
Sent: 26/07/2021 1:39:35 PM
Subject: Attn: David Auster - Planner - Submission to DA2021/0973
Attachments: Letter of Objection - 25072021.pdf;

Attn: David Auster – Planner
Submission to DA2021/0973 – 116 Beatrice Street, Balgowlah Heights

Hi David,

Please find attached letter of objection to DA2021/0973 at 116 Beatrice Street, Balgowlah Heights. This is on behalf of my clients at 114 Beatrice Street, Balgowlah Heights, which adjoins the property to the south. We believe it is essential that further documentation is provided and a site inspection to view the areas of concern.

As discussed, due to COVID lockdown, I have not had the chance to attend the site to get further photos. We request that when lockdown is over, we can provide further information if seen fit to further substantiate our objection.

Please contact me if you have any queries in relation to the letter or arranging a time to inspect the site.

Kind Regards
Mathew Quattroville
Director



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25 July 2021

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

ATTN: David Auster (Planner)

By email:

council@northernbeaches.nsw.gov.au

Re: Letter of Objection to Development Application 2021 / 0973 for alterations and additions to a dwelling house including a swimming pool at 116 Beatrice Street, Balgowlah Heights NSW 2093

Dear Sir,

I refer to the above Development Application (DA) for 116 Beatrice Street, Balgowlah Heights (the site). We act on behalf of the owners of 114 Beatrice Street, Balgowlah Heights, the neighbouring property to the south.

Whilst in principle our clients agree and want to support an upgrade to the existing dwelling house, our clients have serious concerns regarding the impact to the amenity, privacy, and sunlight access to their property to the south. It is noted that my clients are disappointed that no attempt was made by the owners to discuss the plans, as we believe many of the issues could've been rectified prior to lodgement. Notwithstanding, my clients are still keen to work with the owners of 116 Beatrice Street for a reasonable outcome. 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
- Review of DA documentation including architectural plans and the statement of environmental effects
- Environmental Planning and Assessment Act 1979
- Manly Local Environmental Plan 2013
- Manly Development Control Plan
- Relevant NSW Land & Environment Court Planning Principles

Having undertaken a detailed review of the above documentation, the following concerns regarding the proposal have been raised and currently warrant refusal of the application in its current form:

- Alterations and Additions vs New Build
- Section 4.15 (previously Section 79C) of EP&A Act 1979
- Amenity - Privacy
- Amenity - Access to Sunlight
- View Loss
- Bulk and Scale (Side and Rear Setback)
- Incomplete Documentation to Support DA Package (Survey Plan, Architectural Plans, Non-certified Shadow Diagrams and Statement of Environmental Effects)

These issues will be discussed in further detail below.

The Sites



Source: Nearmaps 2021

The site shown with blue pin is 116 Beatrice Street and my client's site 114 Beatrice Street shown with the red star. The green circle highlights the living areas, private open space areas and the swimming pool of 114 Beatrice Street which will be heavily impacted by the proposed development.

Alterations and Additions vs New Dwelling

It is submitted that the proposal is not alterations and additions and falls under a new building. Therefore, any existing non-compliances and proposed non-compliances should be rectified with the application and not supported in their current form. In this regard, the applicant and the Statement of Environmental Effects have failed to address the relevant NSW Land and Environment Court Principles relating to demolition, as shown below:

Demolition - The extent of demolition - alterations and additions or a new building - Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187

Planning principle

56The first question to be considered is "what is the purpose for determining whether this application should be characterised as being for additions and/or alterations to an existing structure rather than an application for a new structure?" The answer to this fundamental question will frame the approach to be undertaken to the analytic framework set out below.

57In determining whether an application is appropriate to be regarded as for additions and/or alterations or not, it is appropriate to follow, by broad analogy, the process discussed by Bignold J in Moto Projects (No 2) Pty Limited v North Sydney Council [1999] NSWLEC 280; (1999) 106 LGERA 298 - namely undertaking both a qualitative and a quantitative analysis of what is proposed compared to what is currently in existence.

58In this consideration, regard should be had to such of the matters in the following lists of matters as are relevant to the enquiry:

59Qualitative issues

- How is the appearance of the existing building to be changed when viewed from public places?*
- To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places?*
- To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area?*
- What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?*
- What is the extent, if any, of any proposed change to the use of the building?*
- To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?*
- To what extent, if any, are the existing access arrangements for the building proposed to be altered?*
- To what extent, if any, will the outlook from within the existing building be altered as a consequence the proposed development?*
- Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?*

60Quantitative issues

- To what extent is the site coverage proposed to be changed?*
- To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?*
- To what extent is the building envelope proposed to be changed?*
- To what extent are boundary setbacks proposed to be changed?*
- To what extent will the present numerical degree of landscaping on the site be changed?*

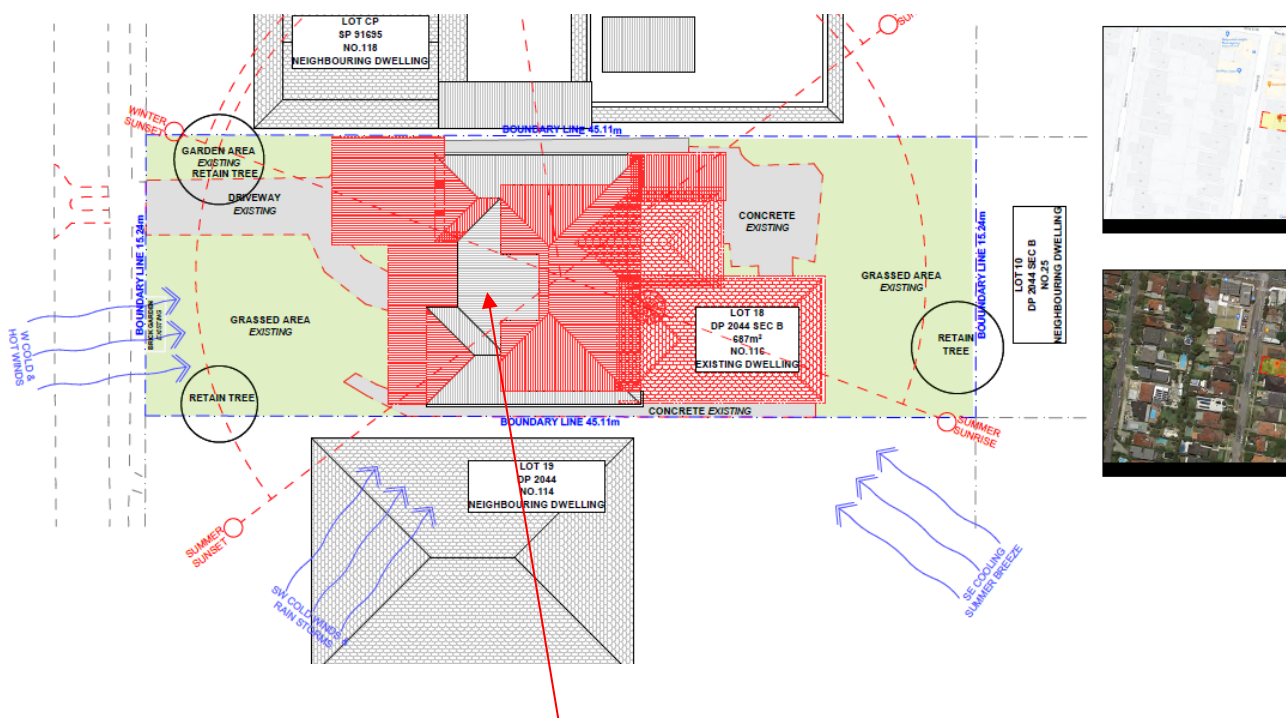
- To what extent will the existing floor space ratio be altered?
- To what extent will there be changes in the roof form?
- To what extent will there be alterations to car parking/garaging on the site and/or within the building?
- To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?
- What relationship does the proportion of the retained building bear to the proposed new development?

61 Obviously, the greater the overall extent of departure from the existing position, the greater the likelihood the proposal should be characterised as being for a new building.

62 It is not intended that the above lists should be regarded as exhaustive. Other matters may well arise for consideration in the facts and circumstances of a particular application or the reason why the analysis is being undertaken. However, having considered all of the listed matters (together with any other additional matters that may be relevant in the particular circumstances of the application), an evaluation can then be made as to whether or not a proposal would correctly be characterised as additions and/or alterations to an existing structure or whether the proposal should be characterised as an application for an entirely new structure.

A review of the planning principle identifies that the proposal does not meet the qualitative and quantitative issues of alterations and additions and the impact and extent of works would be classified as a new build.

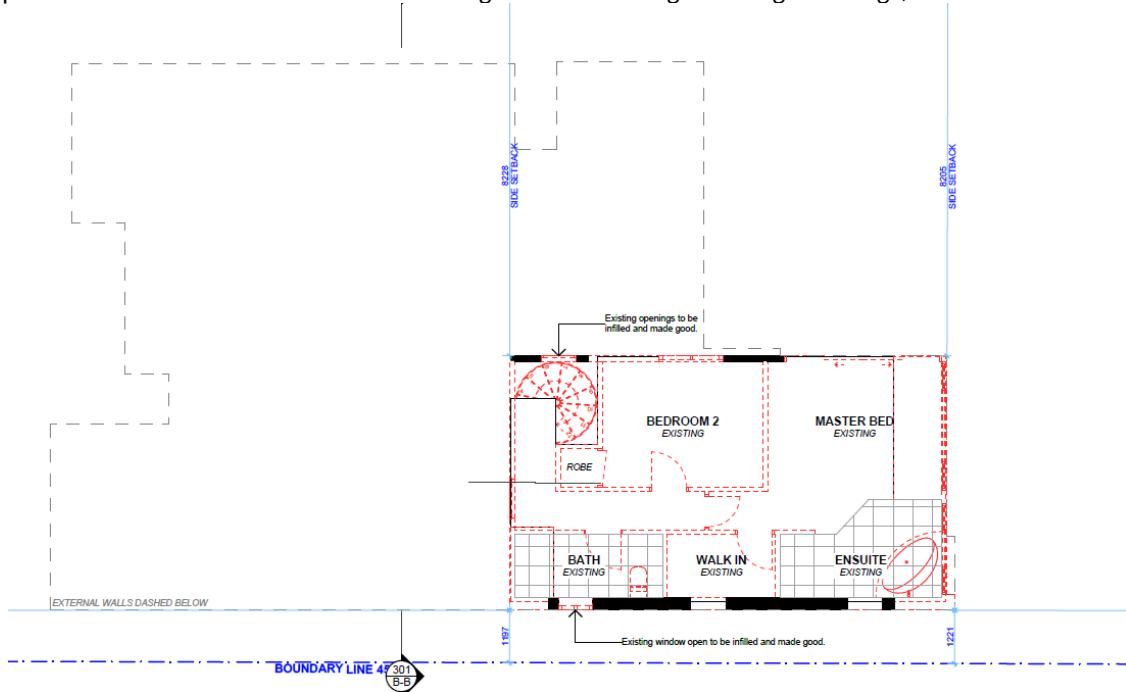
A snapshot of the site analysis shows the extent of the demolition works proposed. It is also important to factor in the increase to the building footprint and the non-compliances proposed which will have a detrimental impact to my client's property to the south.



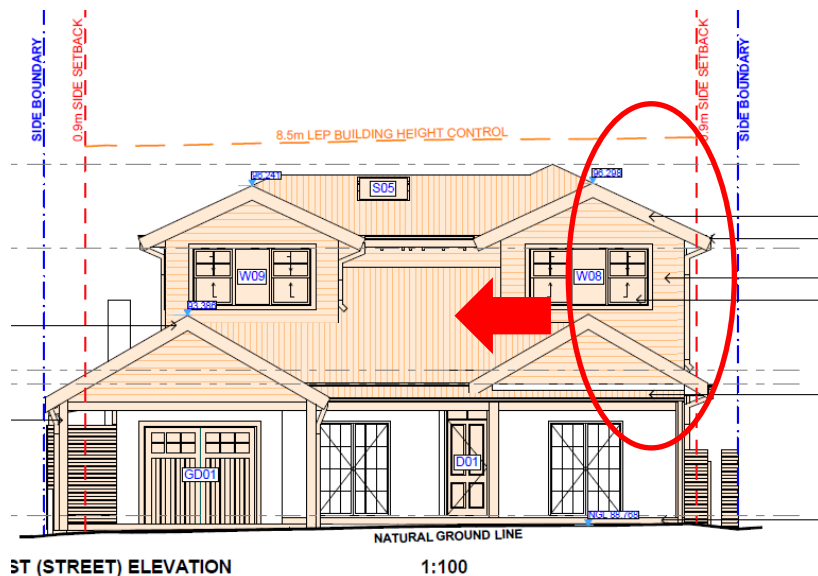
Existing roof to be replaced – not shown to be demolished

It is also noted that the demolition plans are not consistent and don't include the full works to be completed on the site. It is noted that more than 50% of the dwelling will be demolished, and the whole roof will be replaced.

In particular, the demolition works proposed for the first floor (shown below) do not warrant the retainment as alterations and additions and should be adequately addressed to meet the relevant MDCP controls, in particular the required side setbacks and consistent rear alignment with neighbouring dwellings, as a new build.



It is noted that the first floor could easily comply with the requirements of the side setbacks through a better design, which would reduce the impacts to 114 Beatrice Street.



The above west elevation shows that the entire first floor could be reduced or shifted to the north to comply with MDCP. There is no valid or acceptable reason for Council to approve the proposed works which have a detrimental impact to my client's property to the south.

It is respectfully requested that Councils refuse the current application and requests that a new application is submitted as a “New Dwelling House” and not as alterations and additions, to ensure that compliance with the planning controls are achieved.

Section 4.15 (previously Section 79C)

The SEE submitted with the application fails to adequately address Section 4.15, especially noting that the proposal relies on a merit assessment of certain breaches to MDCP. The proposed works are not in the public's interest and rely on the intensification and enlargement of the site through existing non-compliant controls.

In our opinion, the development does not satisfy the planning regime applicable to development on this particular site having regards to the considerations arising from its context. The proposal is not acceptable when assessed against the heads of consideration pursuant to Section 4.15 of the *Environmental Planning and Assessment Act, 1979* (as amended), is not in the public interest and therefore Council should refuse the application in its current form.

Amenity and View Loss

Amenity Impacts (Privacy, Access to Sunlight and Overshadowing)

3.4.2 - Privacy and Security

Objective 1) To minimise loss of privacy to adjacent and nearby development by: appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.
Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.
Objective 3) To encourage awareness of neighbourhood security.

The existing dwelling house at 116 Beatrice Street, currently has one window on the first-floor southern elevation. The proposal now includes four (4) new windows and a balcony which will directly look into the private open space, and the swimming pool of my client's property.

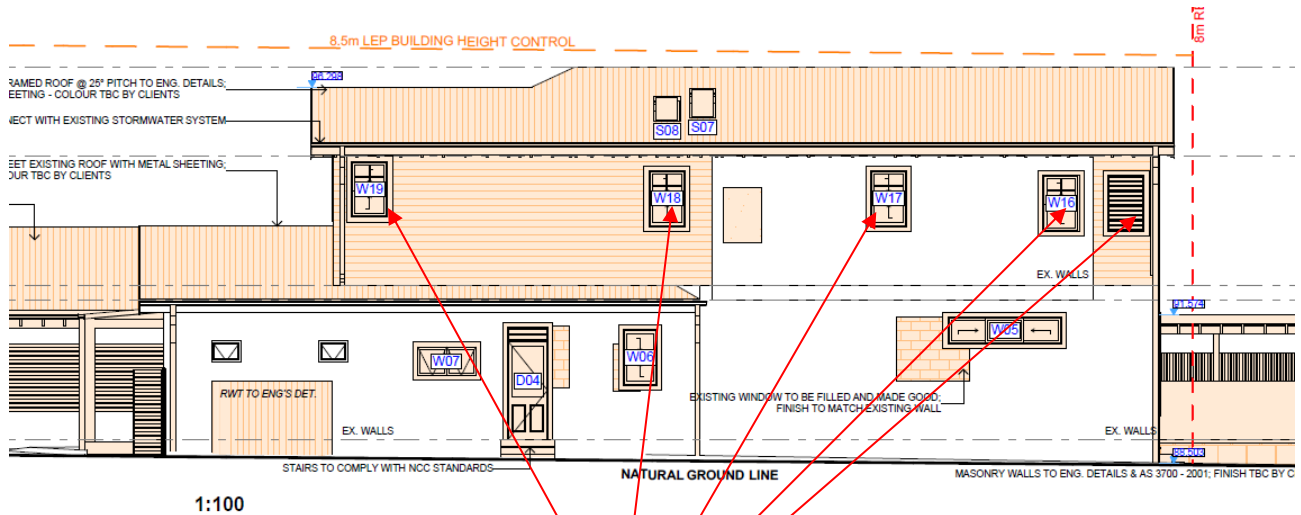
We question if the author of the SEE has actually attended a site inspection as they make several factually incorrect claims that there is no impact, in particular:

Privacy will be retained for neighbours with appropriate side setbacks proposed and no direct overlooking into any key living areas (Page 16).

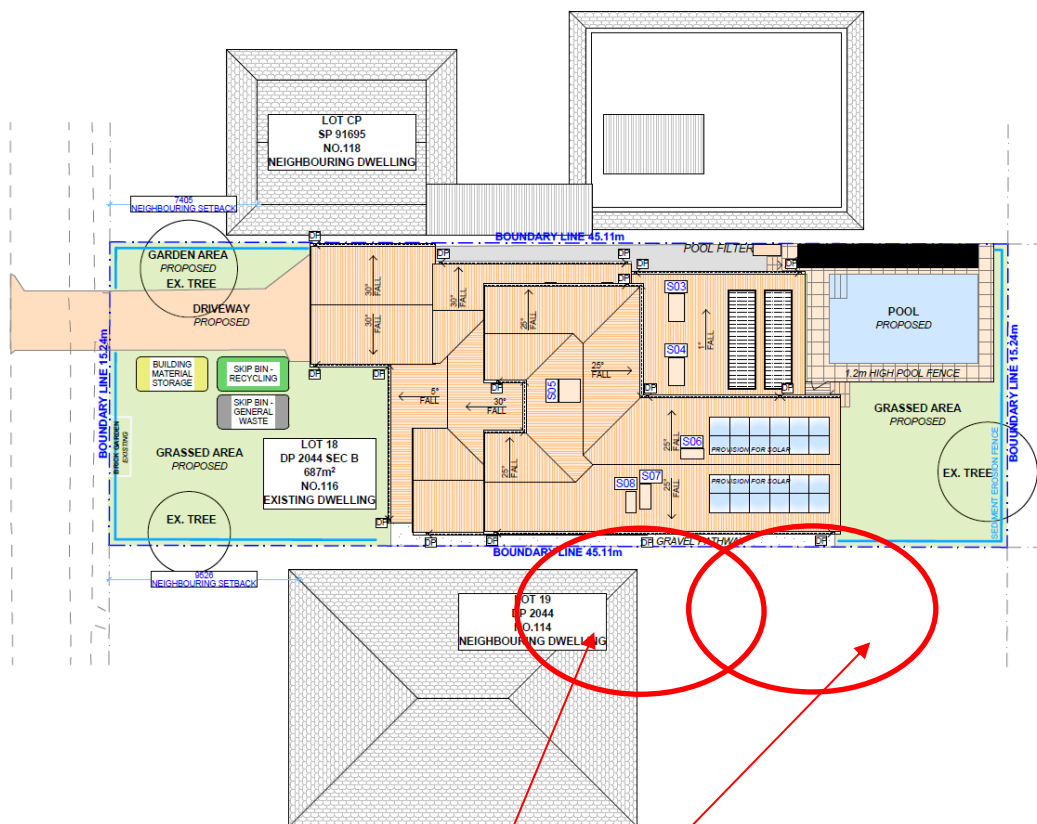
It is noted that the side setbacks don't comply, and the four new windows on the first floor are openable, not fixed, not frosted, not high sill and look directly into our private open space and swimming pool. The proposal includes two skylights for the bathroom and ensuite, therefore the windows are not required. It is also noted that the floor level of the ground floor will also result in potential overlooking and privacy concerns through the placement of windows and the laundry door. The windows are within 3m of the side boundary and don't comply with Councils controls. The proposal clearly has major deficiencies and will have a detrimental impact to my clients.

The SEE submitted fails to address the objectives of 3.4.2 as it must be assumed that they could not defend the proposal as it will have a detrimental impact to the adjoining neighbours, as it results in a loss of privacy and

direct overlooking of outdoor living areas. The images on the following pages and an excerpt of the south elevation and site plan show the loss of privacy through the proposed development.



The four new windows and balcony



Private open space area

Swimming Pool



First Floor Private Open Space

Ground Floor Private Open Space

Swimming Pool

Location of the four new windows and balcony which will look directly into the private outdoor open space of 114 Beatrice Street

Further to the above, the applicant and SEE has failed to address the planning principles for privacy:

Meriton v Sydney City Council [2004] NSWLEC 313 – Privacy – protection of visual privacy

*46 Generalised numerical guidelines such as above, need to be applied with a great deal of judgment, taking into consideration **density**, **separation**, **use** and **design**. The following principles may assist.*

- *The ease with which privacy can be protected is inversely proportional to the **density** of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.*
- *Privacy can be achieved by **separation**. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)*
- *The **use** of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.*
- *Overlooking of neighbours that arises out of poor **design** is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.*
- *Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.*
- *Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of*

windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.

- Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.*
- In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.*

It is noted that the proposal increases the lack of privacy through poor design. Increased and compliant setbacks, along with high sill, obscured windows would assist to limit the impact of the current privacy impacts.

- Overlooking of neighbours that arises out of poor **design** is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.*

Without adequate justification and a substantial amendment to the current plans, the proposal does not comply with the objectives of Control 3.4.2, does not comply with the relevant planning principle and therefore, warrants refusal of the application.

3.4.1 Sunlight Access and Overshadowing

Objective 1) To provide equitable access to light and sunshine.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

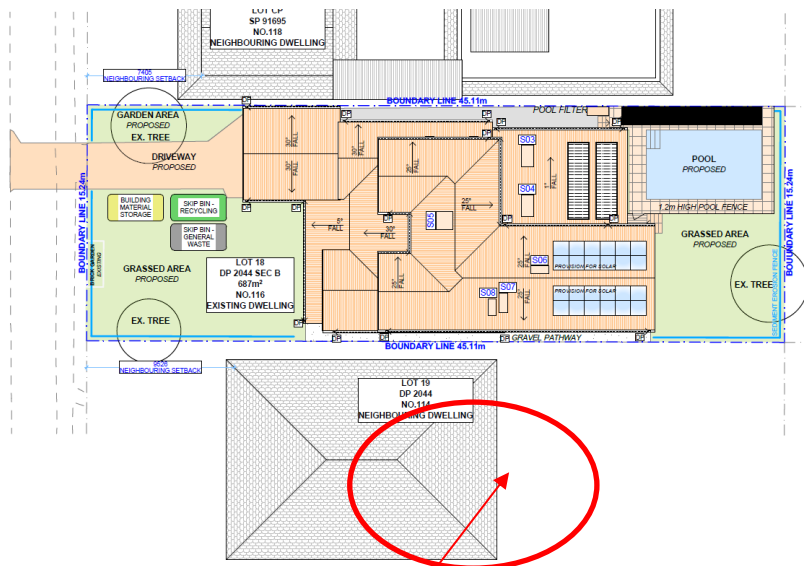
- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

The proposal will further reduce adequate access to light and sunshine. The SEE states that the proposal will have an increased shadowing of 114 Beatrice Street, but then states that:

the adjoining properties maintains compliant solar access at 9am and 12pm.

We find this statement hard to believe considering that the author of the SEE has incorrectly identified where the private open space areas are and has not even mentioned the impact and location of the swimming pool.

We request that the following additional shadow diagrams (including elevational shadow diagrams) for both winter solstice (21 June) and March and September equinox should be provided for a full assessment of impacts to our client's property. We also request that the plans are updated with the correct building footprint of 114 Beatrice Street, noting that the building footprint is not a square as shown on all the plans:



Missing portion of the house



It is further noted that the applicant should provide a revised SEE which addresses the NSW Planning Principle for access to sunlight.:

The Benevolent Society v Waverley Council [2010] NSWLEC 1082 - Access to sunlight

144 The Court's consolidated and revised planning principle on solar access is now in the following terms: Where guidelines dealing with the hours of sunlight on a window or open space leave open the question what proportion of the window or open space should be in sunlight, and whether the sunlight should be measured at floor, table or a standing person's eye level, assessment of the adequacy of solar access should be undertaken with the following principles in mind, where relevant:

- The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that*

are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*
- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*
- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*
- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.*
- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*
- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

Currently the proposal fails to consider the planning principles for access to sunlight, in particular, the following:

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

The proposed application could be substantially amended to comply with Council's setbacks which would reduce the overshadowing to 114 Beatrice Street. The proposal has not identified the private open space areas, living areas, windows that achieve sunlight and has failed to acknowledge the swimming pool. Without a proper assessment of the shadow diagrams, Council cannot warrant approval of the proposal in its current form.

3.4.3 Maintenance of Views

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan

a) The design of any development, including the footprint and form of the roof is to minimise the loss of views from neighbouring and nearby dwellings and from public spaces.

b) Views between and over buildings are to be maximised and exceptions to side boundary setbacks, including zero setback will not be considered if they contribute to loss of primary views from living areas.

c) Templates may be required to indicate the height, bulk and positioning of the proposed development and to assist Council in determining that view sharing is maximised and loss of views is minimised. The templates are to remain in place until the application is determined. A registered surveyor will certify the height and positioning of the templates.

The application has not been supported by a Visual Impact Assessment or a View Impact Study. A View Impact Study must be provided in accordance with the following planning principle established by the NSW Land and Environment Court in *Tenacity v Warringah (2004 NSW LEC 14)*.

The proposal will have impacts to existing views with opportunities available through a redesign of the application to eliminate view impacts from the proposed development. These include:

- Increasing the rear setback to be consistent with Beatrice Street as shown through the image under 4.1.4.4. rear setbacks
- Increasing the side setbacks to be compliant
- A condition that all proposed landscaping in the rear yard has a maximum 3m height limit for growth.

Access to the site is limited due to the current COVID lockdown. We request that additional documentation (including photos) can be provided at a later stage. Regardless, the application doesn't address views, does not meet the objectives of 3.4.3 and does not have been designed as per the controls below:

- a) The design of any development, including the footprint and form of the roof is to minimise the loss of views from neighbouring and nearby dwellings and from public spaces.*
- b) Views between and over buildings are to be maximised and exceptions to side boundary setbacks, including zero setback will not be considered if they contribute to loss of primary views from living areas.*

Bulk and Scale

4.1.4 Setbacks (front, side and rear) and Building Separation

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

The applicants SEE provides the following to Objective 1 above (page 18):

The southern setback is largely non-compliant, however the existing setback is almost entirely retained. Site photos provided above show that the impact to the spatial proportion of the streetscape is negligible at best. Many of the other existing dwellings on the street maintain similar side setbacks.

Again, this is a factually incorrect analysis of the impact of the proposed setbacks. Regardless of existing side setbacks, which were approved under old planning controls, this proposal should be designed in accordance with the current MLEP and MDCP. It is noted that a variation is not warranted, as the proposal is of poor design, creates a 17m two storey wall with no articulation or modulation which further increases overshadowing, privacy and amenity impacts to 114 Beatrice Street.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*

- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

See also objectives at paragraph 3.4 Amenity.

The applicants SEE provides the following to Objective 2 above (page 19):

As described above, the design of the alterations and additions ensures privacy and solar access is maintained for both the subject site and the adjoining properties. There will be no view impacts and the proposal remains consistent with the residential density in the locality. The addition allows for the retention of the existing vehicular access and provides an additional carparking space on the site. Shadow diagrams show that there is no major impact on neighbouring solar access and windows are strategically placed to mediate privacy concerns.

Again, the author of the SEE provides factually incorrect statements. The proposal increases privacy impacts through four new windows and a balcony on the first-floor southern elevation, looking directly into my client's private open space and swimming pool, does not facilitate view sharing, and does not provide equitable access to light and sunshine.

Objective 3) To promote flexibility in the siting of buildings.

The applicants SEE provides the following to Objective 3 above (page 19):

A variation to the minimum control for the existing southern setback, allows for a modern floorplan, while maximising the retention of useable private outdoor space. The proposal will not impact upon any neighbouring properties and is appropriate for the site.

We are confused by the justification provided. The proposal clearly has a detrimental impact to the southern neighbour and maximising the usable private outdoor space is not a valid justification for the side setback. It is noted that a better design with a rear setback that is in line with the rear setback average of Beatrice Street would increase landscaping and private open space to the rear of the dwelling. Further, increasing the first-floor side setback on the southern elevation would not have an impact to the private open space.

As per the review under alterations and additions vs new build, the proposed setbacks should be increased to comply with the controls of MDCP 4.1.4. The non-compliance of the side setback will have a detrimental impact to 114 Beatrice Street through additional overshadowing, increased loss of privacy, and view loss.

4.1.4.2 Side setbacks and secondary street frontages

- Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.*
- Projections into the side setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, and the like, if it can demonstrate there will be no adverse impact on adjoining properties including loss of privacy from a deck or balcony.*
- All new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries;*

- e) *Side setbacks must provide sufficient access to the side of properties to allow for property maintenance, planting of vegetation and sufficient separation from neighbouring properties. See also paragraph 4.1.4.3.b.vi of this plan.*

4.1.4.3 Variations to Side Setback in Residential Density Areas D3 to D9 (see paragraph 4.1.1 of this plan)

Note: The following paragraphs apply to residential density areas D3 to D9 identified in Schedule 1 - Map A of this plan. In this regard the variations in this paragraph do not apply to density areas D1 and D2.

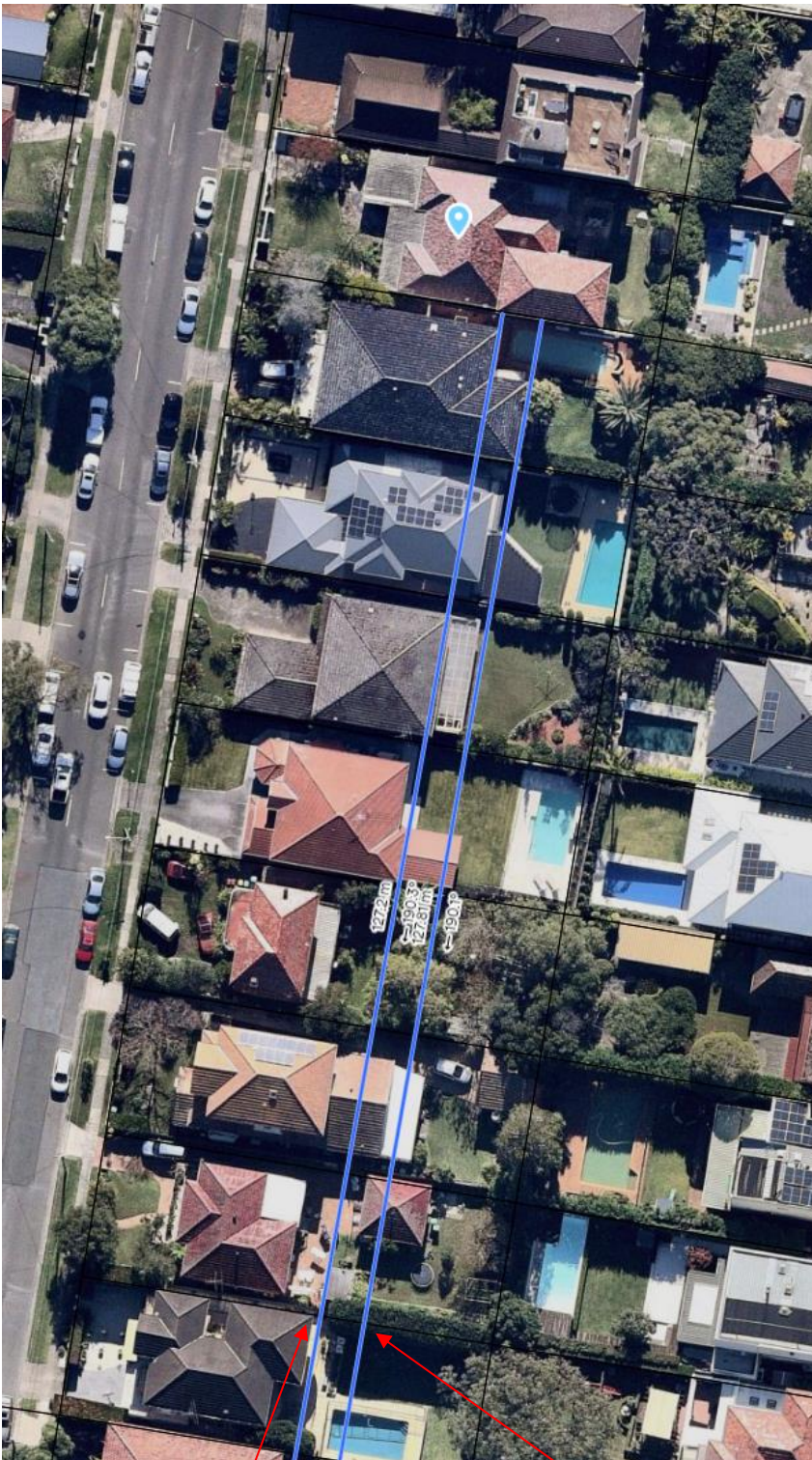
- a) *Council may consider an exception to the side setback control to enable windows at 90 degrees to the boundary to provide some flexibility in the siting and design of buildings which assist in satisfying setback objectives relating to privacy subject to the following:*
- i) *The average distance to the boundary over the length of the wall is to be no less than the required setback control. In relation to the average distance to boundary, the area of building protruding into the minimum setback must be no greater than the area of land at the side boundary that is setback more than what is required by the minimum setback line.*
 - ii) *The wall protruding into the minimum setback must not provide windows facing the side boundary.*
 - iii) *The subject side elevation must provide a window(s) at some 90 degrees to the boundary.*

The proposal does not comply with the objectives or numerical controls of 4.1.4.2. The proposal retains the existing non-compliant side setback and increases it and includes windows within 3m of the side boundary which will adversely impact the privacy of my client's property. Notwithstanding, the existing non-compliance, the proposal seeks to demolish the majority of dwelling and therefore, as per the requirements of demolition (planning principle) the proposal should be assessed as a new dwelling and comply with the required side setbacks. It is further noted that the existing first floor is approx. 10m in length with the proposed extension of a further 7m with the same non-compliant setback which will create a 17m two storey non-articulated wall, which takes away all access to sunlight and heavily impacts the private open space of the adjoining neighbour. The proposal also fails to meet any of the variations allowed. As a result of the proposal having a detrimental impact on the privacy, amenity, access to sunlight and creating unnecessary bulk and scale, the proposal fails to comply with control 4.1.4.2.

4.1.4.4 Rear Setbacks

- a) *The distance between any part of a building and the rear boundary must not be less than 8m.*
- b) *Rear setbacks must allow space for planting of vegetation, including trees, other landscape works and private and/or common open space. The character of existing natural vegetated settings is to be maintained. See also paragraph 3.3 Landscaping.*
- c) *On sloping sites, particularly where new development is uphill and in sensitive foreshore locations, consideration must be given to the likely impacts of overshadowing, visual privacy and view loss.*
- d) *Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy and view loss.*

Notwithstanding the numerical control of 8m for the rear setback, it is considered that the proposal does not meet the requirement of 4.1.4.4 (d). The prevailing rear setbacks are highlighted on the next page with an average 13m ground floor rear setback and a 17m first-floor rear setback. If the proposal was to align with the prevailing pattern of setbacks and increase the side setback it would comply with overshadowing, visual privacy and view loss. It is noted that the properties to the north are not included as they relate to the B1 Neighbourhood Centre and an existing strata development with commercial uses.



Average Ground Floor Setback along Beatrice Street – 13m
Average First Floor Setback along Beatrice Street – 17m

It is further noted that the applicant should provide a revised SEE which addresses the NSW Planning Principle for general impact. It is our interpretation that the proposal will have a detrimental impact and does not meet the criteria below:

General impact - Impact on neighbouring properties - revised principle - Davies v Penrith City Council [2013] NSWLEC 1141 at [116] to [121]

Revised planning principle: criteria for assessing impact on neighbouring properties

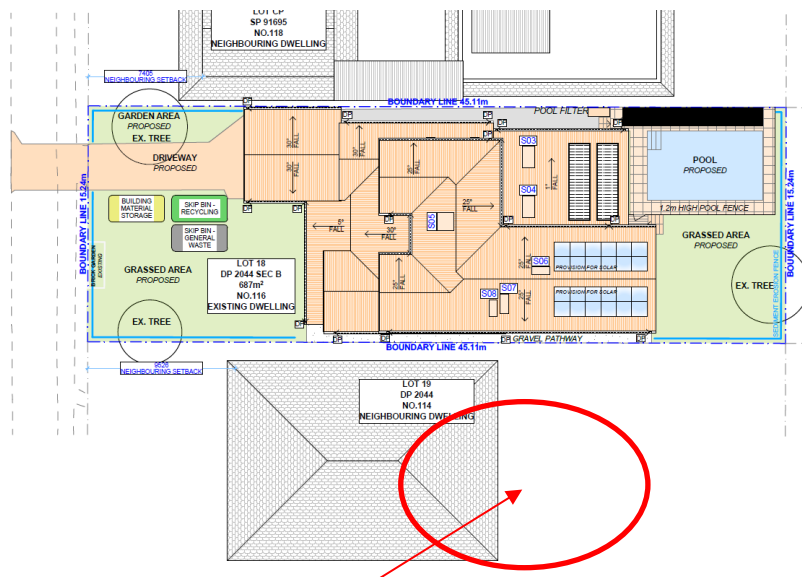
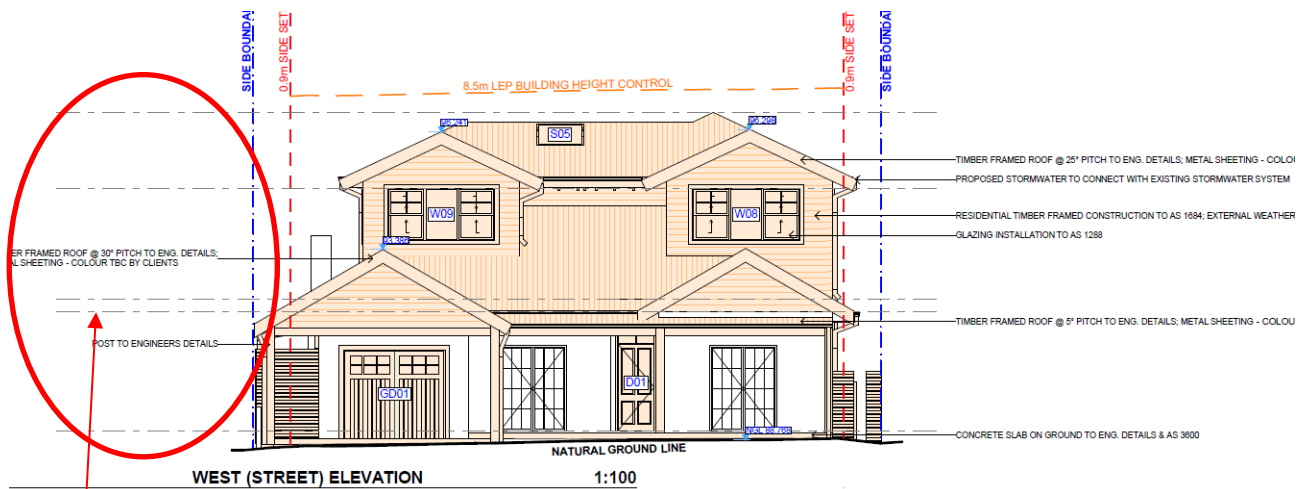
The following questions are relevant to the assessment of impacts on neighbouring properties:

- *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?*

Inadequate Documentation to support the Development Application:

The following documents have not been provided or are inadequate for a proper assessment of the application to take place:

- A Statement of Environmental Effects that adequately addresses non-compliances, the report fails to address the objectives of relevant MLEP and MDCP controls as outlined throughout this submission (in particular amenity and overshadowing), Review of Section 4.15 of the EP&A Act 1979, and the NSW Land and Environment Courts Planning Principle as listed below, in particular for demolition - additions vs new building and an adequate justification of Section 4.15 of the EP&A Act 1979.
- Visual + View Analysis Report including a review of Tenacity Principles from our property. The applicant has failed to address the Tenacity Principles. It is submitted that we will have a view loss impact from the proposed development. Any proposed vegetation in the rear yard should be limited to a 3m height limit to retain the existing view corridors.
- Inadequate Shadow Diagrams - Shadow diagrams (including elevational shadow diagrams) for both winter solstice (21 June) and March and September equinox should be provided for a full assessment of impacts to our client's property. We also request that the plans are updated with the correct building footprint of 114 Beatrice St
- Certification of Shadow Diagrams as per DA lodgement requirements
- Inadequate Architectural Plans - currently missing RLs on elevation plans, no roof plan, incorrect building footprints of adjoining neighbours shown (see below):



Missing portion of the house

No RLs provided

It is noted that without the above information a merit assessment of the proposal cannot be undertaken. These matters alone should warrant refusal of the application.

Conclusion

The proposed development at 116 Beatrice Street, Balgowlah Heights, will have a detrimental impact through the proposed bulk + scale, overshadowing, privacy and amenity, and view impacts on 114 Beatrice Street, Balgowlah Heights. The proposed development fails to comply with several of Council's planning controls and is inconsistent with the existing streetscape and building alignments, in particular, the rear setbacks. The applicant needs to prove that any non-compliance will not have an adverse impact to the amenity of neighbouring properties. The SEE has given no regard to the impacts to our client's property (No. 114 Beatrice Street) – simply stating minor or no impact, which is factually incorrect. As justified throughout this letter, the objectives of the following planning controls are not met:

- MDCP - 3.4.1 Sunlight Access and Overshadowing
- MDCP - 3.4.2 Privacy and Security
- MDCP - 3.4.3 Maintenance of Views
- MDCP - 4.1.4 Setbacks (front, side and rear) and Building Separation

As a result of the above, the application should be refused, as it does not comply with, and does not adequately address the requirements of the EP&A Act 1979 - Section 4.15 (previously Section 79C) and is not in the public's interest.

Before determining the application, it is requested that the assessing officer require further documentation from the applicants to determine the full impact of the proposal and to enable an accurate assessment of overshadowing, privacy and view impacts from our client's property. The following documents should be provided as additional information:

- View Impact Assessment
- Architectural Plans as per DA Lodgement requirements – currently missing RLs on elevation plans, no roof plan, incorrect building footprints of adjoining neighbours shown
- Shadow diagrams (including elevational shadow diagrams) for both winter solstice (21 June) and March and September equinox
- Certification of the Shadow Diagrams as per DA lodgement requirements
- Revised Statement of Environmental Effects to address our concerns

A review of relevant Planning Principles and Court cases that the application does not satisfy:

- *Coorey v Municipality of Hunters Hill* [2013] NSWLEC 1187 Demolition - The extent of demolition - alterations and additions or a new building
- *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 - Access to sunlight
- *Tenacity v Warringah* (2004 NSW LEC 14) – View Sharing
- *Meriton v Sydney City Council* [2004] NSWLEC 313 – Privacy – protection of visual privacy
- *Davies v Penrith City Council* [2013] NSWLEC 1141 at [116] to [121] General impact - Impact on neighbouring properties - revised principle

We request that the above planning principles are addressed, as it is our interpretation that the proposal fails on each of the relevant criteria.

It is respectfully requested that Council refuse the application in its current form and highly recommended that design modifications are made to retain privacy, access to sunlight, view sharing, the streetscape and amenity of our client's property. The proposal does not respond to the particular characteristics of the site or the area. A more considered and site responsive design is possible and should be required of the applicant. If a new application is submitted to Council, or amended plans, we request the opportunity to review such additional information. If no

additional information is submitted, the application is for a development that fails to contribute to the streetscape or neighbourhood and impacts upon the amenity of neighbours and must be refused.

We request that it is essential that the assessment officer undertakes a site inspection to view the concerns outlined within this letter. It is noted that an assessment of the application would fail to address this submission without a site inspection to view the areas of concern.

Should you require any further clarification of the above, please do not hesitate to contact me at mathew@fourtowns.com.au.

Kind Regards
Mathew Quattroville
Director
Four Towns Pty Ltd