m.
- Exceeds Height of Wall control of 7.8 m
- Exceeds FSR control: proposed 0.52:1 instead of 0.4:1 exceeding control by approx.70 sqm or 30%!
- Noncompliant with Rear Setback control: proposed 3.5m-7.5m instead of 8m
- Noncompliant with Side Setback control: proposed 1.22m - 2.77m from East boundary, 0.75m from West boundary

Inconsistent with Planning Objectives of LEP and DCP:

The claims made in the SEE and the Clause 4.6 Variation Request that the non-compliant elements of the proposed design are consistent with planning objectives are incorrect, and inconsistent with an impartial consideration of these objectives.

GFA/FSR (4.1.3.1), Regarding GFA/FSR particularly Objective 2) "To minimise disruption to views to adjacent and nearby development" has been conspicuously ignored. Modifying the

FSR to comply with an imaginary lot of (750 sqm) to upscale design and proportionally increase floor area for an actual lot of (577 sqm), is a novel deception!

Building Height, (4.1.3) With regard to Building Height, (4.1.3) the proposal does not (c ii) "minimise disruption to views from nearby residential development to public spaces, including the harbour and foreshore" (claimed compliance with other objectives may be arguable but cannot justify contravention of development standards).

Objective 1) To ensure the scale of development does not obscure important landscape features. Objective 2) To minimise disruption to views to adjacent and nearby development. Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

Side Setbacks (4.1.4.2): Noncompliance with provisions for Side Setbacks require variations that are not "acceptable on merit" considering the proximity of the walls to the East boundary that constrain views from no 55, diminish availability of sun and daylight, and by overlooking, compromise the privacy of bedrooms of no 55. The roof setback from the East boundary is only 1.2m. and even less, 0.75m. from the West boundary!

Rear Setbacks (4.1.4.4): Noncompliance with Rear Setback provisions is not "acceptable on merit" considering the impact on views from no 55. Please note this impact is exacerbated by the 4 m. extension of the roof and privacy screen beyond the rear wall (7.5 m) for the rear first-floor terrace, which further diminishes the setback and dramatically obstructs the view from no 55. The roof setback is only 3.5m from the rear boundary! i.e., Privacy is secured for the terrace at the expense of neighbours' harbour-views.

#### Clause 4.6 Variation Request:

The Clause 4.6 variation request does not provide legitimate grounds for granting variations or exemptions from applicable development standards and fails to demonstrate the reasonableness of this request. In particular, the request for variation of development standards fails to adequately justify compound impact of multiple breaches of these controls.

#### Scenic Context of proposed Additions:

The Property is located within a Scenic Foreshore Protection Area and shares views of Middle harbour. On a sloping site descending to the foreshore, planning height controls ensure equitable residential amenity based on principles of view sharing. Consistent with the R2 Low Density Residential Zone, FSR Controls and provisions for open space and landscape are designed to constrain density of development and further ensure environmental protection of foreshore landscape and streetscapes.

#### Proposed 3rd Storey Addition:

In this proposal, an additional non-compliant storey with terrace is stacked on the existing two-storey building in a manner that strategically blocks views of Middle Harbour from within the living areas and decks of its neighbour, no.55 Cutler Rd.

#### Contrary to NSW Planning Law precedents:

In terms of NSW Planning Law, the conclusions to be drawn from an examination of *Tenacity Consulting v Warringah* [2004] NSWLEC 140 are quite contrary to the opinion of the planning Consultant outlined in the Clause 4.6 Variation request. The claims that "A view sharing outcome is achieved notwithstanding the non-compliant building height breaching elements proposed" is demonstrably false. So is the claim that "The proposal achieves the objective of

minimising view impact as demonstrated by the view sharing outcome achieved."

Contrary to Principles of View-sharing:

According to the principles of view-sharing outlined by a decision of the NSWLEC (140), the following assessment criteria should apply. (See no.1- 4 below) When considered these clearly demonstrate the unreasonable scope and unacceptable consequences of the proposed design.

25\* The notion of view sharing is invoked when a property enjoys existing views, and a proposed development would share that view by taking some of it away for its own enjoyment. ("Taking it, all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable. To decide whether view sharing is reasonable, I have adopted a four- step assessment")

#### 1. Assessment of Views:

26 The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g., of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g., a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

#### 2. Orientation of Dwellings towards West facing side-views

Please note that the obstruction of views by the non-compliant building element is not confined to one part of the development, but that this additional 3rd storey extends along the entire North/South axis of the building.

In this case, the expectation by residents of no 55 to retain the "side-view" is entirely reasonable, considering the sloping terrain and the existing side orientation of buildings towards views of Middle Harbour. This proposal for no 57 to orient the proposed additional storey with a west facing deck towards such water-views, to obstruct and claim this side-view from its neighbour is therefore entirely unreasonable. (See 27)

The remaining South-West and West facing views are especially important for no 55 following the obstruction of former South facing rear-views to the Heads and Balmoral Beach, by the redevelopment of two dwellings nos. 2/2A Castle Rock Crescent in 2021, and the loss of significant Eucalyptus bush landscape in 2009.

3. Extent of impact (28\*): The extent of impact on views from no 55 is "severe". From the living spaces on the upper level, views are severely diminished, obscuring the interface of land and water of the harbour views. From the living areas on the ground floor, the loss of views is best described as "devastating". This likewise applies to the private open spaces of the decks.

The impact is especially severe considering the confinement of Ms Cardis, an invalid, to the ground floor which is used as her principal living space.

\*28 The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe, or

devastating.

#### 4. Unreasonable view-impact of non-complying additions (29\*):

\*29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises because of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable."

Given the severity of impact on views resulting from non-compliance with planning controls, the proposal can only be assessed as unreasonable. The request for variation of development standards should accordingly be refused.

("With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.")

Views from the public domain and the public interest:

The compromise of views from the public domain in the reserve on the other side of Cutler Road, maybe unfortunate, but are not as egregious as deprivation of neighbouring views. While the public domain is clearly best served by ensuring compliance with controls, there is no public interest served in granting requested variations.

Significant loss of Privacy:

The proposed DA significantly impacts the privacy of homeowners at both no. 55 and no. 59 Cutler Road. (See Side Setbacks)

Solar Access and Overshadowing Impacts

The loss of afternoon sun to the ground floor after 1pm is particularly significant in conjunction with the loss of views. The expanded building volume which annexes the pathway up the East boundary further constrains the space for daylight to reach the ground-floor interiors from west-facing windows, i.e., noncompliant with Objective 3) ("To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development").

Open Space & Landscape Plans:

Plans and calculation of Open Area and Landscaped Area are inaccurate and misleading: the entry pathway is walled in, covered, and built over by the upper-level addition in a way that should exclude consideration as an open or landscaped area. i.e., Open Space is Less than 60% of total area, if entrance corridor behind walls colonnade excluded.

Merit of Design:

We note that no serious effort has been made to design alterations and additions to comply with development standards. It is therefore difficult to justify demand for variation of such standards in terms of claimed design "merit" or "excellence". The investment in scale and cost of proposed additions is displayed in a design that does not accommodate but appropriates the shared amenity of neighbours including views of the harbour foreshore. Since alternative design options have been excluded or ignored, serving a client at the expense of neighbours results in meritless design.

Conclusion:

This submission has demonstrated the compound consequences of the contravention of planning controls in the egregious obstruction of views to no 55 by the proposed additions to no 57 Cutler Road, Clontarf.

As residents and ratepayers, we believe it is the responsibility of Council to uphold its development standards, as specified in the 2013 LEP and DCP, to follow the precedent established by NSWLEC 140 (Tenacity Consulting v Warringah [2004]) and therefore to refuse the Clause 4.6 Variation request and refuse to approve DA2022/1675.