

# SUBMISSION

a written submission by way of objection

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prepared for

TITUS THESEIRA & ANTHONY NG, 173 SEAFORTH CRESCENT SEAFORTH NSW 2092

27 JUNE 2024

NBLPP  
NORTHERN BEACHES COUNCIL  
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DEE WHY  
NSW 2099

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RE: DA 2022 1848;  
173A SEAFORTH CRESCENT SEAFORTH NSW 2092  
WRITTEN SUBMISSION: LETTER OF OBJECTION  
SUBMISSION: TULLOCH

Dear Sir,

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

I refer to the Assessment Report.

My clients ask for the DA to be REFUSED.

If the Panel consider a consent to be warranted, I ask for two conditions of consent to be imposed:

- CONDITION A: To maintain view sharing, the proposed ridge is to be lowered by 780mm, or the end gable facing the harbour to have a 'clipped gable' of the same dimension
- CONDITION B: To maintain view sharing, all proposed trees and plants over 6m in height shall be deleted in the landscape plan. Tree planting shall be located to minimise impacts on view loss, with no trees or landscape species removing water views

## HERITAGE

I contend that the existing building does meet the threshold for listing as a Local Heritage Item.

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

I consider that the dwelling has heritage merit.

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

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



The 112-year-old house called 'Nelma' was built in 1911 for theatrical property manager George Phillips and his wife Elizabeth.

'Nelma' retained strong connections to the theatrical establishment in Sydney pre and post WW1.

The HIS states:

*The Phillips family had connections with the theatrical world. Rock Phillips, as George was called, was property manager at Her Majesty's Theatre and for the J.C. Williamson company. George Phillips was art director on several early movies made in the 1910's. He was a friend of George Rignold, whose Seaforth property 'Braybrook' was one of the few other houses in the western part of Seaforth in the 1920's.*

*Rock's daughter Alma Phillips was a well-regarded music teacher. (Sunday Times 10 August 1913)*

*Dame Nellie Melba had sung to gatherings of friends in the house."*

#### Dame Nellie Melba GBE

Dame Nellie Melba GBE (born Helen Porter Mitchell; 19 May 1861 – 23 February 1931) was an Australian operatic lyric coloratura soprano. She became one of the most famous singers of the late Victorian era and the early 20th century, and was the first Australian to achieve international recognition as a classical musician.

#### George Edward "Rock" Phillips

The original Owner, George Edward "Rock" Phillips was an Australian actor and designer who worked in Australian theatre and film in the early years of the 20th century.

George Edward "Rock" Phillips select filmography is listed within Appendix A.

The design of the 'Cinema Room' was unique to the area, consisting of a long room for early filmography projection and considerable ceiling heights to add to the character. The connection to George Edward "Rock" Phillips and the connection to Dame Nellie Melba GBE makes a strong case for heritage listing.

I contend that the additional level of built form above the 'Cinema Room' is inappropriate, and adversely changes the character of the existing dwelling and the 'Cinema Room'.

I contend that there are ample zones to locate additional built form around the existing property to gain additional floor area, and an extension vertically above the 'Cinema Room' is unacceptable.

Council's Heritage Officer stated the following:

***"Having the first floor extension over the main roof is considered to diminish the character of the original building and it is irreversible.*** New work must recognise and support the heritage significance of the building with a carefully considered design that allows the retention of the significant built form and allows the interpretation of

*the original building. The extension could be located to the southwest section of the site/existing property to **allow the original main roof is retained** and to make sure that the first floor addition is recessively placed, free from the main roof and does not dominate the original built form."*

The Panel can observe that the proposed development continues to present a first floor over the Cinema Room, requiring the existing roof structure to be completely removed.

I agree with Council's Heritage Officer:

- ***the first floor extension over the main roof is considered to diminish the character of the original building and it is irreversible;***
- ***the original main roof must be retained***

Furthermore, the proposed development seeks to remove the complete supporting structures that support the existing, fragile, 100-year old metal panelled ceiling. This is likely **to destroy the panelled ceiling**. The walls would be left open to the elements during construction causing further potential damage to the fragile finishes. The DA should be refused in that no adequate heritage report has been submitted to identify this matter.

On these grounds, the DA should be refused.

## **VIEW SHARING**

The proposed development does not accord with DCP 3.4.3 Maintenance of Views, and the objective 1 of the clause:

*To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

### **View Loss from proposed Built Form**

The Assessment Report states that the view loss from the Ground Floor level is a **moderate loss**. I agree.

I disagree with the Assessment Report that states that a more skilful design would not provide a better outcome.

I contend that the built form can be modified to reduce the impact, by the re-design of the roof, by either lowering the proposed ridge or by providing a clipped gable to the proposed roof form facing the harbour.

I refer to a dismissal of a Class 1 Appeal by NSWLEC Commissioner Gray on view loss grounds. I refer to Bondi Residence Pty Ltd v Waverley Council [2024] NSWLEC 1297. WC DA 9/2023. 14-18 Campbell Parade, Bondi Beach. I represented the neighbour in

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

I contend that the composite consideration from this NSWLEC dismissal, gives clear consideration that where view loss occurs across a front to rear boundary caused by non-compliant development, and the view loss is moderate or higher, then the DA is unreasonable.

*The Commissioner in this case did not accept that the assessment of reasonableness of a view impact is confined to a comparison of a so-called "compliant envelope" with what is proposed. The controls in the DCP are not merely building envelope controls, but extend to specific controls concerning the increase of setbacks to minimise view loss, as well as controls requiring the incorporation of design measures to facilitate view sharing.*

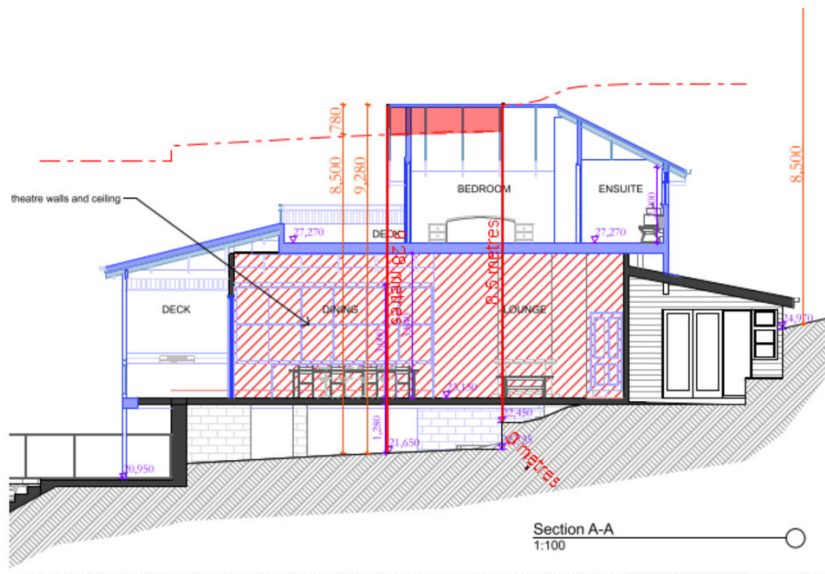
The Assessment Report has identified that the proposed development is non-compliant to HOB, and states that a compliant development would present similar outcomes. I do not agree with that assessment and prefer the consideration of Commissioner Gray in that: *'The controls in the DCP are not merely building envelope controls, but extend to specific controls concerning the increase of setbacks to minimise view loss, as well as controls requiring the incorporation of design measures to facilitate view sharing'*

If the Panel considered that the Council's Heritage Officers recommendation was to preclude any roof form over the Cinema Room to be the correct approach, then there would be no view loss to consider.

The proposed roof design has not completed the *'incorporation of design measures to facilitate view sharing'*.

There are options available to the applicant to provide a roof height not to exceed 8.5m. I ask the Panel to condition any approval with either of these design options.

- **CONDITION A: The proposed ridge is to be lowered by 780mm, or the end gable facing the harbour to have a 'clipped gable' of the same dimension**



### View Loss from proposed Landscaping

I contend that the loss caused by the proposed landscape will be a **devastating loss**.

I attach montages from Pam Walls identifying that loss.





I ask for a condition of consent to deal with this matter.

- **CONDITION B: To maintain view sharing, all proposed trees and plants over 6m in height shall be deleted in the landscape plan. Tree planting shall be located to minimise impacts on view loss, with no trees or landscape species removing water views**

My previous submissions referred to five decisions by the NSWLEC and NBC where similar conditions were imposed:

- *Hong v Mosman Municipal Council [2023] NSWLEC 1149*
- *Zubani v Mosman Municipal Council [2022] NSWLEC 1381*
- *Petesic v Northern Beaches Council [2022] NSWLEC*
- NBLPP: DA 2022 0246 at 120 Prince Alfred Parade Newport
- NBC DDP: DA 2022 2280 at 47 Beatty Street Balgowlah

I represented the neighbours in the above cases.

#### **Clause 4.6**

I disagree with the acceptability of the Clause 4.6 as identified within the Assessment Report, as clearly the excessive height causes view loss from the Ground Floor Level.

I disagree with the Assessment Report that suggests there has been excavation under the proposed 120-year old house, and that contributes to the acceptability of the non-compliant height.

I disagree with the Assessment Report that states:

*"It is agreed that the height non-compliance is a result of the previous excavation under the existing dwelling house. When measured from the natural ground level the dwelling house would be compliant with the development standard."*

*The proposed addition is compliant with the relevant setback controls and exhibits non-compliance with the Height of Buildings development standard as well as the wall height MDCP controls. In relation to the building height and wall height the non-compliance is primarily caused by the existing excavated area under the existing dwelling house, which would constrain any first floor addition proposed on the site. To provide a fully compliant building height would unreasonably limit the design potential of the proposal and would not result in a significant difference to the view loss outcome."*

The land form within the Hill & Blume Survey, and seen within the HIS photography, give the impression of a site that steps down the hill, with rock outcrops stepping in both directions, to the north. There would have been no benefit for the original owners over 100 years ago to excavate a site to RL 21.6, when they had planned to build a ground floor at RL 23.0. The landform to the north-western side boundary adjacent to the extension is at RL 21.2. Clearly there is a cross fall across the site, and the uncomfortable truth for the applicant is that the site has a stepping series of rock shelves that define the Existing Ground Level.

## **CONCLUSION**

I ask the Panel to REFUSE the DA.

If an approval is considered, then I ask that the two conditions identified in this submission be added to any consent.

- CONDITION A: To maintain view sharing, the proposed ridge is to be lowered by 780mm, or the end gable facing the harbour to have a 'clipped gable' of the same dimension
- CONDITION B: To maintain view sharing, all proposed trees and plants over 6m in height shall be deleted in the landscape plan. Tree planting shall be located to minimise impacts on view loss, with no trees or landscape species removing water views

Yours faithfully,



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## APPENDIX

George Edward "Rock" Phillips select filmography

For Australia (1915) - art director

Officer 666 (1916) - art director

In the Last Stride (1916) - actor

Australia's Peril (1917) - art director, actor, producer

The Monk and the Woman (1917) - art director

The Enemy Within (1918) - art director

The Breaking of the Drought (1920) - art director

Aus Stage lists his work as follows:

Properties Master

Come Over Here, Her Majesty's Theatre, Melbourne, VIC, 28 March 1914

Come Over Here, Her Majesty's Theatre (1887-1933), Sydney, NSW, 26 December 1913

Blue Bell in Fairy Land, Theatre Royal (1875-1972), Sydney, NSW, 14 December 1907

Scenic Artist

The Breaking of the Drought, Strand Theatre, Melbourne, VIC, 19 June 1920

Officer 666, Theatre Royal (1875-1972), Sydney, NSW, 1 April 1916

Within Our Gates, or Deeds that Won Gallipoli, Victoria Theatre, Emerald Hill (South Melbourne), VIC, 19 July 1915

Within Our Gates, or Deeds that Won Gallipoli, Waddington's Grand Picture Theatre, Sydney, NSW, 15 July 1915

Within Our Gates, or Deeds that Won Gallipoli, Waddington's Majestic Theatre, Sydney, NSW, 15 July 1915

Within Our Gates, or Deeds that Won Gallipoli, Waddington's Globe Theatre, Sydney, NSW, 15 July 1915

Set Designer

The Enemy Within, Strand Theatre, Sydney, NSW, 11 March 1918

The Monk and the Woman, Lyric Theatre, Sydney, NSW, 8 October 1917

Australia's Peril, Theatre Royal (1875-1972), Sydney, NSW, 19 May 1917

For Australia, Victoria Theatre, Emerald Hill (South Melbourne), VIC, 9 December 1915

For Australia, Waddington's Grand Picture Theatre, Sydney, NSW, 6 December 1915

Actor

Australia's Peril, Theatre Royal (1875-1972), Sydney, NSW, 19 May 1917

In the Last Stride, Alhambra Music Hall, Haymarket, NSW, 1 May 1916

For Australia, Victoria Theatre, Emerald Hill (South Melbourne), VIC, 9 December 1915

For Australia, Waddington's Grand Picture Theatre, Sydney, NSW, 6 December 1915

Properties Master / Mistress

Antony and Cleopatra, Theatre Royal (1875-1972), Sydney, NSW, 19 April 1913

Parsifal Or, The Redemption of Kundry, Her Majesty's Theatre, Melbourne, VIC, 23 March 1907

Veronique, Her Majesty's Theatre (1887-1933), Sydney, NSW, 27 January 1906

Producer

Australia's Peril, Theatre Royal (1875-1972), Sydney, NSW, 19 May 1917

Properties Master

Cinderella, Her Majesty's Theatre, Melbourne, VIC, 19 December 1914

The Forty Thieves, Her Majesty's Theatre, Melbourne, VIC, 29 August 1914

Forty Thieves, Her Majesty's Theatre (1887-1933), Sydney, NSW, 28 March 1914

Forty Thieves, Her Majesty's Theatre, Melbourne, VIC, 18 December 1913

Puss in Boots, Her Majesty's Theatre (1887-1933), Sydney, NSW, 15 March 1913

Puss in Boots, Her Majesty's Theatre, Melbourne, VIC, 21 December 1912

Sinbad the Sailor, Her Majesty's Theatre (1887-1933), Sydney, NSW, 27 April 1912

Sinbad the Sailor, Theatre Royal, Adelaide, SA, 6 April 1912

Sinbad the Sailor, Her Majesty's Theatre, Melbourne, VIC, 23 December 1911

Jack and the Beanstalk, Her Majesty's Theatre (1887-1933), Sydney, NSW, 8 April 1911

Jack and the Beanstalk, Her Majesty's Theatre, Melbourne, VIC, 17 December 1910

Aladdin, Her Majesty's Theatre (1887-1933), Sydney, NSW, 12 March 1910

Aladdin, Her Majesty's Theatre, Melbourne, VIC, 18 December 1909

Jack and Jill, Her Majesty's Theatre (1887-1933), Sydney, NSW, 3 April 1909

Jack and Jill, Her Majesty's Theatre, Melbourne, VIC, 19 December 1908

Humpty Dumpty, Her Majesty's Theatre (1887-1933), Sydney, NSW, 18 April 1908

Humpty Dumpty, Her Majesty's Theatre, Melbourne, VIC, 21 December 1907

Bluebell in Fairyland, Her Majesty's Theatre (1887-1933), Sydney, NSW, 14 December 1907

Mother Goose, Her Majesty's Theatre (1887-1933), Sydney, NSW, 22 March 1907

Alice in Wonderland, Her Majesty's Theatre (1887-1933), Sydney, NSW, 24 December 1906

Mother Goose, Her Majesty's Theatre, Melbourne, VIC, 22 December 1906

The Sleeping Beauty and The Beast or Mother Goose and the Seven Champions, Theatre Royal (1875-1972), Sydney, NSW, 26 December 1903

Dick Whittington and His Cat, Her Majesty's Theatre, Melbourne, VIC, 26 December 1902

Alice in Wonderland, Theatre Royal (1875-1972), Sydney, NSW, 21 December 1901

Australis; or, the City of Zero, Her Majesty's Theatre (1887-1933), Sydney, NSW, 26 December 1900

Little Red Riding Hood or Keeping the Wolf from the Door, Her Majesty's Theatre (1887-1933), Sydney, NSW, 27 December 1899

Robinson Crusoe, Her Majesty's Theatre (1887-1933), Sydney, NSW, 26 December 1895

Jack the Giant Killer, Her Majesty's Theatre (1887-1933), Sydney, NSW, 26 December 1893

Bluebeard, Her Majesty's Theatre (1887-1933), Sydney, NSW, 24 December 1892

Babes in the Woods or Bold Robin Hood and his Foresters Good, Her Majesty's Theatre (1887-1933), Sydney, NSW, 24 December 1891

Dick Whittington and His Cat, Her Majesty's Theatre (1887-1933), Sydney, NSW, 26 December 1890