
From: [REDACTED]
Sent: 4/03/2025 6:10:38 PM
To: Council Northernbeaches Mailbox
Subject: TRIMMED: URGENT: RE: DA 2025/0024 158 PACIFIC PARADE DEE WHY
NSW 2099 WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: TULLOCH on behalf of SOMERVILLE
Attachments: 158 PACIFIC WS.pdf;

I incorrectly sent two submissions into Council.

Could you ensure that that the submission tiled as attached is the only submission uploaded onto the DA Tracker.

Kind regards,

Bill Tulloch BSc[Arch]BArch[Hons1]UNSW RIBA Assoc RAIA
DA Objection Pty Ltd
Director
[REDACTED]

On 4 Mar 2025, at 2:55 pm, [REDACTED] wrote:

Kind regards,

Bill Tulloch BSc[Arch]BArch[Hons1]UNSW RIBA Assoc RAIA
DA Objection Pty Ltd
Director
[REDACTED]

<158 PACIFIC WS.pdf>

SUBMISSION

a written submission by way of objection

BILL TULLOCH BSC [ARCH] BARCH [HONS1] UNSW RIBA Assoc RAIA
Director
DA Objection Pty Ltd

prepared for

DIANE SOMERVILLE, owner of UNIT 5, 139 PACIFIC PARADE DEE WHY
PO Box 1458, Dee Why NSW 2099



4 MARCH 2025

CEO
NORTHERN BEACHES COUNCIL
725 PITTWATER ROAD,
DEE WHY
NSW 2099

council@northernbeaches.nsw.gov.au

RE: DA 2025/0024
158 PACIFIC PARADE DEE WHY NSW 2099
WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: TULLOCH on behalf of SOMERVILLE

Dear Sir,

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

I have been instructed by my client to prepare an objection to this DA.

I have been engaged by my client to critically review the plans and documentation prepared in support of the above development application and to provide advice in relation to policy compliance and potential residential amenity impacts.

Having considered the subject property and its surrounds and the details of the development application currently before Council, I am of the opinion that the proposal, in its present form, does not warrant support. In addition, I am of the view that amendments would need to be made to the development proposal before Council is in a position to determine the development application by way of approval.

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

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A. EXECUTIVE SUMMARY

The design of the proposed development does not ensure that the existing high levels of amenity to my client's property are retained.

Having reviewed the documentation prepared in support of the application and determined the juxtaposition of adjoining properties I feel compelled to object to the application in its current form.

The proposal is considered to be inappropriate within the streetscape.

The bulk, scale, density and height of the proposed development is excessive and inconsistent with the established and desired future streetscape character of the locality.

There is no reason, unique or otherwise why a fully compliant solution to LEP and DCP controls cannot be designed on the site.

The in-fill affordable housing 'bonus' provisions are simply unacceptable for this site. The bonus cannot be deployed as the resultant non-compliant built form beyond the LEP standards causes devastating outcomes to neighbours.

DPIE Practice Notes, dated December 2023 states the following:

'Responding to local standards: The full extent of the in-fill affordable housing bonuses may not be achieved on all sites, due to site constraints and local impacts. The in-fill affordable housing bonuses should not be treated as an entitlement. DAs that propose in-fill affordable housing will be subject to merit assessment by the consent authority. The application of the bonuses does not affect a consent authority's responsibility to consider the requirements of relevant EPIs, a development's likely impacts or the suitability of the site for the development.'

The 'bonus' amendments are considered "bonus" provisions; however, there is no automatic entitlement to the additional height of building provisions.

The 'bonus' amendments do not affect a consent authority's responsibility to consider the requirements of relevant Environmental Planning Instruments. Consent authorities must still consider site constraints and local impacts including the acceptability of the height of building, massing, likely impacts and suitability of the site, in the context of the permitted and additional height of building provisions. A consent authority must also consider the character of the local area and its desired future character.

Site-specific factors may mean the full extent of the additional 'bonus' provisions cannot be granted in some circumstances.

Council and NSWLEC Commissioners regularly concede that development standards and building envelopes provide for maximums and that there is no entitlement to achieve those maximums.

I contend, that the excessive HOB beyond the LEP provisions causes:

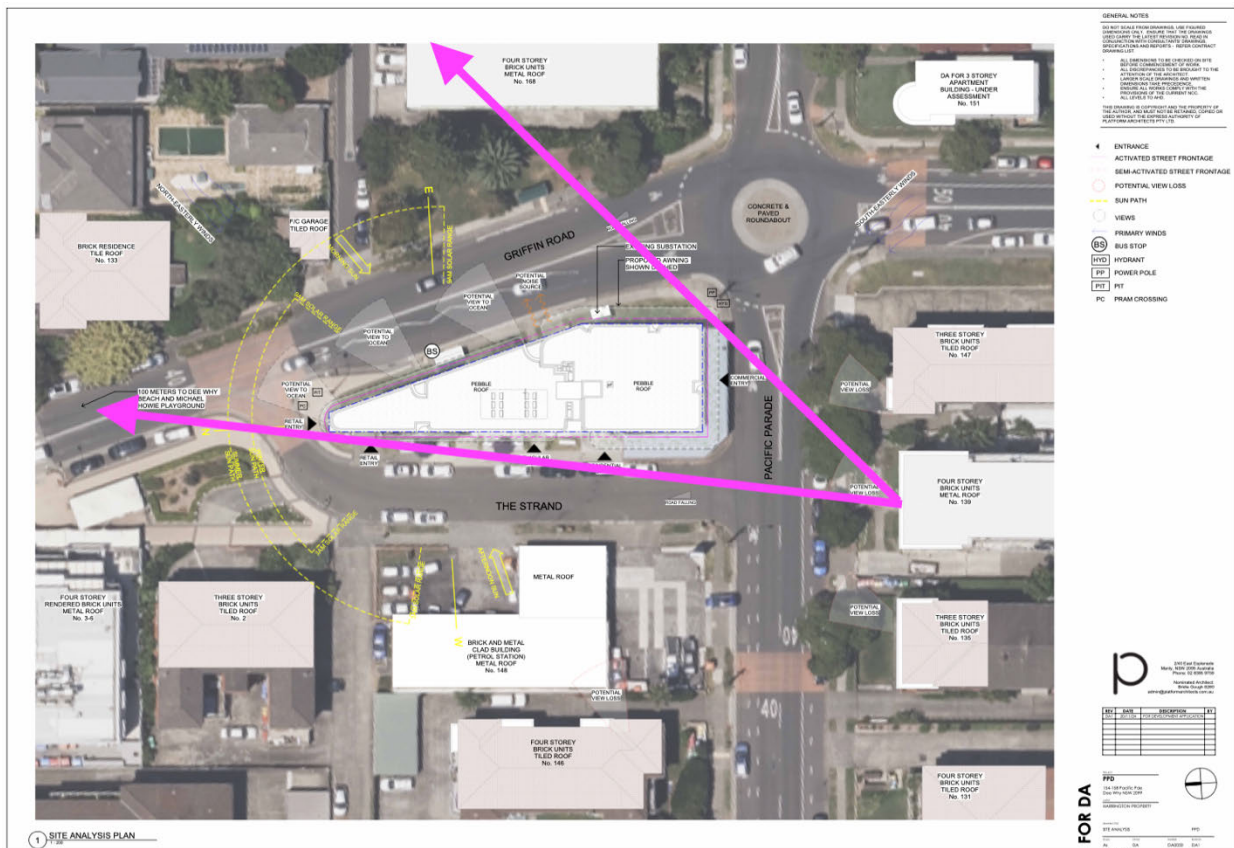
- **Severe & Devastating View Loss Outcomes** from multiple units surrounding the subject site, including my client's unit which directly faces the site
- **Unacceptable Streetscape** outcomes proposing 14.9m HOB building in a 11.0m LEP HOB Zone, with the full non-compliant heights being viewable from all key areas of Dee Why Beach

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

UNACCEPTABLE OUTCOMES

The proposal fails to achieve acceptable outcomes regarding:

- VIEW SHARING: caused by the proposed non-compliant built form and proposed excessive tree canopy. No View Impact Photomontages provided in full accordance with NSWLEC standards;
- VISUAL BULK AND SCALE: caused by the proposed non-compliant built form above LEP/DCP numerical standards;
- TRAFFIC, ACCESS AND PARKING: concerns that no carparking for proposed restaurant and retail, and loss of on-street parking due to car park entry;
- CHARACTER & STREETScape



The view loss corridor from the apartment building

FAILS TO MEET COUNCIL'S PLANNING CONTROLS, THE OBJECTIVES AND THE MERIT ASSESSMENT

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

- EXCESSIVE BUILDING HEIGHT [LEP HOB]: Proposed 14.9m v Control 11.0m [35% non-compliance]
- INSUFFICIENT RETAIL & RESTAURANT PARKING: 27 Required – Zero provided

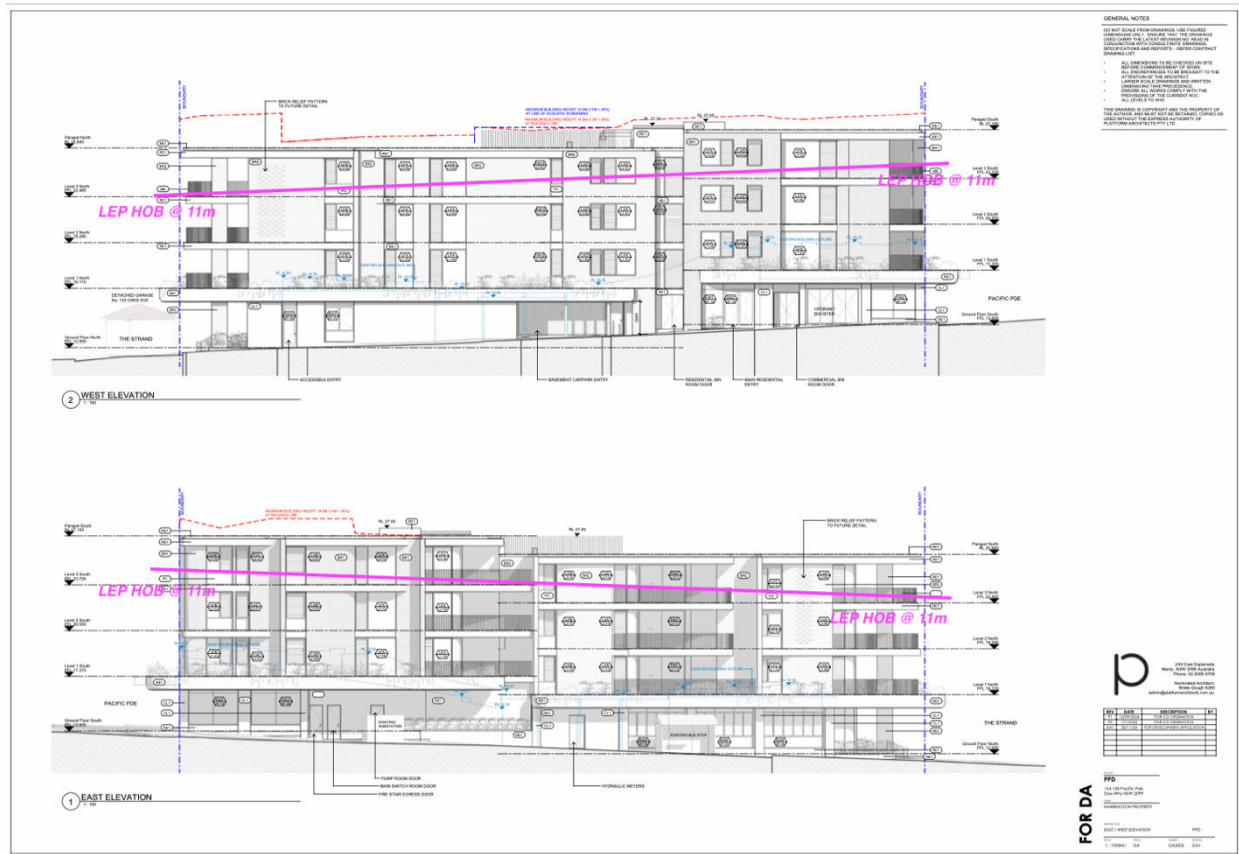
Council will note:

- LIFT OVER-RUN @ RL 27.6
- SURVEY HEIGHT to the north of the existing substation at the boundary @ RL 12.7
- HOB 14.9m

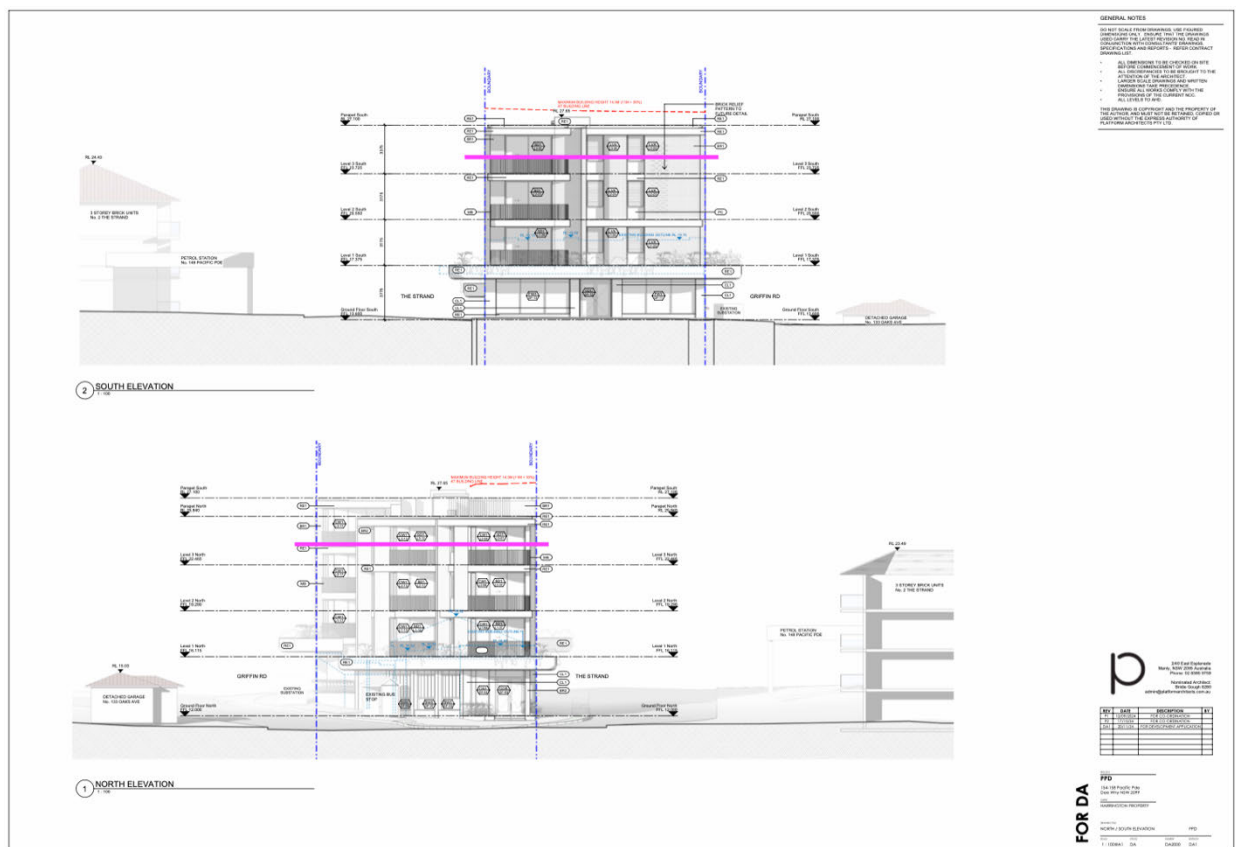
The proposed development fails to meet SEPP planning controls, particularly the affordable housing height incentive provisions contained within Chapter 2, Part 2, Division 1 Infill affordable housing provisions of State Environmental Planning Policy (Housing) 2021 (Housing SEPP), and the objectives and the merit assessment provisions relating to:

- EXCESSIVE BUILDING HEIGHT [SEPP 30% BONUS HOB]: Proposed 14.9m v Control 14.3m [4% non-compliance]

-



6



The excessive HOB exceeding LEP standards.

- EXCESSIVE BUILDING HEIGHT [LEP HOB]: Proposed 14.9m v Control 11.0m [35% non-compliance]
- EXCESSIVE BUILDING HEIGHT [SEPP 30% BONUS HOB]: Proposed 14.9m v Control 14.3m [4% non-compliance]

The proposed development fails to meet Council's planning controls:

- The proposed development does not satisfy the relevant zone objectives in the (LEP) 2014.
- The proposed development exceeds the HOB standards of the LEP.
- The Applicant states that the HOB standards comply with the Housing SEPP, I contend that the HOB exceed Housing SEPP HOB standards. No Clause 4.6 has been submitted.
- The proposal does not define the additional poor amenity outcomes arising from that maximisation and exceedance to Housing SEPP HOB standards, compared with the LEP standards.
- The proposal is not consistent with the objectives and does not comply with the controls of the DCP, significantly relating to neighbour's residential amenity
- The proposal is not compatible with the surrounding development and will not reasonably maintain neighbour amenity.

- The proposal is not consistent with the desired future character established by the LEP.

REQUEST FOR AMENDED PLANS TO BE SUBMITTED TO BETTER ADDRESS IMPACTS UPON ADJOINING PROPERTIES

My client asks 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 my client's amenity loss.

A compliant building design would reduce the amenity impacts identified.

Ask the Applicant to prepare and submit further supporting information and amendments to the assessing officer directly addressing the issues.

Reduce the proposed development as follows:

- **Reduce the Height of Building to below the LEP standards @ 11.0m to ensure view sharing;**
- **Relocate any of the proposed 13 street tree canopy away from corner locations, so as not to impede view sharing**

154-158 Pacific Highway Dee Why Planting Schedule					
Code	Botanic Name	Common Name	Mature Size (H x W)	Proposed Pot Size	Quantity
					Ground
Trees + Palms					
Ac	<i>Archontophoenix cunninghamiana</i>	Bangalow Palm	20 x 3	200L	3
Tl	<i>Tristaniaopsis 'Luscious'</i>	Luscious Water Gum	8 x 4	200L	8
Ca	<i>Cupaniopsis anacardioides</i>	Tuckeroo	12 x 6	200L	2

The excessive tree canopy in viewing corridors

SITE IS NOT SUITABLE

The site is not suitable for the proposed development pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979. The site is not considered suitable for the proposed development in terms of its size, scale and design, despite it being residential development in the zone.

NOT IN THE PUBLIC INTEREST

Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest. The extent of issues identified with the proposed development are such that the public's interest is not served by way of approval of the development application.

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

CLAUSE 4.6 WRITTEN REQUEST: INSUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

The Applicant has not provided a Clause 4.6 written request to adequately demonstrate that the proposal achieves the relevant objectives of the development standards. I contend there are insufficient environmental planning grounds to justify the extent of the proposed variations sought. The variations would result in undue visual bulk that would be inconsistent with the desired future character of the locality.

- EXCESSIVE BUILDING HEIGHT [LEP HOB]: Proposed 14.9m v Control 11.0m [35% non-compliance]
- EXCESSIVE BUILDING HEIGHT [SEPP 30% BONUS HOB]: Proposed 14.9m v Control 14.3m [4% non-compliance]

The proposed development does not satisfy the objectives of the zone or contribute to a scale that is consistent with the desired character of the locality and the scale of surrounding development.

VIEW SHARING

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Viewing Sharing of the DCP. The proposed development is not considered to result in the reasonable sharing of views.

Significant concern is raised in relation to view loss to my client's property as a result of the proposed development, roof form and building height encroachment of this proposal.

- EXCESSIVE BUILDING HEIGHT [LEP HOB]: Proposed 14.9m v Control 11.0m [35% non-compliance]
- EXCESSIVE BUILDING HEIGHT [SEPP 30% BONUS HOB]: Proposed 14.9m v Control 14.3m [4% non-compliance]

Failure to provide adequate photomontages

No adequate assessment has been made to identify the view loss from an NBC HOB compliant @ 11.0m, and the non-compliant 14.9m HOB proposal.

The Applicant has not provided Photomontages in accordance with NSWLEC Guidelines for Photomontages, that Council would expect to be submitted when view loss occurs.

I ask Council to have the Applicant prepare Photomontages on the following NSWLEC basis, showing both the NBC HOB compliant @ 11.0m, and the non-compliant 14.9m HOB proposal.

Use of photomontages

The following requirements for photomontages proposed to be relied on as or as part of expert evidence in Class 1 appeals will apply for proceedings commenced on or after 1 October 2013. The following directions will apply to photomontages from that date:

Requirements for photomontages:

1. Any photomontage proposed to be relied on in an expert report or as demonstrating an expert opinion as an accurate depiction of some intended future change to the present physical position concerning an identified location is to be accompanied by: Existing Photograph. a) A photograph showing the current, unchanged view of the location depicted in the photomontage from the same viewing point as that of the photomontage (the existing photograph); b) A copy of the existing photograph with the wire frame lines depicted so as to demonstrate the data from which the photomontage has been constructed. The wire frame overlay represents the existing surveyed elements which correspond with the same elements in the existing photograph; and c) A 2D plan showing the location of the camera and target point that corresponds to the same location the existing photograph was taken. Survey data. d) Confirmation that accurate 2D/3D survey data has been used to prepare the Photomontages. This is to include confirmation that survey data was used: i. for depiction of existing buildings or existing elements as shown in the wire frame; and ii. to establish an accurate camera location and RL of the camera.

2. Any expert statement or other document demonstrating an expert opinion that proposes to rely on a photomontage is to include details of: a) The name and qualifications of the surveyor who prepared the survey information from which the underlying data for the wire frame from which the photomontage was derived was obtained; and b) The camera type and field of view of the lens used for the purpose of the photograph in (1)(a) from which the photomontage has been derived.

The development application should be refused as the Applicant has not provided photomontages to define the view loss.



VIEW 01 FROM 139 PACIFIC PARADE * - COMPLIANT ENVELOPE WITH 30% UPLIFT FOR AFFORDABLE HOUSING CONTRIBUTION



VIEW 02 FROM 139 PACIFIC PARADE * - COMPLIANT ENVELOPE WITH 30% UPLIFT FOR AFFORDABLE HOUSING CONTRIBUTION



VIEW 01 FROM 139 PACIFIC PARADE * - PROPOSED ENVELOPE



VIEW 02 FROM 139 PACIFIC PARADE * - PROPOSED ENVELOPE

* 139 PACIFIC PARADE HAS SINCE UNDERGONE REMEDIAL WORKS INCLUDING NEW GLASS BALUSTRADES

The applicants montages

The Applicant has not provided Photomontages in accordance with NSWLEC Guidelines for Photomontages, that Council would expect to be submitted when view loss occurs. There is no apparent Registered Surveyors Survey, or the location of the viewpoint. The Applicant has not visited the property to take current photographs, and record the precise location and RL levels. There is no apparent verification of the process. There is no comparison between a compliant 11m HOB, and the proposed 14.9m HOB envelope. The 3.9m reduction in height from the above montages would suggest that a considerable impairment to the view sharing outcome. There is no automatic right to maximise HOB.

The controls require that new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties and must demonstrate that view sharing is achieved through the application of the Planning Principles established in the NSW Land and Environment Court case *Tenacity Consulting v Warringah Council*.

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.

My client 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 balconies is considered unreasonable.

Recent decisions from NSWLEC Decisions make it clear that applicants cannot solely rely upon compliant HOB outcomes in defence of a poor view sharing outcome. I represented neighbours in the following NSWLEC cases.

NSWLEC Commissioner Joanne Gray dismissal of BONDY RESIDENCE PTY LTD V WAVERLEY COUNCIL [2024] NSWLEC 1297 that *'numerical compliance is not sufficient'*. In this case a compliant HOB was insufficient – non-compliance with number of storey and setback was seen to be unacceptable and unreasonable in respect to view sharing. The controls in any DCP are not merely building envelope controls, but extend to specific controls concerning the increase of setbacks and heights to minimise view loss, as well as controls requiring the incorporation of design measures to facilitate view sharing.

NSWLEC Commissioner Dr Peter Walsh dismissal FURLONG V NORTHERN BEACHES COUNCIL [2022] NSWLEC 1208 suggests that for side boundary views which are of a high value and not replicated in other areas of the property, it is appropriate to protect those views and refuse the proposed development. As the Commissioner noted: *'when there are reasonable design alternatives which would moderate this impact significantly'*, and the Applicant has not taken that design path, the proposal is unacceptable and unreasonable in respect to view sharing.

NSWLEC Commissioner Matthew Pullinger agreed in CSKS DEVELOPMENTS PTY LTD V WOOLLAHRA MUNICIPAL COUNCIL [2024] NSWLEC 1801 that a compliant 13.5m HOB was insufficient, and a reduction in height of 4.8m was required, and that outcome *"mitigates against earlier view impacts and is agreed to represent an appropriate response to view sharing"*.

NSWLEC Commissioner Nicola Targett agreed in COLLAROY LIVING PTY LTD V NORTHERN BEACHES COUNCIL [2024] NSWLEC 1352 that a compliant HOB was insufficient, and a reduction in height and 30% reduction in FSR was required, and that outcome *"provides for the reasonable sharing of views"*

Council will fully appreciate the reasoning behind these NSWLEC Decision – I present them, as clearly the Applicant does not seem to understand the requirements under

the DCP, and the NSWLEC Planning Principle that defines view sharing issues: *TENACITY, [TENACITY CONSULTING V WARRINGAH COUNCIL 2004]*

In relation to Principle four of *TENACITY CONSULTING V WARRINGAH COUNCIL 2004* ('Assessment of the reasonableness of the proposal that is causing the impact'), it is considered that a development which complies with all planning controls would be deemed more reasonable than one that is non-compliant.

The proposal as it currently stands presents numerous non-compliances to LEP and DCP controls, which questions whether a more 'skilful' (or sensitive) design would achieve an improved and acceptable outcome.

Further exploration of an alternative design outcome which would include the amendments mentioned within this submission is therefore encouraged to satisfactorily address the Planning Principles established in the NSW Land and Environment Court case.

There are three different points to the fourth Tenacity step, concerned with assessing the reasonableness of the impact, which I summarise as follows:

Point 1 - Compliance, or otherwise, with planning controls.

Point 2 - If there is a non-compliance, then even a moderate impact may be considered unreasonable.

Point 3 - For complying proposals: (a) "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", and (b) "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".

I contend that 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.

I contend that the view impact is considered above a moderate impact from the respective zones within the property given the significant proportion of the views which are impacted. The views most affected are from my client's highly used zones and include very high scenic and highly valued features as defined in Tenacity. The views are certainly worthy of consideration and substantial protection.

The proposal to remove the vast majority of these views is considered overall to be above a moderate view impact.

The 'more skilful design' solution identified in this Submission, gives the Applicant a very high level of amenity, and would enjoy spectacular and impressive views.

COMPLY WITH THE PLANNING REGIME

A compliant building design would reduce the amenity impacts identified.

My client 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 my client 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.

My client wish to emphasise the fact that my client take no pleasure in objecting to their neighbour's DA.

The proposed DA has a deleterious impact on the amenity of their property caused by the DA being non-compliant to controls.

Council and NSWLEC Commissioners regularly concede that development standards and building envelopes provide for maximums and that there is no entitlement to achieve those maximums.

It does seem unreasonable that the Applicants wish to remove my client'ss amenity to improve their own, and is proposing non-compliant outcomes that would seriously adversely affect my client's amenity.

Council's development controls relating to managing building bulk and scale are designed to ensure that buildings are consistent with the height and scale of the desired character of the locality, are compatible with the height and scale of surrounding and nearby development, respond sensitively to the natural topography and allow for reasonable sharing of views and visual amenity.

Council's DCP with respect to the locality, requires that development respond to the natural environment and minimise the bulk and scale of buildings. The proposed development in its current form does not achieve this and provides inadequate pervious landscaped area at ground level.

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, does not succeed on merit and is not worthy of the granting of development consent.

FUNDAMENTAL PRINCIPLES OF DESIGN EXCELLENCE

The proposed development fails the fundamental principles of design excellence in terms of:

- The application fails to adequately address environmental impacts of overshadowing, solar access, views and visual privacy
- Context and local character
- Built form, scale and public domain, urban design response
- Density
- Landscape integration
- Architectural expression, in terms of excessive built form
- The application fails to demonstrate a high standard of architectural design and detailing appropriate to the building type and surrounding character

- The form and external appearance of the proposed development will not improve the quality of the public domain
- The proposed development detrimentally impacts on public view corridors
- The application fails to appropriately address streetscape
- The proposed development fails to provide an appropriate bulk, massing and modulation of buildings
- The proposal is not consistent with existing street frontage heights
- The proposed development does not achieve an appropriate interface at ground level between the building and the public domain
- The proposed development fails to demonstrate excellence and integration of landscape design

INCOMPLETE INFORMATION

The proposed development is incapable of consent, as there is a substantial list of incomplete information that has yet to be provided. I refer Council to Section C of this submission - *Contentions that relate to Insufficient Information*

RE-NOTIFICATION

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

DETAILED LIST OF CONDITIONS OF CONSENT

Section D of this submission titled '*Detailed List of Conditions of Consent*', addresses the conditions that my client seek to any consent.

REASONS FOR REFUSAL

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, my client asks Council to REFUSE this DA, in accordance with Section E '*Reasons for Refusal*' of this submission.

B. CONTENTIONS THAT THE APPLICATION BE REFUSED

1. CONTRARY TO AIMS OF LEP

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 under the LEP.

2. CONTRARY TO 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 zone of the LEP.

ZONE E1 LOCAL CENTRE

The stated objectives of the E1 zone are as follows:

- *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 ensure 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.*

I contend that the proposed development fails the following objectives:

- *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 create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

3. LACK OF STATUTORY POWER

CLAUSE 4.6

The development application should be refused as the proposal exceeds the development standard prescribed by the LEP and it has not been supported by a request to vary pursuant to clause 4.6 of the LEP.

4. INCONSISTENT WITH THE PROVISIONS OF CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

The development application should be refused as the proposal exceeds the development standard prescribed by the LEP and it has not been supported by a request to vary pursuant to clause 4.6 of the LEP.

Furthermore, and in simple terms, I contend that:

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact
- the impacts are not consistent with the impacts that may be reasonably expected under the controls;
- the proposal's height and bulk do not relate to the height and bulk desired under the relevant controls;
- the area has a predominant existing character and the planning controls are likely to maintain it;
- the proposal does not fit into the existing character of the area;
- the proposal is inconsistent with the bulk and character intended by the planning controls;
- the proposal looks inappropriate in its context

The objectives of the standard have not been met.

The bulk and scale of the proposed development is inappropriate for the site and locality.

Strict compliance with the maximum building height is reasonable and necessary in the circumstances of this case.

In summary, the proposal does not satisfy the requirements of clause 4.6 of LEP 2014.

The variation of the standard would not be in the public interest because it would set a precedent for development in the neighbourhood, such that successive exceedances would erode the views enjoyed from other similar properties.

The proposed development is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

5. NON-COMPLIANCE WITH SEPP (RESILIENCE AND HAZARDS) 2021

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 2.11 (c) of State Environmental Planning Policy (Resilience and Hazards) 2021.

The proposed development is considered to be inconsistent with the surrounding coastal and built environment, in relation to the bulk, scale and size of the proposal. The scale overly dominates the coastal environment, in a highly visually prominent area.

6. NON-COMPLIANCE WITH THE HOUSING SEPP – DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

On 15 March 2024 the NSW Government published the *State Environmental Planning Policy Amendment (Housing) 2024*. This document revised the transitional provision set out in section 8(1) of Schedule 7A of the Housing SEPP.

A new provision applies the new Chapter 4 ('Design of residential apartment development') of the Housing SEPP to any development application or modification application, including those lodged before 14 December 2023. This provision is section 8(2A) of Schedule 7A of the Housing SEPP. Schedule 9 'Design Principles' were incorporated into the subject SEPP.

A Design Verification Report has been prepared.

I contend that the proposal is inconsistent with the Design Principles in Schedule 9 of the SEPP.

The proposal also does not comply with the key provisions of the Apartment Design Guide (ADG) which informs the SEPP. An assessment against all the relevant provisions of the ADG is provided.

In addition, as in-fill affordable housing units will be provided as a part of this application, relevant clauses apply to this proposal. The in-fill affordable housing provisions were transferred from State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP) to the Statement Environmental Planning Policy (Housing) 2021 (Housing SEPP) under Chapter 2, Part 2, Division 1.

DPIE Practice Notes, dated December 2023 states the following:

'Responding to local standards: The full extent of the in-fill affordable housing bonuses may not be achieved on all sites, due to site constraints and local impacts. The in-fill affordable housing bonuses should not be treated as an entitlement. DAs that propose in-fill affordable housing will be subject to merit assessment by the consent authority. The application of the bonuses does not affect a consent authority's responsibility to consider the requirements of relevant EPIs, a development's likely impacts or the suitability of the site for the development.'

The amendments are considered "bonus" provisions; however, there is no automatic entitlement to the additional height of building provisions.

The amendments do not affect a consent authority's responsibility to consider the requirements of relevant Environmental Planning Instruments. Consent authorities must still consider site constraints and local impacts including the acceptability of the height of building, massing, likely impacts and suitability of the site, in the context of the permitted and additional height of building provisions. A consent authority must also consider the character of the local area and its desired future character.

Site-specific factors may mean the full extent of the additional bonus provisions cannot be granted in some circumstances.

Council and NSWLEC Commissioners regularly concede that development standards and building envelopes provide for maximums and that there is no entitlement to achieve those maximums.

I contend, that the excessive HOB beyond the LEP provisions causes:

- Severe & Devastating View Loss Outcomes
- Presents 14.9m built forms in a 11m zone, presenting unacceptable streetscape and heritage outcomes, and fails on character grounds

SCHEDULE 9 DESIGN PRINCIPLES FOR RESIDENTIAL APARTMENT DEVELOPMENT

The proposal is inconsistent with the design quality principles of the HOUSING SEPP; Schedule 9 Design Principles for Residential Apartment Development. I contend that the proposed development fails to accord with:

Context and Neighbourhood Character

The resultant bulk, form and scale of the amended proposal will be inconsistent with and unsympathetic to the adjacent sites and neighbourhood. The proposal fails to respond to the surrounding context and neighbourhood character.

Built Form and Scale

The bulk and scale of the proposed new building are excessive. The proposal will not achieve an appropriate built form that fits into its context.

Density

The density is inappropriate to the site and its context.

Landscape

The proposed development does not present a positive image and contextual fit of well-designed development by contributing to the landscape character of the streetscape and neighbourhood. The proposed development does not enhance the development's environmental performance by retaining positive natural features

Amenity

The proposed development does not present good amenity outcomes for neighbours, including loss of view, privacy, and solar.

Aesthetics

The proposal does not respond to or reinforce the existing local context and results in a built form which is excessive in bulk and scale.

The proposed development is contrary to principles 1 to 9 of the design principles for residential apartment development in Schedule 9 of the Housing SEPP. The proposal provides inadequate amenity to apartments and neighbouring residential buildings.

APARTMENT DESIGN GUIDE

The proposed development does not accord with the *Apartment Design Guide*. Concern is expressed relating to the non-compliance to the controls, the objectives, and the failure to reduce the amenity impacts to neighbours on view, visual bulk, privacy, solar,

The proposed development is inconsistent with the design criteria detailed in the Apartment Design Guide in particular:

- 2A Primary Controls
- 2B Building Envelopes
- 2C Building Height

7. BUILDING BULK & SCALE

The proposed development should be refused due to its excessive bulk and scale and its failure to comply with the numerical standards and controls.

The application will result in an unacceptable loss of visual amenity from adjoining private properties, and from the public domain including the foreshore. The loss of visual amenity is due to the excessive bulk and scale of the proposed development. The breaches of the building envelope will result in an adverse visual impact when viewed from private and public domains. The numerical non-compliances result in a cumulative impact, that increases the built form, resulting in an overdevelopment of the site. The proposal will present excessive bulk and scale that is not representative of the type of development anticipated by the zone or the applicable controls. The proposal will result in unreasonable bulk and scale for the type of development anticipated in the zone. The proposal does not step down with the topography of the site. The proposal does not allow for enough landscaping to suitably reduce the bulk and scale of the development. The proposal does not provide adequate articulation of the built form to reduce its massing. The proposal fails to encourage good design and innovative architecture to improve the urban environment. The proposal fails to minimise the visual impact of development when viewed from adjoining properties and streets.

8. CHARACTER & STREETSCAPE

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate streetscape outcome, presenting non-compliant envelope controls that are visible from the street.

The proposed development is inconsistent with the provisions relating to the desired future character. The proposal, due to its excessive bulk, its impact on the amenity of

adjoining properties and users of the public domain, its poor relationship with the subject property and the environment is inconsistent with the objectives with the desired future character provisions of the locality.

The proposed development will have unacceptable impacts upon the amenity for neighbours' property, specifically with regard to visual bulk impact.

The proposed development should be refused due to its excessive bulk, scale and resulting impacts upon the amenity of adjoining properties and the character of the surrounding locality. The proposal does not meet the streetscape character and key elements of the precinct and desired future character. The proposal is excessive in scale, has adverse impacts on the visual amenity of the environment, does not positively contribute to the streetscape in terms of an adequately landscaped setting. The proposal is visually dominant, and is incompatible with the desired future townscape area character. The development has excessive bulk and scale and fails to comply with development standards set out in the LEP, resulting in a building which has unacceptable adverse impacts on neighbouring properties and the locality.

The non-compliant building envelope will lead to unacceptable visual bulk impact to neighbours. The multiple non-compliances arising from the proposed upper floor level and the non-compliant setbacks indicates that the proposed development cannot achieve the underlying objectives of this control, resulting in an unacceptable building bulk when viewed from adjoining and nearby properties.

The development presents an inappropriate response to the site and an unsatisfactory response to the desired future character of the area. The proposed development should be refused because it is incompatible with the desirable elements of the current character of the locality and is inconsistent with the standards and controls:

- The design of the proposal does not recognise or complement the desirable elements of the subject site's current character.
- The proposal does not employ a building form that relates to the landform as it does not step down with the slope of the site.
- The proposal offers little visual relief of the resultant building bulk. Such building bulk is not compatible in scale with adjacent and surrounding development.
- The proposal will present as a large building with insufficient building articulation and landscaping to break up and visually reduce the building bulk.
- The proposal will not appear as low density and, therefore, does not achieve consistency or compatibility with the general built form within the locality or the zone. The development does not present as detached in style with distinct building separation and areas of landscaping.

9. EXCESSIVE BUILDING HEIGHT

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to comply with the building height development standard under the LEP.

The proposed development should be refused due to its excessive height and failure to comply with the *Height of Buildings* set out in the LEP, and in particular:

- The proposed development, by virtue of its height and scale, will not be consistent with the desired character of the locality
- The development will not be compatible with the height and scale of surrounding and nearby development.

The development application should be refused as the proposal exceeds the development standard prescribed by the LEP and it has not been supported by a request to vary pursuant to clause 4.6 of the LEP. The proposed building height is excessive and does not comply with the objectives or controls in the LEP.

The proposal is inconsistent with the objectives of the Height of Buildings development standard pursuant to LEP.

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact
- The development is not compatible with the desired future character of the locality in terms of building height and roof form.
- The development does not minimise the adverse effects of the bulk and scale of buildings

The adverse impacts of the proposed development, including on the amenity of neighbouring property and public property, are directly attributable to the exceedance of the height of buildings development standard. The proposal is inconsistent with the LEP as there is a public benefit in maintaining the Height of Buildings development standard in this particular case. The proposed portion of the building above the maximum height is not 'minor'. The building does not adequately step down the slope.

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."

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

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 excessive heights would have most observers finding *'the proposed development offensive, jarring or unsympathetic'*.

The planning controls are not limited to preventing offence and the like; and are concerned with establishing a certain physical and landscape character. In this instance I am not convinced that there are strong environmental planning grounds to justify a contravention of the scale proposed. The proposed development should be refused due to its excessive bulk and scale and its failure to comply with the LEP development standard

The main LEP standards that control bulk have been exceeded;

- The written request is not well-founded as it does not satisfactorily demonstrate: *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case* because it does not achieve consistency with the objectives of the zone or the objectives of the equivalent development standard contained within clause 4.4 of the LEP; and *that there are sufficient environmental planning grounds to justify contravening the development standard* because the provided justification is insufficient and disagreed with.
- The proposal will present excessive bulk and scale that is not representative of the type of development anticipated by the zone or the applicable controls.
- The proposal does not comply with requirement set out within the DCP, as it does not step down with the topography of the site
- The proposal does not comply with requirement set out within the DCP as it does not allow for enough landscaping to suitably reduce the bulk and scale of the development.
- The proposal does not comply with requirement set out within the DCP as it does not provide adequate articulation of the built form to reduce its massing.
- The proposal is inconsistent with the following objectives of the DCP: *To encourage good design and innovative architecture to improve the urban environment; and To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

10. FORESHORE SCENIC PROTECTION

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it is inconsistent with the provisions of Foreshore Scenic Protection Area, as the built form and scale of the proposed development exceeds the expected form of new development in the foreshore scenic protection area.

The proposal does not achieve the normal outcomes expected to achieve the desired future character of the locality, and maintaining bushland or landscape as the predominant feature with the built form being the secondary component of the visual

catchment. The proposal does not achieve the normal control that development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

The proposal detrimentally affects the visual or aesthetic amenity of land in the foreshore scenic area.

11. TRAFFIC, ACCESS & PARKING

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as traffic, access and parking issues do not accord with the DCP provisions.

The proposed development is required to provide a minimum of 27 non-residential (i.e. retail and restaurant) car spaces under the WDCP.

Relying upon on-street parking is unacceptable to my client.

My client are concerned that the proposed SEPP development does not provide clear detail on the DA drawings;

- NO RETAIL OR RETAIL PARKING SPACES
- DCP requirements for Visitor Parking, including Accessible Parking Spaces and a Car Wash Bay for Residents
- Designated Compliant Accessible Parking Spaces, with 2.5m headroom and no obstructions for wheelchairs;
- All swept paths including B85 passing B99 on the driveway and access ramp;
- Full Dimensions for Car Parking Spaces
- Two Way Accessway dimensions shown on architectural plans;
- Sightlines at exit and entry at the footpath zone
- Vehicular Swept Paths. Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces
- Vehicle Access & Parking. All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off- street Parking standards). With respect to this, the following revision(s) must be undertaken to the parking allocation to ensure compliance: Compliant outcomes in respect to - residential spaces, residential visitor spaces, retail spaces, community facility spaces, car share spaces, car wash bays, motorcycle spaces, residential visitor spaces must be line marked as "Residential Visitor Only".
- Operational Management Plan. Operational Management Plan (OMP) is required to be prepared and submitted to Council detailing the operation of the development.

The proposed traffic and parking arrangement, including the proposed car lift, car stacker, driveway and sight splay are unsatisfactory.

- To minimise conflicts among mechanical parking systems, a traffic signal system should be incorporated and installed at both basement and ground level to give priority to vehicles entering the car park.
- Swept path diagrams indicate restricted movements for vehicles accessing and egressing from the car lift and identify several encroachments into adjacent structures.
- Car lift must be capable of accommodating a B99 vehicle, as per Council's DCP.
- Swept path analysis should be revised accordingly to demonstrate satisfactory movements of B99 vehicles.
- The width of access driveway must be confirmed. This should be clearly depicted on the architectural drawings.
- In accordance with AS 2890.1- 2004 (Parking Facilities, Part 1: Off-Street car parking), the proposed driveway shall be a minimum of 5.5 metres in width for a minimum distance of 6 metres from the property boundary.
- Vehicles are to enter and exit the site in a forward direction.
- All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping.

Vehicle Access & Parking

All internal driveways and vehicle parking space must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

With respect to this, the following revision(s) must be undertaken;

Dimensioned plans for the parking area including the driveway width and parking spaces width are to be submitted to Council's traffic engineer for review to confirm that parking bays and the driveway widths are appropriately sized.

Vehicular Swept Paths

Vehicular manoeuvring swept path plots should be provided for review by Council's traffic engineer.

The plots to be prepared using traffic engineering software such as Autotrack/Autoturn, for a B85 car entering and egressing the most constraint spaces in a forward direction and for a B99 passing a B85 vehicle inside the carpark. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Demolition Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the Applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS' Manual – “Traffic Control at Work Sites”.

Implementation of Demolition Traffic Management Plan

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Construction Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by a TfNSW accredited person and submitted to and approved by the Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site

- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

SEPP HOUSING: CAR PARKING AND TRAFFIC SAFETY

The proposed development should be refused because it does not provide satisfactory car parking and will result in unacceptable traffic safety impacts.

The proposed development provides an inadequate amount of parking for:

- Retail Uses
- Visitor Parking
- Bicycle Parking
- Disability

The proposed development provides an inadequate space for delivery vehicles for:

- Retail Use
- Garbage Collection
- Removalists Vans
- Emergency Vehicles

I contend that there are multiple other concerns:

- It has not been demonstrated by swept path analysis that satisfactory two-way passing of vehicles can be achieved at the proposed vehicle access onto the street having regard for the narrow carriageway width of the street, which includes parallel parking along both kerbsides, as per Appendix B of AS 2890.4-2004.
- Sight Lines at the Entry unacceptable

- Single Service Bay that is sized only for Courier Vans and Utilities is unacceptable. There is no capacity to accommodate deliveries or servicing on-street. An off-street loading bay giving access to a Small Rigid Vehicle is the minimum requirement.
- Head Clearance above Accessible Parking, Loading/Service Bays and Basement Ramp have not been dimensioned, to accord with AS 2890.
- Proposed Vehicle Crossing has not been shown.
- 6m @ 1:20 not shown at entry
- Inadequate details of the proposed basement traffic signals control system have not been provided. Waiting Bays not marked. Access for B99 vehicles past B85 vehicles occupying the waiting bays not demonstrated.
- Queuing Analysis not provided to prevent vehicle encounters on the access ramp.
- The location for the proposed intercom and security card detector is not provided.
- Critical Parking Spaces has not been demonstrated by swept path plots for a B85 vehicle as required by AS 2890.1.

12. IMPACTS UPON ADJOINING PROPERTIES: ADVERSE VIEW SHARING IMPACTS

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to achieve an appropriate view sharing outcome to neighbours.

The proposal is inconsistent with the objectives of the DCP.

The view loss is directly attributable by the '*in-fill affordable housing bonuses*', of HOB.

DPIE Practice Notes, dated December 2023 states the following:

'Responding to local standards: The full extent of the in-fill affordable housing bonuses may not be achieved on all sites, due to site constraints and local impacts. The in-fill affordable housing bonuses should not be treated as an entitlement. DAs that propose in-fill affordable housing will be subject to merit assessment by the consent authority. The application of the bonuses does not affect a consent authority's responsibility to consider the requirements of relevant EPIs, a development's likely impacts or the suitability of the site for the development.'

View loss is assessed on a Planning Principle established by the NSWLEC within *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.

In *Tenacity*, NSWLEC considered Views. *Tenacity* is now the NSWLEC Planning Principle that defines the reasonableness of a proposal to view sharing.

Tenacity states:

"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 application should be refused as it results in unacceptable view loss from adjoining and nearby residential dwellings.

Tenacity, states the test for reasonableness:

Point 1 - Compliance, or otherwise, with planning controls.

Point 2 - If there is a non-compliance, then even a moderate impact may be considered unreasonable.

Point 3 - For complying proposals: (a) "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", and (b) "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 development breaches multiple planning controls and is unreasonable.

FAILURE TO PROVIDE PHOTOMONTAGES

THE Applicant has not provided Photomontages in accordance with NSWLEC Guidelines for Photomontages, that Council would expect to be submitted when view loss occurs.

I ask Council to have the Applicant prepare Photomontages on the following NSWLEC basis:

Use of photomontages

The following requirements for photomontages proposed to be relied on as or as part of expert evidence in Class 1 appeals will apply for proceedings commenced on or after 1 October 2013. The following directions will apply to photomontages from that date:

Requirements for photomontages:

1. Any photomontage proposed to be relied on in an expert report or as demonstrating an expert opinion as an accurate depiction of some intended future

change to the present physical position concerning an identified location is to be accompanied by: Existing Photograph. a) A photograph showing the current, unchanged view of the location depicted in the photomontage from the same viewing point as that of the photomontage (the existing photograph); b) A copy of the existing photograph with the wire frame lines depicted so as to demonstrate the data from which the photomontage has been constructed. The wire frame overlay represents the existing surveyed elements which correspond with the same elements in the existing photograph; and c) A 2D plan showing the location of the camera and target point that corresponds to the same location the existing photograph was taken. Survey data. d) Confirmation that accurate 2D/3D survey data has been used to prepare the Photomontages. This is to include confirmation that survey data was used: i. for depiction of existing buildings or existing elements as shown in the wire frame; and ii. to establish an accurate camera location and RL of the camera.

2. Any expert statement or other document demonstrating an expert opinion that proposes to rely on a photomontage is to include details of: a) The name and qualifications of the surveyor who prepared the survey information from which the underlying data for the wire frame from which the photomontage was derived was obtained; and b) The camera type and field of view of the lens used for the purpose of the photograph in (1)(a) from which the photomontage has been derived.

The development application should be refused as the Applicant has not provided photomontages to define the view loss.

DIANE SOMERVILLE, 5/139 PACIFIC PARADE DEE WHY

LOSS OF VIEW:

water view, beach view, land/water interface view, headland views, landscape, trees & skylines

SEVERITY:

Devastating

CAUSE:

Non-compliance to LEP Height of Building, Excessive Tree Canopy



RECENT REFUSALS THAT ASSIST IN DEFINING OUTCOMES WITHIN *TENACITY CONSULTING V WARRINGAH COUNCIL* 2004

I bring to Council's attention a number of recent appeals on view sharing grounds.

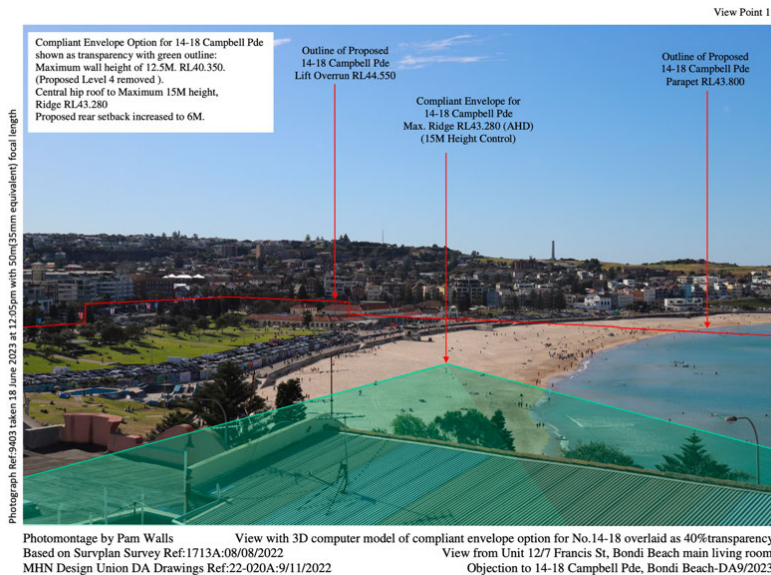
Tenacity continues to be the planning principle, however, my contention is that multiple recent decisions by NSWLEC Commissioners help better define and re-enforce the guiding principles.

I successfully represented neighbours in better protecting their views in these cases.

BONDI RESIDENCE PTY LTD V WAVERLEY COUNCIL [2024] NSWLEC 1297

This case involved an Applicant proposing built form that did not accord with setback, wall height and number storey provisions of the DCP. The proposal did conform to Height of Building standards.

My client would have suffered severe and devastating view loss over Bondi Beach, as can be witnessed by the red line on the attached montage.



The Commissioner in this case did not accept that the assessment of reasonableness of a view impact is confined to a comparison of a so-called “compliant envelope” with what was proposed.

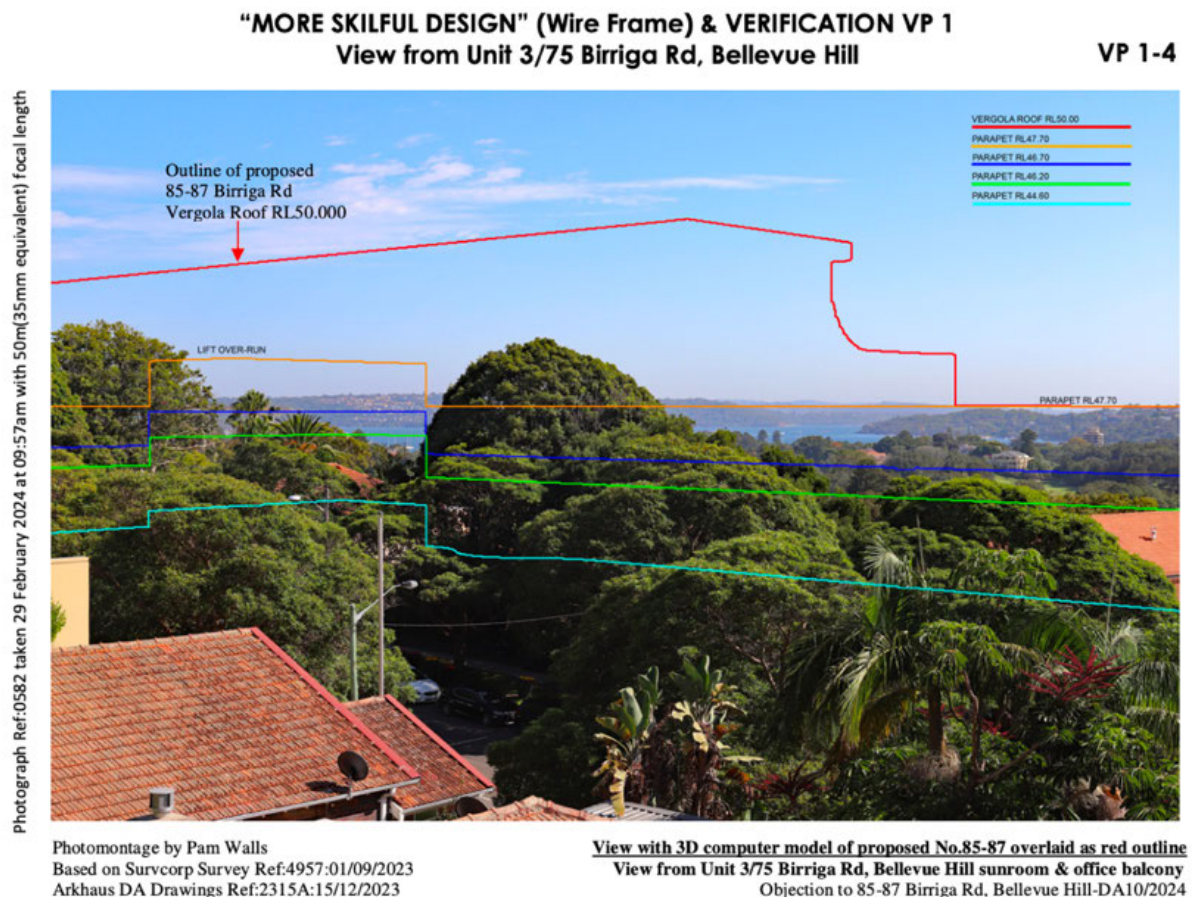
The Commissioner stated:

“The controls in the WDCP are not merely building envelope controls, but extend to specific controls concerning the increase of setbacks to minimise view loss, as well as controls requiring the incorporation of design measures to facilitate view sharing. Much of the impact arises from the non-compliance with the control in the WDCP concerning the maximum number of storeys. The control is for a maximum of four storeys with which the proposed development does not comply. Having regard to the photomontages that have informed the view impact analysis, it is clear from the wireframes that much of the built form that obstructs the views arises from the additional fifth-storey that is contrary to this four-storey controls..it is therefore clearly contemplated that numerical compliance is not sufficient, and additional setbacks ought to be utilised to minimise view loss.... increasing the side boundary setbacks from that proposed would improve view sharing corridors. The proposed development has not done so....the severe impacts on views from the most affected properties are unacceptable as they are caused by the breach of the storey control, the failure to provide adequate side setbacks at the upper level, and the failure to use any other design measures to facilitate view sharing and minimise view loss. This is contrary to the objective to “minimise view loss from existing developments by proposed development. In accordance with Tenacity at [29], 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”.

CSKS DEVELOPMENTS PTY LTD V WOOLLAHRA MUNICIPAL COUNCIL [2024] NSWLEC 1801

This case involved an Applicant proposing built form that did accord with FSR standards. The proposal did generally conform to Height of Building standards.

My client would have suffered devastating view loss over Sydney Harbour, as can be witnessed by the red line on the attached montage.



Changes were made to significantly reduce the overall height of the proposed building, achieved by significantly lowering the ground level and eliminating the roof terraces and associated pergola structure. The agreed amendments also had the effect of reducing the FSR and mitigate against impacts of building scale and view affectation for a number of nearby neighbours.

The amended DA proposed a maximum height of 11.185m in an instance where the relevant development standard for height of building is 13.5m.

Commissioner Pullinger states within cl 23[5]:

"The amended DA's reduced building height mitigates against earlier view impacts and is agreed to represent an appropriate response to view sharing"

From this judgement it can be considered that the assessment of reasonableness of a view impact is not confined to a comparison of a so-called "compliant envelope" with what is proposed, rather than a mitigation against unreasonable view loss.

Commissioner Pullinger in this case agreed that a 4.8m reduction in height below HOB Standards, and a reduction of FSR, was necessary to achieve a more reasonable view sharing outcome.

COLLARROY LIVING PTY LTD V NORTHERN BEACHES COUNCIL [2024] NSWLEC 1352

This case involved an Applicant proposing built form that did not accord with FSR. The proposal did generally conform to Height of Building standards.

My client would have suffered devastating view loss over the coastal views.



During the course of the proceedings, Amended Plans were submitted, including a substantial 30% reduction of the FSR to better resolve the view sharing outcomes, and to provide an:

'approximately "like for like" view impacts as between the proposed development and existing dwellings'.

The Commissioner stated within the findings in CI 87:

"I am satisfied that the Amended Development Application provides for the reasonable sharing of views for the reasons provided by the town planners.

These reasons primarily include:

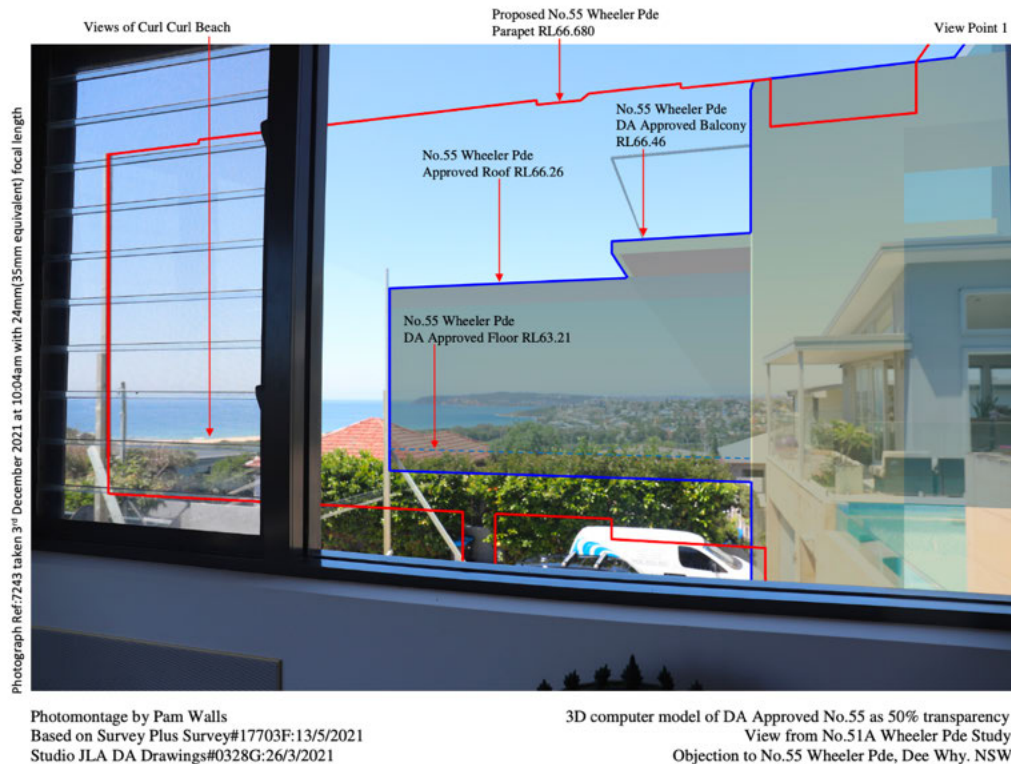
- 1. the siting and height of the four pavilions comprising the development;*
- 2. the approximately "like for like" view impacts as between the proposed development and existing dwellings as demonstrated in the VIS; and*
- 3. the selection of trees and landscaping to ensure the retention of views."*

This decision identified that where excessive FSR is the cause of an unreasonable view sharing, then the Court has found that a substantial reduction of FSR is required to resolve unreasonable view sharing outcomes.

FURLONG V NORTHERN BEACHES COUNCIL [2022] NSWLEC 1208

This case involved an Applicant proposing built form that fully accorded with all envelope controls.

My client would have suffered a severe view loss over the coastal views, across a side boundary.



Commissioner Walsh upheld the Council's decision on the basis that the proposal would bring about "severe view loss impacts" when there was a reasonable design alternative available which would significantly moderate the impact.

The Commissioner found that compliance with development controls does not, of itself, overcome policy settings aimed at reasonable view sharing. The Commissioner held that the proposal "does not pay sufficient regard" to the local development control plan which required view sharing.

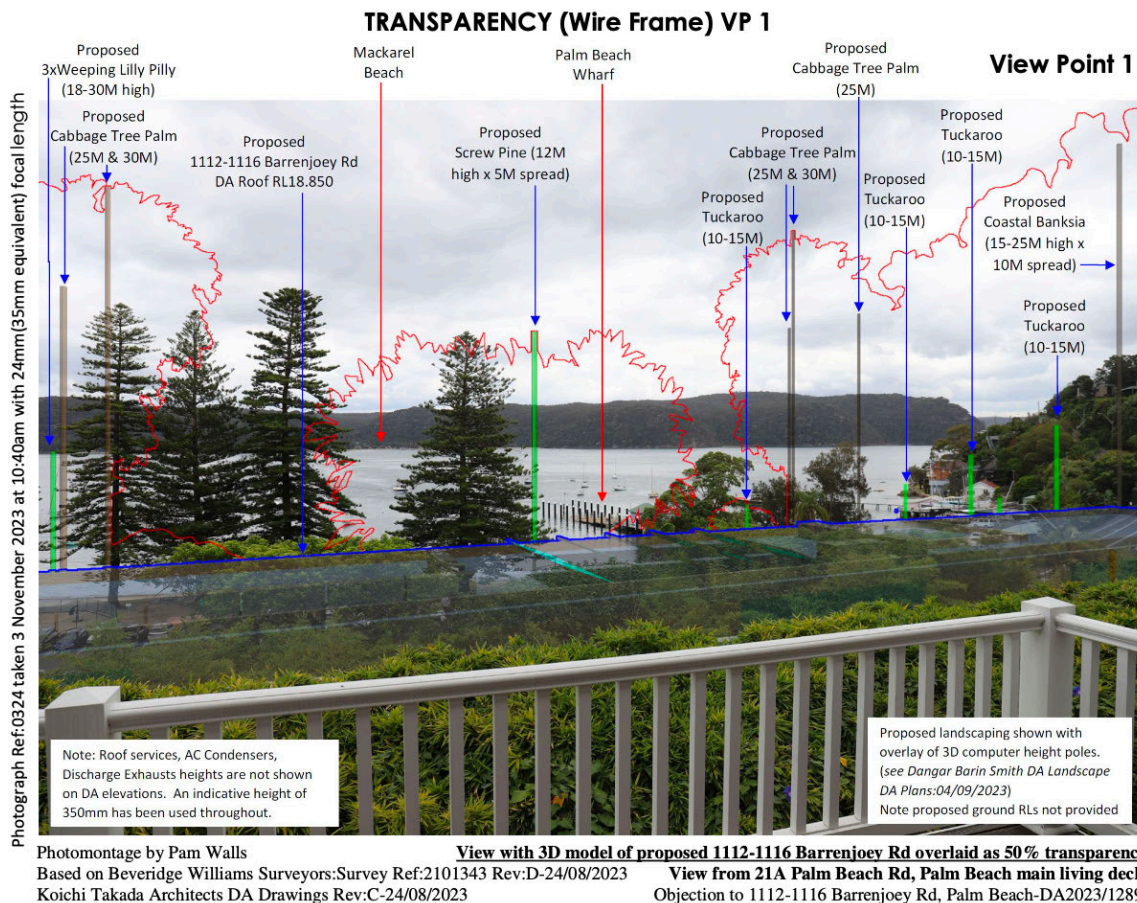
Further, the Commissioner found that a design alternative which shifted the position of the proposed extension by 3.5m was reasonable and would not impede the view to the same extent.

The key-takeaway from this decision is that views that are not perceived from the front and rear boundaries of a property can still be protected if they are of 'high value' and not replicated in other areas of the property. In such circumstances, the loss of 'high value' views could be considered to cause severe view loss and may be able to be protected.

PALMDEV PTY LTD V NORTHERN BEACHES COUNCIL [2025] NSWLEC

This case involved an Applicant proposing built form that did accord with Height of Building standards.

My client would have suffered moderate to severe view loss over Pittwater, as can be witnessed by the red line on the attached montage.

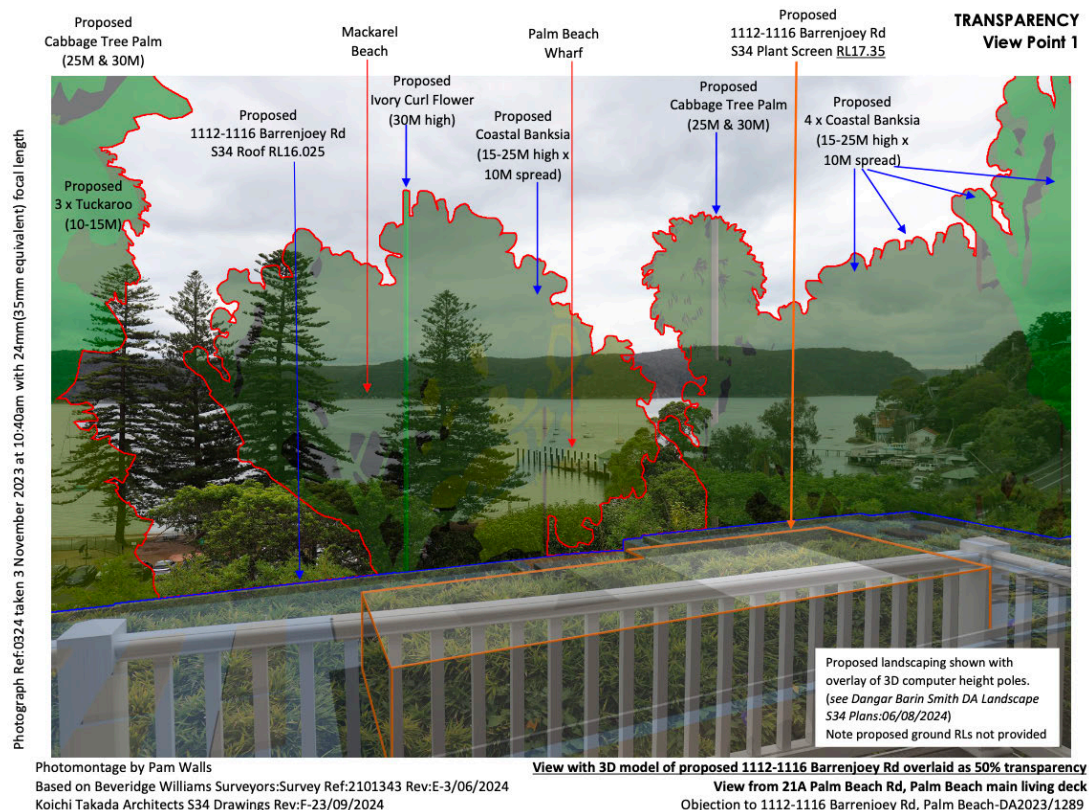


During the course of the proceedings, an entire floor level was removed, removing the view loss of the near water/beach interface.

PALMDEV PTY LTD V NORTHERN BEACHES COUNCIL [2025] NSWLEC

This case involved an Applicant proposing landscape canopy into the viewing corridors to the harbour.

My client would have suffered a devastating view loss over the Pittwater views.



The matter was resolved by agreement of conditions that included:

Condition 9. Amended Landscape Plan

a) Amended Landscape Plan(s) shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

ii) all proposed trees and vegetation in the rear setback shall not exceed a mature height greater than 5m substitute the proposed species with smaller native tree or shrub alternatives where appropriate

iii) all proposed trees in the side setbacks shall not exceed a mature height greater than the immediately adjacent built form height; substitute the proposed species with smaller native tree alternatives where appropriate,

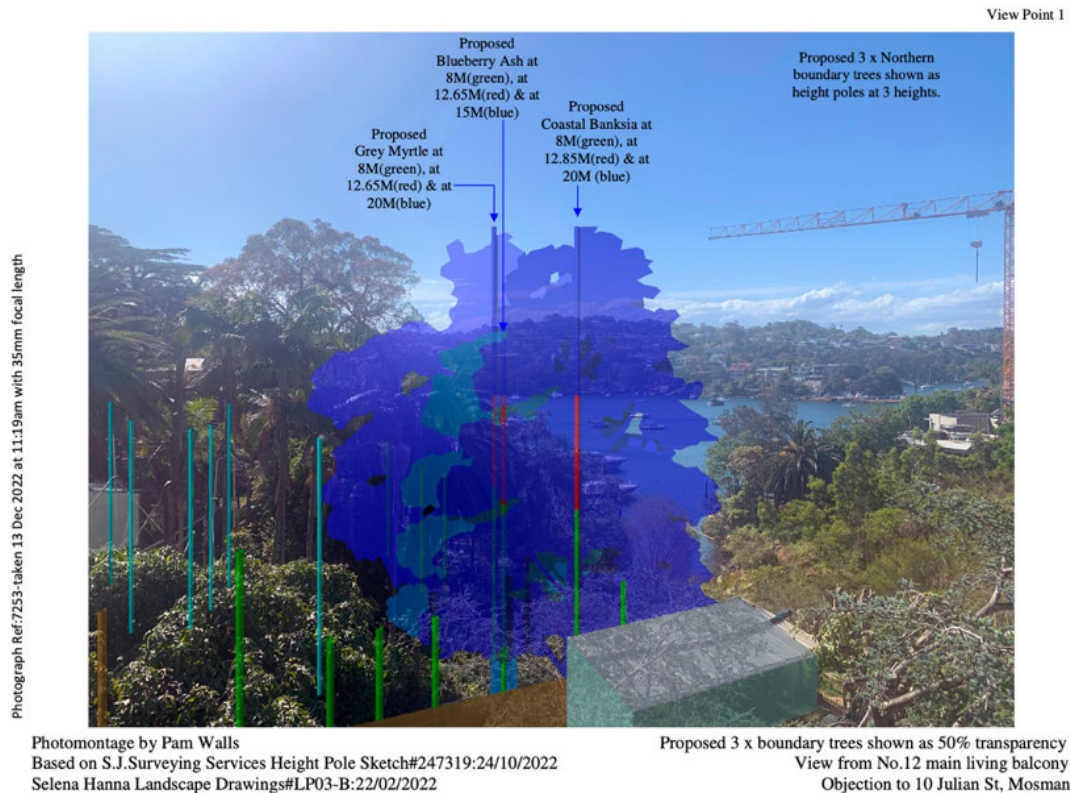
iv) all supplementary vegetation in the side setbacks (i.e. not trees) shall not exceed a mature height greater than the immediately adjacent built form height; substitute the proposed species with smaller alternatives where appropriate,

b) certification shall be submitted to the Certifier that these amendments have been documented. Reason: Landscape amenity.

HONG V MOSMAN MUNICIPAL COUNCIL [2023] NSWLEC 1149

This case involved an Applicant proposing landscape canopy into the viewing corridors to the harbour

My client would have suffered a severe view loss over the harbour views.



Commissioner Walsh summarised the matter in cl 30 of his decision:

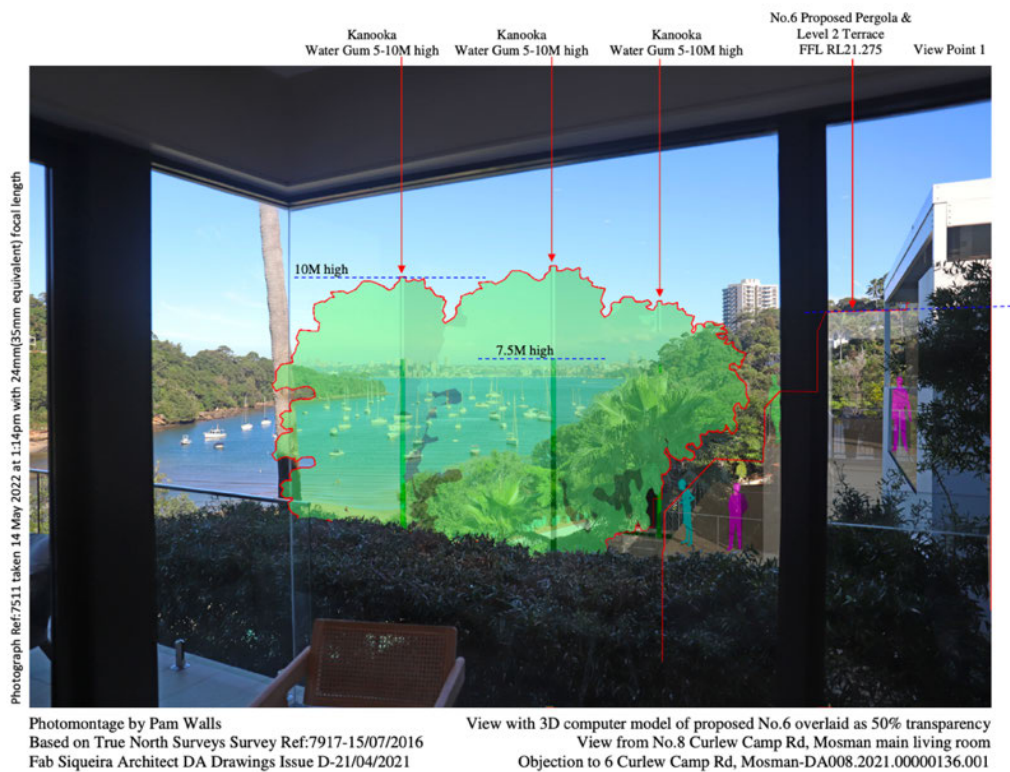
In regard to landscaping and tree protection, I note again that in Court and to some degree of detail, I worked through with the experts the various points of concern raised. This resulted in a number of further agreed alterations to the landscape plan. The Revision C drawings, based on the evidence of the experts but also in my own reading, now provide that appropriate balance between retaining and sometimes enhancing Middle Harbour views, while also providing for a valuable local landscape contribution.

The Revision C drawings required 9 high canopy trees to be deleted and replaced by 3m high species. The condition of consent required a further four transplanted palms to be deleted from the Landscape Plans.

ZUBANI V MOSMAN MUNICIPAL COUNCIL [2022] NSWLEC 1381

This case involved an Applicant proposing landscape canopy into the viewing corridors to the harbour

My client would have suffered a severe view loss over the harbour views.



Commissioner Morris clearly identified that under view sharing any proposal must be mindful to restrict landscape heights to ensure views are adequately protected.

VIEW SHARING ASSESSMENT & NSWLEC TENACITY CONSULTING V WARRINGAH COUNCIL

The DCP Controls on View Sharing refers to outcomes that all new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The DCP Outcomes on View Sharing refers to a reasonable sharing of views amongst dwellings. Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.

The DCP states that the proposal must demonstrate that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing, and references the NSWLEC Planning Principle defined *within 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.

My client 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 balconies is considered unreasonable.

APPLICATION OF TENACITY PLANNING PRINCIPLE

I have been unable to consider the impact of the proposal on the outward private domain views from my client's property.

Height poles or photomontage 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, on a provisional basis ahead of height poles being erected by the Applicant.

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 including entertainment decks, highly used rooms, and private open spaces on my client's property.

The proposed development will impact upon expansive water views, and water views in which the interface between land and water is visible.

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 my client's 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.

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 expectation to retain side views and sitting views is often unrealistic.

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 my client's property.

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 I rate the extent of view loss is above moderate in my 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.

The controls require that new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties and must demonstrate that view sharing is achieved through the application of the Planning Principles established in the NSW Land and Environment Court case *Tenacity Consulting v Warringah Council*.

In *Tenacity* Step 4 is described as 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.

In *Balestriere v Council of the City of Ryde* [2021] NSWLEC 1600 NSWLEC Commissioner Walsh said in relation to the Fourth Step in *Tenacity*:

There are three different aspects to the fourth Tenacity step, concerned with assessing the reasonableness of the impact, which I summarise as follows:

Point 1 - Compliance, or otherwise, with planning controls.

Point 2 - If there is a non-compliance, then even a moderate impact may be considered unreasonable.

Point 3 - For complying proposals: (a) "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", and (b) "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."

In relation to Principle four set down in the *Tenacity* decision ('*Assessment of the reasonableness of the proposal that is causing the impact*'), it is considered that a development which complies with all planning controls would be deemed more reasonable than one that is non-compliant.

The proposal as it currently stands presents numerous non-compliances to LEP and DCP controls, which questions whether a more 'skilful' (or sensitive) design would achieve an improved and acceptable outcome.

Further exploration of an alternative design outcome which would include the amendments mentioned within this submission is therefore necessary to satisfactorily address the Planning Principles established in the NSW Land and Environment Court case.

I contend that the view impact results in a greater than moderate impact from the respective zones within the property given the significant proportion of the views which are impacted. The views are certainly worthy of consideration and substantial protection.

The proposal to remove the vast majority of these views is considered overall to be a greater than moderate view impact and I contend that the proposal therefore fails on NSWLEC *Tenacity* Step 4 Reasonableness.

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 my opinion the extent of view loss is considered to be greater than moderate, in relation to the views from my client's highly used zones of my client's dwelling. The view is from a location from which it would be reasonable to expect that the existing view would be substantially retained, 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 my client's property. The views most affected are from my client's 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 I conclude that my client 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. My 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 maintain my client's view. I 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 my client's 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 my client's 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.

My client contend that 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.

My client contend that the proposal is contrary to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that it does not satisfy the view sharing controls of the DCP.

13. PUBLIC INTEREST

Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not within the public's interest.

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.

The proposed development is contrary to the provisions of relevant environmental planning instruments, development control plans and design guidelines. The proposed development represents numerous non-compliances and inconsistencies with State and Council policy. No circumstances exist that would justify the non-compliances and inconsistencies with these policies.

C. CONTENTIONS THAT RELATE TO INSUFFICIENT & INADEQUATE INFORMATION

The Applicant has not submitted sufficient and/or adequate information under Part 6, Division 1 Clause 54 of the EPA Regulation 2000 to enable a reasonable assessment under the applicable legislation.

The application lacks sufficient detail to make an informed assessment particularly with respect to determining the extent of the following matters and the relationship and impact to adjoining neighbours.

FAILURE TO PROVIDE PHOTOMONTAGES OR HEIGHT POLES

THE Applicant has not provided Photomontages in accordance with NSWLEC Guidelines for Photomontages, that Council would expect to be submitted when view loss occurs.

I ask Council to have the Applicant prepare Photomontages on the following NSWLEC basis:

Use of photomontages

The following requirements for photomontages proposed to be relied on as or as part of expert evidence in Class 1 appeals will apply for proceedings commenced on or after 1 October 2013. The following directions will apply to photomontages from that date:

Requirements for photomontages:

1. Any photomontage proposed to be relied on in an expert report or as demonstrating an expert opinion as an accurate depiction of some intended future change to the present physical position concerning an identified location is to be accompanied by:

Existing Photograph.

a) A photograph showing the current, unchanged view of the location depicted in the photomontage from the same viewing point as that of the photomontage (the existing photograph);

b) A copy of the existing photograph with the wire frame lines depicted so as to demonstrate the data from which the photomontage has been constructed. The wire frame overlay represents the existing surveyed elements which correspond with the same elements in the existing photograph; and

c) A 2D plan showing the location of the camera and target point that corresponds to the same location the existing photograph was taken.

Survey data.

d) Confirmation that accurate 2D/3D survey data has been used to prepare the Photomontages. This is to include confirmation that survey data was used:

- i. for depiction of existing buildings or existing elements as shown in the wire frame; and*
- ii. to establish an accurate camera location and RL of the camera.*

2. Any expert statement or other document demonstrating an expert opinion that proposes to rely on a photomontage is to include details of:

a) The name and qualifications of the surveyor who prepared the survey information from which the underlying data for the wire frame from which the photomontage was derived was obtained; and

b) The camera type and field of view of the lens used for the purpose of the photograph in (1)(a) from which the photomontage has been derived.

The Applicant has not provided an adequate View Impact Analysis which details the extent to which existing water views from my client's 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

My client asks 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.

VISUAL BULK ANALYSIS

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

CLAUSE 4.6 VARIATION REQUEST

Not submitted.

CONSTRUCTION AND DEMOLITION - TRAFFIC MANAGEMENT PLAN

Not submitted.

HEIGHT

I ask Council to request that the Applicant superimpose the Registered Surveyors plan detail with all spot levels and contours onto the Roof Plan, with all proposed RLs shown, so that a full assessment can be made on HOB. The survey is incomplete as it has not recorded the existing ground levels within the lowest floor, nor shown the extent of the lowest floor, nor existing levels under the existing building. Height plane blanket is to be provided for LEP & DCP non-compliances

SURVEY.

Details of neighbouring/surrounding properties, including window/door openings to determine if there will be any privacy, overshadowing or amenity impacts. Registered Surveyors levels transferred to all DA drawings. Incomplete dimensioning on DA plans, and incomplete levels on all elevations to all elements.

Council should note that spot survey levels and contour lines from the Registered Surveyors drawings have not been adequately transferred to the proposed DA drawings of plans, sections, and elevations to enable an assessment of height and the relationship and impact to adjoining neighbours. Neighbour's dwellings have not been accurately located on plans, sections and elevations, including windows and decks, to enable a full assessment of the DA. The plans and documentation are misleading as they do not clearly portray the true extent of works proposed. The plans include inaccuracies and inconsistencies and insufficient information has not been provided in order to enable a detailed assessment, including incomplete dimensional set-out and incomplete levels on drawings to define the proposed building envelope. There is incomplete analysis provided including view loss, solar loss and privacy loss.

I ask Council to request that the Applicant superimpose the Registered Surveyors plan detail with all spot levels and contours onto the Roof Plan, with all proposed RLs shown, so that a full assessment can be made on HOB.

EXTERNAL PLANT

Details of all external plant and equipment including air conditioning units/condensers has not been provided.

Air conditioning units to the façade, roof or balconies of the building will not be acceptable.

SITE CONTAMINATION

The application fails to satisfactorily address site contamination.

D. DETAILED LIST OF CONDITIONS OF CONSENT

CONDITIONS OF ANY CONSENT

Deferred Commencement Conditions:

1. Complete all amendments as identified within '*Request For Amended Plans To Be Submitted To Better Address Impacts Upon Adjoining Properties*' within Executive Summary, including reductions in built form, additional privacy devices, and improved landscaping
2. Complete all amendments to achieve a reasonable view sharing outcome;

My client asks for a complete set of Conditions to be included within any consent, including, but not limited to, the following:

Conditions which must be satisfied prior to the demolition of any building or construction

- o Acoustic Certification of Mechanical Plant and Equipment
- o Arborists Documentation and Compliance Checklist
- o BASIX Commitments
- o Checking Construction Certificate Plans – Protecting Assets Owned by Sydney Water
- o Construction Certificate Required Prior to Any Demolition
- o Electric vehicle circuitry and electric vehicle charging point requirements
- o Engineer Certification
- o Establishment of Tree Protection Zone (TPZ) Fence
- o Geotechnical and Hydrogeological Design, Certification and Monitoring
- o Ground Anchors
- o Identification of Hazardous Material
- o Light and Ventilation
- o No Underpinning works
- o Noise Control - Acoustic Protection of adjoining residential units-Operation of Air Conditioning Plant
- o Parking Facilities
- o Payment of Long Service Levy, Security, Contributions and Fees
- o Professional Engineering Details
- o Public Road Assets Prior to Any Work/Demolition
- o Road and Public Domain Works
- o Soil and Water Management Plan – Submission and Approval
- o Stormwater Management Plan
- o Tree Management Plan
- o Ventilation - Internal Sanitary Rooms
- o Utility Services Generally
- o Waste Storage – Per Single Dwelling
- o Noise Control - Swimming pool/spa pool pumps and associated equipment [if consented]
- o Swimming and Spa Pools – Backwash [if consented]

- Swimming and Spa Pools – Child Resistant Barriers [if consented]

Conditions which must be satisfied prior to the commencement of any development work

- AC Units be to located away from my client's property.
- All Solar Panels and PV systems are to be treated with antireflective glass. Solar glass is to be stippled and light-trapping, with photon-absorbent solar cell attached to the rear side. Angle of reflectivity to neighbours must be considered within final detailed design at construction certificate stage, considering the view from neighbours to the subject site.
- Adjoining Buildings Founded on Loose Foundation Materials
- Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)
- Compliance with Building Code of Australia and insurance requirements
- Dilapidation Reports for Existing Buildings: A photographic survey and dilapidation report of my client adjoining property detailing the physical condition of the property, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, MUST BE submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person and a copy to be given to the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Principal Certifier, prior to the issue of any Construction Certificate.
- Geotechnical Report: Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following: a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum; b) the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended; c) the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site); d) the existing groundwater levels in relation to the basement structure, where influenced; e) the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a "dam" for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and f) recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared

along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages. The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/ hydrogeological engineer with previous experience in such investigations and reporting. It is the responsibility of the consulting geotechnical/ hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate. The design principles for the geotechnical report are as follows: a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure; b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure; c) no changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure; d) vibration is to be minimised or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development; e) appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and f) an adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage. The report, satisfying the requirements of this condition, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

- Erosion and Sediment Controls – Installation
- Establishment of Boundary Location, Building Location and Datum
- Home Building Act 1989
- Notification of Home Building Act 1989 requirements
- Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection
- Site Signs
- Engineer's Certification of Plans
- Structural adequacy & Excavation work
- Toilet Facilities
- Works (Construction) Zone – Approval and Implementation
- Sites in the vicinity of a heritage item. A protection strategy for the duration of the construction works, is to be submitted to and approved by Council's Area Planning Manager prior to the issue of any Construction Certificate. The Strategy is to detail how the proposed works will ensure that the adjoining dwellings are to be suitably protected and stabilized during the construction process including from any construction waste, dust, damp, water runoff, vibration or structural disturbance or damage.

- Demolition, excavation and construction noise and vibration management plan. A site-specific noise management plan must be submitted to the council for comment and approval prior to issue of any construction certificate.
- Landscape of the site. A landscape design documentation package and technical specification for construction by a registered landscape architect, must be submitted to and approved by Council's area coordinator planning assessments / area planning manager prior to the issue of a construction certificate.
- Reflectivity. Prior to issue of the Construction Certificate the Registered Certifier must ensure that the visible light reflectivity from building materials used on the facade of the building does not exceed 20%.
- Notification of excavation works or use of high noise emission appliances/plant. The immediately adjoining neighbours must be given a minimum of 48 hours notice that excavation, shoring or underpinning works or use of high noise emission appliances / plant are about to commence.

Conditions which must be satisfied during any development work

- Asbestos Removal Signage
- Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum
- Survey. All footings, walls and floor slabs adjacent to a boundary must be set out by a registered surveyor. On commencement of brickwork or wall construction a survey and report, prepared by a Registered Surveyor, must be submitted to the Principal Certifier indicating the position of external walls in relation to the boundaries of the allotment. Any encroachments by the subject building over adjoining boundaries or roads must be removed prior to continuation of building construction work. Reason: To ensure the development does not encroach onto Council's ownership.
- Classification of Hazardous Waste
- Compliance with Australian Standard for Demolition
- Compliance with BCA and Insurance Requirements under the Home Building Act 1989
- Compliance with Council's Specification for Roadworks, Drainage and Miscellaneous Works
- Compliance with Geotechnical / Hydrogeological Monitoring Program
- Road Works and, Work within the Road and Footway
- Critical Stage Inspections
- Disposal of Site Water During Construction
- Disposal of Asbestos and Hazardous Waste
- Dust Mitigation
- Erosion and Sediment Controls – Maintenance
- Footings in the vicinity of trees
- Hand excavation within tree root zones
- Hours of Work –Amenity of the Neighbourhood
- Installation of stormwater pipes and pits in the vicinity of trees
- Level changes in the vicinity of trees
- Notification of Asbestos Removal
- Maintenance of Environmental Controls
- Placement and Use of Skip Bins
- Prohibition of Burning
- Public Footpaths – Safety, Access and Maintenance

- Replacement/Supplementary trees which must be planted
- Requirement to Notify about New Evidence
- Site Cranes
- Site Waste Minimisation and Management – Construction
- Site Waste Minimisation and Management – Demolition
- Support of Adjoining Land and Buildings
- Tree Preservation
- Vibration: Monitoring Construction Vibration. Vibrations associated with demolition, excavation and construction works are limited to a tolerance of 3mm/s PPV (peak particle velocity) at the property boundaries (or at sea cliff or cliff adjacent to the subject property). Vibration monitoring equipment is to be installed by a registered Geotechnical Engineer throughout the site and along the boundaries to verify that vibration is within the limits of the maximum tolerance. The vibration monitoring equipment must include a light/alarm, so the site foreman and equipment operator are alerted to the fact that vibration limits have been exceeded. Where the vibration tolerances have been exceeded, works shall cease until a change in construction / excavation methodology are implemented to ensure compliance. It also must log and record vibrations throughout the excavation and construction works so that compliance may be verified. Any monitoring devices are to be installed at the footing level of any adjacent structures. Reason: To restrict vibration impacts.

Conditions which must be satisfied prior to any occupation or use of the building (Part 6 of the Act and Part 8 Division 3 of the Regulation)

- Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification that the height of the building accords with the consent, to the satisfaction of the Principal Certifier. Reason. To ensure the constructed development complies with the approved height.
- Amenity Landscaping
- Certification of Electric Vehicle Charging System
- Commissioning and Certification of Public Infrastructure Works
- Commissioning and Certification of Systems and Works
- Occupation Certificate (section 6.9 of the Act)
- Letter Box
- Swimming and Spa Pools – Permanent Child Resistant Barriers and other Matters [if consented]
- Swimming Pool Fencing [if consented]

Conditions which must be satisfied prior to the issue of the Occupation Certificate for the whole of the building

- Fulfillment of BASIX Commitments – clause 154B of the Regulation
- Landscaping
- Positive Covenant and Works-As-Executed Certification of Stormwater Systems
- Removal of Ancillary Works and Structures
- Road Works (including footpaths)
- Compliance with the acoustic report prior to construction and or occupation certificates

Conditions which must be satisfied during the ongoing use of the development

- Maintenance of BASIX Commitments
- Noise Control
- Noise from mechanical plant and equipment, including swimming pool plant
- Ongoing Maintenance of the Onsite Stormwater Detention (OSD) System, Rain Garden and Rainwater Tank
- Outdoor Lighting – Residential
- Outdoor Lighting – Roof Terraces [if consented]
- Swimming and Spa Pools – Maintenance [if consented]

Advising

- Asbestos Removal, Repair or Disturbance
- Builder's Licences and Owner-builders Permits
- Building Standards - Guide to Standards and Tolerances
- Commonwealth Disability Discrimination Act 1992
- Criminal Offences – Breach of Development Consent and Environmental Laws
- Dial Before You Dig
- Dilapidation Report
- Dividing Fences
- Lead Paint
- NSW Police Service and Road Closures
- Pruning or Removing a Tree Growing on Private Property
- Recycling of Demolition and Building Material
- Release of Security
- Roads Act 1993 Application
- SafeWork NSW Requirements
- Workcover requirements

E. REASONS FOR REFUSAL

My client asks Council to refuse the DA as the proposal is contrary to the Environmental Planning and Assessment Act:

Contentions that the application be refused as listed within this submission.

1. Council is not satisfied that under clause 4.6 of the LEP seeking to justify a contravention of the development standard that the development will be in the public interest because it is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
2. 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 LEP:
 - o Aims of Plan
 - o Zone Objectives
 - o Height of Buildings
 - o Exceptions to Development Standards
3. 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:
 - o View Sharing
 - o Heights
 - o Wall Height
 - o Number of Storey
 - o Setbacks
 - o Landscape
 - o Access & Parking
 - o Site Works Management
 - o Scenic Protection
4. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the plans and documentation are misleading as they do not clearly portray the true extent of works proposed. The plans include inaccuracies and inconsistencies and insufficient information has been provided in order to enable a detailed assessment. Dimensions to boundaries have not been shown in all locations of all proposed built elements. Levels on all proposed works have not been shown.
5. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the proposal would not satisfy the matters for consideration under Biodiversity & Conservation SEPP 2021 and Resilience & Hazards SEPP 2021

6. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that it will have an adverse impact through its bulk, scale and siting on the built environment, and through lack of landscape provision, and adverse impact on the natural environment. The proposed development will have a detrimental impact on the visual amenity of the adjoining properties by virtue of the excessive building bulk, scale and mass of the upper floor and its associated non-compliant envelope.
7. 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.
8. The proposals are unsuitably located on the site pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
9. 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
10. 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. The proposed development will have a detrimental impact on the amenity of adjoining residential properties, and for this reason is contrary to the public interest.

F. CONCLUSION

The proposed development 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 causes considerable amenity loss to my client's 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 considered jarring when viewed from the public domain.

Commissioner Moore revised the NSWLEC planning principle for assessing impacts on neighbouring properties within *Davies v Penrith City Council* [2013] NSWLEC 1141

"The following questions are relevant to the assessment of impacts on neighbouring properties:

How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?

How reasonable is the proposal causing the impact?

How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?

Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?

Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?"

I contend that the proposed development severely impacts my client's property, and in terms of amenity, there is excessive sunlight, view or privacy loss. The loss is unreasonable. My client's property is not vulnerable to the loss that is presented. The loss arises out of poor design, either through non-compliance to envelope controls or poorly located built form.

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 development is incompatible with the existing streetscape and development in the local area generally.
- The proposed development 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 all of which would result in adverse impacts on my client's property. Primarily,

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the DCP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the EPAA1979

The proposed development does not satisfy the appropriate controls. Furthermore, the proposal would result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community, and is therefore not in the public interest. The proposal therefore must be refused. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have not been satisfactorily addressed.

I ask that if Council in their assessment of this application reveals unsupported issues, which prevent Council from supporting the proposal in its current form, and writes to the Applicant describing these matters, I ask for that letter to be forwarded to my client.

My client trust that Council will support my client's submission and direct the proponent to modify the DA plans, as outlined above. My client asks Council Officers to inspect the development site from my client's property so that Council can fully assess the DA.

It is requested that Council inform both myself, and my client directly, of any amended plans, updates or Panel meeting dates. My client request that they present to the Panel, should the DA proceed to the LPP.

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

Yours faithfully,

Bill Tulloch

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