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**Sent:** 30/01/2020 10:09:18 AM  
**Subject:** DA2019/1512 - Submission - Letter of Objection - 140 Ocean Street, Narrabeen  
**Attachments:** DA Submission - 140 Ocean St Narrabeen - 29 January 2020.pdf;

**Attention:** Maxwell Duncan

Good morning, Max

Please find attached a submission on behalf of the owner at 142 Ocean Street, Narrabeen.

This submission relates to DA2019/1512. The property at 140 Ocean Street, Narrabeen, adjoins our client's property.

If you require clarification on any matter, please do not hesitate to contact me.

Kind regards

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**Denis Smith**  
Director, Planning and Property



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29 January 2020

Chief Executive Officer  
Northern Beaches Council  
PO Box 1336  
Dee Why NSW 2099

*ATTN: Maxwell Duncan (Assessment Officer):*

**RE: Objection/Submission to Development Application  
DA2019/1512: 140 Ocean Street, Narrabeen  
Development Application for Demolition and construction of multi dwelling  
housing**

Reference is made to a recently submitted DA at 140 Ocean Street, Narrabeen which proposes demolition of the existing site and construction of a 2-storey multi-dwelling housing development, comprising 2 x two-bedroom apartments, 1 x four-bedroom dwelling and construction of an at-grade car park.

The proposed development results in a number of significant non-compliances to the relevant planning policies, all of which will compromise the environmental amenity of the immediate adjoining neighbours, in particular the objector's premises.

This submission has been prepared of behalf of the adjoining landowner to the north, being 142 Ocean Street, Narrabeen. A comparative image of both sites is provided on the following page. In preparing this submission, due consideration has been given to the following documentation:

- Statement of Environmental Effects prepared by Mecone
- Architectural plans prepared by John O'Brien Architect & Landscape Consultant
- Warringah Local Environment Plan 2011
- Warringah Development Control Plan 2011.

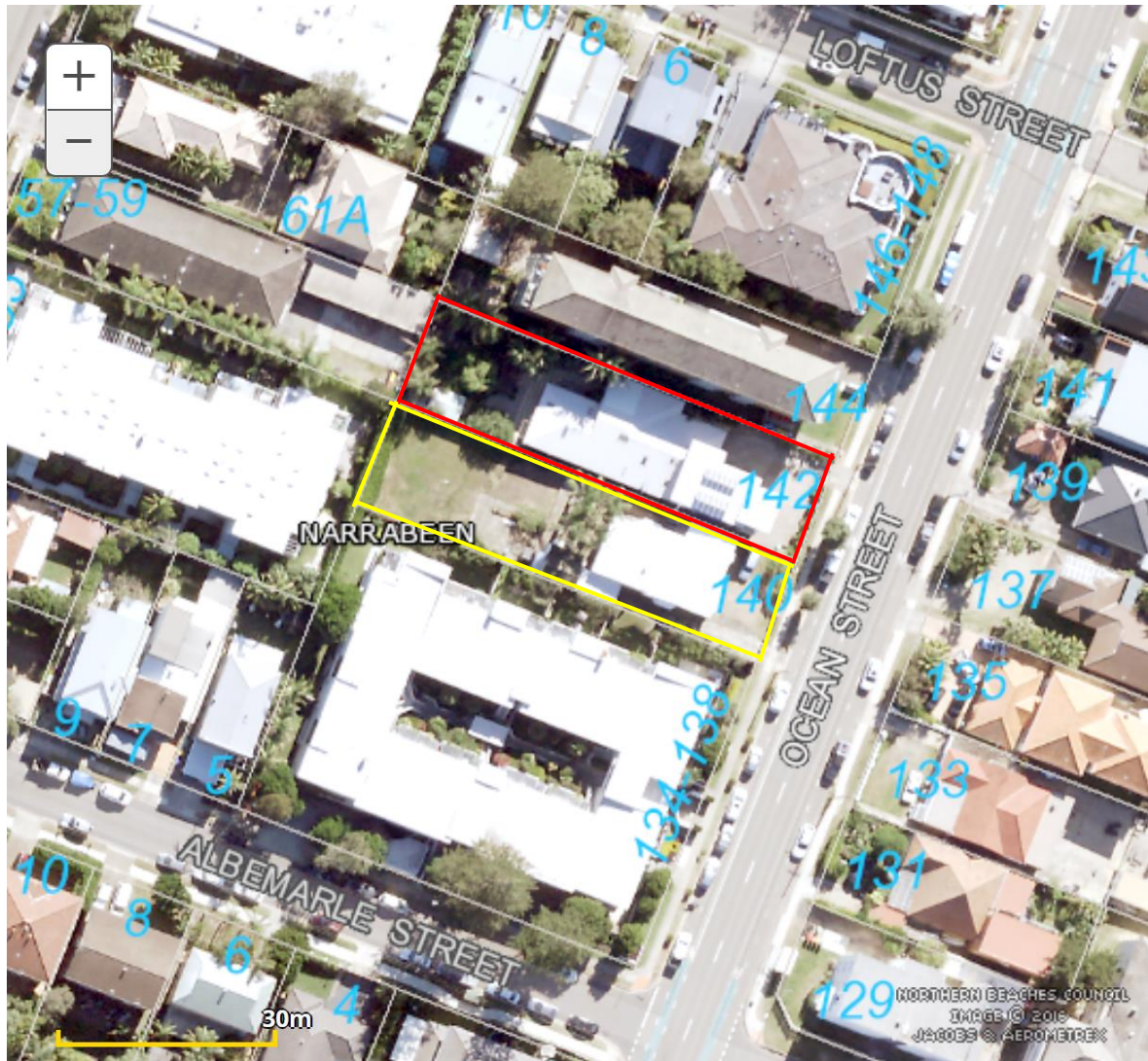
Having undertaken a detailed review of the above documentation, the following concerns regarding the proposal have been raised (and are further expanded within this letter).

- Site Isolation
  - Separation distances and associated amenity impacts (privacy/noise): northern boundary
  - Overdevelopment of the site: non-compliant setbacks and landscaping provisions
  - Urban Design.
-

**Site Context: 140 and 142 Ocean Street, Narrabeen**

**Yellow:** 140 Ocean Street, Narrabeen (site subject of DA2019/1512)

**Red:** 142 Ocean Street, Narrabeen (our client's site)



Source: Northern Beaches Council

**Image of 140 Ocean Street, Narrabeen**



Source: Google Maps 2020

**Proposed development - North Elevation:**



Source: John O'Brien Architect & Landscape Consultant

## KEY POINTS OF OBJECTION:

### **1. Site Isolation: (142 Ocean Street, Narrabeen)**

The application DA2019/1512 has not reviewed WDCP control D19 and will isolate our client's site. On this basis alone, DA2019/1512 should be refused. The proposal is not in keeping with the future character of the area and the proposal does not address amalgamation/consolidation of lots, therefore isolating our client's site at 142 Ocean Street, Narrabeen. The proposal also sterilises our client's site and any future development potential due to the numerous non-compliances (setbacks, landscaping and on-grade car parking), which would impact our client's design and development potential. Our client has stated that they are happy to sit down and negotiate the relevant court principles of Site Isolation with the owners of 140 Ocean Street, Narrabeen. As shown below, the proposal does not comply with WDCP control D19.

#### **D19 Site Consolidation in the R3 and IN1 Zone**

##### **Applies to Land**

*This control applies to land zoned R3 Medium density residential and IN1 General industrial on the Warringah Local Environmental Plan 2011 Land Zoning Map.*

##### **Objectives**

- *To encourage lot consolidation to allow efficient use of land.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To avoid lot sterilization.*

##### **Requirements**

1. *Development shall not result in adjacent allotments that have areas or dimensions, or are constrained in other ways, that would render such allotment(s) incapable of being developed in accordance with Warringah Local Environmental Plan.*
2. *Lots are to be consolidated where necessary to ensure the development of one allotment will not render an adjoining one unsuitable for future development.*
3. *For residential development in the R3 zone private open space may extend to a minimum of 3.5 metres from a side boundary.*
4. *For residential development in the R3 zone basement carparking structures may be positioned up to a minimum of 2 metres from the side boundary but not be more than 1 metre above ground level.*

##### **Exceptions**

*Where allotment size and dimension do not comply with other DCP requirements, variations to side boundary envelopes and side setbacks may be considered on merit to allow the consolidation of allotments for medium density housing*

In light of the above information, an analysis of the isolation principles of the Land and Environment Court has been outlined below. These principles are found in the following Land & Environment Court Case:

- *Karavellas v Sutherland Shire Council [2004] NSWLEC 251 at 17-19*

Is amalgamation of the sites feasible? In determining the answer to this question, the principles set out by Brown C in NSWLEC 251 are relevant. These are set out below:

- *Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.*

- *Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.*
- *Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979.*

Can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?

- *In answering this question the key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.*
- *To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.*
- *The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments.*

**Comment:**

It is our opinion that the above principles have not been addressed as part of the DA process. Of particular notice are the principles raising key points about a development not restraining the potential amenity (solar/privacy/views/amenity) of an adjoining site, and the requirement for negotiations between landowners, both of which have not occurred with DA2019/1512.

Additionally, given the context of both sites adjoining strata titled apartments buildings to the north and south, the two are logically fit for amalgamation as opposed to two separate development parcels, particularly given the associated issues in terms of non-compliance with DCP controls (such as setbacks and landscaping). Given the limited amalgamation options with adjoining strata apartment buildings, the logical lot amalgamation is 140 and 142 Ocean Street, Narrabeen.

From the above assessment and the key findings of both isolation court cases, it is clear that site amalgamation should be encouraged at a reasonable acquisition rate to avoid site isolation, primarily in regard to the proposed non-compliant design of DA2019/1512 which, therefore, sterilises our client's site (142 Ocean Street, Narrabeen). Any approval granted to 140 Ocean Street, Narrabeen, would have to comply with the minimum setbacks as to not sterilise and place prohibitions on our client's land.

## ***2. Separation distances and associated amenity impacts***

Concern is raised with the submitted design and its prohibiting effect on the development potential of 142 Ocean Street, Narrabeen, particularly in regard to building separation and the associated interface/privacy, solar and visual impact concerns.

Notwithstanding the proposal is for a multi-dwelling housing development, the assessment should incorporate the principles of the NSW Apartment Design Guidelines which provide strict controls in regard to building separation for new residential apartment buildings in NSW. Given the context of the two sites, our client would be heavily impacted due to overlooking, privacy and amenity issues. Another important issue is the at-grade parking in the middle of the site, which creates amenity issues such as noise, privacy and light (car headlights during the night) impacts. It is our opinion that the proposal does not comply with WDCP controls D3, D8 and D9.

## ***3. Overdevelopment of the site***

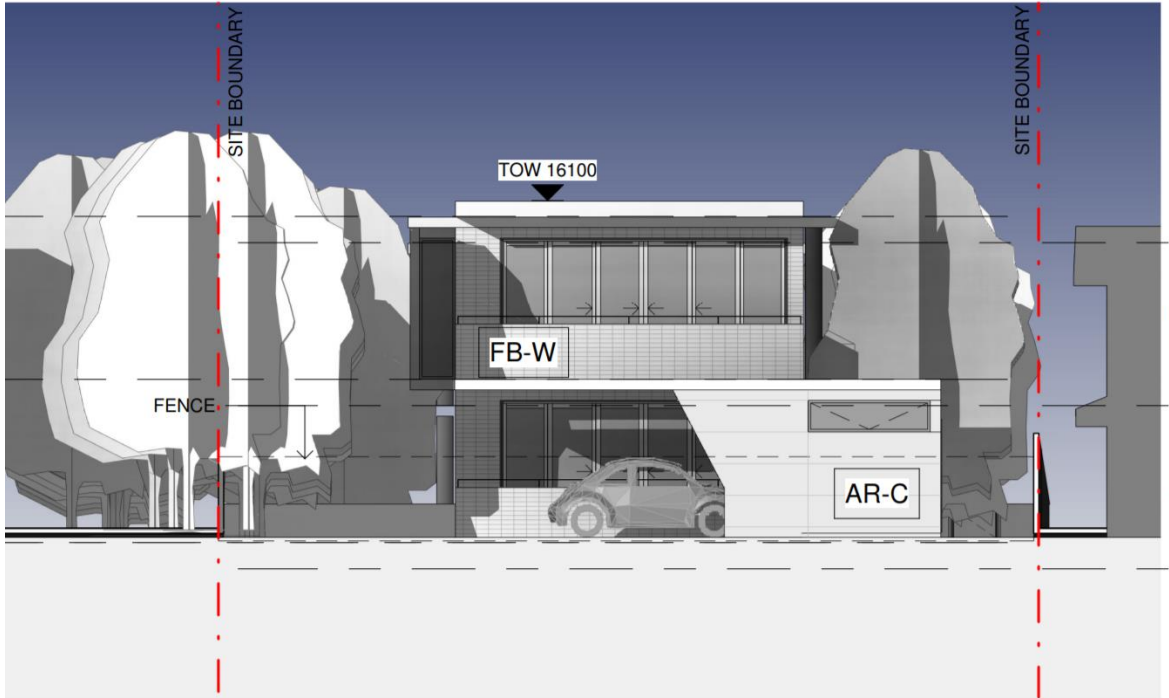
The proposed development of 140 Ocean Street, Narrabeen, not only provides inadequate building separation and setbacks, but also presents a substantial non-compliance to landscaping. It is clear that the existing design as submitted to Council represents an overdevelopment of the site and one which primarily does not comply with key design criteria to reduce such overdevelopment. Of particular note is the at-grade car parking which will have a detrimental impact to our client's daily lives.

The proposed development is not in the public interest and has failed to address and assess any impacts to our client's site to the north, being 142 Ocean St, Narrabeen. The proposal fails to comply with WDCP controls D1, D3, D8, D9 and D19. The impacts of the non-compliances are not minor and will have a detrimental impact to our client's amenity and any future development potential to their site. In its current state DA2019/1512 is not in the public interest and should be redesigned to be compliant with WDCP controls, in particular landscaping (minimum 50%) and all setbacks. The proposal does not meet the relevant objectives of WLEP and WDCP in particular the objectives of the zone R3 Medium Density Residential:

- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*
- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

#### 4. Urban Design

The proposal as submitted has serious flaws with regards to the urban design of the proposed development and the future character of the area. Of particular note is the car port within the front building line. All car parking should be placed underground or behind the front building line, to be consistent with the Ocean Street streetscape (excerpt of the front elevation shown below).



*East Elevation (Front)*

It is also submitted that the proposal does not meet the objectives of WDCP controls D8 Privacy and D9 Building Bulk.



**Conclusion:**

In accordance with the above justification, the DA submitted to Council has a number of fundamental issues and non-compliances which significantly impact the surrounding context, primarily site isolation, separation distances, amenity impacts, solar, overshadowing, privacy and the overall overdevelopment of the site.

In light of the justification provided with this report, it is respectfully requested that Council refuse the subject DA and discussions are held regarding site isolation of our client's property. Our client is open to discussion with the owners of 140 Ocean Street, Narrabeen. Our client's details can be provided to arrange a mutually accepted time to discuss the matters raised in this letter.

If you require any further clarification on this matter, please do not hesitate to contact the office. We would welcome the opportunity of meeting with Council's relevant officers to discuss the impediments that Council intends to place on the development potential of our client's property.

Yours faithfully

A handwritten signature in blue ink that reads "Denis Smith". The signature is written in a cursive style with a large, sweeping initial 'D'.

**DENIS SMITH**  
**Planning and Property Consultant**