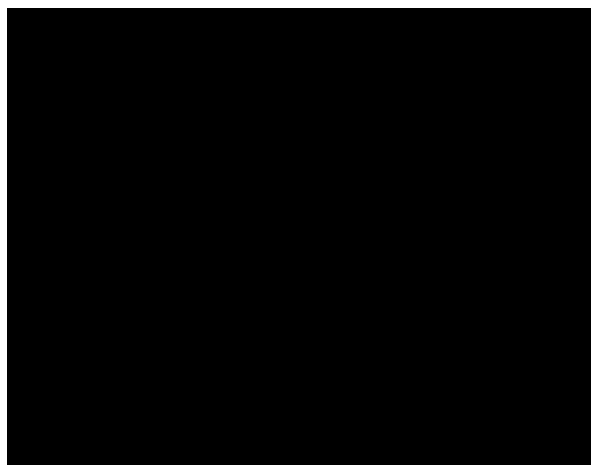

From: Simon Nelson
Sent: 4/12/2023 10:07:46 AM
To: Council Northernbeaches Mailbox
Subject: TRIMMED Submi ion regarding DA2023/1395
Attachments: Objecrion to proposed DA2023 1395.pdf;

Dear Sirs

As owner of 14 Cliff Road, a property adjoining the site of the proposed development, I attach my letter of objection to the above mentioned DA. If you have any questions, please do not hesitate to contact me.

Sincerely

Simon Nelson



14, Cliff Road
Collaroy
NSW
2097

Northern Beaches Council

Att: Adam Croft, Principal Planner

By Email

3rd December 2023

Dear Sirs

Re: DA 2013/1395 - 1010-1014 Pittwater Road Collaroy - Demolition works and construction of shop top housing

I write to you in regard to the above-mentioned DA. I live at 14, Cliff Road, Collaroy, which backs directly onto the site in question. My comments below will be divided into 3 sections. First, I will cover the aspects of the proposal, and in particular, the breaches of planning instruments, that have direct impact on my home and on my family's quiet enjoyment of the property, including the loss of amenity the proposal will be forced onto us by those breaches. I will then discuss wider issues with the proposal which impact a greater number of the local community. I will then discuss the errors and omissions from the submission, including accidental or deliberate misinformation.

In the interests of fair disclosure, not only am I the owner of an adjacent property that will be significantly impacted by the breaches proposed, but I am also a Registered Architect with significant experience of such developments and I consider myself well qualified to make the comments below. I also state that the diagrams I have produced below have been produced with professional care and accuracy, save for having relied on the applicant for the accuracy of their drawings and survey.

Summary of Objections and other comments detailed in this submission.

1. The rear setback is non-compliant with Objective 3F-1 of the ADG, imposing on my property.
2. The height is non-compliant and imposes on my property
3. The scheme calls for an additional storey above what is permitted, imposing on my property.
4. Tree "T12" is endangered due to a miscalculation of the breach of the TPZ
5. The stormwater plan leads me to be concerned about potential flooding to my property
6. The overall massing and bulk of the building will impose on the local area beyond what is reasonable
7. There are significant errors and omissions in the application which makes it unnecessarily difficult to ascertain the breaches proposed of the development
8. The C14.6 Variation request does not meet the standards required to justify granting variations
9. The proposed stormwater easement will be difficult to get and that this matter needs to be resolved before further progress can be made with this DA.

Key Objections

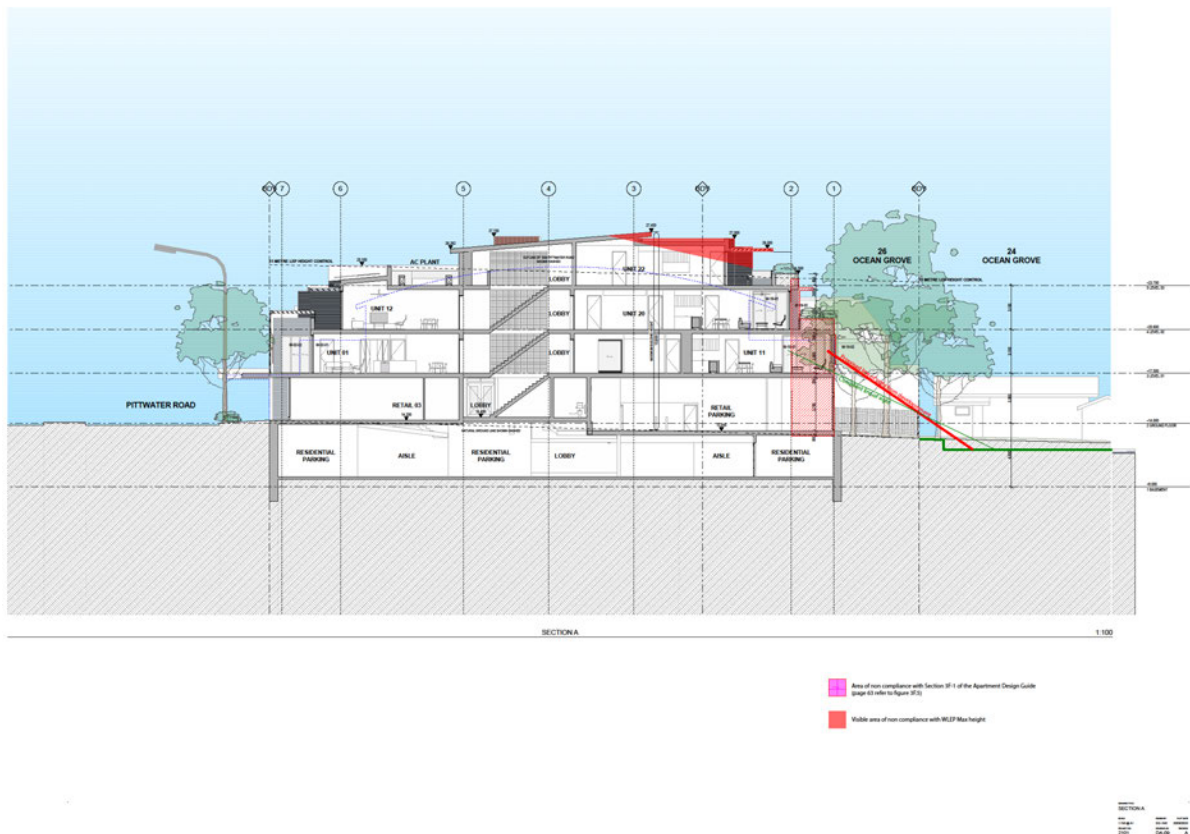
14 Cliff Road will be directly impacted by 3 significant breaches of the planning instruments and an incorrect assessment by the Arborist. It should also be noted that my house is not included in the

survey or on any plans, which is in itself a breach of requirements. The application relies on a survey undertaken on 21/01/2021, at which point only the frame of the new house on my property was complete. Any competent surveyor should be able to provide drawings based on what has been constructed and that has been possible with regard to the new house for over a year. The survey also includes trees which have been removed from site (as authorised under CDC). To claim that there are no drawings is clearly ludicrous, seeing that they have included other houses that were built many years ago and for which there would not be any records. Worse, my house is described as being single storey and brick build, which is incorrect both for the current house and the previous house, which are or was double storey. This is significant because the breaches outlined below, and in particular the height and additional storey breaches, are more obvious from our second storey windows (see below).

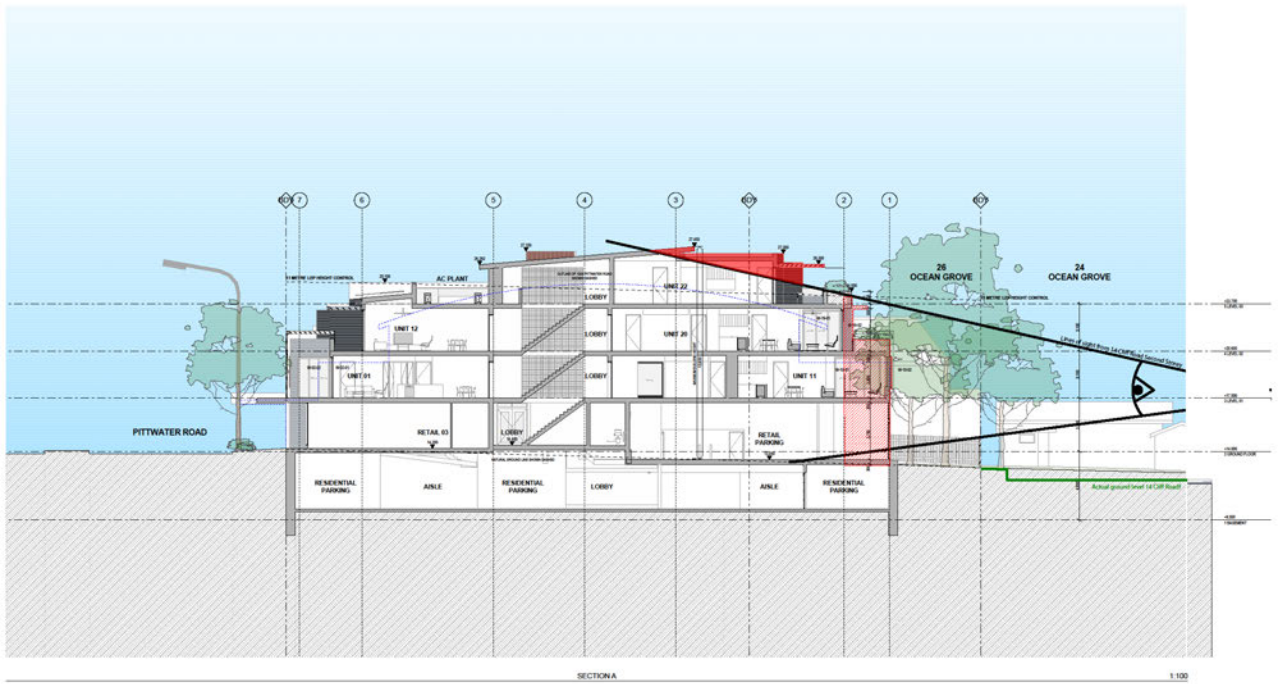
The breaches are as follows

Rear setback – The proposed building is to be located 6m from our rear boundary. According to the Apartment Design Guide (SEPP65), because there is a change in density (from E1 to R2), the setback needs to be an additional 3m. As the ADG states that setback should be a minimum of 4.5m at GL, and 6m at L1 and above, the minimum setback for this project should be a total of 9m. In addition, L3 should be further setback. It should be noted that while the development at 1000 Pittwater Road is only set back 6m at GL, L1 and L2 (greater at L3) it was approved before SEPP65 was introduced and therefore it would be wrong to use that as a precedent for allowing the proposed scheme to breach this important setback requirement.

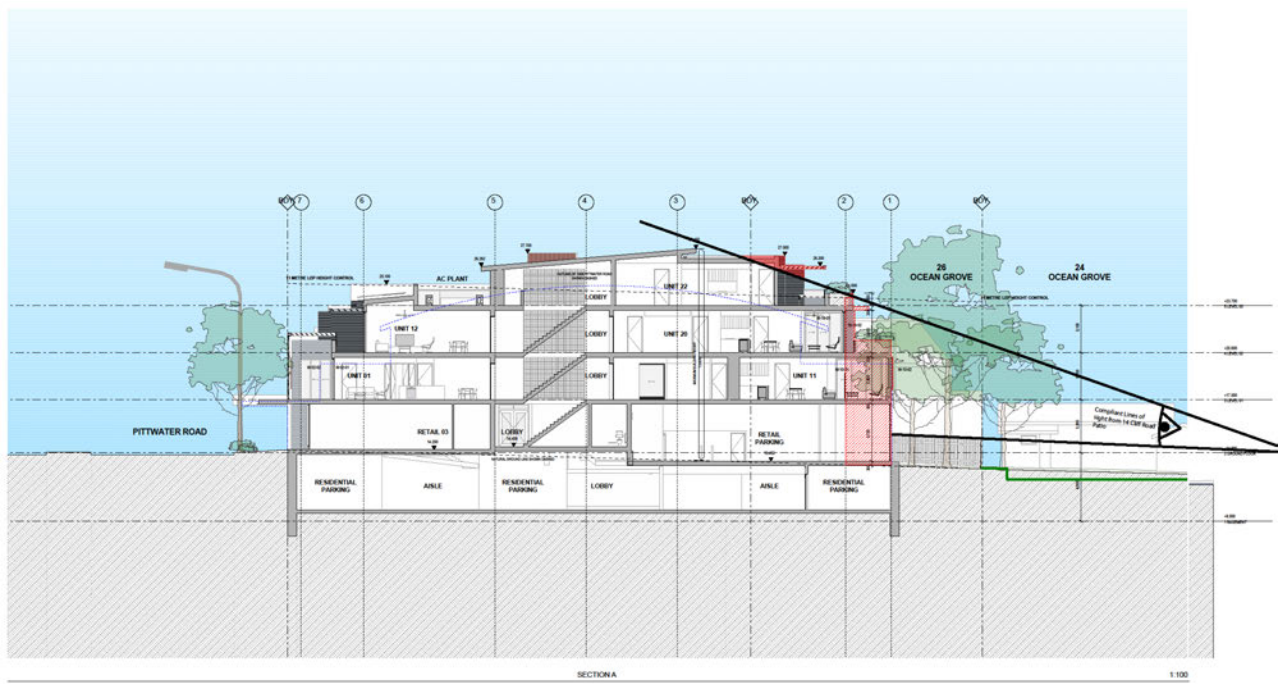
This breach has a number of direct impacts on our property. The increased mass so close to the boundary is inappropriate and imposing. It will destroy the enjoyment and amenity of our back garden. In particular as shown in the diagram below, the windows on L2 will provide direct views into our swimming pool where my wife and I play with our 2 daughters (red line), and which would not be visible if the correct setback was enforced (green line). The additional 3m setback required by the ADG would also increase privacy to our patio and habitable rooms in the house.



Height – The site is subject to an 11m height limit (WLEP). The proposed scheme breaches this height by 2.93m. It is both stated and implied that this height is “concealed” which is not supported by proper analysis. That analysis would show that the height can be seen from both our garden and first floor windows, with the bulk being more noticeable from the second storey windows as can be seen from the 2 drawings below. The amount of the height excess is limited by the bulk of L3, which itself needs to be reduced through greater setback, which would make the breach more visible. In order for a variation to be granted, the 2 top storeys would need to be substantially modified to reduce the bulk of the building and reduce the visual impact on my property.



- Area of non-compliance with Section 3F-1 of the Apartment Design Guide (page 63 refers to Figure 3F.5)
- Visible area of non-compliance with WLEF Max height



- Area of non-compliance with Section 3F-1 of the Apartment Design Guide (page 63 refers to Figure 3F.5)
- Visible area of non-compliance with WLEF Max height

Additional Storey – The proposed scheme proposes a 4th storey, one more than permitted. While I don't have any theoretical objection to this breach, it can only be allowed if it has no impact. The applicant states that it is a "concealed" storey, but the diagrams above disprove this notion. Therefore, I object to the extra storey as it will have an impact on my house, through greater visible mass and bulk. The same arguments used above under "height" apply to this additional storey.

Arborist Report - I have grave concerns about the arborist report and an incorrect assessment of the impact on tree listed as T12, which contributes a dominant feature to our back garden. It provides shade to our habitable rooms on the ground floor at the rear and was included in the calculation of thermal performance, with the house being designed to Passivhaus standards. The loss of this tree would have significant impact on the performance of our house and we would lose all the amenity such a magnificent tree presents. The problem I have identified is in regard to the TPZ and in particular, the amount of encroachment. Taking data from the survey for location and tree diameter, a proper calculation (done in cad by myself) suggests that instead of the claimed 10.9% encroachment, the true figure is 13.5%. In addition, this does not include what I believe is further encroachment due to stormwater drainage, shown on drawings but not detailed enough to be able to accurately add to the calculations. This is well in excess of the 10% encroachment considered acceptable in section 3 of AS4970 – 2009.

This extra encroachment is significant and I have been advised that mechanical digging and piling with that much encroachment will seriously prejudice the survival of this tree. Under AS 4970, only hand digging is allowed so far into the TPZ. The geotechnical report has clearly eliminates hand digging as a feasible method of undertaking this work. Having recently undertaken groundworks in the area to create a swimming pool, which goes to a significantly shallower depth than the proposed scheme, I can confirm the waterlogged nature of the ground and the problems with groundwater. With hand digging being impossible and mechanical piling not being allowed, the proposed building needs to be moved away from the tree, further supporting the argument for enforcing the prescribed setback.

I would further add that the arborists report contains enough errors that I can identify that it brings into question the reliability of the whole report. Besides the error with the TPZ, the report states that T12 is 9m high, when the survey states it as being 16m (my own survey in 2019 had it at 20m). The report says it is based on a visit and observations on 16th June 2023 and reports on a tree on my property, T10, which is given a ULE score of 2 and having fair vitality, which is remarkable as it was removed (with permission) in 2022. While these errors alone aren't very significant, I am concerned that of 3 trees I have checked, there are significant errors with 2 of them. In short, I do not believe council should rely on this report.

Stormwater – I have reviewed the stormwater plans as they currently exist and I am particularly concerned about the proposed "FILTERRA BIOSCAPE SYSTEM". I believe that such an arrangement is unsuitable for land where the water table is as high as it is and that this could lead to local flooding. As the position is close to my boundary and my swimming pool, I believe there is a good chance of flooding and water runoff into my pool. In addition, I will discuss further concerns about stormwater disposal later in this objection.

In addition to the above, I wish to register my opposition to a recommendation made in the Council's Landscape Referral Response. Within the response, there is a recommendation that the landscape plan should be conditioned and modified to include 1 x *Angophora costata*. I am surprised by this recommendation for a number of reasons, not least because this is not a tree that is found in this part

of Collaroy and there is no history of such trees growing in the immediate vicinity. It is also too large for the location, with a branch spread of 10m. This will lead to it being too close to the proposed development, or, if far enough away, it will overhang into the gardens of the houses on Cliff Road. Besides the well known problems of it shedding bark, which will cause significant problems to us with a swimming pool, the tree is well known for dropping limbs, and as such, it is unsuitable for residential gardens as it will pose a danger to residents.

General Comments on impact of Scheme to local Area

While I acknowledge that the following breaches do not directly impact my property, most of them will be visible during my activities in the area, such as walking to work, or visiting neighbours who will be impacted. As such, they will impact my quiet enjoyment of the area and change it's character for the worse.

This might be a good opportunity to state that I am not apposed to the development of the site and have always expected this to happen. However, I had a reasonable expectation of a scheme that substantially complies with the planning instruments and that any approved variations would not have a detrimental impact.

Bulk and Form of the building – The building will be visibly imposingly bigger than the planning instruments allow, due to significant breaches of height and setbacks. These breaches are out of sympathy with the existing developments, which is particularly noticeable in the applicant's own drawings.

Height – While the provided drawings do not allow for such analysis, I believe that the excess height will be visible from many points, including but not limited to the houses on the other side of Pittwater Road, the pedestrian path on the opposite side of Pittwater Road and pedestrians on Cliff Road. In addition, I expect the excess height to be seen from the upper apartments in 26 Ocean Grove as well as 1016 Pittwater Road.

Setbacks – Besides the already discussed rear setback, I note unsatisfactory breaches and outcomes thought the project. The front setback at L2 is not adhered to, which adds significantly to the bulk of the building as seen from the west side of Pittwater Road. The lack of setbacks will also impact the adjacent properties. The proposed 4m high wall to the southern boundary on L3 is a particularly poor outcome, not least for those in the adjacent apartments to the south.

Materials – The schedule of exterior finishes and materials is so light on information it is impossible to understand the true impact of the development. There is no information on the appearance of the entry driveway and what will be visible from the street.

Errors and Omissions by the Applicant

I am only able to judge documents that have been posted on the Council's planning portal and therefore have no way of knowing if additional documents better support this application or correct the errors and omissions. Based on the documents I can access, I would make the following observations.

Design Verification Statement – While this has now been provided, that only occurred after I reported its absence to council. It arrived after the notification period and contains significant claims not made

in other documents, such as the claim that the 4th floor is “concealed” (page 3). This document is required under SEPP 65. All the locals who made submissions prior to the statement being uploaded have been deprived of the opportunity to comment on this document, which is their right under law.

Drawings – There is a requirement that the drawings should include annotation to show the setbacks required by the various planning instruments. These have not been included. This makes it hard for laymen, such as the local residents, to be able to assess any breaches of those setbacks. I have been asked by a number of neighbours to show them exactly where those permitted setbacks should be, and that group only represents a small percentage of those who might object.

There is also a lack of drawings (and other information) to support the proposed breaches of the planning instruments. It is a requirement that the applicant provides adequate evidence of why the breaches are acceptable and this has not happened. Even the most basic of required drawings, those showing overshadowing, are not fit for purpose. Not only do they not show existing and proposed shadowing claim by the drawing, but the simple plan views of ground and rooftops do not allow for adequate analysis of the overshadowing. In particular, how can one analyse the impact of the boundary wall on the balconies and rooms on the top floor of the apartments to the south? Modern software makes it easy to produce the necessary drawings which should have accompanied this proposal. It is a requirement that the drawings show the extent of additional overshadowing cast by the proposed development at ground level and the windows of adjoining and surrounding premises. These drawings do not comply.

I believe that there should also be drawings to support their claim of the 4th floor being concealed. I suspect these are missing because proper analysis does not support this claim.

Statement of Environmental Effects – There is an expectation that this document is accurate and, in particular, correctly indicates compliance and no compliance with planning instruments. While I accept that professionals such as the council’s planning team will not be fooled by the inaccuracies, incorrect information is misleading to local residents who do not have specialist knowledge. I am not sure whether the errors are accidental, or due to incompetence, or due to a deliberate attempt to mislead, but there are a significant number of them. However, the reason for the errors isn’t relevant, because to impact is the same, whatever that reason. I will simply highlight one which impacts my own house. Under ADG Object 3F – 1, Privacy, the SOEE states the scheme complies. However, 3F-1 states (p63 of the ADG) “Apartment buildings should have an increased separation distance of 3m (in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping (figure 3F.5)”. This scheme clearly does not comply yet the SOEE states that the scheme complies with 3F-1.

CI4.6 Variation Request – This document is deeply flawed. While it does well in identifying the Land and Environment Court judgements which could be used to show the court will allow breaches when justified, it fails to provide any real justification for the breaches. It relies on an implicit idea that if others were allowed to exceed the planning instruments, then so should this scheme. What it fails to do is provide the justifications that the other schemes would have given and there is no supporting evidence, by way of drawings and analysis, to support the breaches. The document makes claims which are clearly unsupportable, such as the “contextually responsive building design” which is claimed to be “consistent and compatible with the height of contemporary development within the immediate context of the site including 1008 Pittwater Road directly to the south of the development site”. No reasonable person can support the idea that a 26% breach compared with its neighbour, which can be so easily seen, can be considered as being contextually responsive.

The variation also makes a fundamentally flawed argument when it says “Council’s acceptance of the proposed height variation will ensure the orderly and economic development of the site”. The whole purpose of our planning instruments is to facilitate the orderly and economic development of land, as stated in the Act. Those instruments fairly consider and “distribute” amenity in order to ensure orderly development while providing the basis for economic development. Orderly development of the site can be undertaken without breaching planning requirements while economic advantage can never be the reason for allowing breaches, particularly in cases such as this where the only beneficiary of those breaches is the developer and/or when it is at the expense of the local community. This scheme has failed to show that there is any benefit to the local community in allowing the breaches, and cannot even show that there is no impact, which has to be the minimum standard to apply to consider allowing breaches.

In short, this CI4.6 request fails on both tests required. It fails to show that compliance is unreasonable and unnecessary while also failing to provide any evidence of sufficient environment planning grounds to justify contravention of the development standard.

Stormwater Easement – I note the request that the gaining of the necessary stormwater easement be conditioned and attained after the DA is granted. I object to this for the following reason. Without gaining this easement, the development of the site, either 100% complying or otherwise, cannot go ahead. At this time, the local community are spending significant sums on planning consultants, solicitors and planning and environment barristers. This money will be spent unnecessarily if the site cannot be developed and I have reason to believe that the issue of an easement presents significant problems for the applicant. The applicant proposes a 1m wide easement through 24 Ocean Grove. According to Council’s own requirements, such easements should be 3m wide. As it is, having personally surveyed my neighbours property, there isn’t enough room to impose even a 1m wide easement without going under buildings or digging within the foundation zone. In addition, there are existing sewer, gas and electrical services running in the area of the potential easement, the moving of which would be highly problematic. I am unaware of any court ruling that has forced a Section 88K easement onto a property when that easement would need to go under a home or its outbuildings, or significantly impact the services coming into the property, It is therefore essential that all matters regarding the easement are resolved before the DA can proceed any further.

In conclusion, while there are many other breaches of the various planning instruments that I have not covered, due to them not directly or indirectly impacting me, I believe that the breaches discussed above make this scheme unacceptable in its current form and as such, a DA should not be granted.

Sincerely

Simon Nelson
RAIA, MScMan, BDes, MArch

