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**Sent:** 29/06/2021 8:12:48 PM

**Subject:** 1 Yachtview Avenue, Newport DA 2021/0395 WRITTEN SUBMISSION:  
LETTER OF OBJECTION #2 Submission: Howard

**Attachments:** Howard Submission #2.docx;

**SUBMISSION: HOWARD**  
a written submission by way of objection to DA 2021/0395

**Wayne & Toni-Lou Howard**  
**123 Wallumatta Road**  
**Newport**  
**NSW 2093**

**29 June 2021**

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

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

**Dear Chief Executive Officer,**

**Re:**  
**1 Yachtview Avenue, Newport**  
**DA 2021/0395**

**WRITTEN SUBMISSION: LETTER OF OBJECTION #2**  
**Submission: Howard**

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

We refer to amended plans that have been submitted.

We refer to our Submission dated 6 May 2021 which remains our objection.

We raise the following matters:

1. No consideration has been given to our loss of visual amenity and light concerns caused by the proposed additional alfresco area.

2. No consideration has been given to our request to reduce the proposed rear 2nd storey enclosed alfresco area to a more compliant envelope.
3. No consideration has been demonstrated to keep the proposed 2nd storey enclosed alfresco area to align with both neighbour's properties.
4. No consideration has been demonstrated to take into account that an alfresco area has already been constructed on their property on the ground floor.
5. No consideration has been demonstrated to minimise the overall bulky nature of this development proposal.
6. We have previously lost privacy from the construction of DA No 252/09. This current proposal would only further aggravate the issue and impact us unduly.
7. No height poles have yet been installed giving indication of the effect of the proposal
8. No revised overshadowing study has been supplied.
9. No compelling reason has been provided as to why existing deck area should be enclosed, thereby adversely impacting neighbours visual amenity.

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

Yours faithfully,

**Wayne & Toni-Lou Howard**  
**123 Wallumatta Road**  
**Newport**  
**NSW 2093**

**APPENDIX 6 May 2021 Submission**

**S U B M I S S I O N : H O W A R D**  
a written submission by way of objection to DA 2021/0395

**Wayne & Toni-Lou Howard**  
**123 Wallumatta Road**  
**Newport**  
**NSW 2093**

**6 May 2021**

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

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

**Dear Chief Executive Officer,**

**Re:**  
**1 Yachtview Avenue, Newport**  
**DA 2021/0395**

**WRITTEN SUBMISSION: LETTER OF OBJECTION**  
**Submission: Howard**

This document is a written submission by way of objection 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:

Alterations & Additions to a Dwelling

Construction Cost: \$0.4m

The subject site is zoned E4 in the LEP, and there is no reason, unique or otherwise why a fully compliant solution to LEP and DCP controls cannot be designed on the site.

## **CONTENTS**

Section 1: Executive Summary

Section 2: Characteristics of our Property

Section 3: Matters of Concern

Section 4: Site Description

Section 5: Description of Proposed Development

Section 6: Misleading Information & Outstanding Information

Section 7: Statutory Planning Framework

- Local Environmental Plan
- Development Control Plan
- Section 4.14 [1] of EPAA 1979
- NSW LEC Planning Principles

Section 8: Amended Plans

Section 9: Conclusion

Appendix

## **SECTION 1: EXECUTIVE SUMMARY**

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

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

Our main concerns are:

- Overdevelopment
- View Loss
- Privacy
- Overshadowing
- Visual Bulk
- Preservation of Trees
- Failure to accord with previous condition of consent to plant an additional four native canopy trees

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

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

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

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

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

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

- 1.2 Aims of Plans
- Zone E4 Environmental Living
- 7.2 Earthworks
- 7.6 Biodiversity Protection

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

- A4 Localities: Newport Locality
- B4.22 Preservation of Trees
- B6.1 Access Driveways & Works on the Public Road Reserve
- B6.3 Off-Street Vehicle Parking Requirements
- C1.1 Landscaping
- C1.3 View Sharing
- C1.5 Visual Privacy
- C1.24 Public Road reserve
- D10.1 Character as viewed from a public place
- D10.7 Front Building line
- D10.11 Building Envelope
- D10.18 Scenic protection Cat One areas

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

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

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

The ‘legitimate expectation’ that we had as a neighbour was for a development that would not result in outcomes of non-compliance to envelope controls.

The 'legitimate expectation' that we had as a neighbour was for a development that would not result in poor amenity outcomes, view loss, solar loss, and privacy loss caused directly from the significant non-compliance to front setback, and boundary envelope controls

The 'legitimate expectation' that we had as a neighbour was for a development that integrates with the landscape character of the locality, and an expectation that the proposal would support landscape planting of a size that is capable of softening the built form.

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

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

We present them for Council's consideration.

1. *Reduce rear extension to a more compliant envelope. Reduce extension to a scale to ensure view is maintained and solar loss reduced. Rear alignment to align with neighbour at 2 Yachtview Avenue to the west. Increase privacy screen to deck to 1.7m height*
2. *A complete redesign of the Access Driveways & Works on the Public Road Reserve to ensure the full protection and preservation of the Cedar Tree. No works within the TPZ zone of the Cedar. No excavation in the Public Road Reserve. Updated Arborist Report against new design*
3. *Delete the enclosed garage, and replace with an open carport, with reduced internal height of 2.2m, and maximum roof height of 2.6m.*
4. *Increase landscaping in front setback zone to better screen proposed development*
5. *No excavation within front setback zone*

## **SECTION 2: CHARACTERISTICS OF OUR PROPERTY**

Our property shares a common boundary with the subject property. The subject site lies to the west of our property. We enjoy good levels of view sharing, solar access, and privacy over the subject site.



*Our property is shown 'red starred'*

### **SECTION 3: MATTERS OF CONCERN**

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

The following aspects of the proposal are of concern:

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

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

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

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

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

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

### **SECTION 4: SITE DESCRIPTION**

The SEE states:



*Location: LOT 5 DP 16260*

*Site Area: 943.2 sqm*

*The current building is a split level three storey detached building in a general residential area. The building has one points of access – the main driveway from Yachtview ave. The existing house consists of 4 bedrooms, two bathrooms, modern top floor living areas, with alfresco and entrance. The site has 2 neighbours – on its eastern and western boundary. It's neighbours no. 123 Wallumatta road and no. 2 Yachtview ave*

## **SECTION 5: DESCRIPTION OF PROPOSED DEVELOPMENT**

The SEE states:

*The proposal seeks to alter the existing dwelling with the following changes:*

*New driveway and stairs in frontage*

*New garage and porch area Infront of existing dwelling*

*New enclosed alfresco area and balcony to rear of dwelling*

*New gym on lower level*

## **SECTION 6: MISLEADING INFORMATION & OUTSTANDING INFORMATION**

### **Overshadowing Diagrams**

The Applicant is required to submit hourly solar access diagrams to assess compliance

### **Inconsistencies between documents**

Tree 1 in the Council Reserve is stated to be removed within the Arborist Report, and shown retained within DA drawings.

The design will need to substantially altered in the road reserve to preserve the protected tree, and a further arborist report submitted to Council prior to any determination.

## **SECTION 7: STATUTORY PLANNING FRAMEWORK**

### **LOCAL ENVIRONMENTAL PLAN**

The following matters are relevant to the development under the LEP:

Provision	Compliance	Consideration
1.2 Aims of Plan	No	The proposal does not comply with the aims of the plan.
Zone E4 Environmental Living	No	The proposal does not satisfy the zone objectives.
7.2 Earthworks	No	The excavation is in the front setback zone, adjacent to a major tree, and services in the road reserve, and is considered unacceptable.
7.6 Biodiversity	No	Major Tree is not protected with proposed works within TPZ and SRZ contrary to Arborist advice

## 1.2 Aims of Plan

We contend that the proposed development does not accord with the Aims of the Plan:

The particular aims of the Plan that significantly fail are as follows:

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

- (a) to promote development in Pittwater that is economically, environmentally and socially sustainable,*
- (b) to ensure development is consistent with the desired character of Pittwater's localities,*
- (c) to support a range of mixed-use centres that adequately provide for the needs of the Pittwater community,*
- (d) to retain and enhance land used for employment purposes that is needed to meet the economic and employment needs of the community both now and in the future,*
- (e) to improve access throughout Pittwater, facilitate the use of public transport and encourage walking and cycling,*
- (f) to encourage a range of housing in appropriate locations that provides for the needs of the community both now and in the future,*
- (g) to protect and enhance Pittwater's natural environment and recreation areas,*
- (h) to conserve Pittwater's European and Aboriginal heritage,*
- (i) to minimise risks to the community in areas subject to environmental hazards including climate change,*
- (j) to protect and promote the health and well-being of current and future residents of Pittwater.*

The overdevelopment of the site fails to meet the aims of LEP under residential development and environmental outcomes.

The poor amenity outcomes of loss of view, lack of preservation of existing canopy trees, loss of sunlight, privacy and building bulk, do not protect and enhance the residential use and amenity of existing residential environments in this E4 Zone.

## **ZONE E4 ENVIRONMENTAL LIVING**

We are concerned that the proposed development fails to meet the outcomes of this clause

### *Objectives of zone*

*To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

*To ensure that residential development does not have an adverse effect on those values.*

*To provide for residential development of a low density and scale integrated with the landform and landscape.*

*To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*



*We contend that the proposed development that fails to accord with front setback, and side boundary controls and presents to the street as a bland garage door on the boundary, is not in keeping with the E4 Zone. The failure to design an entry to protect the street tree is a major impediment to granting of consent. The lack of landscape to soften the built form is considered unacceptable. The excessive 'Enclosed Alfresco Area' is non-complaint to boundary envelope controls, and creates view loss, solar loss, privacy concerns, and excessive visual bulk*

## **7.2 EARTHWORKS**

We are concerned that the proposed development fails to meet the outcomes of this clause

*The objective of this clause is to ensure that earthworks 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.*

We contend that the excessive excavation in the front setback zone is unreasonable.

## 7.6 BIODIVERSITY

We are concerned that the proposed development fails to meet the outcomes of this clause.

Tree 1 in the Council Reserve is stated to be removed within the Arborist Report, and shown retained within DA drawings. The design will need to be substantially altered in the road reserve to preserve the protected tree, and a further Arborist Report submitted to Council prior to any determination.

Council must take note and act upon the failure of the Applicant to accord with previous condition of consent to plant an additional four native canopy trees.

The Clause states:

*Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

*the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*

*if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*

*if that impact cannot be minimised - the development will be managed to mitigate that impact.*

	Identification	Height (m)	Crown (m)	DBH (m)	TPZ (m)	SRZ (m)	Age	Health/Vigour	Structure	Significance/Retention Values	Comments
1	<i>Cedrus deodara</i> Himalayan Cedar	<14.00	<9.00	0.58	6.96	2.78	Mature	Good & Good	Typical/ Crown Raised Pruned	Moderate/ Moderate	Replace: The as proposed works equate to a mathematical 'major encroachment' of the total TPZ surface area. This is considered as likely to adversely impact upon the ULE of this tree. As such, the local environment would benefit from a new locally indigenous tree being planted as a replacement within the subject site.

### ***The Arborist's Expert Opinion***

## DEVELOPMENT CONTROL PLAN

We are particularly concerned to the poor compliance to the following controls, and we will address each item separately:

The following matters are relevant to the development under DCP:

Provision	Compliance with Control	Compliance with Objectives
A4 Localities: Newport Locality	No	No
B4.22 Preservation of Trees	No	No
B6.1 Access Driveways & Works on the Public Road Reserve	No	No
B6.3 Off-Street Vehicle Parking Requirements	No	No
C1.1 Landscaping	No	No
C1.3 View Sharing	No	No
C1.4 Solar Access	No	No
C1.5 Visual Privacy	No	No
C1.24 Public Road reserve	No	No
D10.1 Character as viewed from a public place	No	No
D10.7 Front Building line	No	No
D10.11 Building Envelope	No	No
D10.18 Scenic protection Cat One areas	No	No

#### **A4 Localities: Newport Locality**

We are concerned that the proposed development fails to meet the outcomes of this clause

The Clause states:

##### *Desired Character*

*The Newport locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape.*

*A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land.*

*Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded.*



*Proposed development built with zero front setback is not in keeping with the desired character of the E4 Zone.*

#### **B4.22 Preservation of Trees**

We are concerned that the proposed development fails to meet the outcomes of this clause.

Tree 1 in the Council Reserve is stated to be removed within the Arborist Report, and shown retained within DA drawings. The design will need to be substantially altered in the road reserve to preserve the protected tree, and a further arborist report submitted to Council prior to any determination.

Council must take note and act upon the failure of the Applicant to accord with previous condition of consent to plant an additional four native canopy trees.

The Clause states:

##### *Outcomes*

*To protect and enhance the urban forest of the Northern Beaches.*

*To effectively manage the risks that come with an established urban forest through professional management of trees.*

*To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.*

*To protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.*

*To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long-term.*

*To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.*

### **B6.1 Access Driveways & Works on the Public Road Reserve**

We are concerned that the proposed development fails to meet the outcomes of this clause

Tree 1 in the Council Reserve is stated to be removed within the Arborist Report, and shown retained within DA drawings. The design will need to be substantially altered in the road reserve to preserve the protected tree, and a further arborist report submitted to Council prior to any determination.

Pedestrian safety has not been considered within the design.

The proposed landscape encroachment within the road reserve, including planter walling and associated planting is unacceptable based on obstruction to pedestrian access, existing or future utility services, public liability, and ongoing care and management.

The Clause states:

*Outcomes*

*Safe and convenient access.*

*Adverse visual impact of driveways is reduced.*

*Pedestrian safety.*

*An effective road drainage system.*

*Maximise the retention of trees and native vegetation in the road reserve.*

### **C1.1 Landscaping**

We are concerned that the proposed development fails to meet the outcomes of this clause.

Council must take note and act upon the failure of the Applicant to accord with previous condition of consent to plant an additional four native canopy trees.

The proposed development has not provided a landscape scheme that presents an outcome of a built form that softened and complemented by landscaping, nor a landscaping reflecting the scale and form of development, nor the retention of canopy trees by encouraging the use of pier and beam footings, nor development that results in retention of existing native vegetation.

The complete hard surface coverage in the front setback zone, and the major built form in the road Reserve is not considered a sensitive response to the E4 area.

The Clause states:

*Outcomes*

*A built form softened and complemented by landscaping. (En)*  
*Landscaping reflects the scale and form of development. (En)*  
*Retention of canopy trees by encouraging the use of pier and beam footings. (En)*  
*Development results in retention of existing native vegetation. (En)*

### **C1.3 View Sharing**

We are concerned that the proposed development fails to meet the outcomes of this clause.

#### *Outcomes*

*A reasonable sharing of views amongst dwellings. (S)*  
*Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced. (S)*  
*Canopy trees take priority over views. (En, S)*

#### *Controls*

*All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.*

*The proposal must demonstrate that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.*

*Where a view may be obstructed, built structures within the setback areas are to maximise visual access through the structure e.g. by the provision of an open structure or transparent building materials.*

### **Application of Tenacity planning principle**

We have only been able to consider the impact of the proposal on the outward private domain views from our 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 we have no confidence that the assessment is accurate due to the absence of height poles.

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

#### **Step 1 Views to be affected**

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

*The first step is the assessment of views to be affected. Water views are valued more highly than*



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

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

An arc of view to the south-west is available when standing at a central location in the highly used zones on our property.

The composition of the arc is constrained to the south-west over the subject site boundaries, by built forms and landscape.

The central part of the composition includes the subject site.

Views include scenic and valued features as defined in Tenacity.

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

The view is from our highly used rooms towards the water view, and the land-water interface.

The existing view is a 'moving landscape', rather than just a 'scenic outlook', given the activity on the water. The extent of view loss is moderate, and the features lost are considered to be valued as identified in Step 1 of *Tenacity*.



*View that would be lost to the south-west from our private open space deck. The Proposed*

*Development rear alignment would extend well past the dwelling to the west, at #2, #3, and #4 Yachtview Avenue and will not be sympathetic to the upper level alignments of other dwellings*

## **Step 2: From where are views available?**

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

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

The views in all cases are available across the boundary of the subject site at angles to the south-west, from standing [1.4m] and seated [1.2m] positions.

An arc of view to the south-west is available when standing at highly used zones on our property:

In this respect we make two points:

- We have no readily obtainable mechanism to reinstate the impacted views from our high used zones if the development as proposed proceeds; and
- All of the properties in the locality rely on views over adjacent buildings for their outlook, aspect and views towards the water view

## **Step 3: Extent of impact**

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

Step 3 as quoted is:

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

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

We consider the extent of view loss in relation to our living room zones to be moderate using the qualitative scale adopted in *Tenacity*.

The view lost includes water views and land-water interface. As we rate the extent of view loss as moderate in our opinion the threshold to proceed to Step 4 of *Tenacity* is met.

#### **Step 4: Reasonableness**

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

Step 4 is quoted below:

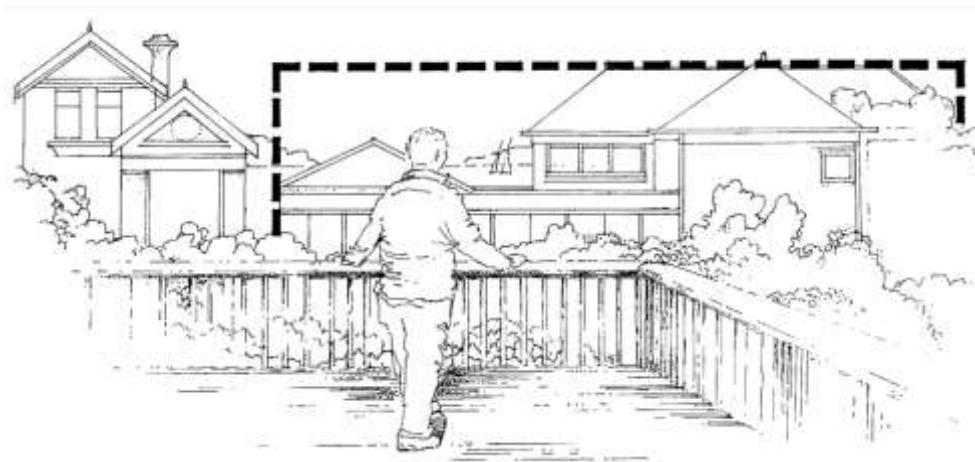
*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

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

In our opinion the extent of view loss considered to be moderate, in relation to the views from our highly used rooms of our dwelling, particularly to the south-west.

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

Once Templates are erected, we can provide additional commentary.



***Where there is a potential view loss, Council could require a maximum building height of less than 8.5m for part of the building.***

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

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

The views most affected are from our highly used zones and include very high scenic and highly valued features as defined in Tenacity.

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

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

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

The applicant should have informed the design by a complete view loss consideration that would have clearly identified that any development into the viewing corridor by non-compliant development would be problematic.

There may be architectural solutions that maintains our view, by proposing development that maintains our view but this needs careful consideration by the Applicant, along with templates to fully test the design outcome.

We object to all the proposed species that will be positioned in our viewing corridor.

The proposed development cannot be supported on visual impacts grounds.

Additionally, the siting of the proposed development and its distribution of bulk does not assist in achieving view sharing objectives. Where the diminishing of private views can be attributed to a non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. The assessment finds that view sharing objectives have not been satisfied.

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

### **Height Poles/ Templates**

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

The Height Poles will need to define:

- All Roof Forms, and all items on the roof
- Extent of all Decks
- Extent of Privacy Screens

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

### **DDP recent Refusal on 'moderate' view loss**

We bring to the attention of Council a recent refusal by NBC DDP on 24 March 2021, following a Recommendation of NBC Development Assessment Manager, by NBC Reporting Manager Anna Williams, a very senior and highly experienced NBC Planning Officer, and the NBC Responsible Officer Rebecca Englund, a very senior NBC Planning Officer, that Council as the consent authority refuses Development Consent to DA2020/1338 for Alterations and additions to a dwelling house on land at Lot 63 DP 8075, 55 Bower Street, Manly, subject to the conditions that were outlined in the Assessment Report.

The assessment of DA2020/1338 involved a consideration of a view loss arising from a proposed development that presented a non-compliant envelope.

The DDP agreed with the recommendation and refused this DA.

The DDP Panel that refused this DA were three of the most senior DDP members: Peter Robinson Executive Manager Development Assessment, Lashta Haidari Manager Development Assessment, and Liza Cordoba Manager Strategic & Place Planning

The Assessment Report found that:

*'the impact associated with the non-compliant built form, specifically the proposed upper floor, is unreasonable and the objectives of the relevant standards and controls are not achieved.'*

The Assessment Report within the Tenacity Assessment concluded:

*Whilst the level of impact is categorised as moderate at worst.....There is also a question as to whether a more skilful design could reduce the level of impact for adjoining properties.....a more skilful design could lessen the impact, the potential impact upon views currently enjoyed from [neighbouring] properties is considered unreasonable.*

*The proposal is also considered to be inconsistent with the requirements of this control, which require views between buildings to be maximised, in addition to those objectives that seeks to provide for view sharing between properties and to maximise disruption and loss of views."*

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

We contend that this refusal on view loss grounds by the DDP, shows that a moderate view loss, at worst, is unreasonable, and gives grounds for refusal.

We contend that this DA Refusal by the DDP sets a benchmark of the custom and practice of Council in consideration of all view loss concerns, in terms of what constitutes the level impact as 'moderate' in terms of Tenacity. This is the issue that we contend must be now considered.

The DA was assessed, and was found that:

*'in light of the building height non-compliance proposed, the proposal should not be supported'*

The severity of the view loss that was considered unacceptable by the DDP, was a view loss that was considered as 'moderate' by the assessing officers and the DDP.

These photographs are shown from page 156 of the DDP Agenda, 24 March 2021.

We contend that our view loss is the same or even more severe than that shown in the view loss consideration by Council on the Bower Street Manly DA

#### **C1.4 Solar Access**

The Clause states:

##### *Outcomes*

*Residential development is sited and designed to maximise solar access during mid-winter. (En)*

*A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)*

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

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

We contend that the overshadowing arises out of poor design. The design is non-compliant to controls and must be considered ‘poor design’.

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

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

The density of the area is low density

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

The solar diagrams are not complete, but what has been provided shows that the proposed development will overshadow the adjoining dwellings.

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

The proposed development has been designed without considering the amenity of the neighbouring properties. It is considered that a more skilful design, could have been adopted that would have reduced the impact on the neighbouring properties.

- *To be assessed as being in sunlight, the sun should strike a vertical surface at a horizontal angle of 22.5o or more. (This is because sunlight at extremely oblique angles has little effect.) For a window, door or glass wall to be assessed as being in sunlight, half of its area should be in sunlight. For private open space to be assessed as being in sunlight, either half its area or a useable strip adjoining the living area should be in sunlight, depending on the size of the space. The amount of sunlight on private open space should be measured at ground level.*

What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

There is minor overshadowing as a result of vegetation

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

The area is not currently undergoing change.

What has been submitted gives the very clear indication that the outcome is not in accordance with controls.

The loss of solar access in winter is unreasonable.

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

### **C1.5 Visual Privacy**

We are concerned that the proposed development fails to meet the outcomes of this clause

The Clause states:

#### *Outcomes*

*Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)*

*A sense of territory and safety is provided for residents. (S)*

#### *Controls*

*Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).*

*Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.*

*Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.*

We are concerned of the privacy of the deck area.



The dwelling's design does not adequately preserve the privacy of the neighbouring properties located to the rear and side of the site.

There are decks that have a direct sight line to windows on our property.

We ask for 1.7m high privacy screens to any deck, and those privacy screens must not obstruct view.

An assessment of the privacy impact against the planning principle *Meriton v Sydney City Council* [2004] NSWLEC 313 follows:

*Principle 1: The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.*

Response: The development is located in a low-density area.

*Principle 2: Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)*

Response: The proposed development result in a privacy impact with the proposed decks facing neighbours without sufficient screening devices being provided, considering the proposed decks are directly opposite our windows.

*Principle 3: The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.*

Response: The decks in question are decks of the main living areas, it is considered that the living areas will result in an unacceptable privacy breach. The proposed decks facing the rear private open spaces for the neighbouring dwelling and will result in an unacceptable level of privacy impact.

*Principle 4: Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.*

Response: The proposed development decks have been designed without any consideration to the privacy of the neighbouring property.

*Principle 5: Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.*

Response: It is considered that the private open space of the neighbouring dwellings could be protected through the provision of privacy screens or obscured glass.

*Principle 6: Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.*

Response: As mentioned above, the use of privacy screens would reduce the impact of the dwelling.

*Principle 7: Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.*

Response: The landscaping should ensure no loss of water view.

*Principle 8: In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.*

Response: The area is not undergoing change that would warrant privacy impact such as the one presented.

Comment: As the development is considered to result in an unacceptable privacy impact due to the design, it is requested that the proposed development be redesigned to reduce amenity impact on the neighbouring properties.

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

#### **C1.24 Public Road reserve**

We are concerned that the proposed development fails to meet the outcomes of this clause

Tree 1 in the Council Reserve is stated to be removed within the Arborist Report, and shown retained within DA drawings. The design will need to be substantially altered in the road reserve to preserve the protected tree, and a further arborist report submitted to Council prior to any determination.

The Clause states:

*All existing trees over 3m in height and native vegetation within the road reserve areas are to be retained where practical. The existing trees are to be protected during the construction of works through temporary perimeter fencing that is 1.8m high.*

## **D10.1 Character as viewed from a public place**

We are concerned that the proposed development fails to meet the outcomes of this clause

The Clause states:

### *Outcomes*

*To achieve the desired future character of the Locality.*

*To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built form and natural environment. (En, S, Ec)*

*To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.*

*The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)*

*High quality buildings designed and built for the natural context and any natural hazards. (En, S)*

*Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)*

*To preserve and enhance district and local views which reinforce and protect Pittwater's natural context.*

*To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures being a secondary component.*

*To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)*

### *Controls*

*Buildings which front the street must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality. Blank street frontage facades without windows shall not be permitted.*

*Walls without articulation shall not have a length greater than 8 metres to any street frontage.*

*Any building facade to a public place must incorporate at least two of the following design features:*

- i. entry feature or portico;*
- ii. awnings or other features over windows;*
- iii. verandahs, balconies or window box treatment to any first floor element;*
- iv. recessing or projecting architectural elements;*
- v. open, deep verandahs; or*
- vi. verandahs, pergolas or similar features above garage doors.*

*The bulk and scale of buildings must be minimised.*

*Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place.*

*Except in the Newport Commercial centre, parking structures must be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser.*

*Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.*

*Television antennas, satellite dishes and other telecommunications equipment must be minimised and screened as far as possible from public view.*

*General service facilities must be located underground.*

*Attempts should be made to conceal all electrical cabling and the like. No conduit or sanitary plumbing is allowed on facades of buildings visible from a public space.*



***We are concerned that the non-compliant development in the Front Setback Zone does not accord with the controls within ‘D10.1 Character as viewed from a public place’ or ‘D10.7 Front Building line’ or ‘D10.11 Building Envelope’***

#### **D10.7 Front Building line**

We are concerned that the proposed development fails to meet the outcomes of this clause

The Clause states:

*Outcomes*

*Achieve the desired future character of the Locality. (S)*

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

*The amenity of residential development adjoining a main road is maintained. (S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

*Vehicle manoeuvring in a forward direction is facilitated. (S)*

*To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

*To encourage attractive street frontages and improve pedestrian amenity.*

*To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*

*Controls*

*The minimum front building line shall be 6.5m or established building line, whichever is the greater.*

#### **D10.11 Building Envelope**

We are concerned that the proposed development fails to meet the outcomes of this clause.

The rear extension exceeds the Building Envelope, and fails to meet the outcomes.

The Clause states:

*Outcomes*

*To achieve the desired future character of the Locality. (S)*

*To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

*To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*

*The bulk and scale of the built form is minimised. (En, S)*

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

*To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

*Controls*

*Buildings are to be sited within the following envelope:*

#### **D10.18 Scenic protection Cat One areas**

We are concerned that the proposed development fails to meet the outcomes and controls of this clause

The Proposed Development rear alignment would extend well past the dwelling to the west, at #2, #3, and #4 Yachtview Avenue and will not be sympathetic to the upper level alignments of other dwellings.

The overdevelopment in the front setback zone, and in the Road Reserve is contrary to this clause.

The Clause states:

**Outcomes**

*To achieve the desired future character of the Locality. (En,S)*

*To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as ridges, upper slopes and the waterfront. (En, S)*

*Maintenance and enhancement of the tree canopy. (En,S)*

*Colours and materials recede into a well vegetated natural environment. (En, S)*

*To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component (En, S)*

*To preserve and enhance district and local views which reinforce and protect Pittwater's bushland landscape and urban form to enhance legibility.*

*To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

*To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to the natural environment.*

*Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.*

**Controls**

*Screen planting shall be located between structures and boundaries facing waterways.*

*Canopy trees are required between dwellings and boundaries facing waterways and waterfront reserves.*

*Development is to minimise the impact on existing significant vegetation.*

*The applicant shall demonstrate the retention and regeneration of existing native vegetation outside of the immediate area required to carry out the development.*

*The development is to incorporate measures for planting and maintenance of native vegetation within those areas which are already cleared, and which are not required to be cleared to allow for the development.*

*The siting, building form, orientation and scale of the development shall not compromise the visual integrity of the site by removal of canopy trees along ridges and upper slopes.*

*The development must incorporate the use of unobtrusive and non-reflective materials and the colours of exterior surfaces shall help blend structures into the natural environment.*

*Applicants are to demonstrate that proposed colours and materials will be dark and earthy.*

## **SECTION 4.14 [1] OF EPAA 1979**

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

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

### **LIKELY IMPACTS OF THE DEVELOPMENT**

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

### **SUITABILITY OF THE SITE**

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

### **PUBLIC INTEREST**

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

### **NSW LEC PLANNING PRINCIPLES**

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

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

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

*Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?*

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

**Commentary:**

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

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

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

**Commentary:**

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

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



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

Commentary:

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

## **SECTION 8: AMENDED PLANS**

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

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

We present them for Council’s consideration.

6. *Reduce rear extension to a more compliant envelope. Reduce extension to a scale to ensure view is maintained and solar loss reduced. Rear alignment to align with neighbour at 2 Yachtview Avenue to the west. Increase privacy screen to deck to 1.7m height*
7. *A complete redesign of the Access Driveways & Works on the Public Road Reserve to ensure the full protection and preservation of the Cedar Tree. No works within the TPZ zone of the Cedar. No excavation in the Public Road Reserve. Updated Arborist Report against new design*
8. *Delete the enclosed garage, and replace with an open carport, with reduced internal height of 2.2m, and maximum roof height of 2.6m.*
9. *Increase landscaping in front setback zone to better screen proposed development*
10. *No excavation within front setback zone*

## **SECTION 9: 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.

If the Applicant does not give Council immediate confirmation that the above matters will be rectified by resubmission of Amended Plans based upon our consideration of a more skilful design, and corrects all incorrect information on the DA drawings, then Council has no other option than to **REFUSE** this DA for the reasons stated in this Written Submission

The outcome is a building that causes poor amenity outcomes and other amenity loss concerns due

to non-compliance to multiple residential outcomes and controls.

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

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

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

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

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

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

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

The processes and assessments have not been satisfactorily addressed.

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

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

We expect that the determination will be carried out by the Case Officer with a request to withdraw this DA or face refusal, due to the numerous excessive non-compliances to outcomes and controls.

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

We expect that on such a sensitive site, the Applicant should be charged by Council to deliver a totally compliant scheme to LEP and DCP outcomes and controls.

There is no excuse that neighbour's amenity must suffer due to non-compliance to the controls.

In assessing the impact of a development proposal upon a neighbouring property, what was said by Roseth SC in *Pafbum v North Sydney Council* [2005] NSWLEC 444 (16 August 2005), at [19]-[24], is extremely helpful:

*19 Several judgments of this Court have dealt with the principles to be applied to the assessment of impacts on neighbouring properties. Tenacity Consulting v Warringah [2004] NSWLEC 140 dealt with the assessment of views loss; Parsonage v Ku-ring-gai Council [2004] NSWLEC 347 dealt with the assessment of overshadowing; while Meriton v Sydney City Council [2004] NSWLEC 313 and Super Studio v Waverley Council [2004] NSWLEC 91 dealt with the assessment of overlooking.*

*20 Five common themes run through the above principles. The first theme is that change in impact may be as important as the magnitude of impact.*

*21 The second theme is that in assessing an impact, one should balance the magnitude of the impact with the necessity and reasonableness of the proposal that creates it.*

*22 The third theme is that in assessing an impact one should take into consideration the vulnerability of the property receiving the impact.*

*23 The fourth theme is that the skill with which a proposal has been designed is relevant to the assessments of its impacts. Even a small impact should be avoided if a more skilful design can reduce or eliminate it.*

*24 The fifth theme is that an impact that arises from a proposal that fails to comply with planning controls is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.*

In the case of the present development proposal:

1. the magnitude of impact upon the amenity, use and enjoyment by us of our property is certainly not insignificant, in that:
  - the visual and acoustic privacy, solar loss, view loss and visual bulk impacts from the proposed development into our property well above controls,
  - The extent of the proposed building envelopes
  - The siting and extent of the proposed dwelling without having sufficient consideration for maintaining amenity
  - taking amenity from neighbours
2. our property is vulnerable, being directly adjacent to the subject site;
3. the lack of attention in the design of the development proposal as regards the impacts of the proposed development on our property in terms of height, bulk, view loss, visual privacy, acoustic privacy, visual bulk, and loss of winter sun, is relevant to the assessments of those impacts, such that even a small impact should be avoided if a more skilful design can reduce or eliminate it;

4. the fact that the proposal fails to comply with a number of important planning controls is much more difficult to justify than would otherwise be the case with a complying proposal; and
5. the proposal involves non-compliance with a number of principal planning control and this is an indicator of overdevelopment of the site.

In summary, we have, as Roseth SC pointed out in Pafbum, a legitimate expectation that the development to take place on the subject property '*will comply with the planning regime*' in the present circumstances.

We will welcome the opportunity to further expand on any of the issues once Amended Plans are submitted, and once templates and height poles are erected based upon the reductions identified within this Submission.

Yours faithfully,

**Wayne & Toni-Lou Howard**  
**123 Wallumatta Road**  
**Newport**  
**NSW 2093**

## **APPENDIX**

### **Appendix**

We ask Council to ensure that all appropriate conditions are considered to any consent, including but not limited to, the following:

#### **Conditions of Consent**

Compliance with other Departments, Authority or Service Requirement

Prescribed Conditions

General Requirements

#### **Approved Land Use**

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

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

Amendments to the approved plans [*\*see attached list above in main body of Submission*]

All windows facing neighbours to have obscured glazing

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

Pre-commencement Dilapidation Report

Compliance with standards [demolition]

Compliance with standards

Boundary Identification Survey

Structural Adequacy & Excavation Work

Geotechnical Report Recommendations to be incorporated into designs and structural plans

Engineering Assessment

Engineers Certification of Plans, including all retaining walls

Compliance with Ecologists Recommendations pre construction

Tanking of Basement Level

Installation & Maintenance of Sediment & Erosion Control

Demolition Traffic Management Plan

Construction Traffic Management Plan

Waste Management Plan

Waste & Recycling Requirements

Public Domain Plan

Soil and Water Management Program

Shoring of Council's Road Reserve

Vehicle Crossing Application

Pedestrian sight distance at property boundary

Location of security gate and intercom system

Minimum driveway width

Access driveway

Allocation of parking spaces

On-site Stormwater Detention Details

Stormwater Disposal

Sydney Water

Water Quality Management

External finishes to Roof  
Colours & Materials

New Landscaping Plan  
Project Arborist  
Tree Protection  
Tree Trunk, Root and Branch Protection  
Root Mapping  
Tree Removal within the Road Reserve  
On slab landscape planting and associated works

Mechanical plant location  
AC Condenser Units

Design Impact on processes and public/private amenity  
No excavation within 1m of boundary  
Protection of Neighbours assets

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

Plant room and equipment for operational conditions - Noise and vibrations

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

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

### **Conditions that must be addressed prior to any commencement**

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

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

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

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

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

Property Boundary levels  
Survey Certificate

Implementation of Demolition Traffic Management Plan  
Implementation of Construction Traffic Management Plan  
Traffic Control during Road Works  
Vehicle Crossings  
Footpath Construction

Geotechnical issues  
Detailed Site Investigation, Remedial Action Plan & Validation  
Installation and maintenance of sediment controls  
Building materials  
Rock Breaking  
Protection of adjoining property  
Vibration at 2.5mm/sec with a halt at 2.0mm/sec  
No excavation within 3m of boundary

Ecologists Recommendations during construction  
Waste Management during development  
Waste/Recycling Requirements

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

Protection of Sites of Significance  
Notification of Inspections

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

Post Construction Dilapidation Report

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

Required Planting

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

Contamination Remediation, Validation and Site Audit Statement  
Reinstating the damaged road reserve during construction

Condition of retained vegetation  
Stormwater disposal  
Works as executed drawings - stormwater

Installation of solid fuel burning heaters:

Certification of solid fuel burning heaters

Required Tree Planting  
Required Planting

Acoustic treatment of pool filter  
Noise Nuisance from plant

Lighting Nuisance

Swimming pool requirements  
Garbage and Recycling Facilities  
House number Building Number  
Waste Management Confirmation  
Waste and Recycling Facilities Certificate of Compliance



Waste/Recycling Compliance Documentation

Positive Covenant for Waste Services

Authorisation of legal documentation required for waste services

Privacy Screens

Reinstatement of Kerbs

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

Noise and vibrations. Noise from all plant must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open. Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

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

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

Approved Land Use

Maintenance of solid fuel heater

Operation of solid fuel heaters

Landscape maintenance

Landscaping adjoining vehicular access

Maintenance of stormwater treatment measures

Retention of Natural Features

No additional trees or scrub planting in viewing or solar access corridors of neighbours

Environmental and Priority Weed Control

Control of weeds

No planting environmental weeds

Maintain fauna access and landscaping provisions

Compliance with ecologists recommendation

Works to cease if heritage item found

Dead or injured wildlife

Noise

Noise Nuisance from plant

Swimming pool filter, pump and AC units [noise]

Outdoor lighting

Lighting Nuisance

Plant room and equipment for operational conditions - Noise and vibrations

Loading and Unloading vehicles