
Sent: 20/02/2020 9:20:51 AM
Subject: 1 Tabalum Road, Balgowlah Heights 2093 DA 2020/0077 WRITTEN
SUBMISSION: LETTER OF OBJECTION
Attachments: Submission Gazzilli DA 2020 0077.docx;

Mr Gian Gazzilli & Mrs Lucy Gazzilli

3 Tabalum Road

Balgowlah Heights 2093

NSW

20 February 2020

Chief Executive Officer

Northern Beaches Council

725 Pittwater Road

Dee Why NSW 2099

Northern Beaches Council

council@northernbeaches.nsw.gov.au

cc. The Commissioner, NSWRFSS: Section 79BA Referral [appendix A]

Jo-Anne.Robson@rfs.nsw.gov.au

Dear Chief Executive Officer,

Re:

1 Tabalum Road, Balgowlah Heights 2093

DA 2020/0077

WRITTEN SUBMISSION: LETTER OF OBJECTION

Submission: Gazzilli

Please find attached a written submission on the above DA.

Regards,

Mr Gian Gazilli & Mrs Lucy Gazzilli

3 Tabalum Road

Balgowlah Heights 2093

NSW

Mr Gian Gazilli & Mrs Lucy Gazzilli
3 Tabalum Road
Balgowlah Heights 2093
NSW

18 February 2020

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

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

cc. The Commissioner, NSWRFSS: Section 79BA Referral [appendix A]
Jo-Anne.Robson@rfs.nsw.gov.au

Dear Chief Executive Officer,

Re:
1 Tabalum Road, Balgowlah Heights 2093
DA 2020/0077

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission: Gazzilli

This document is a submission by way of objection to **DA 2020/0077**
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:

*“Demolition of Existing House, Pool and Driveways. Construction of New
House, Pool, Driveway and Landscaping.”*

\$2.85m Cost of Work

The northern boundary of the subject site forms a common boundary with my property.

My concern is the significant overdevelopment as best identified as follows:

- **Building Height 10.74 v 8.5m control [126% non compliance]**
- **FSR c.0.5 v 0.4 [125% non compliance]**
- **Wall Heights 10.34m v 8.0m [129% non compliance]**
- **Number of Storey 4 v 2 [200% non compliance]**
- **Front Setback Tabalum 6.13m v 7.0m [114% non compliance]**
- **Setback Cutler 3.28m v 1.5m [218% non compliance]**
- **Northern Side Setback 3.0m v 2.78m [108% non compliance]**
- **Rear Setback 8m v 1.23m [650% non compliance]**
- **Pool Setback to Neighbour 1.23m v 4.0m [325% non compliance]**
- **Pool above ground 4.0m v 1.0m [400% non compliance]**
- **Pool & Concourse Proportion of Total Open Space c.75% v 30% [250% non compliance]**
- **Fences 5.62 v 1.0m [562% non compliance]**
- **Excavation 6.4m v 1.0m [640% non compliance]**
- **Excavation onto Northern Boundary**

This Written Submission will address the following matters:

1. Introduction

Characteristics of Objector's Property
Matters of Concern

2. Site Description

3. Proposed Development

4. Misleading Information & Outstanding information

5. Statutory Planning Framework:

MLEP

Principal Development Standards:

Clause 1.2 Aims of Plan
Clause 4.3 Height of Building
Clause 4.4 Floor Space Ratio
Clause 4.5 Calculation of FSR and Site Area
Clause 4.6 Exceptions to Development Standards
Clause 6.2 Earthworks
Clause 6.9 Foreshore Scenic protection

MDCP

Part 1

1.7 Aims and Objectives of this Plan

Part 3 General Principles of Development

3.1 Streetscapes and Townscapes
3.1.1 Streetscape (Residential areas)
3.1.1.1 Complementary Design and Visual Improvement
3.1.1.2 Front Fences and Gates
3.1.1.3 Roofs and Dormer Windows
3.1.1.4 Garages, Carports and Hardstand Areas
3.3.1 Landscaping Design
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)
3.4.1 Sunlight Access and Overshadowing
3.4.1.5 Excessive Glare or Reflectivity Nuisance
3.4.2 Privacy and Security
3.4.2.1 Window Design and Orientation
3.4.2.2 Balconies and Terraces
3.4.2.3 Acoustical Privacy (Noise Nuisance)
3.4.3 Maintenance of Views
3.7 Stormwater Management
3.9 Mechanical Plant Equipment
3.9.1 Plant Rooms
3.9.2 Roof-top Plant, Lift Towers etc.
3.9.3 Noise from Mechanical Plant

Part 4 Development Controls

4.1 Residential Development Controls
4.1.2 Height of Buildings

- 4.1.2.1 Wall Height
- 4.1.2.2 Number of Storeys

- 4.1.2.3 Roof Height
- 4.1.3 Floor Space Ratio (FSR)
 - 4.1.3.2 Exceptions to FSR for Plant Rooms
 - 4.1.3.3 Exceptions to FSR for Open Balconies
- 4.1.4 Setbacks (front, side and rear) and Building Separation
 - 4.1.4.1 Street Front setbacks
 - 4.1.4.2 Side setbacks and secondary street frontages
 - 4.1.4.4 Rear Setbacks
 - 4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2
- 4.1.5 Open Space and Landscaping
 - 4.1.5.1 Minimum Residential Total Open Space Requirements
 - 4.1.5.2 Landscaped Area
- 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 - 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas
 - 4.1.6.4 Vehicular Access
- 4.1.8 Development on Sloping Sites
- 4.1.9 Swimming Pools, Spas and Water Features
 - 4.1.9.1 Height above ground
 - 4.1.9.2 Location and Setbacks
 - 4.1.9.3 Proportion of Total Open Space
- 4.1.10 Fencing
 - 4.1.10.1 Exceptions to maximum height of Fences
- 4.4.5 Earthworks (Excavation and Filling)
 - 4.4.5.1 General
 - 4.4.5.2 Excavation
 - 4.4.5.3 Filling
 - 4.4.5.4 Retaining walls

6. Statement of Environment Effects Rebuttal
7. Clause 4.6: Non Submission
8. NSW LEC Planning Principles
9. Proposed Conditions of Consent to any Approval

Massing Envelope Reductions
 Privacy Measures
 Other Conditions

10. Conclusion

Appendix A: NSW RFS Section 79BA Referral

Introduction

I write to submit my Written Submission to object to the above DA.

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

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

I have in the past made it very clear what my concerns are, and have presented very clear alternatives to overcome the problems. I do so again in this Written Statement.

Unfortunately with this latest DA I am still left with a non-compliant envelope that is causing me direct amenity loss.

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

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

It does seem unreasonable that the Applicant wishes to remove my amenity to improve his own, and is proposing a catalogue of non-compliant outcomes that would poorly affect my neighbours, the broader neighbourhood, and myself.

This Written Statement will continue to identify the amenity losses that I will suffer, and continues to present alternative solutions to overcome the problems in a reasonable way.

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

The DA scheme submitted requires to be amended, and I 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 I ask Council to either heavily condition any approval, or simply issue a refusal.

I am concerned that the FSR is well over controls, and in light of the absence of Clause 4.6 FSR written request, and other misleading and outstanding information, the Council may consider the need to reject the Development Application as being beyond power on grounds that Council, as consent

authority, has not been provided with sufficient probative material to form a proper basis for lawful action.

The Council as consent authority cannot be satisfied that the written request for Building Height adequately addresses the matters required by clause 4.6(3) by demonstrating that:

- (a) compliance is unreasonable or unnecessary; and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard

The excessive building height over a large portion of the proposed building footprint, causes view loss, solar loss, privacy issues, streetscape issues, and other poor outcomes.

In this Written Submission I list the conditions that I wish Council to consider in any approval.

I am concerned to the non-compliance of the MLEP Principal Development Standards:

- Clause 1.2 Aims of Plan
- Clause 4.3 Height of Building
- Clause 4.4 Floor Space Ratio
- Clause 4.5 Calculation of FSR and Site Area
- Clause 4.6 Exceptions to Development Standards
- Clause 6.2 Earthworks
- Clause 6.9 Foreshore Scenic protection

The non-compliance to Residential Development Controls is of deep concern and an example of overdevelopment:

- 4.1 Residential Development Controls
 - 4.1.2 Height of Buildings
 - 4.1.2.1 Wall Height
 - 4.1.2.2 Number of Storeys
 - 4.1.2.3 Roof Height
 - 4.1.3 Floor Space Ratio (FSR)
 - 4.1.3.2 Exceptions to FSR for Plant Rooms
 - 4.1.3.3 Exceptions to FSR for Open Balconies
 - 4.1.4 Setbacks (front, side and rear) and Building Separation

- 4.1.4.1 Street Front setbacks
- 4.1.4.2 Side setbacks and secondary street frontages
- 4.1.4.4 Rear Setbacks
- 4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2
- 4.1.5 Open Space and Landscaping
 - 4.1.5.1 Minimum Residential Total Open Space Requirements
 - 4.1.5.2 Landscaped Area
- 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 - 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas
 - 4.1.6.4 Vehicular Access
- 4.1.8 Development on Sloping Sites
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 - 4.1.9.1 Height above ground
 - 4.1.9.2 Location and Setbacks
 - 4.1.9.3 Proportion of Total Open Space
- 4.1.10 Fencing
 - 4.1.10.1 Exceptions to maximum height of Fences
- 4.4.5 Earthworks (Excavation and Filling)
 - 4.4.5.1 General
 - 4.4.5.2 Excavation
 - 4.4.5.3 Filling
 - 4.4.5.4 Retaining walls

The non-compliance to MLEP Principal Development Standards and MDCP Residential Development Controls is of deep concern. These non-compliances are directly attributable to the non-compliance to General Principles of Development, particularly Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) and other poor amenity outcomes.

Part 1

1.7 Aims and Objectives of this Plan

Part 3 General Principles of Development

3.1 Streetscapes and Townscapes

3.1.1 Streetscape (Residential areas)

3.1.1.1 Complementary Design and Visual Improvement

3.1.1.2 Front Fences and Gates

3.1.1.3 Roofs and Dormer Windows

3.1.1.4 Garages, Carports and Hardstand Areas

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- 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)
 - 3.4.1 Sunlight Access and Overshadowing
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 - 3.4.2 Privacy and Security
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 - 3.4.2.2 Balconies and Terraces
 - 3.4.2.3 Acoustical Privacy (Noise Nuisance)
 - 3.4.3 Maintenance of Views
- 3.7 Stormwater Management
- 3.9 Mechanical Plant Equipment
 - 3.9.1 Plant Rooms
 - 3.9.2 Roof-top Plant, Lift Towers etc.
 - 3.9.3 Noise from Mechanical Plant

The non-compliance to MLEP Principal Development Standards, MDCP Residential Development Controls, and MDCP General Principles of Development forms the basis of my objection.

My amenity will suffer from these non-compliances to controls.

Characteristics of my Property

My property is located to the north of the subject site.

Key aspects of my property are as follows:

Privacy between the existing dwelling on the subject site and my property is excellent, with little overlooking.

Views from my house extend from my Living Room south-east windows towards Sydney Heads, Middle Head, and the harbour. I watch the Cruise Liners sail out at from a seated position and a standing position in my Living Room.

Views from my house extend from my Living Room south-west windows towards the City Skyline, and the harbour. I watch the yacht races on the harbour, and the passing marine craft cruising the harbour.

Solar Access is excellent. I receive excellent winter daylight over the existing neighbours dwelling of the subject site.

The neighbourhood is very quiet and peaceful. There is little traffic from the neighbourhood street.

Matters of Concern

The proposal will result in view impacts, privacy loss, visual bulk, loss of solar daylight access and concerns over excessive vibration from excessive excavation

I am 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<sup>[1]
[SEP]</sup>
- The siting and extent of the proposed dwelling without having sufficient consideration for maintaining view corridors, solar access and privacy, caused by non-compliant envelope.
- Excessive vibration and other poor environmental outcomes caused by the excavation

I provide further details of these matters below and request Council's close consideration of these in the assessment of the application. <sup>[1]
[SEP]</sup>

My main concerns are non-compliant development leading directly to amenity losses including:

- **Views,**
- **Overshadowing,**
- **Overlooking /Privacy,**
- **Noise/Vibration from excessive excavation,**
- **Visual Bulk/General Impact,**
- **Height, Bulk & Scale**

Prior to the submission of the DA by the Applicant, the Applicant **did not** have any prior consultation with me.

I am concerned that the SEE has failed to properly address my amenity concerns, is suggesting that the DA accords with LEP & DCP controls when it clearly does not, and does not present a Clause 4.6 FSR Application request despite non-compliance to LEP controls.

The non-compliance to residential controls represents overdevelopment by non-compliance to the main controls:

MLEP

4.3 Height of Building

4.4 Floor Space Ratio

MDCP

4.1.2 Height of Buildings

4.1.2.1 Wall Height

4.1.2.2 Number of Storeys

4.1.2.3 Roof Height

4.1.3 Floor Space Ratio (FSR)

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

4.1.4.1 Street Front Setbacks

4.1.4.2 Side Setbacks and Secondary Street Frontages

4.1.4.4 Rear Setbacks

4.1.5 Open Space and Landscaping

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

I accept that a compliant envelope will bring changes to my amenity outcomes, but I do not consider it at all reasonable to have to accept that non-complying development will rob me of my amenity. I object most vigorously.

I am being advised by a highly experienced consultant to assist me in this matter.

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

Site Description

The Applicant's SEE attempts to describes the site but there a number of false and misleading statements:

I bring to Council attention:

The SEE states:

"Abutting to the north at No.3 Tabalum is a large 2 and 3 storey dwelling house with an upper roof level of rl 83.45 and an overall height of 10.67m (refer profile north elevation)".

This is a false and misleading statement.

The existing ground level under the roof at #3 Tabalum at RL 83.45 [survey] is RL 74.26 [survey], giving a height of 9.19m. The zone above 8.5m is very minimal.

Council should also note that there is a 1m drop across the boundary, and the survey shows that drop from RL 74.28 [adjacent SW corner of #3 Tabalum] on #3 Tabalum to RL 73.26 on #1 Tabalum.

Council should also note that the #1 Tabalum rises from ground generally at RL 72 to the west of the existing dwelling, resuting in #1 Tabalum sitting over 2.25m lower than #3 Tabalum down the slope.

Despite this considerably difference in existing ground levels between the two sites, the proposed development is requesting a building height as high as #3 Tabalum, resulting in massive non-compliance.

The SEE also states:

"The land falls quite steeply from the Tabalum Road frontage at rl 76.66 centrally to the rear boundary abutting No.6 Cutler Road at rl 72 at the pool coping. There is a retaining wall adjacent to the boundary with No.6 Cutler Road. The level at the base on the abutting property being approximately rl 68.18"

This is a false and misleading statement.

Council should note that the Pool Coping does not abut the No. 6 Cutler boundary, but sits well back from the boundary.

Council should also note that the #1 Tabalum rises from ground generally at RL 72 to the west of the existing dwelling, resuting in #1 Tabalum sitting over 4.0m higher than #6 Cutler at RL 68.

Council should also note the survey level under the South West corner of the proposed Pool, shown on the survey at **RL 68.18.**

Council should also note the survey level under the South West corner of the proposed Clerestory, shown on the survey at **RL 72.31.**

Council should also note the survey level under the South West corner of the proposed Main Roof, shown on the survey at **RL 71.68.**

Proposed Development

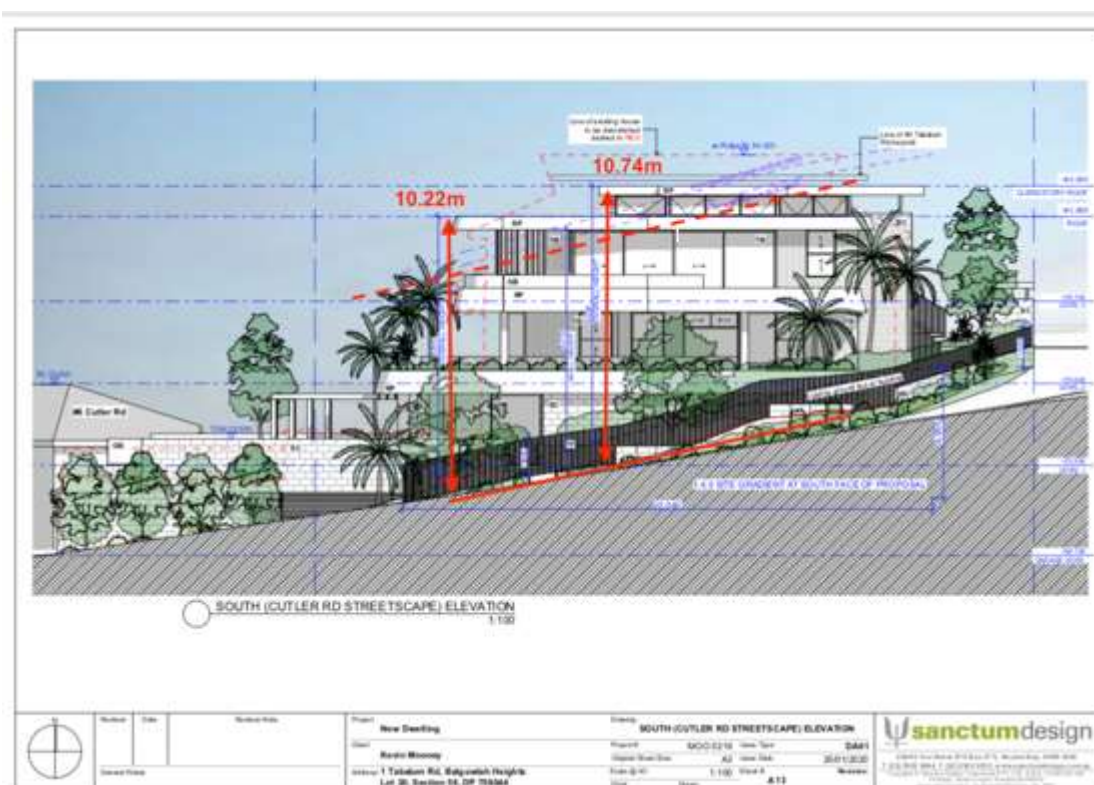
The proposed development is described within the Applicant's SEE.

The SEE states:

"The form and presentation are balanced in proportion and utilises a contemporary roof form, balconies, steps and projections to create well-articulated elevations further modulated by variety in materials and finishes."

The proposed development does not step with the topography of the land.

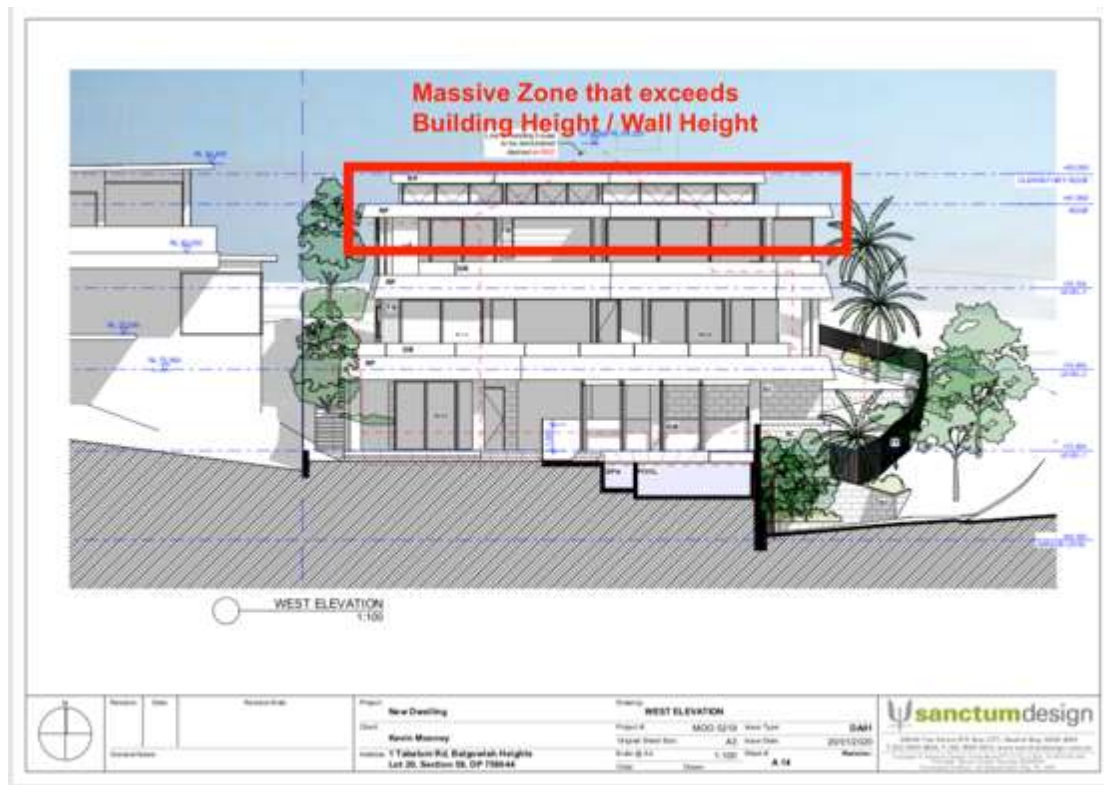
The proposed building heights simply refuse to accord with the 8.5m control, and progresses westwards presenting a maximum building height of **10.74m** for the clerestory, and **10.22m** for the main roof at the south west corner. The proposed wall heights exceed at heights of 10.34m and 9.84m, exceeding controls by over 2.34m. The proposed development presents as a three storey building to the south-west corner, as clearly evident in the attached extract, with building heights at 10.22m and 10.74m



Poor attention has been given to the topography and environmental value of the land with the dwelling failing to step down the slope.

a merit assessment.” [SEP]

There is a very major portion of the western elevation over height controls, as seen in the attached sketch:

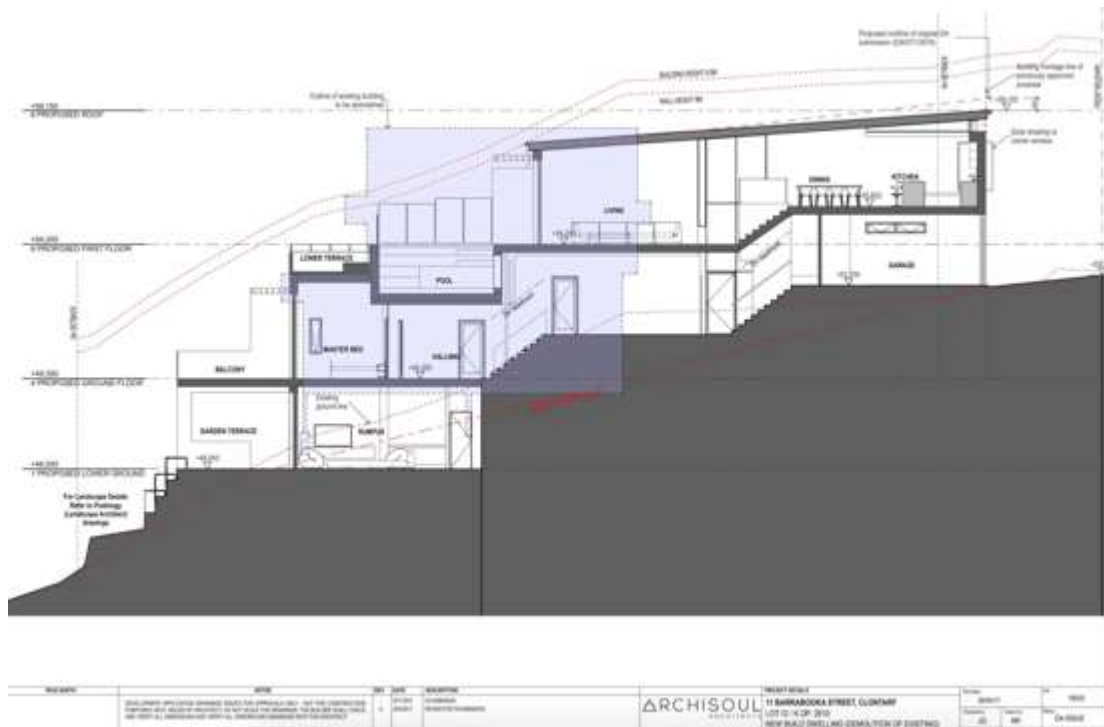


The Height, Form and Footprint all exceed LEP and DCP controls. Clause 4.6 FSR assessment has not been submitted against a non-compliant FSR. Amenity loss occurs, and that is considered a totally unreasonable outcome.

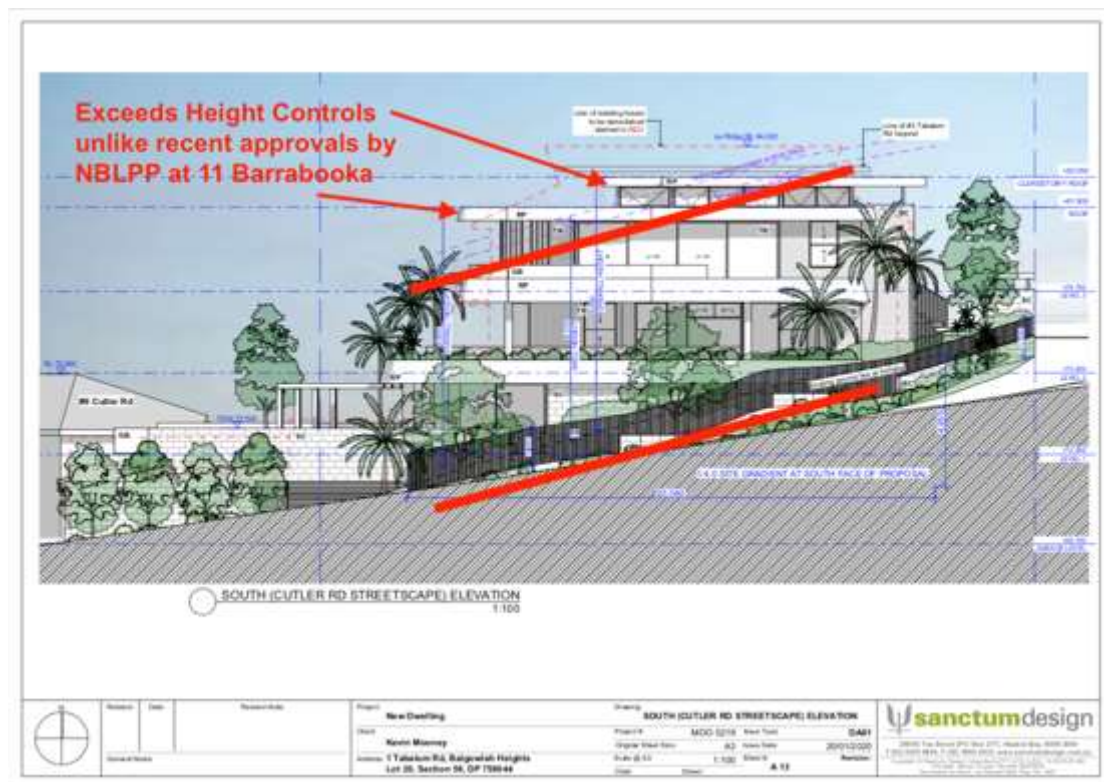
Recent approvals in the immediate area, both from NBLPP and LEC, have restricted new build developments to building envelope controls.

Council will note also that on all recent DAs in neighbouring Barrabooka and Ogilvy [#3, #5, #7, #11, & #13], strict compliance to the 8.5m maximum building height has been demanded by NBC, NBLPP and LEC.

The only recent new build DA approved by the NBLPP & LEC in the area was on #11 Barrabooka, [DA 371/2016, approved 2017 & 2018] and that approval required the Applicant to reduce building heights under the 8.5m level, and to accord with setback controls. The existing building was significantly higher than the controls, however NBLPP & LEC restricted building heights below 8.5m.



Nearby, 11 Barrabooka St Clontarf: NBLPP & LEC approval



1 Tabalum: Non-compliant proposed development

It is incorrect to state that recent DA approvals allowed new builds to exceed maximum building height controls. The reverse is true. The NBC custom and practice is to follow the maximum building height control in an absolute fashion on new builds in this immediate area.

The Clause 4.6 does not satisfactorily address what environmental planning grounds exist to justify contravening the standard. Nowhere within the Applicant's Clause 4.6 is there identification of any environmental planning ground, unique or otherwise, that justifies the contravention.

Misleading Information & Outstanding information

Existing Ground Levels

I bring to the attention of Council that the Applicant has not represented the Existing Ground Levels from the Applicant's Survey, correctly onto the DA drawings, in particularly Plans, Elevations and Sections.

The misrepresentation of Existing Ground Levels from the Applicant's Survey has led to the maximum building height, wall heights, side boundary envelopes being shown in a misleading way.

I ask that Council insist that the Applicant positions on each Plan, Elevation and Section the precise Existing Ground Levels from the Applicant's Survey and to adjust the maximum height envelope accordingly.

If the Applicant relies upon false and misleading information, then I reserve my position on the validity of any future approval, and I reserve my right to challenge the validity at any time. There are also very severe penalties and enforcement powers under the Environmental Planning and Assessment Amendment (Offences and Enforcement) Regulation 2015 (Amending Regulation) that the Applicant and his Consultants should be mindful to.

The levels shown on the southern elevation are incorrect.

Council should also note the survey level under the South West corner of the proposed Clerestory, shown on the survey at **RL 72.31**. The level shown on the southern elevation is considerably higher to mask the true proposed building height. The SEE fails to identify this matter within the Clause 4.6.

Council should also note the survey level under the South West corner of the proposed Main Roof, shown on the survey at **RL 71.68**. The level shown on the southern elevation is considerably higher to mask the true proposed building height. The SEE fails to identify this matter within the Clause 4.6.

Height Poles/ Templates

I ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building height and building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor.

The Height Poles will need to define at the non-compliant envelope:

- All Roof Forms
- 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.

The incorrectly represented Existing Ground Levels gives me great concern that other 3D montages could be equally shown as incorrect.

I require these height poles to fully determine view loss, privacy, solar access, visual bulk, and height/bulk/scale issues.

Statement of Environmental Effects

There are multiple inaccuracies, particularly relating to non-compliant elements that have not been addressed.

There has not been any adequate view loss consideration, privacy consideration, and overshadowing analysis at hourly intervals to address equinox loss by non-compliant development.

Request to Vary a Development Standard

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

There are large areas of voids through the proposed building that add to the bulk that could easily be filled in by further submission. These areas must be included within the FSR calculation as they are enclosed on all four sides and a roof. There are substantial undercroft areas at the lower level, and on decks, that are covered by a roof and generally enclosed on three sides. These areas also add to the bulk of the building, and these areas must be included within the FSR calculation

View loss, overshadowing and privacy loss that is a direct result of a non-compliance should not be supported by Council.

Site Analysis

View loss, overshadowing and privacy loss has not been properly addressed within the Site Analysis, contrary to DCP controls.

Excavation and/or Fill Plan

These plans are not fully dimensioned, and require full dimensions to common boundaries to ensure future compliance, contrary to DCP controls.

Filling exceeds 1m above natural ground level, contrary to controls.

The proposed development is proposing to fill by over 2m along the western boundary, after removing the above ground pool. This is not shown on the DA drawings.

- a) *Filling must not exceed 1m above natural ground level.*
- b) *Only natural rock, gravels or sand material (not builder's waste or demolition materials from approved sources, must be used as filling.*

Site Plan

The site plan does not adequately dimension every proposed built form to the common boundary, and requires full dimensions to ensure future compliance. This is contrary to DCP controls.

Floor Plans

The floor plans and roof plans do not adequately dimension every proposed built form to the common boundary, and requires full dimensions to ensure future compliance. This is contrary to DCP controls.

Elevations & Sections

There are roof forms that do not have RL levels, to accurately record what is being proposed.

All drawings require full dimensions and levels on every extremity to ensure future compliance. This is contrary to DCP controls.

Landscape Plan & Landscape Design Statement

The precise detail of the planting along the boundary is unclear.

Survey

The survey incorrectly identifies the existing pool to be an 'Inground Pool'. This pool is an above ground pool.

The survey level to tiled pool coping is at RL 72, whilst the land immediately to the west is at RL 69.35, a drop of over 2.7m.

Once this pool is demolished, the natural ground levels will rise from the survey mark at RL 69.35 to RL 72 adjacent the existing dwelling on #1 Tabalum. Generally the existing ground levels under the above ground pool are at RL 69.5.

Statutory Planning Framework

The statutory planning framework is generally described within the Applicant's SEE.

NBC Website states the following Zoning and Overlays apply:

- R2 Low Density Residential
- Bushfire Prone
- Residential Open Space Area OS4
- Foreshore Scenic Protection Area

I do not intend to repeat every clause from Council's LEP & DCP, but wish to emphasis the main non-compliances to the planning controls, and identify the amenity losses that are directly attributable to that non-compliance.

As NSW LEC Planning Principles state:

How much of the impact is due to the non-complying elements of the proposal?

Are the impacts consistent with impacts that may be reasonably expected under the controls?

There is very significant non-compliance:

- 4.1.2 Height of Buildings
 - 4.1.2.1 Wall Height
 - 4.1.2.2 Number of Storeys
 - 4.1.2.3 Roof Height
- 4.1.3 Floor Space Ratio (FSR)
 - 4.1.3.2 Exceptions to FSR for Plant Rooms
 - 4.1.3.3 Exceptions to FSR for Open Balconies
- 4.1.4 Setbacks (front, side and rear) and Building Separation
 - 4.1.4.1 Street Front setbacks
 - 4.1.4.2 Side setbacks and secondary street frontages
 - 4.1.4.4 Rear Setbacks

The amenity loss is directly attributable to the non-compliance

The subject site is large, and the proposal is for a new build, and there is no reason, unique or otherwise why a fully compliant solution cannot be designed on the site.

MLEP

Principal Development Standards:

Clause 1.2 Aims of Plan

In these proposals the local amenity and environmental outcomes would be severely challenged by non-compliant envelope, excessive basement, and poor outcomes to neighbours and to the coastal environment.

The overdevelopment is staggering, best described by the percentage excess to controls:

- Building Height 10.74 v 8.5m control [126% non compliance]
- FSR c.0.5 v 0.4 [125% non compliance]
- Wall Heights 10.34m v 8.0m [129% non compliance]
- Number of Storey 4 v 2 [200% non compliance]
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- Excavation onto Northern Boundary

I contend that the proposed development does not promote a high standard of urban design that responds to the existing or desired future character of areas, and does not ensure all development appropriately responds to environmental constraints and does not adversely affect the character or amenity of the area or its existing permanent residential population.

I contend that the proposed development does not ensure high quality landscaped areas in the residential environment.

I contend that the proposed development does not protect existing landforms and natural drainage systems and minimise the risk to the community in areas subject to environmental hazards, bush fires and landslip.

I contend that the proposed development does not in relation to the areas unique harbour setting to preserve and enhance the amenity of public places and areas visible from navigable water around the area.

This is contrary to DCP controls.

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

1.2 Aims of Plan

(1) This Plan aims to make local environmental planning provisions for land in Manly in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.

(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

(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

(ii) to ensure high quality landscaped areas in the residential environment, and

(f) in relation to the natural environment—

(iv) to protect existing landforms and natural drainage systems and minimise the risk to the community in areas subject to environmental hazards, particularly flooding, bush fires, acid sulfate soils, sea level rise, tsunami and landslip, and

(g) in relation to Manly's unique harbour, coastal lagoon and ocean beach setting—

(i) to preserve and enhance the amenity of public places and areas visible from navigable water around Manly.

The requirements under this clause clearly have not been met.

View loss, overshadowing and privacy loss that is a direct result of a non-compliance should not be supported by Council.

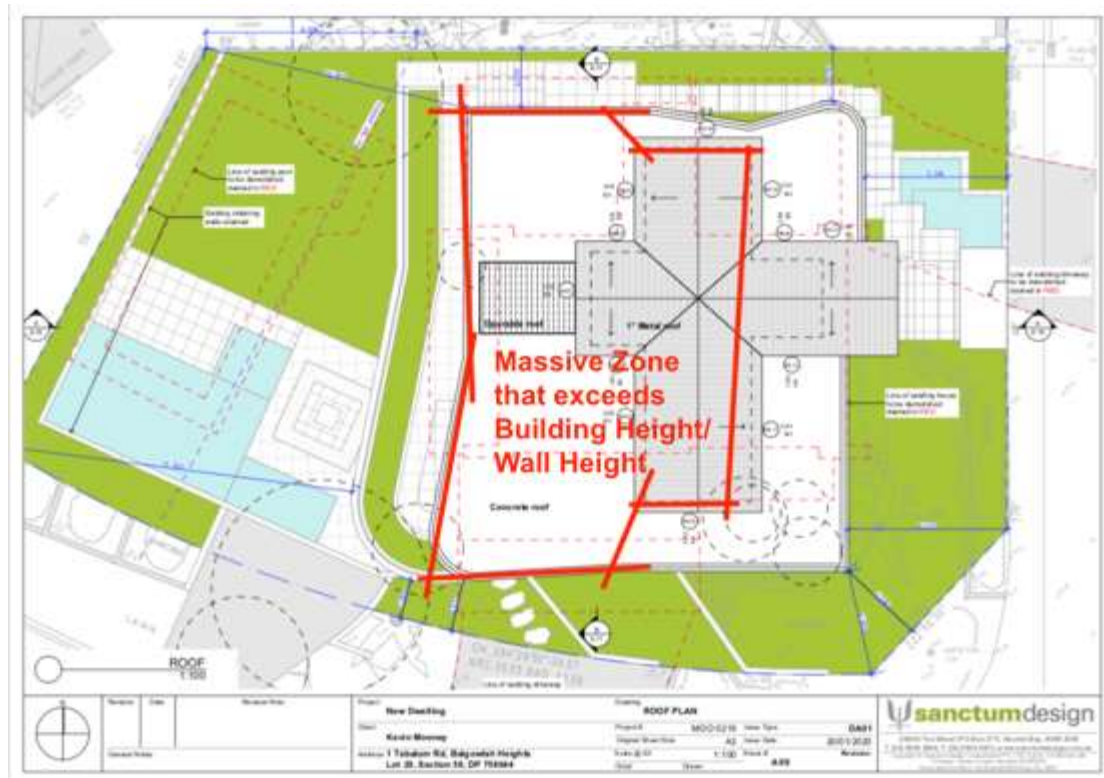
Clause 4.3 Height of Building

Control 8.5 m

Proposed 10.74 m [clerestory at SW corner, survey RL 72.31] and 10.22m [roof at SW corner, survey RL 71.68]

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.





The proposed development does not minimise disruption to the views to nearby residential development from public spaces (including the harbour and foreshores), views from nearby residential development to public spaces (including the harbour and foreshores), and views between public spaces (including the harbour and foreshores).

The proposed development does not maintain adequate solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and maintain adequate to habitable rooms of adjacent dwellings.

The proposed development does not 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.

The Council as consent authority cannot be satisfied that the written request for Building Height adequately addresses the matters required by clause 4.6(3) by demonstrating that:

(a) compliance is unreasonable or unnecessary; and

(b) there are sufficient environmental planning grounds to justify contravening the development standard

The excessive building height over a large portion of the building footprint, causes view loss, solar loss, privacy issues, streetscape issues, visual bulk, three storey to the Cutler Road and National Park streetscape, and other poor outcomes.

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

4.3 Height of buildings

(1) The objectives of this clause 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.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

No Clause 4.6 Exceptions to Development Standards request has been submitted for the excessive FSR.

The Clause 4.6 Exceptions to Development Standards submitted for the Building Height grossly understates the numerical non-compliance.

View loss, overshadowing and privacy loss that is a direct result of a non-compliance should not be supported by Council.

Clause 4.4 Floor Space Ratio

I contend that the proposed development does not ensure the bulk and scale of development is consistent with the existing and desired streetscape character.

I contend that the proposed development does not control building density and bulk in relation to the site area to ensure the development does not obscure important landscape and townscape features.

I contend that the proposed development does not maintain an appropriate visual relationship between new development and the existing character and landscape of the area.

I contend that the proposed development does not minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.

The FSR is under calculated as there are numerous void areas, undercroft areas enclosed on three sides, and excessive plant that when included within the FSR calculation, render the FSR grossly in excess of LEP and DCP controls.

In light of the absence of Clause 4.6 FSR applications, and other outstanding information, Council may need to reject the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.



Voids not included in FSR; Massive Undercroft not included in FSR; Excessive Storage & Plant not included in FSR

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

4.4 Floor space ratio

- (1) *The objectives of this clause are as follows—*
 - (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
 - (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
 - (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
 - (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The calculation of FSR is understated.

No Clause 4.6 FSR Exceptions to Development Standards request has been submitted.

View loss, overshadowing and privacy loss that is a direct result of a non-compliance should not be supported by Council.

Clause 4.5 Calculation of FSR and Site Area

I contend that the Applicant has under forecast the calculation of FSR. I bring to Council's attention the following:

- numerous large void areas, that add considerably to bulk
- undercroft areas enclosed on three sides, that add considerably to bulk
- excessive plant zones



The calculation of FSR is understated.

No Clause 4.6 Exceptions to Development Standards request has been submitted.

View loss, overshadowing and privacy loss that is a direct result of a non-compliance should not be supported by Council.

Clause 4.6 Exceptions to Development Standards

I suggest that the DA should be withdrawn by the Applicant, and resubmitted when the design has been modified to deal with the false and misleading information.

Currently, the Council has no power to grant development consent because no Clause 4.6 FSR has been submitted on the above LEP controls.

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

The Council should immediately consider refusing the DA, and perhaps is precluded from proceeding any further with its assessment and consideration of the DA.

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

4.6 Exceptions to development standards

No Clause 4.6 Exceptions to Development Standards request has been submitted for non-compliant Building Height and FSR.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

4) Development consent must not be granted for development that contravenes a development standard unless—

- (a) the consent authority is satisfied that—*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Planning Secretary has been obtained.*

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

This is contrary to LEP controls.

Clause 6.2 Earthworks

The substantial extent of the earthworks will have a detrimental impact on environmental functions and processes, neighbouring uses, and features of the surrounding land.

I am concerned on the vibration risks associated with this quantity of excavation close the neighbours boundaries.

The continuous vibration from many, many months of excavation would be intolerable, and totally unreasonable. Vibration would make many neighbours house unliveable during this extensive excavation period. I am concerned to the damage to my house.

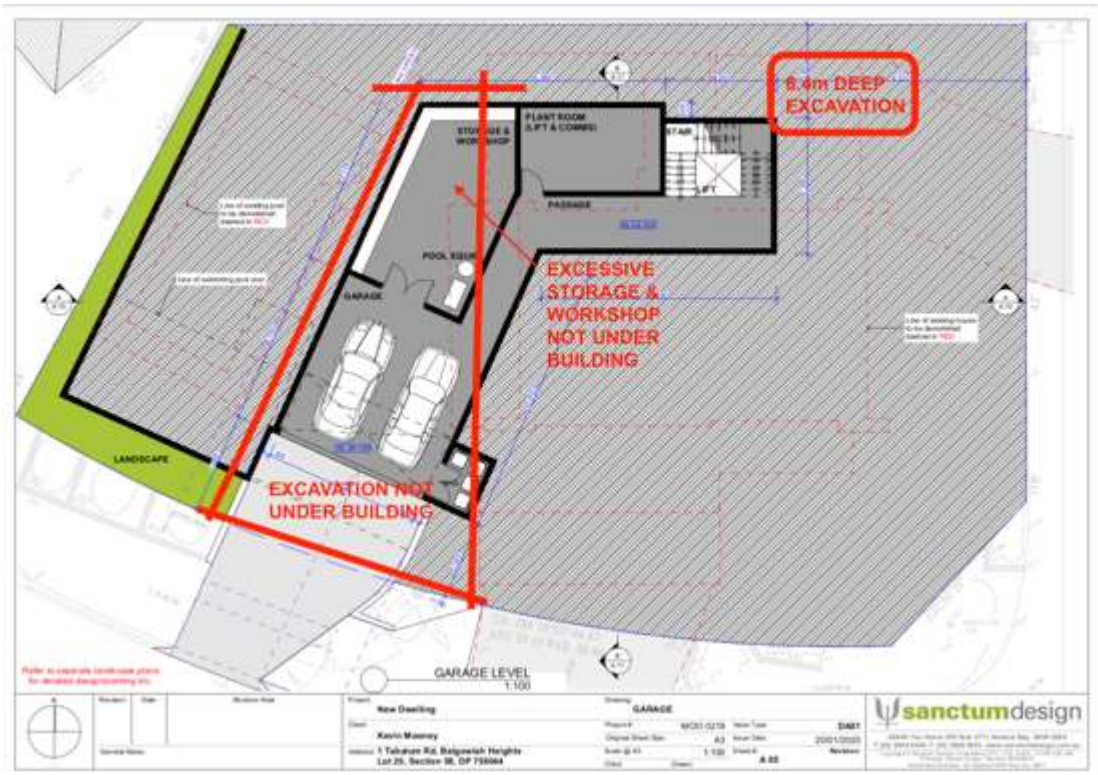
The noise would be horrendous, and not only affect neighbours, but also the amenity of those at the nearby public domain zones.

I am concerned on the likely disruption, or any detrimental effect on, existing drainage patterns and soil stability in the locality.

I am concerned that the changed water flows through the property, I am concerned that no extensive study commissioned to assess the issue, and to adjoining trees in adjoining land that will be significantly threatened by changed outcomes.

I am concerned that altered subsoil water flows will damage my property.

I am concerned on the intensity and extended programme to extract and recover excavated material and bedrock from the proposed development, and the number of truck movements to extract this considerable amount of soil.



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

6.2 Earthworks

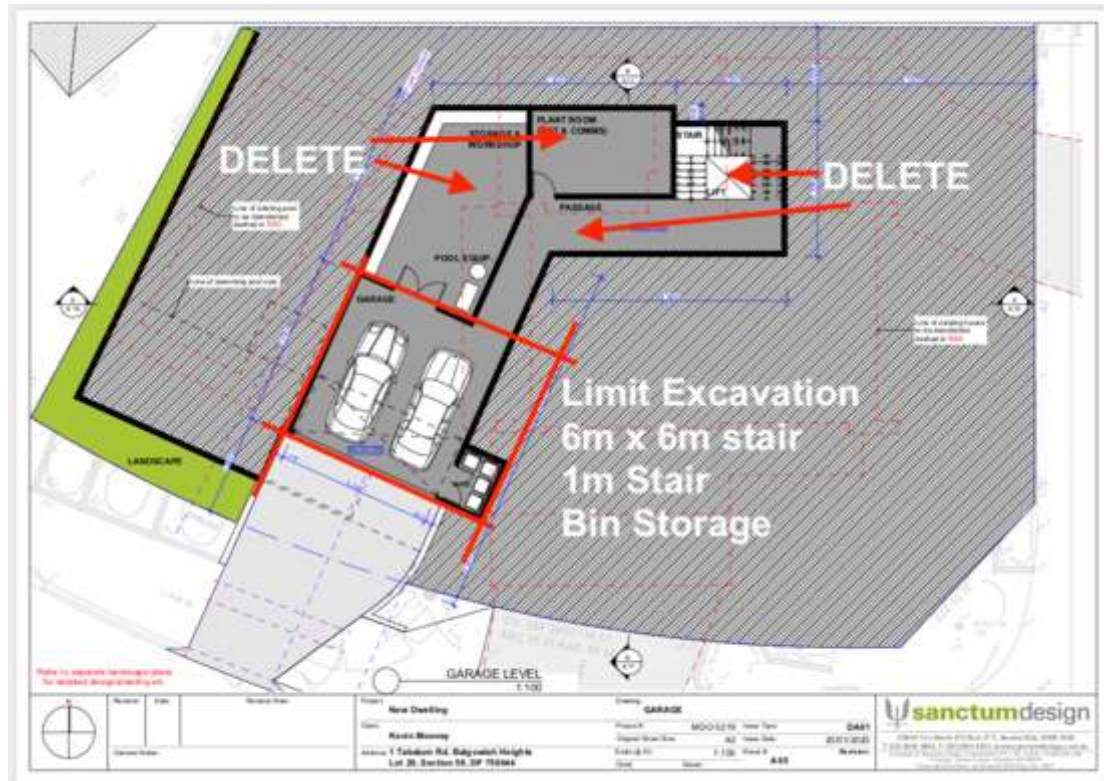
(1) *The objectives of this clause are as follows—*

(a) *to ensure that earthworks and associated groundwater dewatering for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,*

(3) *Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—*

- (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
- (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

I ask Council to condition any approval to significantly reduce the excavation near our property, by the deletion of all zones, other than a 6m x 6m zone, plus a 1m stair, and bin storage, all within a 7m x 6m zone immediately off Cutler Road.



Clause 6.9 Foreshore Scenic protection

I contend that the proposed development does not meet the objective of this clause to protect visual aesthetic amenity and views to and from Sydney Harbour.

I contend that the proposed development produces impacts that are of detriment to the visual amenity of the harbour and loss of views from a public place to the foreshore.

The overdevelopment represented by excessive FSR, building height, wall height, number of storey, and setback clearly gives grounds for concern.

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

6.9 Foreshore scenic protection area

- (1) The objective of this clause is to protect visual aesthetic amenity and views to and from Sydney Harbour, the Pacific Ocean and the foreshore in Manly.*
- (2) This clause applies to land that is shown as “Foreshore Scenic Protection Area” on the Foreshore Scenic Protection Area Map.*
- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters—*
- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
 - (b) measures to protect and improve scenic qualities of the coastline,*
 - (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
 - (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

View loss, overshadowing and privacy loss that is a direct result of a non-compliance should not be supported by Council.

MDCP

1.7 Aims and Objectives of this Plan

I contend that the proposed development does not ensure that development contributes to the quality of the natural and built environments.

I contend that the proposed development does not encourage development that contributes to the quality of our streetscapes and does not ensure future development has consideration for the needs of all members of the community.

I contend that the proposed development does not ensure development positively responds to the qualities of the site and its context and character of the surrounding area.

The overdevelopment represented by excessive FSR, building height, wall height, number of storey, and setback clearly gives grounds for concern. Amenity is affected by all these non-compliances and is unreasonable.

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

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.*

3.1 Streetscapes and Townscapes

I contend that the proposed development does not minimise any negative visual impact of walls, fences, elevated pools and carparking on the street frontage.

I contend that the proposed development does not ensure development generally viewed from the street complements the identified streetscape

I contend that the proposed development does not encourage soft landscape alternatives when front fences and walls may not be appropriate

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

Relevant DCP objectives to be met include the following:

Streetscape

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

3.1.1 Streetscape (Residential areas)

I contend that the proposed development does not recognise predominant streetscape qualities, such as building form, scale, and patterns which contributes to the character of the local area.

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

Streetscape is defined (see Dictionary in this plan) and represents the inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character.

Development should recognise predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area.

3.1.1.1 Complementary Design and Visual Improvement

I contend that the proposed development does not complement the predominant building form in the locality, ensure the bulk and design of development does not detract from the scenic amenity of the area, 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. Setbacks have not been maximised to enable open space to dominate buildings.

The overdevelopment represented by excessive FSR, building height, wall height, number of storey, and setback clearly gives grounds for concern.

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

- 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;*

Setback Principles in Low Density Areas

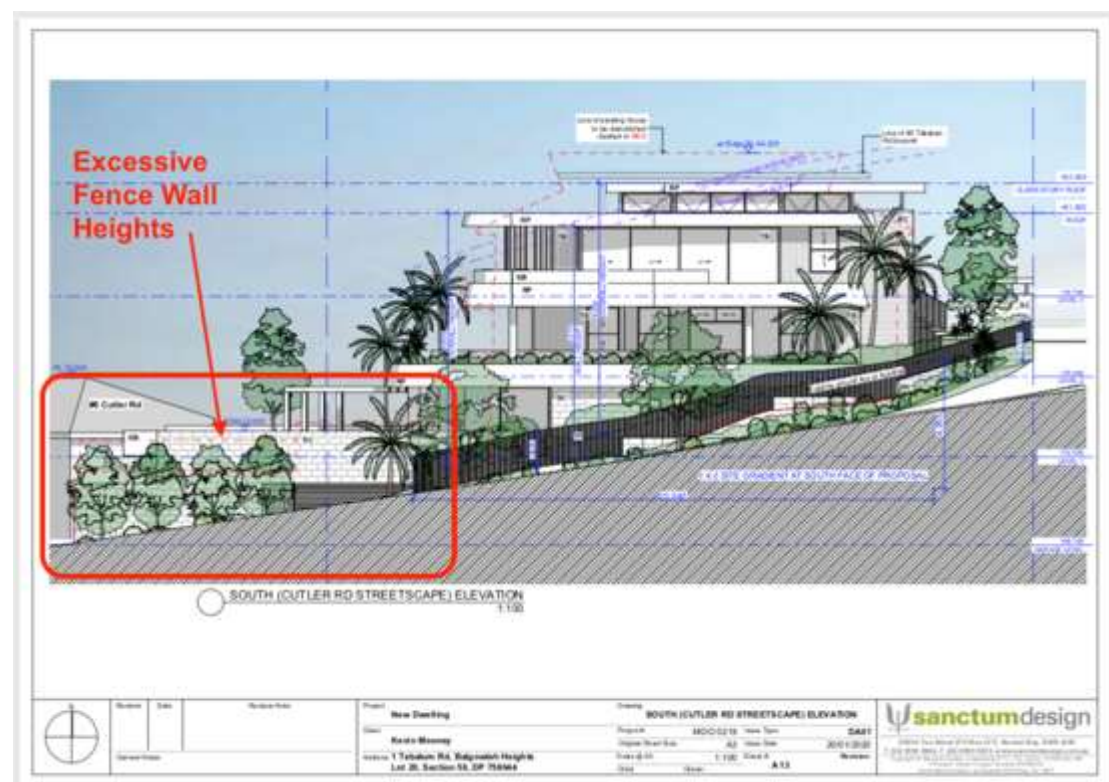
- b) *In lower density areas including LEP Zones R2, E3 & E4, setbacks should be maximised to enable open space to dominate buildings, especially on the foreshore.*

3.1.1.2 Front Fences and Gates

The siting, height and form of boundary fences and walls does not reflect the fencing characteristic of the locality, particularly those of adjacent properties.

The raised pool structure is exceeding excessive.

The garage entry structure is exceeding excessive.



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

- a) *Notwithstanding maximum height provisions for fencing at paragraph*

4.1.10; the siting, height and form of boundary fences and walls should reflect the fencing characteristic of the locality, particularly those of adjacent properties. All fencing and wall materials must be compatible with the overall landscape character and the general appearance of the building and the streetscape.

- b) Boundary fences or walls must not be erected where they would conflict with the local character.*
- c) Front fences and gates must be constructed in materials that complement the architectural style and period of the dwelling and improve the streetscape. In particular, fencing adjacent to a public road or place must not be constructed in metal cladding, powder coated or otherwise.*
- d) Gates must not encroach on public land when opening or closing.*

3.1.1.3 Roofs

Roofs have not been designed to avoid or minimise view loss and reflectivity.

The design of the roofs that grossly exceed the maximum building height and wall height is unreasonable.

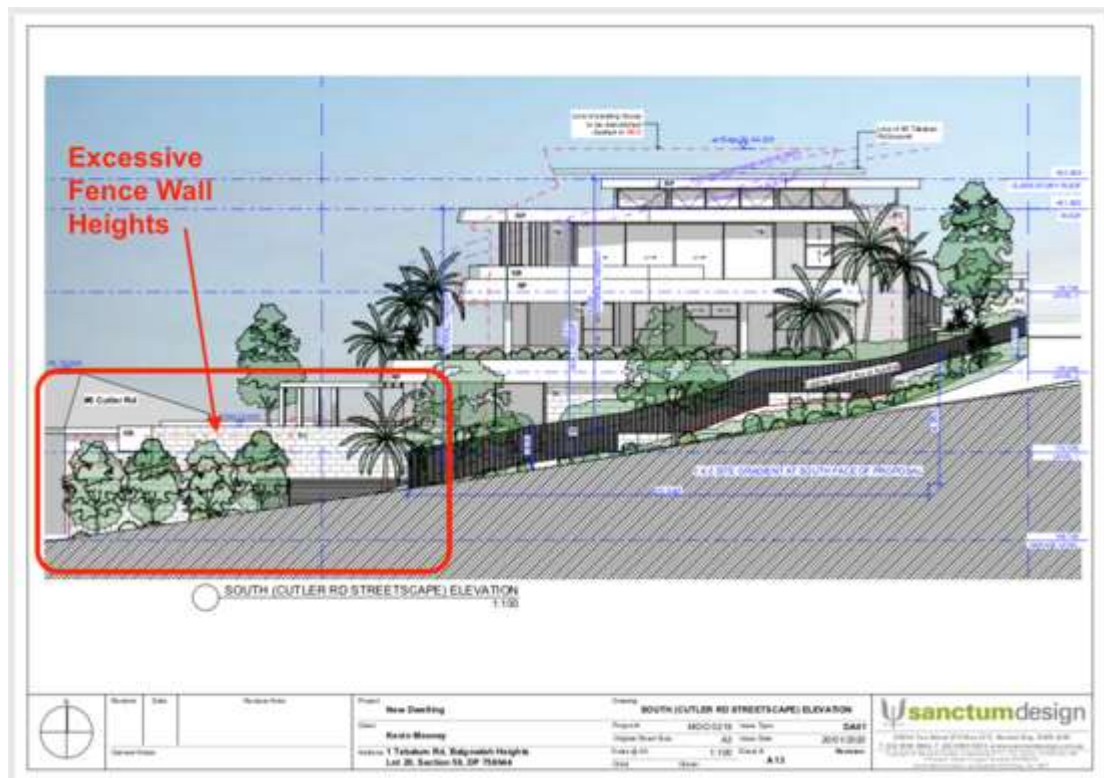
The overdevelopment represented by excessive FSR, building height, wall height, number of storey, and setback clearly gives grounds for concern. I contend that the DA fails the major objectives of this control as follows:

See also paragraph 3.4.3 Views regarding roof forms to minimise view loss.

- a) Roof forms should complement, but not necessarily replicate the predominant form in the locality and in particular those of adjacent buildings.*
- b) Roofs should be designed to avoid or minimise view loss and reflectivity.*

3.1.1.4 Garages, Carports and Hardstand Areas

The Garage has been designed and sited in a manner that does dominate the street frontage by not being compatible with the streetscape and the location in relation to front setback criteria

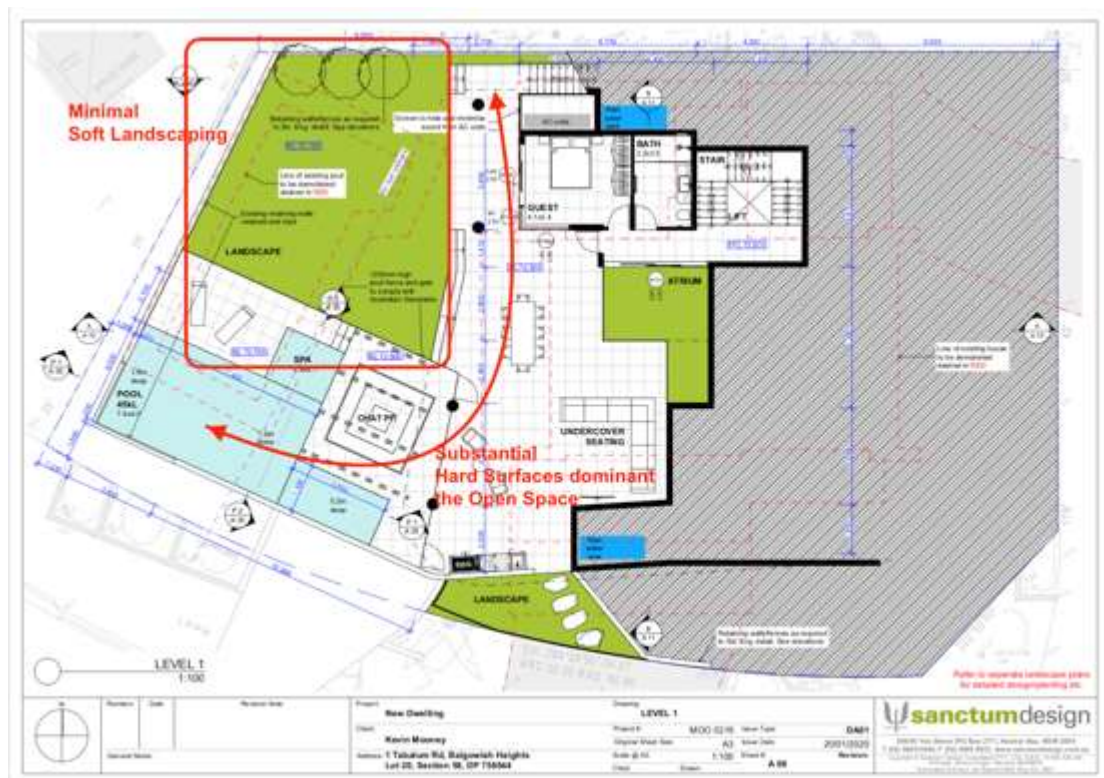


I contend that the DA fails the major objectives of this control as follows:

- a) *Garages, carports and hardstand areas must be designed and sited in a manner that does not to dominate the street frontage by:*
 - i) *its roof form, material choice and detailing by being subservient to the associated dwelling; and*
 - ii) *being compatible with the streetscape and the location in relation to front setback criteria.*

3.3.1 Landscaping Design

Setbacks of buildings from open space have not been maximised to enable open space to dominate buildings, especially when viewed to and from Sydney Harbour and the National Park.



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

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

- Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.*
- Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.*

Landscape Character

[a] The design, quantity and quality of open space should respond to the character of the area. In particular

In low density areas: (including LEP Zones R2 Low Density, E3 Environmental Management and E4 Environmental Living) open space should dominate the site. Setbacks of buildings from open space should also be maximised to enable open space to dominate buildings, especially when viewed to and from Sydney Harbour, the Ocean and the foreshore.

In areas adjacent to native vegetation: the design of development should be sympathetic to the natural environment in order to protect and enhance the area as habitat for native fauna.

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

The proposed development does not protect the amenity of existing and future residents and minimise the impact of new development, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.

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

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.

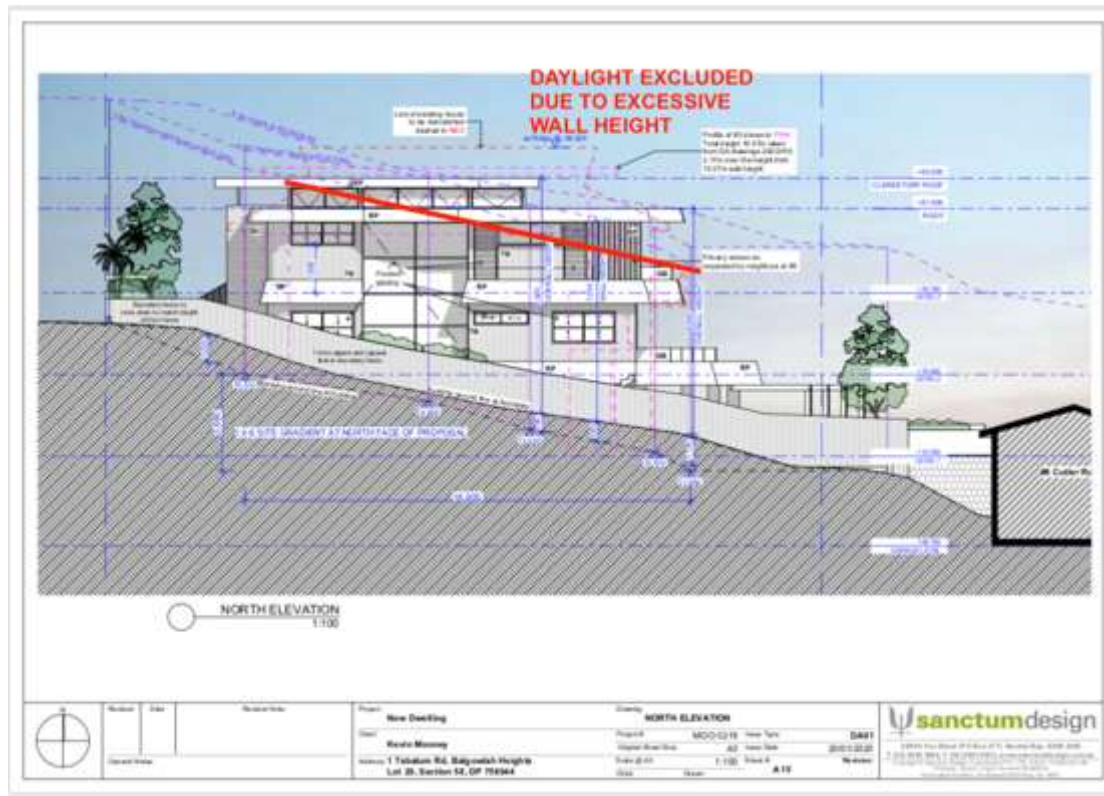
Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.

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.*

3.4.1 Sunlight Access and Overshadowing

I contend that the proposed development does not provide equitable access to light and sunshine, and does not allow adequate sunlight to penetrate private open spaces and windows to the living spaces and habitable rooms of the adjoining properties.



I contend that the proposed development does not maximise the penetration of daylight into the habitable rooms by the non-compliant envelope, reducing considerably the available winter sky.

I contend that the proposed development does not 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 does not maximise setbacks to encourage solar penetration into properties.

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

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..*

3.4.1.5 Excessive Glare or Reflectivity Nuisance

I am concerned on the glare from excessive use of glass, and the reflectivity of roof finishes and other wall finishes.

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

All external material and finishes incorporated into the development must consider and mitigate any excessive glare or reflectivity nuisance.

3.4.2 Privacy and Security

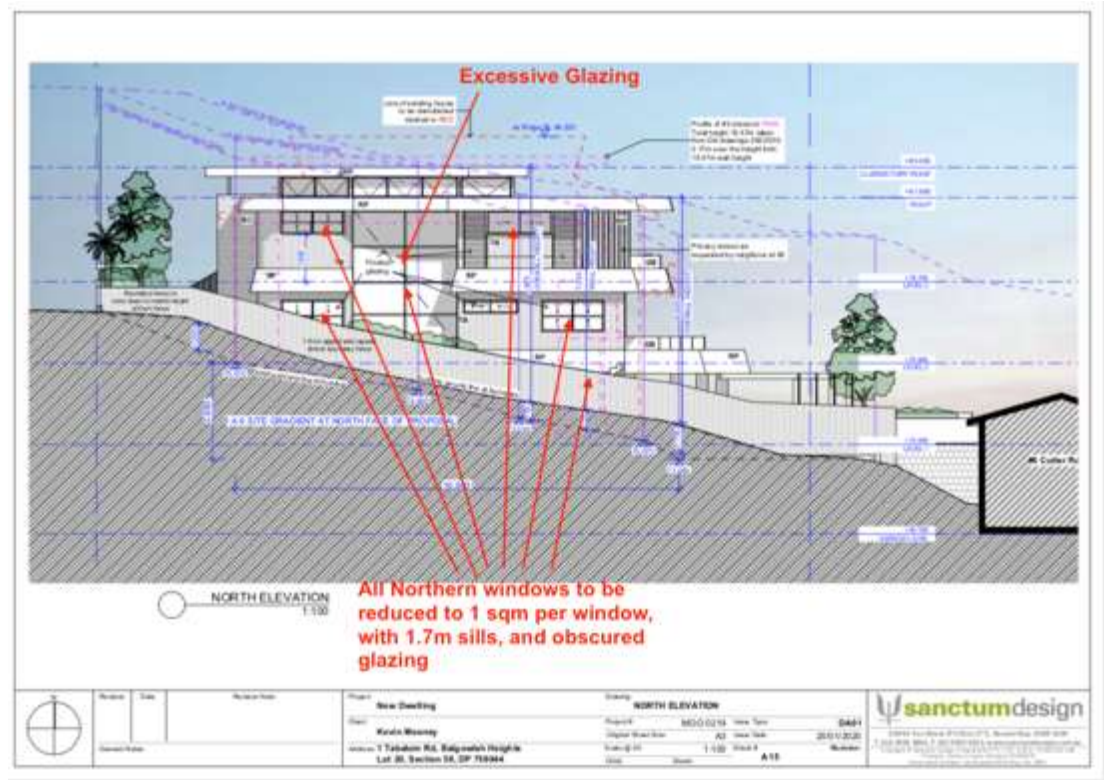
The proposed development does not ensure that the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours. The siting of the non-compliant development is positioned too close to the boundary, and will not provide acoustic or visual privacy to my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

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

The proposed development has not orientated all the living areas, habitable rooms and windows to private open space areas or to the street to limit

overlooking. Some of these windows face my property, and that creates the problems.

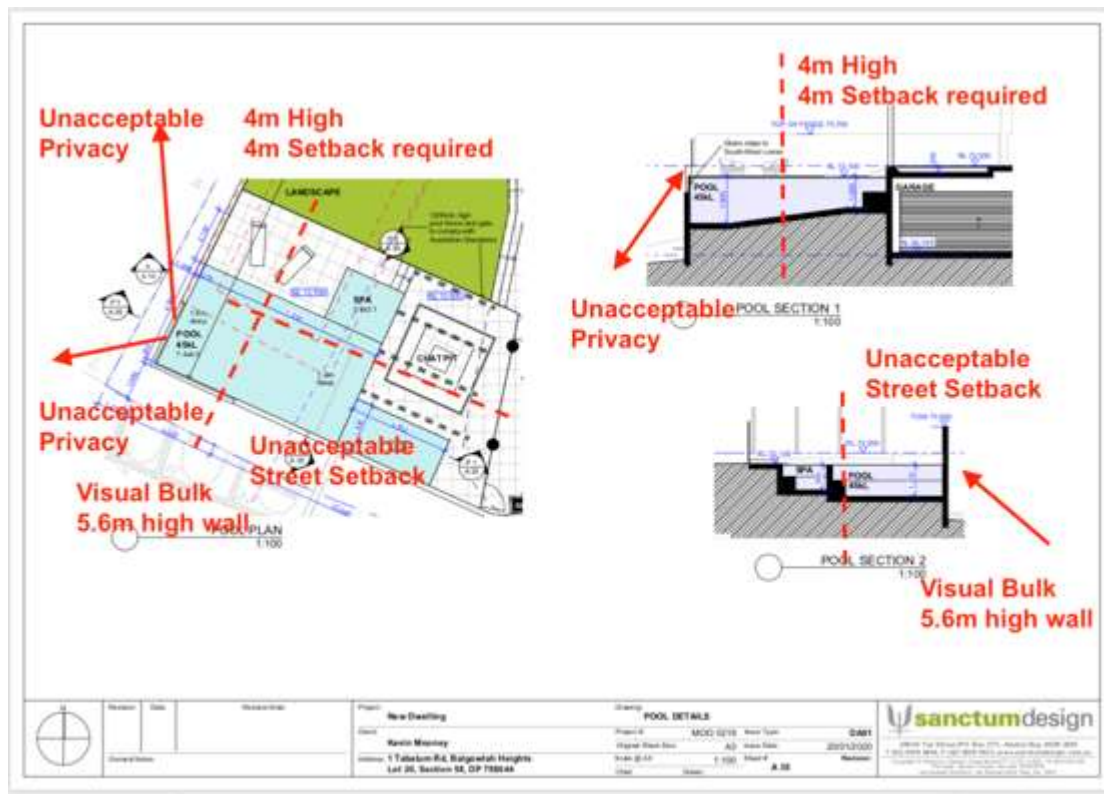
The windows facing our property at all levels must have privacy screens, and need to be reduced in size to 1sqm to each room, including the stair.



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

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

The design of the development gives rise to unreasonable privacy outcome by elevated decks and windows elevated within non-compliant envelope beyond controls giving direct line of sight into neighbours property.



The proposed pool presents other privacy concerns to neighbours, but also to the streetscape.

The design does not ensure the siting and design of buildings to provide a high level of visual and acoustic privacy for occupants and neighbours facing our property.

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

Note: Consideration of privacy are typically balanced with other considerations such as views and solar access. The degree of privacy impact is influenced by factors including the use of the spaces where overlooking occurs, the times and frequency these spaces are being used, expectations of occupants for privacy and their ability to control overlooking with screening devices.

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.*

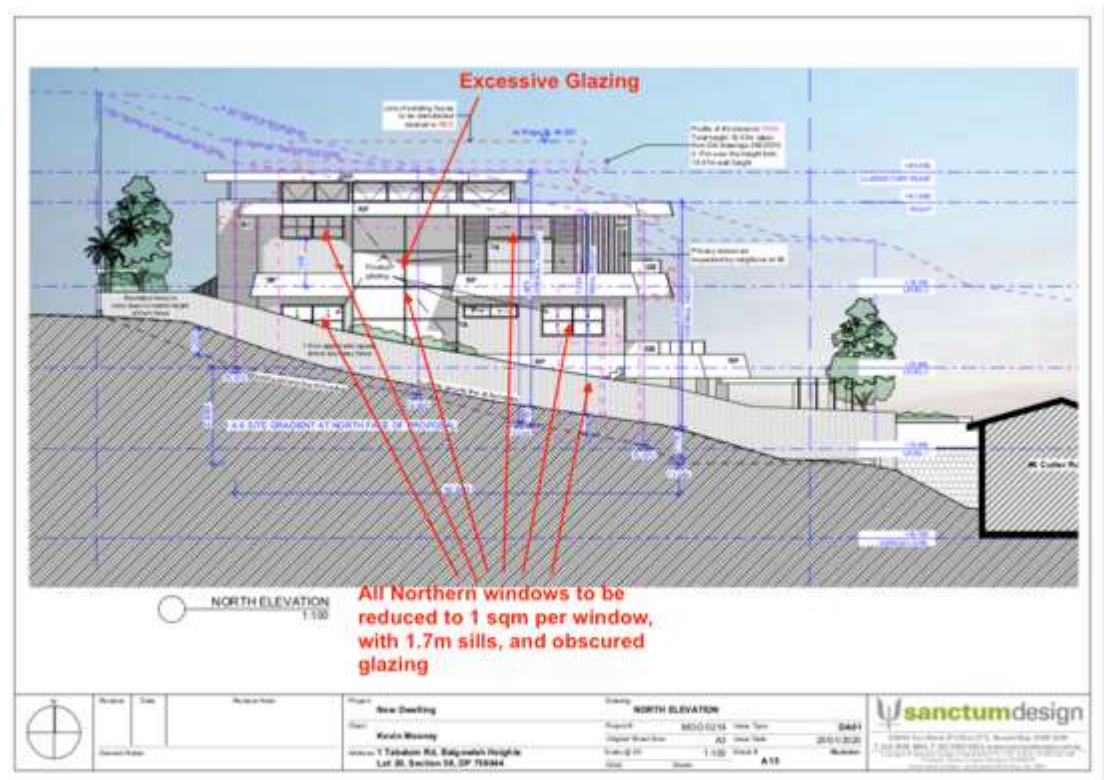
Objective 3) To encourage awareness of neighbourhood security.

See also paragraph 4.1.5.3 Principal Private Open Space.

See also Amcord Design Element 5.5 for acceptable solutions in meeting the objectives of this plan where this plan is otherwise silent. Amcord solutions are not to be adopted where they result in any non-compliance with this plan or in the case of Residential Flat Buildings are inconsistent with guidance in relation to visual privacy set out in Part 3F of the Apartment Design Guide.

3.4.2.1 Window Design and Orientation

The proposed development has not used narrow, translucent or obscured glass windows to maximise privacy where necessary. Windows have not been off-set from those in our building to restrict direct viewing and to mitigate impacts on privacy.



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

- 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.*

3.4.2.2 Balconies and Terraces

Architectural or landscape screens has not been provided to balconies and terraces to limit overlooking of our property. Architectural screens must be fixed in position and suitably angled to protect visual privacy.

Where the proposed development has provided screens they grossly exceed wall height and building height controls.

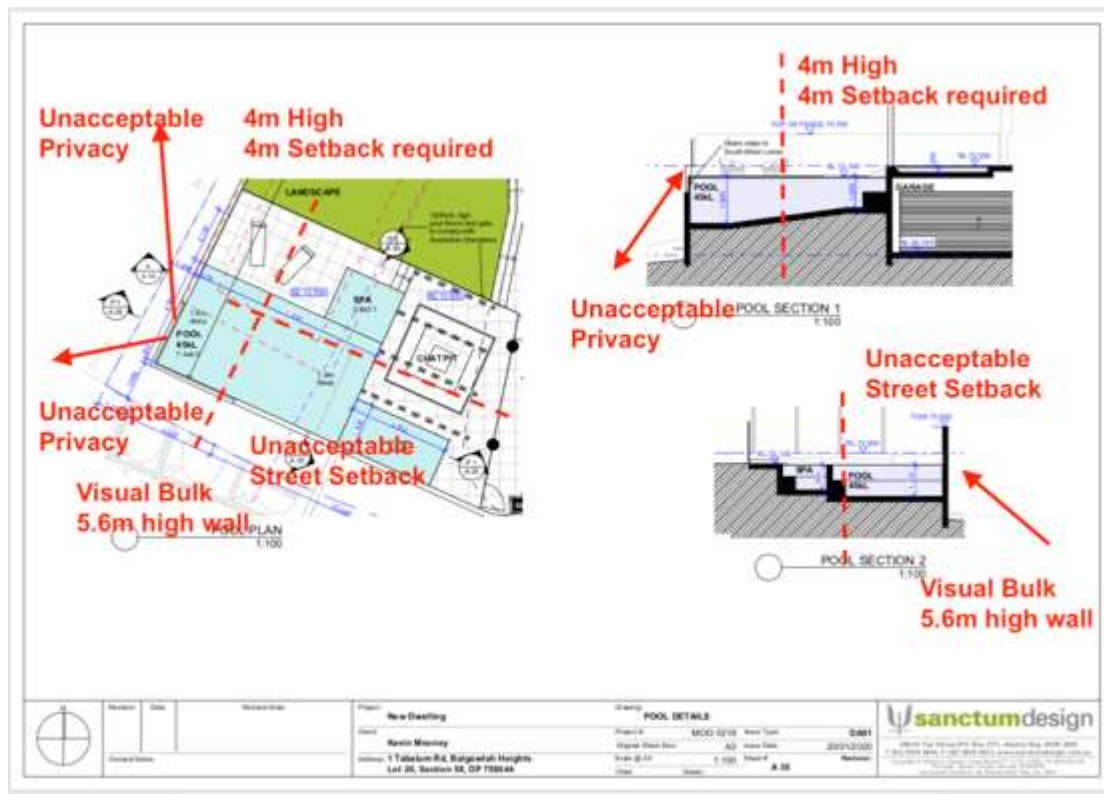
I contend that the DA fails the major objectives of this control as follows:

- a) *Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.*
- b) *Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.*

3.4.2.3 Acoustical Privacy (Noise Nuisance)

I am concerned over the noise emitted through the massive glazed wall to the proposed internal stair immediately adjacent bedrooms

I am concerned of the noise emitted from plant equipment including pool pumps and the privacy from the pool.



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

- a) *Consideration must be given to the protection of acoustical privacy in the design and management of development.*
- b) *Proposed development and activities likely to generate noise including certain outdoor living areas like, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.*
- c) *Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures.*

3.4.3 Maintenance of Views

I am very concerned that the Block-Model Photomontages have not been prepared in accordance with the Land and Environment Court of NSW practice guidelines for such material.

In this regard the location and lens height of the camera was not surveyed by the Applicant's registered surveyors who did not accompany the author of the view loss images for view inspections at the time of photography. [L] [SEP]

For the certification of photomontages, the fundamental requirement is that there is a computer model of the proposed future development that can be accurately located in three-dimensional space and merged with representative photographs taken from key viewing places, to produce a photomontage. [L] [SEP]

The model of the proposed building needs to be a 3D model, the location and height of which can be verified with respect to surveyed features of the existing development on the site and/or verified 3D reference points in the surrounding areas. The 3D model is then inserted into (merged with) high definition digital images of the existing environment. [L] [SEP]

This principle is recognised by a practice direction of the Land and Environment Court of New South Wales, which requires that the 3D model of the proposed development can be shown to match the physical features of the existing environment, the features of which can be verified and that the images used are taken at a consistent and known focal length. Other requirements for accuracy are explained below. [L] [SEP]

The key to being able to certify the accuracy of the resulting photomontage is being able to demonstrate that the 3D model of proposed building envelopes has a good fit to known surveyed markers or fixed features of the site or locality which are shown on a survey plan that can be certified for accuracy by registered surveyors. This has not occurred as far as I can assess.

The second level of fit that is critical is the fit of the model to a conventional photographic representation of the site in its context.

I am uncertain who prepared the 3D model and who referenced the verified 3D reference points in the surroundings.

I know that the Applicant's Surveyor has never requested entry to our Living Room to take measurements, so I contend that the process is flawed.

If these montages and verified reference points were prepared by the Applicant's Architects, I would have great concern.

The previous DA, prepared by the same Architect, was withdrawn due to false and misleading information as the drawings were drawn to significantly favor the Applicant and mislead.

We therefore hold no comfort that the images that have been presented are accurate.

In my opinion there are discrepancies in relation to the alignment of the model to the fixed features of the surrounding environment within the photomontages, and as such we contend that these montages cannot be accepted by Council as being faithful representations of the likely effects of the proposed development on views from these locations. [L] [SEPI]

Our viewpoint from our south-east windows looking towards iconic Middle Head and the Harbour has not even been addressed by the Applicant or within the SEE.

I suggest the Applicant may have completed the exercise, but as the outcome was so devastating a loss the Applicant simply deleted it from their submission. The SEE has failed to even address the matter.

I ask that Council insist that the Applicant erect Templates, accurately located by the Applicant's Surveyor.

Without templates erected I have no certainty as to the extent of the actual loss.

What Council does certainly know is that the proposed development is non-compliant to all major envelope controls, building height, wall height, FSR, front setback, and side setback, and I contend that these non-compliances will inevitably unreasonably take our view.

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

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

The development breaches multiple planning controls and is unreasonable.

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

Application of Tenacity planning principle

Based on the incomplete and non-compliant preparation of the

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

A preliminary analysis and assessment in relation to the planning principle of Roseth SC of the Land and Environment Court of New South Wales in *Tenacity Consulting v Warringah [2004] NSWLEC 140 - Principles of view sharing: the impact on neighbours (Tenacity)* is made, however I have no confidence that the assessment is accurate due to the previous commentary.

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

Step 1 Views to be affected

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

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

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

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

The height and massing of the building including will create view loss.

The view from my south-east windows towards the iconic Middle Head and Harbour, and the land-water interface will be lost. The loss would be from non-compliant front setback, side setback and FSR.

The view from my south-west windows towards the iconic Harbour, City Skyline and the land-water interface will be lost. The loss would be from non-compliant wall height, building height, and FSR.

The existing view is a 'moving landscape', rather than just a 'scenic outlook', given the activity on the water, particularly the cruise ships entering the harbour.

The extent of view loss is above moderate, and the features lost are considered to be valued as identified in Step 1 of *Tenacity*.



View from #3 Tabalum Living Room looking South-East



View from #3 Tabalum Living Room looking South-West

Step 2: From where are views available?

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

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

The views in all cases are available across the boundary of the subject site at oblique angles to the south-east and south-west, from standing and seated positions.

In this respect I make two points:

- I have no readily obtainable mechanism to reinstate the impacted viewed 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 Harbour, particular views from Tabalum.

Step 3: Extent of impact

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

Step 3 as quoted is:

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

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

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

The view lost includes Middle Head, Harbour, City, and land-water interface. As I rate the extent of view loss as moderate in my opinion the threshold to proceed to Step 4 of *Tenacity* is met.

Step 4: Reasonableness

The planning principle states that consideration should be given to the causes of the visual impact and whether they are reasonable in the circumstances.

Step 4 is quoted below:

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

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

Similar, the views to the south-east are not to be gained from other locations within the dwelling.

In my opinion the extent of view loss considered to be moderate, in relation to all potential views from my dwelling, particularly to the south-east.

The view is from a location from which it would be reasonable to expect that the existing view, particularly of Middle Head and the Harbour to the south-east, could be retained especially in the context of a development that does not comply with controls.

As a result, the view sharing proposed is unreasonable.

Once Templates are erected, I can provide additional commentary.

Conclusions

The private domain visual catchment is a small arc to the south-east and part of a greater arc to the south-west from which views will be affected as a result of the construction of the proposed development.

[L]
[SEP]

The proposed development will create view loss in relation to my property.

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

[L]
[SEP]

Having applied the tests in the Tenacity planning principle and without a montage that can be relied upon, I conclude that I would be exposed to moderate view loss. [L]
[SEP]

The significant non-compliance with planning controls of the proposed development, causes these losses. [L]
[SEP]

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

The proposed development cannot be supported on visual impacts grounds. [L]
[SEP]

To assist the Applicant I suggest that the applicant's site analysis should have considered the following envelope controls to maintain view:



3.7 Stormwater Management

I am concerned that stormwater will create problems for my property.

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

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

- Objective 1) To manage urban stormwater within its natural catchments and within the development site without degrading water quality of the catchments or cause erosion and sedimentation.*
- Objective 2) To manage construction sites to prevent environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation.*
- Objective 3) To promote ground infiltration of stormwater where there will be no negative (environmental) impacts and to encourage on-site stormwater detention, collection and recycling.*
- Objective 4) To make adequate arrangements for the ongoing maintenance of stormwater facilities.*

The following consideration and requirements apply to the management of stormwater:

- a) In support of the purposes of LEP clause 6.4(3), all developments must comply with the Council's 'Stormwater Control Policy' (see Council Policy Reference S190). The standards to achieve the controls contained in the Stormwater Control Policy are provided in Council's "Specification for On-site Stormwater Management 2003" and "Specification for Stormwater Drainage". Stormwater management measures are to be implemented and maintained in accordance with the Specification for Stormwater Management;*
- b) Stormwater disposal systems must provide for natural drainage flows to be maintained;*
- c) Pervious surfaces and paving will be used for driveways, pathways and courtyards where practical;*
- d) Notwithstanding the prevailing BASIX water conservation targets, the collection of rainwater/run-off for non-potable uses exceeding the target is encouraged; and*
- e) A qualified drainage/hydraulic engineer will design all stormwater controls, devices and water storage systems; and*

3.9 Mechanical Plant Equipment

I am concerned that the plant equipment including air conditioning (both heating and cooling systems and ventilation), swimming pool filtration and other mechanical systems will create excessive noise.

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

Mechanical Plant Equipment refers to the necessary infrastructure to support and maintain services or operations including air conditioning (both heating and cooling systems and ventilation), swimming pool filtration and other mechanical systems. Plant may also maintain other systems, such as plumbing and lighting for larger developments.

3.9.1 Plant Rooms

I request that the floor area must be no larger than the actual area which the plant and/or machinery occupies plus the equivalent of a 0.5m access and maintenance area surrounding the plant/machinery item for access and ventilation.

I am concerned over excessive excavation for plant rooms, creating excessive vibration.

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

- a) *Plant rooms are generally required to accommodate mechanical plant systems for commercial buildings or major residential development and used exclusively for that purpose. The design and size of these rooms will vary depending on the technical specifications of the systems and other factors such as access and ventilation.*
- b) *The provision of plant equipment in low density residential development rarely demands exclusive rooms for the occupation of plant i.e. a 'plant room', but where an exclusive plant room is proposed, the floor area must be no larger than the actual area which the plant and/or machinery occupies plus the equivalent of a 0.5m access/maintenance area surrounding the plant/machinery item for access and ventilation*. Plant rooms are not to be used for other purposes such as for storage and laundry and the overall size*

of the plant room should generally be less than a size of habitable rooms and must not add to building bulk or result in excessive excavation. In considering the location of mechanical plant equipment in dwelling houses, the use of an otherwise non-habitable location/ space or under storey that is well ventilated and which minimise noise impacts are preferred.

***Note:** *While additional space around plant equipment may be required for occupational, health and safety reasons, (i.e. more than 0.5m around the plant) then the floor area will be calculated as gross floor area for the purposed of the FSR calculation.*

3.9.2 Roof-top Plant, Lift Towers etc.

I contend that the DA fails the major objectives of this control as follows, as the lift over run exceeds maximum building height.

Roof-top plant and lift towers must be inconspicuous and / or designed as an integral part of the building in such a way as to appear as an appropriate part of the overall townscape. Plant equipment is to be appropriately located and designed such that it is not apparent from the street level view or from other active pedestrian areas and must not compromise street character, landscaping or pedestrian amenity or conflict with townscape objectives of this plan.

3.9.3 Noise from Mechanical Plant

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

External mechanical plant systems (for pools, air conditioning and the like) must be acoustically enclosed and located centrally and away from neighbours living areas of neighbouring properties and side and rear boundaries.

Note: *Excessive noise from the operation of mechanical plant such as air conditioning units, swimming pool pumps, and ventilation and refrigeration systems can disturb residents, disrupt sleep, interfere with normal daily activities or significantly impact on people's health.*

Summary:

The proposal requires to be heavily amended to resolve all these matters. The non-compliance will result in:

- Visually dominant height and bulk imposing on the private open space of neighbours.
- Unreasonable solar loss
- Unreasonable view loss
- Unreasonable privacy outcome by elevated decks and windows beyond controls giving direct line of sight into neighbours property, with no privacy screening
- Unreasonable pool location with devastating amenity outcomes
- Unreasonable and excessive excavation, leading to vibration risks

4.1 Residential Development Controls

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

This section of the plan provides controls for development generally in LEP Zones R1, R2, R3, E3 and E4. These paragraphs may also apply to residential development elsewhere in Manly and are to be read in conjunction with development standards in the LEP.

Relevant DCP objectives to be met in relation to residential development include the following:

- Objective 1) To delineate by means of development control the nature and intended future of the residential areas of the former Manly Council area.*
- Objective 2) To provide for a variety of housing types and densities while maintaining the exiting character of residential areas of the former Manly Council area.*
- Objective 3) To ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residences, the existing environmental quality of the environment or the aesthetic quality of the former Manly Council area.*
- Objective 4) To improve the quality of the residential areas by encouraging landscaping and greater flexibility of design in both new development and renovations.*
- Objective 5) To enable population growth without having adverse effects on the character, amenity and natural environment of the residential areas.*

Objective 6) To enable other land uses that are compatible with the character and amenity of the locality.

Objective 7) To ensure full and efficient use of existing social and physical infrastructure and the future provision of services and facilities to meet any increased demand.

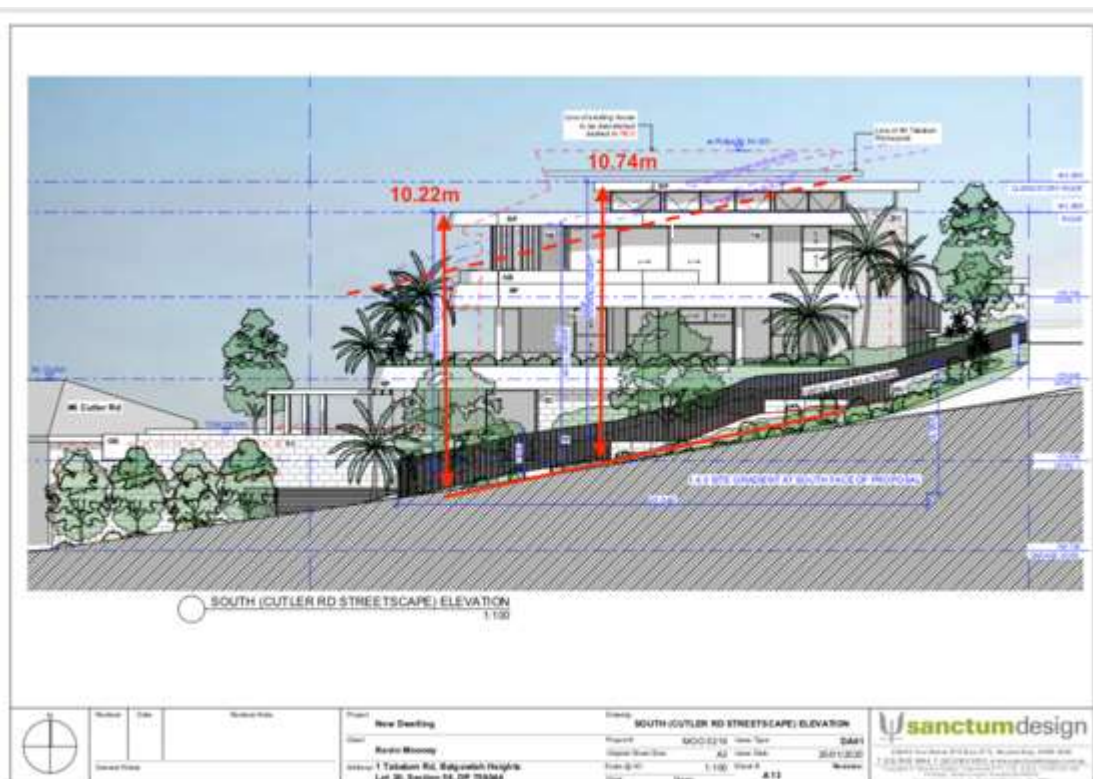
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

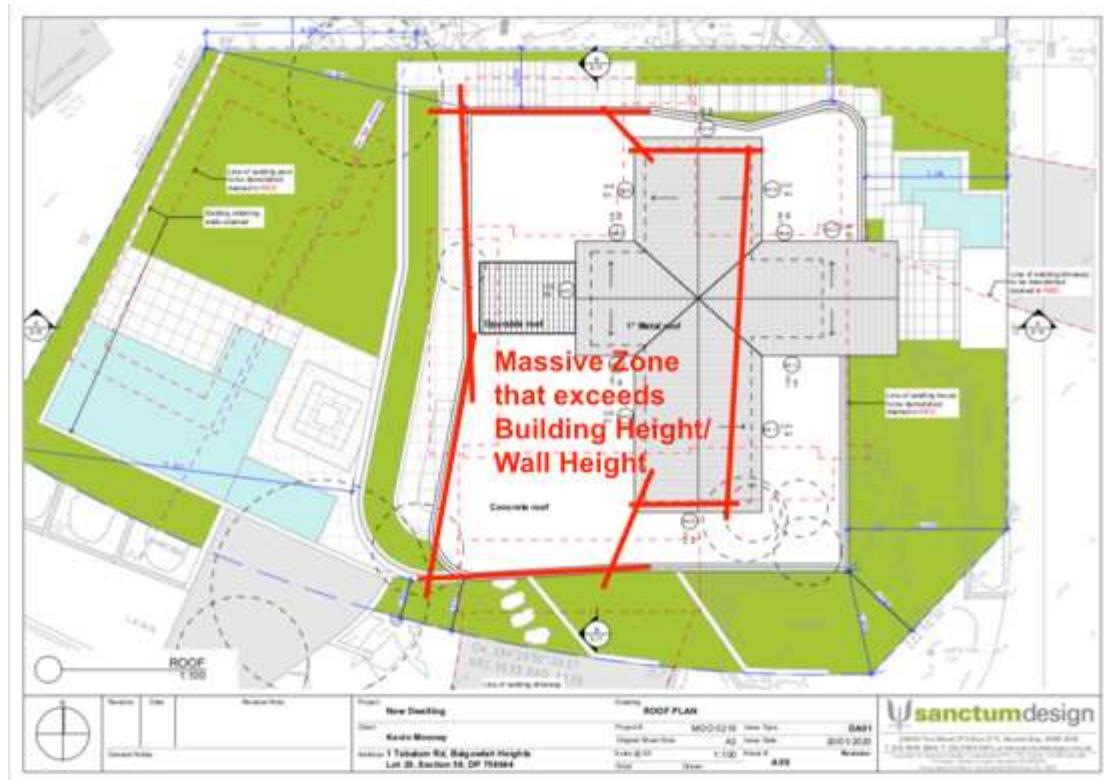
Control 8.5 m

Proposed 10.74 m [clerestory at SW corner, survey RL 72.31] and 10.22m [roof at SW corner, survey RL 71.68]

I refer to comments under the MLEP, made previously.

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.





The proposed development does not minimise disruption to the views to nearby residential development from public spaces (including the harbour and foreshores), views from nearby residential development to public spaces (including the harbour and foreshores), and views between public spaces (including the harbour and foreshores).

The proposed development does not maintain adequate solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and maintain adequate to habitable rooms of adjacent dwellings.

The proposed development does not 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.

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

While the LEP contains Height of Buildings development standard and special height provisions, these paragraphs control the wall and roof height and the number of storeys within and in support of the LEP provisions in relation to residential development.

LEP objectives for the Height of Buildings at clause 4.3 are particularly

applicable to controls at paragraph 4.1.2 of this DCP.

4.1.2.1 Wall Height

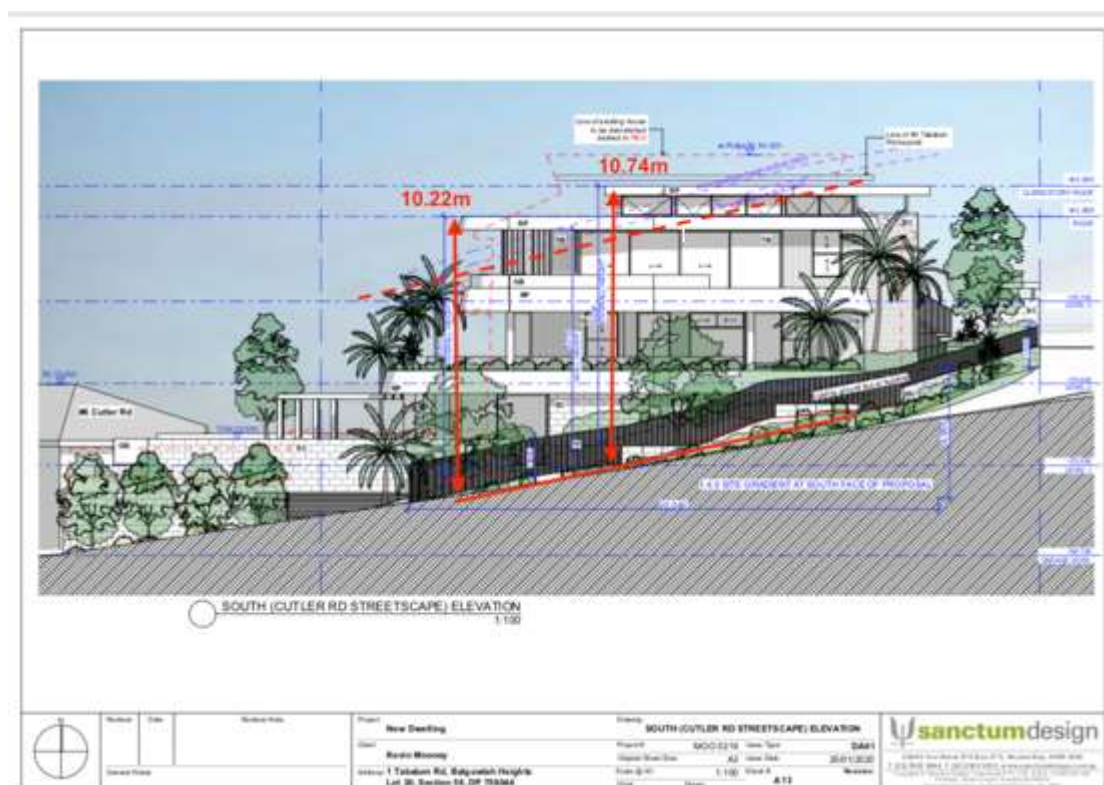
Control 7.8m and 8.0m

Proposed 10.34m clerestory; 9.82m Roof

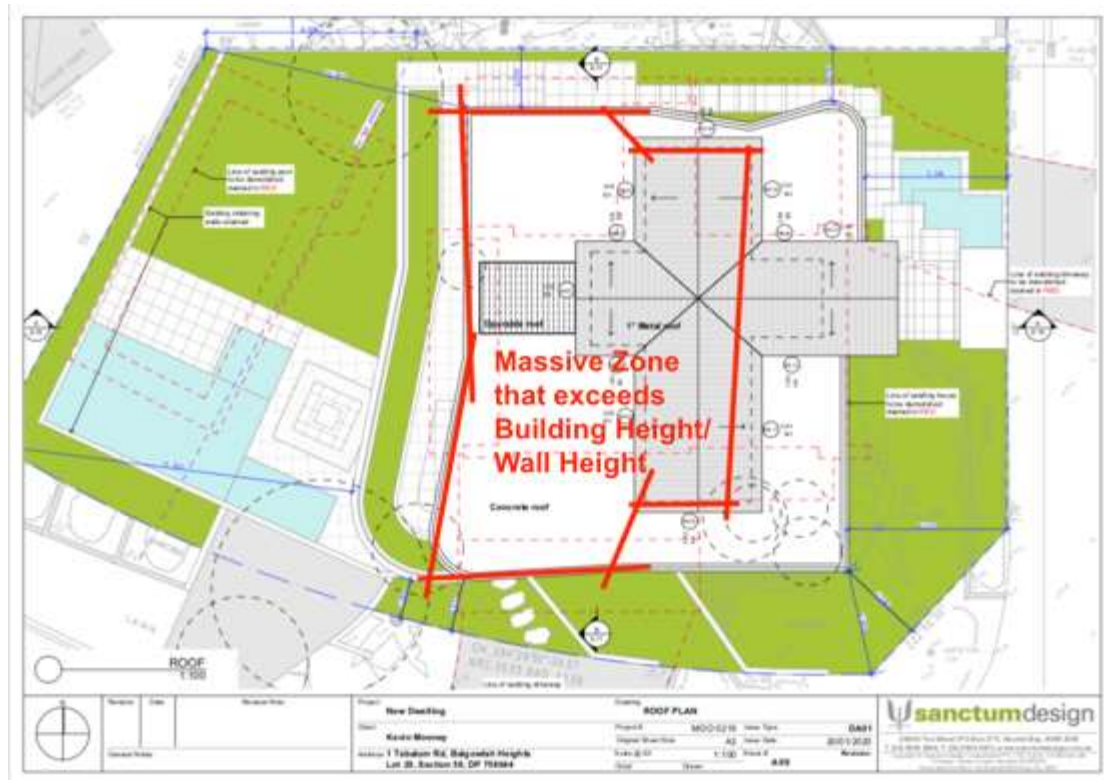
The objectives have clearly not been met.

The visual impact from adjoining properties and from the public recreational zones is one of visual bulk. The roof forms will dominate the views from the public recreational zones, from the street, other neighbours properties and the view from my property.

The non-compliant wall height directly causes this loss.



The proposed wall heights are 400mm below the maximum building height.



The proposed development does not allow me to share the views that I currently enjoy.

The non-compliant wall height directly causes this loss.

The proposed development does not minimise the impact of development to my as it creates view loss, solar loss, privacy loss, and considerable visual bulk.

The proposed development does not respond to site topography and does not discourage excavation of the natural landform.

The site topography has not been properly addressed, leading to non-compliance and poor visual bulk.

The design has not discouraged excavation of the natural landform: it has taken one enormous hole out of the natural landform that could never be replaced.

This is contrary to DCP controls.

The extent of the non-compliance is clear on the northern elevation, but under forecast on the southern elevation.

This non-compliance in conjunction with the side boundary non-compliance will result in a significant bulk and scale imposing on the private open space of neighbours, public domain, and my property.

There is a significant concern over the view loss, overshadowing and privacy loss as a result of this element.

View loss, overshadowing and privacy loss that is a direct result of a non-compliance should not be supported by Council.

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

Within the LEP Height of Buildings development standard, the maximum external wall height is calculated based on the slope of the land under the proposed wall. Figures 26, 27 and 28 provide guidelines for determining the maximum height of external walls based on the particular slope of the land along the length of these proposed walls. The maximum wall height control will also vary from one building, elevation or part elevation to another depending on the slope of land on which the wall is sited. Within the range of maximum wall heights at Figures 26 and 28, the permitted wall height increases as the slope of the land increases up to a gradient of 1 in 4, at which point the permitted maximum wall height is capped according to Figure 26.

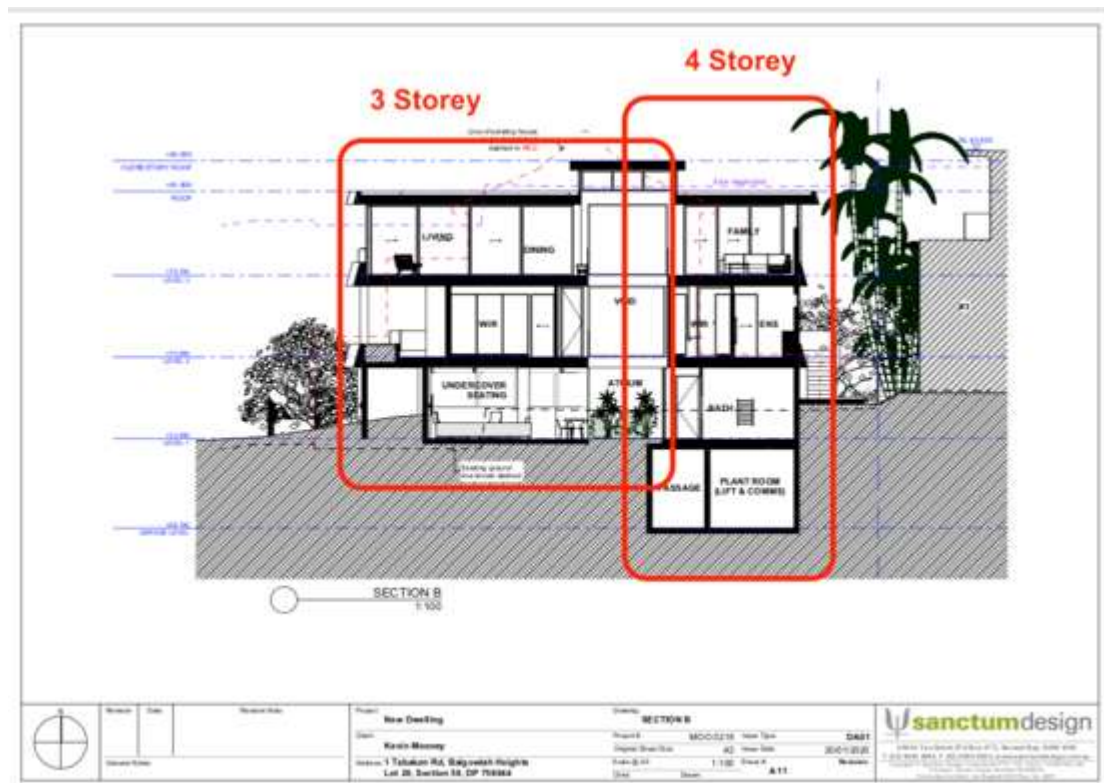
[b] For the purpose of determining maximum wall height, the slope of the land is calculated at natural ground level along the full length of the proposed wall expressed as a ratio that is applied in Figure 27 - Interpretation of Wall Height based on Slope. The slope of land on which the wall is sited will differ from one building to another and from one elevation of that building to another elevation and will be used in Figure 28 below to determine the maximum wall height in each case.

4.1.2.2 Number of Storeys

Control: Two Storey

Proposed: Four Storey

The majority of the proposed development is three storey, and the section shows zones over the garage entry as four storey.



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

[a] Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.

[b] Variation to the maximum number of storeys may be considered: where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height, and to allow an additional understorey where that storey satisfies the meaning of basements in the LEP.

4.1.2.3 Roof Height

Control 8.5 m

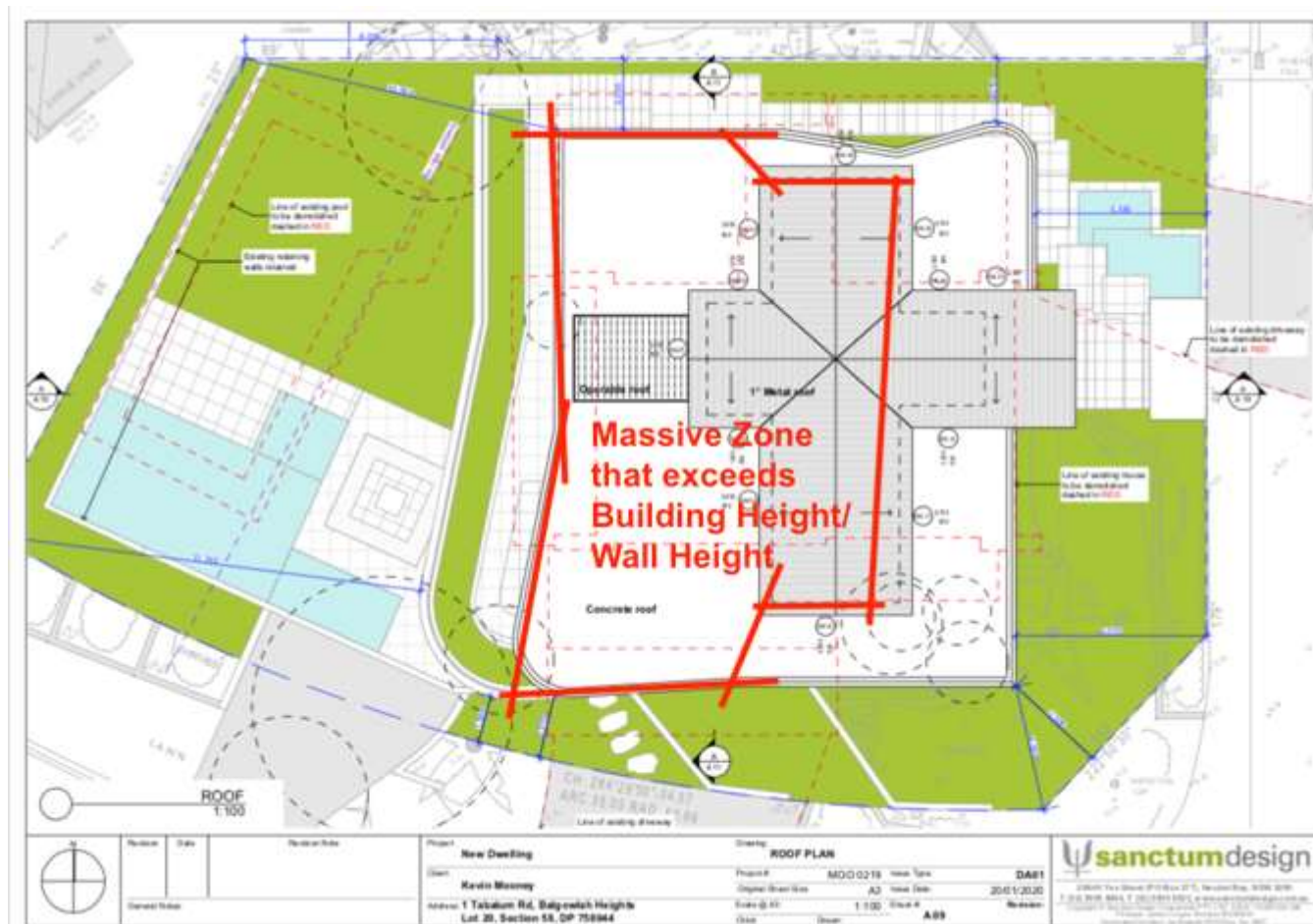
Proposed 10.74 m [clerestory at SW corner, survey RL 72.31] and 10.22m [roof at SW corner, survey RL 71.68]

I contend that the DA fails the major requirement of this control:

Roofs should complement the roof pitch and forms of the existing buildings in the streetscape

The proposed roofs do not complement the roof pitch and forms of the existing buildings in the streetscape or by the public domain to the east.

I am concerned that all these roof structures are pushed well into zones facing the National Park, making the outcome every more concerning.



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

Roof parapets may extend up to 0.6m above the actual wall height where Council considers that a parapet is considered to be appropriate to the design of the development and satisfies the objectives of this DCP and the LEP. For example, a parapet roof should not result in the appearance of lift structures and the like that protrude above the roof.

Note: As the LEP definition 'Building Height' incorporates plant and lift overruns, these structures must be similarly contained and not protrude above the maximum roof height.

4.1.3 Floor Space Ratio (FSR)

Control 0.4

Proposed 0.5 or more



The following zones should be included within FSR, as they add to the bulk of the building, and do not accord with FSR calculations:

- **Void Areas not included, even at the base of the void**
- **Undercroft enclosed on three sides and a roof not included**
- **Excessive Storage and Plant not included in FSR**

All these areas add to the bulk, and are 'ripe' for further enclosure at a later date.

The proposed development does not minimise disruption to views to adjacent and nearby development, and does not allow adequate sunlight to penetrate private open spaces and windows to the living spaces of adjacent residential development.

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

Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply.

In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:

Objective 1) To ensure the scale of development does not obscure important landscape features.

Objective 2) To minimise disruption to views to adjacent and nearby development.

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

4.1.3.2 Exceptions to FSR for Plant Rooms

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

In calculating the gross floor area under the LEP dictionary meaning for the purpose of calculating FSR, consideration must be given to paragraph 3.9 Plant Equipment of this plan with regard to the design and maximum area of plant equipment and plant rooms.

4.1.3.3 Exceptions to FSR for Open Balconies

The balconies that are enclosed by roof structures, and many are enclosed on three sides by wall heights exceeding 1.4m high, adding to the bulk, and they should not be included into the LEP definition of Gross Floor Area.

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

Objective 1) To maintain open balconies which contribute to the articulation of building facades without adding to the building bulk and provide

an amenity of open space for occupants.

In calculating the Gross Floor Area under the LEP dictionary meaning for the purpose of calculating FSR, balconies that are enclosed will not be excluded from the LEP definition of Gross Floor Area i.e. will be included in FSR when the balcony is:

- i) enclosed to the extent that it is part of the building envelope as defined by the Building Code of Australia; and
- ii) considered by Council to have the character of a habitable room.

Note: In this regard it is noted that the LEP only excludes balconies from the Gross Floor Area when the outer walls are less than 1.4m high.

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

The proposed development does not maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

The proposed development does not ensure and enhance local amenity by providing privacy, providing equitable access to light, sunshine and air movement and facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.

The proposed development does not define and add character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and facilitate safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.

The proposed development does not enhance and maintain natural features by accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees; does not ensure the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and does not ensure the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.

The proposed development does not assist in appropriate bush fire asset protection zones

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

Note: This section addresses the buildings' setback from its various property boundaries.

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

- 1. To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*
- 2. To ensure and enhance local amenity by:*
 - providing privacy;*
 - providing equitable access to light, sunshine and air movement; and*
 - facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
 - defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
 - facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*
- 3. To promote flexibility in the siting of buildings.*
- 4. To enhance and maintain natural features by:*
 - accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
 - ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
 - ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*
- 5. To assist in appropriate bush fire asset protection zones*

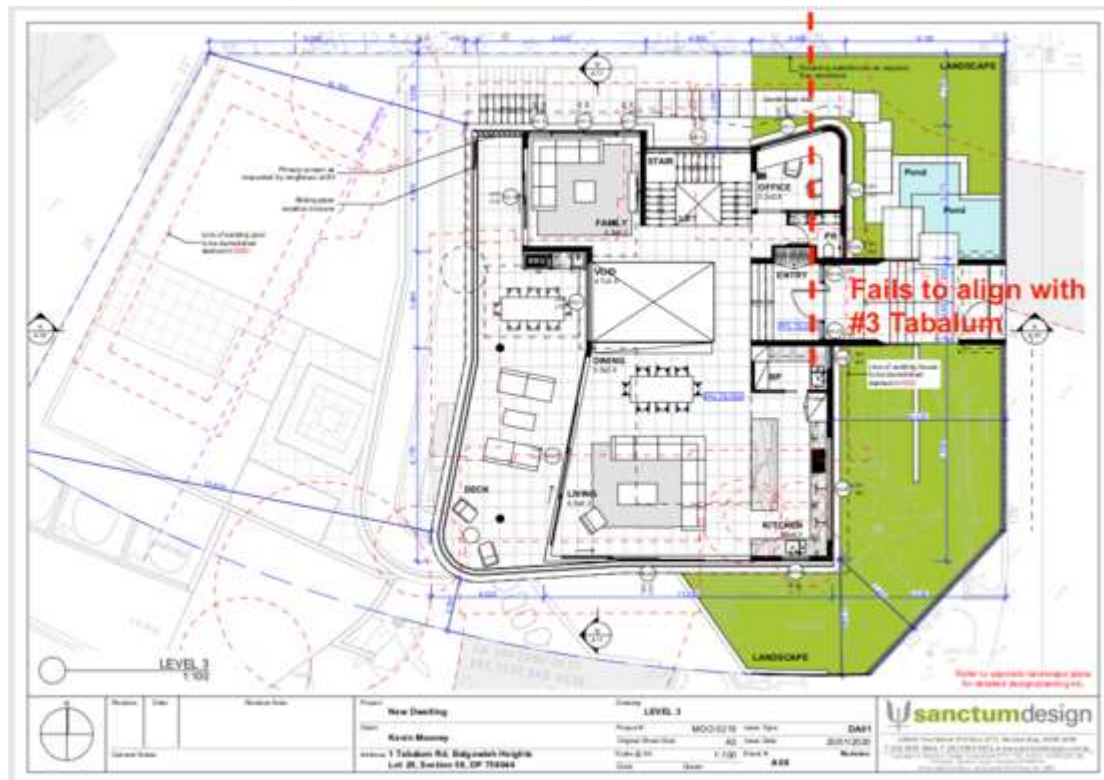
4.1.4.1 Street Front setbacks

Tabalum Street Setback

Control #3 Tabalum at 7.0m

Proposed 6.13 m

The non-compliant front setback adds to the loss of view to the iconic Sydney Harbour Heads. I ask for a compliant front setback that relates to 3 Tabalum.



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

[a] Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity

[b] Where the street front building lines of neighbouring properties are variable and there is no prevailing building line in the immediate vicinity i.e. where building lines are neither consistent nor established, a minimum 6m front setback generally applies. This street setback may also need to be set further back for all or part of the front building façade to retain significant trees and to maintain and enhance the streetscape.

[c] Where the streetscape character is predominantly single storey building at the street frontage, the street setback is to be increased for any proposed upper floor level. See also paragraph 4.1.7.1.

Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity.

[d] Projections into the front setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, chimneys, meter boxes and the like, where no adverse impact on the streetscape or adjoining properties is demonstrated to Council's satisfaction.

Note: Reference to 'prevailing building lines' in this paragraph means the building lines determined in undertaking the context and site analysis required to accompany all DAs (see Council's Administrative Guidelines) including, in this case, demonstrated survey of all building lines and street frontages in the vicinity i.e. the visual catchment along the street.

4.1.4.2 Side setbacks and secondary street frontages

Northern Elevation Setback

I request that the Side setback be increased to 3m due to the privacy issues arising from the high usage zones particularly the Office at the north east corner



The development does become visually dominant by virtue of its height and bulk, and will present a visually dominant outcome, purely by virtue of its height and bulk.

The development does not ensure adequate light, solar access and privacy by providing spatial separation between buildings.

The development does not respond to the topography of the site.

The proposed development does not accord with the control that states that all new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries. This is the situation along the proposed northern side setback, immediately adjacent our boundary.

The proposed development does not accord with the control that states that for secondary street frontages of corner allotments, the side boundary setback control will apply unless a prevailing building line exists. In such cases the prevailing setback of the neighbouring properties must be used. Architecturally the building must address both streets.

The proposed wall height mentioned earlier, in respect to wall heights, to the south west corner is **9.84m**.

The Setback to Cutler Road should therefore be 1/3 of 9.84m, being **3.28m**.



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

[a] Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.

[b] Projections into the side setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, and the like, if it can demonstrate there will be no adverse impact on adjoining properties including loss of privacy from a deck or balcony.

[c] All new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries;

[d] For secondary street frontages of corner allotments, the side boundary setback control will apply unless a prevailing building line exists. In such cases the prevailing setback of the neighbouring properties must be used. Architecturally the building must address both streets.

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

[f] In relation to the setback at the street corner of a corner allotment the setback must consider the need to facilitate any improved traffic conditions including adequate and safe levels of visibility at the street intersection. In this regard Council may consider the need for building works including front fence to be setback at this corner of the site to provide for an unobstructed splay. The maximum dimension of this triangular shaped splay would be typically up to 3m along the length of the site boundaries either side of the site corner.

See also paragraph 5.5 Road Widening and Realignment and the former Manly Council's Corner Splay Policy (C150) for instances where the corner splay may be acquired by Council at intersections in the public interest and in the circumstances of the particular case.

4.1.4.4 Rear Setbacks

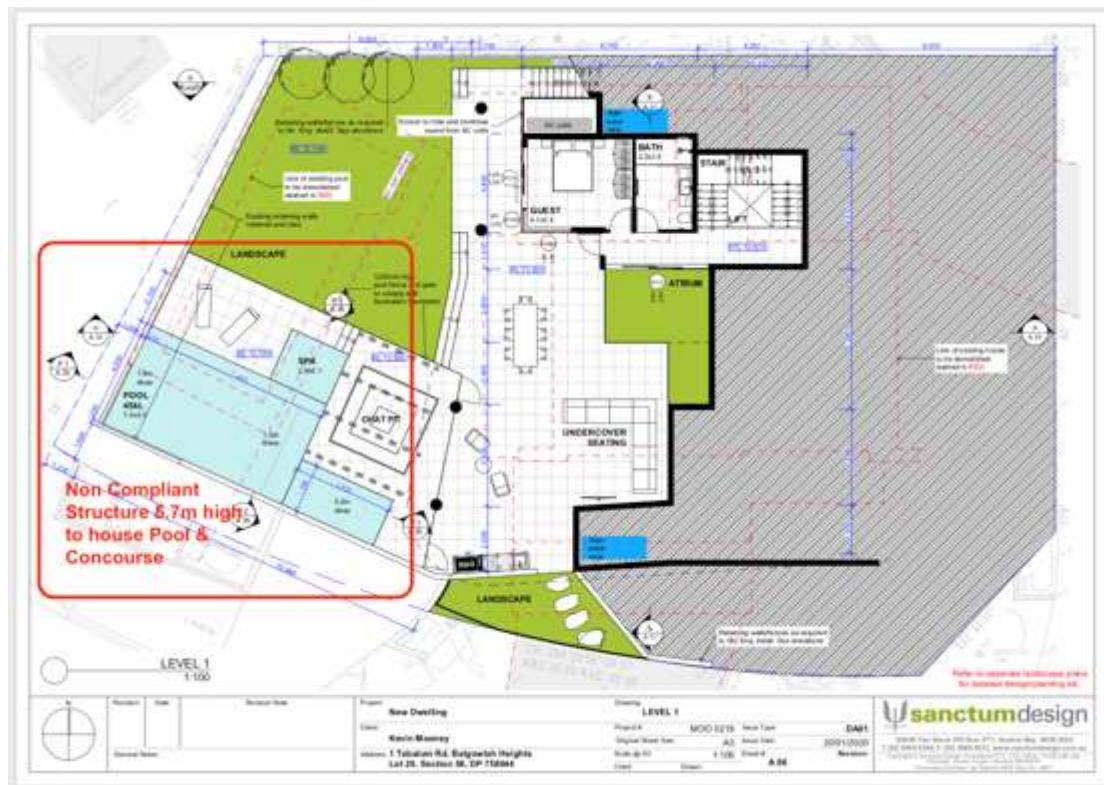
Control 8 m

Proposed 1.23 m

I am concerned that a major new build element of the proposed development, namely the elevated pool is built into the rear setback zone.

The new structure is part of the building considering that the built form rises to RL 73.9 over the adjacent levels at the south-west corner at RL 68.18. This represents wall heights of up to 5.72m, which is effectively a two storey structure, built into the rear setback zone.

This structure is built only 1.23m from the western boundary, and 1.685m from the southern street boundary.



No consideration to privacy, additional overshadowing, and visual bulk has been considered in this respect.

I contend that Council must consider this element as proposed development within the rear setback.

The proposed development does not maintain the distance between any part of a building and the rear boundary must not be less than 8m. The proposed development does not maintain rear setbacks to allow space for planting of vegetation, including trees, other landscape works and private and/or common open space. On sloping sites, particularly as this new development is uphill and in sensitive foreshore locations, no consideration has been given to the likely impacts of overshadowing, visual privacy and view loss. Rear setbacks has not minimise overshadowing, visual privacy and view loss.

Opportunities for deep soil landscape areas are not maintained in a very critical area adjacent to the rear boundary and the public domain to the west, and neighbours property.

Any design should be according with the rear back so as to encourage deep soil landscape to enrich this zone. The setting of neighbours trees is compromised, by placing built form close to the important neighbours trees. TPZs are compromised.

The sense of openness will be lost, as a major zone for open landscape will be built upon by the construction of a major pool built into the rear setback and street setback zones.

The amenity of the adjacent National Park will be compromised, as a major pool overlooking the public land will make any casual user of the National Park feel like they are being watched and overlooked. The privacy of casual users to enjoy the space will be poorly affected.

The visual continuity will be broken, and the landscape elements totally controlled by built form.

The form in the rear setback built will dominate the landscape, and that is a very unwelcome outcome of the non-compliant rear setback.

The scenic amenity of the area is heavily compromised.

- The Development fails to maintain a minimum setback to rear boundaries.
- The Development fails to ensure that the rear setback area is to be landscaped and free of any above or below ground structures. Built form dominates the zone.
- The Development fails to ensure that where there is a compliant rear boundary setback, above and below ground structures and private open space, including basement carparking, balconies, terraces, pools and the like

The development fails the objectives and the requirements.

The proposed dwelling and proposed deck adjoining the proposed Living zones is significantly non-compliant.

This is contrary to DCP controls.

The proposed raised pool and associated areas, built into the rear setback zone, will be jarring to the natural environment.

This design will result in a significant built form within the rear setback area.

This element is not consistent with the rear setback objectives of the DCP.

The proposed development will present non-compliant building heights and wall heights adjacent to this zone, adding to the concern.

Views, overshadowing and privacy to the adjoining public and private domains are not reasonably maintained.

View loss, overshadowing and privacy loss that is a direct result of a non-compliance should not be supported by Council.

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

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

4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2

I am concerned to the swimming pool proposed to be positioned immediately adjacent the E1 National Park. There is no common boundary, but the setting to an entry area of the National Park will be affected by the visual bulk of the development.

The Pool is not designed to complement the natural or landscape character of the adjacent LEP Zones.

I refer to earlier dimensional concerns.

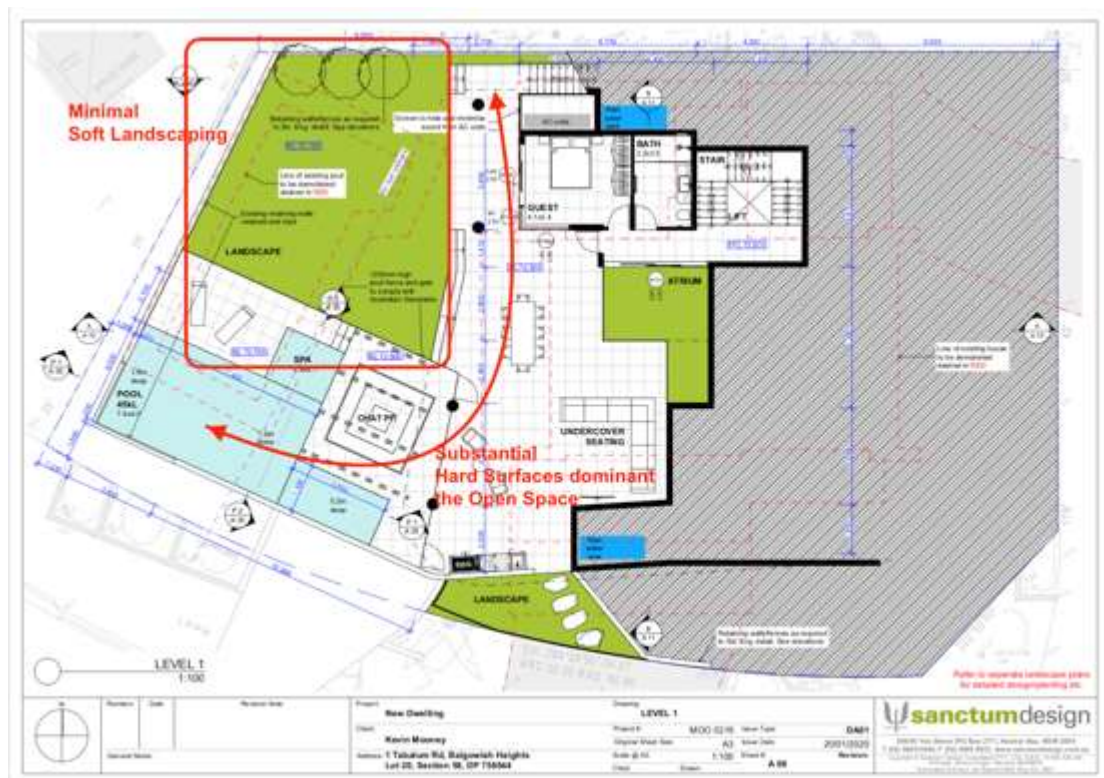
I contend that the DA fails the major objectives of this control as follows:

- a) *Buildings, swimming pools and garden sheds on sites with a common boundary to land zoned in the LEP as Zones RE1 Public Recreation, RE2 Private Recreation, E1 National Parks and E2 Environmental Conservation must be set back at least 6m from this common boundary and in the case of rear setbacks, the minimum 8m setback prevails (see paragraph 4.1.4.4 of this plan). However, gazebos, barbeques, child play equipment and the like may be permitted within this setback provided they are designed to complement the natural or landscape character of the adjacent LEP Zones.*
- b) *Remnant native vegetation must be protected on land particularly within the minimum required setback area adjacent to land zoned in the LEP as Public or Private Recreation (Zones RE1 & RE2), National Parks (Zone E1) and Environmental Conservation (Zone E2). The design of development generally adjacent to native vegetation should be sympathetic to the natural environment in order to protect and enhance areas as habitat for native fauna.*

4.1.5 Open Space and Landscaping

The proposed development does not maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

The proposed development does not maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.



The proposed development does not maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

The proposed development does not retain and augment important landscape features and vegetation including remnant populations of native flora and fauna. The proposed development does not maximise wildlife habitat and the potential for wildlife corridors. The 70% coverage of hard finishes, with a token amount of soft creates a setting for these matters.

Council should note that in September 2019 Sydney University conducted a limited study in the front and backyard of our property to see what animals live in our neighbourhood. Ringtail and bushtail possums were found.

I ask Council to consider the need to submit a Flora and Fauna Assessment, Terrestrial Biodiversity Report and a Species Impact Assessment, and other reports as required.

Threatened Species have been observed in nearby sites, and Council must consider individual assessments carried out in accordance with Section 5A of EPAA.

Consideration also must be given to the MLEP 2013 Clause 6.3[3] and [4] relating to terrestrial biodiversity.

In recent assessments in the area there has been recordings of numerous specie, and most are protected [p].:

Mammalia

Long-nosed Bandicoot [p]
Common Brushtail Possum [p]
White Striped Freetail Bat [p]
Goulds Wattled Bat [p]
Eastern Bent wing Bat [p]
Grey Headed Flying Fox [p]

Reptila

Eastern Water Skink [p]
Delicate Skink [p]
Southern Leaf Tailed Geoko [p]
Eastern Water Dragon [p]
Common/Eastern Blue-Tongue [p]

Amphibian

Common Eastern Froglet [p]

Aves

Australian Brush Turkey [p]
Sulphur Crested Cockatoo [p]
Australian raven [p]
Pied Butcherbird [p]
Laughing kookaburra [p]
Eastern Yellow Robin [p]
Noisy Miner [p]
Eastern Whipbird [p]
Pied Currawong [p]
Rainbow Lorikeet [p]

Most neighbours observe these specie regularly in the area.

My concern is that the design has not taken any consideration of the protection of the habitats for these species, nor created zones for their habitat.

Core refuge habitat for Bandicoots and Possums has not been considered, despite the fact that they appear in Reports on nearby development. We know from the Sydney University that Possums habitat the area, and this is well known. Bandicoots have been observed in many local studies. Skinks, Geoko, and Blue-Tongues are also well reported.

My concern is to the disturbance of the habitat by excessive excavation, and the extension of the basement zones beyond the building footprint, will

produce a poor outcome.

My main concern is the location, size, and height of the pool structure, and the massive hard surface zone around the pool that extends to a massive undercroft. This zone should have been a deep soil landscaping zone, with the pool positioned adjacent to the proposed dwelling, leaving a large zone to the rear boundary for a more responsive landscape solution towards the National Park.

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

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

- 1. To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna*
- 2. To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*
- 3. To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*
- 4. To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*
- 5. To minimise the spread of weeds and the degradation of private and public open space.*
- 6. To maximise wildlife habitat and the potential for wildlife corridors*

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

I contend that the garage should be positioned under the proposed dwelling, to avoid excessive excavation. The existing garage in Cutler Road has been used for decades without concern. A similar garage in a similar location would be the option to better reduce amenity impacts on neighbours.

The proposed development does not ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

The proposed development does not ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

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

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

- Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).*
- Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.*
- Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.*
- Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.*
- Objective 5) To ensure the width and number of footpath crossings is minimised.*
- Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.*
- Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.*

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas

The design and location of the garage does not minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality

Garage structures are forward of the building line and are designed and sited so as to dominate the street frontage.

There is a reasonably alternative onsite location to this massive streetscape entry, by simply maintaining a garage entry under the proposed dwelling at existing entry grade.

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

- a) *The design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.*
- b) *Garage and carport structures forward of the building line must be designed and sited so as not to dominate the street frontage. In particular:*
 - i) *garages and carports adjacent to the front property boundary may not be permitted if there is a reasonably alternative onsite location;*
 - ii) *carports must be open on both sides and at the front; and*
- c) *the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.*

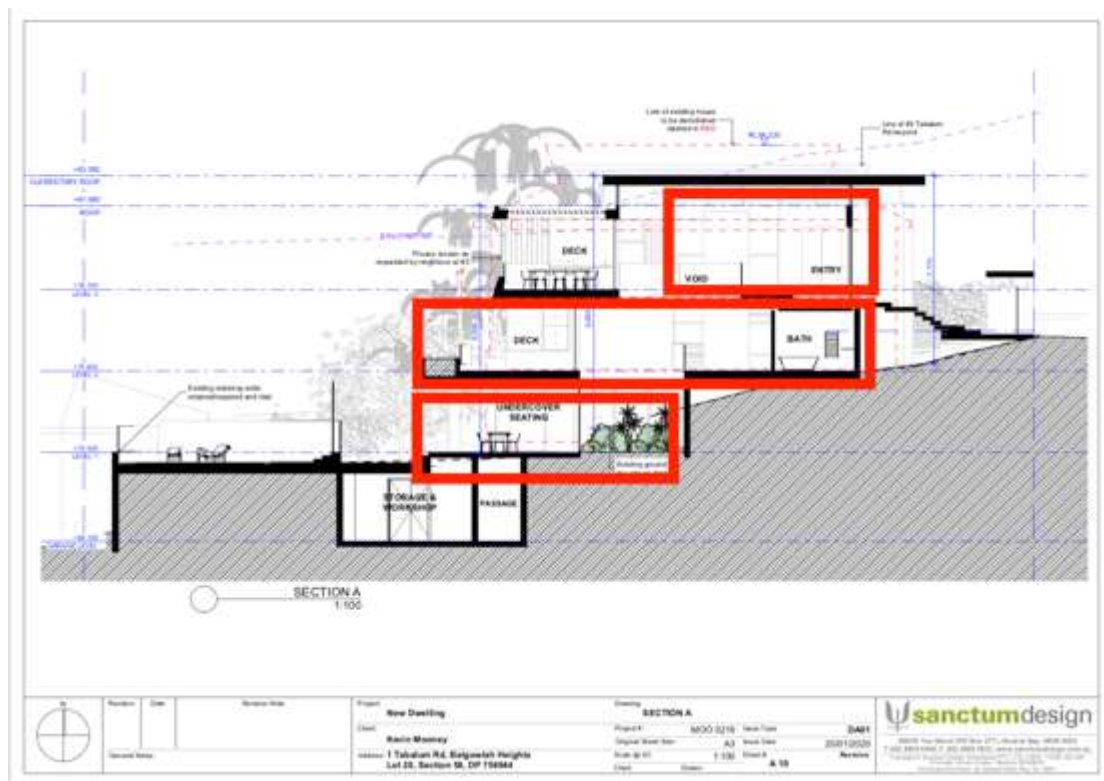
4.1.8 Development on Sloping Sites

The design of development does not respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.

Of particular concern the proposed development does not generally step with the topography of the site as the proposed development simply ignores building

height and wall height controls, and does not step down the slope, but projects roof heights to the west as if it is a flat site.

Of particular concern the proposed development does not avoid large undercroft spaces and does not minimise supporting undercroft structures. The large undercroft area at the lower level is cavernous.



Design must step with the slope, and be generally two storey

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

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.*

Driveways on sloping sites

- c) On steep sites, driveways must be designed so they do not dominate the street frontage, by:*
 - i) limiting their height above existing ground level to avoid the need for elevated ramps and similar structures to access car parking areas, especially those which may encroach on public land;*
 - ii) limiting their width;*
 - iii) using materials that do not visually detract from the natural surroundings; and*
 - iv) retaining significant trees.*

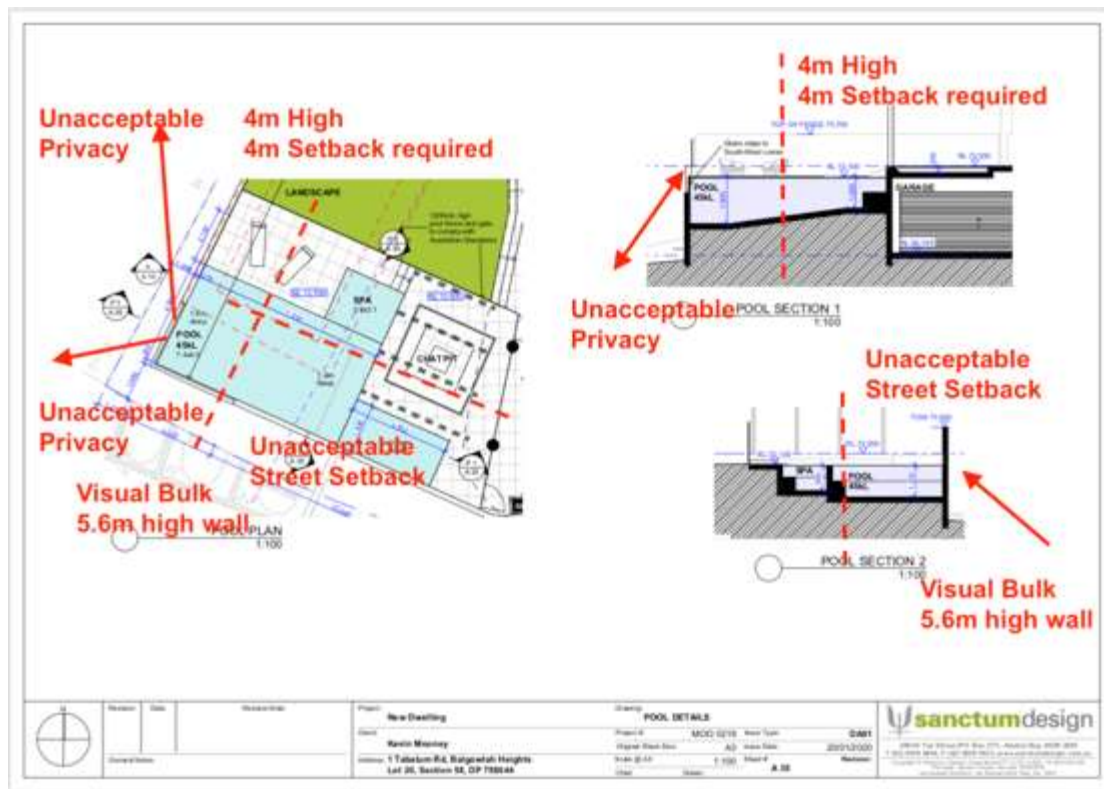
4.1.9 Swimming Pools, Spas and Water Features

The proposed pool has not been located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties. The proposed pool has not been appropriately located so as not to adversely impact on the streetscape or the established character of the locality. The proposed pool has not been integrated into the landscaping.

I am concerned that a major new build element of the proposed development, namely the elevated pool is built into the rear setback zone.

The new structure is part of the building considering that the built form rises to RL 73.9 over the adjacent levels at the south-west corner at RL 68.18. This represents wall heights of up to 5.72m, which is effectively a two storey structure, built into the rear setback zone.

This structure is built only 1.23m from the western boundary, and 1.685m from the southern street boundary.



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

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

- Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;*
- Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;*
- Objective 3) To integrate landscaping; and*
- Objective 4) To become an emergency water resource in bush fire prone*

areas.

4.1.9.1 Height above ground

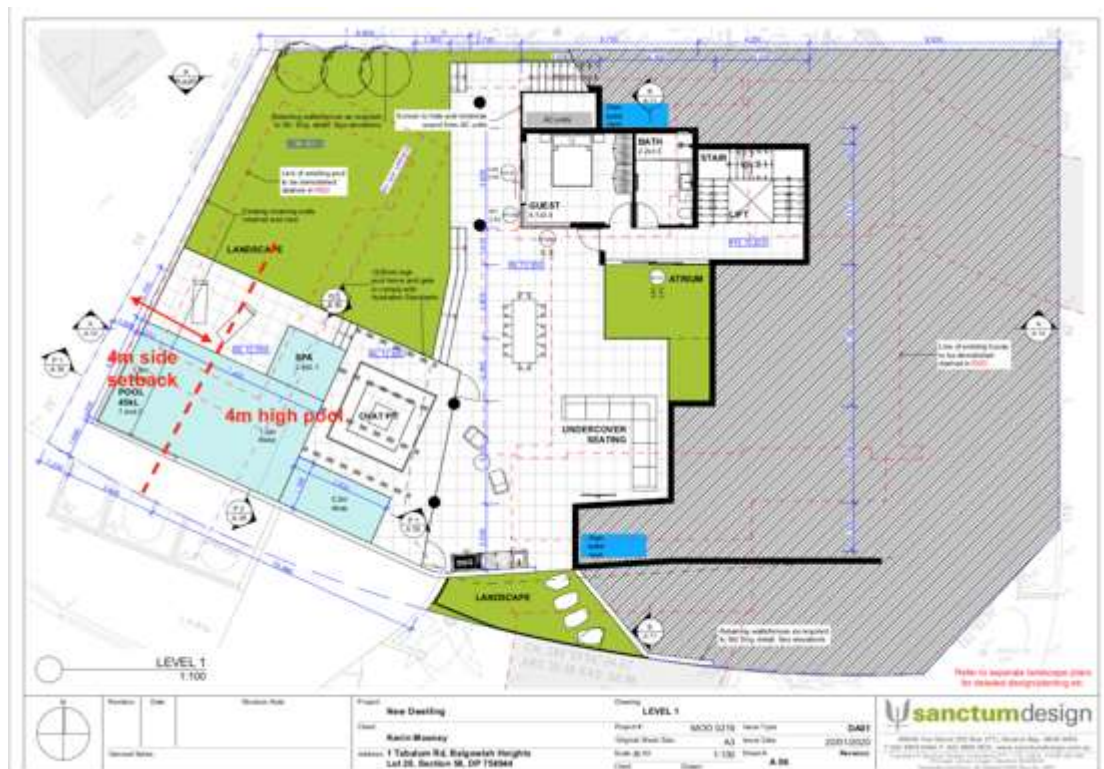
The proposed swimming pool and spa has not been built on or in the ground and is elevated more than 1m above natural ground level, and it would detract from the amenity or character of the neighbourhood

The pool does not accord with minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.

The new structure is part of the building considering that the built form rises to RL 73.9 over the adjacent levels at the south-west corner at RL 68.18. This represents wall heights of up to 5.72m, which is effectively a two storey structure, built into the rear setback zone.

The pool grossly exceeds the 1m above natural ground level control, being 4m above ground.

The pool and concourse would need to have a setback to neighbours boundary by 4m to accord with the control.

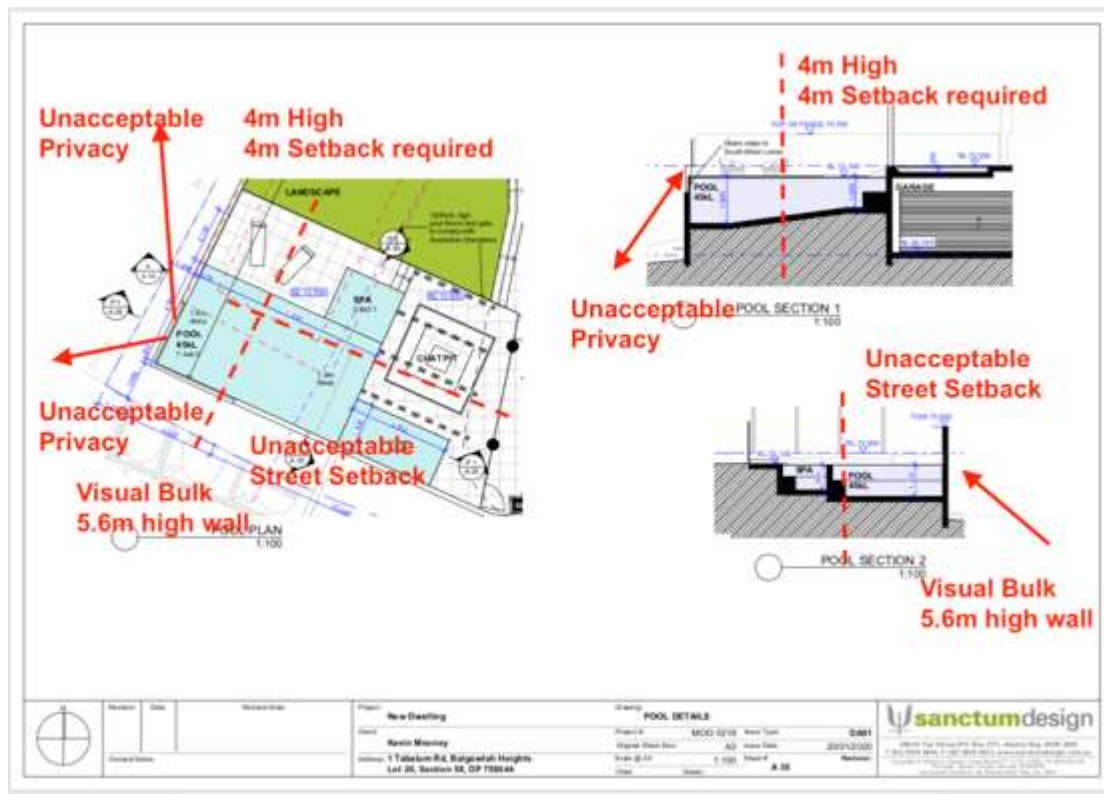


I contend that the DA fails the major objectives of this control as follows:

- a) *Swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. Consideration of any exception to exceed the height above ground must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse more than 1m above natural ground level:*
 - i) *would not detract from the amenity or character of the neighbourhood; and*
 - ii) *is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.*

4.1.9.2 Location and Setbacks

The pool is located in the front setback zone to Cutler Road. It detracts from the amenity and character of the neighbourhood, and the entry to the National Park.



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

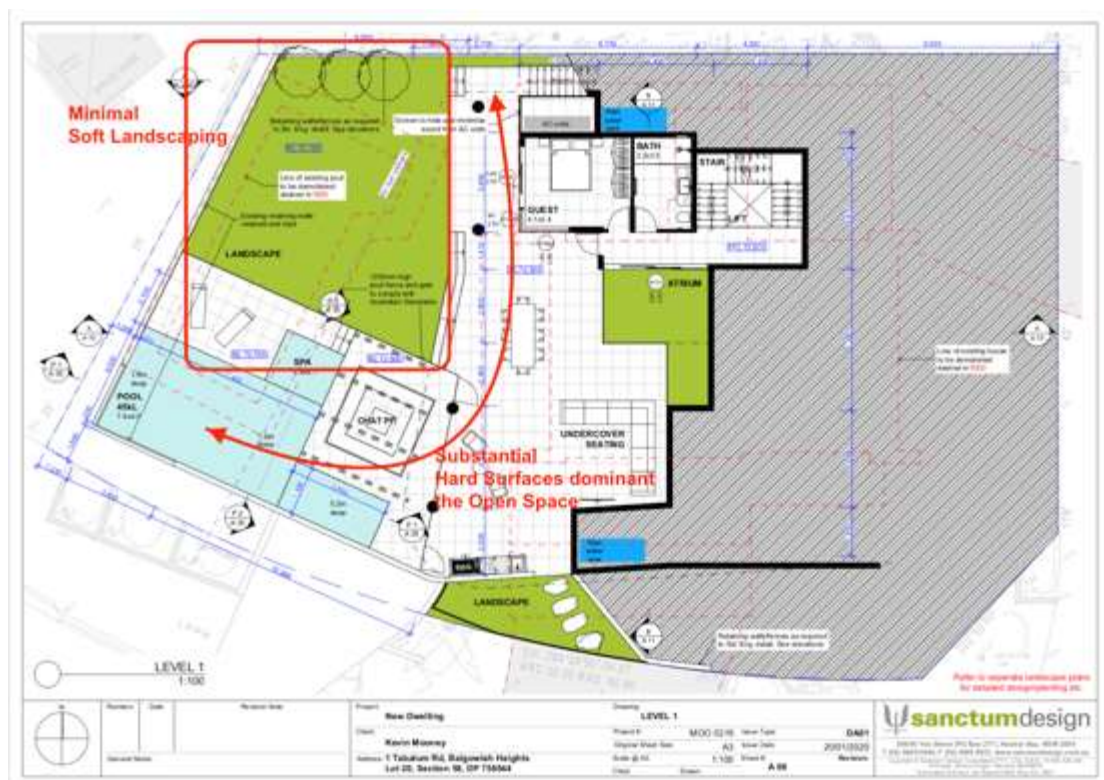
- a) *Swimming pools and spas must not be located within the front setback i.e. between the front boundary of the lot and the building line. Consideration of any exception to the required location must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse:*
 - i) *does not detract from the amenity or character of the neighbourhood; and*
 - ii) *is a minimum distance from the front boundary equivalent to at least twice the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.*
- c) *The setback of the outer edge of the pool/spa concourse from the side and rear boundaries must be at least 1m, with the water line being at least 1.5m from the boundary.*

4.1.9.3 Proportion of Total Open Space

The pool, spa, and concourse comprises more than 30 percent of the total open space.

The pool, and the concourse presented at Level 1, presents a massive zone well beyond the 30% of open space control.

Level 1 Pool & Concourse looks to be occupying 75% or more of the available Total Open Space at this level. The quantum of zone left for deep soil planting is extremely minimal.



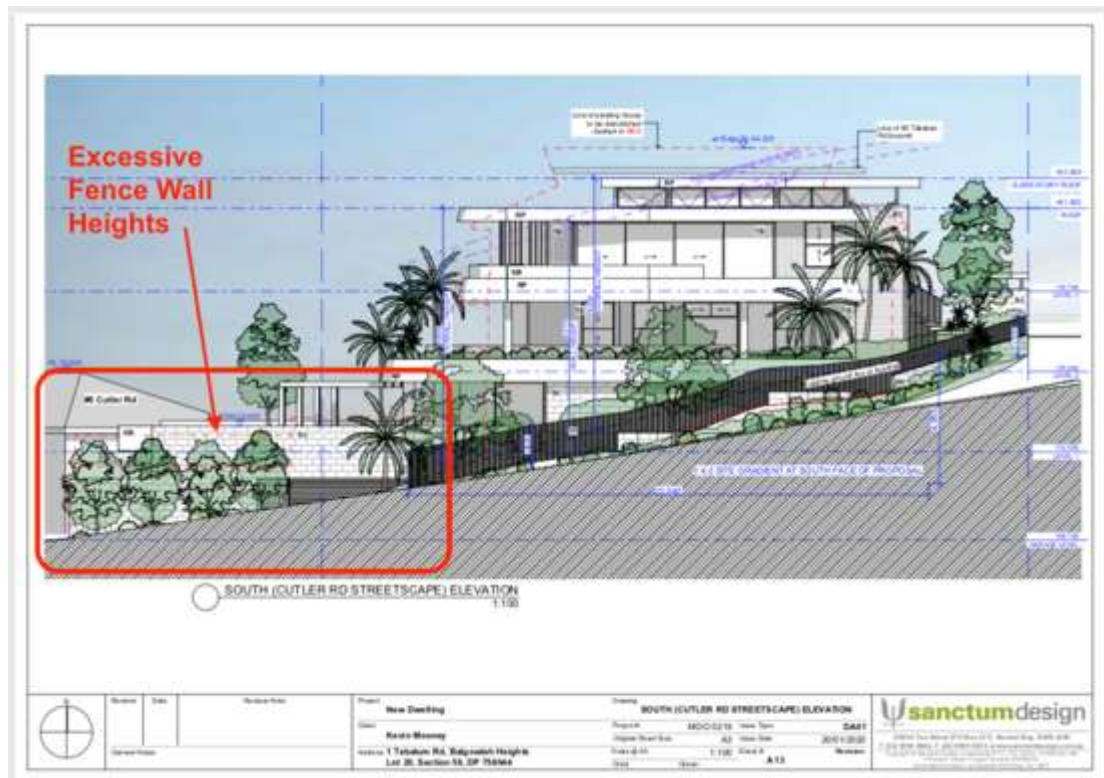
I contend that the DA fails the major objectives of this control as follows:

Swimming pools and associated concourse areas must not comprise more than 30 percent of the total open space.

See also Dictionary meaning of Total Open Space which includes swimming pools only occupying less than 30 percent of the total open space.

4.1.10 Fencing

Freestanding walls and fences between the street boundary and the building are more than 1m high above ground level at any point.



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

Freestanding walls and fences between the front street boundary and the building are to be no more than 1m high above ground level at any point.

4.1.10.1 Exceptions to maximum height of Fences

Freestanding walls and fences between the street boundary and the building are more than 1m high above ground level at any point, and still more than 1.5m relating to this clause.

I contend that the walls and fence structures along Cutler Road, with minimal setback, are totally unreasonable.

These wall heights are at RL 73.50, set against survey levels at the Council footpath zone at RL 67.88 to 70.11. **These fences are up to 5.62m high.**

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

- a) *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.*
- b) *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.*

4.4.5 Earthworks (Excavation and Filling)

The proposed development does not limit excavation as required by Council controls, and does not limit “cut and fill” and other earthworks. The proposed excavation would discourage the alteration of the natural flow of ground and surface water. No detailed engineering study has been commissioned to consider these issues.

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

I am greatly concerned that the excavation will create airborne pollution, by the excessive excavation of substantial volume of rock, and I am concerned about fine dust being emitted for extended periods whilst this massive basement is excavated, blowing not only over neighbours, but those using the National Park adjoining the harbour.

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

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

The proposal includes extensive excavation of the site up to **6.4m deep**, for a multitude of uses. [RL 75.1 survey above north-east corner - RL 69.1 - less structural slab 68.7]

This is contrary to DCP controls.



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

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

I ask the Council to condition any approval with a new double garage to be positioned under the proposed building off Cutler Road, with a complaint setback, all to Council controls. Delete the basement and the basement ramp.

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

Note: Before granting development consent for earthworks, consideration must be given to the matters listed in LEP clause 6.2(3)(a)-(h).

Relevant DCP objectives in this plan in relation to these paragraphs include:

Objective 1)

To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, “cut and fill” and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

4.4.5.1 General

Earthworks have not been limited to that part of the site required to accommodate the building, but has extended well beyond the building alignment to the west.

I am concerned that natural and undisturbed ground level has not been maintained within 0.9m of side and rear boundaries.



Non Compliant Excavation proposed up to Boundary

The controls state that on steeply sloping sites, pier and suspended slab or an equivalent non-invasive form of construction technique must be used to minimise earthworks and vegetation loss and retain natural features. These techniques are not being used.

Excavation under the canopy of any tree, including those trees on our property, is being planned, without any justification providing its long-term survival and stability is not jeopardised.

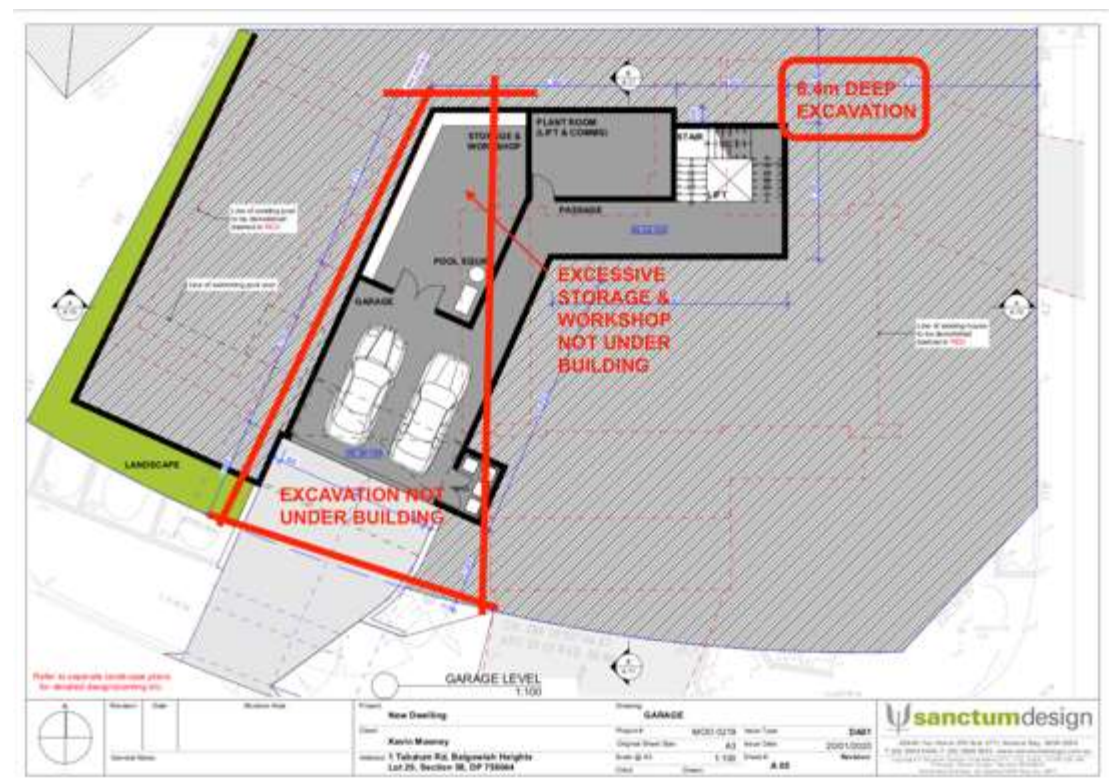
I contend that the DA fails the major objectives of this control as follows:

- [a] Earthworks must be limited to that part of the site required to accommodate the building and its immediate surrounds to protect significant natural features of the site including vegetation and prominent rock outcrops.
- [b] Natural and undisturbed ground level must be maintained within 0.9m of side and rear boundaries
- [c] On steeply sloping sites, pier and suspended slab or an equivalent non-invasive form of construction technique must be used to minimise earthworks and vegetation loss and retain natural features.
- [d] Excavation under the canopy of any tree (including those on neighbouring properties) will only be permitted providing its long-term survival and stability is not jeopardised. Such excavation must be supported by an Arborist report.
- [e] Approved sediment, siltation and stormwater control devices must be in place (and maintained) prior to and during the carrying out of any earthworks and other works on the site.

4.4.5.2 Excavation

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

Excavation is not generally limited to 1m below natural ground and not contained within the footprint of the building.





Dilapidation survey reports will be required.

- [a] Excavation is generally limited to 1m below natural ground level with the exception of basement parking areas (which will be contained within the footprint of the building) and swimming pools;*
- [b] A dilapidation survey report and geotechnical assessment may be required for excavation works exceeding 1m. Dilapidation survey reports are to include photographic survey of the physical condition of adjoining properties, both internally and externally, including walls ceilings, roof, structural members and other such items. Such records are to provide proper record in relation to the proposed development to particularly assist in any dispute over damage to adjoining proposed arising from the works. It is in the interests of applicants and adjoining landowners for it to be as full and as detailed as necessary commensurate with the nature of the proposed development*

4.4.5.3 Filling

Filling exceeds 1m above natural ground level, contrary to controls.

The proposed development is proposing to fill by over 2m along the western boundary, after removing the above ground pool. This is not shown on the DA drawings.

- a) *Filling must not exceed 1m above natural ground level.*
- b) *Only natural rock, gravels or sand material (not builder's waste or demolition materials) from approved sources, must be used as filling.*

4.4.5.4 Retaining walls

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

Retaining walls within 1m of the front boundary must not exceed 1m above natural ground level.



Appendix A: NSW RFS: Section 79BA Referral Review

I ask Council to refer the DA to the NSW RFS under a Section 79BA Review as identified within Appendix A

Statement of Environment Effects Rebuttal

There are numerous non-factual matters stated within the Applicant's SEE.

The SEE has failed to quantify *'the difference between the impacts of a complying and a non-complying development'*

The SEE has failed to identify any environmental planning ground, unique or otherwise, that justifies the contravention of non-compliance to controls.

The SEE fails to address the major non-compliances of

MLEP

4.3 Height of Building [incorrect height stated]

4.4 Floor Space Ratio

MDCP

4.1.3 Height of Buildings [incorrect height stated]

4.1.2.1 Wall Height

4.1.2.2 Number of Storeys

4.1.2.3 Roof Height

4.1.3 Floor Space Ratio (FSR)

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

4.1.4.1 Street Front Setbacks

4.1.4.2 Side Setbacks and Secondary Street Frontages

4.1.4.4 Rear Setbacks

4.1.5 Open Space and Landscaping

The SEE fails to consider the poor amenity outcomes particularly from view loss, overshadowing and privacy.

The SEE fails to identify the need for Clause 4.6 Applications for FSR.

Clause 4.6: Failure to Submit

The Applicant has failed to submit Clause 4.6 Applications for FSR.

The Applicant has failed to identify the correct Building Heights within the Clause 4.6 Applications submitted.

The Council as consent authority cannot be satisfied that the written request for Building Height adequately addresses the matters required by clause 4.6(3) by demonstrating that:

- (a) compliance is unreasonable or unnecessary; and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard

The excessive building height over a large portion of the building footprint, causes view loss, solar loss, privacy issues, streetscape issues, and other poor outcomes.

The Council should immediately consider refusing the DA, and perhaps is precluded from proceeding any further with its assessment and consideration of the DA.

Council does not have before it a Statement of Environmental Effects that it can rely upon.

I refer Council to the **Byron Shire Businesses for the Future Inc v Byron Council** [the Club Med Case], showing that absence of relevant detail invalidates the very decision making process.

Council must note that in **Randwick City Council v Micaul Holdings Pty Ltd [2016]**, Chief Judge Preston noted in respect to Clause 4.6 that:

“...the Court need not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather ‘only indirectly by being satisfied that the applicant’s written request has adequately addressed’.

I suggest that even if a Clause 4.6 was submitted for FSR it could not satisfactorily address what environmental planning grounds exist to justify contravening the standard.

There is no identification of any environmental planning ground, unique or otherwise, that justifies the contravention.

There is no basis upon which any variation can be granted.

Accordingly, consent must be refused on that basis.

Currently, there is no power to grant development consent because no Clause 4.6 for FSR has been submitted.

If a Clause 4.6 for FSR was submitted it would still be highly unlikely to succeed as (a) the request to vary the control could not identify any environmental planning ground that justifies the contravention, and does not exist; and (b) the proposal is inconsistent with the objectives of the standard in any event due to significant amenity loss.

The Council as consent authority cannot be satisfied that the written request for FSR would adequately addresses the matters required by clause 4.6(3) by demonstrating that:

(a) compliance is unreasonable or unnecessary; and

(b) there are sufficient environmental planning grounds to justify contravening the development standard

The excessive building height over a large portion of the building footprint, causes view loss, solar loss, privacy issues, streetscape issues, and other poor outcomes.

I also refer Council to ***Whittaker v Northern Beaches Council [2017]***

NSW LEC Planning Principles

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

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:

In this objection we have clearly showed that the FSR is over controls, and reducing the FSR would assist in reducing the impact.

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.

The proposals are non-compliant in multiple areas, and the Applicant has not quantified the difference between the impacts of a complying and a non-complying development.

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

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

Commentary:

The freedom of neighbour’s property from being overlooked simply has not been properly and fully considered.

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.”

Commentary:

The development breaches multiple planning controls and is unreasonable.

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

Proposed Conditions of Consent to any Approval

I ask Council to impose the following conditions to any consent. I ask that Council request that the Applicant submit Amended Plans to resolve these matters in full, prior to determination.

Massing Envelope Reductions

[The first series of conditions would preferably all be dealt with under resubmission of Amended Plans, as they may be too extensive for conditional approval. I present them for Council's consideration]

- Reduce Building Heights to 8.5m, whilst providing an additional setback of the proposed northern corners of the proposed development to maintain view and daylight.
- Reduce Wall Heights to below 7.8m
- Reduce FSR to below 0.4, after adding void areas and enclosed decks, massive undercroft zones, oversized storage and plant zones, and terraces into calculations
- Increase Tabalum Road Front Setback to match No. 3 Tabalum to 7m, or further to achieve view sharing from #3 Tabalum
- Increase Northern Setback to 3m
- Increase Cutler Road Setback to 1/3 building height control
- Delete Pool, maintain current location
- Delete Basement, garage under proposed dwelling off Cutler Road, or delete all the basement zones other than a 6m x 6m zone for a double garage immediately off Cutler Road, with a 1m wide stair immediately and adjacent to the garage to exit to the south west corner.

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

Privacy

- Reduce windows to all northern rooms to a maximum of 1 sqm in each room,
- Reduce window to Stair to 1 sqm window at high level
- Raise window sills to 1.7m height above internal FFLs to all windows facing neighbour's boundary.

- Obscured glass or privacy screens to all windows facing the neighbour's boundary
- Privacy screens to all decks and windows facing neighbour's boundary to be 1.7m high obscured glass screens.
- Increase number of screening trees and bushes along neighbour's boundary to create a vegetated barrier between windows on subject site and neighbours windows.
- 4m setback of pool to neighbours boundary

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

Reason: Privacy

Landscaping

- Increase screening trees and bushes along neighbour's boundary.
- Provide protection to the Structural Root Zone and Tree Protection Zone to the trees on neighbours property adjacent to the common boundary.
- Increase deep soil zones along boundaries

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

Reason: Privacy

Vibration

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

Lower level of vibration is to be conditioned to avoid and/or reduce the risk of damage to the neighbour's property.

The level at **2.0mm/sec** can be normally easily achieved by making attenuation cuts into the upper siltstone strata and sandstone, prior to bulk excavation, and always ensuring the attenuation cuts are 0.5m lower than the excavated surfaces at all times. Other precise methods are to be specified by the Geotechnical Engineer.

The removal of the pool slab and the existing dwelling slab will need careful consideration, as these activities will lead to very elevated vibration outcomes and risk of substantial damage if not carefully controlled.

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

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

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

Plant

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

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

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

Reason: Acoustic Privacy

Lighting

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

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

Reason: Lighting Nuisance

I ask Council to impose conditions as appropriate regarding:

- Structural Adequacy, Excavation Work, Retaining Wall
- Sub-Soil Seepage
- On-Site Stormwater Management Details
- Stormwater Disposal
- Property Boundary Levels
- Works in close proximity to the allotment boundary
- Stormwater Disposal
- Geotechnical Report Recommendations to be incorporated into design and structural plans
- Boundary Identification Survey
- Survey Certificate
- Vehicle Driveway Gradients
- Excavation Work
- Shoring of Neighbours boundary
- Protection of Adjoining Property- Excavation
- Soil & Water Management Program
- Dilapidation Report
- Tree Protection
- Road Reserve
- Landscape Completion Certificate
- Stormwater Disposal Certificate
- Structures located near boundary Certificate
- Geotechnical Certificate
- Post Construction Dilapidation Certificate
- Swimming Pool Requirements

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 cause poor amenity outcomes including privacy, view loss, overshadowing, streetscape, vibration, landscaping, native tree loss and other concerns due to non-compliance to multiple residential controls including building height, FSR, wall height, side setback, rear setback, landscaping, parking, garage, fencing, ground works and other concerns.

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

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

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

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

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

Such variations do not succeed pursuant to section 4.15 of the Act. The solutions have not achieved the objects of DCP standards for dealing with that aspect of the development.

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 of the DCP^[1]_{SEP} and objectives of the LEP. ^[1]_{SEP}

The resultant over-development is representative of an envelope above the maximum built form outcome anticipated on the site under the provisions of LEP and DCP.

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 proposed development does not satisfy the appropriate controls.

The processes and assessments have not been satisfactorily addressed.

The DA scheme submitted requires to be amended, and I 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 I ask Council to either heavily condition any approval, or simply issue a refusal.

Alternatively Council may consider in light of the absence of Clause 4.6 FSR applications, and other outstanding information, to reject the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.

I expect that the final determination will be carried out by the LPP, due to the numerous excessive non-compliances, if not refused earlier.

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

I expect that on such a very large site, the Applicant should be charged by Council to deliver a totally compliant scheme to LEP and DCP controls. There is no excuse that neighbours amenity and the public domain amenity must suffer due to non-compliance to the controls. All I seek is a fully compliant development to Council's controls, and for the envelope controls to be drawn accurately based upon the boundary survey levels and other survey marks across the site.

The proposed development represents considerable over development:

- **Building Height 10.74 v 8.5m control [126% non compliance]**
- **FSR c.0.5 v 0.4 [125% non compliance]**
- **Wall Heights 10.34m v 8.0 [129% non compliance]**
- **Number of Storey 4 v 2 [200% non compliance]**
- **Front Setback Tabalum 6.13m v 7.0m [114% non compliance]**
- **Setback Cutler 3.28m v 1.5m [218% non compliance]**
- **Northern Side Setback 3.0m v 2.78m [108% non compliance]**
- **Rear Setback 8m v 1.23m [650% non compliance]**
- **Pool Setback to Neighbour 1.23m v 4.0m [325% non compliance]**
- **Pool above ground 4.0m v 1.0m [400% non compliance]**
- **Pool & Concourse Proportion of Total Open Space 75% v 30% [250% non compliance]**
- **Fences 5.62 v 1.0m [562% non compliance]**
- **Excavation 6.4m v 1.0m [640% non compliance]**
- **Excavation on northern boundary**

I will welcome the opportunity to further expand on any of the issues above once height poles are erected.

Yours faithfully,

Mr Gian Gazilli & Lucy Gazzilli
3 Tabalum Road
Balgowlah Heights

[attached Appendix A]

Appendix A: NSW RFS: Section 79BA Referral Review

Photographs of Vegetation south of subject site Potential BAL FZ

The marked up image, has been taken from the Applicant's Bushfire Assessment showing the inter-connected canopy structures from Grotto Point to the subject site. The text in yellow is our own. The locations of photographs taken are shown with a *. Note the 'forest/woodland' vegetation, and the connected canopy structures towards Grotto Point.

The bushfire concern is that a major fire runs along to the ridge line to Grotto, and then a late southerly change ignites a raging bushfire straight towards the subject site, through dense vegetation, with a slope of 10-15 deg or greater pushing the fire front to explode onto Cutler Road, immediately adjacent the subject site, less than a road width away from the proposed development.

The concern is that the proposed BAL 29 is highly inadequate, and BAL FZ should be determined as the appropriate rating. All properties facing the hazard in nearby Barrabooka Street have all been rated BAL FZ by NSW RFS & Private Certifiers in recent years.



Image 01: Aerial view of the subject area courtesy Nearmap

The first series of photographs are taken from a rock outcrop to the west of the Culter Rd Lookout, looking south towards Grotto Point, before sweeping westwards along the ridge line, up to Cutler Road, and the vegetation immediately across the road from the subject site. A fire raging from Grotto Point along the ridge, with a strong southerly, up 10-15 deg slopes, through connected canopy is the significant concern.

The second series of shots are taken within the forest/woodland bushland immediately to the south and south west of the subject site, immediately behind the telegraph pole on Cutler Road. [Pole MO 31419]. Access can be obtained by walking along the fire trail to the south of #1 Cutler, and walking 50m west, until you see a child's 'swing' suspended, turn south, and you are within the vegetation zone facing the subject site. Enter the clearing to view the 6-10m tall canopy. As you head back towards the subject site, the density of the vegetation becomes inaccessible and the vegetation taller, with dense 100% canopy cover. Heading towards the east the density of the vegetation also becomes inaccessible. Trees are semi mature to mature, and canopy coverage ranges from 50% to 100%. This canopy connects with other canopy and dense vegetation that connects to the other substantial forest coverage towards Grotto Point. Other photos are taken of this area from Cutler Road looking into this densely vegetated, inaccessible area, of mature 10m high trees, with near-on 100% canopy cover in parts.

Previous Bushfire Consultants certifying in Barrabooka Street noted in respect to the vegetation to the east of Barrabooka Street, and west of the subject site: *"...with reference to PBP and the bushfire prone land map for the area the classification of vegetation for this hazard is forest."*

All ratings in Barrabooka have been to BAL FZ. The subject site would appear to be in a more hazardous position than the properties to the west of Barrabooka Street.

We are concerned that ember attack could land in very dry, highly flammable vegetation and starting new fires very, very easily getting an exponential growth of the fire front and acceleration of the fire front moving across the landscape towards the subject site.

Our consideration is that in studying Table 1; Reference AS3959: 2009 Table 2.4.2 the assessment that we wish NSWRFs to consider is based upon the following:

- Direction: South
- Distance to APZ: <12m
- Vegetation Classification: Forest/Woodland
- Assessment of Effective Slope: Downslope Slope >10-15 deg
- Anticipated Radiant Heat: >40w/m²
- BAL: Flame Zone FZ

All 'Scrubland' <14m, all 'Woodland' <25m, and all Forest <39m would warrant a BAL FZ rating, considering the effective downslope >10-15 deg. It is difficult to imagine a firestorm less than 40w/m² hitting Cutler Road in a raging bushfire from Grotto Point.

Grotto Point to Subject Site





Dense Vegetation less than 12m from Subject Site, with connected canopy to Grotto Point



Dense Vegetation south of subject site, access via 'swing' passage opposite the mid point of #1 Cutler southern elevation



Dense vegetation immediately opposite subject site, access via fire trail to south of #1 Cutler



Dense vegetation immediately opposite subject site, access via fire trail to south of #1 Cutler



Dense vegetation immediate opposite subject site



Dense vegetation immediately opposite subject site



Dense vegetation immediately opposite subject site



View from Balmoral Beach showing extensive 'angophora forest' from Grotto Point to the subject site. [centre of photo on top of ridge]