Sent: 18/11/2022 10:35:58 AM

Subject: RE: DA 2022 1848; 173A Seaforth Crescent Seaforth NSW 2092 WRITTEN SUBMISSION: LETTER OF OBJECTION SUBMISSION: NG

Attachments: NG SUBMISSION 17 Nov 22.docx;

S U B M I S S I O N: N G

a written submission by way of objection

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NSW 2092

17 November, 2022

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RE: DA 2022 1848; 173A Seaforth Crescent Seaforth NSW 2092

WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: NG

Dear Sir,

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

We are being assisted by a very senior experienced consultant in the preparation of this Written Submission.

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

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A. EXECUTIVE SUMMARY

The design of the dwelling does not ensure that the existing high levels of amenity to our property is retained.

The proposal is considered to be inappropriate within the context of the surrounding dwellings.

The subject site is zoned C3 Environmental Management under the LEP, and there is no reason, unique or otherwise why a fully compliant solution to LEP and DCP controls cannot be designed on the site.

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

- View loss
- Visual Bulk
- Solar Loss
- Built form positioned on our title

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

- Building Height: Proposed 10.0m v Control 8.5m [18% non-compliance]
- Wall Height: Proposed 9.4m v Control 7.2m [30% non-compliance]
- Front Setback: major encroachment on Neighbours land
- Side Setback East: Proposed 0.9m v 2.2m Control [240% non-compliance]

The SEE has incorrectly calculated Height of Building and Wall Height.

The SEE has not addressed unauthorized built form on neighbour's land. The SEE has not addressed the proposed works on neighbour's land without the adjoining owner's consent.

The SEE has not addressed the 1972 Easement & Restrictions instrument on height and boundary setback.

The SEE has not ensured that a Demolition Traffic Management Plan and Construction Traffic Management Plan is submitted as part of the DA on a significantly constrained site.

All these matters were clearly identified to the Applicant pre-submission, by way of correspondence dated 17 August 2021 and within submissions on the previous DA.

The existing car parking has not been shown on the Applicant Survey, or on any DA drawing. The car parking is restricted to one car space. We contend that the proposed development is far too excessive to be supported by one car space. The parking space is by way of easement on our property on their title.

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

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

A compliant building design would reduce the amenity impacts identified.

We agree with Roseth SC in NSWLEC Pafbum v North Sydney Council:

"*People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.*"

The '*legitimate expectation'* that we had as a neighbour was for a development that would not result in very poor amenity outcomes caused directly from the non-compliance to building envelope controls.

Our significant concern is the extension above the 8.5m control, and works proposed in the setback zones. This is unacceptable.

There is ample site area to extend the property to the existing dwelling to the boundary, whilst maintaining the cinema room.

Council will also note that the Applicant is proposing works on our property. No agreement is given to access our property other than to demolish the illegally built structure on our land.

Council will note that the proposed development has only one car space for a 4 bedroom plus study dwelling. This is woefully short of Council requirements, and by itself gives grounds for refusal.

We ask Council to consider the heritage significance to the Cinema Room and the building in general.

We want to emphasise the fact that we take no pleasure in objecting to our neighbour's DA.

We are objecting because the proposed DA has a poor impact on the amenity of our property, and the urban design outcomes within the context of the surrounding dwellings.

and this is caused by the DA being non-compliant to controls.

If the DA was fully compliant to all controls our amenity loss would be more reasonable.

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

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, does not succeed on merit and is not worthy of the granting of development consent.

We ask Council to seek modifications to this DA as the proposed development does not comply with the planning regime, by non-compliance to development standards, and this non-compliance leads directly to our amenity loss.

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

B. FACTS

1. THE PROPOSAL

The development application seeks approval for the proposed construction of alterations and additions to an existing dwelling.

2. THE SITE

The subject allotment is described as 173A Seaforth Crescent, Seaforth, being Lot 22 within Deposited Plan 805188 and is zoned E3 Environmental Management Residential under the Manly Local Environmental Plan 2013. The dwelling is not listed as a heritage item within Schedule 5 of the Manly Local Environmental Plan 2013, nor is it noted as being within a Conservation Area.

We ask Council to consider the heritage significance to the Cinema Room and the building in general.

3. THE LOCALITY

The existing character of the local area, including the immediate visual catchment (generally within 150 metres of the site) is of a well-established neighbourhood, made up of a heterogeneous mix of dwelling types within domestic landscaped settings.

Our property shares a common boundary with the subject site.

4. STATUTORY CONTROLS

The following Environmental Planning Instruments and Development Control Plans are relevant to the assessment of this application:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000

- SEPP (Building Sustainability Index: BASIX) 2004;
- SEPP (Resilience and Hazards) 2021;
- SEPP (Biodiversity and Conservation) 2021.

- Manly Local Environmental Plan 2013 [referred to as LEP in this Submission]
- Manly Development Control Plan 2013 [referred to as DCP in this Submission]

C. CONTENTIONS THAT THE APPLICATION BE REFUSED

1. LACK OF STATUTORY POWER

Clause 4.6

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

Encroachment

The development application should be refused as the proposal requests construction activity on neighbour's land, and adjoining owners' consent will not be given.

The encroaching elements will require to be bought up to building regulation standards, and as such this constitutes development on neighbour's land without neighbour's consent.

Owners Consent has not been obtained for the work on 173 Seaforth Crescent. All works are required to be setback 10ft from the boundary to our common boundary to accord with controls and terms of easement. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, no owners consent been provided for the encroaching within neighbour's land which is not part of common property.

The development application should be refused as the proposal requests construction activity that exceeds *Instrument Setting Out Terms Of Easement And Restrictions As To The User Intended To Be Created Pursuant To Section 88B Of The Conveyancing Act 1919*, dated 26 July 1972, Part 4a, 4b, 4c requiring a 10ft setback to the boundary, and restriction to building height, sloping between RL 110ft and RL 91ft. MLEP Clause 1.9A Suspension of covenants, agreements and instruments cannot be relied upon as the works proposed are not in accordance with the LEP and DCP. We have a registered surveyor confirm that these levels are RL110 feet = RL33.478 AHD [RL110ft], and RL27.687 AHD [91 ft]. The proposed RL 31.620 ridge, at a maximum 10.76m, exceeds the easement height control and the LEP control at 8.5m

Heritage Significance

The development application should be refused as the Applicant has nominated the house and detailed the significance to Heritage NSW. As the property currently is nominated, and without a heritage report submitted by the Applicant, the proposed development cannot be fully assessed on heritage grounds.

2. CONTRARY TO AIMS OF LEP

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the aims under the LEP.

3. CONTRARY TO ZONE OBJECTIVES

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the objectives of the zone of *the LEP*.

4. INCORRECT CONSIDERATIONS OF 'GROUND LEVEL EXISTING'

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to present *ground level (existing)* in accordance with the LEP, and the recent decisions on *ground level (existing)* at the NSWLEC.

The LEP states the following within the LEP Dictionary:

"ground level (existing) means the existing level of a site at any point."

The DA drawings have not adequately transferred the spot levels from the Registered Surveyors drawing onto the DA Architectural drawings to allow assessment of heights.

The topography of the site shows that the site has falls across the site.

We bring to Council's attention recent NSWLEC decisions relating to the consideration of *ground level (existing)* on sites that had not been totally built upon:

- In *Strebora Pty Ltd v Randwick City Council (No. 2)* [2017] NSWLEC 1575 ('*Strebora*'),: Commissioner: Dickson: *'the determination of 'ground level (existing)' must bear some relationship to the overall topography and context of the site'*

- In *Gejo Pty Ltd v Canterbury-Bankstown Council* [2017] NSWLEC 1712('*Gejo*'): Commissioner Gray: *'actual height of the proposed building must first be determined by application of the [relevant] LEP definitions and that the extrapolation approach used in Bettar and Stamford was justified in circumstances where the existing ground level is not known due to extensive development on the site'*.

- In *Nicola v Waverley Council* [2020] NSWLEC 1599 ('*Nicola*'): Commissioner Bindon: *'where the facts and circumstances of the case make the use of the extrapolation method appropriate, the levels to be used should be taken from the closest immediate proximity where existing ground can be found, whether that be inside or outside subject site.*

- In Cadele Investments Pty Ltd v Randwick City Council [2021] NSWLEC 1484 at [90]-[91]: Commissioner Bindon stated: "the alternative method of measurement is not in accordance with the definition of building height in the RLEP, which relies on the defined term "ground level (existing)". In using the undefined "natural ground line" the Applicant relies on the concept of extrapolating the ground levels on the periphery of the site to avoid the inconvenient "variations to the landform created by the existing dwelling", and refers to Bettar v Council of the City of Sydney [2014] NSWLEC 1070 (Bettar) as providing an authority to do so.

We bring to Council's attention early NSWLEC decisions relating to the consideration of *ground level (existing)* on sites that had been wholly built upon:

- *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*: Commissioner O'Neill. The *Bettar* extrapolation method

- Stamford Property Services Pty Ltd v City of Sydney [2015] NSWLEC 1189 ('Stamford'): Commissioner Pearson

We contend that *ground level (existing)* on the subject site has not been assessed correctly.

We bring to Council's attention the following issues.

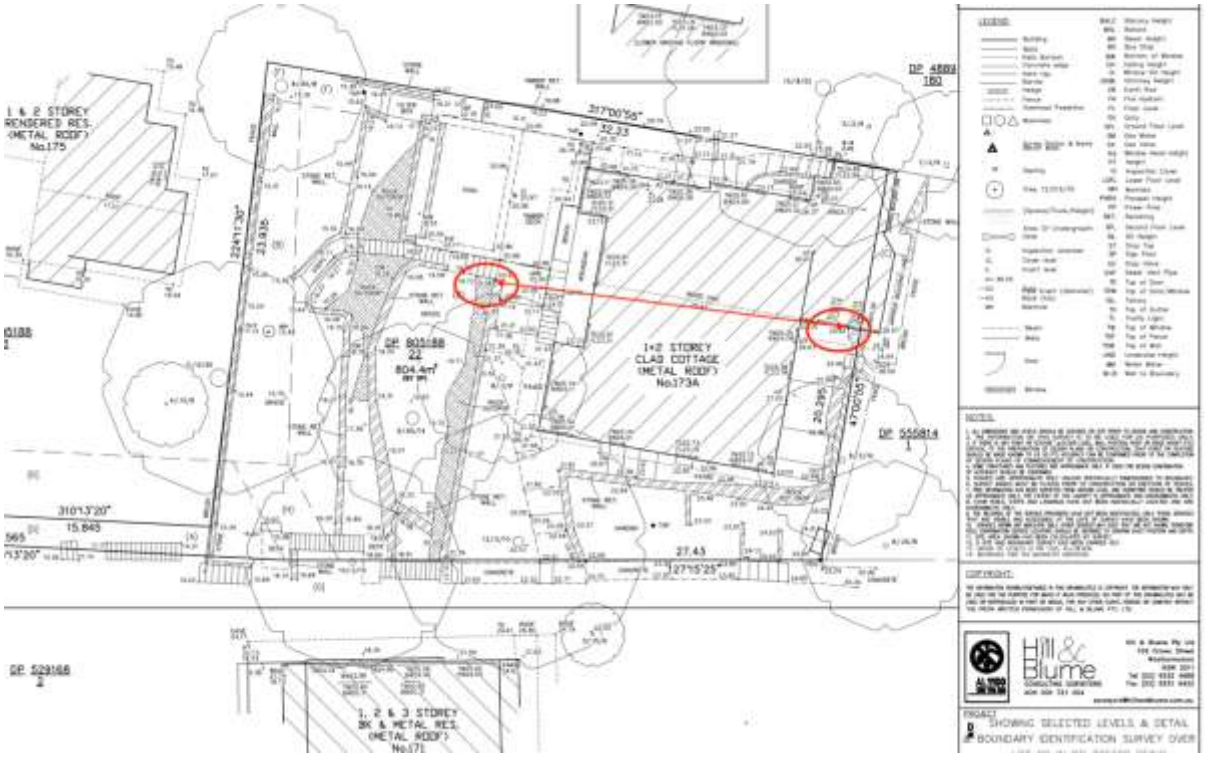
We contend that the Applicant has avoided locating the Registered Surveyors spot levels onto the plans, sections and elevations to falsely suggest that the heights are lower than what is truly correct.

Council will note that there are no '*ground level (existing)' survey marks* on the Applicant 's Survey under the existing dwelling.

Council will also note that the Applicant is using tops of retaining walls and artificially raised decks as '*ground level (existing)'*.

This approach does not correspond with Stamford Property Services Pty Ltd v City of Sydney [2015] NSWLEC 1189 ('Stamford').

We contend that the correct approach is to use the natural rock outcrops adjacent to the existing dwelling shown in the following extract of the Registered Surveyors drawing, and to extrapolate the line between the two survey marks to better define '*ground level (existing)'*.



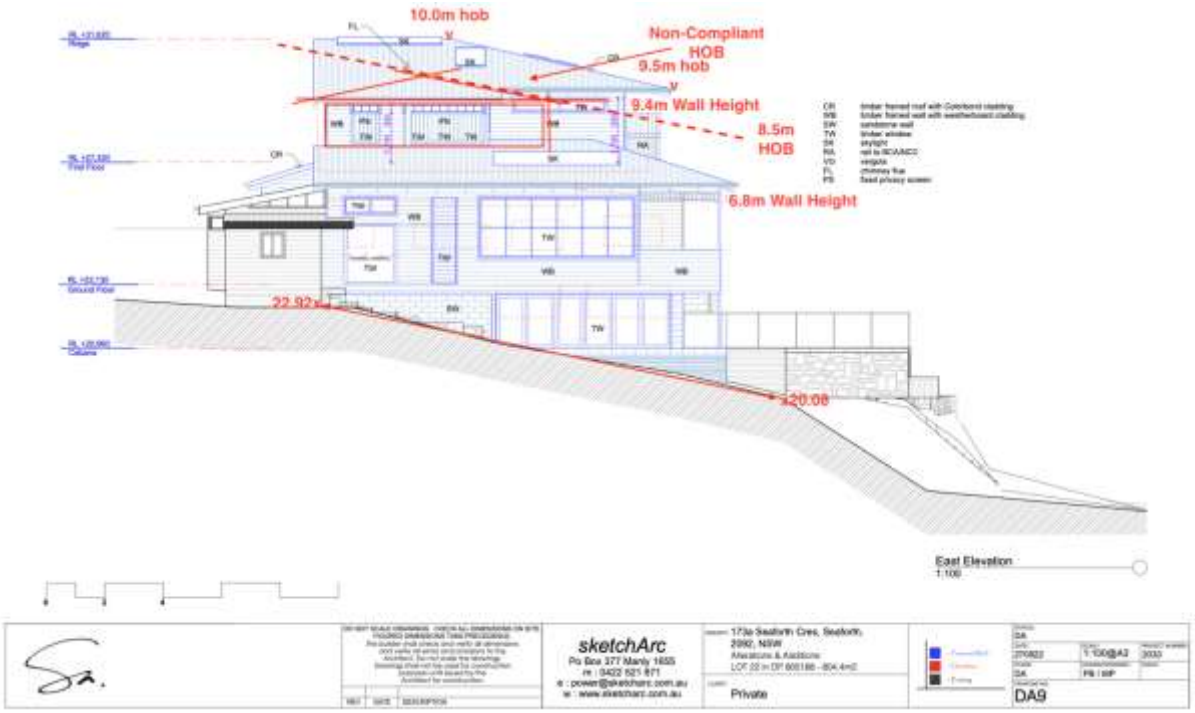
Council will note that the two levels are 20.08 and 22.92.

The 20.08 level is the top of a rock outcrop immediately to the NW of the existing dwelling, and 22.92 level is the bottom of a rock outcrop immediately to the SE of the existing dwelling.

The Applicant has used the adjacent top of the retaining wall that sits on top of the rock outcrop at 20.08, and presented within all the DA drawings, false and misleading heights relating to *ground level (existing)*.

Council will note that when these levels of 20.08 and 22.92 are positioned on the East Elevation, this clearly shows that the extrapolation between these spot levels, equates fairly accurately to the *ground level (existing)* shown on the East Elevation.

Council can easily then identify that the proposed development is substantially above the 8.5m Height of Building standard to a height of 10.0m, and the Wall Height control to a height to 9.4m.



Council will note that a compliant envelope to the true 8.5m Height of Building standard, would require the upper level to be substantially redesigned. We indicate on the above sketch the reductions that would be required including a substantially reduced hip roof with a low pitch profile to minimise view loss of the harbour. We address this matter latter in the Submission.

5. EXCESSIVE BUILDING HEIGHT

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

The proposed development should be refused due to its excessive height and failure to comply with the *Height of Buildings* set out in the LEP which permits a maximum height of 8.5 metres.

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

The adverse impacts of the proposed development, including on the amenity of neighbouring property and public property, are directly attributable to the exceedance of the height of buildings development standard.

The proposal is inconsistent with the LEP as there is a public benefit in maintaining the Height of Buildings development standard in this particular case.

The proposed portion of the building above the maximum height of 8.5m is not 'minor'. The building does not adequately step down the slope.

The DA seeks for a substantial non-compliance with the Council permissible height as provided for in the LEP. The proposal is not supported by a clause 4.6 seeking to justify the breach of the height standard.

We submit that the proposal is excessive and an over development and that any clause 4.6 submissions do not satisfy the pre-requisites in clause 4.6 of the LEP. We consider that, in this instance, they would not be able to establish an argument to support their assertion that it is unreasonable and unnecessary to comply with the control, considering the serve view loss.

We submit that the submission fails on the basis of the assessment against the objectives of clause 4.3, as well as the environmental planning grounds set out. Additionally, we consider that the development does not comply with the objectives of the land use objectives.

In respect of the proposed development, we submit that the built form, which also incorporates other substantial non-compliant breaches will have negative impacts the amenity of neighbours as well as have significant impacts in respect of visual intrusion. Additionally, there is nothing provided for in this development that seeks to minimise the adverse effects of bulk and scale of the building.

In respect of the compatibility test, unsurprisingly the applicant completely ignores multiple considerations dealing with the understanding of the site in respect of its topography, how it is viewed from neighbouring properties as well as the lack of compatibility with its form and articulation.

We contend that the proposal fails to adequately demonstrate that compliance with each standard is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening each of the standards. Variation of the development standards is not in the public interest because the proposed development is not consistent with the objectives of each development standard nor the objectives of the zone. The proposed development has not sought adequate variations to development standards. The proposal is excessive in bulk and scale, and is inconsistent with the desired future character of the area resulting in adverse impacts in the context of the surrounding dwellings.

. The proposal results in an unacceptable dominance of built form over landscape. The proposal fails to minimise the adverse effects of bulk and scale resulting in adverse amenity impacts.

The proposed development should be refused due to its excessive visual impact and impacts on the character of the locality, adjoining properties and the surrounding environment.

The form and massing of the proposal does not appropriately respond to the low-density character of the surrounding locality

The form and massing of development is also inconsistent with the provisions of the DCP which prescribe that new development should complement the predominant building form in the locality.

The proposal would not recognise or protect the natural or visual environment of the area, or maintain a dominance of landscape over built form. The proposal has not been designed to minimise the visual impact on the surrounding environment.

In Veloshin, [Veloshin v Randwick Council 2007], NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

"Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified."

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

In Project Venture Developments v Pittwater Council (2005) NSW LEC 191, NSW LEC considered character:

"whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site's visual catchment".

The non-compliant elements of the proposed development, particularly caused from non-compliant excessive heights would have most observers finding *'the proposed development offensive, jarring or unsympathetic'*.

6. EXCESSIVE WALL HEIGHT & NUMBER OF STOREY

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to comply with the control.

The proposed development should be refused due to its excessive height and failure to comply with the Wall Height set out in the controls.

The proposed development is inconsistent with the objectives of the zone and the objectives that underpin the wall height.

The adverse impacts of the proposed development, including on the amenity of neighbouring property and public property, are directly attributable to the exceedance of the wall height control.

The failure of the SEE to demonstrate the outcomes required by the wall height control means that the variation cannot be supported and, therefore, by necessity, the development application should be refused.

The proposal is inconsistent with the LEP and DCP as there is a public benefit in maintaining the Wall Height control in this particular case.

The proposed portion of the building above the maximum wall height is not 'minor'.

We contend that the proposal fails to adequately demonstrate that compliance with each standard or control is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening each of the standards. Variation of the development standards or control is not in the public interest because the proposed development is not consistent with the objectives of each development standard or control nor the objectives of the zone. The proposed development has not sought adequate variations to development standards or controls. The proposal is excessive in bulk and scale, and is inconsistent with the desired future character of the area resulting in adverse impacts in the context of the surrounding dwellings.

. The proposal results in an unacceptable dominance of built form over landscape. The proposal fails to minimise the adverse effects of bulk and scale resulting in adverse amenity impacts.

The non-compliant elements of the proposed development, particularly caused from non-compliant excessive heights would have most observers finding *'the proposed development offensive, jarring or unsympathetic'*.

7. UNACCEPTABLE BUILDING SEPARATION

The proposed development should be refused as it is significantly non-compliant with setback of the DCP.

- Side
- Front

The proposed development does not provide appropriate setbacks. This leads to inconsistency with the character of the area and unreasonable amenity impacts.

The proposal will result in an unsatisfactory scale of built form that will be disproportionate and unsuitable to the dimensions of the site and neighbouring residential development.

The height and bulk of the development will result in unreasonable impacts upon the amenity of neighbouring properties with regard to visual dominance.

The excessive built form of the proposal results in a development where the building mass becomes visually dominant and imposing, particularly when viewed from the visual catchment of neighbouring properties

The cumulative effect of the non-compliances with setback and other development standard result in an over development of the site with the site being not suitable for the scale and bulk of the proposal.

8. HERITAGE CONSERVATION CONCERNS

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate heritage conservation outcomes.

We consider that the dwelling has heritage merit.

The proposed built form above the Cinema Room will not protect this important item.

The proposed development does not conserve the environmental heritage of the area and does not conserve the heritage significance of the item including settings and views.

9. IMPACTS UPON ADJOINING PROPERTIES: VIEW LOSS

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

We consider that our view loss is greater than moderate. Our loss is best defined as severe to devastating.

The proposed development when considered against the DCP and the NSW Land and Environment Court Planning Principle in *Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC* will result in an unacceptable view impact and will not achieve appropriate view sharing.

The proposed development will result in unacceptable additional view impacts. The view impact is greater than moderate when considered against the *Tenacity* planning principle. The view impact could reasonably be avoided by a more considered design that retains the amenity of the proposal, whilst limiting the impact upon the neighbouring property.

The built form proposed blocks scenic, iconic or highly valued items or whole views as defined in *Tenacity* terms.

The proposed development will unreasonably obstruct views enjoyed by our property from highly used rooms and from entertainment decks, resulting in inconsistency with the requirements and objectives of the DCP.

The proposed development has not considered the strategic placement of canopy trees to avoid further view loss impacts upon existing view corridors.

The Applicant has not provided an adequate View Impact Analysis which details the extent to which existing water views from our property, and other impacted dwellings, are obstructed under the current proposal. The existing documentation accompanying the application is insufficient to undertake a detailed analysis of the proposal against the relevant DCP and NSWLEC guidelines.

The proposal may also cause potential view loss of the water views from the public road, and may cause potential view loss from other neighbours who have not been notified of this DA.

We bring to Council's attention a number of recent decisions on view loss grounds:

- FURLONG V NORTHERN BEACHES COUNCIL [2022] NSWLEC 1208 [NSWLEC Dismissal of Appeal]
- DER SARKISSIAN V NORTHERN BEACHES COUNCIL [2021] NSWLEC 1041[NSWLEC Dismissal of Appeal]
- WENLI WANG V NORTH SYDNEY COUNCIL [2018] NSWLEC 122
- REBEL MH NEUTRAL BAY PTY LTD V NORTH SYDNEY COUNCIL [2018] NSWLEC 191

We contend that the composite consideration from these NSWLEC decisions, gives clear consideration that where view loss occurs caused by non-complaint development, and the view loss is moderate or higher, then the DA is unreasonable.

Other decisions suggest that even when a compliant development causes view loss, and the view is across a boundary, and when there is an alternative option open to avoid that view loss, and that alternative has not been taken, then the DA is unreasonable.

FURLONG V NORTHERN BEACHES COUNCIL [2022] NSWLEC 1208

We refer to a dismissal of a Class 1 Appeal by NSWLEC Commissioner Dr Peter Walsh on a nearby site in Dee Why on view loss grounds. We refer to Furlong v Northern Beaches Council [2022] NSWLEC 1208. [NBC DA 2021/0571, 55 Wheeler Parade Dee Why]

We raise the dismissal by NSWLEC of the Applicant's appeal. The case in question had many similarities to this DA.

NBC DDP refused this DA on 24 November 2021, with Panel members Rod Piggott, Rebecca Englund, Tony Collier and Liza Cordoba, following a Refusal Recommendation of NBC Development Assessment Manager, by the NBC Responsible Officer Jordan Davies, a very senior NBC Planning Officer, that Council as the consent authority refuses Development Consent to DA2021/0517 for Alterations and additions to a dwelling house on land at Lot B DP 338618, 55 Wheeler Parade Dee Why subject to the conditions that were outlined in the Assessment Report.

The assessment of DA 2020/0517 involved a consideration of a view loss arising from a proposed development that presented a generally compliant envelope to LEP and DCP controls.

The DDP agreed with the recommendation and refused this DA.

The Assessment Report found that:

" A view assessment is undertaken later in this assessment report and the proposal is found to result in an unsatisfactory view sharing outcome and the application is recommended for refusal for this reason"

The Assessment Report found that in respect to a compliant envelope:

" the question to be answered is whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact upon views of neighbours."

The Assessment Report within the Tenacity Assessment concluded:

"the view impact looking south-east is considered both severe and devastating from the respective rooms given the significant proportion of the views which are impacted. The aspect looking south and south- east are considered whole, prominent coastal views which are certainly worthy of consideration and at least

partial protection. The proposal to remove the vast majority of these views is considered overall to be a severe view impact."

The DA was recommended for refusal, and DDP refused the DA in full support of the NBC Responsible Officer Assessment Report.

The severity of the view loss that was considered unacceptable by the DDP was clearly stated by the DDP. This level of view loss was considered as '*severe*' by the assessing officers and the DDP.

The Applicant appealed this decision.

On 22 April 2022, the appeal on Furlong v Northern Beaches Council [2022] NSWLEC 1208, was dismissed by the NSWLEC Commissioner Dr Peter Walsh. The decision summarised the issues:

60 Council took me to the findings of Robson J in Wenli Wang v North Sydney Council [2018] NSWLEC 122 ('Wenli Wang').

I reproduce pars [70]-[71] below:

"70 Applying the fourth step of Tenacity, I repeat that the proposed development complies with the development standards in the LEP and is therefore more reasonable than a development which would have breached them. However, I do also note that there is evidence in the form of the Colville plan that a similar amount of floor space could be provided by a design which reduces the effect on the view from the surrounding properties.

71 I consider there is force in the submission of Council that the applicant has taken a circular approach to the fourth step of Tenacity which presupposes a right to the level of amenity achieved by the proposed development. Whilst it is true that a redevelopment similar to that provided in the Colville plan would not provide the same amenity as the proposed development, it would provide a very high level of amenity and enjoy impressive views."

61 In the matter before me, I am more inclined to the kind of conclusion expressed at [71] in Wenli Wang. While the proposed development, accommodating the alternative designs suggested by Council (either shifting the master bedroom westwards some 3.5m or sliding the master bedroom to the south to bring about the same view availability effect – see [43]), may not provide the same amenity outcomes as would be the case without such changes, the proposal would still enjoy a very high level of amenity, including in regard to the panoramic views available to the south, especially from living areas. The master bedroom would still enjoy superior views.

62 The proposal would bring about a severe view loss impact on 51A Wheeler Parade when there are reasonable design alternatives which would moderate this impact significantly. The proposal does not pay sufficient regard to cl D7 of WDCP which requires view sharing. The proposal before the Court does warrant the grant of consent in the circumstances.

The key issues in this case considered that the proposal would bring about a greater than moderate view loss impact, across a side boundary, on a Study/Bedroom when

there was a reasonable design alternatives which would moderate this impact significantly. The proposal did not pay sufficient regard to cl D7 of WDCP which requires view sharing.

DER SARKISSIAN V NORTHERN BEACHES COUNCIL [2021] NSWLEC 1041

We refer to a dismissal of a Class 1 Appeal by NSWLEC Commissioner Dr Peter Walsh on a nearby site in Curl Curl on view loss grounds. We refer to Der Sarkissian v Northern Beaches Council [2021] NSWLEC 1041. [NBC DA 2019/0380, 72 Carrington Parade, Curl Curl]

We raise the dismissal by NSWLEC of the Applicant's appeal. The case in question had many similarities to this DA.

- The main view loss concern was to a neighbour immediately behind 72 Carrington Parade, Curl Curl. We are in a similar position immediately behind the subject site.
- The view loss involved side setback controls.
- The view loss at Curl Curl was severe – our loss would be also be greater than moderate: we would have significant loss of land/water interface from our living spaces

The key matters within the Commissioner's Conclusion:

- the determinative issue in this case is view loss
- the proposal would significantly change the amenity enjoyed for the worse.
- both policy controls and view sharing principles suggest the proposal goes too far.
- proposal attempts to achieves too much on a constrained site.
- a reasonable development at the upper level in regard to view sharing and setback policy,
- with good design, there is scope for this to occur while also providing for reasonable floor space on this level.

It is clear that the view loss, on this DA, occurs through a poor consideration on wall height, building height and side setback controls.

Our commentary on this DA is very similar to Commissioner Walsh in Der Sarkissian v Northern Beaches Council [2021] NSWLEC 1041

- the determining issue in this case is view loss – in our case a water and water/land interface view loss
- the proposal would significantly change the amenity enjoyed for the worse.
- policy controls of building height, wall height, side boundary envelope non-compliances and view sharing principles suggest the proposal goes too far.
- proposal attempts to achieves too much on a constrained site.
- a reasonable development at the upper level in regard to view sharing building height, wall height, side boundary envelope policy, would share the view

- with good design, there is scope for view sharing to occur while also providing for reasonable floor space on all levels

We contend that there is no reasonable sharing of views amongst dwellings.

The new development 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.

WENLI WANG V NORTH SYDNEY COUNCIL [2018] NSWLEC 122

This decision, and referenced in FURLONG, gives consideration to the assessment of a complaint development.

In this particular case, we are assessing a substantially non-complaint development, however view loss over a side boundary again is a key matter,

REBEL MH NEUTRAL BAY PTY LTD V NORTH SYDNEY COUNCIL [2018] NSWLEC 191

As noted by his Honour, Justice Moore of the Court in Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 (Rebel),

"the concept of sharing of views does not mean, for the reasons earlier explained, the creation of expansive and attractive views for a new development at the expense of removal of portion of a pleasant outlook from an existing development. This cannot be regarded as "sharing" for the purposes of justifying the permitting of a non-compliant development when the impact of a compliant development would significantly moderate the impact on a potentially affected view".

This is a key consideration, and one that parallels the forementioned NSWLEC decisions.

TENACITY CONSULTING V WARRINGAH COUNCIL 2004

In Tenacity, [Tenacity Consulting v Warringah Council 2004], NSW LEC considered Views. Tenacity suggest that Council should consider:

"A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable."

The development breaches multiple planning controls and is unreasonable.

We contend that the impact on views arises as a result of non-compliance with one or more planning controls, and the view loss from the highly used rooms and decks is considered unreasonable.

APPLICATION OF TENACITY PLANNING PRINCIPLE

We have been unable to consider the impact of the proposal on the outward private domain views from our property.

Height poles and our montage view loss analysis has yet to be provided by the Applicant.

An assessment in relation to the planning principle of Roseth SC of the Land and Environment Court of New South Wales in Tenacity Consulting v Warringah [2004] NSWLEC 140 - Principles of view sharing: the impact on neighbours (Tenacity) is made, on a provisional basis ahead of height poles being erected by the Applicant.

The steps in Tenacity are sequential and conditional in some cases, meaning that proceeding to further steps may not be required if the conditions for satisfying the preceding threshold is not met.

STEP 1 VIEWS TO BE AFFECTED

The first step quoted from the judgement in Tenacity is as follows:

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

An arc of view is available when standing at a central location in the highly used zones including entertainment decks, highly used rooms, and private open spaces on our property.

The composition of the arc is constrained over the subject site boundaries, by built forms and landscape. The central part of the composition includes the subject site. Views include scenic and valued features as defined in Tenacity. The proposed development will take away views for its own benefit. The view is from our highly used rooms towards the view. The extent of view loss exceeds moderate and the features lost are considered to be valued as identified in Step 1 of Tenacity.

STEP 2: FROM WHERE ARE VIEWS AVAILABLE

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

The second step is to consider from what part of the property the views are

obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The views in all cases are available across the boundary of the subject site, from standing and seated positions. An arc of view is available when standing at highly used zones on our property.

In this respect we make two points: We have no readily obtainable mechanism to reinstate the impacted views from our high used zones if the development as proposed proceeds; and all of the properties in the locality rely on views over adjacent buildings for their outlook, aspect and views towards the view.

We attach photos from our highly used rooms.

The proposed non-compliant height and non-compliant setback will unreasonably remove harbour views:

Severe View Loss from Highly Used Rooms: Upper Level

Devastating View Loss from Highly Used Room: Lower Level

STEP 3: EXTENT OF IMPACT

The next step in the principle is to assess the extent of impact and the locations from which the view loss occurs.

Step 3 as quoted is:

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

As we rate the extent of view loss is above moderate in our 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 applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

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

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

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

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

Point 3 - For complying proposals: (a) "whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours to bring about impact", and (b) "if the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable".

In respect to Point 3, NSWLEC Commissioner Walsh in Furlong v Northern Beaches Council [2022] NSWLEC 1208 referenced *Wenli Wang v North Sydney Council* [2018] NSWLEC 122, in considering that if a more skilful design could be achieved arriving at an outcome that achieved '*a very high level of amenity and enjoy impressive views', then a proposed development has gone too far, and must be refused.*

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 our opinion the extent of view loss considered to be the greater than moderate, in relation to the views from our highly used zones of our dwelling. The view is from a location from which it would be reasonable to expect that the existing view, particularly of the view that could be retained especially in the context of a development that does not comply with outcomes and controls. The private domain visual catchment is an arc from which views will be affected as a result of the construction of the proposed development. The proposed development will create view loss in relation to our property. The views most affected are from our highly used zones and include very high scenic and highly valued features as

defined in Tenacity. Having applied the tests in the Tenacity planning principle we conclude that we would be exposed to a loss greater than moderate from the highly used rooms. The non-compliance with planning outcomes and controls of the proposed development will contribute to this loss. Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

The proposed development cannot be supported on visual impacts grounds. The proposal incorporates a significant departure from controls, which helps contain building envelope. Additionally, the siting of the proposed development and its distribution of bulk does not assist in achieving view sharing objectives. Where the diminishing of private views can be attributed to a non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. Our assessment finds that view sharing objectives have not been satisfied.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control.

There are architectural solutions that maintains our view, by proposing development that maintains our view, and we identify the precise amendments necessary to overcome this loss.

The built form can be reduced in scale to fall within the 8.5m height control, or the Master Bedroom could be located elsewhere on the site, giving the Applicant the same amenity outcome.

As noted by his Honour, Justice Moore of the Court in Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 (Rebel),

"the concept of sharing of views does not mean, for the reasons earlier explained, the creation of expansive and attractive views for a new development at the expense of removal of portion of a pleasant outlook from an existing development. This cannot be regarded as "sharing" for the purposes of justifying the permitting of a non-compliant development when the impact of a compliant development would significantly moderate the impact on a potentially affected view".

The same unreasonable scenario in Rebel applies to the current DA. The proposed breaching dwelling will take away views from our property (and possibly other adjoining properties) to the considerable benefit of the future occupants of the proposed dwelling. This scenario is not consistent with the principle of View Sharing enunciated by his Honour, Justice Moore in Rebel. The adverse View Loss from our property is one of the negative environmental consequences of the proposed development. The proposed development cannot be supported on visual impacts grounds.

These issues warrant refusal of the DA.

We ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly

measured by the Applicant's Registered Surveyor. The Height Poles will need to define: All Roof Forms, and all items on the roof, Extent of all Decks, Extent of Privacy Screens. Height Poles required for all trees. The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

In conclusion, as the dwelling proposed will impact views from our property, the erection of height poles is required to allow an accurate assessment of view impact. The height poles should provide a delineation to identify any elements of the proposed built form that breaches the envelope controls of height and setbacks.

We contend that the proposed development when considered against the DCP and the NSW Land and Environment Court Planning Principle in *Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC* will result in an unacceptable view impact and will not achieve appropriate view sharing.

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

10. IMPACTS UPON ADJOINING PROPERTIES: OVERSHADOWING

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to overshadowing.

The Applicant has not provided adequate Solar Access Diagrams, at one hourly intervals, in plan and elevation of our property, to assess the loss of solar access at mid-winter, to accord with DCP controls and NSWLEC planning principles

We believe that further assessment of the shadow impacts through the production of elevational shadow diagrams or a "View from the Sun" assessment are critical in order to understand the potential future impacts and necessary for Council's reasonable assessment.

The proposed development should be refused as it will have unacceptable impacts upon the amenity of adjoining properties, specifically with regard to overshadowing.

The proposed development will result in unreasonable overshadowing of the windows of our property and the private open space of our property, resulting in non-compliance with the provisions of DCP.

A variation to the DCP is not supported as the objectives of the clause are not achieved.

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."

We contend that the overshadowing arises out of poor design. The design does not respect envelope controls, and must be considered 'poor design'.

The Applicant has not submitted hourly solar diagrams to fully assess the solar loss. We ask Council to obtain these diagrams.

The loss of sunlight is directly attributable to the non-compliant envelope.

The planning principle The Benevolent Society v Waverley Council [2010] NSWLEC 1082 is used to assess overshadowing for development application. An assessment against the planning principle is provided as follows:

• 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 density of the area is highly controlled. Building envelope controls have been exceeded.

• The amount of sunlight lost should be taken into account, as Well as the amount of sunlight retained.

The solar diagrams are not complete, but what has been provided shows that the proposed development will overshadow the adjoining dwellings. The amount of sunlight that will be lost will only be able to be fully considered once solar elevational drawings are submitted. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

• 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 development has been designed without considering the amenity of the neighbouring properties. It is considered that a more skilful design, with a compliant envelope control, could have been adopted that would have reduced the impact on the neighbouring properties. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

• To be assessed as being in sunlight, the sun should strike a vertical surface at a horizontal angle of 22.5o or more. (This is because sunlight at extremely oblique angles has little effect.) For a window, door or glass wall to be assessed as being in sunlight, half of its area should be in sunlight. For private open space to be assessed

as being in sunlight, either half its area or a useable strip adjoining the living area should be in sunlight, depending on the size of the space. The amount of sunlight on private open space should be measured at ground level.

This can only be fully assessed once elevational solar drawings at hourly intervals are submitted. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

• 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.

There is no major overshadowing as a result of vegetation

• 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.

The area is not currently undergoing change, the LEP and DCP controls have not altered for many years.

The assessment of the development against the planning principal results in the development not complying with the solar access controls and therefore amended plans should be requested to reduce the overshadowing impact on the adjoining neighbour. It is suggested that a more skilful design of the development, with a compliant envelope control, would result in less impact in regard to solar access. It is requested that Council seek amended plans for the development to reduce the impact of the development, and these matters are addressed elsewhere in this Written Submission.

We object to solar loss to our private open space, and to our windows that allow mid-winter solar access into highly used room by non-compliant development controls.

11. IMPACTS UPON ADJOINING PROPERTIES: VISUAL BULK IMPACT

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to visual bulk impact.

The non-complaint building envelope will lead to unacceptable visual bulk impact to neighbours.

12. PUBLIC INTEREST

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

in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest.

D. CONTENTIONS THAT RELATE TO INSUFFICIENT INFORMATION

View Impact Analysis

The Applicant has not provided an adequate View Impact Analysis which details the extent to which existing water views from our property are obstructed under the current proposal, from the proposed built form and the proposed trees, to accord with DCP controls and NSWLEC planning principles

We ask Council that after amended plans are submitted to reduce the building envelope below building height, wall height, and all envelope controls, to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor. The Height Poles will need to define: All Roof Forms, and all items on the roof, Extent of all Decks, Extent of Privacy Screens. Height Poles required for all trees. The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

Solar Access Diagrams

The Applicant has not provided adequate Solar Access Diagrams, at one hourly intervals, in plan and elevation of our property, to assess the loss of solar access at mid-winter, to accord with DCP controls and NSWLEC planning principles

We believe that further assessment of the shadow impacts through the production of elevational shadow diagrams or a "View from the Sun" assessment are critical in order to understand the potential future impacts and necessary for Council's reasonable assessment.

Visual Bulk Analysis

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

Easement Analysis

The Applicant has not provided an adequate analysis of the '*Instrument setting out terms of easement and restrictions as to the user intended to be created pursuant to section 88b of the conveyancing act 1919*', dated 26 July 1972, Part 4a, 4b, 4c requiring a 10ft setback to the boundary, and restriction to building height, sloping between RL 110ft and RL 91ft.

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

A compliant building design would reduce the amenity impacts identified.

Reduce the proposed development as follow:

1. REDUCTION OF BUILT FORM

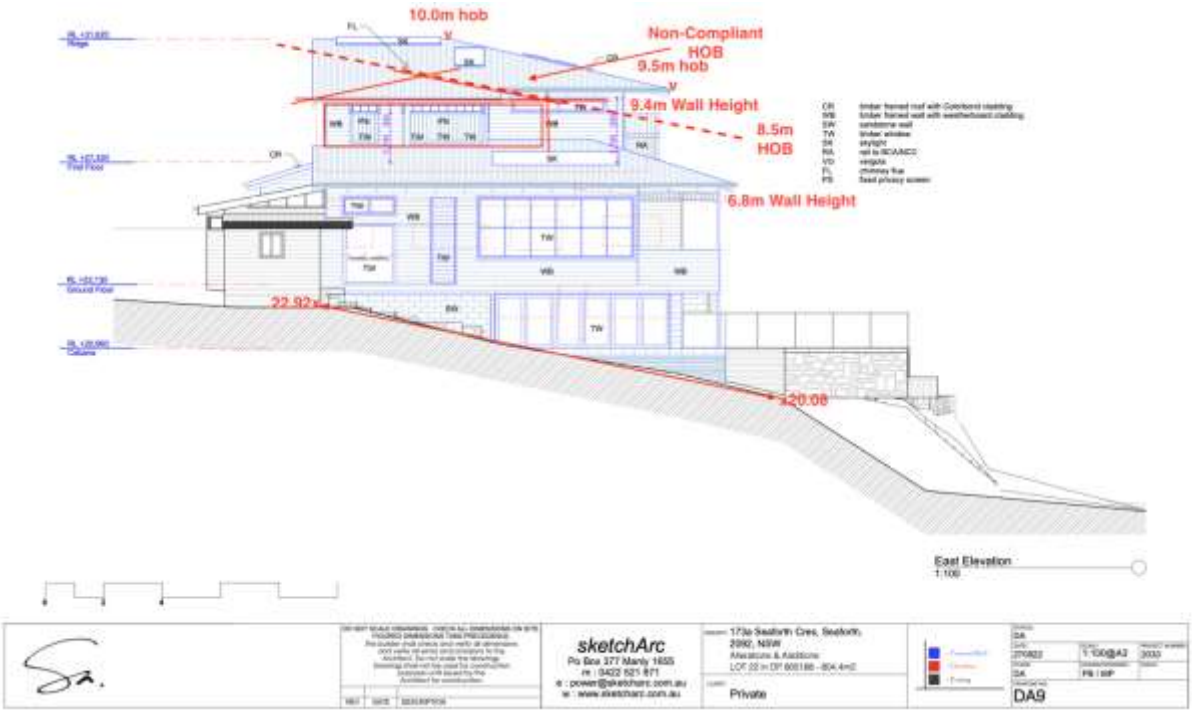
- Reduce the Building Height to 8.5m, below the extrapolation between 20.08 top of rock outcrop level to 22.92 base of rock outcrop
- Reduce the Wall Height to DCP controls
- Increase Side Setback to DCP controls
- Increase Front Setback to DCP controls
- Remove all built form from the neighbour's property

2. OTHER MATTERS/CONDITIONS OF ANY CONSENT

- Dilapidation reports, including photographic surveys, of the adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items. The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing. Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must: compare the post-construction report with the pre-construction report, clearly identify any recent damage and whether or not it is likely to be the result of the development works, should any damage have occurred, suggested remediation methods.
- The Applicant must provide a certificate to ensure the recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report are to be incorporated into the construction plans. The certificate shall be prepared by a qualified geotechnical engineer.
- The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.
- The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Council's Water Management for Development Policy. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.
- 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 are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.

- The development is required to be carried out in accordance with all relevant Australian Standards.
- A survey certificate prepared by a Registered Surveyor at the following stages of construction: (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details. (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid. (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.



F. REASONS FOR REFUSAL

We ask Council to refuse the DA as the proposal is contrary to the Environmental Planning and Assessment Act:

1. No 4.6 Variation has been submitted on Height of Building. Council is not satisfied that under clause 4.6 of the LEP seeking to justify a contravention of the development standard that the development will be in the public interest because it is inconsistent with the objectives of the standard and the

objectives for development within the zone in which the development is proposed to be carried out.

2. The development application should be refused as the proposal requests construction activity on neighbour's land, and adjoining owners' consent will not be given. Owners Consent has not been obtained for the work on 173 Seaforth Crescent. All works are required to be setback 10ft [3m] from the boundary to our common boundary to accord with controls and terms of easement. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, no owners consent been provided for the encroaching within neighbour's land which is not part of common property.
3. The development application should be refused as the proposal requests construction activity that exceeds *Instrument Setting Out Terms Of Easement And Restrictions As To The User Intended To Be Created Pursuant To Section 88B Of The Conveyancing Act 1919*, dated 26 July 1972, Part 4a, 4b, 4c requiring a 10ft setback to the boundary, and restriction to building height, sloping between RL 110ft and RL 91ft, and a 10ft setback to the common boundary to 173 Seaforth Crescent. MLEP Clause 1.9A Suspension of covenants, agreements and instruments cannot be relied upon as the works proposed are not in accordance with the LEP
4. The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy objectives and planning controls of LEP:

- Aims of Plan
- Zone Objectives
- Height of Buildings
- Exceptions to Development Standards

5. The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy objectives and planning controls of DCP:

- Excessive Wall Height & Number of Storey
- Unacceptable Building Separation
- Heritage Conservation Concerns
- Impacts Upon Adjoining Properties: View Loss
- Impacts Upon Adjoining Properties: Overshadowing
- Impacts Upon Adjoining Properties: Visual Bulk
- 1.7 Aims and Objectives of this Plan
- 3.4.1 Sunlight Access & Overshadowing
- 3.4.3 Maintenance of Views
- 4.1.2.1 Wall Height
- 4.1.4 Setbacks (front, side and rear) and Building Separation
- 4.1.4.1 Front Setback
- 4.1.4.2 Side setbacks
- 4.1.8 Development on Sloping Sites
- 5.4.1 Foreshores Scenic Protection

6. Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005 Harbour Foreshores & Waterways Area. The proposals would not satisfy the matters for consideration under Part 2 Clause 14 [d] and Part 3 Division 2 Clause 25 & 26 of the SEPP: Sydney Harbour Catchment, or the requirements of the Sydney Harbour Foreshores and Waterways Area Development Control Plan, Clause 5.4.
7. SEPP (Coastal Management) 2018. The proposals would not satisfy the matters for consideration under SEPP CM 2018 Clause 14 in respect to loss of views to the foreshore
8. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the plans and documentation are misleading as they do not clearly portray the true extent of works proposed. The plans include inaccuracies and inconsistencies and insufficient information has been provided in order to enable a detailed assessment. There is insufficient information has been submitted to enable the assessment of the application.
9. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the proposal would not satisfy the matters for consideration under Biodiversity & Conservation SEPP 2021 and Resilience & Hazards SEPP 2021
10. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that it will have an adverse impact through its bulk, scale and siting on the built environment, through its potential use, adverse social impact in the locality and through lack of landscape provision, and adverse impact on the natural environment.
11. The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* in that this area of the site is unsuitable for a development of such excessive bulk and scale.
12. The proposals are unsuitably located on the site pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
13. The proposal does not satisfy Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979 in that the proposal does not adequately address the amenity of neighbours
14. The proposal is contrary to the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*. The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest.

G. CONCLUSION

The proposed dwelling is not consistent with the intent of the LEP standards and DCP controls as they are reasonably applied to the proposal.

The variations to LEP standards and DCP controls are considered unreasonable in this instance. The cumulative effect on these non-compliances cause considerable amenity loss to our property.

The development will not sit well within the context of the surrounding dwellings,

with non-compliance to LEP standards and DCP controls causing considerable concern. In this regard, the proposal is considered excessive in bulk and scale and would be consider jarring when viewed from the public domain.

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

"The following questions are relevant to the assessment of impacts on neighbouring properties:
How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?
How reasonable is the proposal causing the impact?
How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?
Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?
Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?"

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

It is considered that the proposal is inappropriate on merit and unless amended plans are submitted, this DA must be refused for the following reasons:

- The application has not adequately considered and does not satisfy the various relevant planning controls applicable to the site and the proposed development.
- The proposed dwelling is incompatible with the existing context of the surrounding dwellings.
- and development in the local area generally.
- The proposed dwelling will have an unsatisfactory impact on the environmental quality of the land and the amenity of surrounding properties.
- The site is assessed as unsuitable for the proposal, having regard to the relevant land use and planning requirements.

It is considered that the public interest is not served.

The proposed development does not follow the outcomes and controls contained within the adopted legislative framework.

Having given due consideration to the matters pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended, it is considered that there are multiple matters which would prevent Council from granting consent to this proposal in this instance.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts all of which would result in adverse impacts on our property.

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

We trust that Council will support our submission and direct the proponent to modify the DA plans, as outlined above. We ask Council Officers to inspect the development site from our property so that Council can fully assess the DA.

Yours faithfully,

Anthony Ng
173 Seaforth Crescent
Seaforth
NSW 2092