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18 March 2019

General Manager  
Northern Beaches Council  
725 Pittwater Road  
Dee Why NSW 2099

*ATTN: Adam Croft (Assessment Officer)*

Dear Sir

**Re: OBJECTION TO DEVELOPMENT PROPOSAL (DA2019/0145) at No. 39  
Adelaide Street, Clontarf**

Tomasy Pty Ltd has been instructed by the owners of No. 37 Adelaide Street, Clontarf ('objectors' or 'client'), to lodge a formal objection to the development proposal at No. 39 Adelaide Street, Clontarf. No. 37 Adelaide Street, Clontarf, is owned by Krys Lojek and Mark Shoebridge, who reside in this house with their family. The objectors submission relates to the development application for alterations and additions to an existing two-storey dwelling house, which would result in the construction of a three-storey dwelling.

The proposed development suggests in a number of significant non-compliances to the relevant planning policies including the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013, all of which will compromise the environmental amenity of the immediate adjoining neighbours, in particular, the objector's premises.

A comparative image of the properties can be seen on the following page, which shows the location of the existing dwellings in relation to one another. In preparing this submission, due consideration has been given to the following documentation:

- Site Inspection (carried out on the 7 March 2019)
- Review of DA documentation including architectural plans and Statement of Environmental Effects and Clause 4.6 Variation Request
- Manly Local Environmental Plan 2013
- Manly Development Control Plan 2013

A detailed review of the above documentation raised, the following concerns regarding the proposal. These concerns have been further expanded upon on the following pages of this document.

- Floor Space Ratio, including submitted Clause 4.6 Variation.
- Building height;
- Number of Storeys;
- Setbacks;
- Privacy;
- Foreshore Scenic Protection Area;
- Engineering.

Our client's property – No. 37 Adelaide Street, Clontarf (outlined in green).



Source: SIX Maps 2019

Property subject of DA2019/0145 No. 39 Adelaide Street, Clontarf (outlined in red).

## 1. Floor Space Ratio

The site, under the provisions of the Manly LEP2013, allows for a maximum Floor Space Ratio (FSR) of 0.40:1. The following table lists the allowable FSR, the existing FSR on the site and the proposed FSR.

Allowable FSR and GFA	Existing FSR and GFA	Proposed FSR and GFA
0.4:1 181.9sqm	0.41:1 187sqm	0.64:1 289.3sqm
<b>Non-Compliance</b>	0.01:1 5.1sqm	0.24:1 102.3sqm

The proposal represents a development that will result in additional 102.3sqm of GFA for the premises which is a significant breach under the FSR development standard of the Manly LEP2013. This results in a over one third of an increase in size of the existing dwelling on the site.

The proposed dwelling represents an overdevelopment of a lot of this size, as well as a site with this extent of topographical constraints. Clause 4.4 of the Manly LEP2013 states the following:

### 4.4 Floor space ratio

(1) *The objectives of this clause are as follows:*

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

The proposed alterations and additions to the existing dwelling house are inconsistent with the above objectives of Clause 4.4 in the following manner:

- The resultant building will represent a development that is out of character with the desired future character of the area. See images on page 6 of this document.
- The development standards of the Manly LEP2013 express numerically the desired future character of the area. The proposal represents a substantial variation to that standard.
- It is acknowledged that the existing FSR is non-compliant. However, there is an immense difference in the impact of an additional 0.01:1 (5.1sqm) non-compliance compared with a 0.24:1 (102.3sqm) non-compliance. This further exacerbates the non-compliances that currently prevail.
- The substantial deference from the prescribed FSR is not considered to be adequately justified in the submitted Statement of Environmental Effects and Clause 4.6 Variation.

- The Clause 4.6 Variation largely bases its justification on the knowledge that the existing site does not meet the minimum lot size requirements. While it is acknowledged that this is correct, consideration needs to be given the actual lot size and prepare a development that complements the size and topography of the lot in its current form, which this proposal does not.
- The proposal represents a substantial overdevelopment of the site and will set a precedent for development in the area that does not adhere to the development controls of the zone and precinct.

It is acknowledged that Clause 4.1.3.1, Exceptions to FSR for undersized lots, of the Manly DCP2013 applies to the site. This clause states that Council *may* consider variations to the prescribed FSR in the Manly LEP2013 development standards *if* the development complies with the standard prescribed in the Clause. Despite this clause, the noncompliance with the FSR provisions results in a number of non-compliances for the development as a whole. Compliance with the FSR prescribed in the Manly LEP2013 would substantially reduce the amount of non-compliances of the development and create a development that has a positive impact on the locality. The reliance on this clause of the Manly DCP2013 is unreasonable in these circumstances as it results in an oversized dwelling on a site that cannot support it due to its size and topography.

The resultant built form of the proposed development that substantially exceeds the permissible FSR under the Manly LEP2013 is excessive and incompatible with the constraints of the site. The size and topography of the subject lot requires the design of a development that is sympathetic to the applicable constraints of the site, does not result in negative impacts on neighbouring properties and is consistent with the existing streetscape.

The subject development does not consider the constraints of the site, and proposed a design that does not adhere to the relevant site constraints of topography and lot size, as well as, the objectives of Clause 4.4 Floor Space Ratio of the Manly LEP2013. As such, the development should be required to substantially reduce the proposed FSR to be compliant with the controls of the Manly LEP2013 rather than relying on a clause of the DCP2013.

## 2. Building Height

The subject proposal results in an increase of approximately 1m in building height from the existing dwelling on the site. The definition of building height in the Manly LEP 2013 is:

***building height (or height of building)*** means:

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*  
*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

The proposed dwelling includes an additional floor level (first floor) and a non-pitched roof that will increase the height and the overlooking into our client's property. The additional floor level of the property results in a building height that creates a substantial hindrance



to our client's use of their primary living area, which immediately abuts the subject property. Hence, the increase in height of the dwelling will have a substantial impact on the primary living area of the objector's property. The images below demonstrate the existing substantial view of the existing pitched roof of no. 39 Adelaide Street.



Figure 1.1 View from primary living area at no. 37 Adelaide Street, Source: Property owners.



Figure 1.2 View from primary living area at no. 37 Adelaide Street, Source: Property owners.

As can be seen from the above images, the roof of the adjoining property is a substantial part of the view from the main living area. It should be noted this is not the primary view from the main living area but is an important aspect of the existing view. An increase in height of 1m above the existing building height will result in a loss of the sunset view and the tree view, as well as views of the distant city skyline. This will have a substantial impact on the amenity of the main living area and result in a view of a wall and windows.

It is also noted in the Statement of Environmental Effects prepared by Myriad Consulting dated February 2019, the report states 'a small portion the awning extends above 8.5m' (Page 11). It is our understanding that any breach of a principal development standard, no matter how small, requires the preparation of a Clause 4.6 Variation Request. The Development Application is silent on this matter.

### **3. Number of Storeys**

In addition to the above, the proposal for alterations and additions to provide for a first-floor addition is a direct contravention of the Manly Development Control Plan 2013, Clause 4.1.2.2 Number of Storeys. The clause in the Manly LEP2013 reads as follows:

*Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.*

The subject site is not located on land listed as 'L' or 'N1' and therefore must comply with the two-storey height control. It is understood that there are a number of three-storey buildings in the immediate locality; however, the inclusion of this development as a three-storey development is not consistent with the desired future character of the area, as expressed in the controls for the Manly LEP2013 and the Manly DCP2013. The inclusion of an additional first level represents a development of a bulk and scale that is inconsistent with developments in the surrounding area and will have an adverse impact on the amenity of neighbouring properties, in particular No. 37 Adelaide Street. The images below demonstrate the existing character of the streetscape in Adelaide Street.





Figure 1.3: 35 Adelaide Street, Clontarf. Source: Personal



Figure 1.4: 37 Adelaide Street, Clontarf (our client's property), Source: Personal

It is acknowledged that the development will be viewed as two-storeys from Adelaide Street, from Beatrice Street, the proposed dwelling will appear three storeys and remain non-compliant with this control. The proposed bulk of this building, with minimal articulation of facades represents a building that is of a bulk and scale that is unreasonable in the proposed locality.

The design of the proposed development has not adequately considered the topography of the land. Development on sloping land is required to 'step down' with the land to reduce the bulk and scale of the building. Manly DCP2013, Clause 4.1.8 Development on Sloping Sites, states:

### Requirements

- (a) *The design of development must respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.*
- (b) *Developments on sloping sites must be designed to:*
  - a. *Generally step with the topography of the site; and*
  - b. *Avoid large undercroft spaces and minimise supporting undercroft structures by integrating the building into the slope whether to the foreshore or a street.*

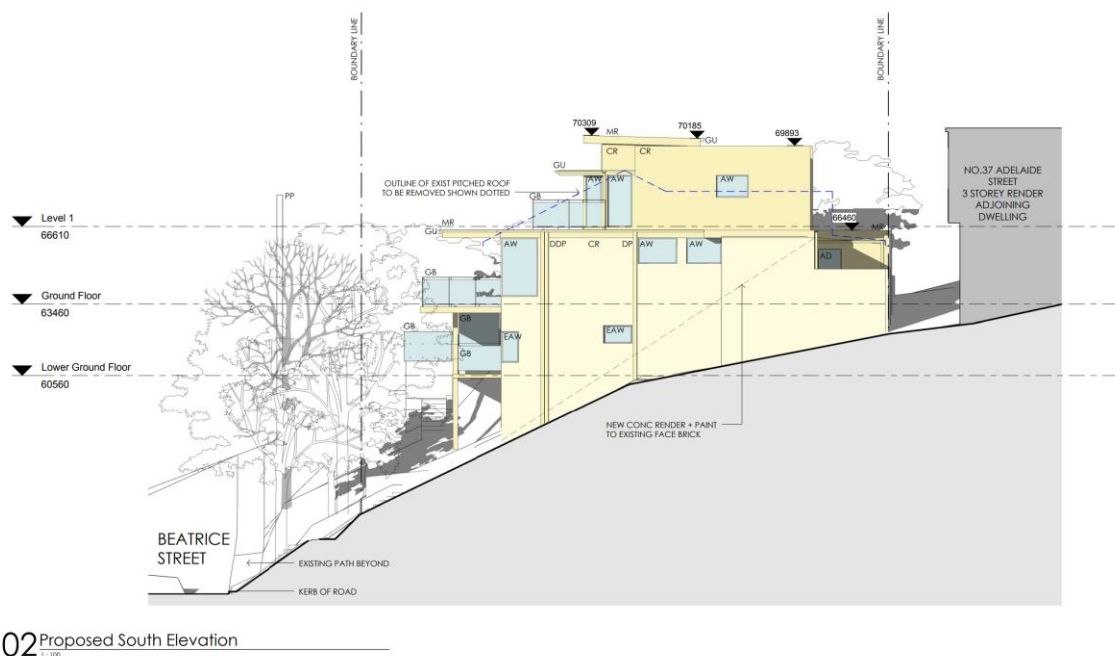


Figure 1.5 Proposed Southern Elevation, Source: Architectural Plans prepared by Red Blue Architecture, Drawing No. DA0204

The southern elevation shown above demonstrates non-compliance with Clause 4.1.8 of the Manly DCP. We acknowledge that the site has substantial topographical constraints; however, the slope of the site has not been adequately considered when designing the subject dwelling. The planning controls for this precinct have been determined to ensure new buildings step their proposal with the site which would therefore create compliances with building height, setbacks and substantially reduce the overall impact of the excessive FSR noncompliance.



As the proposed development has not considered the above-mentioned clause, the resultant building is of a bulk and scale that will have substantial adverse impacts on neighbouring properties, in particular our client's property. If the proposed dwelling generally complied with the provisions of this clause, and Clause 4.1.2.2 of the Manly DCP2013, the development would extensively reduce its bulk and scale and result in a building that minimises its adverse impact on the immediate locality.

## **4. Setbacks**

### **Front Boundary Setback**

The proposal includes the reduction of the front setback by 1.25m for the provision of the new garage structure, resulting in a front boundary setback of approximately 4.75m. Clause 4.1.4.1 of the Manly DCP2013 states that the minimum required setback is 6m, notwithstanding consideration must be given to the average front building line of neighbouring properties.

The average front setback for the adjacent five dwellings on Adelaide Street equates to a front boundary setback of approximately 8m. The proposed front setback is both below the minimum specified in the DCP2013 and also almost half of the average for the immediately adjacent dwellings. This will result in the bulk of the building being too far forward on the property, in unnecessary adverse impacts by way of excessive bulk and scale detrimentally impacting the streetscape.

It is important to note that the existing property contains a carport only. The proposal involves the encroachment of the existing front boundary setback for the construction of a garage structure. This part of the proposal will have substantial adverse impacts on the amenity of the neighbouring properties and is inconsistent with the desired future character of the area.

### **Side and Rear Boundary Setbacks**

The applicant has noted that there will be no proposed changes to the existing side and rear setbacks. The existing side and rear setbacks are not compliant with the provisions of the Manly DCP2013. Notwithstanding the alterations and additions to the dwelling do not propose any alterations and additions to the existing setbacks, the increase in height of the building results in an unreasonable impact on the amenity of our client's property.

In particular, side boundary setbacks are based on the calculation of 1/3 of the wall height of the premises under Clause 4.1.4.2 of the Manly DCP2013. As the development proposes the increase in the wall height of the dwelling, the side boundary setback requirements increase substantially. This further emphasises the non-compliance with the Clause, and subsequently the negative impacts on the amenity of neighbouring properties.

## **5. Privacy**

The proposal will result in unnecessary privacy issues for our client. The development proposes an additional storey directly adjacent to the eastern boundary, adjacent to no. 37 Adelaide Street. Our client's dwelling contains their primary living space along that

boundary with substantial window openings that will look directly into the proposed new storey of the development.

While it is against Northern Beaches Council policies for the public to view the floor plan for the proposed dwelling, it is clear that due to the large existing windows in the primary living space of no. 37 Adelaide Street, there will be adverse privacy impacts for both properties.

## **6. Foreshore Scenic Protection Area**

It is acknowledged that the view over no. 39 Adelaide Street is not our client's primary water view. However, little consideration for all potential has been demonstrated within the supporting documentation provided by the applicant. Our client is concerned that additional storey of the development will substantially impact their sunset views as shown in the photos earlier in this document and replace it with the view of a concrete wall and windows.

We also question whether the proposed alterations and additions will have any view sharing impacts on neighbouring properties. No view analysis has been prepared as part of this application. The Statement of Environmental Effects fails to apply the view sharing principles of the NSW Land & Environment Court (*Tenacity Consulting vs. Warringah Council* [2004] NSWLEC 140). This test is essential for all development where it is evident that proposal could have an adverse impact on existing views enjoyed by neighbouring residents.

## **7. Engineering**

It is also important to note that the internal referral response from Council's Engineering Department recommend refusal of the application. This is on the basis that the onsite stormwater detention system proposed with the application is not large enough to control the discharge from the proposed development. See the officer's comments below:

*An on site stormwater detention (OSD) system has been proposed in the application. However, the Permissible Site Discharge (PSD) has not been calculated in accordance with Council's Manly Specification for on site Stormwater Management 2003. The proposed tank is too small to control the discharge from the proposed development. The stormwater management plan shall be amended to comply with the above specification.*

*As such, Development Engineering cannot support the application.*

## Conclusion

This report has set out the excessive bulk and scale of the dwelling, and the resultant substantial adverse impact on the amenity, overlooking and privacy of our client's property. It is important to note that our client does not object to alterations and additions to revitalise the existing dwelling house on the site. However, any proposal should fully consider the amenity impacts of constructing a dwelling of this size and scale on a lot that simply cannot support a development of the proposed scale. The proposed development does not successfully create a dwelling that responds to the constraints of the site, while providing a development that overall complies with the development standards and controls of the relevant urban planning instruments.

The proposal requires substantial amendments that need to ultimately result in a reduction in size of the proposed final dwelling. The proposal should be compliant with the development standards for FSR and Building Height, needs to properly consider the topography of the site and should comply with all relevant Manly DCP2013 requirements. The proposal also needs to be sympathetic to neighbouring properties and the adverse impact this development is likely to have. Tomasy Planning, and the objectors recognise that the construction of the dwelling will not have any adverse impact on the primary view corridor; however, the site is located within the Foreshore Scenice Protection Area where all views need to be retained.

It is also important to note that some excavation and landscaping works are currently being undertaken on the site under a Complying Development Certificate. A review of these works has not been able to be undertaken as a part of this submission. However, these works should be a consideration in the assessment of the proposal.

In light of the above, Tomasy Pty. Ltd. recommends that Council refuse the development application in its current form under Clause 4.16 of the Environmental Planning and Assessment Act, 1979. The proposal suffers from substantial departures to the relevant planning policies and the requirements of Clause 4.15 of the Environmental Planning & Assessment Act, 1979.

Please forward all Council correspondence to both the sender's and owners addresses to ensure that all parties remain involved with Council's proceedings in the determination of this development application.

Should you require any further clarification of the above, please do not hesitate to contact Tia Mills on 8456 4712.

Yours faithfully,



**Denis Smith (Director)**  
**Tomasy Planning Pty Ltd**

Cc: Krys Lojek and Mark Shoebridge, 37 Adelaide Street, Clontarf