



22 February 2022

Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

Via email: council@northernbeaches.nsw.gov.au

Dear Mr Milliken,

Re: Response to submissions received – DA2022/0033 at 30A Addison Road, Manly.

I write on behalf of Mr Shamia (Applicant) in response to the submissions received following Council's notification of Development Application DA2022/0033, which seeks consent for the demolition of the existing dwelling and the construction of a new dwelling at 30A Addison Road, Manly.

To inform this response, I have reviewed and considered the following documents:

- Architectural Plans (Revision L, by Chateau Architects + Builders, dated 14.01.2022)
- Detail & Boundary Survey (prepared by Luke Skelton of Veris, dated 12.01.2022)
- Statement of Environmental Effects (Revision 2, by Claron Consulting Pty Ltd, dated 14.01.2022)
- Clause 4.6 Submission (by Claron Consulting Pty Ltd, dated 06.12.2021)
- Pre-lodgement Advice from Council (dated 13 May 2021)
- Stamped Plans, Notice of Determination and Assessment Report relating to DA341/2016 (Development Application for alterations and additions at the site)

This response responds to the concerns raised in the submissions from:

1. Johns & Bolding of 30 Addison Road (dated 07.02.2022)
2. Matthews of 3/34 Addison Road (dated 07.02.2022)
3. Endre of 2/28 Addison Road (dated 08.02.2022)
4. Taylor of 29 Darley Road (dated 09.02.2022)
5. Linforth & Hearne of 1/28 Addison Road (dated 14.02.2022)
6. Hammond of 34A Addison Road (dated 14.02.2022 & 15.02.2022)
7. Banjac of 8/8 Bruce Avenue (dated 15.02.2022)
8. Browning & Lee of 3/28 Addison Road (dated 15.02.2022 & 16.02.2022)
9. Dry of 6/8 Bruce Avenue (dated 15.02.2022)

Consistent with Council's Community Participation Plan, all submission received by or on behalf of the same dwelling have been counted as a single submission.

The concerns raised in the submissions are considered, as follows:

BUILDING HEIGHT

A submission was received from Johns & Bolding of 30 Addison Road which suggests that the maximum building height of 9.2m, as nominated in the SEE and supporting Clause 4.6 Submission, is incorrect. The submission suggests that there are three separate areas of non-compliance, as follows:

- The south-eastern corner of the roof over the upper floor balcony breaches the height plane by 2.6m, to a maximum height of 11.1m,
- The south-eastern corner of the roof terrace parapet breaches the height plane by 1.9m, to a maximum height of 10.4m, and
- The south-eastern corner of the balustrade of the roof terrace breaches the height plane by 1.1m, to a maximum height of 9.6m.

Building height is calculated by drawing a vertical line between the top of the building and the existing ground level, at any one point on the building. The submission confirms that the measurements referred to above are based upon survey points along the boundaries of the site, and beyond the footprint of the proposed development. On a sloping site, such as the subject site, the difference between the levels of the land below the proposed building and along the boundary may be markedly different, and as such, it is crucial that the survey points relied upon are as close the proposed building as possible.

The most precise way of calculating building height where the proposed development extends beyond the footprint of the existing building is to superimpose/overlay the Detail & Boundary Survey atop of the Roof Plan. Upon review of the overlay of the Detail & Boundary Survey atop of the Roof Plan (Figure 1), I confirm that:

- the south-eastern corner of the roof over the upper floor balcony reaches a maximum height of **9.22m**, breaching the height plane by 720mm. This is based on measuring the vertical distance between the south-eastern corner of the roof at RL 17.7m AHD and the land directly below at RL 8.48m AHD.

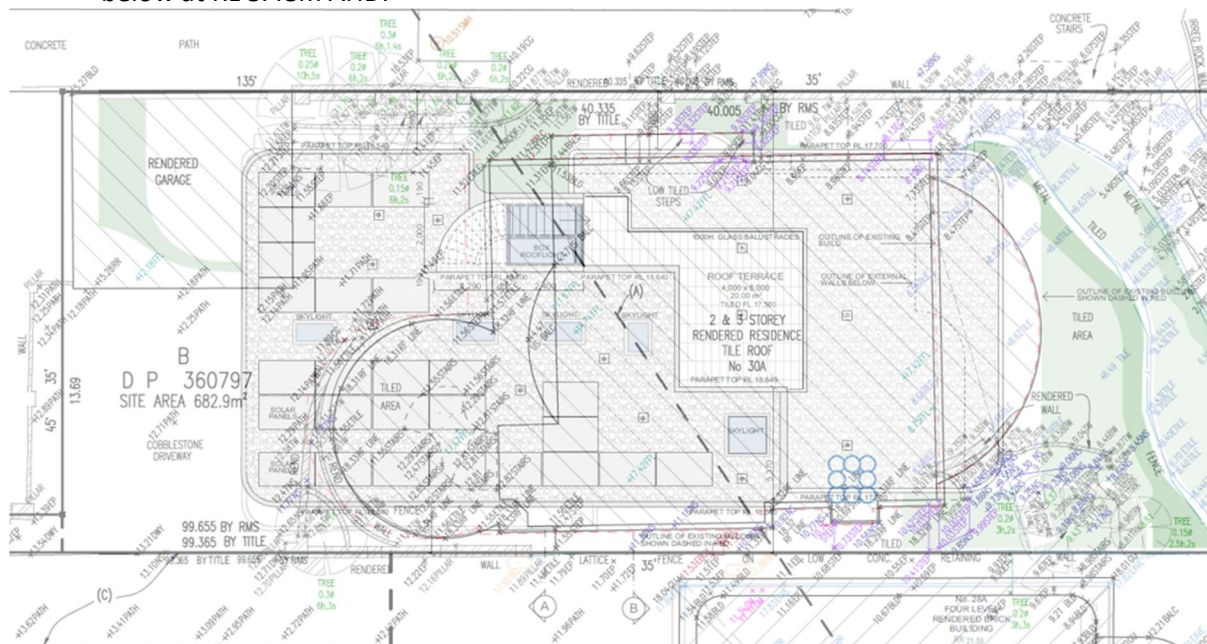


Figure 1: Overlay of the Detail & Boundary Survey atop of the Roof Plan

An amended clause 4.6 request will be submitted to correct the nominated maximum building height from 9.2m to 9.22m.

Where the ground levels are unable to be determined (within the footprint of the excavated building), Council allows for extrapolation or interpolation, consistent with the decision of Commission O'Neill in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070. Upon review of the height blanket prepared to accompany the proposed development (Figure 2), and the Sections that highlight the interpolated ground levels, I confirm that:

- The south-eastern corner of the roof terrace parapet does not exceed the 8.5m height plane, and
- The south-eastern corner of the balustrade of the roof terrace marginally breaches the 8.5m height plane by approximately 200mm.

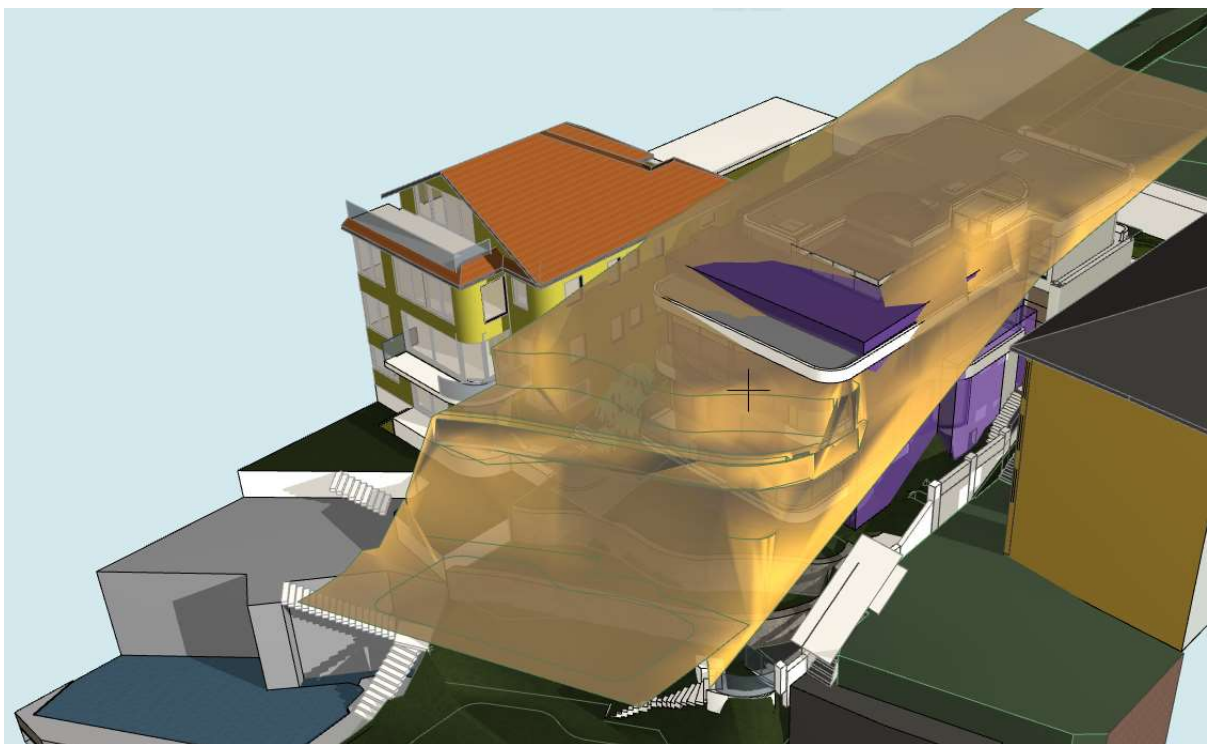


Figure 2: Interpolated height blanket

The size/depth of the roof terrace can be reduced to address this unintentional non-compliance. An extract of the amended design is provided in Figure 3 (over page) with the amended height blanket at Figure 4 (over page).

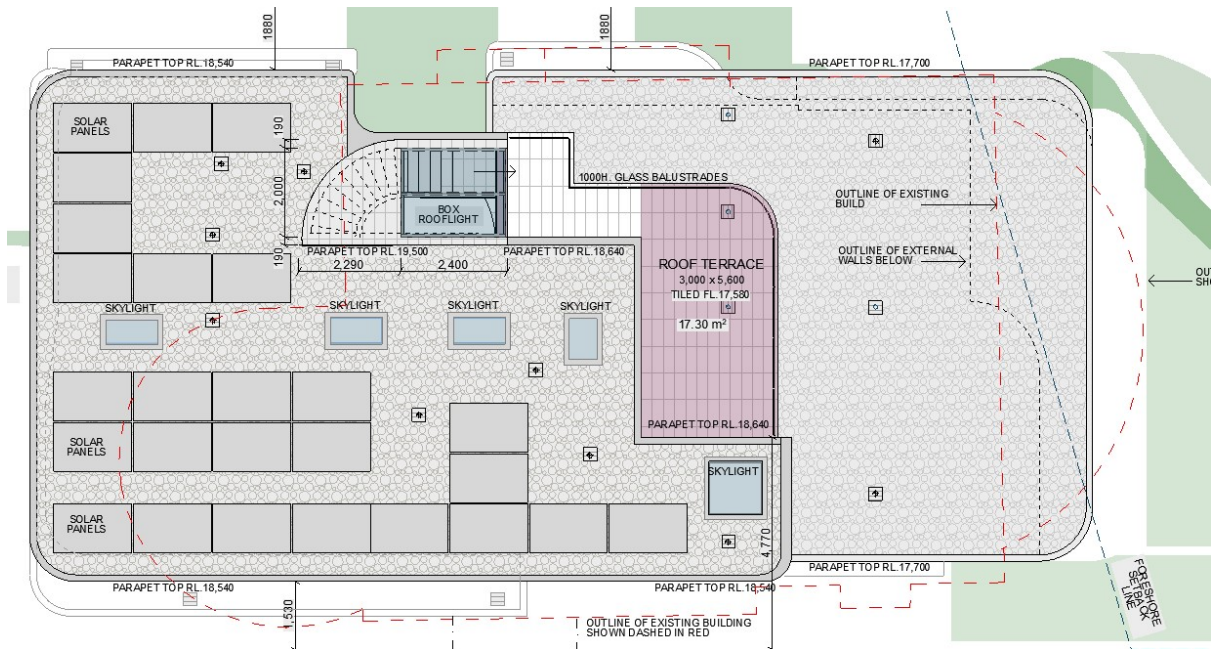


Figure 3: Amended roof plan

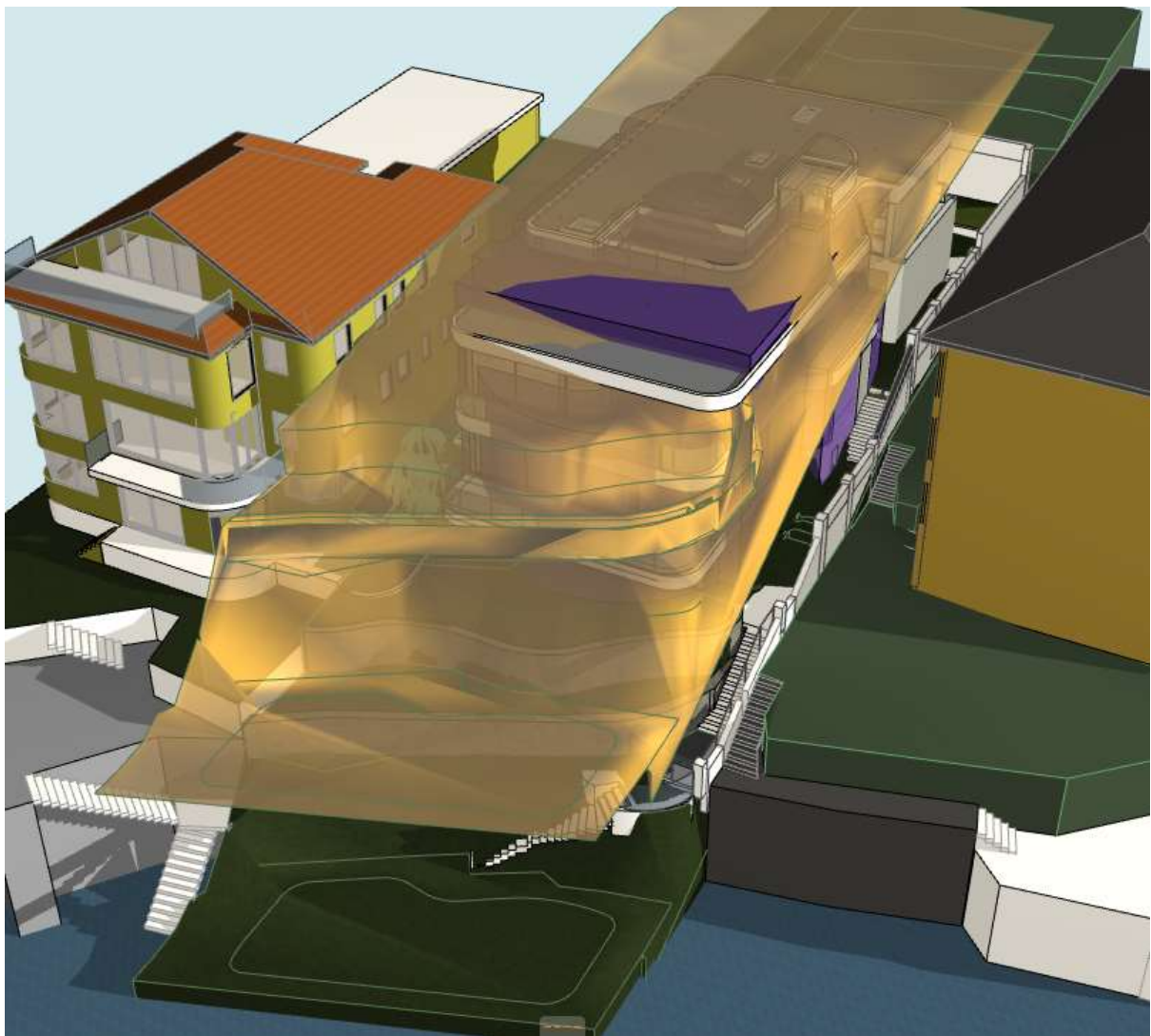


Figure 4: Amended height blanket

The submission from Johns & Bolding of 30 Addison Road continues to purport further inaccuracies by suggesting that the proposed parapet at RL 19.5m AHD is 2.1m higher than the existing roof. The parapet in question at RL 19.5m AHD is the parapet that surrounds the roof access, which is limited to 2.0m in width and 2.4m in depth. At worst, this minor portion of the dwelling exceeds the height of the existing roof by 1.17m. However, of most relevance is the fact that this portion of the dwelling is wholly maintained below the 8.5m height plane.

The proposed roof form over the upper portion of the dwelling has a parapet height of RL 18.54m AHD, only 210mm higher than the existing roof. The proposed roof form over the lower portion of the dwelling has a parapet height of 17.7m AHD, 630mm lower than the existing roof.

A comparison of the existing dwelling and the proposed dwelling is provided Figures 5 and 6, with the existing dwelling shown in purple and the proposed dwelling in white.



Figure 5: 3D comparison of existing dwelling (purple) and proposed dwelling (white) as seen from the west.



Figure 4: 3D comparison of existing dwelling (purple) and proposed dwelling (white) as seen from the north.

Unfortunately, it appears that the incorrect calculations within the submission from Johns & Bolding of 30 Addison Road have been relied upon by other neighbours in the preparation of their submissions of objection (Browning & Lee of 3/28 Addison Road and Hammond of 34A Addison Road).

The submission from Johns & Bolding of 30 Addison Road suggests that Council, as the consent authority, has no statutory power to approve the proposed development, as the height of the dwelling exceeds that nominated in the clause 4.6 submission. At this point in time, this statement is technically correct, as the exact height referred to in the clause 4.6 is marginally inaccurate and as the non-compliance associated with the roof terrace is not acknowledged.

However, amended plans and an amended clause 4.6 request have been prepared to address this issue, and subject to Council's satisfaction that the amended request is consistent with the provisions of clause 4.6 of MLEP 2013, there is no statutory impediment to prevent Council from granting consent to the proposed development with regard to building height.

FSR

The submission from Johns & Bolding of 30 Addison Road states that the proposed development exceeds the 0.6:1 FSR that applies in relation to this site. This claim is based on an opinion that the inclusion of the area of the battle-axe handle is unreasonable in this particular instance, as easements over the that portion of the land "makes the proposed development on the accessway highly prohibitive".

Clause 4.5 of MLEP 2013 clearly stipulates what can and cannot be included in the calculation of site area for the purpose of calculation FSR. Whilst clause 4.5(4) of MLEP 2013 prescribes that land on which development is prohibited cannot be included within the site area, a right of carriageway does not act to prohibit development.

There is no reason as to why the area of the battle-axe handle cannot be included within the site area calculation. This position is consistent with the position formed by Council during the recent pre-lodgement meeting and in relation to the previous development application approved on the site.

The proposed development is maintained below the maximum applicable FSR and there is no statutory impediment to prevent Council from granting consent to the proposed development with regard to FSR.

CHARACTER, BULK & SCALE

A number of submissions have been received in objection to the bulk and scale of the development, and a perceived inconsistency with the character of the area.

The proposed development is a part two and part three storey dwelling house, that has been designed to ensure strict compliance with the FSR development standard, the primary control that limits the bulk and scale of development throughout the locality.

The apparent size of the dwelling, particularly as seen from the waterway, is generally consistent with that which exists on the site and is compatible with the massing of surrounding development. In an area where residential flat buildings exist and remain permissible on the land, and where other surrounding development significantly exceeds the maximum permissible height and FSR standards, I

would find it difficult to suggest that the proposed development is inconsistent with or at odds with the character of the area.

The height non-compliances associated with the proposed development are acknowledged, however these areas are relatively minor components of the development that arise due to the topography of the land and do not detrimentally impact upon the bulk and scale of the development. The majority of the dwelling is maintained below the height plane and remains lower than adjacent roof forms (as seen in Figure 5).

The proposed development will not be readily discernible from Addison Road and will not impact upon the streetscape setting. The north-western (front) façade is limited in height to two storeys with varied materiality and setbacks to ensure that the visual impact of the development is not dominant as seen from upslope properties. Further, the proposal incorporates a flat roof to ensure that any disruption of view lines obtained over the site is appropriately minimised.

The rear elevation is appropriately articulated by virtue of the deep-set balconies and the varied wall setbacks. Landscaping is also proposed to soften the visual impact of the development as seen from the waterway. Overall, the bulk and scale of the development appears to be reasonable within the context of this particular site.

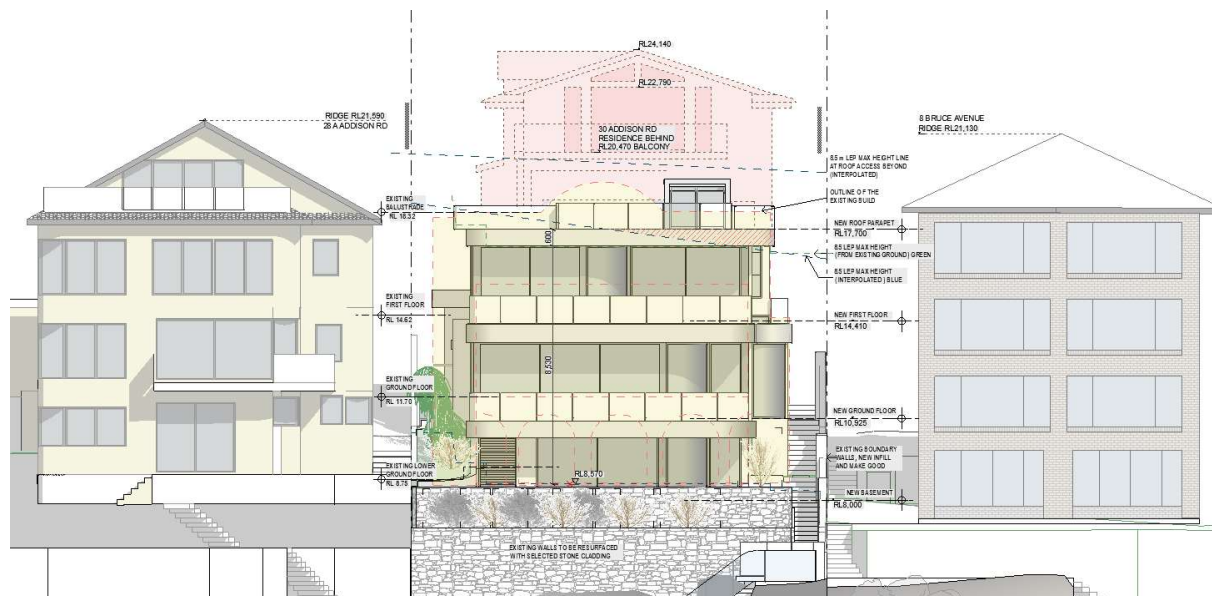


Figure 5: An extract of the South-Eastern Elevation

VIEWS

A number of submissions have been received with regard to potential view loss from adjoining properties at 30 Addison Road, 34A Addison Road, 3/28 Addison Road and 29 Darley Road. Whilst the level of impact cannot be qualified without inspections of the properties in question, I note the following:

- **30 Addison Road**
30 Addison Road is located upslope and to the north-west of the subject site with views obtained over their rear boundary and over the roof of the existing dwelling. The submission is supported by one photograph of an existing view from the upper floor terrace, however the complete expanse of views available from throughout the property as a whole has not been qualified. Without such qualification, the assessment undertaken in the submission is flawed.

Noting that the majority of the proposed development is maintained within the volume of the existing dwelling, the likely impacts upon views currently enjoyed from 30 Addison Road are considered to be minor.

- 34A Addison Road

34A Addison Road is located upslope and to the north of the subject site with views obtained across their side boundary and over the roof of the existing dwelling. The submission is supported by two photographs of existing view corridors over the subject site, however the complete expanse of views available throughout the property as a whole has not been qualified.

Noting that the majority of the proposed development is maintained within the volume of the existing dwelling, the likely impacts upon views currently enjoyed from 34A Addison Road are considered to be minor.

- 3/28 Addison Road

3/28 Addison Road is located upslope and to the west of the subject site with views obtained across their side boundary and over the roof of the existing dwelling. The submission is supported by a collection of photographs of existing view corridors over the subject site, however the locations are not accurately identified and as above, views obtainable in other directions are not qualified.

Noting that the majority of the proposed development is maintained within the volume of the existing dwelling, the likely impacts upon views currently enjoyed from 3/28 Addison Road are considered to be minor.

- 29 Darley Road

A submission was received from Taylor of 29 Darley Road, in objection to the protruding balconies and associated impacts upon views. As 29 Darley Road is not in the visual catchment of the site, it can only be assumed that this submission must relate to an alternate property. Until the correct property is identified, an impact upon such is unable to be undertaken.

It is understood that you will undertake your own inspections and view loss assessment as part of the assessment process. We would be grateful if any images taken during such inspections were shared with the Applicant, to enable 3D modelling of the likely impacts of the proposed development. We believe that this would be of great assistance to you and the objecting parties, more so than height poles, to clearly identify the form of the development proposed from all relevant vantage points.

The submission from Johns & Bolding of 30 Addison Road lists three examples where Council staff were not supportive of a proposal based upon the level of impact on existing view corridors. The assessment of view impact is specific to the site, the context and the individual proposal. As someone who was personally involved in the assessment/determination of each of the three examples cited, I can confirm that they are not comparable to the circumstances of the proposed development and are irrelevant in the assessment of the subject application.

WALL HEIGHT

A number of submissions cite non-compliance with the maximum wall height permitted by MDCP 2013. In accordance with clause 4.1.2.1 of MDCP 2013, the wall height of the north-eastern and south-western side elevations is to be limited to 7.4m and 7.3m respectively.

The wall height of the south-western side elevation is maintained below 7.3m and is compliant with this control.

The wall height along the north-eastern side elevation exceeds 7.4m and is non-compliant with this control. However, the non-compliance is limited in length and is associated with a portion of the building that is setback 2.68m – 2.8m from the side boundary. The non-compliance appears to arise as a consequence of the cross-fall of the land, and a significant proportion is associated with an open style balcony.

The submissions in objection to the wall height non-compliance suggest that this portion of the development results in unreasonable impacts upon existing view corridors, however the wall height of the existing development is greater than that currently proposed in this location, and as such, the proposal is likely to result in a minor increase in views available to nearby properties.

The submission from Johns & Bolding of 30 Addison Road suggests that the variation is unable to be supported as “the proposal fails to adequately demonstrate that compliance with each standard of control is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening each of the standards...”. The submission incorrectly infers the tests to vary a development standard, which are quite different to those that relate to development controls.

Rather, section 4.15(3A)(b) of the EP&A Act requires Council to be flexible in applying development controls and allow for reasonable alternative solutions that achieve the objectives of the control for dealing with that aspect of the development.

In my opinion, the minor breach to the prescribed wall height along the north-eastern elevation does not detract from consistency with the objectives of the development control, and the extent of non-compliance is commensurate with that seen in development on sloping sites in the immediate streetscape and the wider locality in general.

NUMBER OF STOREYS

Submissions have been received which object to the proposed development on the basis that the proposal is inconsistent with the two storey height limit of clause 4.1.2.2 of MDCP 2013.

The proposed non-compliance with the two storey height limit is be reasonable in the circumstances of this application, noting that:

- The proposed development incorporates split-level floor slabs to follow the slope of the land,
- The lower level is largely subterranean and excavated into the slope of the site,
- The proposal sites adjacent to four storey development, and
- The proposal is largely maintained at or below the height limit.

The submission from Johns & Bolding of 30 Addison Road once again seeks to impose the much more rigorous test reserved for variations to development standards to the number of storeys development control.

In my opinion, the circumstances of this application warrant variation of the two storey height limit imposed by clause 4.1.2.2 of MDCP 2013.

SIDE SETBACKS

Submissions have been received in objection to the non-compliant side setbacks of the proposed development, with suggestions that the non-compliant side setbacks result in unacceptable bulk and scale.

Clause 4.1.4.2 of MDCP 2013 prescribes that dwelling should be setback from the side boundary at a distance of not less than one third of the wall height. Upon review of the plans presented to accompany the application, the proposal generally complies with this control.

The submissions appear to be referring to the 3m setback requirement for windows on side elevations. The 3m setback control of clause 4.1.4.2 of MDCP 2013 is limited to windows, not walls, and is unrelated to bulk and scale.

Whilst it is apparent that the proposal comprises windows within 3m of side boundaries, the size of these windows have been minimised, and are generally offset from those of adjoining dwellings. Should Council have concern with potential privacy impacts associated with any specific windows, conditions of consent can be imposed in this regard.

REAR SETBACK (FSBL)

A submission has been received from Johns & Bolding of 30 Addison Road in objection to the encroachment of the dwelling within the foreshore area, suggesting that the portion of the development within the foreshore area leads to unacceptable impacts upon amenity and visual dominance when viewed from neighbouring dwellings.

The portion of the dwelling within the foreshore building line is located approximately 29m from common boundary with 30 Addison Road. The proposed balconies within the foreshore area will be screened from view by the proposed dwelling and will not result in unacceptable privacy or visual amenity impacts upon occupants of 30 Addison Road.

The foreshore building line is a development standard under the provisions of clause 6.10 of MLEP 2013. The proposed development is permitted within the foreshore area by virtue of clause 6.10(2), which provides for the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so.

The proposed development is largely maintained within the footprint of the existing dwelling, with no part of the dwelling extending further seaward compared to that which currently exists. The proposed new dwelling seeks to replace the existing curved balconies with more rectilinear balconies, which have been stepped back at a greater distance from the water as the height of the development increases.

In my opinion, the siting of the proposed new dwelling appropriately responds to the alignment of the buildings to either side, and Council can be satisfied of the matters listed in clause 6.10(3) of MLEP 2013.

SOLAR ACCESS

Submissions were received from Banjac at 8/8 Bruce Avenue and Dry at 6/8 Addison Road regarding the proximity of the proposed development to the common side setback and the loss of light resulting from the development. Clause 3.4.1.2 of MDCP 2013 prescribes the controls for the maintenance of daylight, which is limited to impacts between 9am and 3pm in mid-winter. The proposed development is located to the south of the building at 8 Bruce Avenue and will not result in a reduction to the level of solar access presently enjoyed during mid-winter.

PRIVACY

Submissions have been received in objection to the proposed development due to potential visual privacy impacts. The potential impacts are considered with respect to each individual property, as follows:

- 30 Addison Road

The submission from Johns & Bolding of 30 Addison Road raises two specific areas of concern, namely the proposed roof terrace and the removal of trees along the battle-axe handle.

The proposed roof top terrace is located approximately 20m from the common boundary with 30 Addison Road and the resultant spatial separation, which far exceeds the 9m AMCORD guidelines, will ensure appropriate levels of privacy for both properties.

The application proposes the removal of existing trees along the battle-axe handle. The trees in question serve no benefit to the amenity of the proposed dwelling, but rather are being relied upon by occupants of other properties for privacy between upslope properties.

I am advised that the tree removal is required to facilitate appropriate access during construction. The trees in question are undesirable species and can be removed without consent at any time.

- 28 Addison Road

Submissions have been received from multiple units at 28 Addison Road raising concerns with regard to overlooking from the proposed roof terrace. The roof terrace is located more than 29m from the closest point of the building at 28 Addison Road and the resultant spatial separation, which far exceeds the 9m AMCORD guidelines, will ensure appropriate levels of privacy for both properties.

The submissions also object to the removal of trees along the battle-axe handle. Whilst it is apparent that the trees provide a high level of amenity for occupants of dwelling at 28 Addison Road, it must be acknowledged that the trees in question are undesirable species and can be removed without consent at any time.

However, as suggested in one of the submissions received, the retention or replacement of these trees may be a conciliatory act to appease the concerns of neighbouring property owners with respect to other aspects of the development.

- 34 Addison Road

Submissions have been received from 34A and 3/34 Addison Road raising concerns with regard to overlooking from the proposed roof terrace. The roof terrace is located more than

24m from the common boundary with 30 Addison Road and the resultant spatial separation, which far exceeds the 9m AMCORD guidelines, will ensure appropriate levels of privacy for both properties.

- 6/8 Bruce Avenue

A submission was received from Dry of 6/8 Bruce Avenue raising concerns with regard to overlooking and noise associated with the proposed roof top terrace. Upon review of real estate listings, it appears that 6/8 Bruce Avenue is located in the north-western corner of the ground floor of the adjacent residential flat building. The proposed roof top terrace is located in excess of 9m from the closest window of 6/8 Bruce Avenue, with direct overlooking prevented by the roof of the level below.

The roof terrace is limited in size and is considerably smaller than that approved by Council pursuant to DA341/2016. Furthermore, I note that the concept of a 20m² roof top terrace was supported by Council in the pre-lodgement notes dated 13 May 2021.

DRIVEWAY DESIGN & USE

Submissions have been received from multiple units at 28 Addison Road raising concerns regarding the proposed access gate. The submissions suggest that the proposed gate will prevent the driveway of 30A Addison Road from being used to facilitate turning/manoeuvring for vehicles accessing the garages of units at 28 Addison Road.

Upon review of the Detail and Boundary Survey provided to support the application, there is no right of way or any other legal mechanism in place which permits occupants of 28 Addison Road to use the driveway of 30A Addison Road (being the portion behind the proposed gate) for vehicle access or manoeuvring.

Whilst the occupants of 28 Addison Road may have benefitted from the use of this area historically, without a right of way registered upon the title of the land, neither the adjoining properties owners nor Council has the right to request that this access be maintained.

OTHER

The submission from Johns & Bolding of 30 Addison Road lists a number of development applications that were withdrawn from Council in the past two years and claims the basis for such withdrawal. I raise concern in this regard, noting that Council's position in relation to withdrawn applications is not publicly available, and any withdrawal request is not publicly viewable on Council's website. Either the author of the submission has somehow obtained access to confidential correspondence between Council and other individuals, or they have taken liberties in assuming the reasons for the withdrawal of these applications. If the later is the case, this should be qualified.

The submission from Johns & Bolding of 30 Addison Road also lists the reasons as to why the application should be refused, in addition to a number of suggestions to alleviate some of the concerns raised. Whilst an objecting party is able to make such recommendations, it will ultimately come down to whether Council is of the same opinion. If any of these concerns are shared, we understand that Council will formally write to Applicant, and provide an opportunity to make amendments to the proposal.

If/when this occurs, we request the opportunity to meet with you, to gain a complete understanding of any changes that are deemed to be necessary. We would like to continue to work with Council to ensure the best outcome for the development of this site.

Should you have any queries regarding the information above, please do not hesitate to contact me on 0472 65 74 74.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'REnglund.' with a stylized, cursive script.

Rebecca Englund

Director | Northern Beaches Planning