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**Sent:** 2/10/2020 1:26:04 PM

**Subject:** 14 Ernest Street Balgowlah Heights NSW 2093 DA 2020/1173 WRITTEN  
SUBMISSION: LETTER OF OBJECTION Submission: Christie

**Attachments:** Submission Christie.pdf;

SUBMISSION: CHRISTIE  
a written submission by way of objection to DA 2020/1173

Anita Catherine & Brett David Christie  
12 Ernest Street  
Balgowlah Heights  
NSW 2093

1 October 2020

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

Northern Beaches Council  
[council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

Dear Chief Executive Officer,

Re:  
14 Ernest Street Balgowlah Heights NSW 2093  
DA 2020/1173

WRITTEN SUBMISSION: LETTER OF OBJECTION  
Submission: Christie

This document is a written submission by way of objection to DA 2020/0950  
lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

The DA seeks development consent for the carrying out of certain development, namely:

*The proposed development includes alterations to the ground floor, a new first floor, pool and associated landscaping works.*

Construction Cost: \$1.0m

The subject site is zoned R2 pursuant to Manly Local Environmental Plan 2013 ("MLEP 2013"), and there is no reason, unique or otherwise why a fully compliant solution to LEP and DCP controls cannot be designed on the site.

## EXECUTIVE SUMMARY

This Written Submission asks Council to **REFUSE** this DA.

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

The proposed development is a clear case of overdevelopment, as represented by the main envelope controls:

- Height of Building 9.52m **12%** non-compliance
- Eastern Side Setback **202%** non-compliance [2.75m control v 1.348m proposed]
- Eastern Wall Heights **14%** non-compliance [7.2m control v 8.2m proposed 45.72-37.53]
- Landscaping non-compliance
- Total Open Space non-compliance
- Prevailing Front Setback non-compliance
- Pool non-compliance

The non-compliance to numerical standards leads directly to our amenity loss

Our main concerns are:

- Overshadowing
- Overlooking/Privacy
- Visual Bulk
- Pool

This Written Submission will document a very clear case for Council to REFUSE this DA, or to impose a series of conditions to any consent to reduce the impact of the non-compliant envelope.

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

The Applicant has had no prior discussion with us regarding to this DA.

We are objecting because the proposed DA has a very poor impact on the amenity of our property and this is caused by the DA being non-compliant to multiple controls.

It does seem very unreasonable that the Applicant wishes to remove our amenity to improve his own, and is proposing a catalogue of non-compliant outcomes that would poorly affect our amenity

The proposed development is considered to be inconsistent with the outcomes, controls and objectives of the relevant legislation, plans and policies.

The DA scheme submitted requires to be substantially amended due to the non-compliant setback, height and other issues, and we ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, then we ask Council to refuse the DA or condition the consent.

We are concerned to the non-compliance of the LEP:

- 1.2 Aims of Plans
- Zone R2 Low Density Residential
- 4.3 Height of Buildings
- 4.6 Exceptions to Development Standards

We are concerned to the non-compliance of the DCP:

The non-compliance to LEP and DCP outcomes and controls forms the basis of our objection. Our loss of amenity will suffer from these non-compliances to outcomes and controls.

- 1.7 Aims and Objectives of this Plan
- 3.1.1 Streetscape (Residential areas)
- 3.3.1 Landscaping Design
- 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)
- 3.4.1 Sunlight Access and Overshadowing
- 3.4.2 Privacy and Security
- 3.4.3 Maintenance of Views
- 4.1 Residential Development Controls
- 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- 4.1.4 Setbacks (front, side and rear) and Building Separation
- 4.1.5 Open Space and Landscaping
- 4.1.7 First Floor and Roof Additions
- 4.1.8 Development on Sloping Sites
- 4.1.9 Swimming Pools, Spas and Water Features
- 4.1.10 Fencing

In this Written Submission we ask Council to request the Applicant to submit Amended Plans to bring the proposed development back into a more generally compliant envelope including:

- Increase Eastern First Floor Setback to 2.75m
- Reduce Building Height to be below 8.5m

- Reduce eaves to 300mm
- Reduce Roof to 2-degree pitch
- Raise sills to 1.6m high to windows W02, 03, 04 & W16, 17, 18, 19, 20, 21
- The pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the boundary. The pool to be relocated with a greater side setback. The pool must not be more than 1m above ground level existing in any location. Landscape zone in the 2m side setback zone with species 3m high.

## CHARACTERISTICS OF OUR PROPERTY

Our property shares a common boundary with the subject property.

The subject site lies to the east of our property.

We enjoy good levels of solar access, and privacy over the subject site.

Our property is shown on the attached map 'red starred'. The subject site is shown 'edged in red and flagged'.

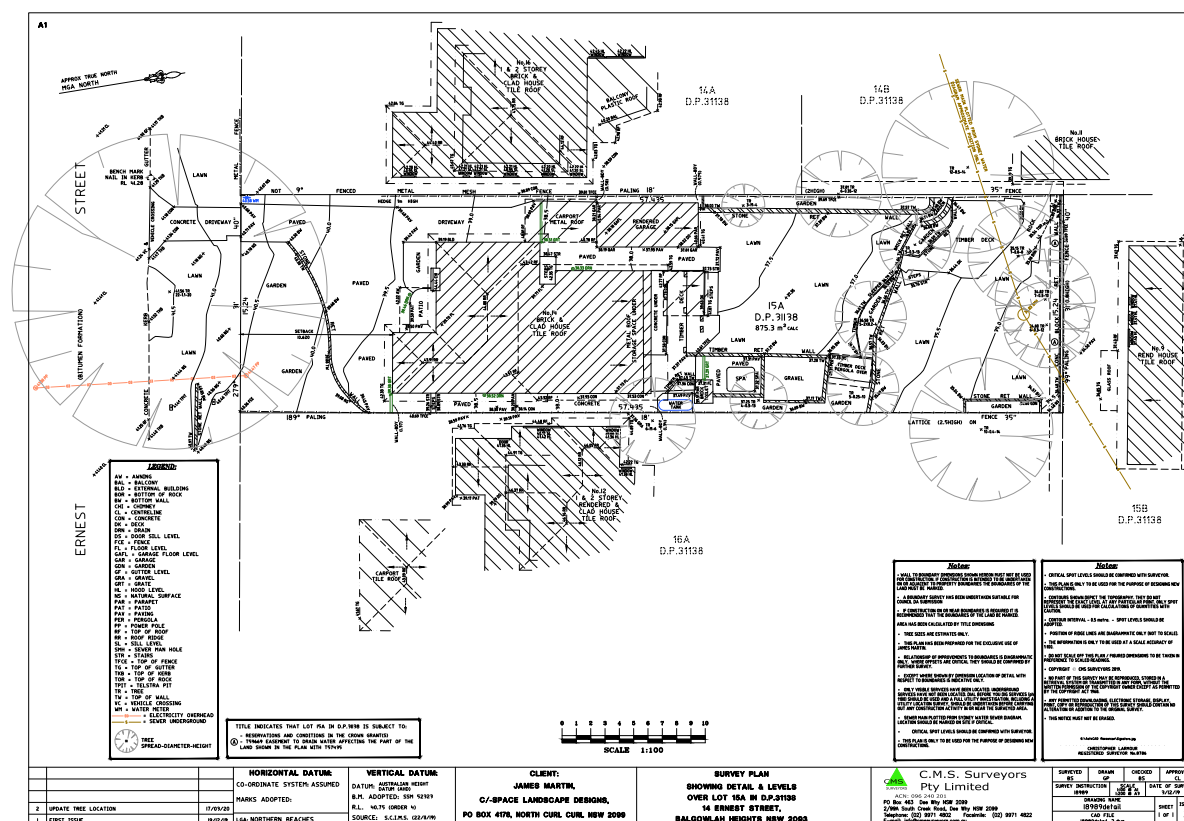


The SEE states:

*It is rectangular in shape with a 15.24 metre primary street frontage to Ernest Street and rear boundary, and side boundaries of 57.435 metres.*

*The site has an area of 875.32m<sup>2</sup> and falls from front to rear. The lot is currently occupied by a single storey brick and clad dwelling with a metal roof and a carport and storage space along the western side of the dwelling.*

*The site is surrounded by detached residential dwellings. It is in close proximity to Bareena Park and Forty Baskets Beach. Public transport and shops are available along Ernest Street and Beatrice Street*



## SURVEY





*12 Ernest Street: Our property presents to the streetscape with a single storey, with the upper storey built within the roofscape, and restrained side setbacks..*





16 Ernest Street: Presents as a single storey, with the upper floor setback from either neighbour

Neither of the neighbouring sites present as two-storey to the streetscape, with considerable side setback relief

## DEVELOPMENT PROPOSAL

The concept of the proposed development is to retain the existing elevated floor structure at RL 39.7 that currently is positioned over 2.2m above *ground level existing* and extend that floor structure to create a larger deck zone to the rear.

The Applicant then adds a two-storey structure 6m high to the first -floor ceiling level.

The problem with this design option is that wall heights extend development standards to a non-compliant 8.2m height.

The roof structure then extends a further 1.8m in height, and exceeds maximum building height, to 9.52m.

This design option creates additional solar loss, privacy loss, and visual bulk all caused by the non-compliant building height, wall height and non-compliant side setback.



We contend that if the Applicant wishes to build the second floor to a wall height of over 8.2m, they must provide a fully compliant side setback of 1/3 wall height, to 2.75m side setback facing our property. Additionally, to reduce the bulk and scale of the building, we would ask that the roof structure be reduced to a simple low-pitch roof at 2 degrees. The proposed 600mm eaves to be reduced to 300mm, and the eaves to be expressed.

The pool is non-compliant in height, and needs to be lowered.

The proposed pool fence is positioned on the boundary. This would preclude us from planting trees along the boundary. We note that Council has conditioned pool fences to be setback from the boundary by 2m, and we ask for that to occur. The pool will need to setback by a further 2m to accommodate the repositioned pool fence.

The SEE states: *The alterations and additions will be made up as follows:*

## GROUND FLOOR

Internal alterations to open up the rear of dwelling to create an open plan living area with kitchen opening onto the deck.

Installation of stairs to new first floor and a bathroom.

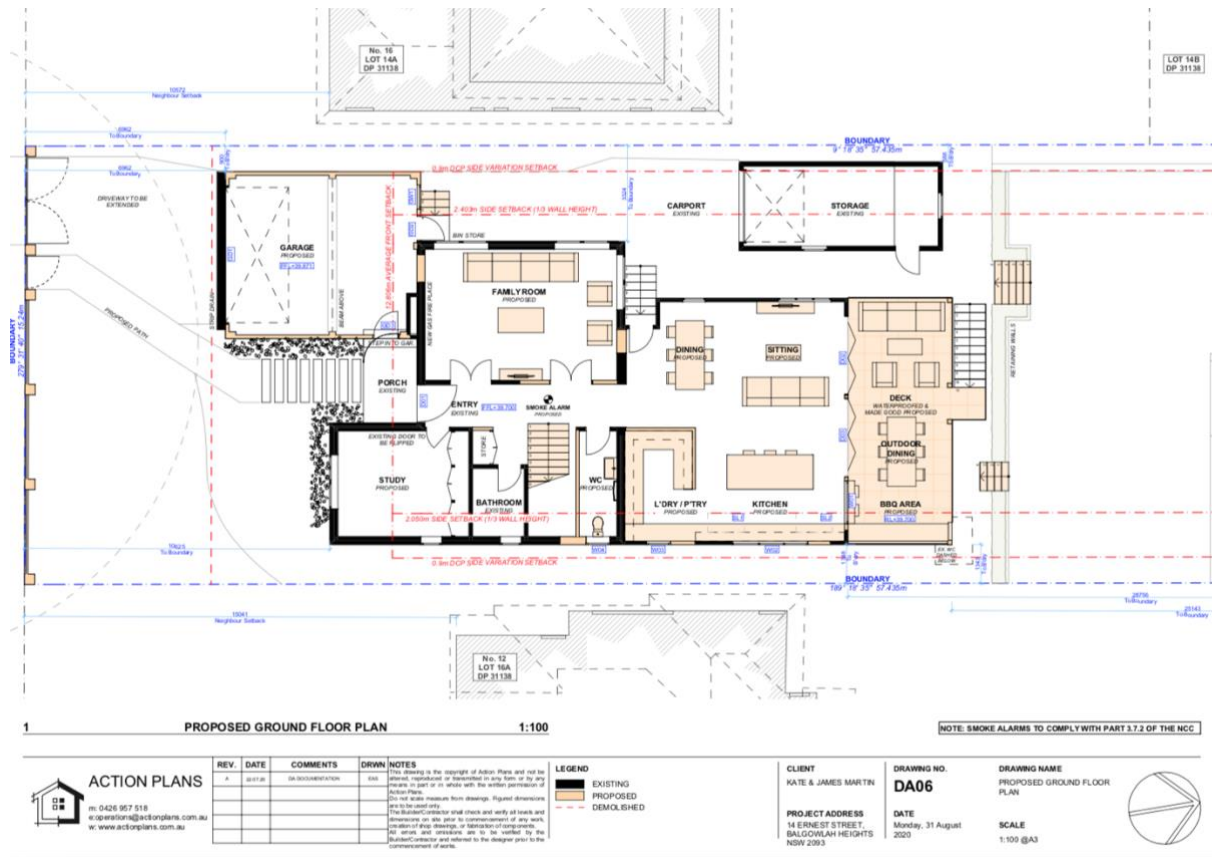
Bedroom 2 converted into a study.

Bedroom 1 and lounge room converted into a family room.

Construction of covered rear deck with stairs to lawn

New windows as detailed on plans

New Garage at the front of the dwelling



## FIRST FLOOR

New first floor including:

Master bedroom with walk in robe, ensuite, retreat and balcony

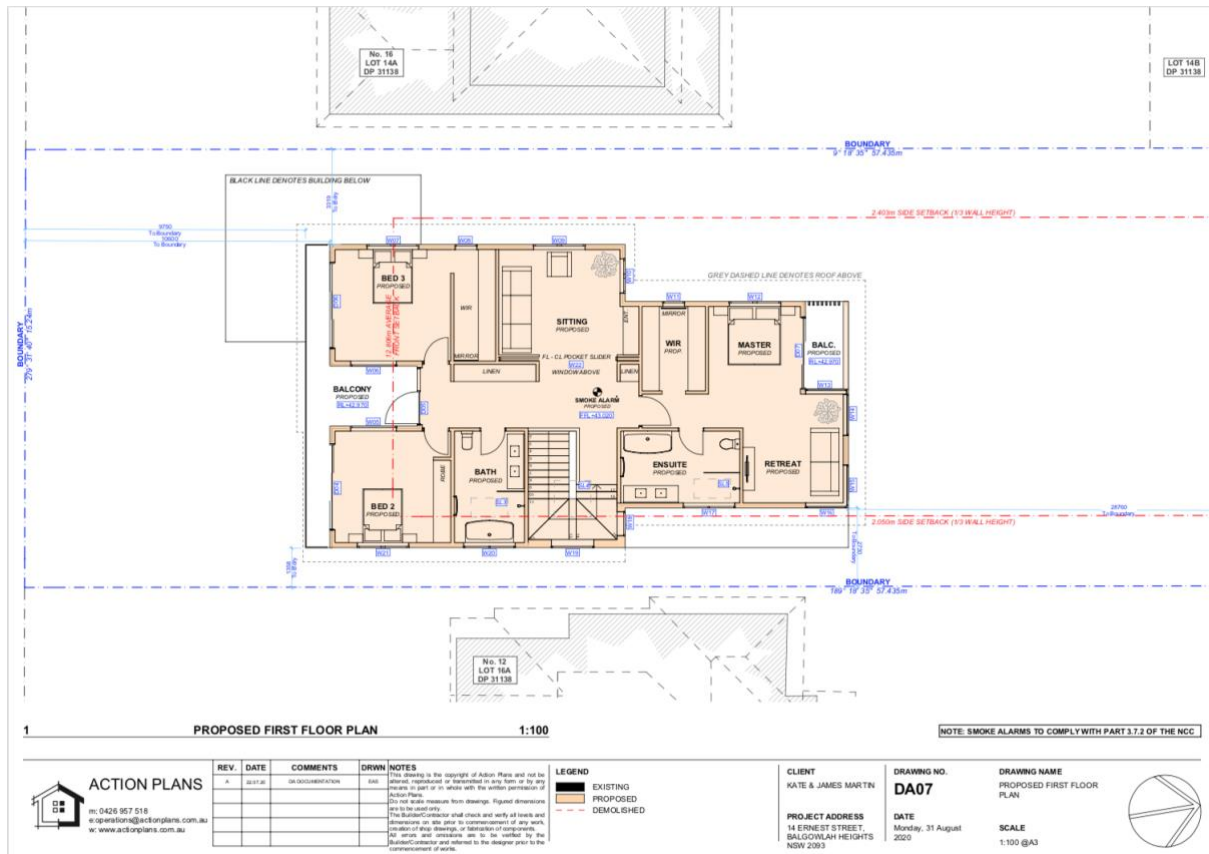
Bathroom

Bedroom 2 with built in robe

Bedroom 3 with built in robe

Sitting area

Linen cupboards



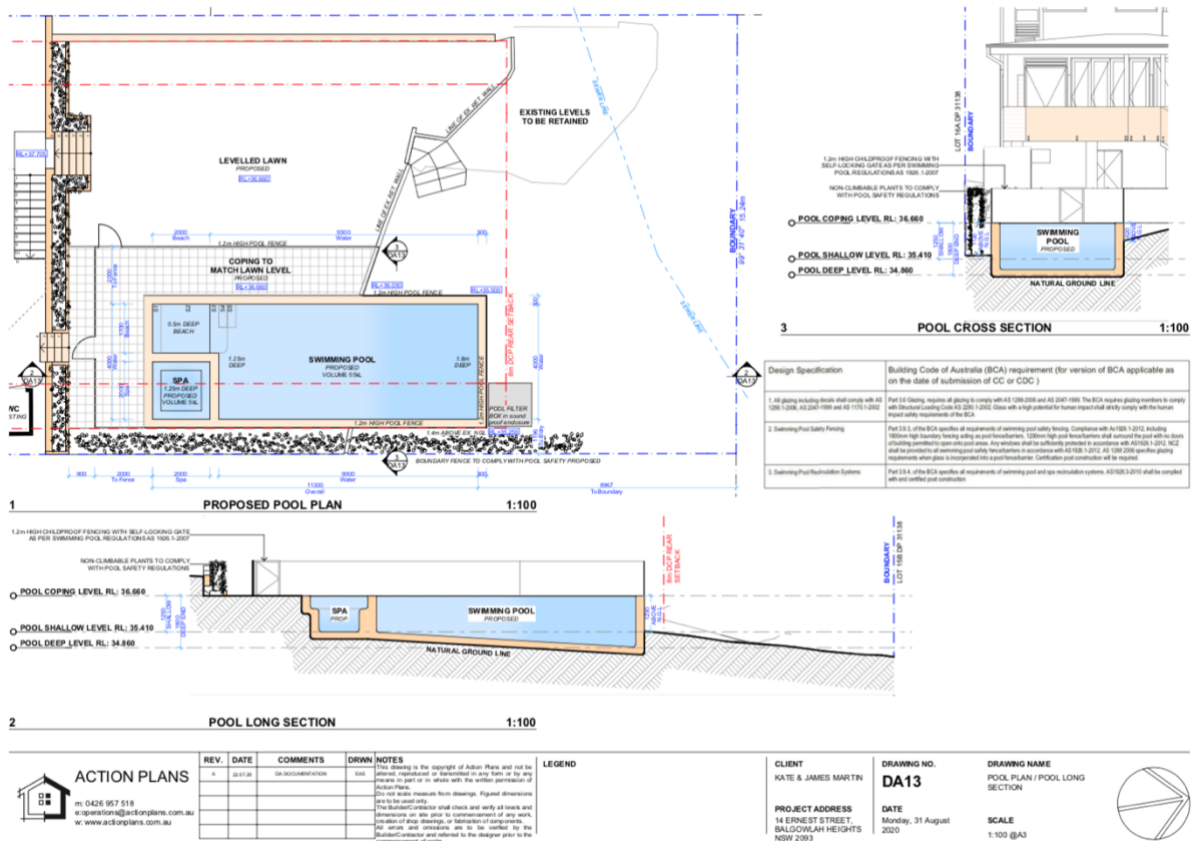
## POOL AND REAR YARD

In-ground pool with spa with a volume of 55mL (pool) and 5mL (spa) and dimensions of 11.3m x 4m and maximum depth of 1.8m.

Raising of lawn by 600mm

Paved pool surrounds with compliant fencing as detailed on plans

Retaining wall and planter box



## FRONT YARD

New timber and masonry front fence 1.6m high.

New path to entry of the dwelling

New driveway

New lawn area



## Coorey v Municipality of Hunters Hill

We ask Council to consider whether this DA should be better described as a New Build.

We contend that under Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187, that this proposed development must be considered a New Build Development and not an Alteration & Addition.

The Coorey Planning principle commences with a question:

*The first question to be considered is "what is the purpose for determining whether this application should be characterised as being for additions and/or alterations to an existing structure rather than an application for a new structure?"*

*The answer to this fundamental question will frame the approach to be undertaken to the analytic framework set out below.*

### **Qualitative issues:**

*How is the appearance of the existing building to be changed when viewed from public places?*

*To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places?*

*To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area?*

*What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?*

*What is the extent, if any, of any proposed change to the use of the building?*

*To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?*

*To what extent, if any, are the existing access arrangements for the building proposed to be altered?*

*To what extent, if any, will the outlook from within the existing building be altered as a consequence the proposed development?*

*Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?*

### **Quantitative issues**

*To what extent is the site coverage proposed to be changed?*

*To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?*

*To what extent is the building envelope proposed to be changed?*

*To what extent are boundary setbacks proposed to be changed?*

*To what extent will the present numerical degree of landscaping on the site be changed?*

*To what extent will the existing floor space ratio be altered?*

*To what extent will there be changes in the roof form?*

*To what extent will there be alterations to car parking/garaging on the site and/or within the building?*

*To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?*

*What relationship does the proportion of the retained building bear to the proposed new development?*

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

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

## **Commentary**

We contend that the qualitative and quantitative issues all point to the fact that this DA should not be considered as an Alteration & Addition, but a New Build.

The first consideration for Council is whether the retained structure is so tokenistic to be irrelevant compared with the changed scope of the new works.

The proposed demolition is so extensive to cause that which remains to lose the characteristics of the form of the existing structure.

The extensive nature of the development is a considerable departure to the existing small-scale situation.

The dwelling is extensively extended, raised, and has a completely new roof structure.

There are multiple new structures proposed that changes the environment completely.

As Coorey states: *“Obviously, the greater the overall extent of departure from the existing position, the greater the likelihood the proposal should be characterised as being for a new building”.*

We contend that this is a New Build and we would ask Council to consider this matter closely.

## OUTSTANDING INFORMATION

### Overshadowing Diagrams

The Applicant is required to submit hourly solar access diagrams on our western windows to assess compliance, caused by non-compliant wall height and non-compliant side setback.

We ask Council to obtain from the Applicant hourly overshadowing drawings to confirm compliance with the DCP:

- *for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);*
- *for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.*

### Height Poles

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

The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings, including the roof ridge heights.

## **MATTERS OF CONCERN**

We are concerned that these impacts will negatively impact the level of amenity currently enjoyed.

The following aspects of the proposal are of concern:

- The extent of the proposed building envelopes
- The siting and extent of the proposed dwelling without having sufficient consideration for maintaining amenity

We provide further details of these matters below and request Council's close consideration of these in the assessment of the application.

We are concerned that the SEE has failed to properly address our amenity concerns, and is suggesting that the DA accords with LEP & DCP outcomes and controls when it clearly it does not.

The non-compliance to LEP and DCP outcomes and controls forms the basis of our objection.

The subject site is of a large size, and there is no reason, unique or otherwise why a fully compliant solution to all outcomes and controls cannot be designed on the site.

This letter of objection will detail our concerns, and our amenity losses that have arisen as a direct result of the non-compliance to outcomes and controls.



## STATUTORY PLANNING FRAMEWORK

### Manly Local Environmental Plan 2013

The following matters are relevant to the development under the MLEP 2012:

Provision	Compliance	Consideration
Part 1 Preliminary		
1.2 Aims of Plan	No	The proposal does not comply with the aims of the plan.
Land Use Table		
Zone R2 Low Density Residential	No	The proposal is defined as a dwelling house and is permissible with consent in the R2 Low Density Residential zone. The proposal does not satisfy the zone objectives.
Part 4 Principle Development Standards		
4.3 Height of Buildings	No	A maximum height of 8.5m is permitted.  A height greater than 8.5m is proposed, at 9.52m 47.519-38.0 contour to eastern boundary = <b>9.52m</b> <b>12% non-compliance</b>
4.6 Exceptions to development standards	See discussion	

#### Aims of the Plan

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property.

*(2) The particular aims of this Plan are as follows:*

*(a) in relation to all land in Manly:*

- (i) to promote a high standard of urban design that responds to the existing or desired future character of areas, and*
- (ii) to foster economic, environmental and social welfare so that Manly continues to develop as an accessible, sustainable, prosperous, and safe place to live, work or visit, and*
- (iii) to ensure full and efficient use of existing social and physical infrastructure and the future provision of services and facilities to meet any increase in demand, and*
- (iv) to ensure all development appropriately responds to environmental constraints and does not adversely affect the character, amenity or heritage of Manly or its existing permanent residential population,*
- (b) in relation to residential development:*
  - (i) to provide and maintain a diverse range of housing opportunities and choices that encourages affordable housing to cater for an ageing population, changing demographics and all socio-economic groups, and*
  - (ii) to ensure high quality landscaped areas in the residential environment, and*
  - (iii) to encourage higher density residential development to be located close to major transport nodes, services and employment opportunities, and*
  - (iv) to maintain active retail, business and other non-residential uses at street level while allowing for shop top housing in centres and offices at upper floors in local centres,*

## **Zone and Objectives**

The subject property is zoned R2 pursuant to Manly Local Environmental Plan 2013 ("MLEP 2013")

### *Objectives of zone*

*To provide for the housing needs of the community within a low density residential environment.  
To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property.

## **Height of Buildings**

The proposed development does not provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality. The proposed development does not control the bulk and scale of buildings.

We contend that the DA fails the objectives of this control as follows:

Pursuant to Clause 4.3 of MLEP 2013 the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control are as follows:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

*(b) to control the bulk and scale of buildings,*

*(c) to minimise disruption to the following:*

*(i) views to nearby residential development from public spaces (including the harbour and foreshores),*

*(ii) views from nearby residential development to public spaces (including the harbour and foreshores),*

*(iii) views between public spaces (including the harbour and foreshores),*

*(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

*(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

We contend that the non-compliance leads directly to our amenity loss:

*(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

**Comment:** There are roof forms to this height in this immediate area.

*(b) to control the bulk and scale of buildings,*

**Comment:** There are envelopes that present such excessive built form in this zone.

*(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

**Comment:** The loss of solar access to our windows is of extreme concern to us. The outcome does not accord with DCP requirements. We will lose considerable solar access to all our habitable rooms, and we will lose unreasonable solar access to our private open space, directly from the proposed non-compliant development.

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied.

The clause 4.6 variation request has been prepared by the Applicant, however the request does not demonstrate that the development is consistent with the objectives of the zone, and consistent with the objectives of the building height standard.

Strict compliance is reasonable and necessary, to ensure amenity outcomes.

There are insufficient environmental planning grounds exist to justify the variation sought.

The 4.6 variation request is not well founded.

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property.

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”*

Commentary:

The non-compliant elements of the proposed development, particularly the proposed Upper Floor Levels, would have most observers finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context’*



## Manly Development Control Plan 2013

The following matters are relevant to the development under MDCP:

Provision	Compliance with Control	Compliance with Objectives
1.7 Aims and Objectives of this Plan	No	No
Streetscape	No	No
3.1.1.3 Roofs and Dormer Windows	No	No
3.3 Landscaping	No	No
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)		
3.4.1 Sunlight Access & Overshadowing	No	No
3.4.1.2 Maintaining Solar access into living rooms of adjacent properties Privacy & Security	No	No
4.1.2 Height of Buildings (incorporating wall height, number of storeys and roof height)	No	No
4.1.4.2 Side setbacks and secondary street frontages	No	No
4.1.5 Open Space and Landscaping 4.1.5.1 Minimum Residential Total Open Space Requirements	No	No
4.1.7 First Floor Additions	No	No

4.1.8 Development on Sloping Sites	No	No
4.1.19 Swimming Pools, Spas and Water Features	No	No

## 1.7 Aims and Objectives of this Plan

The General Aims of this plan are to:

- a) Ensure that development contributes to the quality of the natural and built environments.
- b) Encourage development that contributes to the quality of our streetscapes and townscapes.
- c) Ensure that development is economically, socially and environmentally sustainable and to require the principles of ecologically sustainable development to be taken into consideration when determining DAs.
- d) Ensure future development has consideration for the needs of all members of the community.
- e) Ensure development positively responds to the qualities of the site and its context.
- f) Ensure development positively responds to the heritage and character of the surrounding area

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property.

## Streetscape

### 3.1.1.1 Complementary Design and Visual Improvement

- a) *Development in the streetscape (including buildings, fences and landscaping) should be designed to:*
  - i) *complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
  - ii) *ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*
  - iii) *maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment,*

- whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;*
- iv) avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;*
  - v) address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;*
  - vi) visually improve existing streetscapes through innovative design solutions; and*
  - vii) incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design.*

*Setback Principles in Low Density Areas*

- b) In lower density areas including LEP Zones R2, E3 & E4, setbacks should be maximised to enable open space to dominate buildings, especially on the foreshore.*

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property.

The non-compliant building height and non-compliant side setback is clearly visible from the street, and that is unacceptable.

### **3.1.1.3 Roofs and Dormer Windows**

The non-compliant building height and non-compliant side setback that is the outcome of the roof design is unacceptable. We offer constructive alternatives to overcome these matters.

### **3.3 Landscaping**

The landscaping area is non-compliant to controls, and we ask Council to ensure that the proposed development is brought back into compliance.

We are concerned over the TPZ of our trees near the boundary including two mango trees and a large protected gum to the rear of our property. No Arborist Report has been prepared to identify these matters.



PROTECTED GUM AT REAR OF OUR PROPERTY: NO ARBORIST REPORT





**TWO MANGO TREES ON OUR PROPERTY CLOSE TO NEW EXTENSION: NO ARBORIST REPORT**

### 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

The DCP states:

*Relevant DCP objectives to be met in relation to these paragraphs include the following:*

*Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.*

*Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.*

#### *Designing for Amenity*

- a) Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property. This is especially relevant in higher density areas, development adjacent to smaller developments and*

*development types that may potentially impact on neighbour's amenity such as licensed premises.*

- b) Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.*
- c) The use of material and finishes is to protect amenity for neighbours in terms of reflectivity. The reflectivity of roofs and glass used on external walls will be minimal in accordance with industry standards. See also Council's Administrative Guidelines regards DA lodgement requirements for materials and finishes.*

We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property. The excessive, non-compliant envelope reduces sunlight to our western windows, and positions windows much closer to our western windows causing privacy concerns.

### **3.4.1 Sunlight Access & Overshadowing**

*Relevant DCP objectives to be met in relation to this part include the following:*

- Objective 1) To provide equitable access to light and sunshine.*
- Objective 2) To allow adequate sunlight to penetrate:  
private open spaces within the development site; and  
private open spaces and windows to the living spaces/ habitable rooms  
of both the development and the adjoining properties.*
- Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:  
encouraging modulation of building bulk to facilitate sunlight  
penetration into the development site and adjacent properties; and  
maximising setbacks on the southern side of developments to encourage  
solar penetration into properties to the south.*

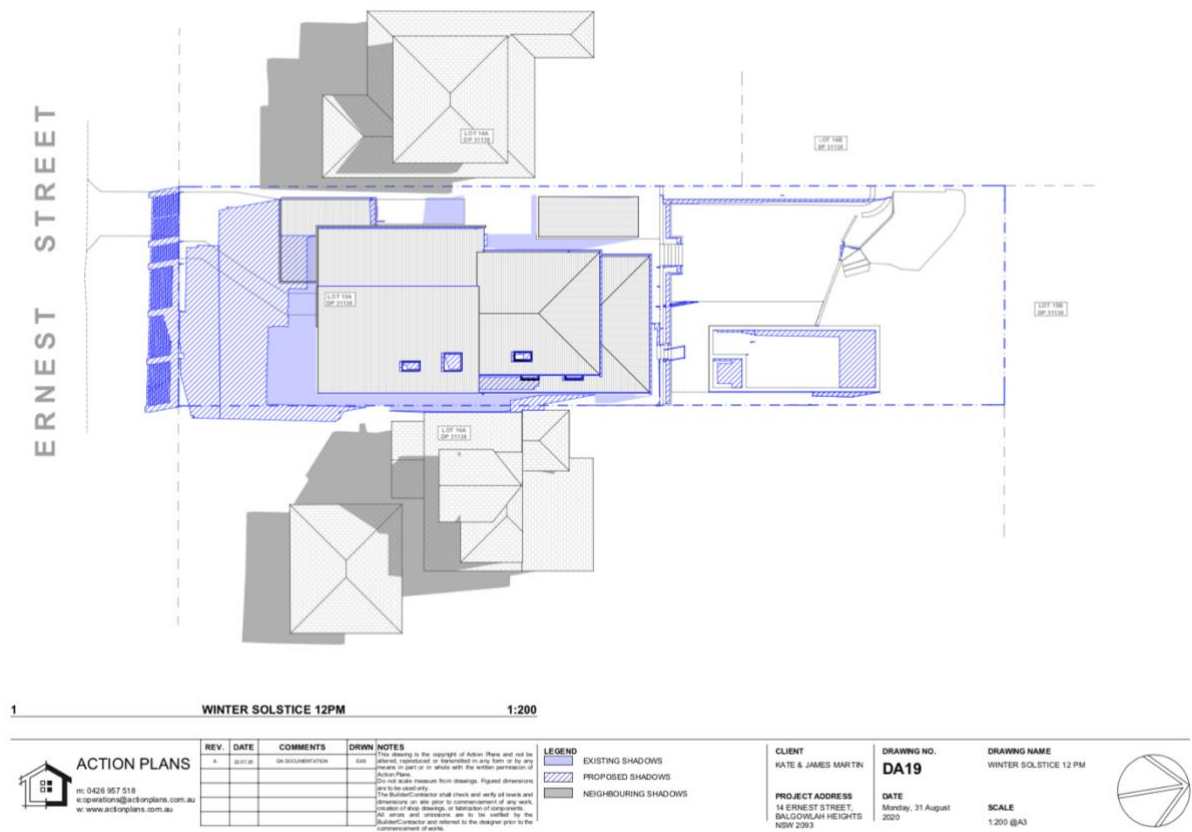
We contend that the proposed development does not accord with this clause due to the multiple non-compliances to development standards, that cause direct amenity harm to our property.

### **3.4.1.2 Maintaining Solar access into living rooms of adjacent properties**

*In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:*

- a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);*

- b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);
- c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.



WINTER SOLSTICE Noon





INTERNAL VIEW OF KITCHEN & LIVING ZONES AT GROUND FLOOR FACING WEST TO THE SUBJECT SITE. THESE AREAS WILL BE POORLY AFFECTED BY LOSS OF AFTERNOON SUNSHINE BY THE NON-COMPLIANT ENVELOPE.





INTERNAL VIEW OF LIVING ZONES AT GROUND FLOOR FACING WEST TO THE SUBJECT SITE. THESE AREAS WILL BE POORLY AFFECTED BY LOSS OF AFTERNOON SUNSHINE BY THE NON-COMPLIANT ENVELOPE.



INTERNAL VIEW OF STUDY ZONES AT GROUND FLOOR FACING WEST TO THE SUBJECT SITE. THESE AREAS WILL BE POORLY AFFECTED BY LOSS OF AFTERNOON SUNSHINE BY THE NON-COMPLIANT ENVELOPE.

### Privacy & Security

Relevant DCP objectives to satisfy in relation to this part include the following:

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

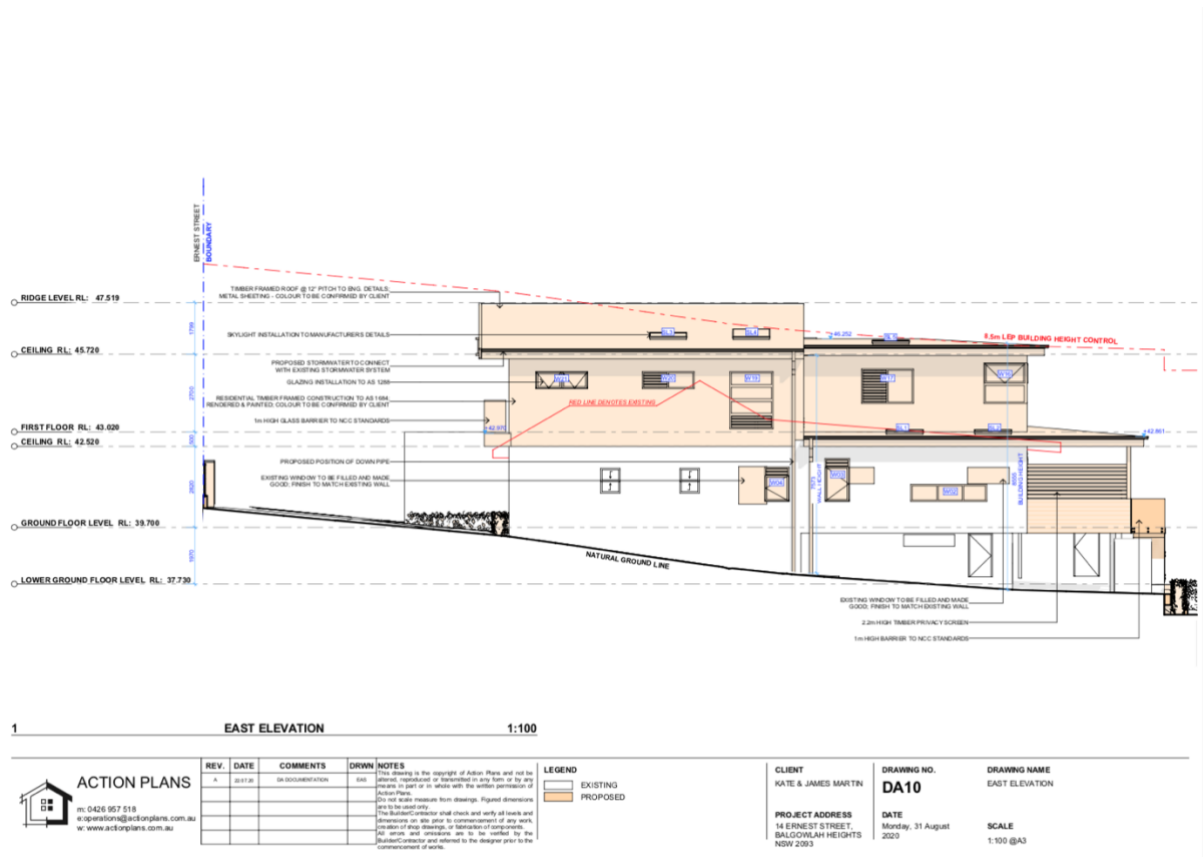


We contend that the proposed development does not accord with this control.

We ask for a compliant side setback of 2.75m facing our property at the first floor. This outcome will allow greater privacy outcome from the proposed first floor windows by the increase of distance. We ask for all windows facing the side setback zone to have 1.6m high sills.

3.4.2.1 Window Design and Orientation

- a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.
- b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.



EAST ELEVATION

We ask for all windows facing the side setback zone to have 1.6m high sills, and be redesigned to be offset to our windows.

## Part 4 Development Controls and Development Types

### 4.1 Residential Development Controls

#### 4.1.2 Height of Buildings (incorporating wall height, number of storeys and roof height)

Clause 4.3 of the LEP restricts the height of any development on the subject site to 8.5 metres. The proposed additions result in a maximum height **of 9.52m** and not 8.974 metres as the applicant suggests, which significantly varies the development standard.

The DCP permits a maximum wall height of 7.2 metres.

The non-compliance leads directly to amenity loss.

##### 4.1.4.2 Side setbacks and secondary street frontages

We dispute the Statements made within the SEE

We require a full 1/3 wall height side setback at the first floor to 2.75m.

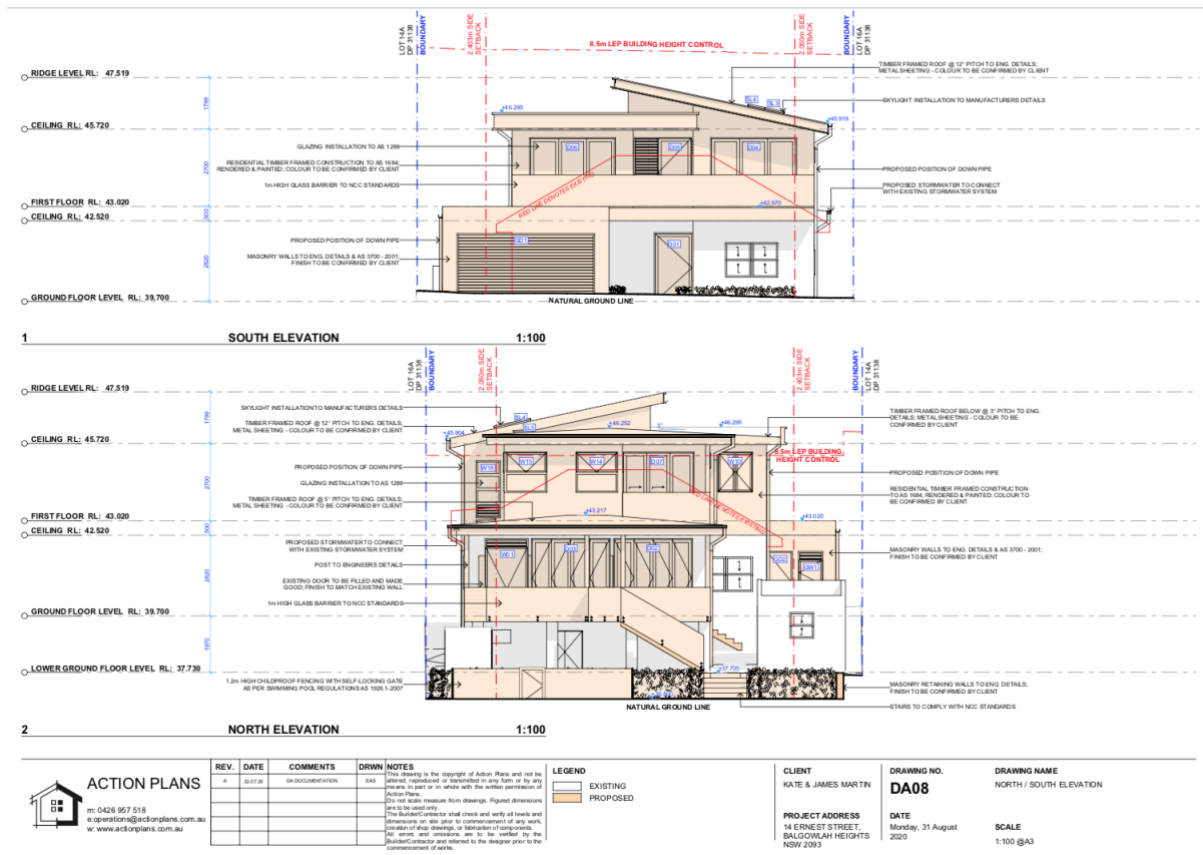
The proposed non-compliant side setback facing our property

- A negative presentation to the streetscape
- Privacy, solar access, is not retained for neighbours
- Streetscape character is not maintained and improved

The pool fence built on the boundary is unacceptable. The pool fence requires a 2m side setback, with the pool increased in side setback appropriately.

The proposal would not be compatible with the desired future character with regard to building height and roof form.

The proposal does not demonstrate that the variation minimises the adverse impacts of bulk and scale of buildings. The proposal has not adequately demonstrated that areas of noncompliance will not result in the loss of amenity to neighbours. The proposal results in adverse effects of bulk and scale in terms excessive visual impact on neighbours.



## ELEVATION NORTH & SOUTH

The North/South Elevations show the unacceptable bulk and scale of the proposed development, with non-compliant building height, wall height and side setback. Note that the stated side setback non-compliance is false and misleading. The wall height is 8.2m requiring a 2.75m side setback facing our property. The maximum building height is 9.52m.

### 4.1.5 Open Space and Landscaping

#### 4.1.5.1 Minimum Residential Total Open Space Requirements

The DCP requires a total of 55% of the site to be open space with a minimum 35% of that open space to be landscaped area.

The development proposes does not accord with this provision.

#### 4.1.7 First Floor Additions

The proposed upper floor addition is not complementary to the site and streetscape and is not appropriate with its impact on neighbouring properties.

The DCP states:

#### 4.1.7.1 First Floor Additions

- a) *First floor additions must complement the architectural style of the ground floor and where possible retain existing roof forms. Notwithstanding setback provisions, the addition may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues.*
- b) *The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of the former Manly Council area. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure.*

We contend that the first floor additions must fully accord with side setback and building height controls to avoid excessive amenity loss.

#### 4.1.8 Development on Sloping Sites

*The DCP states:*

*Relevant DCP objectives to be met in relation to these paragraphs include:*

- Objective 1) To ensure that Council and the community are aware of, and appropriately respond to all identified potential landslip & subsidence hazards.*
- Objective 2) To provide a framework and procedure for identification, analysis, assessment, treatment and monitoring of landslip and subsidence risk and ensure that there is sufficient information to consider and determine DAs on land which may be subject to slope instability.*
- Objective 3) To encourage development and construction this is compatible with the landslip hazard and to reduce the risk and costs of landslip and subsidence to existing areas.*

*Requirements*

- a) *The design of development must respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.*
- b) *Developments on sloping sites must be designed to:*
  - i) *generally step with the topography of the site; and*

- ii) *avoid large undercroft spaces and minimise supporting undercroft structures by integrating the building into the slope whether to the foreshore or a street.*

The fundamental problem with the design concept is that the design does not step with the sloping topography, and presents large undercroft spaces. The main height controls of building height and wall height are significantly breached.

In this respect, a better design option, a more skilful design, would be to present a new build development with the two storey envelope simply stepping down the slope.

#### **4.1.19 Swimming Pools, Spas and Water Features**

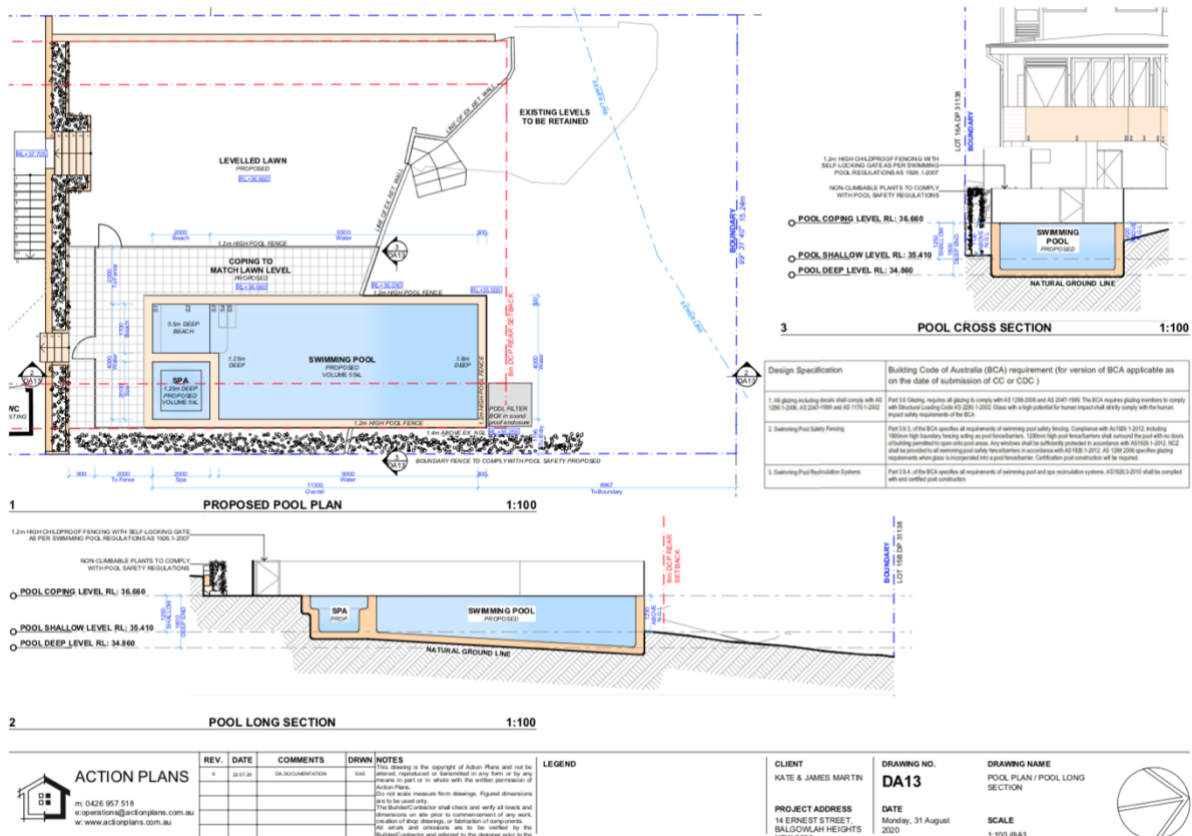
The proposed swimming pool is inappropriate in regards to character and amenity of the neighbourhood.

It has setbacks to the side boundary is inappropriate, as if forces a pool fence to be constructed on the boundary.

As conditioned in other Council consents [[DA2020/0318](#)], we ask for a 2m side setback for the pool fence, with the pool set a further 2m away from the pool fence.

*“ The pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the boundary”*

The pool is non-compliant to height and requires to be reduced in height.



## POOL

### 4.1.10.1 Exceptions to maximum height of Fences

We ask Council to condition any consent to accord with these controls.

- In relation to stepped fences or walls on sloping sites (see paragraph 4.1.8), the fence and/or wall height control may be averaged.*
- In relation to open/ transparent fences, height may be increased up to 1.5m where at least 30 percent of the fence is open/ transparent for at least that part of the fence higher than 1m.*

## **NSW LEC PLANNING PRINCIPLES**

We bring to the attention of Council numerous **NSW LEC Planning Principles** that have relevance to this DA.

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.”*

### **Commentary:**

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

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

*“Would it require the loss of reasonable development potential to avoid the impact?”*

*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?”*

### **Commentary:**

The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal.

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.”*

### **Commentary:**



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”*

Commentary:

The non-compliant elements of the proposed development, particularly caused from the non-compliant front setbacks, the excess height, and the 5m boundary walls, would have most observers finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context’*

## **AMENDED PLANS: PROPOSED CONDITIONS OF CONSENT TO ANY APPROVAL:**

We ask that Council request that the Applicant submit Amended Plans to resolve these matters in full, prior to determination.

These conditions would preferably all be dealt with under resubmission of Amended Plans, or by a withdrawal of this DA and a submission of a new DA.

We present them for Council's consideration.

- Increase Eastern First Floor Side Setback to 2.75m
- Reduce Building Roof Height to be below 8.5m maximum building height
- Reduce eaves to 300mm
- Reduce Roof to 2-degree pitch
- Raise sills to 1.6m high to windows W02, 03, 04 & W16, 17, 18, 19, 20, 21
- The pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the boundary. The pool to be relocated with a greater side setback. The pool must not be more than 1m above *ground level existing* in any location, and to be lowered below RL 36.5, and not exceed the RL 35.5 contour. Landscape zone in the 2m side setback zone adjacent the pool to be deep soil, dense planted with species 3m high at close centres.

We ask Council to consider all conditions within Appendix A

## **ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000**

Applicable regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia and *Home Building Act 1989*, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection may be addressed by appropriate consent conditions in the event of an approval.

## **LIKELY IMPACTS OF THE DEVELOPMENT**

This assessment has found that the proposal will have a detrimental impact on the natural and built environments pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.

## **SUITABILITY OF THE SITE**

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

## **PUBLIC INTEREST**

The proposal is not in the public interest because it results in a development of excessive bulk and scale which has adverse amenity impacts on adjoining properties and the broader locality.

## CONCLUSION

The proposed development does not satisfy the relevant objectives of the LEP and the relevant outcomes and controls contained in the DCP as they are reasonably applied to an application proposing a new dwelling.

The outcome is a building that causes poor amenity outcomes and other amenity loss concerns due to non-compliance to multiple residential outcomes and controls.

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, outcomes and controls.

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

Having given due consideration to the relevant considerations pursuant to 4.15 of the Environmental Planning & Assessment Act 1979 (as amended) it has not been demonstrated that the proposed development is appropriate for approval.

This application results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

In consideration of the proposal and the merit consideration of the development, the proposal is not considered to be consistent with the objectives, outcomes and controls of the DCP and objectives, aims, outcomes and controls of the LEP.

The resultant development is not considered to be an appropriate outcome for the site as it fails the balance between the development of the site and the retention of significant natural features and the maintenance of a reasonable level of amenity for adjoining properties.

The processes and assessments have not been satisfactorily addressed.

The DA scheme submitted requires to be amended, and we ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, then we ask Council to simply issue a refusal.

We will welcome the opportunity to further expand on any of the issues once Amended Plans are submitted, identified within this Submission.

If this does not occur the Development Application should be **REFUSED** by Council.

Yours faithfully,

Anita Catherine & Brett David Christie  
12 Ernest Street  
Balgowlah Heights  
NSW 2093

#### Appendix:

#### Conditions of Consent

Compliance with other Departments, Authority or Service Requirement

Prescribed Conditions

General Requirements

#### Approved Land Use

*Nothing in this consent shall authorise the use of the site as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, as defined within the LEP. Any variation to the approved land use and/occupancy beyond the scope of the above definition will require the submission to Council of a new DA.*

#### Conditions to be satisfied prior to the issue of the CC

Amendments to the approved plans [*\*see attached list in body of written submission*]

All windows facing neighbours to have obscured glazing

All privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.

Pre-commencement Dilapidation Report

Compliance with standards [demolition]  
Compliance with standards  
Boundary Identification Survey

Structural Adequacy & Excavation Work  
Geotechnical Report Recommendations to be incorporated into designs and structural plans  
Engineering Assessment  
Engineers Certification of Plans, including all retaining walls  
Tanking of Basement Level  
Installation & Maintenance of Sediment & Erosion Control

Demolition Traffic Management Plan  
Construction Traffic Management Plan  
Waste Management Plan  
Waste & Recycling Requirements  
Soil and Water Management Program

Vehicle Crossing Application  
Pedestrian sight distance at property boundary  
Location of security gate and intercom system  
Minimum driveway width  
Access driveway

On-site Stormwater Detention Details  
Stormwater Disposal  
Sydney Water  
Water Quality Management

External finishes to Roof  
Colours & Materials

New Landscaping Plan  
Project Arborist  
Tree Protection  
Tree Trunk, Root and Branch Protection  
Root Mapping  
Tree Removal within the Road Reserve

Mechanical plant location  
AC Condenser Units

No excavation within 1m of boundary

## Protection of Neighbours assets

Pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the boundary

Noise from all plant rooms including roof top mechanical plant room, mechanical ventilation for car parks, extraction units and exhaust fans, air condition units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open.

Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

## Conditions that must be addressed prior to any commencement

Pre-Construction Dilapidation Report  
Installation and maintenance of sediment and erosion control

Pedestrian Sight Distance at Property Boundary  
Demolition and Construction Traffic Management Plan  
On Street Work Zones and Permits  
Kerbside Parking Restrictions

Project Arborist  
Tree Removal  
Tree Removal in the road reserve  
Tree Trunk, Branch, and Root Protection  
Tree protection  
Tree and vegetation removal from property

## Conditions to be complied with during demolition and building works

Road Reserve  
Removing, handling and disposing of asbestos  
Demolition works – Asbestos

Property Boundary levels  
Survey Certificate

Implementation of Demolition Traffic Management Plan  
Implementation of Construction Traffic Management Plan  
Traffic Control during Road Works

Vehicle Crossings  
Footpath Construction

Geotechnical issues  
Detailed Site Investigation, Remedial Action Plan & Validation  
Installation and maintenance of sediment controls  
Building materials  
Rock Breaking  
Protection of adjoining property  
Vibration to reduce to 2.5mm/sec  
No excavation within 1m of boundary

Waste Management during development  
Waste/Recycling Requirements

Tree Protection – Arborist Supervision of Works  
Tree and vegetation protection  
Tree Condition  
Native vegetation protection  
Protection of rock and sites of significance  
Aboriginal heritage

Protection of Sites of Significance  
Notification of Inspections

**Conditions which must be complied with prior to the issue of the OC**

Post Construction Dilapidation Report

Certification of Structures  
Geotechnical Certificate  
Environmental Reports Certification  
Landscape Completion Certification  
Certification of Civil Works & Works as executed data on council land  
Fire Safety Matters  
Retaining Wall

Required Planting

Positive Covenant and Restriction as to User for On-site stormwater disposal structures  
Positive Covenant for the maintenance of stormwater pump out facilities



Reinstating the damaged road reserve during construction

Condition of retained vegetation

Stormwater disposal

Works as executed drawings - stormwater

Installation of solid fuel burning heaters: No approval is granted for the installation of a solid/fuel burning heater. Certification of solid fuel burning heaters

Required Tree Planting

Required Planting

Acoustic treatment of pool filter

Noise Nuisance from plant

Lighting Nuisance

Swimming pool requirements

Garbage and Recycling Facilities

House number Building Number

Waste Management Confirmation

Privacy Screens

Reinstatement of Kerbs

Control of noise, odour and vibrations from equipment within plant rooms and ventilation systems connected with the building to ensure noise and vibration from this equipment does not impact on the health and well-being of persons living within the complex and other surrounding premises.

Plant room and equipment for operational conditions - Noise and vibrations. Noise from all plant rooms including roof top mechanical plant room, mechanical ventilation for car parks, extraction units and exhaust fans, air condition units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open. Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

Mechanical Ventilation certification: Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668: the use of mechanical ventilation.

**Ongoing Conditions that must be complied with at all times**

Approved Land Use  
Maintenance of solid fuel heater  
Operation of solid fuel heaters  
Landscape maintenance  
Landscaping adjoining vehicular access  
Maintenance of stormwater treatment measures  
Retention of Natural Features  
No additional trees or scrub planting in viewing or solar access corridors of neighbours  
Environmental and Priority Weed Control  
Control of weeds  
No planting environmental weeds  
Maintain fauna access and landscaping provisions  
Noise  
Noise Nuisance from plant  
Swimming pool filter, pump and AC units [noise]  
Outdoor lighting  
Lighting Nuisance  
Plant room and equipment for operational conditions - Noise and vibrations