
Sent: 25/08/2020 7:55:10 PM

Subject: Submission #7: Buckle & Dorsen. 41-43 Beach Road Collaroy NSW 2097 DA
2019/1522

Attachments: BUCKLE & DORSEN #7.pdf;

SUBMISSION: BUCKLE & DORSEN
a written submission by way of **further** objection to DA 2019/1522

29 & 35 Beach Road
Collaroy
NSW 2097

25 August 2020

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

Northern Beaches Council
council@northernbeaches.nsw.gov.au

Dear Chief Executive Officer,

Re: 41-43 Beach Road Collaroy NSW 2097
DA 2019/1522

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission #7: Buckle & Dorsen

We refer Council to our Submission #6 dated 11 August 2020.

This Submission addresses the Applicants amendments within:

Schedule of changes for the proposed modifications DA Amendment "E"

The Applicant states these are:

Proposed changes to the Amendment "D"

- *Southern fence on top of existing stone retaining wall has been reduced in height from 1.8 m to 1.2 m. To be see-through. Refer to new detail plan DA 610.*
- *Line of existing ground level used to calculate compliance with maximum height and maximum wall height controls has been updated as requested by Council.*
- *Please note that no changes are proposed to the main building. Main building to remain as per amendment D previously lodged.*

In respect to these matters:

1. The Southern fence on top of existing stone retaining wall must be deleted on visual bulk and overshadowing grounds;
2. The 'Stamford' consideration is clearly incorrect, and we refer Council to Submission #6 attached to this Submission;
3. No changes are made to the non-compliant building envelope, which we find totally unacceptable.

Our main concerns from the non-compliant envelope remain:

- Building Bulk
- Visual Bulk from our residence
- Visual Bulk and Poor Urban Design outcomes from the public zones immediately in front of the south east corner of the subject site
- Solar loss to solar panels to 29 Beach Street, and to private open space
- Privacy loss from elevated windows of the proposed southern elevation and pool concourse zones
- View Loss from 35 Beach Street
- Excessive Excavation
- Lack of landscaping to provide privacy screening of southern boundary
- New 2020 subsidence to the neighbours to the north, not addressed.
- Structural Stability of existing sandstone wall close to southern boundary

The matters that require Council's attention, in terms of amendment or deferred commencement condition, are as follows:

Southern Wing

1. The First Floor Roof of the Southern Wing is to be reduced in height by **1.34m** to accord with Wall Height & Building Height controls.
2. The Ground Floor Roof of the Southern Wing [eastern end] is to be reduced in height by **0.25m** to accord with Wall Height & Building Height controls.
3. The First Floor is to be setback a **further 1.02m** from the southern boundary to accord with DCP B3 Side Boundary Envelope, unless the reduction of height in item 1 resolves the non-compliance
4. The building envelope is to be setback 6m from the rear setback to accord with WDCP B9 Rear Setback
5. The building envelope needs to further reduced, in addition to the above items, to accord with DCP D6 Access to Sunlight
6. The southern side setback of the ground floor and first floor to increase by a further 2m, in addition to above matters, to ensure a sharing of views from 35 Beach Road

7. New Landscape Plan in southern side setback zone, to provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building and to enhance privacy between buildings, all in accordance with WDCP D1, and to avoid overshadowing and view loss to all neighbouring dwellings
8. No excavation in southern side setback zone, and the complete deletion of the basement living zone
9. No additional wall or fence added to existing sandstone wall that is setback 400mm from southern and eastern boundary. Delete all additional walls to the southern and part eastern boundaries, positioned on top of the existing sandstone wall that are wrongly depicted as 'boundary walls'.

Reason: View Loss, Overshadowing, Privacy, Streetscape, General Impact, Landscape, Height/Bulk/Scale, Visual Bulk and Excessive Excavation

Once these amendments are made and new height poles erected, against the above items, Council and neighbours can reassess the acceptability of this amended envelope.

Dimensional set out of the proposed development needs to occur from the SE and SW corners of the subject site, with a clear dimensional set out of all floorplates and roof configurations, at all high points and changes of direction.

The DA will need to provide photomontages from our properties and from the public domain to the east of our properties. Provide solar access diagrams at hourly intervals of all neighbours' windows. Any loss from non-compliant envelope will be unacceptable.

Privacy

- All windows facing neighbours to have obscured glazing
- All privacy screens shall be fixed and full height, and 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.
- The Elevated Roof to the south-west must be made totally non-accessible
- The proposed sliding doors that open from the pool deck zone, be deleted, these doors to be replaced with a solid, full height, acoustic wall.
- Living Zone at Basement deleted, with no windows facing neighbours to southern boundary.
- No excavation below Contour RL 11.25m on LTS Survey in the southern side setback zone, other than existing built surfaces and structures.
- Master Bedroom Deck to have full height privacy screen to the south

Reason: Privacy

Landscaping

New Landscape Plan in southern side setback zone, to provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building and to enhance privacy between buildings, in accordance with WDCP D1, and to avoid overshadowing and view loss to all neighbouring dwellings

Landscape Architect to provide 3D model to identify maximum envelope of landscaping to southern side setback zone, to protect views and solar access whilst mitigating the built form and providing better privacy. Landscape Architect to locate taller trees and shrubs to better fill the maximum envelope potential. Maximise the landscape content, with no neighbour amenity loss. Submit 3D Model in Amended Plans.

NBC Tree Protection & NBC Trees Condition clauses to be added to Landscape Plan. Retain other trees as identified by Council. Provide protection to the Structural Root Zone and Tree Protection Zone to the trees on neighbours property adjacent to the common boundary to be added to Landscape Plan. Tree Protection conditions to be added to Landscape Plan

On slab planting and associated works conditions to be added to Landscape Plan. Protection of Rock to be added to Landscape Plan. Landscape Completion Certificate requirements to be added to Landscape Plan. Environmental and priority Weed Control requirements to be added to Landscape Plan

Reason: Landscape

View Loss

In addition to the above measures, further increase the view sharing from 35 Beach, by rotating the proposed southern wing to the north, by 2m at the eastern leading edge.

Reason: View Loss

Excavation

The excavation for basement uses is to be solely limited to a 36sqm double garage at the base of the ramp, with a turning platform.

The extensive vibration from such an extended excavation is totally unreasonable in an R2 Zone.

No other excavation in any area for other basement uses.

Delete basement room to south-east corner.

Reason: DCP C7 Excavation

We also ask Council to consider these additional Conditions in any future Consent

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*]

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.

Structural Adequacy & Excavation Work

Compliance with standards [demolition]

Compliance with standards

External finishes to Roof

Stormwater Disposal

Geotechnical Report Recommendations to be incorporated into designs and structural plans

Construction Traffic Management Plan

Boundary Identification Survey

Tree Protection Plan

Erosion and Sediment Control Plan

Engineering Assessment

Engineers Certification of Plans, including all retaining walls

New Landscaping

Design Impact on processes and public/private amenity

Mechanical plant location

No excavation within 1m of boundary

Vibration not to exceed 2.5mm/sec at boundary, with halt at 2.0mm/sec

Protection of Neighbours assets
On slab landscape planting and associated works

Conditions that must be addressed prior to any commencement

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

Conditions to be complied with during demolition and building works

Removing, handling and disposing of asbestos
Demolition works – asbestos
Property Boundary levels
Survey Certificate
Installation and maintenance of sediment controls
Notification of Inspections
Traffic control and management during works
Vehicle Crossings
Waste Management during development
Building materials
Geotechnical issues
Rock Breaking
Protection of rock and sites of significance
Aboriginal heritage
Protection of adjoining property
Vibration not to exceed 2.5mm/sec at boundary, with halt at 2.0mm/sec
No excavation within 1m of boundary

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

Post Construction Dilapidation Report & Making Good of all Defects
Final Survey Certificate
Certification of Structures
Retaining Wall
Geotechnical Certificate
Landscape Completion Certification
Required Planting
Positive Covenant and Restriction as to User for On-site stormwater disposal structures
Condition of retained vegetation
Stormwater disposal
Geotechnical certification prior to occupation certificate
Installation of solid fuel burning heaters: No approval is granted for the installation of a solid/fuel burning heater.
Tree planting
Required Planting
Acoustic treatment of pool filter
Noise Nuisance from plant
Lighting Nuisance
Swimming pool requirements
Works as executed drawings

Garbage and Recycling Facilities
Fire Safety Matters
Privacy Screens and privacy obscured glass Certification to accord to DA plans

Ongoing Conditions that must be complied with at all times

Approved Land Use
Solid fuel heater: prohibited
Landscape maintenance
Maintenance of stormwater treatment measures
Retention of Natural Features
No additional trees or scrub planting in viewing or solar access corridors of neighbours
Control of weeds
No planting environmental weeds
Maintain fauna access and landscaping provisions
Works to cease if heritage item found
Noise Nuisance from plant
Swimming pool filter, pump and AC units [noise]
Outdoor lighting
Lighting Nuisance

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

There is no excuse that neighbour amenity must suffer due to non-compliance to the controls. All we seek is a fully compliant development to all Council's controls and for the height controls to be drawn accurately based upon the boundary survey levels and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189 principles.

We do hope the Applicant submits Amended Plans, once again, to resolve these matters, erects Height Poles based upon a further reduced envelope, submits further site analysis axonometric height and solar diagrams, submits revised and complete overshadowing drawings, corrects *ground level existing*, and other matters identified within our Submissions.

If this does not occur, we ask Council to immediately **REFUSE** this DA.

Yours faithfully,

Mrs Jan Dorsen
35 Beach Road
Collaroy

Mr & Mrs Bill & Victoria Buckle
29 Beach Road
Collaroy

Appendix: Submission 11 August 2020

Executive Summary

This document is a submission by way of further objection to DA 2019/1522 lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

This Written Submission is in response to the submission of **Amended Plans** dated **29 July 2020** on Council website.

The subject site is over 1544sqm, and there is no reason, unique or otherwise why a fully compliant solution cannot be designed on the site.

The latest Amended Plan submission by the Applicant unfortunately presents an unconvincing external architectural outcome to the southern boundary, composed of multiple styles that clash in the composition. The brutalist forms used within the ground zones are not convincing, and have simply arisen out of a scheme that now evolves from attempting to maximise the envelope to the controls, with contrived architectural outcomes. The upper level is a bland box type style, that does not connect with the ground plate, but awkwardly positions itself without any reference to the brutalist envelope below.

The design attempts to build on a steep 30-degree slope to the southern boundary, and in doing so, creates an unacceptable building bulk to the public domain, to the immediate south and south-east of the subject site, and to all adjoining owners. The preferred outcome would have been to build on the more level land at the top of the 30-degree slope.

How this approach blends with the environment of the beach setting, and the immediate neighbours is a major concern.

We ask Council for the NBC Urban Design Officers and the NBC Design and Sustainability Advisory Panel to review this matter.

The latest Amended Plan submission by the Applicant has attempted to resolve the DCP B3 Side Boundary Envelope Non-compliance, and other matters. Unfortunately, the building envelope continues not to comply with Building Height, Wall Height and Side Boundary Envelope development standards.

The Applicant has now informed the design by finally considering an Axonometric Model to define the DCP B3 Side Boundary Envelope. This should have been completed within the Site Analysis pre submission. Unfortunately, the Applicant has decided to breach the Side Boundary Envelope despite the poor overshadowing, view loss, privacy and visual bulk outcomes. The First Floor requires to be setback a further 1m.

The Applicant now needs to complete further Site Analysis Axonometric Models:

- Create a corrected 'ground level existing', Axonometric at 30 degrees incline from the same southern boundary levels from a considered *NSW LEC Stamford* position, and then to

consider the 7.2m Wall Height and 8.5m Building Height development standards to show full compliance, and inform the design of the constraints to the envelope.

- Create a Solar Axonometric from windows and solar panels on both neighbouring properties that suffer solar loss under D6 Access to Sunlight, and inform the design of the constraints to the envelope.

Unfortunately, this set of Amended Plans presents ongoing non-compliance to the main envelope controls:

- DCP B1 Wall Heights
- WLEP 4.3 Height of Buildings
- DCP B3 Side Boundary Envelope

We are concerned that the Applicant has used incorrect ‘ground level existing’ [GLE] within the DA drawings presented, and has not followed the principles within *NSWLEC 1189 Stamford Property Services Pty Ltd v City of Sydney* for considering these levels. This misrepresentation of GLE has contributed to the Applicant under forecasting Wall Heights and Heights of Building calculations. We contend that the Southern Wing of this proposed development is still outside of the numerical control standards, and this non-compliance leads directly to the residential amenity losses including:

- Overshadowing
- Privacy
- View Loss
- Visual Bulk

The Council has not been provided sufficient information to properly assess this DA and we contend Council must consider rejecting the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.

- No proper Exception to Development Standards under Clause 4.6 has been submitted to consider the non-compliance to WLEP 4.3 Height of Buildings, failure to address ongoing non-compliance DCP B1 Wall Heights and DCP B3 Side Boundary Envelope, has not properly assessed existing ground levels, and the poor, inconsistent, and incomplete assessments of overshadowing, view loss, privacy, and visual bulk.
- Ongoing incorrect use of ‘ground level existing’ consideration, *NSWLEC 1189 Stamford Property Services Pty Ltd v City of Sydney*
- No hourly study of the solar loss on the northern and western elevations, and specifically on the solar panels, to include the 5m high wall, on 29 Beach Road Collaroy, nor to 35 Beach

Street eastern windows, incomplete survey to accurately record windows and solar panels, to assess full compliance to DCP controls

- Failure to provide a Tenacity Assessment on View Loss from 35 Beach Road Collaroy, considering the view from the Living Room and Deck, considering the moderate loss, and considering the non-compliant development causing that loss.
- Failure to provide montage perspectives from the public zone immediately in front of 29 Beach Road Collaroy to consider the impact of the proposed development rising over 15m above the public domain at the south-east corner of the subject site.
- Incomplete landscaping consideration to ensure that the proposed landscape in the southern setback zone, screens the proposed development from neighbours and the public domain, whilst preserving view corridors and solar corridors
- Incomplete consideration of privacy outcomes, with direct overlooking of neighbours less than 9m away.
- Ongoing false representation on the proposed additional wall, wrongly classified as a 'boundary wall', on the southern and part eastern boundaries on DA drawings
- An urban design outcome that is not in keeping with the neighbourhood
- Axonometric Model for Wall Height, Building Height, or Solar Loss to the Southern Boundary
- Incomplete dimensions and levels to fully describe the proposed development, and for future compliance and certification.

In this Written Submission we will again identify the non-compliances that lead directly to the amenity loss, and we will identify, once again, the amenity losses that have not been properly assessed by the Applicant.

In this Written Submission we will again identify the modifications to the DA that would need to occur to satisfy compliance to the LEP and DCP.

LEP & DCP Non-compliance

“Ground level (existing)” [GLE]

We are very concerned that the “ground level (existing)” has not been accurately shown on the Applicant’s DA drawings.

We refer Council to the NSWLEC case that considered the definition of “ground level (existing)” is *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070. This decision was followed in the following year in the decision of *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189.

In *Stamford Property Services*, the Court maintained the principles as *Bettar*, and restated that “ground level (existing)” must relate to the levels of the site, and not to the artificially modified levels of the site as reflected by the building presently located on the land.

The decision confirmed that the proposed height be measured from the natural ground levels of the site where known, such as undisturbed levels at the boundary, and from adjacent undisturbed levels such as the level of the adjacent undisturbed levels at the boundary of the site.

These levels could then be extrapolated across the subject site reflecting the pre-development sloping topography of the land. The *Stamford* decision was totally consistent with the approach adopted in *Bettar*.

Both *Stamford* and *Bettar* have confirmed that the definition of “ground level (existing)” from which building height should be measured:

- *is not to be based on the artificially modified levels of the site such as the floor levels of an existing building. This includes the entrance steps of an existing building.*
- *is not to include the basement floor or the soil beneath the basement following construction of the building.*
- *is to be based on the existing undisturbed surveyed surface of the ground. For sites where access to the ground surface is restricted by an existing building, natural ground levels should be determined with regard to known boundary levels based on actual and surveyed levels on adjoining properties including within the public domain (footpaths).*

It is on the basis of these Court cases, and from the survey levels, and the Applicant’s DA drawings, that we contend that the “ground level (existing)” have not been portrayed in the correct method.

It can be seen on this particularly site that the existing undisturbed surveyed surface of the ground is best identified along the southern boundary of the site. The southern section of the site then rises through a series of large retaining walls, up to 3.2m in height, towards the north.

Council should note that within the Geotechnical Report there is recorded fill up to 0.9m deep at the top of the main southern 30-degree embankment.

We contend the applicant has simply used the top of the substantial retaining walls to consider “ground level (existing)” and this is incorrect.

The applicant has also not used the base of the existing swimming pool levels, and this is incorrect.

The applicant has also not used the southern boundary levels to assess “ground level (existing)”, and this also is incorrect.

The Applicant’s Clause 4.6 by Ingham, July 2020, states in Section 1

The original natural ground level of the site at 41-43 Beach Road has been the subject of substantial alteration near the southern boundary and includes nearby excavation for a large swimming pool that is to be removed. The excavated area containing the existing swimming pool and surrounding pool platform results in an existing ground level within this area that is between 0.8m and 1.8m lower than the existing ground level around the pool platform. Building height must be measured from existing ground level, which in the case of a swimming pool, is the level at the bottom of the pool.

We contend, that the Applicant in this submission of amended DA drawings has not followed the *Stamford* and *Bettar* principles identified by their own Planner Ingham’s, and we contend that the “ground level (existing)” has not been portrayed in the correct method.

We contend the levels provided by the Applicant’s Surveyor LTS, and by Norton Partners supplied by Neighbours, define the southern boundary very well. There appears no dispute in this matter, as the Applicant has used the Norton levels in presentation of their DCP B3 Side Boundary Envelope analysis. LTS and Norton surveys accord with each other, with the Norton survey simply adding additional level and setback details.

Our main concerns are now primarily on excessive Wall Heights and Building Heights. Non-compliance remains on the DCP B3 Side Boundary Envelope and that remains unacceptable on such a large site.

We have used survey levels along the southern boundary and have generally applied *Stamford* “...to apply a ground plane across the site drawn from ground lines at the boundaries of the site.”

In this respect we have also considered that as the geotechnical report [TGE, 15 June 2019, Bore 6] shows there is existing fill of 0.9m to the east of the existing dwelling on #41 Beach, we have considered existing ground levels to be an extraction of those levels, including the base of the pool, and extend those levels to the undisturbed southern boundary levels shown on the surveys.

We contend that considering the extensive massive sandstone wall structures to the south of the pool, gives the distinct impression that it was very likely the pool base was positioned at above existing ground levels, and the large sandstone retaining wall structures simply were back filled to achieve a generally level zone with the pool that exists on site for the enjoyment of past occupants. The retaining walls to the north of the pool were constructed to generally retain the filling that is noted on the TGE Geotechnical Report.

For example, at the LTS survey level on the southern boundary, at RL 5.64 [LTS], the land rises 5.5m to RL 11.16 [LTS] on the path above the pool, over 8m of horizontal run, at a slope of 35 degrees slope. The area in front of the dwelling had fill to 0.9m [TGE Geo Report], so the existing ground level, we have considered are grades from RL 5.64 [survey] to a level above the pool at c.RL 10.26 [survey – 0.9], that allows for a 0.9m fill, at 30 degrees.

At the eastern edge of the southern wing, the survey shows RL 4.6 [Norton], the land then rises 6.9m to RL 11.5 [LTS] on the top of the stairs above the pool, over 12m of horizontal run, at a slope of 30 degrees. The slope at this location might be lower at this location, at 28 degrees, if a 0.9m dimension of fill reduced the LTS RL level.

The *Stamford* alternative consideration is to run existing grades from the southern boundary at RL 5.64 and with a slope to the northern boundary levels at RL 12.32, a rise of 6.68m, approximately 42m away, at a slope of 9 degrees.

We have generally used a 30-degree slope [1.1.732] from the boundary to generally define *Stamford GLE levels*. It is a very conservative approach as the slope may be lower, and that would create higher wall and building height outcomes. In general terms we have assessed the slope in a manner of removing the retaining walls, and generally used a 30-degree slope to better define the *Stamford GLE levels*.

Using the 9-degree slope from the southern boundary to the northern boundary would be unreasonable considering the geotechnical core details [TGE, 15 June 2019, Bore 6] taken from in front of the existing dwelling at 41 Beach Road, showing highly likely original strata 0.9m below the surface.

Council will obviously be aware that we are scaling off drawings for horizontal measurements where no length is stated. We have used the scale bar on the surveyor's drawings when required.

We have also used the Applicants stated proposed RL and FCL heights as noted on the DA drawings.

We now turn to the various location 'Points' identified within the DA drawings and make an assessment based upon *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189.

This exercise could easily have been completed by an Axonometric Model, but in the absence of one, we will complete this manually.

NSWLEC 1189 *Stamford Property Services Pty Ltd v City of Sydney* states:

"...to apply a ground plane across the site drawn from ground lines at the boundaries of the site. This ensures a practical application of the height standard."

Southern Wing: First Floor Roof

Point J

Proposed RL 18.52

Proposed underside of ceiling FCL

Ground Level Existing 9.56 [Stamford, base of retaining wall]

Building Height 8.96m **[0.46m non-compliant]**

Point J2

Proposed RL 18.72

Proposed underside of ceiling FCL 18.10 [*610mm for a metal roof detail looks excessive]

Ground Level Existing 9.56 [Stamford, base of retaining wall]

Building Height 9.16m **[0.66m non-compliant]**

Wall Height 8.54 **[1.32m non-compliant]**

Point N

Proposed RL 18.34

Proposed underside of ceiling FCL 18.1

Ground Level Existing 9.56

Building Height **[0.28m non-compliant]**

Wall Height **[1.34m non-compliant]**

Southern Wing: Ground First Floor Roof [eastern section]

Point M

Proposed RL 16.0

Proposed underside of ceiling FCL 15.7

Ground Level Existing RL 8.3 [most of the section sits over the pool base, Stamford consideration to boundary presents even lower levels]

Building Height 7.7m

Wall Height 7.4m **[0.20m non-compliant]**

DCP B3 Side Boundary Envelope

Point J

Proposed Height RL 18.52

Level at Boundary RL 4.85

Required setback to fall within DCP B3: $[18.52 - [4.85 + 4] = 9.67\text{m}]$

Proposed Setback 8.65m

Condition required: **Setback Point J 1.02m**

Council can see by the above analysis the building envelope is still not in compliance.

We have not carried out an exhaustive list, but it would appear that FCL are not correct in many locations, and depths have been increased to achieve compliance as noted on the Applicant's drawings.

Stamford 'ground level existing' is incorrect on every sectional drawing, and in the plan analysis, contrary to the Applicant's Planners [Ingrams] own Stamford considerations.

The building would need to reduce in height by up to **1.34m**, and setback **1.02m**, or a combination of both, to achieve compliance.

It is these non-compliances that continue to lead to unacceptable amenity outcomes.

Amenity Losses

We identify the issues of the amenity loss that we are very concerned about in respect to this proposed Development

Overshadowing

The Applicant has failed to present hourly elevational drawings of the solar loss on the northern and western elevations on 29 Beach Road Collaroy, to assess full compliance to DCP controls. No assessment has been made on the extensive solar panel impact.

We are concerned that the Applicant Survey LTS, has not surveyed the windows or solar panels, as no survey heights have been recorded on the LTS Survey.

We note within **D6 Access to Sunlight**:

The planning principle established in the Benevolent Society v Waverley Council (2010) NSWLEC 1082 will be used in the assessment of sunlight.

We contend that the D6 Access to Sunlight Objectives simply has not been met:

- *To ensure that reasonable access to sunlight is maintained.*
- *To promote passive solar design and the use of solar energy.*

We note that the Applicant has not relied upon any 'exceptions' within his analysis, nor could they.

We also note that the applicant has not carried out a *Benevolent Society Assessment*. We present such an assessment later in this section.

We are greatly concerned that the Applicant's large 5m high wall parallel to the boundary, but setback considerably from the boundary, has not been included within these shadow diagrams. We contend that the shadow diagrams are false and misleading, as if the 5m high wall was to be included it would represent on the shadow diagrams as a reasonably straight line of shadow. The shadow diagrams do not show that, and in this respect, Council must take note that they cannot rely upon these diagrams representing the true outcome.

We ask for hourly elevational and plan shadow diagrams, with the 5m high wall fully shown.

We contend that there are other design options available that would ensure compliance, and considering the very large site, would not unreasonably constrain the development.

We, at 29 Beach Road, rely heavily on their northern windows and western windows to bring winter sunshine in our residence. The proposed development has not ensured that reasonable access to sunlight is maintained and has not promoted passive solar design and the use of solar energy.

- Council should note that northern windows on the upper floor on the eastern side, provide direct northern winter sunshine into a highly used Study and Exercise Room. Currently these windows receive morning sunshine, and maintain 50% of glass in sunshine at Noon Mid Winter, and that percentage reduces through the afternoon.
- Council should note that northern windows on the upper floor on the western side, provide direct northern winter sunshine into the highly used Music Room. Currently these windows receive sunshine at Noon Mid-Winter, and sunshine for a small amount of time either side of noon.
- Council should note that western windows on the upper floor, provide direct westerly winter sunshine into the same, highly used Music Room. No elevations have been submitted, but considering the drawings submitted, it would be expected that winter sunshine would be available through the afternoon Mid-Winter.
- Council should note that western windows on the lower floor, provide direct westerly winter sunshine into the highly used Reading and Television Room overlooking the Pool. No elevations have been submitted, but considering the drawings submitted, it would be expected that winter sunshine would be available through the afternoon Mid-Winter.
- Council should note that the Pool Concourse is heavily used through the mid-winter, as it provides a sun trap and a warm spot out of the winter winds. Current sun is available from 9am through Noon, and to the mid afternoon.
- Council should note that the Roof has a considerable quantum of solar panels on the roof. Currently, there is no shadow on these panels from 9am to 3pm Mid Winter.

From the drawings presented it is difficult to see how any of these windows or solar panels receive the sun requirements as set out within the DCP, when the 5m high wall is added to these drawings.

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.”

Council will need to obtain from the Applicant a properly considered analysis not only of the sun loss to these heavily used rooms, on an hourly basis, but also to the significant loss to our extensive solar panel system.

The 2m wall that is proposed to be added to the existing 3.2m high sandstone wall, setback from the **southern** and **eastern** boundaries must be removed. This will cause considerable overshadowing, and visual bulk.

If the Applicant wishes to have a boundary wall it does need to be positioned on the site boundary in full accordance with the Applicant's survey, and clarified by Norton Partners Survey, not some random location inbound to the boundary that causes maximum amenity loss.

The proposed wall also fails **DCP B3 Side Boundary Envelope, B5 Side Boundary Setbacks, B9 Rear Boundary Setbacks, DCP E7 Development on land adjoining public open space** and must be removed.

From the very limited information submitted, from an uncertain survey base, and from the uncertainty whether the 5m high wall positioned away from the southern and eastern boundaries is included in the shadow caste, we contend that the solar access does not accord **The Benevolent Society v Waverley Council [2010] NSWLEC 1082**, nor **DCP D6 Access to Sunlight**

The Applicant has failed to present hourly elevational drawings of the solar loss on the western elevations on 35 Beach Road Collaroy, to assess full compliance to DCP controls.

We are concerned that the Applicant Survey LTS, has not surveyed the windows for level, as no survey exists of all the affected windows. The LTS Survey has failed to survey the western windows at all.

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, R2 residential dwellings.

- 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. This overshadowing will occur from 9am until 3pm. The amount of sunlight that will be lost will only be able to be fully considered once solar

elevational drawings are submitted of all windows, however it appears the loss is total from 9am to 3pm in some areas. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

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

- *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.*

This can only be fully assessed once elevational solar drawings at hourly intervals are submitted. Windows that orientate east and west are of concern under this heading. 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 no major 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.

The assessment of the development against the planning principle results in the development not complying with the solar access controls and therefore amended plans should be requested to reduce the overshadowing impact on the adjoining neighbour, and fully accord with the DCP control.

We contend that these matters give grounds for refusal of this DA.

Privacy

We have presented these matters to Council on a number of occasions but the Applicant has not resolved any of these matters:

- Council should note the Deck that opens from the main pool area looking directly at both of our properties. This presents acoustic privacy concerns and direct visual privacy concerns. We ask for this opening be closed with an acoustic rated solid wall.
- Council will note that all windows look directly at neighbour's windows or glazed doors from an elevated position across side boundaries and cause very serious privacy concerns. All windows require full privacy screens to Council controls to a height of 1.5m
- Council should note the proposed Living Room at the basement level that looks directly onto neighbouring properties. The windows facing south must be deleted, and replaced with a solid wall.
- Council will note that the First Floor Master Bed Deck may not have any privacy screen to the south. The extent is unclear as plan detail has not been provided. As the deck is elevated above neighbour's windows and decks, this new deck requires the deck to have a full height privacy screen.
- Council will note that the First Floor Roof Deck facing south to the western end of the Southern Wing must be conditioned in any approval to be totally Non-Accessible

We also note that the applicant has not carried out a *Meriton Assessment*. We present such an assessment.

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 windows facing neighbours without any screening devices being provided in many locations. The windows are in an elevated position due to the design of the development and therefore the separation is minimal.

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 windows in question are windows of the living areas, including kitchens. It is considered that the living areas will result in an unacceptable privacy breach. The proposed windows and decks facing the entry and exit point for the neighbouring dwelling and will result in an unacceptable level of privacy impact. The proposed windows and 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 is a new development and the proposed windows 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 highlight windows and the provision of privacy screens.

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 highlight windows and 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: No proper landscaping is proposed as part of the development application to moderate the impact

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.

We contend that the proposed development does not accord with **DCP D8 Privacy**, to the objectives nor the requirements.

We contend that these matters give grounds for refusal of this DA.

View Loss

The Applicant has failed to provide a Tenacity Assessment on View Loss from 35 Beach Road Collaroy.

The 'Tenacity' headland view and water view from future upper level is from the Living Room and Deck, the loss is a moderate loss, and the non-compliant development to height controls causes that loss. The loss of the headland view is unacceptable as it provides a natural frame to the view that exists for 35 Beach Road Collaroy, and for many elevated houses to the south that share this view.

We also note that the applicant has not carried out a *Tenacity Assessment*. We present such an assessment.

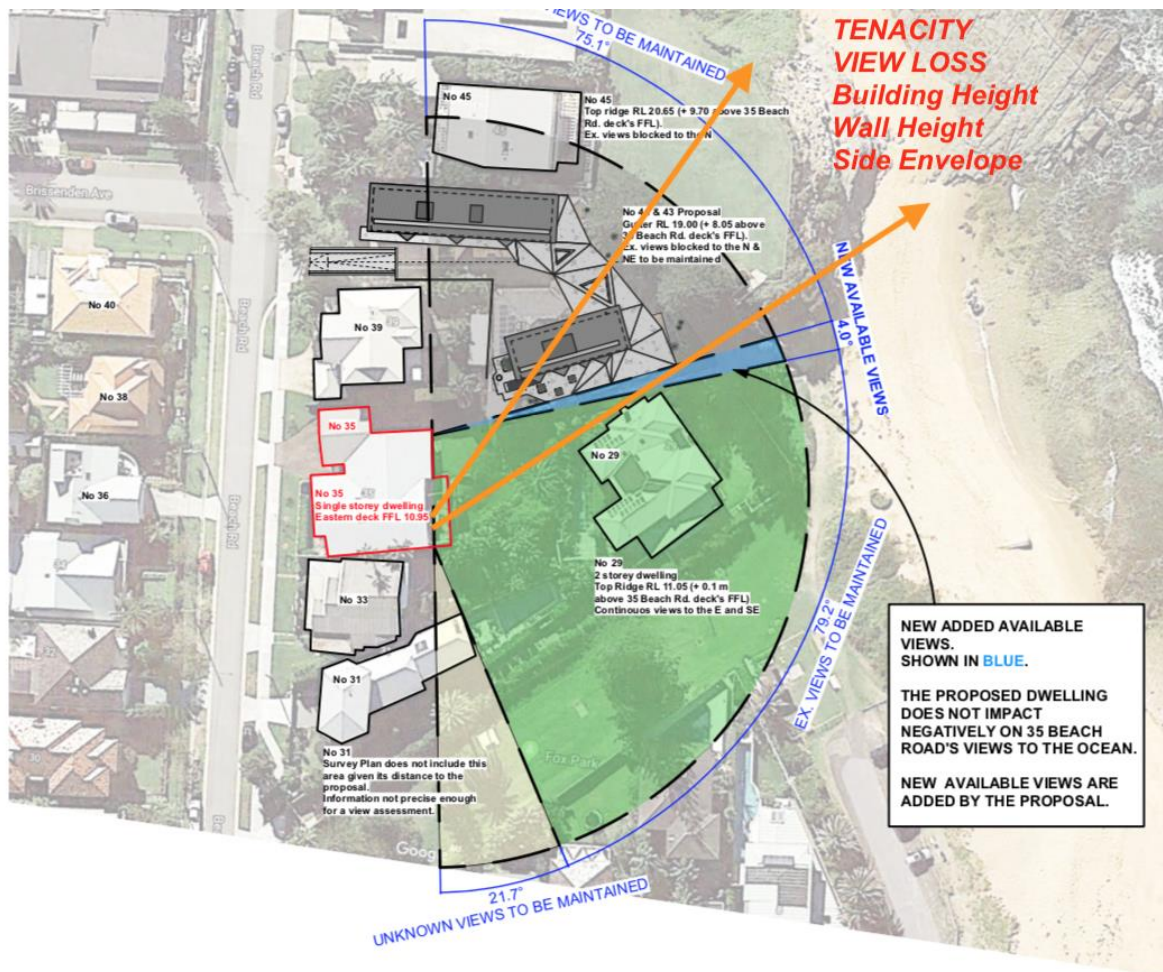
The applicant has failed to even correctly identify the location of the Living Rooms on their very limited plan consideration.

We refer Council to our earlier Tenacity Assessment, contained in appendix C

We ask for Council to take this matter into consideration of further envelope reductions.

The view is currently being damaged by the leading edges at ground floor, first floor, and roof of the eastern perimeter of the Southern Wing.

We contend that the proposed development does not accord with **DCP D7 Views**, to the objectives nor the requirements.



02 PROPOSED VIEWS TO THE OCEAN ANALYSIS. 35 BEACH ROAD
1/500 AT A1

PROPOSED VIEWS KEY	
	EX. VIEWS TO THE OCEAN TO BE MAINTAINED
	UNKNOWN VIEWS TO BE MAINTAINED. LACK OF PRECISE INFORMATION.
	EX. BLOCKED VIEWS TO THE OCEAN TO BE MAINTAINED
	NEW ADDED OPEN VIEWS TO THE OCEAN

In Tenacity, [Tenacity Consulting v Warringah Council 2004], NSW LEC considered Views. Tenacity suggest that Council should consider:

"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."

We contend that these matters give grounds for refusal of this DA.

Building Bulk

We remain very concerned to the visual and building bulk caused by this proposed development from our property and from the public domain in front of 29 Beach Street, looking back at the dwelling that rises over 15m above this zone. The montages from surrounding neighbours show an horrendous building bulk consideration. We believe the proposed development will be *offensive, jarring or unsympathetic*.

We contend that the proposed development does not accord with **DCP D9 Building Bulk**, to the objectives nor the requirements.

No montage has been presented by the Applicant in this close in zone looking at the development at the quarter view at close range from below the development to the south east.

The height poles show how massive the proposal will be, and how out of keeping it will be to the sensitive area immediately to the ocean side of 29 Beach Street.

The addition of a 1.8m wall to the existing 3.2m high sandstone wall, to both the southern and eastern zones, will only make the overall composition completely unacceptable.

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”

We contend that these matters give grounds for refusal of this DA.



01 VIEW FROM 35 BEACH ROAD DECK

Applicant's Montage

Excavation

We remain opposed to the massive excavation proposed on the subject site. The garage should be strictly limited to a double garage at the base of the ramp, with a turning platform. The extensive vibration from such an extended excavation is totally unreasonable in an R2 Zone.

We contend that the proposed development does not accord with **DCP C7 Excavation**, to the objectives nor the requirements.

We contend that these matters give grounds for refusal of this DA.

Landscaping

The Applicant has not provided sufficient landscaping consideration to ensure that the proposed landscape in the southern setback zone, screens the proposed development from neighbours and the public domain, whilst preserving view corridors and solar corridors. We ask Council to ensure that the Applicant submits further amended drawings to deal with this matter.



Applicant's Montage

We contend that the proposed development does not accord with **DCP D1 Landscape**, to the objectives nor the requirements.

We contend that these matters give grounds for refusal of this DA.

Structural Stability of existing sandstone wall close to southern boundary

We remain very concerned to the structural adequacy of this wall, and ask Council to request a structural adequacy certification from the Applicant.

We believe that the wall will need to be rebuilt, replaced or demolished by the Applicant.

New Geotechnical Report

We remain very concerned to the subsidence to the north of the subject site.

A revised Geotechnical Report needs to be submitted to consider new 2020 subsidence to the neighbours to the north.

All neighbours surrounding the proposed massive excavation may experience similar problems.

Amendments Outstanding

We ask Council to refer to Appendix A to capture the full list of the Conditions that we wish to be considered, as raised in previous Submissions

Amended Plans

The following conditions will need to be met by submission of amended plans:

Southern Wing

10. The First Floor Roof of the Southern Wing is to be reduced in height by **1.34m** to accord with Wall Height & Building Height controls.
11. The Ground Floor Roof of the Southern Wing [eastern end] is to be reduced in height by **0.25m** to accord with Wall Height & Building Height controls.
12. The First Floor is to be setback a **further 1.02m** from the southern boundary to accord with DCP B3 Side Boundary Envelope, unless the reduction of height in item 1 resolves the non-compliance
13. The building envelope is to be setback 6m from the rear setback to accord with WDCP B9 Rear Setback
14. The building envelope needs to further reduced, in addition to the above items, to accord with DCP D6 Access to Sunlight
15. The southern side setback of the ground floor and first floor to increase by a further 2m, in addition to above matters, to ensure a sharing of views from 35 Beach Road
16. New Landscape Plan in southern side setback zone, to provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium

high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building and to enhance privacy between buildings, all in accordance with WDCP D1, and to avoid overshadowing and view loss to all neighbouring dwellings

17. No excavation in southern side setback zone, and the complete deletion of the basement living zone
18. No additional wall or fence added to existing sandstone wall that is setback 400mm from southern and eastern boundary. Delete all additional walls to the southern and part eastern boundaries, positioned on top of the existing sandstone wall that are wrongly depicted as 'boundary walls'.

Reason: View Loss, Overshadowing, Privacy, Streetscape, General Impact, Landscape, Height/Bulk/Scale, Visual Bulk and Excessive Excavation

Once these amendments are made and new height poles erected, against the above items, Council and neighbours can reassess the acceptability of this amended envelope.

Dimensional set out of the proposed development needs to occur from the SE and SW corners of the subject site, with a clear dimensional set out of all floorplates and roof configurations, at all high points and changes of direction.

The DA will need to provide photomontages from our properties and from the public domain to the east of our properties. Provide solar access diagrams at hourly intervals of all neighbours' windows. Any loss from non-compliant envelope will be unacceptable.

Privacy

- Raise window sills and privacy screens to 1.7m height above internal FFLs to all windows facing neighbour's boundary at all levels.
- The Elevated Roof to the south-west must be made totally non-accessible
- The proposed sliding doors that open from the pool deck zone, be deleted, this wall to be replaced with a solid, full height, acoustic wall.
- Living Zone at Basement deleted, with no windows facing neighbours to southern boundary. No excavation below Contour RL 11.25m on LTS Survey in the southern side setback zone, other than existing built surfaces and structures.
- Master Bedroom Deck to have 1.7m high privacy screen to the south

Reason: Privacy

Landscaping

New Landscape Plan in southern side setback zone, to provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs

and canopy trees of a size and density to mitigate the height, bulk and scale of the building and to enhance privacy between buildings, in accordance with WDCP D1, and to avoid overshadowing and view loss to all neighbouring dwellings

Landscape Architect to provide 3D model to identify maximum envelope of landscaping to southern side setback zone, to protect views and solar access whilst mitigating the built form and providing better privacy. Landscape Architect to locate taller trees and shrubs to better fill the maximum envelope potential. Maximise the landscape content, with no neighbour amenity loss. Submit 3D Model in Amended Plans.

NBC Tree Protection & NBC Trees Condition clauses to be added to Landscape Plan. Retain other trees as identified by Council. Provide protection to the Structural Root Zone and Tree Protection Zone to the trees on neighbours property adjacent to the common boundary to be added to Landscape Plan. Tree Protection conditions to be added to Landscape Plan

On slab planting and associated works conditions to be added to Landscape Plan. Protection of Rock to be added to Landscape Plan. Landscape Completion Certificate requirements to be added to Landscape Plan. Environmental and priority Weed Control requirements to be added to Landscape Plan

Reason: Landscape

View Loss

In addition to the above measures, further increase the view sharing from 35 Beach, by providing an additional 2m setback at each level from the southern boundary.

Reason: View Loss

Excavation

The excavation for basement uses is to be solely limited to a double garage at the base of the ramp, with a turning platform.

The extensive vibration from such an extended excavation is totally unreasonable in an R2 Zone.

No other excavation in any area for other basement uses.

Delete basement room to south-east corner.

Reason: DCP C7 Excavation

Conclusion

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

We ask Council that based on no properly considered Exception to Development Standards under Clause 4.6 to vary Height of Buildings, incorrect '*ground level existing*', incomplete solar access drawings with no proper *Benevolent Society Assessment* lodged, absence of a *Tenacity Assessment* from 35 Beach Road, inadequate landscape consideration in southern setback zone, inadequate consideration of privacy matters with no proper *Meriton Assessment* lodged, absence of montage consideration immediately in front of the south east corner of the subject site, ongoing incorrect positioning of 'boundary walls' not on the boundary to the south and east boundaries, and other matters, to reject the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.

If the DA relies upon incorrect information, then we reserve our position on the validity of any future approval, and we reserve our right to challenge the validity at any time.

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

There is no excuse that neighbour amenity must suffer due to non-compliance to the controls. All we seek is a fully compliant development to all Council's controls and for the height controls to be drawn accurately based upon the boundary survey levels and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189 principles.

We do hope the DA submits Amended Plans, once again, to resolve these matters, erects Height Poles based upon a further reduced envelope, submits further site analysis axonometric height and solar diagrams, submits revised and complete overshadowing drawings, corrects *ground level existing*, and other matters identified within this Submission.

If this does not occur, we ask Council to immediately **REFUSE** this DA.

Yours faithfully,

Mrs Jan Dorsen
35 Beach Road
Collaroy

Mr & Mrs Bill & Victoria Buckle
29 Beach Road
Collaroy

Attachment:

- A. Conditions to be considered in any future consent, in addition to those listed above
- B. Norton Survey June 2020
- C. Appendix C: Tenacity Assessment from previous Written Submissions

Appendix B Proposed additional Conditions to those stated within this Written Submission

Structural Adequacy, Excavation Work, Retaining Wall

New Geotechnical Report to consider new 2020 subsidence to neighbor to the north. All neighbours surrounding the proposed massive excavation may experience similar problems.

Existing Sandstone Block Retaining Wall to the southern boundary be rebuilt to ensure structural adequacy.

Delete Basement and basement ramp, and provide a new double garage to be positioned under the northern wing, with a compliant front setback, all to Council controls.

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required.

All retaining walls, including the sandstone wall along the southern boundary, are to be structurally adequate for the intended purpose, shall be certified as compliant with all relevant Australian Standards and Codes, designed and certified by a Structural Engineer, except where site conditions permit the following:

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and

(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

Reason: Public and Private Safety

Sub-Soil Seepage

The Applicant is to submit plans demonstrating that all sub-soil seepage drainage is discharged via a suitable silt arrester pit in accordance with relevant Australian Standards.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

On-Site Stormwater Management Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

Property Boundary Levels

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain the existing profile of the boundary.

Works in close proximity to the allotment boundary

The Applicant is to maintain existing ground levels within 1m to the allotment boundary.

No approval is granted for any change to existing ground levels and all works within 1m to the allotment boundary to accommodate the development.

No fence to be added to top of the existing sandstone wall to the south.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain the existing profile of the natural ground levels adjacent neighbours boundary.

Vibration

Reduce Peak particle velocity to be less than **2.5mm/sec** at the common boundary, with warning alarms on site to stop work if thresholds are exceeded at **2.0mm/sec**.

35 Beach Road is an older property with delicate period detailing of delicate and fragile ceilings and wall finishes, including stained glass windows, and this lower level of vibration is to be conditioned to avoid and/or reduce the risk of damage to the older fragile finishes within the property.

The level at **2.0mm/sec** can be normally easily achieved by making attenuation cuts into the upper siltstone strata and sandstone, prior to bulk excavation, and always ensuring the attenuation cuts are 0.5m lower than the excavated surfaces at all times. Other precise methods are to be specified by the Geotechnical Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority, to include method statement of excavation works, monitoring of boundary levels, halt signals, notifications on site and to PCA, and attenuation methods to reduce vibration risks.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To reduce risk of vibration damage to neighbours property.

Plant

AC Plant & Pool Plant not to be positioned along boundary to neighbour's property, and to be positioned in a dedicated acoustic rated plant room.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Noise from combined operation of all mechanical plant and equipment must not generate noise levels that exceed the ambient background noise by more than 5dB(A) when measured in accordance with the *NSW Industrial Noise Policy* at the receiving boundary of residential and other noise sensitive land uses.

Reason: Acoustic Privacy

Lighting

No external lighting facing neighbour's property or internal lighting causing lighting nuisance to neighbour's property.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: Lighting Nuisance

WE ask Council to impose conditions as appropriate regarding:

- Stormwater Disposal
- Geotechnical Report Recommendations to be incorporated into design and structural plans
- Boundary Identification Survey
- Survey Certificate, of completed development to accord with DA levels and dimensions, and staged Survey Certificates prior to the pouring of each floor slab, at each level, and after forming the roof members, or the formation of formwork if a concrete roof.
- Vehicle Driveway Gradients
- Structural Adequacy
- Excavation Work
- Shoring of Neighbours boundary
- Protection of Adjoining Property- Excavation
- Soil & Water Management Program
- Dilapidation Report
- On Slab Landscape Planting & Associate Works
- Tree Protection
- Tree Condition
- Protection of rock

- Landscape Completion Certificate
- Environmental and priority Weed Control
- Landscape Maintenance
- Road Reserve
- Stormwater Disposal Certificate
- Structures located near boundary Certificate
- Geotechnical Certificate
- Post Construction Dilapidation Certificate
- Swimming Pool Requirements

Appendix C: Tenacity Assessment from previous Written Submissions

In *Tenacity*, [Tenacity Consulting v Warringah Council 2004], NSW LEC considered Views. Tenacity suggest that Council should consider:

“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.”

The development breaches multiple planning controls and is unreasonable.

The impact on views arises as a result of non-compliance with one or more planning controls, and the greater than moderate impact is considered unreasonable.

Application of Tenacity Planning Principle

We have only been able to consider the impact of the current proposal on the outward private domain views from my property, by visual assessment. There are no height poles erected of these proposals, so my assessment is limited by their absence.

A preliminary analysis and assessment in relation to the planning principle of Rosebath 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 fully accurate due to the previous commentary on the absence of new 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 my opinion the threshold test to proceed to Step 1, we provide the following analysis;

An arc of view to the east is available when standing at a central location in the Living Room and the adjacent main entertainment deck. Both are highly used zones on my property.

The composition of the arc is constrained to the north and south either side of the subject site, by built forms and landscape.

The northern part of the composition includes the subject site and the buildings and roof forms that currently occupy the site on the subject site frame the view.

The overall composition of the total view is significantly enhanced by the lush vegetation of the headland in front of the subject site, including the Norfolk Pines

The future loss of view from a first-floor addition on my property would also be a moderate loss

This view obviously includes scenic and valued features as defined in Tenacity.

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

The view from my living room windows and deck towards the view.

The extent of view loss is moderate or greater, and the features lost are considered to be valued as identified in Step 1 of *Tenacity*.

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 north and east, from standing and seated positions.

A wide arc of view to the north and east is available when standing at a central location on the living spaces, entertainment decks, and other highly used zones on my property.

In this respect we make two points:

- we have no readily obtainable mechanism to reinstate the impacted views from my existing living zones if the development as proposed proceeds. A first floor addition would lose the same headland and ocean view; and
- All of the properties in the locality rely on views over adjacent buildings side boundaries for their outlook, aspect and views towards the headland and water interface 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 my living room loss to be greater than moderate using the qualitative scale adopted in *Tenacity*.

The view lost includes headland views and future ocean water views.

As we rate the extent of view loss as greater than moderate in my 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.

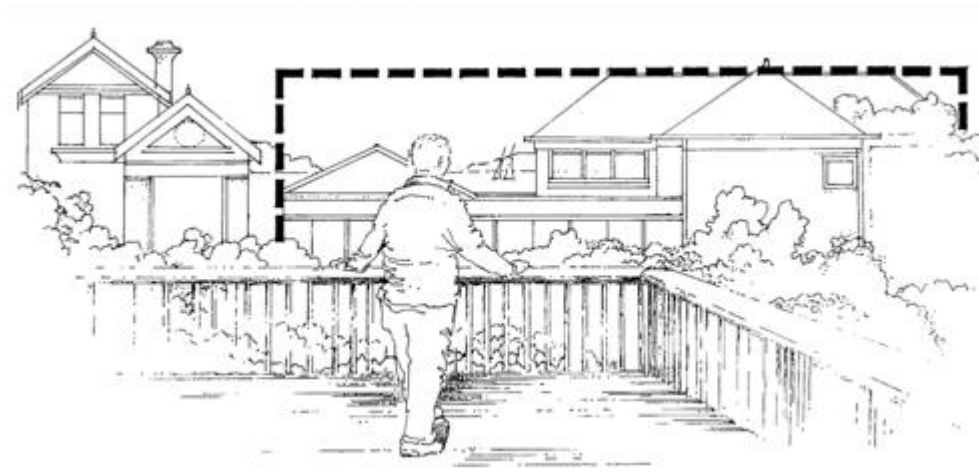
In my opinion the extent of view loss considered to be greater than moderate, in relation to the views from my living rooms and living room deck of my dwelling, particularly to the north and east towards the water view.

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

Tenacity supports my case:

"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."

Once new Templates are erected, we can provide additional commentary.



Where there is a potential view loss, Council should require a maximum building height of less than 8m for part of the building, and should consider other modifications to the design to achieve view sharing.

The private domain visual catchment is an arc to the north and east 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 my property.

The views most affected are from living areas and associated terraces and include high scenic and highly valued features as defined in *Tenacity*.

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

The significant non-compliance with planning outcomes and controls of the proposed development cause 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 extending to the north on the subject site, within the side envelope controls, would remove my view.

At this juncture, the proposed development cannot be supported on view loss grounds.

The proposed development is over maximum building height, and grossly exceeds side boundary controls, over most of the southern wing of the proposed development.

“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.”

The view loss is totally unreasonable.

The Author of the SEE has made no attempt to inspect my property to assess the view loss, let alone carry out any Tenacity Assessment.

Buildings sited and designed to accomodate view sharing

