

S U B M I S S I O N : D O R S E N

a written submission by way of further objection to DA 2019/1522

Mrs Jan Dorsen
35 Beach Road
Collaroy
NSW 2097

22 June 2020

Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
Dee Why NSW 2099

Northern Beaches Council
council@northernbeaches.nsw.gov.au

Dear Chief Executive Officer,

Re: 41-43 Beach Road Collaroy NSW 2097
DA 2019/1522

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission #3: Dorsen

This document is a submission by way of further objection to DA 2019/1522 lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

This Written Submission is in response to the submission of **Amended Plans** dated 28 May 2020.

The subject site is over 1544sqm, and there is no reason, unique or otherwise why a fully compliant solution cannot be designed on the site.

Executive Summary

This Written Submission addresses my ongoing objection to the above development.

I want to emphasise the fact that I take no pleasure in objecting to my neighbour's DA.

I am objecting because the proposed DA has a very poor impact on my amenity from my property, and this is caused by the DA being non-compliant to multiple controls.

If the DA was fully compliant to all controls my amenity loss might be more reasonable.

The DA or his Advisors did not visit my property to assess my amenity loss.

My concerns are not only my amenity loss, but the wider urban design outcomes, particularly those when viewed from Fisherman's Beach and the public zone to the ocean side of 29 Beach, and immediately adjacent my Ocean Gate Entry on the south-east corner of the subject site. I am also extremely concerned to the devastating amenity loss of my neighbour at 29 Beach, and other neighbours that are very poorly affected by this proposed development.

I am very concerned that the DA and his Advisors have under forecast the non-compliance, by not representing the registered surveyor's Ground Level [Existing] accurately onto the DA drawings. I am greatly concerned to the ongoing incorrect drawings, and incorrect montage images being presented to Council.

My main amenity concerns are:

- View Loss
- Overshadowing
- Privacy
- Visual Bulk
- Excessive Excavation

My amenity losses are directly attributable to non-compliance of the main LEP and DCP controls:

- **Side Boundary Envelope:** Grossly Exceeds Envelope from southern boundary, with the majority of the southern wing outside of envelope control
- **Height of Buildings:** Control 8.5m v 9.44m [19.0 roof – 9.56 survey] **>11%** non-compliance at SE corner
- **Wall Height:** Control 7.2m v 8.54m [18.1 fcl- 9.56 survey] **>18%** non-compliance at SE corner

The overall combined effect caused by the non-compliant Height of Building, Wall Height, Building Envelope and other non-compliance lead to my amenity loss.

The height of the building is significantly higher and the building envelope is more non-compliant than the DA drawings and the SEE suggests.

The proposed development also presents a considerable unreasonable visual bulk and a very poor character as viewed from a public place. The subject site falls within a scenic protection category one area, and I contend that the overdevelopment of the site fails to meet the outcomes.

My amenity loss is directly attributable to the non-compliance.

The proposed development presents significant non-compliance to multiple controls and the residential amenity outcomes are therefore considered unreasonable.

DCP B3 Side Boundary Envelope

Unfortunately, the DA has once again submitted a series of incorrect drawings in relation to the existing levels along the southern boundary of the subject site.

Council has inspected my property in close detail, and Council clearly observed that the boundary runs along a grass zone approximately 400mm to the south of the large sandstone wall.

Council was very clear in the inspection that they fully understood the levels on the DA's survey along the southern boundary as **RL 4.24 and RL 5.64** as shown on the DA's survey.

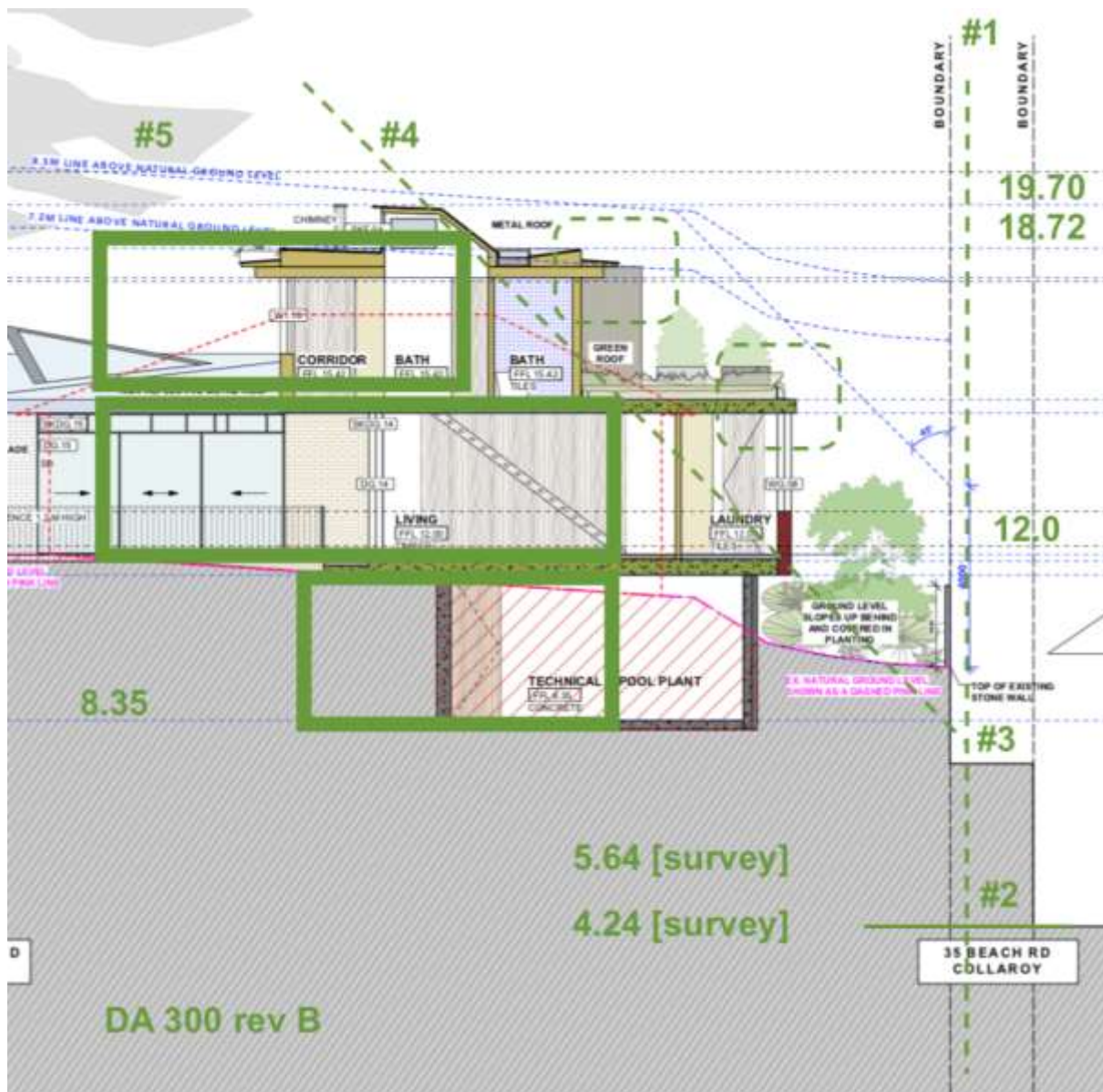
I referred to this matter on multiple occasions within my initial Written Submission of 28 January 2020. In my Written Submission of 9 May 2020, I referred to this matter once again.

I am very concerned that the ongoing incorrect information regarding the existing ground levels along the southern boundary at levels shown on the DA's Registered Surveyors Survey **at RL 4.24 and RL 5.64** has not been corrected, particularly relating to the **DCP B3 Side Boundary Envelope** being hopelessly incorrect. The drawings that are incorrect are all the drawings describing the building envelope on the southern boundary:

- DA 200 rev A
- DA 210 rev A
- DA 300 rev B
- DA 310 rev B
- DA 330 rev B

There are multiple incorrect issues including, but not limited to, the following:

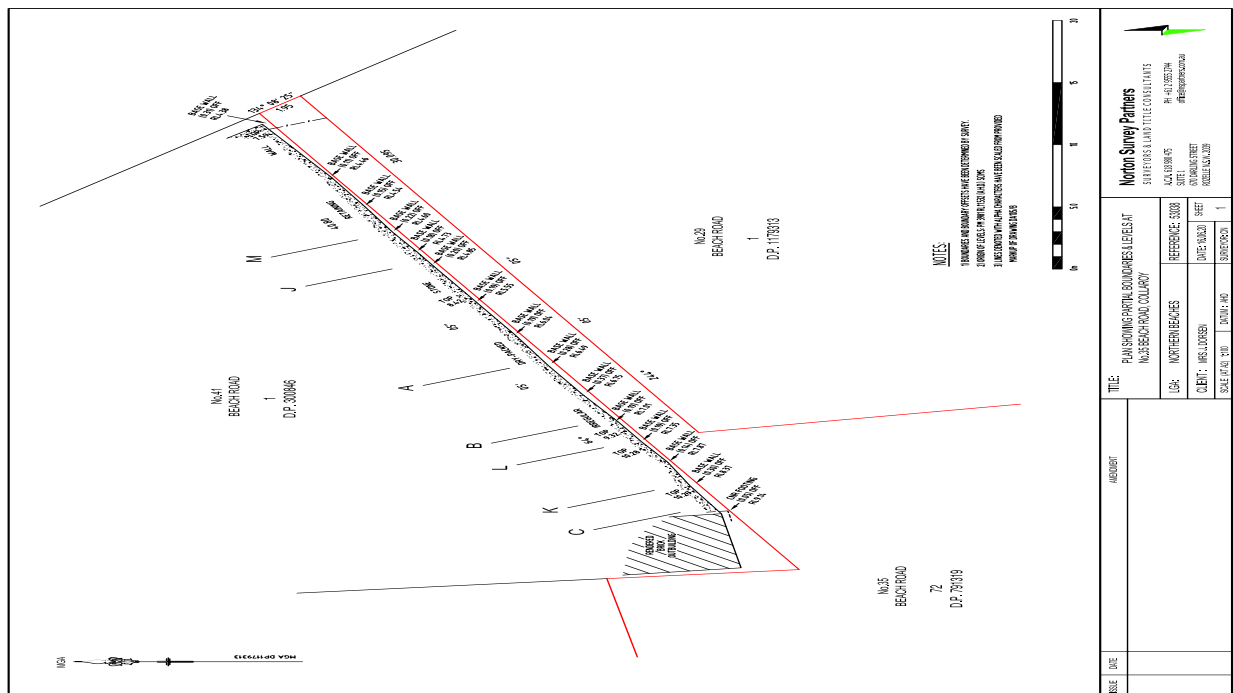
1. Incorrect positioning of southern boundary, on all DA sectional drawings
2. Incorrect existing ground levels at the southern boundary on all DA sectional drawings
3. Incorrect positioning of the 4m vertical **DCP B3 Side Boundary Envelope** lines on all DA sectional drawings, from grossly incorrect levels
4. Incorrect positioning of the 45-degree **DCP B3 Side Boundary Envelope** lines on all DA sectional drawings, grossly inaccurate, incorrect and incorrect
5. Incorrect Maximum Building Height lines on all DA sectional drawings



Incorrect Drawings: [my entries in 'green'] Envelope needs considerable further setback to be made compliant. The level of the southern boundary is at #2.

On 9 June 2020, I commissioned a well-respected firm of Registered Surveyors, Norton Survey Partners [Norton], to seek clarification of the common boundary of the subject site.

I choose to undertake this exercise to ensure myself that the Applicants Survey carried out by LTS dated 3 October 2018 reference 50485 001 DT, was accurate in terms of the precise common boundary alignment and level.



The LTS Survey shows levels either side of these positions at **RL 4.24 and RL 5.64**.
Extrapolating between the LTS survey levels, gives similar RL levels as the Norton survey.

I am greatly concerned that all drawings presented in this DA Amended Plan Submission dated 28 May 2020, have not shown the correct levels shown on the DA's LTS Survey on the southern boundary.

My Written Submission of 29 January 2020 made it extremely clear that the drawings were incorrect then, as they continue to be now.

I now have documentary evidence prepared by Chris Norton, Registered Surveyor, Norton Survey Partners that confirms the accuracy of the survey by the DA's Registered Surveyor.

Unfortunately, the drawings continue to show incorrect information, and that incorrect information could clearly misled Council, myself, my neighbours, and the broader community. The outcome would likely cause significant environmental harm to neighbours amenity and to the broader community.

On the basis of a systematic, ongoing misrepresentation of the DA's Registered Surveyors Survey at RL 4.24 and RL 5.64, along the subject site's southern boundary the Council has no other option than to **immediately refuse this DA**.

If the DA relies upon incorrect information, then I reserve my position on the validity of any future approval, and I reserve my right to challenge the validity at any time.

Council will no doubt be aware that to accord with **DCP B3 Side Boundary Envelope**

"Boundary Envelopes must be sited within a building envelope determined by projecting planes at 45 degrees from a height above ground level (existing) at the side boundaries of 4 metres"

I now use the Norton levels to identify the compliance to the DCP B3 Side Boundary Envelope control:

Point M @ Southern Boundary: RL 4.60

Point J @ Southern Boundary: RL 4.85

I refer to the DA's drawing DA 106 rev B, showing Point M. The survey level is a position between survey mark RL 4.24 and RL 5.64 on the LTS Survey. Norton Partners have surveyed this level to be **RL 4.60**. Allowing for a 4m projection from the **RL 4.60 level**, and allowing for a

45-degree envelope, the required setback from the southern boundary for Point M is **7.90m**. [16.5 - 4.00 - 4.60] The proposed development does not comply.

I refer to the DA's drawing DA 106 rev B, showing Point J. The survey level is a position between survey mark RL 4.24 and RL 5.64 on the LTS Survey. Norton Partners have surveyed this level to be **RL 4.85**. Allowing for a 4m projection from the **RL 4.85**, and allowing for a 45-degree envelope, the required setback from the southern boundary for Point J is **10.15m**. [19.0 - 4.0 - 4.85] The proposed development does not comply.

The Objectives of this **DCP B3 Side Boundary Envelope** are very clear

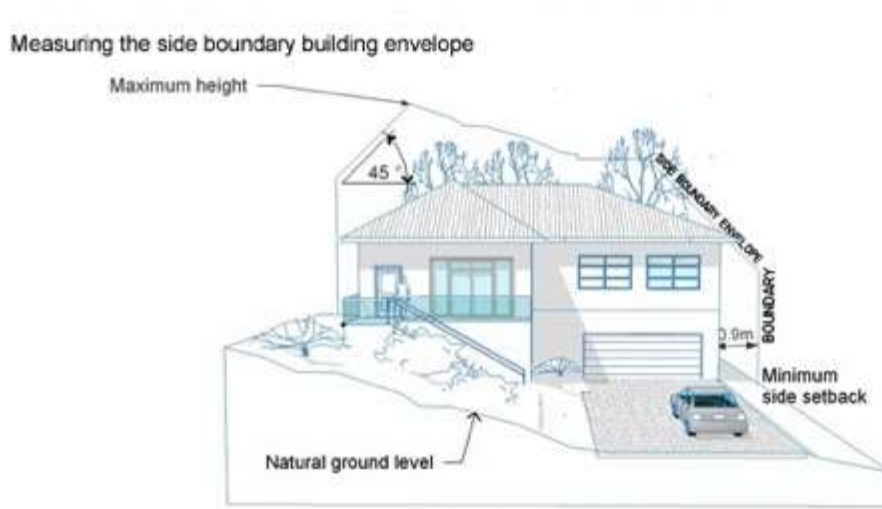
Objectives

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*
- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*
- *To ensure that development responds to the topography of the site.*

The proposed development by not complying with **DCP B3 Side Boundary Envelope** controls, also fails every objective.

What the DA is trying to propose, is to somehow suggest the southern boundary starts further to the north to support a massively non-compliant envelope, however the DA's Surveyor states otherwise.

The DCP makes it very, very clear.



Measuring the side boundary building envelope starts from the Boundary – not some imaginary line further into the site.

The DA drawings are incorrect. They simply do not follow the DA's Surveyor drawing that clearly shows the Southern Boundary to be well clear of the sandstone wall.

The non-compliance on the proposed development to the 4m control, in conjunction with the non-compliant wall height will result in a visually dominant height and bulk on the private open space of neighbours, and on the public domain to the east and south east.

WLEP 4.3 Height of Buildings

The scale of the development is excessive, and exceeds controls, and causes unreasonable amenity loss.

The proposed building heights simply refuse to accord with the LEP 8.5m control, and progresses south presenting a maximum building height of 9.44m, representing a non-compliance of over 11%.

No Clause 4.6 has not been submitted, contrary to controls.

The Objectives of this **WLEP 4.3 Height of Buildings** are very clear

Objectives

(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

The proposed development does not comply with **WLEP 4.3 Height of Buildings** controls, and it also fails every objective.

Coupled with the substantial non-compliance with DCP B3 Side Boundary Envelope, the overall outcome is a proposed development that is offensive, jarring and unsympathetic in a highly sensitive beach side context, having regard to the built form characteristics of development within the site's visual catchment.

The buildings are clearly not compatible with the height and scale of surrounding and nearby development, as is witnessed by the DA's montage from my property.

The proposed development has not minimised visual impact, disruption of views, loss of privacy and loss of solar access, by wholesale disregard to both DCP B3 Side Boundary Envelope and WLEP 4.3 Height of Buildings controls.

Of significant concern, the proposed development has not minimised the adverse impact of development on the scenic quality of Warringah's coastal environment. The massive scale facing the beach front, rising over **14.6m** [19.0 - 4.38] above my ocean side entry zone, within just a few meters of the public domain is totally unreasonable.

WLEP 4.6 Exceptions to Development Standards

Development Consent cannot be granted as no Clause 4.6 has been submitted addressing the non-compliant Height of Buildings, contrary to LEP controls.

Even if a Clause 4.6 was submitted it could not address the failure to meet the objectives of the WLEP 4.3 Height of Buildings control.

There are considerable incorrect drawings, relating to incorrect survey levels being presented on the DA's DA drawings.

Council may consider they cannot continue considering the DA, and if the DA does not withdraw, they may have no other option than to immediately refuse the DA.

The non-compliant building height causes devastating amenity loss. This is totally unreasonable.

DCP B1 Wall Heights

The proposed development fails to meet the Objectives or Requirements of this Clause

Objectives

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*
- *To ensure development is generally beneath the existing tree canopy level.*
- *To provide a reasonable sharing of views to and from public and private properties.*
- *To minimise the impact of development on adjoining or nearby properties.*
- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*
- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Requirements

Walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).

Excavation

My concerns regarding the extensive excavation remains the same as my original Written Submission. The Concern now is heightened by the apparent subsidence on properties to the north of the subject site. Proposing excavation into a zone already showing signs of stress is highly unreasonable.

Council must obtain a revised Geotechnical Report from the DA's Geotechnical Engineer and update the report to assess the acceptability of such a massive excavation.

I refer to C7, C8 & C9 from my earlier Submission:

C7 Excavation and Landfill

I contend that the DA fails the major objectives and requirements of this control:

Objectives

- To ensure any land excavation or fill work will not have an adverse effect upon the visual and natural environment or adjoining and adjacent properties.
- To require that excavation and landfill does not create airborne pollution.
- To preserve the integrity of the physical environment.

Requirements

2. Excavation and landfill works must not result in any adverse impact on adjoining land.

I am greatly concerned that the massive excavation will have an adverse effect upon the natural environment or adjoining and adjacent properties, such as mine.

I am concerned to the nearby subsidence on neighbouring sites to the north of the subject site, and the absence of any geotechnical report addressing this most serious matter.

I am concerned on the excessive vibration risks.

I am concerned to the future health of the Norfolk Island Pines to the east

I am greatly concerned that the massive excavation will create airborne pollution, by the excessive excavation of 2250cub m of rock, and I am concerned about fine dust being emitted for extended periods whilst this massive basement is excavated, blowing not only over neighbours, but those using the public domain by the oceanfront.

I am greatly concerned that the massive excavation will have an adverse effect upon preserving the integrity of the physical environment, significantly the structural concerns to my property, and to the sandstone wall on the subject site.

I am greatly concerned that the massive excavation will have an adverse impact my adjoining land, with excessive vibration and structural instability.

The proposal includes extensive excavation of the site up to 4.5m deep, for car parking, sub floor storage, surfboard storage, cellar, 17m long storage zones, extensive driveways, oversized plant rooms, oversized lifts, stairs, and other uses. The extent of the excavation is vastly excessive: it exceeds 500sqm!

This is contrary to DCP controls.

The extent of the basement will cut through the upper watercourse layers of sandy and silty clay soils, very stiff clay layers, to siltstone, and then well below to dense sandstone bedrock levels forming a complete barrier to the feed of water to the Norfolk Island Pines on Council land to the east. This is a major concern.

The extensive vibration caused by this massive basement cutting through dense sandstone over 500sqm of site will cause massive disturbance, vibration risks and residential amenity disturbance, and will have a high risk to the integrity of the physical environment.

I ask the Council to condition any approval with a new double garage to be positioned under the northern wing, with a compliant front setback, all to Council controls. Delete the basement and the basement ramp.

Main Amenity Loss Considerations

Height and Bulk.

It is very obvious that the development is visually dominant by virtue of its height and bulk.

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 DA's montage tells the story, and surely must be a 'text book example' of an **offensive, jarring and unsympathetic** built form.



What has not been shown in this montage is the existing 3.4m high sandstone wall on the subject site, nor the 1.8m wall being proposed on top of this existing wall, creating a wall height close to the boundary of over 5m. This is further incorrect images and drawings.

The design of the development does not minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

The requirements under this clause clearly have not been met, particularly to the southern boundary:

"On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope", and 'Building height and scale needs to relate to topography and site conditions'.

The building bulk is particularly unreasonable, as the development on the sloping land [58% grade] facing my property, has not been contained within LEP and DCP envelope controls.

Solar Access

The solar access into my property is highly compromised, and the loss is totally as a result of the non-compliance to **DCP B3 Side Boundary Envelope** controls. The loss of morning

sunshine onto my house by this unreasonable envelope is totally unacceptable. The loss extends to my private open space lawn zones throughout the day. The difference between a compliant envelope and this non-compliant envelope has not been assessed.

In **Davies, [Davies v Penrith City Council 2013]**, NSW LEC considered **General Impact**. Davies suggest that Council should consider:

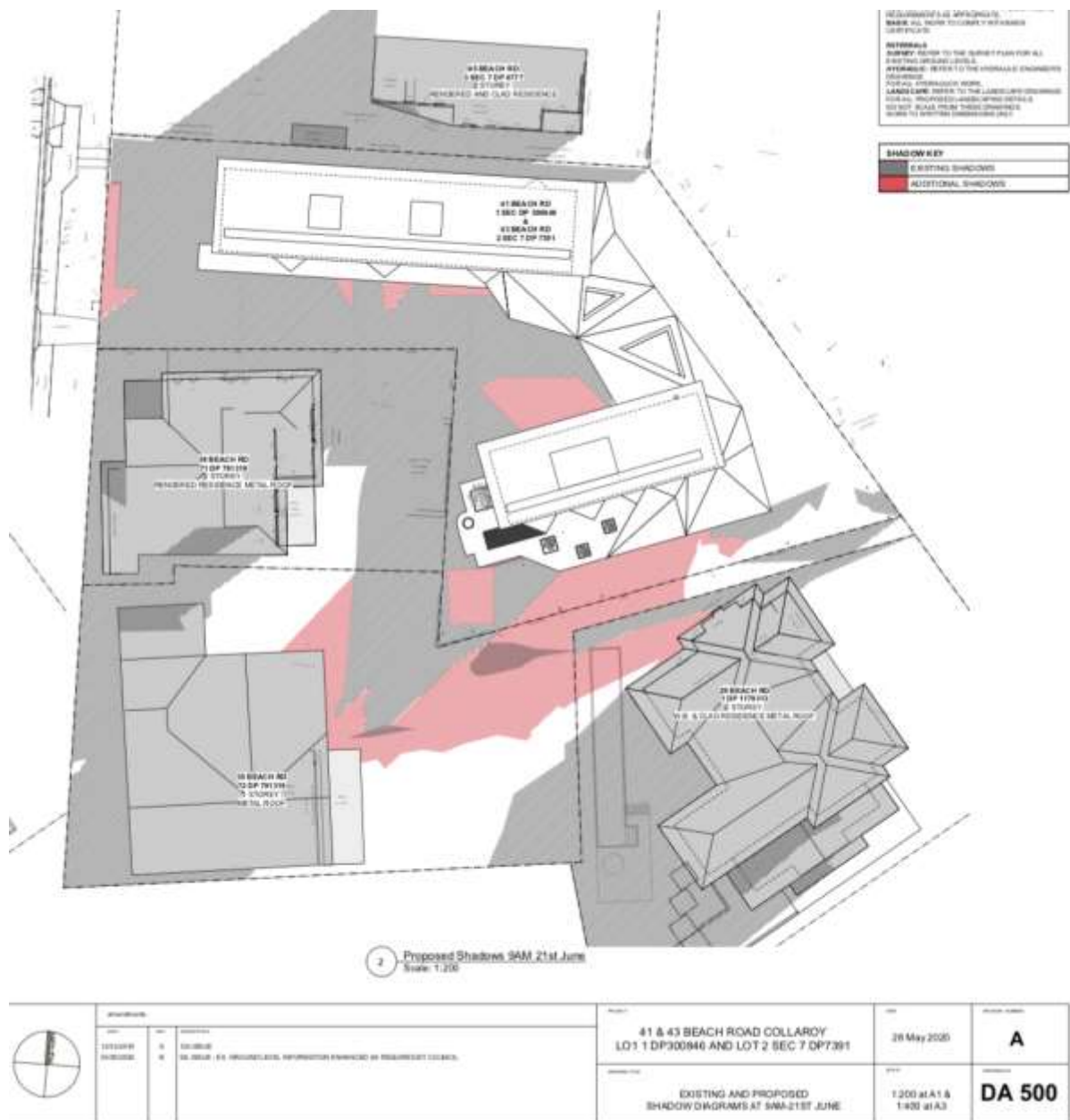
“Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?”

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

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

I contend that the DA can avoid the impact by repositioning the southern wing to be maintained within the **DCP B3 Side Boundary Envelope**. A more sensitive design to accord with these controls would achieve the same amenity whilst reducing the impact. The DA has not assessed the difference between a compliant B3 Side Boundary Envelope and the non-compliant envelope in this set of amended plans.

My property and windows remains unsurveyed by the DA, so the diagrams provided are guesswork.



DA 500 A: Unreasonable overshadowing as a direct result of non-compliant built envelope

The proposed development does not ensure that reasonable access to sunlight is maintained. The non-compliant development is causing considerable solar loss, and my property has not even been surveyed, let alone shadow diagrams completed.

The proposed development does not encourage any innovative design solutions to improve the urban environment and public open space.

The proposed development does not promote passive solar design and the use of solar energy. In fact, it does the reverse, by robbing neighbours of solar access to existing solar panels.

The proposed development does unreasonably overshadow the public open space, by proposing a non-compliant development casting additional excessive shadow into the eastern public open space in the afternoons.

I am greatly concerned to the solar access loss to my neighbour at 29 Beach by this proposed non-compliant envelope.

Privacy

My privacy is compromised by the proximity of the glazed openings to my private open space and ocean entry zones.

In **Meriton**, [**Meriton v Sydney City Council 2004**], NSW LEC considered **Privacy**. Meriton suggest that Council should consider:

“When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.”

All windows facing my property must have **1.7m high sills**, with **obscured glass** to ensure direct overlooking does not occur. The proposed development at all levels is highly elevated above my private open space and windows, and therefore Council must impose strong conditions to overcome this large large amenity problem.

I contend that the DA fails the major objectives and requirements of this control:

Objectives

- To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*
- To encourage innovative design solutions to improve the urban environment.*
- To provide personal and property security for occupants and visitors.*

Requirements

- 1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.*
- 2. Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.*
- 3. The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.*
- 4. The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.*

The proposed development does not ensure that the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours. The siting of the non-compliant southern wing is positioned too close to the southern boundary, and will not provide acoustic or visual privacy to my dwelling.

The proposed building layout has not been designed to optimise privacy for occupants of the development and occupants of adjoining properties.

The proposed development has not orientated all the living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking. Some of these windows face my property to the south, and that creates the problems. I am concerned to the First Floor Deck, the Pool Concourse opening to the south, the Playroom overlooking my ocean beach entry and the windows facing our property at all levels without privacy screens.

The proposed development has not properly considered the effective location of doors, windows and balconies to avoid overlooking. I prefer the use of screening devices, high sills or obscured glass to these areas, and for Council to carefully consider all these matters.

The proposed development windows provide direct or close views into the windows of my property. I am concerned on all southern windows overlooking our beach entry and our dwelling, and deck.

The design of the development gives rise to unreasonable privacy outcome by elevated decks and windows elevated within non-compliant envelope beyond controls giving direct line of sight into neighbours property. The design does not ensure the siting and design of buildings to provide a high level of visual and acoustic privacy for occupants and neighbours facing my property.

The Elevated 'Green Roof' facing me would create an elevated deck at c RL 16 that would look down at my windows and doors with head heights of RL 12.77, and to my Deck and Garden at RL 10.65. I ask that this roof to have privacy screens facing my property at the face of the window elevation.

I am also concerned to the proposed sliding doors at FL 12.0 that open from a noisy pool deck zone, immediately towards my window and doors with head heights of RL 12.77, and to my Deck and Garden at RL 10.65. I ask for these sliding doors to be replaced with a non-opening solid acoustic wall.

I am concerned that the Playroom at basement level has windows looking directly at my beach entry. These south facing windows require privacy screens.

There are other glazed windows facing my property to the south and west at all levels that all will require privacy screens at all levels facing south and south-west towards my property and beach entry zones.

Why should non-compliant development rob me of my privacy?

View Loss

The non-compliant Side Boundary Envelope, coupled with non-compliant Building Height removes the existing view of the headland and Norfolk Pines. The ocean view from my future first floor on my dwelling would be lost completely. The loss would be considered more than moderate.

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.”

DCP D7 Views states:

Objectives

- *To allow for the reasonable sharing of views.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To ensure existing canopy trees have priority over views.*

Requirements

1. Development shall provide for the reasonable sharing of views.

Commentary:

No assessment has been made, and no consideration of this vital matter within the site analysis.

There is no reasonable sharing of views amongst dwellings.

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

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

The view loss exceeds 'moderate' on the Tenacity scale.

My comments are as follows.

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.

The impact on views arises as a result of non-compliance with one or more planning controls, and the greater than moderate impact is considered unreasonable.

Application of Tenacity Planning Principle

I have only been able to consider the impact of the current proposal on the outward private domain views from my property, by visual assessment.

A preliminary analysis and 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, however I have no confidence that the assessment is fully accurate due to the previous commentary on the absence of new height poles.

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.

Prior to undertaking Step 1 however, an initial threshold in Tenacity is whether a proposed development takes away part of the view and enjoys it for its own benefit and would therefore seek to share the view. In my opinion the threshold test to proceed to Step 1, I provide the following analysis;

An arc of view to the east is available when standing at a central location in the Living Room and the adjacent main entertainment deck. Both are highly used zones on my property.

The composition of the arc is constrained to the north and south either side of the subject site, by built forms and landscape.

The northern part of the composition includes the subject site and the buildings and roof

forms that currently occupy the site on the subject site frame the view.

The overall composition of the total view is significantly enhanced by the lush vegetation of the headland in front of the subject site, including the Norfolk Pines

The future loss of view from a first-floor addition on my property would also be a moderate loss

This view obviously includes scenic and valued features as defined in Tenacity.

The proposed development will take away views for its own benefit.

The view from my living room windows and deck towards the view.

The extent of view loss is moderate or greater, 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 at angles to the north and east, from standing and seated positions.

A wide arc of view to the north and east is available when standing at a central location on the living spaces, entertainment decks, and other highly used zones on my property.

In this respect I make two points:

- I have no readily obtainable mechanism to reinstate the impacted views from my existing living zones if the development as proposed proceeds. A first floor addition would lose the same headland and ocean view; and
- All of the properties in the locality rely on views over adjacent buildings side boundaries for their outlook, aspect and views towards the headland and water interface view

Step 3: Extent of impact

The next step in the principle is to assess the extent of impact, considering the whole of the property 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.

Step 3 also contains a threshold test. If the extent of impact is negligible or minor for example, there may be no justification for proceeding to Step 4, because the threshold for proceeding to considering the reasonableness of the proposed development may not be met. In that case the reasonableness question in Step 4 does not need to be asked and the planning principle has no more work to do.

I consider the extent of view loss in relation to my living room loss to be greater than moderate using the qualitative scale adopted in *Tenacity*.

The view lost includes headland views and future ocean water views.

As I rate the extent of view loss as greater than 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.

Step 4 is quoted below:

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more

skilful design could provide the DA with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

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

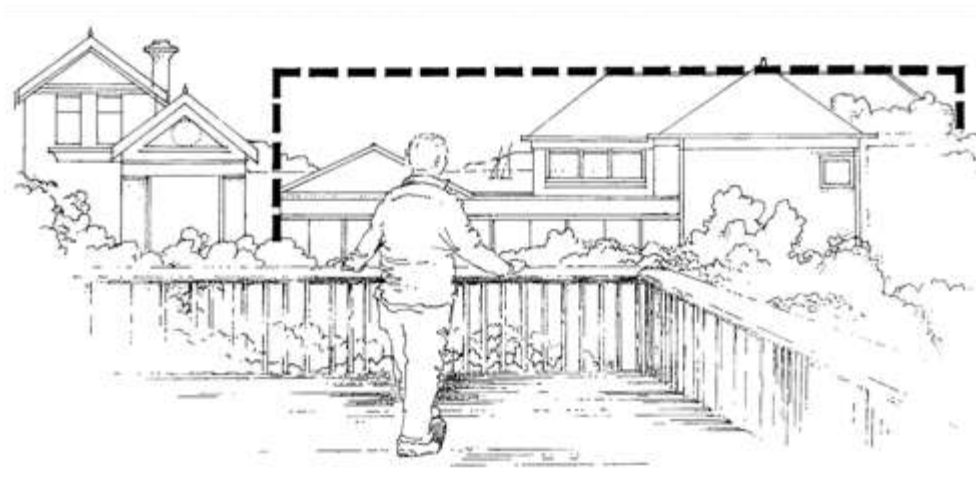
In my opinion the extent of view loss considered to be greater than moderate, in relation to the views from my living rooms and living room deck of my dwelling, particularly to the north and east towards the water view.

The view is from a location from which it would be reasonable to expect that the existing view, could be retained especially in the context of a development that does not comply with outcomes and controls.

Tenacity supports my case:

“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.”

Once new Templates are erected, I can provide additional commentary.



Where there is a potential view loss, Council should require a maximum building height of less than 8m for part of the building, and should consider other modifications to the design to achieve view sharing.

The private domain visual catchment is an arc to the north and east 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 property.

The views most affected are from living areas and associated terraces and include high scenic and highly valued features as defined in Tenacity.

Having applied the tests in the Tenacity planning principle and without a montage that can be relied upon, or new height poles erected, I conclude that I would be exposed to greater than moderate view loss.

The significant non-compliance with planning outcomes and controls of the proposed development cause this loss.

Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

The DA should have informed the design by a complete view loss consideration that would have clearly identified that any development extending to the north on the subject site, within the side envelope controls, would remove my view.

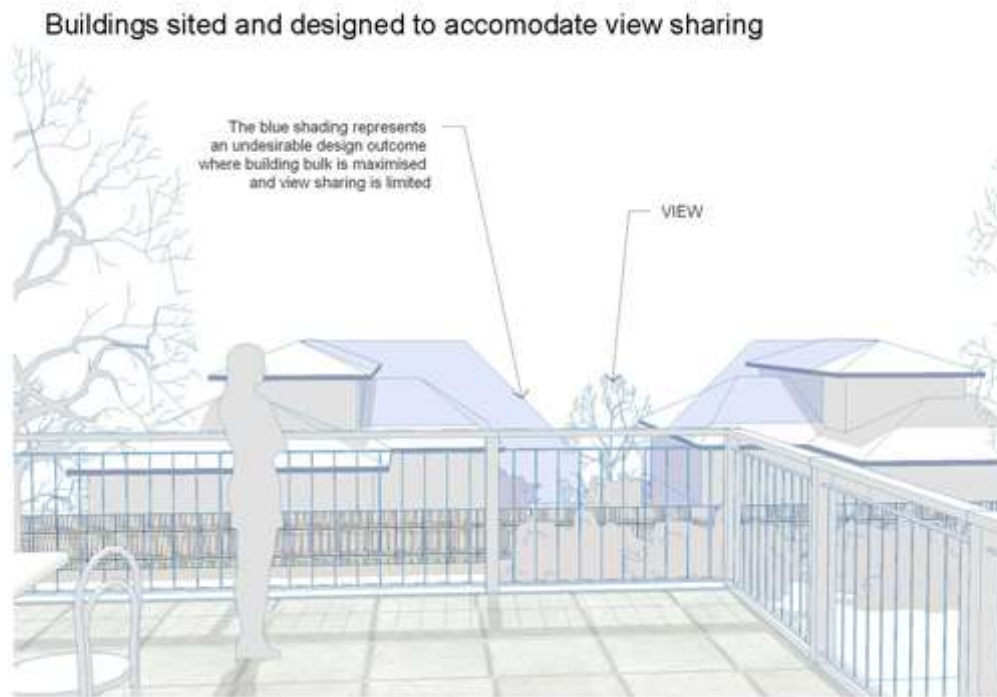
At this juncture, the proposed development cannot be supported on view loss grounds.

The proposed development is over maximum building height, and grossly exceeds side boundary controls, over most of the southern wing of the proposed development.

“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 view loss is totally unreasonable.

The Author of the SEE has made no attempt to inspect my property to assess the view loss, let alone carry out any Tenacity Assessment.



I am also greatly concerned to the view loss to my other neighbours by this proposed non-compliant envelope.

D15 Side and Rear Fences

I contend that the DA fails the major objectives and requirements of this control:

Generally, side and rear boundary fences are to be no higher than 1.8 metres on level sites, or 1.8 metres measured from the low side where there is a difference in either side of the boundary.

As stated elsewhere I am concerned on the structural stability of the existing sandstone wall being retained.

I am also very concerned that the existing 3.4m sandstone wall, will have another 1.8m high fence added to it, creating a wall height of over 5.2m at the south east corner of the subject site, and immediately adjacent my ocean beach gate.

It is totally inappropriate and totally unreasonable to arrive at a design solution that requires 5.2m high side fence structures close to the common boundary to mask non-compliant development.

Further Submission of Amended Plans

The following conditions will need to be met by submission of amended plans:

Southern Wing

1. All built elements of the Ground Floor & Basement: **7.90m** side setback from southern boundary to accord with WDCP B3, and position Point M so that the maximum building height is within control
2. All built elements of the First Floor: **10.15m** side setback from southern boundary to accord with WDCP B3, and position Point J so that the maximum building height is within control. Ensure that the saw tooth plan details are setback 10.15m.
3. Minimum 6.0m rear setback to eastern boundary to accord with WDCP B9
4. New Landscape Plan in southern 7.9m side setback zone, to provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building and to enhance privacy between buildings, all in accordance with WDCP D1, and to avoid overshadowing and view loss to all neighbouring dwellings
5. No excavation in southern 7.9m side setback zone
6. No additional wall added to existing sandstone wall that is setback 400mm from southern boundary

Reason: View Loss, Overshadowing, Privacy, Streetscape, General Impact, Landscape, Height/Bulk/Scale, Visual Bulk and Excessive Excavation

Once these amendments are made and new height poles erected, against the above six items, Council and neighbours can reassess the acceptability of this amended envelope.

Submit 3D model with correct boundary levels to show strict compliance with WDCP B3.

Dimensional set out of the proposed development needs to occur from the SE and SW corners of the subject site, with a clear dimensional set out of all floorplates and roof configurations.

The DA will need to provide photomontages from my property and from the public domain to the east of our property. Provide solar access diagrams at hourly intervals of all neighbours' windows. Any loss from non-compliant envelope will be unacceptable.

Privacy

- Raise window sills to 1.7m height above internal FFLs to all windows facing neighbour's boundary at all levels. W 1.22 to W 1.27 incl at First Floor; W G.04 to 08 incl, WG.14 at Ground Floor; WB 02, WB 03 and DB 02 at Lower Ground Floor
- Obscured glass or privacy screens to all windows facing the neighbour's boundary
- The Elevated 'Green Roof' to the south-west must be made totally non-accessible, with all windows W 1.22 to W 1.27 to have window sills to 1.7m height above internal FFLs to all windows facing neighbour's boundary.
- The proposed sliding doors at FL 12.0 that open from the pool deck zone, be deleted, this wall to be replaced with a solid, full height, acoustic wall.
- Main access to Playroom to be from the east, with 1.7m sill height windows facing neighbours to southern boundary. No excavation in 7.5m southern side setback zone.
- All south facing windows to have full height privacy screens at all levels facing south.

Reason: Privacy

Landscaping

New Landscape Plan in southern 7.9m side setback zone, to provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building and to enhance privacy between buildings, in accordance with WDCP D1, and to avoid overshadowing and view loss to all neighbouring dwellings

Landscape Architect to provide 3D model to identify maximum envelope of landscaping to southern side setback zone, to protect views and solar access whilst mitigating the built form and providing better privacy. Landscape Architect to locate taller trees and shrubs to better fill the maximum envelope potential. Maximise the landscape content, with no neighbour amenity loss. Submit 3D Model in Amended Plans.

NBC Standard: One tree per 20 sqm, one shrub per 1 sqm, 4 groundcovers/grass species per 1 sqm to be added to Landscape Plan

NBC Tree Protection & NBC Trees Condition clauses to be added to Landscape Plan

Tree 11 to south west corner to be retained, with 4m TPZ, to be added to Landscape Plan

Retain other trees as identified by Council

Provide protection to the Structural Root Zone and Tree Protection Zone to the trees on neighbours property adjacent to the common boundary to be added to Landscape Plan.

Tree Protection conditions to be added to Landscape Plan

On slab planting and associated works conditions to be added to Landscape Plan

Protection of Rock to be added to Landscape Plan

Landscape Completion Certificate requirements to be added to Landscape Plan

Environmental and priority Weed Control requirements to be added to Landscape Plan

Reason: Landscape

Structural Adequacy, Excavation Work, Retaining Wall

New Geotechnical Report to consider new 2020 subsidence to neighbor to the north. All neighbours surrounding the proposed massive excavation may experience similar problems.

Existing Sandstone Block Retaining Wall to the southern boundary be rebuilt to ensure structural adequacy.

Delete Basement and basement ramp, and provide_a new double garage to be positioned under the northern wing, with a compliant front setback, all to Council controls.

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required.

All retaining walls, including the sandstone wall along the southern boundary, are to be structurally adequate for the intended purpose, shall be certified as compliant with all relevant Australian Standards and Codes, designed and certified by a Structural Engineer,

except where site conditions permit the following:

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and

(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

Reason: Public and Private Safety

Sub-Soil Seepage

The DA is to submit plans demonstrating that all sub-soil seepage drainage is discharged via a suitable silt arrester pit in accordance with relevant Australian Standards.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

On-Site Stormwater Management Details

The DA is to provide a certification of drainage plans detailing the provision of on-site stormwater detention

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the

development.

Property Boundary Levels

The DA is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain the existing profile of the boundary.

Works in close proximity to the allotment boundary

The DA is to maintain existing ground levels within 1m to the allotment boundary.

No approval is granted for any change to existing ground levels and all works within 1m to the allotment boundary to accommodate the development.

No fence to be added to top of the existing sandstone wall to the south.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain the existing profile of the natural ground levels adjacent neighbours boundary.

Vibration

Reduce Peak particle velocity to be less than **2.5mm/sec** at the common boundary, with warning alarms on site to stop work if thresholds are exceeded at **2.0mm/sec**.

35 Beach Road is an older property with period detailing of delicate and fragile ceilings and wall finishes, including stained glass windows, and this lower level of vibration is to be conditioned to avoid and/or reduce the risk of damage to the older fragile finishes within the property.

The level at **2.0mm/sec** can be normally easily achieved by making attenuation cuts into the upper siltstone strata and sandstone, prior to bulk excavation, and always ensuring the

attenuation cuts are 0.5m lower than the excavated surfaces at all times. Other precise methods are to be specified by the Geotechnical Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority, to include method statement of excavation works, monitoring of boundary levels, halt signals, notifications on site and to PCA, and attenuation methods to reduce vibration risks.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To reduce risk of vibration damage to neighbours property.

Plant

AC Plant & Pool Plant not to be positioned along boundary to neighbour's property, and to be positioned in a dedicated acoustic rated plant room.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Noise from combined operation of all mechanical plant and equipment must not generate noise levels that exceed the ambient background noise by more than 5dB(A) when measured in accordance with the *NSW Industrial Noise Policy* at the receiving boundary of residential and other noise sensitive land uses.

Reason: Acoustic Privacy

Lighting

No external lighting facing neighbour's property or internal lighting causing lighting nuisance to neighbour's property.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: Lighting Nuisance

I ask Council to impose conditions as appropriate regarding:

- Stormwater Disposal
- Geotechnical Report Recommendations to be incorporated into design and structural plans
- Boundary Identification Survey
- Survey Certificate
- Vehicle Driveway Gradients
- Structural Adequacy
- Excavation Work
- Shoring of Neighbours boundary
- Protection of Adjoining Property- Excavation
- Soil & Water Management Program
- Dilapidation Report
- On Slab Landscape Planting & Associate Works
- Tree Protection
- Tree Condition
- Protection of rock
- Landscape Completion Certificate
- Environmental and priority Weed Control
- Landscape Maintenance
- Road Reserve
- Stormwater Disposal Certificate

- Structures located near boundary Certificate
- Geotechnical Certificate
- Post Construction Dilapidation Certificate
- Swimming Pool Requirements

Conclusion

If the DA does not give Council immediate confirmation that the above matters will be rectified by resubmission of Amended Plans, and corrects all incorrect information on the DA drawings, then Council has no other option than to **REFUSE** this DA for the reasons stated in this Written Submission and previous submissions.

The subject site is over 1536.5 sqm, it is of considerable size, and there is no reason, unique or otherwise, why a fully compliant solution cannot be designed on the site, to avoid amenity loss

As stated earlier, the DA has not submitted a Clause 4.6, and even if it was submitted, it would fail on multiple levels as there are not sufficient environmental planning grounds to justify the departure. The development does not satisfy the objectives of the standard and gives rise to adverse residential amenity consequences.

On the basis of a systematic, ongoing misrepresentation of the DA's Registered Surveyors Survey at RL 4.24 and RL 5.64, along the subject site's southern boundary the Council has no other option than to **immediately refuse this DA**.

Council must now consider that based on the misrepresentation of incorrect existing ground levels along the southern boundary resulting in incorrect building envelope, and other incorrect information, to reject the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.

If the DA relies upon incorrect information, then I reserve my position on the validity of any future approval, and I reserve my right to challenge the validity at any time.

In consideration of the proposal and the merit consideration of the development, I contend that the proposals are considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with SEPP [Coastal Management] 2018
- Inconsistent with the objects of the EPAA 1979

The design of the proposals and the poor amenity outcomes render the proposal inappropriate and unsuitable for the site and the location.

The DA has not adequately addressed view loss, solar loss and privacy loss issues of neighbour's amenity.

The built form of the development does not provide an outcome that is compatible with the area, and is incompatible with neighbour's amenity.

The bulk and scale of the building is beyond LEP & DCP controls, and is not consistent with a site responsive design, facing a very sensitive public domain coastal area.

The design is not consistent with the desired future character for the locality and exhibits non-compliances with building envelope controls.

I contend that the proposed development does not satisfy the appropriate controls and that all processes and assessments have not satisfactorily addressed.

The development does not satisfy the objectives of the standard and will present poor residential amenity consequences.

The identified non-compliances have not been appropriately justified having regard to the associated objectives.

The subject site is of sufficient size, and there is no reason, unique or otherwise, why a fully complaint solution cannot be designed on the site, to avoid amenity loss.

I ask Council, that unless the DA addresses these matters completely within an Amended Plan resubmission, then Council must **REFUSE** Development Consent to Development Application for the reasons outlined as follows:

Section 4.15[1] [a][i] Provisions of any Environmental Planning Instrument, the development is inconsistent with WLEP 2014

WLEP

1.2 Aims of Plan

4.3 Height of Buildings

4.6 Exceptions to Development Standards

Zone R2

6.2 Earthworks

Section 4.15[1] [a][iii] Provisions of any DCP, the development is inconsistent with WDCP,

WDCP

A5 Objectives

B1 Wall Heights

B3 Side Boundary Envelope

B9 Rear Boundary Setbacks

C7 Excavation & Fill

D6 Access to Sunlight

D7 Views

D8 Privacy

D9 Building Bulk

D12 Glare & Reflection

E1 Preservation of Trees

Section 4.15[1] [b][i] Likely Impacts of the development. The proposal will have a detrimental impact on both the natural and built environments pursuant to Section 4.15(1)(b)(i) of the *Environmental Planning and Assessment Act 1979*.

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

The site is not suitable for the proposal pursuant to Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*.

The proposal is not in the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.

For the reasons set out above the Development Application should be refused by Council.

I will welcome the opportunity to further expand on any of the issues above once revised

templates and height poles are erected, based upon the further amended envelope within this objection.

As the proposed development contravenes a development standard imposed by an environmental planning instrument by more than 10%, and as Council has more than 10 unique objections, I ask for confirmation that the NBLPP will determine this DA. Council may decide to simply issue a REFUSAL based upon incorrect information.

I request these matters be closely considered in the assessment of the proposed development.

I expect that on such a large and very sensitive site, the DA should be charged by Council to deliver a totally compliant scheme to LEP & DCP controls.

There is no excuse that neighbours amenity must suffer due to non-compliance to the controls. All I seek is a fully compliant development to all Council's controls and for the envelope controls to be drawn accurately based upon the boundary survey levels and other survey marks across the site.

I do hope the DA submits Amended Plans, once again, to resolve these matters, erects Height Poles based upon a further reduced envelope, submits revised and complete overshadowing drawings, and other matters identified within this Submission.

If this does not occur, I ask Council to immediately **REFUSE** this DA.

Yours faithfully,

Mrs Jan Dorsen
35 Beach Road
Colloroy