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Subject: RE: DA 2021 2617 25 CARRINGTON PARADE FRESHWATER NSW 2096
WRITTEN SUBMISSION: LETTER OF OBJECTION SUBMISSION: MEALE

Attachments: MEALE WS.docx;

SUBMISSION: MEALE

a written submission by way of objection

Greg Meale
24 Carrington Parade
Freshwater
NSW 2096

7 February 2022

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RE: DA 2021 2617 25 CARRINGTON PARADE FRESHWATER NSW 2096
WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: MEALE

Dear Sir,

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

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, we ask Council to REFUSE this DA.

We are being assisted by a very senior experienced consultant in the preparation of this Written Submission.

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EXECUTIVE SUMMARY

The design of the dwelling does not ensure that the existing high levels of amenity to our property is retained.

The proposal is considered to be inappropriate within the streetscape.

The subject site is zoned R2 Low Density Residential under the LEP, and there is no reason, unique or otherwise why a fully compliant solution to LEP and DCP controls cannot be designed on the site.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts that result in adverse impacts on our property.

- View loss
- Solar Loss
- Excessive Bulk

The proposed development fails to meet Council's planning controls, the objectives and the merit assessment provisions relating to:

- Front Setback
- Side Boundary Envelope

The proposed development represents an unreasonable dwelling house design, for which there are design alternatives to achieve a reasonable development outcome on the site without having such impacts.

A compliant building design would reduce the amenity impacts identified.

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

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

The 'legitimate expectation' that we had as a neighbour was for a development that would not result in very poor amenity outcomes caused directly from the non-compliance to building envelope controls.

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

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

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

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

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, the subject of this Submission, does not succeed on merit and is not worthy of the granting of development consent.

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

If any Amended Plan Submission is made by the Applicant, and re-notification is waived by Council, we ask Council to inform us immediately by email of those amended plans, so that we can inspect those drawings on the Council website.

FACTS

1. THE PROPOSAL

The development application seeks approval for the proposed alterations and additions at 25 Carrington Parade Freshwater

2. THE SITE

The site is legally identified as Lot 2 DP.1139402 known as 25 Carrington Parade, Freshwater, has a Zoning of R2 Low Density Residential

3. THE LOCALITY & OUR PROPERTY

The existing character of the local area, including the immediate visual catchment (generally within 150 metres of the site) is of a well-established neighbourhood, made up of a heterogeneous mix of dwelling types within domestic landscaped settings.

Our property shares a common boundary with the subject site.

4. THE CONTROLS

The following Environmental Planning Instruments and Development Control Plans are relevant to the assessment of this application:

- Environmental Planning and Assessment Act 1979.
- Environmental Planning and Assessment Regulation 2000.
- SEPPs
- LEP
- DCP

CONTENTIONS THAT WARRANT THE REFUSAL OF THE APPLICATION

1. CHARACTER

The proposed development should be refused as it is inconsistent with the character of the local area contrary to the provisions of the LEP and DCP.

The proposal does not achieve the desired character of the locality.

The proposed development should be refused due to its excessive bulk and scale and impacts on the character of the locality, adjoining properties and the surrounding environment.

The form and massing of the proposal does not appropriately respond to the low-density character of the surrounding locality.

The form and massing of development is also inconsistent with the provisions of the LEP and DCP which prescribe that new development should complement the predominant building form in the locality.

The proposed development is non-compliant to:

- Front Setback
- Side Boundary Envelope

The proposed development is outside the envelope controls.

The proposed development projects further to the front boundary than the immediate neighbours.

The bulk and scale of the development is inconsistent with existing development in the visual catchment.

The proposal is not of a scale that seeks to achieve the desired future character, does not maintain or enhance local amenity, does not maintain the general dominance of landscape over built form, and does not satisfactorily minimise the adverse effects of bulk and scale of buildings. The proposal is excessive in bulk and scale; and does not have adequate regard for the maintenance of existing residential amenity.

The proposal would not be appropriate to the environmental constraints of the site and would not maintain the existing level of residential amenity. The proposal would not recognise, protect, or enhance the natural or visual environment qualities of the locality. The proposal would not protect or conserve the existing landform in order to maintain the landscaped amenity of the locality.

The proposal would not be of a scale which is in keeping with the context of the locality, and would not maintain a general dominance of landscape over built form. The proposal would not maintain or enhance local amenity or minimise the adverse effect on bulk and scale.

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 non-compliant elements of the proposed development, particularly caused from non-compliant standards and controls would have most observers finding *‘the proposed development offensive, jarring or unsympathetic’*.

2. SETBACK

The proposed development should be refused as it is significantly non-compliant with front setback of the DCP. This leads to loss of water/land interface views and solar loss.

The proposed development does not provide appropriate side boundary envelope setbacks. This leads to solar loss and poor visual bulk.

The DCP states:

Objectives

- *To create a sense of openness.*
- *To maintain the visual continuity and pattern of buildings and landscape elements.*
- *To protect and enhance the visual quality of streetscapes and public spaces.*
- *To achieve reasonable view sharing.*

Requirements

1. *Development is to maintain a minimum setback to road frontages.*
2. *The front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences.*

The SEE states:

"The setbacks of the residence will remain generally consistent with the existing adjacent properties along Carrington Parade.....a proposed front alignment that is generally consistent with the dwellings either side to provide a more consistent pattern of development in relation to front setback."

This statement is incorrect.

Our eastern deck has a front setback minimum of 6.6m.

Our dwelling has a front setback of the external wall at a minimum of 8.8m.

The proposed deck has a minimum front setback of 4.8m.

The proposed dwelling at Ground Floor has a minimum front setback of 8.0m.

We contend that the minimal front setbacks of 6.6m [deck] and 8.8m [external wall] on our property are maintained on the subject site.

The proposal will result in an unsatisfactory scale of built form that will be disproportionate and unsuitable to the dimensions of the site and neighbouring residential development.

The bulk of the development will result in unreasonable impacts upon the amenity of neighbouring properties with regard to visual dominance.

The excessive built form of the proposal results in a development where the building mass becomes visually dominant and imposing, particularly when viewed from the visual catchment of neighbouring properties and the streetscape.

The cumulative effect of the non-compliances with setback result in an over development of the site with the site being not suitable for the scale and bulk of the proposal.

SIDE BOUNDARY ENVELOPE

The proposed development should be refused as it is non-compliant with Building Envelope of the DCP.

The development application proposes non-compliances with the side boundary envelope on both sides, being outside the envelope on either side,

The proposal will result in an unsatisfactory scale of built form that will be disproportionate and unsuitable to the dimensions of the site and neighbouring residential development.

The bulk of the development will result in unreasonable impacts upon the amenity of neighbouring properties with regard to visual dominance.

The excessive built form of the proposal results in a development where the building mass becomes visually dominant and imposing, particularly when viewed from the visual catchment of adjacent properties

The cumulative effect of the non-compliances with side boundary envelope and front setback result in an over development of the site with the site being not suitable for the scale and bulk of the proposal.

3. IMPACTS UPON ADJOINING PROPERTIES: VIEW LOSS

The proposed development when considered against the DCP and the NSW Land and Environment Court Planning Principle in *Tenacity Consulting Pty Ltd v Warringah Council (2004)* NSWLEC will result in an unacceptable view impact and will not achieve appropriate view sharing.

The proposed development will result in unacceptable additional view impacts. The view impact is severe when considered against the *Tenacity* planning principle. The view impact could reasonably be avoided by a more considered design that retains the amenity of the proposal, whilst limiting the impact upon the neighbouring property.

The proposed development will unreasonably obstruct views enjoyed by our property from highly used rooms and from entertainment decks, resulting in inconsistency with the requirements and objectives of the DCP.

The Applicant has not provided an adequate View Impact Analysis which details the extent to which existing water views from our property, and other impacted dwellings, are obstructed under the current proposal. The existing documentation accompanying the application is insufficient to undertake a detailed analysis of the proposal against the relevant DCP and NSWLEC guidelines.

DER SARKISSIAN V NORTHERN BEACHES COUNCIL [2021] NSWLEC 1041

We refer to a dismissal of a Class 1 Appeal by NSWLEC Commissioner Dr Peter Walsh on a nearby site in Curl Curl on view loss grounds. We refer to Der Sarkissian v Northern Beaches Council [2021] NSWLEC 1041. [NBC DA 2019/0380, 72 Carrington Parade, Curl Curl]

We raise the dismissal by NSWLEC of the Applicant's appeal. The case in question had many similarities to this DA.

- The main view loss concern was to a neighbour immediately behind 72 Carrington Parade, Curl Curl.
- The view loss involved setback controls.
- The view loss at Curl Curl was severe – our loss would be also be the severe: we would have significant loss of land/water interface from our living spaces and decks

The key matters within the Commissioner's Conclusion:

- the determinative issue in this case is view loss
- the proposal would significantly change the amenity enjoyed for the worse.
- both policy controls and view sharing principles suggest the proposal goes too far.
- proposal attempts to achieves too much on a constrained site.
- a reasonable development at the upper level in regard to view sharing and setback policy,
- with good design, there is scope for this to occur while also providing for reasonable floor space on this level.

It is clear that the view loss, on this DA, occurs through a poor consideration on front setback envelope controls.

Our commentary on this DA is very similar to Commissioner Walsh in Der Sarkissian v Northern Beaches Council [2021] NSWLEC 1041

- the determining issue in this case is view loss – in our case a water and water/land interface view loss
- the proposal would significantly change the amenity enjoyed for the worse.
- policy controls of front setback non-compliances and view sharing principles suggest the proposal goes too far.
- proposal attempts to achieves too much on a constrained site.
- a reasonable development at the upper level in regard to view sharing would share the view
- with good design, there is scope for view sharing to occur while also providing for reasonable floor space on all levels

We contend that there is no reasonable sharing of views amongst dwellings.

The new development is not designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The proposal has not demonstrated that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.

We also refer to two recent DA that were refused by NBC DDP:

DA 2020/1338 55 BOWER STREET, MANLY

We bring to the attention of Council a recent refusal by NBC DDP on 24 March 2021, following a Refusal Recommendation of NBC Development Assessment Manager, by NBC Reporting Manager Anna Williams, a very senior and highly experienced NBC Planning Officer, and the NBC Responsible Officer Rebecca Englund, a very senior NBC Planning Officer, that Council as the consent authority refuses Development Consent to DA2020/1338 for Alterations and additions to a dwelling house on land at Lot 63 DP 8075, 55 Bower Street, Manly, subject to the conditions that were outlined in the Assessment Report.

The assessment of DA 2020/1338 involved a consideration of a view loss arising from a proposed development that presented a non-compliant envelope to LEP and DCP controls.

The DDP agreed with the recommendation and refused this DA.

The DDP Panel that refused this DA were three of the most senior DDP members: Peter Robinson Executive Manager Development Assessment, Lashta Haidari Manager Development Assessment, and Liza Cordoba Manager Strategic & Place Planning

The Assessment Report found that:

'the impact associated with the non-compliant built form, specifically the proposed upper floor, is unreasonable and the objectives of the relevant standards and controls are not achieved.'

The Assessment Report within the Tenacity Assessment concluded:

Whilst the level of impact is categorised as moderate at worst, the impact would be reduced with a compliant or near compliant design.

There is also a question as to whether a more skilful design could reduce the level of impact for adjoining properties.....that a more skilful design could lessen the impact.

The proposal is also considered to be inconsistent with the requirements of this control, which require views between buildings to be maximised, in addition to those objectives that seeks to provide for view sharing between properties and to maximise disruption and loss of views."

The DA was recommended for refusal, and DDP refused the DA in full support of the NBC Reporting Manager and NBC Responsible Officer Assessment Report.

We contend that this DA Refusal by the DDP sets a benchmark of the custom and practice of Council in consideration of all view loss concerns.

The severity of the view loss that was considered unacceptable by the DDP was clearly stated by the DDP. This level of view loss was considered as 'moderate' by the assessing officers and the DDP. The photographs are shown from page 156 of the DDP Agenda, 24 March 2021.

We contend our view loss is of a severity equal or worse than this view loss.

In Q4 2021, a S82A DA has been submitted, with Amended Plans, presenting a 'more skilful design' solution to maintain an important view to Freshwater Beach.

DA 2021/0517 55 WHEELER PARADE DEE WHY

We bring to the attention of Council a recent refusal by NBC DDP on 24 November 2021, with Panel members Rod Piggott, Rebecca Englund, Tony Collier and Liza Cordoba, following a Refusal Recommendation of NBC Development Assessment Manager, by the NBC Responsible Officer Jordan Davies, a very senior NBC Planning Officer, that Council as the consent authority refuses Development Consent to DA2021/0517 for Alterations and additions to a dwelling house on land at Lot B DP 338618, 55 Wheeler Parade Dee Why subject to the conditions that were outlined in the Assessment Report.

The assessment of DA 2020/0517 involved a consideration of a view loss arising from a proposed development that presented a non-compliant envelope to LEP and DCP controls.

The DDP agreed with the recommendation and refused this DA.

The Assessment Report found that:

" A view assessment is undertaken later in this assessment report and the proposal is found to result in an unsatisfactory view sharing outcome and the application is recommended for refusal for this reason"

The Assessment Report found that in respect to a compliant envelope:

" the question to be answered is whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact upon views of neighbours."

The Assessment Report within the Tenacity Assessment concluded:

"the view impact looking south-east is considered both severe and devastating from the respective rooms given the significant proportion of the views which are impacted. The aspect looking south and south- east are considered whole, prominent coastal views which are certainly worthy of consideration and at least partial protection. The proposal to remove the vast majority of these views is considered overall to be a severe view impact."

The DA was recommended for refusal, and DDP refused the DA in full support of the NBC Responsible Officer Assessment Report.

We contend that this DA Refusal by the DDP sets a further benchmark of the custom and practice of Council in consideration of all view loss concerns.

The severity of the view loss that was considered unacceptable by the DDP was clearly stated by the DDP. This level of view loss was considered as 'severe' by the assessing officers and the DDP.

We contend our view loss is of a similar severity.

TENACITY CONSULTING V WARRINGAH COUNCIL 2004

In Tenacity, [Tenacity Consulting v Warringah Council 2004], NSW LEC considered Views. Tenacity suggest that Council should consider:

"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."

The development breaches multiple planning controls and is unreasonable.

- FSR
- Landscape Area
- Building Height
- Wall Height
- Number of Storey
- Front Setback
- Rear Setback
- Side Setback

We contend that the impact on views arises as a result of non-compliance with one or more planning controls, and the view loss from the highly used rooms and decks is considered unreasonable.

APPLICATION OF TENACITY PLANNING PRINCIPLE

We have been able to consider the impact of the proposal on the outward private domain views from our property.

Height poles and our montage view loss analysis has yet to be provided by the Applicant.

An assessment in relation to the planning principle of Roseth SC of the Land and Environment Court of New South Wales in Tenacity Consulting v Warringah [2004] NSWLEC 140 - Principles of view sharing: the impact on neighbours (Tenacity) is made.

The steps in Tenacity are sequential and conditional in some cases, meaning that proceeding to further steps may not be required if the conditions for satisfying the preceding threshold is not met.

Step 1 Views to be affected

The first step quoted from the judgement in Tenacity is as follows:

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.

An arc of view is available when standing at a central location in the highly used zones on our property.

The composition of the arc is constrained over the subject site boundaries, by built forms and landscape. The central part of the composition includes the subject site. Views include scenic and valued features as defined in Tenacity. The proposed development will take away views for its own benefit. The view is from our highly used rooms towards the view. The extent of view loss exceeds moderate and the features lost are considered to be valued as identified in Step 1 of Tenacity.

The views to be impacted include views of Curl Curl Beach including land-water interface and the wave action zone.

Step 2: From where are views available?

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

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 views in all cases are available across the boundary of the subject site, from standing and seated positions. An arc of view is available when standing at highly used zones on our property.

In this respect we make two points: We have no readily obtainable mechanism to reinstate the impacted views from our high used zones if the development as proposed proceeds; and all of the properties in the locality rely on views over adjacent buildings for their outlook, aspect and views towards the view.



View from our Balcony that would be severely affected by the non-compliant front setback

Step 3: Extent of impact

The next step in the principle is to assess the extent of impact and the locations from which the view loss occurs.

Step 3 as quoted is:

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.

As we rate the extent of view loss is above moderate in our opinion the threshold to proceed to Step 4 of Tenacity is met.

Step 4: Reasonableness

The planning principle states that consideration should be given to the causes of the visual impact and whether they are reasonable in the circumstances.

Step 4 is quoted below:

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.

As the proposed development does not comply with outcomes and controls, that are the most relevant to visual impacts, greater weight would be attributed to the effects caused.

In our opinion the extent of view loss considered to be the greater than moderate, in relation to the views from our highly used zones of our dwelling. The view is from a location from which it would be reasonable to expect that the existing view, particularly of the view that could be retained especially in the context of a development that does not comply with outcomes and controls. The private domain visual catchment is an arc from which views will be affected as a result of the construction of the proposed development. The proposed development will create view loss in relation to our property. The views most affected are from our highly used zones and include very high scenic and highly valued features as defined in Tenacity. Having applied the tests in the Tenacity planning principle we conclude that we would be exposed to a loss greater than moderate from the highly used rooms. The non-compliance with planning outcomes and controls of the proposed development will contribute to this loss. Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

The proposed development cannot be supported on visual impacts grounds. The proposal incorporates a significant departure from controls, which helps contain building envelope. Additionally, the siting of the proposed development and its distribution of bulk does not assist in achieving view sharing objectives. Where the diminishing of private views can be attributed to a non-compliance with one or more planning controls, even a moderate impact may be considered

unreasonable. Our assessment finds that view sharing objectives have not been satisfied.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control.

There are architectural solutions that maintains our view, by proposing development that maintains our view, and we identify the precise amendments necessary to overcome this loss.

As noted by his Honour, Justice Moore of the Court in *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 (*Rebel*),

“the concept of sharing of views does not mean, for the reasons earlier explained, the creation of expansive and attractive views for a new development at the expense of removal of portion of a pleasant outlook from an existing development. This cannot be regarded as “sharing” for the purposes of justifying the permitting of a non-compliant development when the impact of a compliant development would significantly moderate the impact on a potentially affected view”.

The same unreasonable scenario in *Rebel* applies to the current DA. The proposed breaching dwelling will take away views from our property (and possibly other adjoining properties) to the considerable benefit of the future occupants of the proposed dwelling. This scenario is not consistent with the principle of View Sharing enunciated by his Honour, Justice Moore in *Rebel*. The adverse View Loss from our property is one of the negative environmental consequences of the proposed development. The proposed development cannot be supported on visual impacts grounds.

These issues warrant refusal of the DA.

Height Poles: We ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor. The Height Poles will need to define: All Roof Forms, and all items on the roof, Extent of all Decks, Extent of Privacy Screens. Height Poles required for all trees. The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

4. IMPACTS UPON ADJOINING PROPERTIES: OVERSHADOWING

The proposed development should be refused as it will have unacceptable impacts upon the amenity of adjoining properties, specifically with regard to overshadowing.

The proposed development will result in unreasonable overshadowing of the windows of our property and the private open space of our property, resulting in non-compliance with the provisions of DCP.

A variation to the DCP is not supported as the objectives of the clause are not achieved.

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

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

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

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

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

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

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

The density of the area is highly controlled. Building envelope controls have been exceeded.

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

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

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

The proposed development has been designed without considering the amenity of the neighbouring properties. It is considered that a more skilful design, with a compliant envelope control, could have been adopted that would have reduced

the impact on the neighbouring properties. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

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

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

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

There is no major overshadowing as a result of vegetation

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

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

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

We object to solar loss to our rear private open space, and to our windows that allow mid-winter solar access into highly used room by non-compliant development controls.

5. IMPACTS UPON ADJOINING PROPERTIES: EXCESSIVE BULK & SCALE

The proposed development should be refused due to its excessive visual impact and impacts on the character of the locality, adjoining properties and the surrounding environment.

The form and massing of the proposal does not appropriately respond to the low-density character of the surrounding locality

The form and massing of development is also inconsistent with the provisions of the DCP which prescribe that new development should complement the predominant building form in the locality.

The proposal would not recognise or protect the natural or visual environment of the area, or maintain a dominance of landscape over built form. The proposal has not been designed to minimise the visual impact on the surrounding environment.

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

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

Commentary:

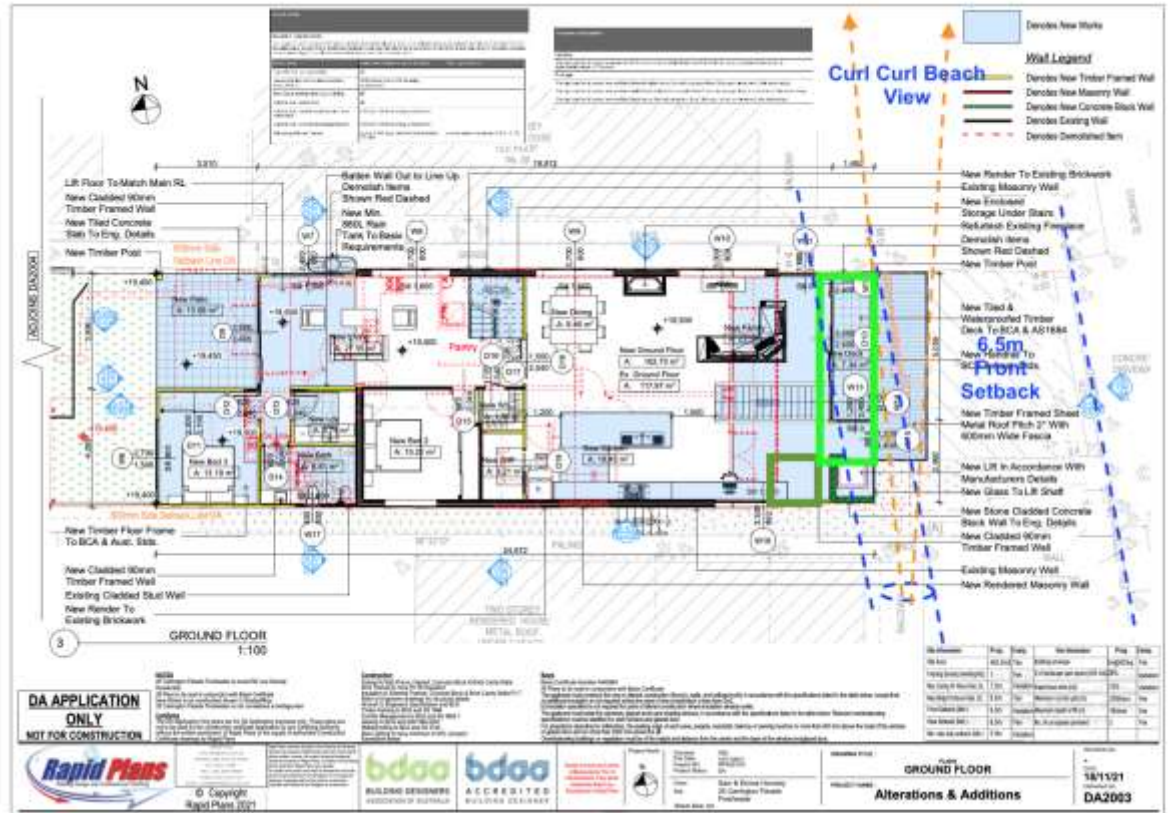
The impacts are not consistent with the impacts that would be reasonably expected under the controls.

6. CONTENTIONS THAT MAY BE RESOLVED BY AMENDED PLANS: DESIGN ALTERNATIVES

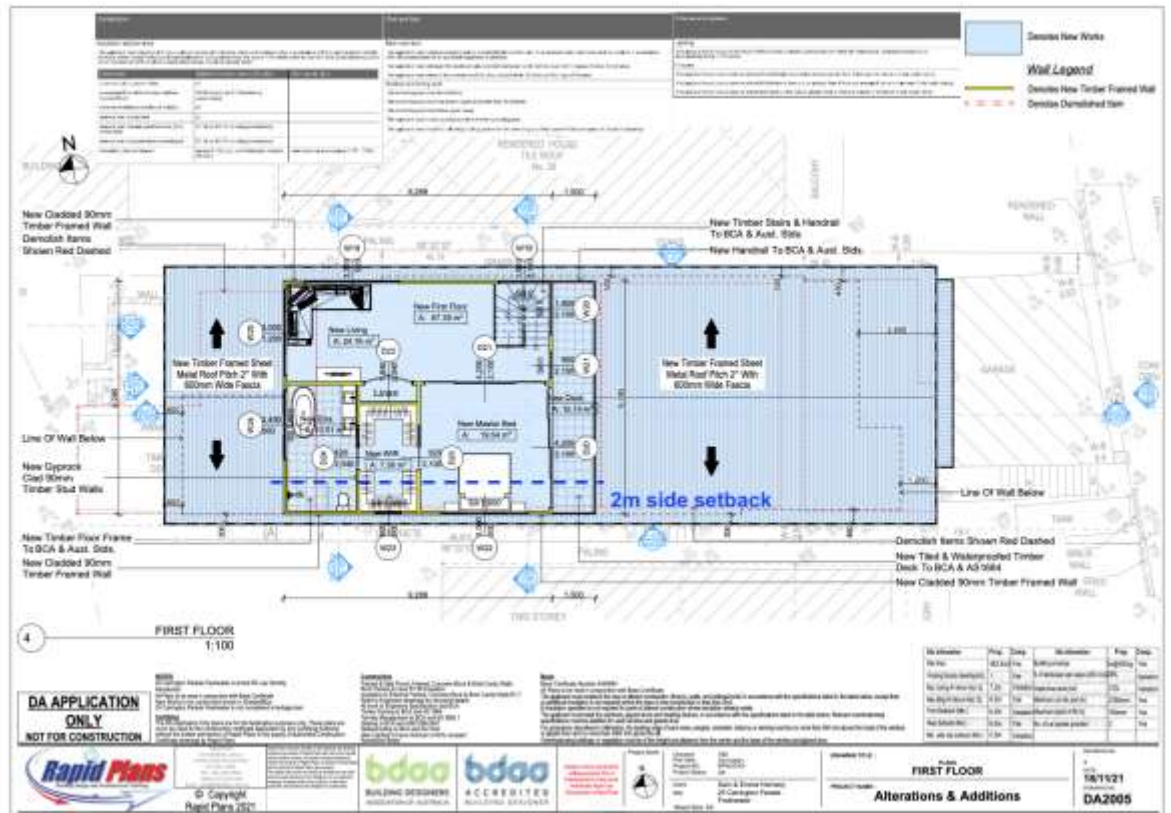
A compliant building design would reduce the amenity impacts identified.

Reduce the proposed development as follow:

- Delete all built form in the 6.5m front setback zone at the Ground Floor, to better accord with B7 Front Boundary Setbacks
- Reposition the proposed eastern 1.8m wide deck at the Ground Floor to be to the west of the 6.5m front setback zone, to equal the same compliant front setback of the eastern deck of the neighbour at #24 Carrington. No deck within the front 6.5m setback zone, to better accord with B7 Front Boundary Setbacks
- Reposition the eastern external wall alignment to the Ground Floor to have a minimum front setback of 8.8m to equal the same 8.8m minimum front setback of the eastern wall zone of neighbour at #24 Carrington, to better accord with B7 Front Boundary Setbacks
- Reposition the roof over the eastern external wall alignment to the Ground Floor to have a minimum front setback of 8.2m to equal the same 8.2m minimum front setback of the eastern wall zone of neighbour at #24 Carrington, to better accord with B7 Front Boundary Setbacks
- Increase the southern side setback of the First Floor to 2m, to better accord with B3 Side Boundary Envelope, and relocate the first floor 2m to the west to resolve view loss
- Roof: The external finish to the roof must have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours must not be permitted.



Marked up DA Drawing Ground Floor: Delete all built form in the 6.5m front setback zone at the Ground Floor, to better accord with B7 Front Boundary Setbacks. Reposition the proposed eastern 1.8m wide deck at the Ground Floor to be to the west of the 6.5m front setback zone [as green rectangle above], to equal the same compliant front setback of the eastern deck of the neighbour at #24 Carrington. Reposition the eastern external wall alignment to the Ground Floor to have a minimum front setback of 8.8m to equal the same 8.8m minimum front setback of the eastern wall zone of neighbour at #24 Carrington, to better accord with B7 Front Boundary Setbacks. Reposition the roof over the eastern external wall alignment to the Ground Floor to have a minimum front setback of 8.2m to equal the same 8.2m minimum front setback of the eastern wall zone of neighbour at #24 Carrington, to better accord with B7 Front Boundary Setbacks



Marked up DA Drawing First Floor: Increase the southern side setback of the First Floor to 2m, to better accord with B3 Side Boundary Envelope

7. CONTENTIONS THAT RELATE TO A LACK OF INFORMATION

View Impact Analysis

The Applicant has not provided an adequate View Impact Analysis which details the extent to which existing water views from our property are obstructed under the current proposal, from the proposed built form and the proposed trees, to accord with DCP controls and NSWLEC planning principles

We ask Council that after amended plans are submitted to reduce the building envelope below building height, wall height, and all envelope controls, to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor. The Height Poles will need to define: All Roof Forms, and all items on the roof, Extent of all Decks, Extent of Privacy Screens. Height Poles required for all trees. The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

Solar Access Diagrams

The Applicant has not provided adequate Solar Access Diagrams, at one hourly intervals, in plan and elevation of our property, to assess the loss of solar access at mid-winter, to accord with DCP controls and NSWLEC planning principles

Visual Bulk Analysis

The Applicant has not provided adequate montages from our property to assess the visual bulk assessment from the proposed non-compliant envelope.

8. REASONS FOR REFUSAL

We ask Council to refuse the DA as the proposal is contrary to the Environmental Planning and Assessment Act:

WARRINGAH LEP

- 1.2 Aims of Plans
The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the aims (2a), (2c), (2d), (2f) and (2g) under the LEP.
- 2.3 Zone Objectives
The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the objectives of the R2 Low Density Residential zone of the LEP as it fails to provide for the housing needs of the community within a low-density residential environment.

WARRINGAH DCP

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy objectives and planning controls of DCP:

- B3 Side Boundary Envelope
- B7 Front Boundary Setbacks
- D6 Access to Sunlight
- D7 Views
- D9 Building Bulk

The proposal is contrary to Section 4.15(1)(a) (iv) of the *Environmental Planning and Assessment Act 1979* in that there is insufficient information has been submitted to enable the assessment of the application

The proposal is contrary to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that it will have i) an adverse impact through its bulk, scale and siting on the built environment, (ii) through its potential use, adverse social impact in the locality and (iii) through lack of landscape provision, including there being no indigenous tree plantings, adverse impact on the natural environment.

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* in that this area of the site is unsuitable for a development of such excessive bulk and scale.

The proposals are unsuitably located on the site pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

The proposal does not satisfy Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not adequately address the amenity of neighbours

The proposal is contrary to the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*. The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest.

CONCLUSION

The proposed dwelling is not consistent with the intent of the LEP standards and DCP controls as they are reasonably applied to the proposal.

The variations to LEP standards and DCP controls are considered unreasonable in this instance. The cumulative effect on these non-compliances cause considerable amenity loss to our property.

The development will not sit well within the streetscape with non-compliance to LEP standards and DCP controls causing considerable concern. In this regard, the proposal is considered excessive in bulk and scale and would be consider jarring when viewed from the public domain.

It is considered that the proposal is inappropriate on merit and unless amended plans are submitted, this DA must be refused for the following reasons:

- The application has not adequately considered and does not satisfy the various relevant planning controls applicable to the site and the proposed development.
- The proposed dwelling is incompatible with the existing streetscape and development in the local area generally.

- The proposed dwelling will have an unsatisfactory impact on the environmental quality of the land and the amenity of surrounding properties.
- The site is assessed as unsuitable for the proposal, having regard to the relevant land use and planning requirements.

It is considered that the public interest is not served.

The proposed development does not follow the outcomes and controls contained within the adopted legislative framework.

Having given due consideration to the matters pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended, it is considered that there are multiple matters which would prevent Council from granting consent to this proposal in this instance.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts of which would result in adverse impacts on our property.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, we ask Council to REFUSE this DA.

Yours faithfully,

Greg Meale
24 Carrington Parade
Freshwater
NSW 2096