
From: [REDACTED]
Sent: 14/12/2022 11:06:08 AM
To: Council Northernbeaches Mailbox
Cc: 'Bridget Smithers'
Subject: TRIMMED: DA2022/1910 - Objection attached on behalf of Strata Owners SP69175
Attachments: Strata Owners Corp SP69175-Objection to adjoining 61 North Steyne DA-DA2022-1910-14.12.22.pdf;

Hello at Northern Beaches Council,

We attach a detailed objection to the above development application currently on Notification.

Formal acknowledgement of receipt will be appreciated.

Regards,

Wayne Collins

Colco Consulting Pty Ltd

Email: [REDACTED]

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14 December 2022

Chief Executive Officer
Northern Beaches Council
Council Offices
DEE WHY NSW 2099

By email to - council@northernbeaches.nsw.gov.au

Dear Sir,

RE: Objection to DA No. 2022/1910 – 61 North Steyne Manly, cnr Denison Street. Proposed Demolition and construction of a new 5 storey Non-compliant Residential Flat Building. Objection on behalf of the proprietors of the adjoining building No. 59 North Steyne, Strata Owners SP69175.

1.0. Introduction

1.1. We represent the owners of the residential flat building adjoining to the south, No. 59 North Steyne Manly being the Strata Owners Corporation SP No. 69175 and the individual strata lot owners. Our instructions are to review the application and advise on compliance with planning controls, planning objectives, implications and potential impact on their property and owners of the strata title apartments, and environs. Our further instructions are to prepare and issue this objection in response to Development application currently with Northern Beaches Council and on notification.

1.2. The application proposes a five (5) storey non-compliant residential flat development comprising five (5) apartments - non-compliant maximum height, non-compliant wall height, non-compliant number of storeys, non-compliant setbacks, non-compliant gross floor area and floor space ratio, non-compliant landscaping, non-compliance with the National Construction Code/Building Code of Australia, and a two storey excavated basement below the tidal water table with the only vehicle access being by a single car lift. This is all proposed on a small, constrained corner site of 407.3m².

1.3. The proposed development adjoins our clients building on the southern boundary. Our clients residential building comprises four floors with the fourth floor apartments being two levels with “rooms in the roof cavity” a design encouraged at the time of consent for compliances with planning principles and proposing a desirable roof design other than a “flat” roof.

Our clients building is constructed to the common side boundary for the first three (3) levels with the fourth (4) level setback from the boundary in accordance with planning controls, and the rooms in the roof further setback again. This is clearly evident in the development application Statement of Environmental Effects (SEE) photo Fig. 6 which we reprint below.



Figure 6 Adjoining development south of the site
Source: Google Street View

The stepped side setbacks on the fourth floor and for the “rooms in the roof” of No. 59 North Steyne are clearly visible in the photo above, and below.



Figure 12 Photomontage of the proposed development from opposite North Steyne
Source: Estudio Nod

1.4. The planning requirements at the time of consent for our clients building are evident in the photo and montage above (Fig. 6 and 12) with the stepped side setbacks and “rooms in the roof cavity” further setback again. The photomontage also demonstrates the negative impacts the proposed development will have on the amenity of our clients’ apartments. For example, Level 4 of our clients building will look directly onto a blank full length masonry wall along the side boundary and levels four and five will be directly overlooked by the proposed fifth floor apartment. All levels will lose the existing views to the northeast.

The subject proposal does not attempt to comply with the three (3) storey planning control, or a “rooms in the roof cavity” or side setback to a fourth level as demonstrated in the SEE photomontage – Fig. 12 of the applicant’s document. The result is that the application –

1. Fails the side boundary setback control.
2. Exceeds the maximum statutory height control.
3. Exceeds the three (3) storey limit for the site.
4. Proposes a complete single level apartment on level 5 which at the very best should be limited to a “room in the roof” for the apartment on the fourth floor – *if it should ever be permitted to exceed the maximum height control and three (3) storey limit.*
5. Proposes excessive and non-compliant gross floor area and floor space ratio.
6. There are multiple non-compliances as outlined in this objection, including the basement two level carpark.

1.5. We have reviewed the DA drawings and documents, inspected the site, met with our clients, taken photos and advised them accordingly. Our assessment concludes this is an excessive and unreasonably large overdevelopment of a small corner site which ignores planning controls and the planning objectives, ignores impact on neighbours. The proposal is unacceptable environmental impacts - and particularly our clients’ expectations of continued enjoyment of their homes.

1.6. We find the development proposal –

1. Is grossly non-compliant and a significant, unacceptable overdevelopment of this small and constrained corner site. It surely is an “ambit” claim to test council planners on how much leniency they may be able to obtain in the pursuit to maximise the size of their development and profit.

2. Creates considerable cause for concern and alarm with:

1. The extent of the development proposed on such a small and constrained site, and numerous non-compliances as outlined in this submission including height, number of storeys, setbacks, FSR, landscaping.
2. The loss of amenity (sun, privacy, and views).
3. The visual building bulk (especially on proposed levels four and five).
4. The potential impact on the footings and structure of our client’s property.

3. The impacts on amenity of residents including loss of privacy, loss of afternoon sun and loss of views, directly result from the non-compliances with the planning controls and planning objectives.

4. Goes to extraordinary efforts attempting to justify the numerous and serious non-compliances. These non-compliances include -

1. Breach of statutory maximum height. *The statutory maximum is 13 metres, and the proposal is 16.3 metres.*
2. Breach of statutory wall heights. *The maximum wall height is 12 metres and the proposal exceeds the wall heights for levels four and five.*
3. Breach of statutory maximum floor space ratio (FSR) – indeed we consider the claimed gross floor area calculation and FSR calculation may even be understated and therefore council planners are asked to carry out their own calculations. *The statutory maximum is 1.5:1 and the proposal is 1.79:1 (at least).*
4. Breach of maximum number of storeys. *The maximum allowed number of storeys is three (3) and the proposal is five (5).*
5. Breach of the side boundary setbacks especially along the southern side for floor levels four and five.
6. Basement carpark. Unsatisfactory two level basement carpark (below the water table) with access difficulties serviced only by a single vehicle lift, inadequate access for disabled parking, no provision for visitor parking, and no required basement area

designed or provided for the NCC/BCA required fire hydrant booster pump and other fire control measures.

7. Basement carpark, Non-compliance with the BCA regulation requirement for two separated emergency exits from a two level basement carpark – one at each end.
8. Basement carpark below the tidal water table – potential problems and risk with excavation, interference with the natural water table, and with stormwater drainage and prevention of basement flooding in periods of storms and high seas and flood emergencies. The proposed flood gates may not be effective.
9. Traffic issues in Denison Street. Potential to create further traffic problems in Denison Street due to the single lift access to the basement carpark, and particularly when the lift is inoperable as it will be from time to time. We are aware of other apartment buildings with single lift access to basement parking and each has experienced considerable lift stoppages and extended repair/maintenance periods where vehicles could not exit or enter the carpark.
10. Negative impact on the water table and potential to undermine the structure of our client's adjoining building at No. 59 North Steyne.
11. Non-compliant landscaping and landscaped area.
12. Loss of views from No. 59 North Steyne including apartments 1, 5, 8 and 11.
13. Loss of amenity - sun, privacy, and amenity for apartments in No. 59 North Steyne, including levels four and five in particular.
14. Breach of the National Construction Code/Building Code of Australia regulations and claims that the non-compliances can be addressed at a later Construction Certificate stage with engineered performance solutions. *We disagree based on our experience with similar buildings as performance solutions are unlikely to be accepted and compliance will require allocated floor areas and require design modifications to the building. They should be designed and provided for in the DA drawings. In our opinion, the compliance requirements cannot be obtained without potentially significant building design modifications, including requirement for additional floor areas and servicing areas and reduction of usable basement area.*
15. Inadequate response to the Northern Beaches Council response to the Pre-DA application earlier submitted to council.
16. Failure of the clause 4.6 applications to justify variations to the statutory controls for height, FSR and wall heights. They do not justify the breaches on any appropriate or reasonable basis, and should not be accepted by the consent authority.
17. Other areas as outlined in this objection.

2.0. Strongly object to this Application

2.1. Our clients strongly object to the proposal for the reasons outlined in clause 1.0 above, clause 3.0 and throughout this objection. Our clients are alarmed at the proposal and cannot imagine that the consent authority could support the many non-compliances with planning controls and planning objectives, resultant negative impact on our client's property and residents' loss of amenity, privacy, and views. We outline these non-compliances and concerns more fully in clause 3.0 following.

2.2. The application should be refused, and in the first instance Council should ask the applicant to withdraw the application and submit a new DA for a smaller and compliant development.

2.3. No. 61 North Steyne is a small corner lot in a high traffic location and has significant constraints. Our clients are not opposed to redevelopment provided it complies with the applicable planning

controls and planning objectives and protects the amenity and building structure of their adjoining property. Unfortunately, the current DA fails miserably.

The small and constrained site cannot sustain the large non-compliant development of the form proposed.

3.0. Objections in more Detail

1. The subject site is a small corner site of 407.3m² and is heavily constrained by numerous factors including, the small land area, the corner site on North Steyne and Denison Street and planning setback controls from each street; the one way traffic direction in Denison Street and the busy North Steyne catering to beach traffic and through traffic between Manly and Queenscliff/Northern beaches areas. The site is also constrained by the Geotech issues including dense sand and absence of rock, a high tidal water table and the location of adjoining buildings. The proposal fails to comply with numerous critical planning controls and planning objectives.

2. The Statement of Environmental Effects (SEE) submitted with the DA documents, presents a glowing support of the proposal, and attempts to justify the numerous non-compliances which our clients disagree. Page 6 of the SEE for example states and we quote:

“The application is recommended for approval given the following reasons (our underscoring):

- The proposed development is consistent with the aims and objectives of the *Manly Local Environmental Plan 2013* and Manly Development Control Plan 2013, as well as all relevant State Environmental Planning Policies.
- The proposed development provides a mix of well-designed, generously sized residential apartments which will regenerate an under-utilised, site, replacing an existing unit block that is incongruous with its context, of poor residential amenity, DDA and BCA non-compliances and improve the North Steyne streetscape fronting the Manly foreshore.
- The high-quality architectural design of the proposed development will provide a high level of residential amenity, consistent with the principles and objectives of *State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development* as (SEPP 65) well as the *NSW Apartment Design Guide* (ADG).
- The intricate form, massing and articulation of the proposed development demonstrates a strong understanding of the site’s unique contextual constraints. Specifically, the proposal acknowledges its street corner position with a skilful architectural approach and presents a contextual fit with neighbouring development.
- Supporting technical studies that accompany this DA confirm that the proposed development will not give rise to any significant adverse environmental impacts, and that any potential impacts can be addressed through appropriate mitigation measures.
- Pre-lodgement consultation was undertaken with Northern Beaches Council and their Design and Sustainability Advisory Panel (DSAP) including meetings on 23rd June 2022 and 7th July, 2022. The Applicant and the project team have considered all feedback received and this has shaped the design development of the proposal, where reasonable and appropriate.
- The proposed variation to the maximum building height development standard is considered acceptable in the circumstances of the site and in accordance with the flexibility allowed under Clause 4.6 of the Manly LEP.
- The proposed development is suitable for the site and is in the public interest.”

Our clients strongly disagree – and reject these claims, including –

1. “is consistent with the aims and objectives of the *Manly Local Environmental Plan 2013* and Manly Development Control Plan 2013, as well as all relevant State Environmental Planning Policies”

2. “The intricate form, massing and articulation of the proposed development demonstrates a strong understanding of the site’s unique contextual constraints”
3. “the proposed development will not give rise to any significant adverse environmental impacts, and that any potential impacts can be addressed through appropriate mitigation measures.”
4. “The proposed variation to the maximum building height development standard is considered acceptable in the circumstances of the site and in accordance with the flexibility allowed under Clause 4.6 of the Manly LEP.”
5. “The proposed development is suitable for the site”.

3. Planning controls exist for good reason including to control future development of land and buildings – all controlled, constrained and guided by many planning documents. For this property they include –

1. State Environmental Planning Policies (SEPPs) –
 - SEPP Resilience and Hazards) 2021
 - SEPP (Biodiversity and Conservation) 2021
 - SEPP No. 65 – Design Quality of Residential Apartment Development and apartment Design Guide.
 - SEPP (Buildings Sustainability Index: BASIX) 2004
2. Coastal Management Act 2016
3. Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
4. Manly Local Environmental Plan 2013 which includes the land use zone of R3 Medium Density Residential for the subject site.
5. Manly Development Control Plan 2013,
6. Building Code of Australia/National Construction Code – being Australia’s primary set of technical design and construction requirements for buildings.

4. These planning policies exist for very good reasons, including –

- To set the parameters for future development of land,
- To manage land and development in an orderly and constrained manner,
- To foster and manage a high standard of Urban design,
- To protect the environment,
- To protect the amenity of adjoining properties and resident’s amenity,
- To protect the locality, and
- To protect local and state heritage.

The town planning and development application process is not a “free for all” but this seems to be the approach pursued with this proposal.

For example, the statutory aims and objectives of the Manly Local Environmental Plan 2013 states (our underscoring) –

“1.2 Aims of Plan

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

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

(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,

(a) in relation to all land in Manly—

(i) to promote a high standard of urban design that responds to the existing or desired future character of areas, and

- (ii) to foster economic, environmental, and social welfare so that Manly continues to develop as an accessible, sustainable, prosperous, and safe place to live, work or visit, and
- (iii) to ensure full and efficient use of existing social and physical infrastructure and the future provision of services and facilities to meet any increase in demand, and
- (iv) to ensure all development appropriately responds to environmental constraints and does not adversely affect the character, amenity or heritage of Manly or its existing permanent residential population,
- (b) in relation to residential development—
 - (i) to provide and maintain a diverse range of housing opportunities and choices that encourages affordable housing to cater for an ageing population, changing demographics and all socio-economic groups, and
 - (ii) to ensure high quality landscaped areas in the residential environment, and
 - (iii) to encourage higher density residential development to be located close to major transport nodes, services and employment opportunities, and (c) and (d).
- (e) in relation to heritage—to identify, protect, sustain, manage and conserve all heritage, including archaeological relics, sites and resources, places of Aboriginal heritage significance, heritage items (and their curtilages), heritage conservation areas and the cultural (natural and built) environmental heritage of Manly,
- (f) in relation to the natural environment—
 - (i) to conserve and enhance terrestrial, aquatic and riparian habitats, biodiversity, wildlife habitat corridors, remnant indigenous vegetation, geodiversity and natural watercourses, and
 - (ii) to promote energy conservation, water cycle management (incorporating water conservation, water reuse, catchment management, stormwater pollution control and flood risk management) and water sensitive urban design, and
 - (iii) to protect, enhance and manage environmentally sensitive land with special aesthetic, ecological, scientific, cultural or conservation values for the benefit of present and future generations, and
 - (iv) to protect existing landforms and natural drainage systems and minimise the risk to the community in areas subject to environmental hazards, particularly flooding, bush fires, acid sulfate soils, sea level rise, tsunami and landslip, and
 - (v) to provide a framework that facilitates and encourages measures to assist the adaptation of the local environment to mitigate the impacts of climate change, and
 - (vi) to give priority to retaining bushland for its own intrinsic value and as a recreational, educational and scientific resource,
- (g) in relation to Manly's unique harbour, coastal lagoon and ocean beach setting—
 - (i) to preserve and enhance the amenity of public places and areas visible from navigable water around Manly, and
 - (ii) to retain open space, make more foreshore land available for public access and protect, restore and enhance riparian land along watercourses and foreshore bushland."

5. The controls and objectives for Maximum building height, Maximum Floor Space Ratio (gross floor area as a ratio to the land area), Maximum wall heights, on-site parking and visitor parking, Minimum landscaping area and minimum landscape area dimensions **are each critical elements in the design process – especially for a new building. A new building is free of constraints that may be present for an existing building and as such a new building is expected to achieve compliance with all controls** (minor variations excepted provided the proposal objectively achieves the individual and overall planning objectives).

Yet – this development application FAILS each one of these planning controls and planning objectives and attempts to justify why their Clause 4.6 applications to vary breaches of planning controls should be accepted. We and our clients reject this approach to town planning. This is a new building, and it should comply (minor variations accepted if the planning objectives are achieved). The use of Clause 4.6 of the MLEP should be limited to minor variations only. The application before council is a grossly non-compliant overdevelopment and unacceptable by objective criteria.

6. The subject application fails to comply with planning and National Construction Code/Building Code of Australia (NCC/BCA) controls and regulations.

7. The numerous non-compliances of this development proposal include: Height, Floor Space Ratio, Wall heights, Side setbacks, Number of storeys – 3 storey limit (5 proposed), Building bulk, Parking, Landscaping, negative impacts on amenity and enjoyment of occupants of apartments in our clients building, including loss of sun, privacy, and loss of views and concerns with structural impact on adjoining buildings.

Many of these were outlined in the Northern Beaches response to an earlier Pre-DA application. However, the proposal fails to appropriately respond to issues raised by Northern Beaches Council in Council's response to the Pre DA application, including:

- Height of building
- Floor Space Ratio (FSR)
- Number of storeys
- Wall heights
- Side setbacks
- Impact on amenity - privacy and loss of sun and loss of views
- SEPP 65 and related State Apartment Design Guidelines
- Landscaping and minimum area requirements.
- Carparking including apartment requirements, visitor requirements and convenient access.
- Emergency response to flooding.
- National Construction Code/BCA compliance.
- Waste and Recycling bin room and convenient access for collection.

8. Maximum Height, Wall height and Proposed Levels 4 and 5. Further to our clients concern with each of the above issues and non-compliances and the cumulative affect thereof - our clients reject the proposed level 5 in its entirety and Level 4 – if it was to be allowed, to be set back from the side setback equivalent to that of our clients building.

Their preference is for the 3 storey limit be adhered to.

The proposal -

- Exceeds the statutory maximum height and maximum wall height.
- Fails to comply with the maximum floor space ratio.
- Fails any attempt to be contained with the design parameters of “rooms in a roof cavity” criteria as was adopted for the development at 59 North Steyne under an earlier Local Environmental Plan.
- The clause 4.6 applications all fail to justify why the breaches of the statutory height control and other non-compliances should be varied to allow the proposal. The clause 4.6 applications should be rejected.

9. Side setbacks – southern elevation. The proposed side setbacks adjoining 59 North Steyne for levels 4 and 5 are non-compliant and unacceptable. In any event both levels 4 and 5 breach the maximum height and maximum wall heights, and the three (3) storey limit.

If such a redevelopment is to be seriously considered for this site, and bonus variations accepted (which our clients oppose) then it must adopt the setback criteria that the former Manly Council applied to No. 59 North Steyne where levels 4 and 5 are significantly setback from the side boundary and level 5 is a secondary space element contained within a roof cavity space.

10. Two level Basement carpark.

The two level basement carpark requires complex and risky excavation in removing sand in a high tidal water table, and on a small and constrained site. Excavation is well below the tidal ground water levels and significantly below the basement level of our clients adjoining property - with significant implication to the structural integrity for our client's property. This includes the issues contained in the Douglas Partners "Preliminary Geotechnical Assessment Report of September 2022". We quote in part (our Italics and underscoring) –

"7.1 Anticipated Geotechnical and Hydrogeological Issues

The anticipated geotechnical issues that need to be considered for the proposed development are:

- Groundwater is likely at a relatively shallow depth and dewatering may be required for the construction of the basement levels;*
- A 'tanked (i.e. fully water-tight) basement will be required and should be designed for hydraulic uplift pressures;*
- Control of temporary groundwater inflow during construction requiring dewatering and the construction of a shoring wall extending to sufficient depth beneath the excavation;*
- Dewatering in sands leading to possible localised temporary draw down of the groundwater table which may cause settlement of adjacent buildings being supported on high level footings and similar effect of services, if not properly controlled;*
- If anchors are used to temporarily support the shoring, it will be necessary to obtain permission from affected parties prior to installation."*

"7.2 Groundwater

Based on the observed groundwater levels in the area (typically RL0.5 to RL1.0 m AHD), it is anticipated that bulk excavation level to about RL -0.6 m maybe up to 1.6 m below the typical groundwater table. Localised deeper excavations for lift pits will extend further below the water table. 7.2 ."

"7.4 Dewatering and Tanking

7.4.1 General

In constructing the basement, it is assumed that a shoring wall will be installed to below the bulk excavation level, the site will then be dewatered, progressively excavated and finally a tanked basement will be constructed.

Generally the groundwater level should be lowered to at least 1 m below the bulk excavation level to allow machinery to operate and traverse the site. On this basis, the normal groundwater level may need to be temporarily lowered by about 2.1 m to 2.6 m to approximately RL -1.6 m AHD (but locally deeper for lift pits).

In order to reduce groundwater flows into the basement excavation and thereby reduce potential impacts to the surrounding groundwater, potential acid sulphate soils, and neighbouring buildings, a water-tight "cut-off" wall should be formed around the perimeter of the basement that intersects a lower permeability stratum or is sufficiently deep to allow a rate of dewatering and construction of a tanked (i.e. fully watertight) basement so there is no long term pumping requirements or drawdown of the water table surrounding the site.

It is recommended that the permanent basement structure be tanked and designed for hydrostatic uplift. In the absence of long term monitoring and for preliminary purposes, it is suggested that typical loads due to a groundwater table rising to at least RL3.0 m AHD should be considered in the basement design. It is not possible to guarantee (accurately predict) future groundwater levels and response to extreme rainfall events, climate change, sea level rise and other factors. If it is necessary to eliminate the risk of buoyancy issues for the tanked basement then the design could incorporate hydrostatic relief 'valves or portals' at the adopted design water level to prevent structural damage to the building, in the event that water levels rise to above the design level.

In the long term, the downward force to resist uplift is typically provided by the weight of the building itself, and the detailing of the slab and foundations should be designed accordingly. It is anticipated

that the uplift pressures will be counteracted by the dead load of the building once it is completed (subject to confirmation by the structural engineer)."

The two level basement carpark – further issues and concerns:

- Significant concerns and risk with the potential for excavation impact on the structural integrity of our clients adjoining building at No. 59 North Steyne.
- Potential to lower the water table and cause settlement issues with our clients building.
- The geotechnical assessment report submitted outlines various concerns and states that steel piling is unacceptable and that excavation, footings for the carpark and building, and tanking of the carpark require specialist methods.
- The geotechnical assessment report states that in order to undertake the excavation and retain the surrounding properties it will be necessary to construct specific retaining walls, and these will require sand retaining anchors to be placed below the surrounding properties including our client's property. Our client's will not agree to sand anchors being placed below its basement carpark.
- Concerns with the only vehicle access to the carpark is by a single vehicle lift which will create traffic and amenity concerns in the one-way traffic in Denison Street and on-street parking which is always extremely limited - when it fails to operate. Experience elsewhere in Queenscliff and North Sydney, for example indicates this can be regular.
- The carpark also has other deficiencies including the fact that it does not comply with the NCC/Building Code of Australia (BCA) in particular for emergency fire exits (two isolated required and only one provided), and possibly ventilation requirements, compliant access for disabled spaces, or provide visitor parking. The application documents state that these matters can be subject to fire engineered performance solutions at the CC stage. We reject this approach as this is a new building and it MUST be designed upfront as a fully compliant building and there should be no compromises in a new building especially in terms of National Construction Code/BCA compliance and fire/smoke and emergency exits. For example – two (2) independent people emergency exits are required. Whilst performance solutions may be appropriate for existing buildings where there are significant structural/design constraints, they should not apply to a new building.
- No provision within the basement for a required Fire hydrant booster pump system. Once again the DA documents state this can be addressed at the CC stage. We reject this approach for a new building as the drawings at least providing appropriate space requirements. This will definitely occupy floor area and service area. Our experience in another project required areas the equivalent of approximately 3 parking spaces to achieve compliance with the NCC/BCA regulations!
- There are other potential BCA non-compliances that should be identified and addressed in the DA drawings to ensure they represent a true outcome of spatial and location requirements.
- Compliance with the National Construction Code/BCA requirements for a new building MUST be designed in a DA for the above reasons. From personal experience, these matters occupy floor space and require unrestricted access for maintenance and servicing.

11. Architectural presentation and streetscape. The proposal raises questions relating to a cohesive and complimentary streetscape along the North Steyne elevation in that it adopts strong horizontal design elements that are at different levels to the horizontal design elements of adjoining No. 59 North Steyne which is not ideal, in our opinion.

12. Landscaping. Is non-compliant and also relies on being granted approval to landscape the adjoining council owned road setback land along North Steyne frontage. Further the landscape areas included in the calculation include areas which fail to meet the minimum area dimension criteria.

13. Future Redevelopment? A compliant redevelopment is possible and may be deemed acceptable. However not this proposal –

- This is a small corner site with clearly evident site constraints.
- The site cannot sustain a development of the magnitude proposed.
- The planning controls limit development to three (3) storeys and limit maximum height, maximum wall height and floor space ratio.
- Whilst some relatively minor concessions to planning controls may be acceptable for a smaller development, this proposal is grossly non-compliant and unacceptable.
- A proposed new development should be designed to comply with the applicable planning controls and applicable legislation, including the Building Code of Australia.
- It is clear that this proposal has little regard for the planning controls and surely must be considered a “try-on”, ambit claim to test the system and to determine just how far the applicant can develop beyond the planning and legislative controls.

4.0. Conclusion

1. This development application DA No. 2022/1910 represents a developer driven ambit claim approach that endeavours to obtain maximum development floor areas and building bulk far beyond that allowed by the applicable planning controls and planning objectives. The proposal has little regard to the planning controls and planning objectives, and little regard to neighbours, locality, the small site area and site constraints. The proposal is not supportable.

2. The applicable and non-compliant planning controls including Height, Floor Space Ratio, number of storeys, Setbacks, and amenity impact - *exist to place objectives and limitations on development, to stop excessive development – and hopefully encourage good responsible development and urban design.* We acknowledge that occasionally some development controls may justify specific merit consideration with limited (minor) degrees of flexibility due to specific circumstances, however, they each must be assessed on merit against each and every planning objective and the potential cumulative effect of non-compliances.

3. There is no justifiable merit basis to accept the extent of non-compliances for this proposal. Any redevelopment of this site must be appropriate to the limited small area and specific site and locality constraints - and designed accordingly. The current application fails, and there are no planning or architectural reasons why a smaller and more compliant proposal should not be achieved.

4. The proposal is unacceptable in its entirety for the extent of the numerous non-compliances and issues raised in this objection. We refer particularly in clause 1.6 and 3.0. Our clients ask, and we agree, that council reject the application and immediately ask the applicant to withdraw the application and submit a compliant application that:

- 1. Significantly reduces the size, height, number of storeys and visual bulk, and appropriately and responsibly responds to impact on neighbours, locality and streetscape including our client’s property at 59 North Steyne.**
- 2. Appropriately addresses all non-compliances and issues raised in this submission, including compliance with BCA regulations which must be designed into the proposal from the**

beginning and not attempt to have non-compliances addressed at a later Construction Certificate stage for the reasons that experience clearly indicates that these matters nearly always require floor space and access requirements and significant design modifications – all of which will be complicated on this small and constrained site.

5. The proposal in our opinion, is incapable of being modified to responsibly address each of these planning non-compliances and issues raised in this submission. This ambit claim application must be rejected.

Yours faithfully,



Wayne Collins
Director