
From: [REDACTED]
Sent: 31/08/2023 11:41:48 AM
To: Council Northernbeaches Mailbox
Cc: 'John Fortescue'
Subject: TRIMMED: Submission (objection) DA2022/1164 FAO Mr Alex Keller
Attachments: Building Submission DA2022_1164.docx; Objection to development at 34-35 South Steyne Manly.pdf;

Mr Keller

Please see two submissions pertaining to DA2022/1164 34-35 South Steyne Manly. The first being my personal submission and the second being a technical, expert, opinion from town planner 'The Planning Collective'.

Address is:
Mrs L Fortescue
U632/25 Wentworth Street
Manly NSW 2095

My contact number is [REDACTED]
[REDACTED]

Regards

Building Submission DA2022/1164 34-35 South Steyne Manly

Mr J Fortescue (for Mrs L Fortescue)

U632/25 Wentworth Street Manly NSW 2095

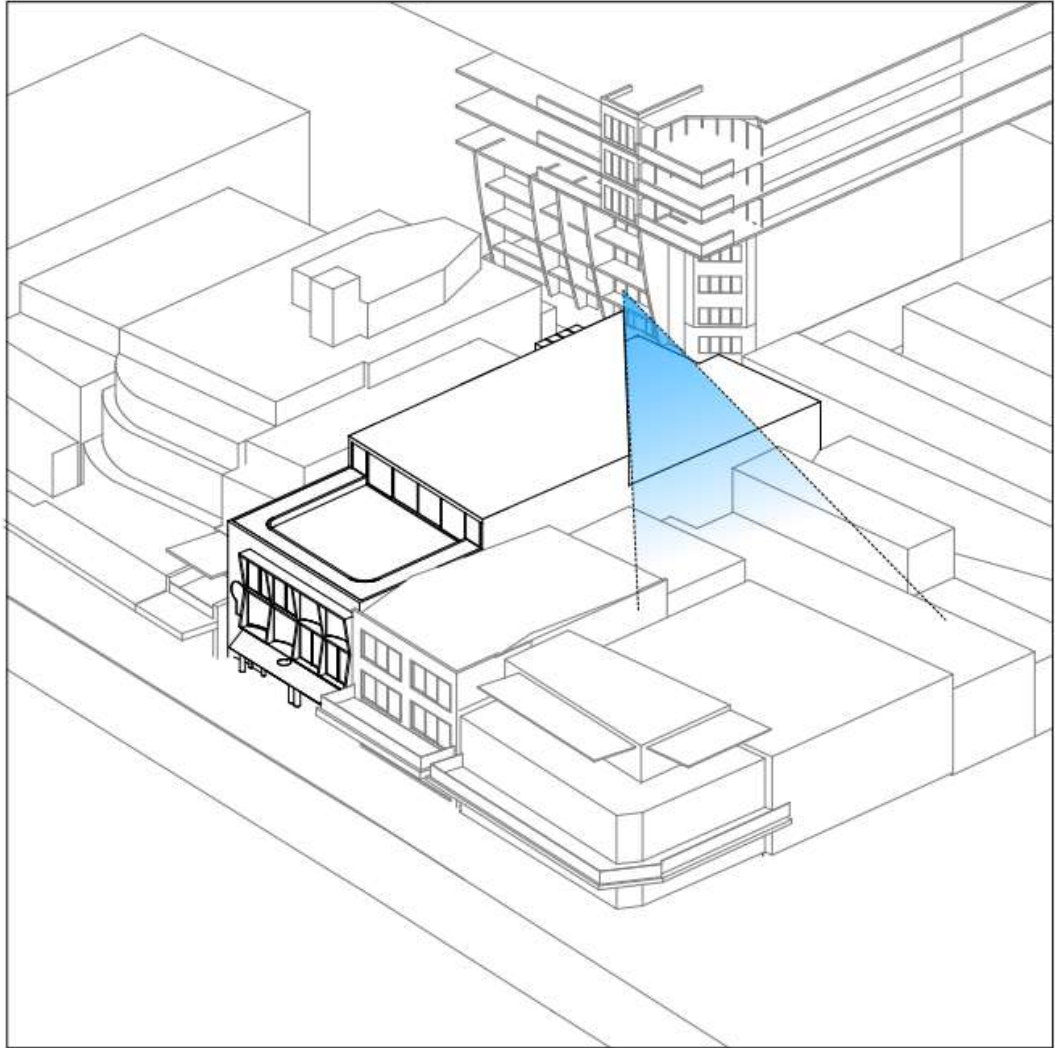
1. I live in Peninsula Apartments, level 6 east facing sea view apartment. Apartment 632.
2. My primary objection to this development is height. The proposal (DA2022/1164) exceeds LEP maximum building height.
3. From the building plans submitted for DA2022/1164 the height from ground (Rialto Lane) to the building top including lift over run and plant room screening = 14.200m
4. My flat's height from ground (defined by Rialto Lane) is approx. 13.000m
5. Therefore, the calculated height obstruction, on a horizontal plain at my flat, is at least 1.2m - note my comments on the 'cutaway' below. As a result, I lose a significant view.
6. LEP is a statutory instrument and legally binding. It is not an arbitrary discussion document. It stipulates maximum height of buildings at 10.0m.
7. The plans submitted clearly identify the building as over height – 14.2m.
8. For every person, business, or resident it is fundamental that standards are upheld. The LEP is a NSW statutory instrument.
9. The delegated 'policeman' of these standards for us in Manly is the Northern Beaches council. In this case the council says (by de facto of delegated authority) there is a height restriction of 10 m. So, we the community of Northern Beaches trust council to uphold and not make exceptions to the principle.
10. We trusted the council in 2005 and they let us down with the construction of the building located at 31, 32, 33 South Steyne (DA468/00). This was the subject of the subject of the Ombudsman's report dated Sept 2010. The Ombudsman (after a year-long investigation) was very critical of Manly Council and the council's approach to upholding standards. The Ombudsman focused on the DA process.
11. NSW Ombudsman's report 'Manly Council' 3 September 2010. This report focuses on failings by council. In particular matters arising under the heading 'Development Application Processing' and section 6.5 and 6.6 in the report. Are these issues occurring again?
12. The then Mayor of Manly sent us an apology but it was too late for the damage was done. All because standards were not upheld. This is a fundamental principle of our society.
13. Is this happening again? If it's a 10m limit, then why are the plans covered by DA2022/1164 being considered for a 14.2m building. This is a 40% overrun, not a minor or trivial overrun, and beyond that which is provisioned. The council cannot consider this compliant or in the spirit of the regulation and therefore council must deny approval of DA2022/1164.
14. Focusing on this DA. Referencing point 3 above the plans contained within the DA impact view (my view) significantly. See Appendix 1 for pictures.
15. The plans/calculations are not entirely accurate from my perspective. One third of my view is to the North East to the North – a direct view east to the north. In that view I have open views to the ocean, Long Reef, Dee Why, Freshwater Queenscliff and North Steyne. I have a beach view of 'mid Steyne' up to North Steyne.
16. The view diagrams contained in the plans only show impact to view horizontally not vertically. In particular the downward aspect to the beach.
17. The loss of view, particularly straight ahead and down 45degrees, I believe, is incorrectly calculated and not representative of the actual impact. The plans only show a horizontal representation.
18. I was not consulted via a visit to my apartment to accurately define the loss of view – the presentation of view loss in the documents is in effect a theoretical hypothesis sculpted to

present a particular case. No calculations by the developer have been done from my living spaces.

19. The view diagrams do not elaborate on the angle of the cutaway. They are lines on plans and from previous learnings on building developments along South Steyne such details are necessary. Therefore, from my estimates one third of my view of ocean and beaches will be lost. This is contrary to the claim made in the plans where it says '3rd storey has been carved away allowing for unobstructed views to beach and headland beyond'. On the 6th floor this claim is not true. I will lose beach and sea view if the building is built above the 10m LEP limit.
20. Rialto Lane traffic. Due to all the developments over the last 20 years Rialto Lane is a bottleneck. Coles articulated deliveries and non-articulated vehicles plus vehicles supplying other businesses often queue to get into Rialto Lane and when in Rialto Lane, park in any available space regardless of if legal or not. I am always hearing vehicles using their horns or voices to have vehicles move so they can get to their next delivery. I don't believe their traffic report reflects the reality of what goes on in Rialto Lane. During construction, the traffic impact will be significant and become a major issue for businesses and deliveries. The Peninsulas car park, ingress, and egress will become a lottery. Appendix 2 shows daily happenings in Rialto Lane. This development will only exacerbate the traffic issue.

Appendix 2 - Views

This depicts a false narrative of the view impact to my flat – the apex of the blue shaded area.



3. VIEW SHARING

To ensure view sharing is maintained with the apartments behind, the 3rd storey has been carved away allowing for unobstructed views to beach and headland beyond.

My Views

From bedroom most northerly position on balcony



Note if building is developed to plans, we loose sight of beach on right side of picture. On the description they say we don't loose views.

From a second bedroom



From living room – center of balcony



The building in front in this picture was the focus of the ombudsman's report and demonstrates how the council failed us when managing over height buildings. I get the sense the same is about to happen with this development DA2022/1164 if consent is given for the building with a height above the 10m rule.

Appendix 2

Rialto lane traffic

We as residents rarely see parking rangers in Rialto Lane. Every day there are issues of too many vehicles clogging up the lane for one reason or another. The development proposed is further exacerbating this matter. It's a significant pedestrian thoroughfare between the Corso and Wentworth Street and the beach. All pictures taken Aug 30 2023 at 11:15am.





OBJECTION REPORT

DA2022/1164

Demolition and construction of a commercial building

34-35 South Steyne Manly

www.townplanningcollective.com.au

Objection to DA2022/1164
34-35 South Steyne Manly

Objection to DA2022/1164
34-35 South Steyne Manly

OBJECTION REPORT

34-35 South Steyne Manly

On behalf of the residents at Unit 632 of the adjoining building (Peninsular Apartments)

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1 Introduction

Town Planning Collective have been engaged by the residents of unit 632, 25 Wentworth Street Manly to review the application for the construction of a commercial development at 34-35 South Steyne Manly (DA2022/1164). Our review of the DA has been based on the information that is available from the Council's website.

2 Background

2.1 Site Description

The site is identified as 34 - 35 South Steyne Manly NSW 2095. The site is described in the statement of environmental effects as the following:

The site is comprised of the following land holdings:

- Lot 2 in DP 861591 (34 South Steyne, Manly)
- Lot B in DP 102407 (35 South Steyne, Manly)

The site is irregularly shaped, with a 15.305m wide frontage to South Steyne to the north-east, a maximum depth of 46.815m and a total area of 690.2m². The site has a secondary frontage to Rialto Lane at the rear. The site is generally level and is partially affected by flooding.

A two storey commercial building currently occupies the site, with at-grade parking at the rear. The site is burdened by a 3.0m wide right of carriageway that runs parallel along the south- western boundary.



The subject site is zoned E1 under the Local Environmental Plan.

Zone E1 Local Centre

1 Objectives of zone

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

2 Permitted without consent

Home-based child care; Home businesses; Home occupations

3 Permitted with consent

Amusement centres; Boarding houses; Car parks; Centre-based child care facilities; Commercial premises; Community facilities; Creative industries; Early education and care facilities; Electricity generating works; Entertainment facilities; Environmental protection works; Flood mitigation works; Function centres; Group homes; Home industries; Hostels; Hotel or motel accommodation; Information and education facilities; Local distribution premises; Medical centres; Oyster aquaculture; Passenger transport facilities; Places of public worship; Public administration buildings; Recreation areas; Recreation facilities (indoor); Registered clubs; Respite day care centres; Roads; Service stations; Shop top housing; Signage; Tank-based aquaculture; Tourist and visitor accommodation; Veterinary hospitals; Waste or resource transfer stations

4 Prohibited

Any development not specified in item 2 or 3

Notes on permissibility within the zone

The development is a commercial building which is listed as a permitted use within the land zone. It is noted that that development doesn't comply with the objectives of the zone due to the impact the development provides in relation to view loss resulting in a less than favourable development regarding the scale and architectural treatment to neighbouring properties.

2.2 Proposed Development

The statement of environmental effects accompanying the development application provides the following description of the development:

The proposed development is depicted in the architectural plans set prepared by Durbach Block Jaggers. This application provides for the following built form and land use outcomes:

- *Demolition of the existing site structures,*
- *Construction of a 3-4 storey commercial building over 2 basement levels, comprising:*
 - *Basement Level 02: commercial bin store and 12 parking spaces, inclusive of a loading bay, a disabled parking space, an EV charging space and 2 carshare rideshare spaces,*
 - *Basement Level 01: 152.04m² of commercial floor space, retail bin store, amenities, plant areas, end of trip (EOT) facilities & bicycle storage,*
 - *Ground Level: 370.54m² of retail floor space presenting to both South Steyne and Rialto Lane, basement entry from Rialto Lane, through site link connecting South Steyne and Rialto Lane, services and lobby for upper level commercial space,*
 - *Level 01: 502.75m² of commercial floor space, amenities, services, balcony to South Steyne, central courtyard,*
 - *Level 02: 522.29m² of commercial floor space, amenities, services, balcony to South Steyne, central courtyard,*
 - *Level 03: 209.42m² of commercial floor space, amenities, services, plant equipment, and roof terrace with lap pool,*
 - *Roof: solar panels*
- *Internal lift and stair access,*
- *Landscaping, and*
- *Stormwater infrastructure,*

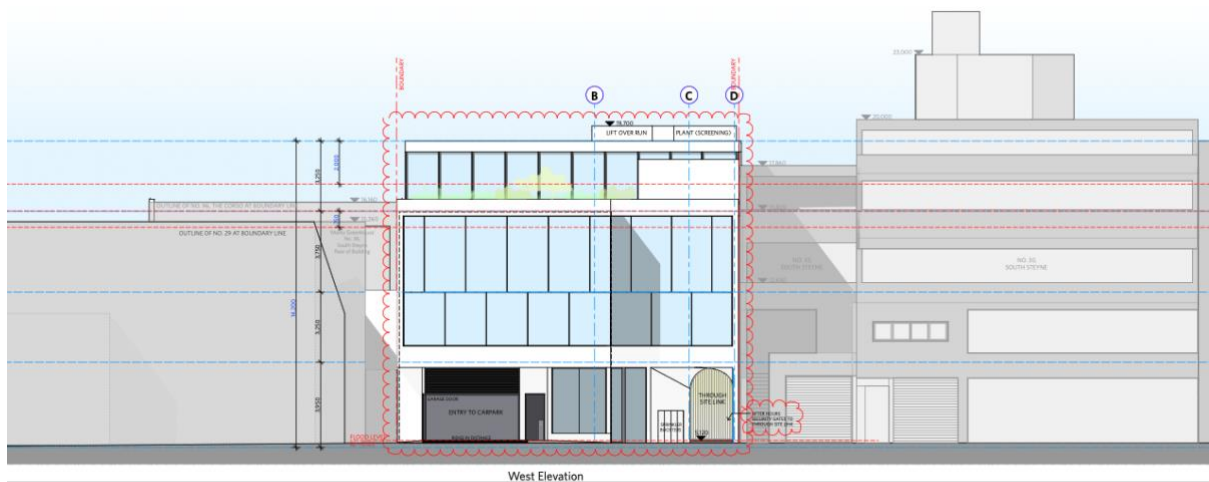
The proposed development presents as a three storey building to South Steyne, marrying with the parapet heights of the adjoining buildings. The fourth level is setback at the rear of the site and will not be readily visible from South Steyne or the beachfront reserve.

The proposed development demonstrates a superior architectural design solution for the site, providing exceptional levels of amenity for future occupants of the development whilst also exceeding sustainability and thermal performance targets. The proposal provides a skilfully designed through-site pedestrian link, that is naturally lit and ventilated from the central courtyard and the enlarged openings at both ends.

3 Planning Assessment

3.1 View Loss

The proposed development seeks consent for the construction of a four-storey commercial building with basement parking. As a result of the design of the new building, the adjoining residents have concerns that the development will obliterate the views currently enjoyed from their properties of the Manly Beach and the ocean. It is noted that the view loss is a direct result of the height of the building which is noted to be well beyond the legislative height of building limit for the site under clause 4.3. While the residents are aware that any development on the site will result in some level of view loss from their dwelling unit it is considered that some level of view sharing could be achieved through a more skilful design and a design that complies with clause 4.3 of the LEP.



The view sharing DCP control provides the following objectives:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

Comment: An assessment against the planning principle for view sharing has been undertaken and shown below. It is considered that the development does not result in a reasonable sharing of views.

- *To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

Comment: The design of the building is not suited to the locality and is not considered an innovative design solution. It does not improve the urban environment and will set a dangerous precedent in the locality for bulky overdeveloped buildings along South Steyne and the Corso

- *To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

Comment: The proposed development result in substantial view loss.

An assessment of the development against the Planning Principle Tenacity Consulting v Warringah [2004] NSWLEC 140 is provided as followed:

- *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg 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, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

The views currently enjoyed by the adjoining resident is of the Manly Beach, ocean and the Norfolk Island Pine trees as shown in the image below:



- The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The views are obtained from the balcony with the views being obtained of Manly Beach with a water to land interface. The views are obtained from both a sitting and standing position.

- 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.

It is noted though that Manly Beach is an iconic view and this view is currently enjoyed from balcony which is used as a main area of entertainment and private open space. Based on the plans provided to Council, the development will result in a substantial impact of views the dwelling unit (and many other units within the Peninsula Apartments). It is noted in the applicants view loss assessment that unit 632 has views of Queenscliff headland and the water in the distance however it is considered the view of the land to water interface is an iconic view and should be retained. The proposed development will obliterate the iconic views.

- 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 as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. 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.

The proposed development is considered to be a bulky development that provides a substantial non compliance to the height of building development standard. It is considered that a more reasonable design that complies with the legislative height limits for the site would result in an acceptable level of view sharing for neighbouring properties without compromising on the functionality of the proposed development. It is considered that the view loss occurs due to poor design and the view sharing is not considered to be reasonable.

It is considered that the proposed development is considered to result in substantial view loss for Unit 632 and it is requested that the development be redesigned to minimise the impacts and to provide a level of view sharing for the surrounding properties.

3.2 Height of Building

The proposed development results in a substantial non compliance in relation to Height of Building development standard (clause 4.3) with the proposed development providing a height of 14.5m. It is noted that the site is mapped as having two height of building limits with the front of the site having a 10m limit and the rear portion of the site mapped as 12m. It is noted that the main area of unacceptable non compliance relates to the rear portion of the site with the development providing a fourth storey to the commercial building resulting in substantial view impacts of adjoining properties.

The applicant has submitted a clause 4.6 report to provide a request to vary the development standard. The report provides a high level superficial assessment of the development in relation to the requirements set out in clause 4.6 and accepted case law. It is not considered that the clause 4.6 report provides sufficient planning grounds nor does it show that the development is in the public's interest.

An assessment of the breach to the development standard is provided to show that the applicant's position on the matter is subjective and does not consider the development and its impacts on the surrounding developments and the context of the locality.

Clause 4.3 provides five objectives. To determine the development's compliance with the objectives it is considered an assessment against each individual objective is necessary.

Assessment Of The Development Against The Objectives Of Clause 4.3

Objective a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.*

Comment: The screenshot of the east elevation below shows that the development is not consistent with the height of buildings to the north of the site with the fourth floor presenting as a substantial addition compared to the height of these buildings. The development to the south was approved under the previous Local Environmental Plan and, at the time, was a controversial approval resulting in substantial view impacts on adjoining residences and was subject to an Ombudsman review. It is therefore not appropriate to use the southern building as an example of an established building height for the streetscape. It is not considered that the proposed development complies with this objective as provided above

Objective b) *to control the bulk and scale of buildings,*

Comment: The proposed development, while not appearing to be of a bulky design or appearance as viewed from the front of the property, the development is of a bulky design when viewed from the higher levels of the Peninsula Apartment building. It is noted that in the context of the surrounding buildings, the fourth floor intensifies the bulk and scale of the building to the north resulting in a large scale of built form resulting in a domineering presence on surrounding buildings.

It is not considered that the proposed development complies with this objective as provided above.

Objective c) *to minimise disruption to the following—*

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment: As discussed above, the development results in substantial view loss impacts to adjoining residences of Manly Beach. It is noted that a compliant development would facilitate adequate view sharing without compromising the developments relation to surrounding buildings.

It is not considered that the proposed development complies with this objective as provided above.

Objective d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment: Due to the orientation of the site, the development generally complies with the solar access requirements for upper floor units of the Peninsular Apartments however at lower levels there will be a overshadowing impact of the development as a direct result of the fourth floor addition.

It is considered that the proposed development does not comply with the objective due to impacts on solar access non compliances.

Objective e) to ensure the height and bulk of any proposed building or structure in a recreation or conservation zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment: Not applicable to this land use zone.

The assessment above, provides a clear non compliance with the objectives of clause 4.3 and therefore the requirements under clause 4.6 are not considered to be satisfied. It is noted that under a review of recent Council approvals relating to substantial breaches to clause 4.3 (greater than 20%) the approved developments all related to existing buildings with non compliant heights based on historical approvals under previous legislation. Based on the impacts of the development and the non compliance with the objectives of clause 4.3 it is considered that Council cannot approve the development as the provisions for exceptions to development standards under clause 4.6 are not satisfied. It is therefore considered that Council should require the removal of the fourth level of the development or proceed with a refusal of the development.

3.3 Demolition and Construction

The proposed development includes demolition of structures and construction of the development. It is noted that the proposed development includes substantial excavation to provide the basement parking area.

It is considered that any demolition or construction on the site would result in vibration impacts on adjoining residences. It is therefore requested that a dilapidation report is provided for adjoining properties to ensure that the proposed demolition will not impact the sites. The dilapidation report should be provided prior to the commencement of works and a following report should be provided prior to the issue of any occupation certificate. The dilapidation reports should be undertaken by an independent qualified practicing professional and should document the property to identify if any excavation or building works result in any impact on the dwellings.

3.4 Visual Impact

The proposed development is considered to be an overdevelopment of the site with the proposed dual occupancy resulting in a domineering impact on the streetscape. The development is not considered to have a positive visual impact on the area and is considered to be of a design that is out of character for the locality and will result in a visual scar on the area.

3.5 Character of the area

The design of the development is not considered to be within the character of the area with the development being designed with minimal architectural design and little regard to the bulk and scale of the development. It is considered that the development is not compatible with the surrounding development. The Planning Principle, *Project Venture Developments Pty Ltd v Pittwater Council* 2005, provides a clear assessment path to determine whether a development is compatible with the surrounding development. The Principle establishes the following two questions to be answered to determine whether a proposal is compatible with its context:

- Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.
- Is the proposal's appearance in harmony with the buildings around it and the character of the street?

An assessment against the planning principle follows:

1. Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

The proposed development exceeds the height of building requirements and results in a building with excessive bulk and scale and is considered to be an overdevelopment of the site. The physical impacts of the development on the surrounding buildings is considered to be unacceptable and damaging to the amenity of adjoining residences. The development will result in substantial view loss as well as a negative visual impact for the locality.

2. Is the proposal's appearance in harmony with the buildings around it and the character of the street?

The proposed development has a scale that, when compared to adjoining properties, is out of proportion and creates a domineering impact and intensifies the impact of the adjoining property to the south. It is noted that the design and height of the building is in contrast to surrounding buildings to the north. The proposed development is considered to be impactful for the character of the area, providing a negative presence within the locality.

4 Conclusion

The residents of Unit 632 are not anti-development and are only wanting to protect the amenity that they currently enjoy at their residence. The proposed development as presented to Council is considered to not comply with a variety of development controls, is not consistent with the character of the area and results in substantial impacts on the adjoining property in terms of view loss. Due to the numerous issues with the development including the substantial non compliance with clause 4.3 of the LEP, it is considered that Council should recommend the application be refused.