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**Sent:** 17/11/2020 6:57:05 PM

**Subject:** #I Bilambee Lane, Bilgola Plateau DA 2020 1351 WRITTEN SUBMISSION:  
LETTER OF OBJECTION Submission: Sutherland

**Attachments:** Sutherland WS 171120.pdf;

S U B M I S S I O N : S U T H E R L A N D  
a written submission by way of objection to DA 2020/1351

Mr Barrie Sutherland  
3/1 Bilambie Ave  
Bilgola Plateau

17 November 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:  
#1 Bilambee Lane, Bilgola Plateau  
DA 2020 1351

WRITTEN SUBMISSION: LETTER OF OBJECTION  
Submission: Sutherland

This document is a written submission by way of objection to DA 2020/1351  
lodged under Section 4.15 of the EPAA 1979 [the EPA Act]

The DA seeks development consent for the carrying out of certain development, namely:

*The demolition of existing structures and construction of a shop top housing development comprising two ground floor commercial premises and eight (8) residential apartments above, over two basement levels together with site works, drainage, landscaping and works within the road reserve, at No. 1 Bilambee Avenue, Bilgola Plateau.*

The subject site is zoned B1 Neighbourhood Centre, under strict envelope controls, under the Local Environmental Plan, and there is no reason, unique or otherwise why a fully compliant solution to SEPP No. 65 ADG, LEP and DCP controls cannot be designed on the site.

I agree with Roseth SC in NSWLEC Pafbum v North Sydney Council:

*“People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.”*

I ask Council to refuse this DA as the proposed development does not comply with the *planning regime*, by multiple non-compliance to development standards, and this non-compliance leads directly to my amenity loss.

## **SECTION 1: EXECUTIVE SUMMARY**

I want to emphasise the fact that I take no pleasure in objecting to my neighbour’s DA.

I am objecting because the proposed DA has a very poor impact on the amenity of my property, and the urban design outcomes within the streetscape, and this is caused by the DA being non-compliant to multiple controls.

If the DA was fully compliant to all controls my amenity loss would be more reasonable.

It does seem unreasonable that the Applicant wishes to remove my amenity to improve his own, and is proposing a catalogue of non-compliant outcomes that would seriously adversely affect my amenity.

The Applicant or his Advisors did not visit my property to assess my amenity loss.

My concerns are not only my amenity loss, but the wider urban design outcomes, particularly those when viewed from the surrounding streetscape.

The proposed development brings medium to high density development into a heavily controlled B1 Neighbourhood Centre zone. The subject site is surrounded by sensitive E4 Environmental Living Low Density Residential environment, with strict building envelope controls that are adhered to and regularly enforced by Council refusals.

The proposed development in this heavily controlled B1 Neighbourhood Centre zone, exceed PLEP 2014 principle development standards of Heights of Buildings, and the Density Controls for Shop Top Housing in B1 Zones.

The proposed development exceeds P21 DCP controls including landscape controls, front, rear and side setback controls, building envelope controls, and many other controls.

The proposed development could not be more non-compliant to Council controls.

The **overdevelopment** is best described by the scope of the non-compliance:

- LEP 4.3 Building Height 11.2 v 8.5m [32% non-compliance]
- LEP 4.5A Density Controls 8 Units v 6.2 Units [29% non-compliance]
- DCP C1.1 Landscaping 20% v 0% [>1000% non-compliance]
- DCP D3.6 Front building line 3.5m v 2.7m [30% non-compliance]
- DCP D3.7 Side and rear building line 3.0m v 0 [>1000% non-compliance]
- DCP D3.9 Building Envelope 4.2m+45deg. [major non-compliance]

The proposed development fails to meet the State Environmental Planning Policy No 65 – Design of Residential Flat Development, and the SEPP 65: ADG principles including Context & Neighbourhood Character, Built Form & Scale, Density, Sustainability, Landscape, Amenity, and Aesthetics.

The proposed development could not be more non-compliant to SEPP No. 65 ADG controls.

- Site Analysis 3A-1:
- Orientation 3B-1, 3B-2:
- Public Domain Interface 3C-1, 3C-2:
- Communal and Public Open space 3D-1, 3D-2, 3D-3:
- Deep Soil Zones 3E-1:
- Visual Privacy 3F-1, 3F-2
- Facades 4M-1, 4M-2,
- Roof Design 4N-1
- Landscape Design 4O-1, 4O-2,

The montage images provided by the Developer are extremely selective, in ensuring that the viewing point of each montage obscures the true non-compliant building envelope. A view point taken at a slightly longer distance from Plateau Road from the south-east and south west, Bilambee Avenue to the north-west, and Bilkurra Avenue to the north-east would clearly expose the non-compliant upper floor and plant to the sensitive Zone E4 streetscape, and present building heights to over 11.2m into the sensitive E4 neighbourhood of generally single and double storey residential dwellings.



*The subject site is viewed from all surrounding streets where the full 11.2m high built form will be on full display, and all three storey and plant will be highly visible.*

Council must ensure that photo montage images are prepared, after height poles are erected, to fully consider the non-compliant envelope from all four leading roads to the subject site. Attached are four photographs that would clearly show the full 11.2m high development set against compliant buildings and dwellings in the neighbourhood.

The proposed top of plant at RL 152.75, is **3.88m higher** than the existing parapet of the existing Shop Top Housing neighbouring development at 1 Bilambee Avenue at RL 148.87, above the existing parapet above Organic Avenues & Smile Dental.







The heavily controlled B1 Neighbourhood Centre zone is within an 8.5m building height control zone, and the expectation within that zone, is to achieve a two-storey building. It should be noted that Council could have considered a higher maximum building height in this B1 Zone, however, rightly the Council and the community have agreed through the LEP controls, to restrict this particular site to an 8.5m maximum building height, with strict side boundary envelope and setback controls. The legitimate expectation by the community is that the Council will uphold those controls, and as previously stated: *"People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime."* [NSWLEC Pafbum]

For a Shop Top Housing development, the consideration on the subject site is of a commercial storey height of c. 3.8m at ground floor, and a single level of residential above at c. 3.1m storey height, with a roof structure to 8.5m maximum building height above housing lift over runs and plant zones.

The PLEP 2014 never considered a three-storey configuration on the subject site as an architectural outcome, as that form of sectional profile would create a 10m storey building height [3.8m retail storey height + 2 x 3.1m residential storey heights = 10m overall storey height], plus a 1.2m zone for plant and lift over-run in addition to the 10m, giving 11.2m height. Council never considered that this site was to be zoned as a 10.0m or 11.5m maximum building height area. Council very deliberately, and with the support of the community, zoned the site at 8.5m. Unfortunately, this proposed development proposes an 11.2m building height.

The *'legitimate expectation'* that I had as a neighbour had, was that a two-storey configuration to c.6.9m storey height and a small additional 1.6m height zone for plant and lift over-run to reach the 8.5m maximum building height.

The *'legitimate expectation'* that I had as a neighbour was that any proposed development would accord with a 3.5m front building line setback, with 3.0m side and rear setback onto my private open space.

The *'legitimate expectation'* that I had as a neighbour was that any proposed development would accord with a landscape outcome with 20% of the site reserved for deep soil planting, according with [DCP C1.1 Landscaping 20%](#).

The *'legitimate expectation'* that I had as a neighbour was that any proposed development would maintain my access to air, daylight, acoustic privacy, visual privacy, and outlook to the neighbourhood to my south facing Terrace and Balcony.

The *'legitimate expectation'* that I had as a neighbour was that any proposed development would comply with the LEP Density Controls for Shop Top Housing to control overall density for any development, however the Developer has also simply ignored those LEP controls.

Unfortunately, the Developer is proposing a significant overdevelopment of the environmental sensitive area, and in doing so causes amenity impacts to the immediate neighbours, and more broadly to the urban design characteristics of the area.

The amenity impacts caused to my property are:

- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.6 Acoustic Privacy
- Access to Air
- Access to Outlook & View



*My open Terrace to the left*



*My Terrace has shown on Developers Surveyor drawing. Existing Solar Access, Good Privacy, District Views, & full ventilation available*

### **My Terrace:**

My Terrace faces the subject site. The Terrace is covered with a transparent roof sheet at RL 148.62, with the parapet above at RL 148.87. The Terrace has a balustrade to a level of RL 147.21. From the terrace I have views to the south over the subject site.

My bathroom windows face the Terrace with window heads at RL 148.13. A glazed door on the western side of the Terrace provides the only ventilation and natural light into a living room. The Terrace also provides the only outside zone for drying clothes.

The Terrace is my only external private open space.

The current parapet on the subject site is at RL 145.07.

The proposed development creates a new parapet at RL 151.55, and creates a blank wall 4.32m higher than the existing balustrade on my Terrace.

What is proposed is a blank wall that would remove all my solar access, all the southern aspect view, and leave me with an enclosed space with no access to daylight, no access to ventilation of my bathroom and living room, and removes all my view.

The adjacent ground level existing on the subject site is RL 141.84, and the proposed new parapet is therefore 9.71m in height, with zero rear setback.



*View from my Terrace to the east*



***View from my Terrace to the south***

I ask Council that the parapet of the proposed development is reduced in height to RL 147.1, to the sill level of my window, and for no built form for a distance of 3m from my Terrace or my Balcony, with a fully compliant rear setback of 3m, a compliant 8.5m maximum building height, with compliant boundary envelope, to enable solar access and ventilation to enter my Terrace to serve my bathroom and living room, and ongoing amenity into my Unit.

All windows within 9m of my windows to have privacy screens to ensure privacy. No deck access to the boundary alignment to ensure acoustic privacy

I ask Council to consider my view aspect to the east and south to ensure that there is some outlook to the neighbourhood.

I ask Council to ensure that my air conditioning pipework be retained so that my air conditioning system remains fully functional.

The amenity impacts to the streetscape and the remainder of the community are:

- Character as viewed from a Public Place
- Scenic Protection
- Poor Landscaping

The overall combined effect caused by the numerous non-compliance, lead to a considerable unreasonable visual bulk and a very poor character as viewed from a public place. The subject site falls within a scenic protection category one area, and I contend that the overdevelopment of the site fails to meet the outcomes.

In this Submission I will identify the non-compliances to SEPP 65, LEP & DCP controls to show that the development is totally unreasonable and unacceptable.

I will propose a series of modifications to the proposed development to overcome the amenity issues for Council to consider. If the Developer does not submit Amended Plans to resolve these matters, I ask Council to immediately REFUSE the DA.

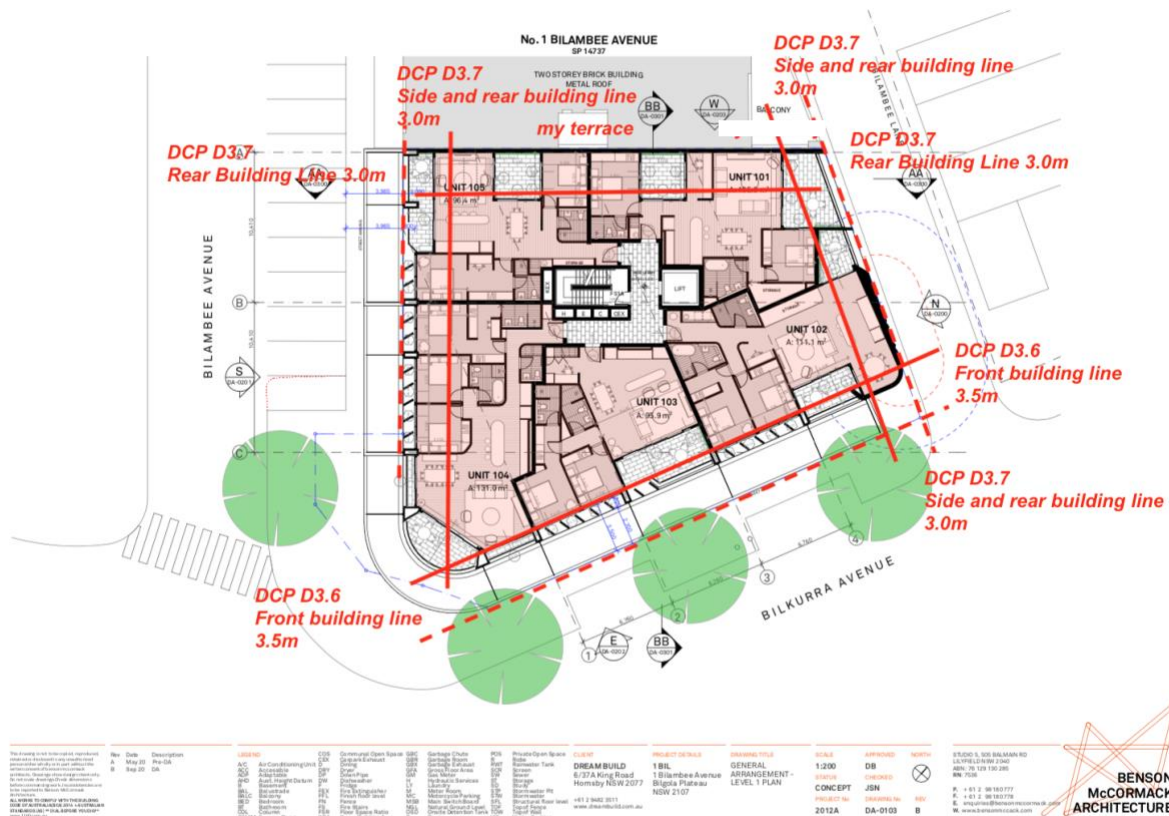
I am not only presenting my amenity problems, and the urban design and landscape concerns, but I am also presenting a potential solution to that problem, that hopefully provides a better framework to resolve the design problem on a very sensitive site. I do hope the Applicant and Council take this approach as being constructive.

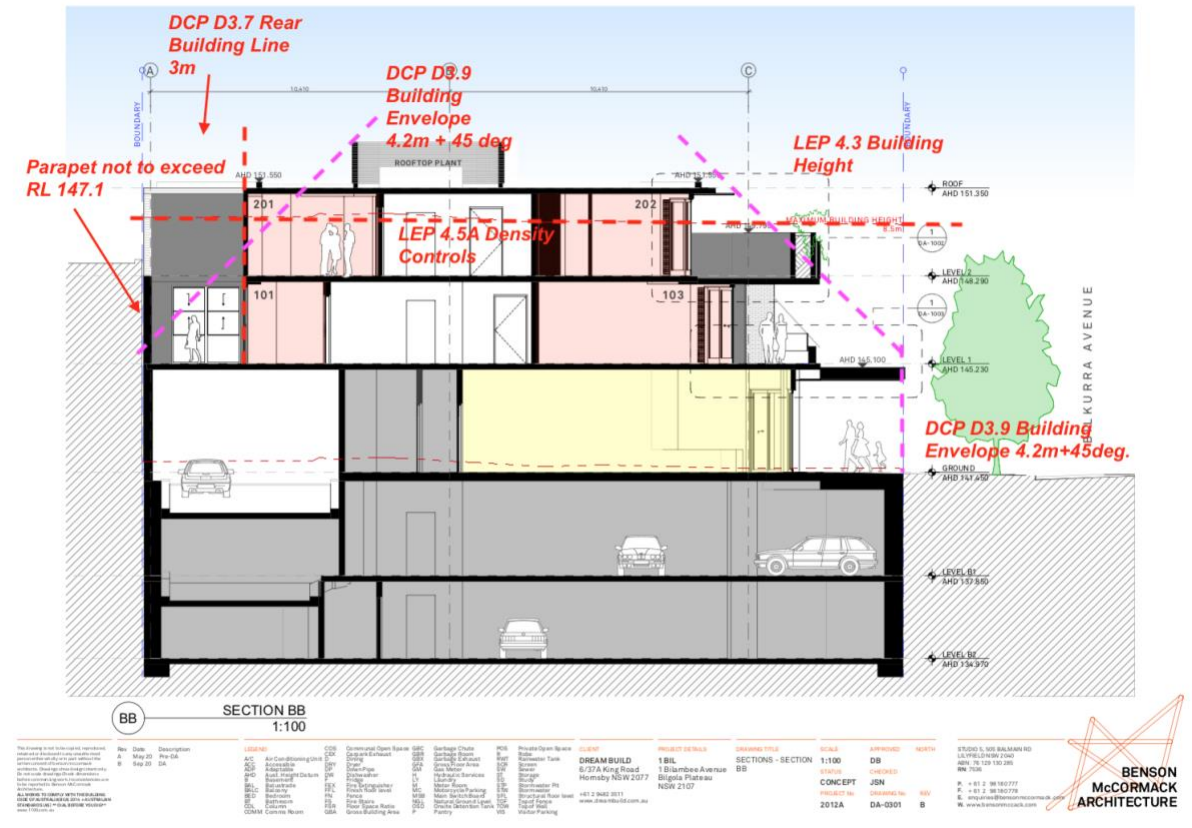
The neighbouring sites are in a sensitive low-impact residential development zone, and little consideration has been given to the objectives in those zones, and to curtail overdevelopment on this subject site. The non-compliance to controls, and lack of consideration of height and setback controls to marry in with neighbours is of great concern.

The overall effect is a development that is considerably out of scale with the neighbours, particularly when viewed from the surrounding streetscape, and of an urban block, where built form dominates the landscape, next to the E4 Zone where the reverse is the control.

Inevitably the current building needs to be replaced, but I contend that a more sensitive redevelopment, significantly limiting excavation, and complying with all NBC and ADG controls, with a compliant building height, and all envelope controls, is preferable. This type of outcome might be considerably more reasonable and considerably more preferable, than the proposed development.

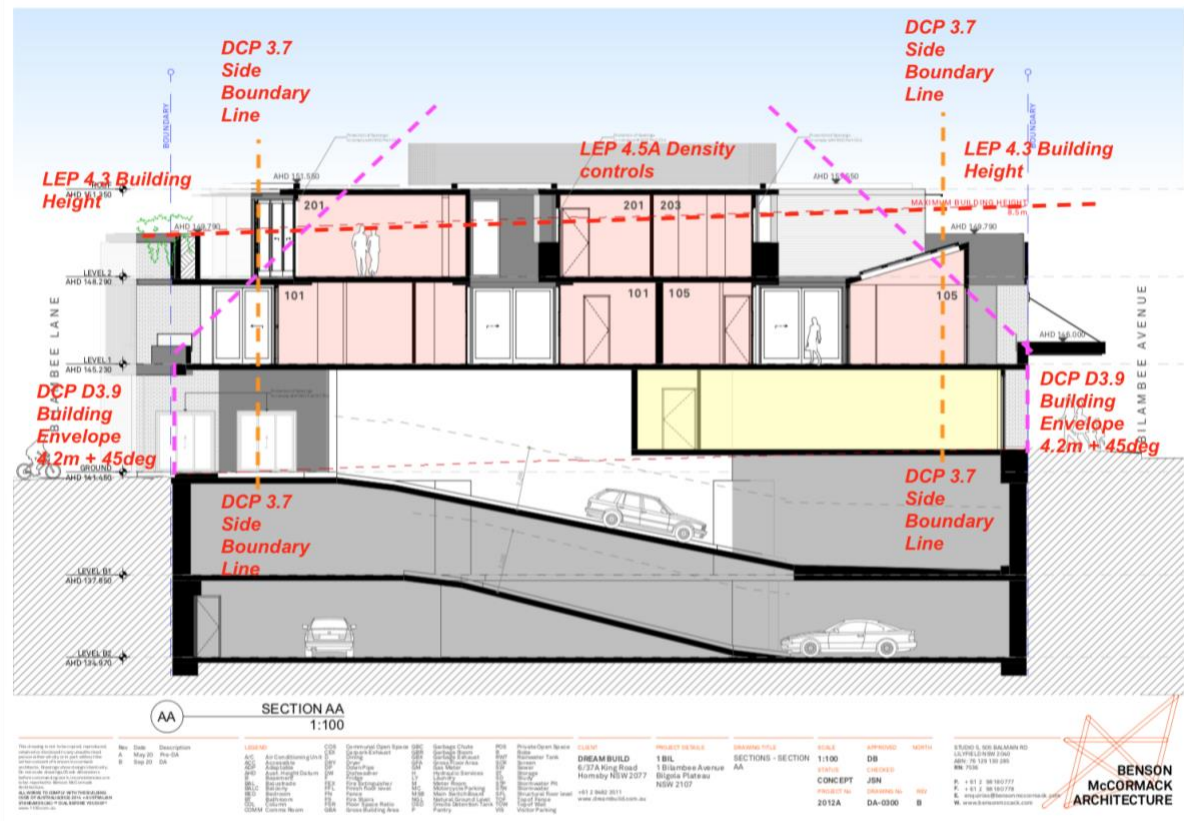
The character of the proposed development when viewed from surrounding streetscape is jarring. The character is of a heavy commercial building better suited to a more urban environment. Council should encourage the development of a more delicate 'residential pavilion' style outcome, rather than a building with considerable solid heavy facades. A lower wall height to match the existing neighbouring commercial buildings, with a more compliant ADG and DCP side setback, would give the Architect a smaller bulk to address.





*Non Compliance to LEP 4.3 Building Height, LEP 4.5A Density Controls, DCP D3.7, DCP D3.9 and any new parapet not to exceed RL 147.1 to be positioned under the sill level of the Terrace facing the subject site.*

*I request full building envelope compliance facing Bilkurra Avenue and my property, with full compliance to building height, density controls, building envelope, and setback controls*



*Non Compliance to LEP 4.3 Building Height, LEP 4.5A Density Controls and DCP D 3.7 & DCP D 3.9*

*I request full building envelope compliance facing Bilkurra Avenue and my property, with full compliance to building height, density controls, building envelope, and setback controls*

I list the main issues that require amendment:

- Reduce wall height at street frontages to a maximum of RL 148.87 to match neighbours parapet and to reduce scale and bulk
- Delete all units at Level 2, and the roof to become non-trafficable
- Position roof plant centrally, and no higher than RL 150.0 [8.5m above contour 141.5]
- Building Height to reduce to 8.5m to LEP 4.3 Building Height
- Reduced number of Units to a maximum of 6 to comply with LEP 4.5A Density Controls
- Adherence to DCP D3.9 Building Envelope to 45 degree
- Adherence to DCP D3.6 Front building line to 3.5m
- Adherence to DCP D3.7 Side and rear building line to 3.0m
- Adherence to DCP C1.1 Landscaping to better screen proposed development
- New parapet not to exceed RL 147.1 to be positioned under the sill level of the Terrace facing the subject site.
- Privacy screens to residential units facing my property

- External seating to be time limited: 7am to 6pm, and acoustic levels not to exceed 33 + 5 dB[A]
- Deliveries and Waste Removal to be time limited: 7am to 6pm, and acoustic levels not to exceed 33 + 5 dB[A]
- Roof Plant compliance

The written requests submitted pursuant to clause 4.6 which seek to justify contravention of the development standards fail to adequately demonstrate that compliance with each standard is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening each of the standards. Variation of the development standards is not in the public interest because the proposed development is not consistent with the objectives of each development standard nor the objectives of the zone.

## **SECTION 2: CHARACTERISTICS OF MY PROPERTY**

Key aspects of my property are as follows:

My property shares a common boundary with the subject property.

The subject site lies to the South-East of my property.

I enjoy good levels of privacy and solar access over the subject site's boundaries.

My property is shown on the attached map 'red starred'. The subject site is shown 'edged in red and flagged'.



### SECTION 3: SITE DESCRIPTION

The SEE describes the site:

*The development site is legally known as Lot 5 DP 229309, commonly known as No. 1 Bilambee Lane, Bilgola Plateau. The lot has a development site area of 930sqm with frontage to Bilambee Lane of 19.86m, northern side boundary of 29.26m, frontage to Bilambee Avenue of 19.81m, and 4.9m with splay corner of 5.8m and 8.75m and frontage to Bilkurra Avenue of 32.91m. The site benefits from three street frontages – Bilambee Avenue, Bilkurra Avenue and Bilambee Lane.*

*The site has a gentle slope for building purposes. It has a cross fall from the north-East corner (RL142.4m AHD) to the south-eastern corner (RL141.25m AHD), a fall of 1.15m. For building purposes, the fall from the Eastern (Bilambee Ave) boundary to the north-east corner is 1.03m. There is currently access to the site from each street and two accesses from Bilkurra Avenue. Bilambee Avenue has a pedestrian crossing at the intersection of Plateau Road and there is 'give way' sign at the intersection of Bilkurra Avenue and Plateau Road. The closest bus stop is located on Bilambee Avenue, at the north-Eastern end of the neighbourhood centre.*

*The Bilgola Plateau Neighbourhood Centre comprises a strip of two storey shops and business premises. Current occupancies are the vehicle service centre, café, physio, cellars, Square 4 general store, beauty and massage. The rear of each premises has access to Bilambee Lane – either pedestrian only or single vehicle roller doors on nil setback to the laneway. The rear of the premises are generally*

*used for garbage bin and other storage. There are no trees on the site and only street tree along Bilkurra Avenue. The building structures of the development site are aged and nearing the end of their useful life.*

## **SECTION 4: PROPOSED DEVELOPMENT**

The SEE describes the proposed development.

*The proposal seeks to demolish the existing structures on site and construct a shop top housing development comprising a two retail shops (1191.sqm and 317.7sqm) at ground level and eight (8) residential apartments above. Two basement levels are proposed to cater for off-street parking and services for the development. Outdoor dining is proposed along the Bilkurra Avenue frontage with additional onstreet parking and landscaping proposed within the Bilambee Avenue and Bilkurra Avenues road reserves.*

*The ground floor premises will comprise two (2) retail premises. Retail A is the larger of the two premises. It is a corner shop with frontages to Bilambee Avenue and Bilkurra Avenue. Retail B is the smaller premises with frontage to Bilambee Avenue and the existing onstreet parking spaces. Above ground level are two levels of residential apartments, comprising eight (8) apartments. These are a mix of 2 & 3 bedroom units. Parking and services are provided with the two basement levels. Basement 2 contains resident and visitors spaces and Basement 1 contains retail spaces and one residential visitor space. There are thirty (30) parking spaces within the basement levels, plus the on-street parking in Bilambee Avenue and the new on-street parking in Bilkurra Avenue. There are 4 x motorcycle spaces and 12 x bicycle spaces within the two basements.*

*Vehicular access to the basement levels is via a new crossover and ramp off Bilambee lane. Pedestrian access to the site is available from two active street frontages to the retail premises and via the entry and lobby facing Bilkurra Avenue to the upper level residences. A lift and stairs provides access from the basement levels to the ground and upper floor levels.*

Comment:

The proposed development does not accord with any of the main LEP and DCP controls – absolutely none of them.

The proposed plan form does not respond to the setback controls or building envelope controls on any frontage.

The proposed wall height of over 8.5m to the boundaries, presents a very hard urban edge at a scale totally out of character to the sensitive neighbourhood. There are no other buildings in Bilgola Heights that present an 8.5m high building to the streetscape with a flush wall height >8.5m to all boundaries.

## **SECTION 5: INCOMPLETE INFORMATION**

### **Height Poles/ Templates**

I ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Surveyor, and for these surveyor plans uploaded onto NBC Website.

The Height Poles will need to define the maximum built form in all zones:

- All Roof Forms
- All Plant Screens and all Plant
- All Solar panel heights
- All lift over runs
- All sun control and privacy control devices
- Extent of all Decks and Planters
- Extent of Privacy Screens and balustrades

The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

I require these height poles to fully determine amenity loss, as the building envelope is substantially non-compliant.

### **Overshadowing Diagrams**

Overshadowing diagrams need to be presented at hourly intervals, and full elevational studies completed on my Terrace and on my Balcony window

### **Acoustic Report**

I am not confident that acoustic impacts from the mechanical plant is able to be mitigated and a more complete acoustic report to assess the impact of the mechanical plant must be provided for full consideration within the DA.

The Mechanical Plant Noise Assessment Report dated September 2020 by NSS is incomplete in these matters.

The acoustic environment should be categorised by low background noise levels during the day and evening due to low operational noise from surrounding residential properties.

There is considerable concern on the noise into the residential zone, and I ask Council to ensure that full acoustic impact detail is provided by the Developer at DA stage to ensure full compliance.

I ask Council to obtain:

#### **Night: 2200 to 0700**

The actual LAF90 lowest acoustic readings, that are well **below 30 dBA**, shown in the evening 22 August 2020, 25 August 2020, 26 August 2020, 27 August 2020, and 28 August 2020.

It is very important to identify from the recorded background level at night [10pm to 7pm] figures, the actual minimum level. Council will note that the recordings simply fall below the 30dB[A] level, but the actual level is not stated.

#### **Evening 1800 to 2200**

The actual LAF90 lowest acoustic readings, that are below **32 dBA**, shown in the evening 21 August 2020 and 26 August 2020.

Council will note that the recordings simply fall below the 32dB[A] level, but the actual level is not stated.

#### **Day 0700 to 1800**

The actual LAF90 lowest readings, that are below **33 dBA**, shown on 24 August 2020 and 27 August 2020.

Council will note that the recordings simply fall below the 33dB[A] level, but the actual level is not stated.

The Acoustic Report will need to confirm requirements to ensure the following:

- External seating to be time limited: 7am to 6pm, and acoustic levels not to exceed 33 + 5 dB[A].
- Deliveries and Waste Removal to be time limited: 7am to 6pm, and acoustic levels not to exceed 33 + 5 dB[A]

The Acoustic Report makes no reference to these noise generators, nor the impact on neighbours.

The detail provided with Air Conditioner Condensers, Roof Top Mechanical Plant, Chamber Substation, Lift Motor and Diesel Pump are not sufficiently detailed.

I ask Council to obtain from the Developer the specific treatments to plant areas to complete a more complete '*acoustic impact of plant equipment*' including but not limited to, acoustic barriers, acoustic seals to doors, details of air discharge side, details of air intake side, details of silencer installation, details of VSD operational capacity night/day/evening, details of fan isolation to building structure,

details of insulation from fan to ductwork, details of isolating the fan from mounts, details of waffle pads, and details of condenser units in night operation mode.

The Acoustic Report must provide acoustic design detailing and recommendations to address any potential noise and vibration impacts to ensure that the operation of an individual piece of equipment in combination will not exceed more than 5dB[A] above the background [LA90, 15min] level during the day and shall not exceed the background level at night [10pm to 7pm] when measured at the boundary when measured at the boundary, balcony or habitable room of the potentially affected residential occupancies, either within or external to the development such as my own property.

I ask Council to condition that no further roof plant area or plant installation than shown on the DA drawings be allowed to be added by Modification DA in the future under any circumstances.

I ask Council to have the following matters considered:

1. Part of rooftop external mechanical plant – condenser units – to be relocated in the basement. It is expected that being within an enclosed space in the basement will not have an impact in the nearest noise sensitive receivers.
2. Car-park and kitchen exhausts to be relocated towards the centre of the building. Distance between these plant and noise sensitive receivers to be increased, therefore it is anticipated that noise impact levels will decrease.
3. External area of external seating to be deleted, as noise impact from patrons is unacceptable to nearby noise sensitive receivers.
4. Garbage area to be enclosed, so that noise impact to the nearest noise sensitive receivers to be minimal.
5. Specific treatments to be identified as discussed above
6. Delivery and waste removal times strictly restricted to 7am to 6pm.
7. Cafe times strictly restricted to 7am to 6pm.

## **SECTION 6: SEPP POLICY NO 65 – DESIGN OF RESIDENTIAL FLAT BUILDINGS**

### **Principle 1 Context & Neighbourhood Character**

*Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.*

*Responding to context involves identifying the desirable elements of an area's existing or future character. Ill designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.*

*Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.*

Comment: The SEPP Design Statement identifies that the existing commercial context is a single level of commercial with a single level of residential above. The SEPP Design Statement does not identify that the existing development on the neighbouring commercial areas conforms to height control, whilst the proposed development does not, whilst exceeding all envelope controls and setback controls. The SEPP Design Statement fails to justify any of these matters.

## **Principle 2 Built Form & Scale**

*Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.*

*Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.*

*Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.*

Comment: The SEPP Design Statement does not identify that the non-compliant third floor can be fully viewed from surrounding streets, and does not justify how a 11.2m building height achieves a scale, bulk, and height to the existing or desired future character in a low density leafy residential zone.

## **Principle 3 Density**

*Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.*

*Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.*

Comment: The SEPP Design Statement does not justify why non-compliance to LEP Density controls is warranted, particularly when it results from substantial non-compliance to building height, setback, landscape and envelope controls.

## **Principle 4 Sustainability**

*Good design combines positive environmental, social and economic outcomes.*

*Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.*

Comment: The SEPP Design Statement does not justify why poor neighbours amenity and sustainability outcomes responds to this consideration.

## **Principle 5 Landscape**

*Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of Ill designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.*

*Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.*

*Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.*

Comment: The SEPP Design Statement does not justify why ZERO landscape provision on the site responds positively to this control.

## **Principle 6 Amenity**

*Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident Ill being.*

*Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.*

Comment: The SEPP Design Statement does not justify why poor neighbours amenity and sustainability outcomes responds to this consideration.

## **Principle 7 Safety**

*Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.*

*A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.*

Comment: The SEPP Design Statement does not justify why an enlarged crossing to a considerable parking facility and serving facility will be a good outcome for residents crossing this zone, and what precautions the Developer has taken to avoid neighbours from danger. The sub-station will emit low frequency electromagnetic radiation [EMR] close to neighbours habitable rooms and the Developer has not addressed this matter.

## **Principle 8 Housing Diversity and Social Interaction**

*Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.*

*Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.*

*Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.*

Comment: The SEPP Design Statement does not justify why similar forms and type of unit confirmation is the correct diversity and social interaction outcome.

## **Principle 9 Aesthetics**

*Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.*

Comment: The SEPP Design Statement does not justify how a 11.2m development responds to the existing or future local context, with non-compliant density, landscaping, setbacks, and non-compliant

envelope control. How can good aesthetics flourish when the development is so non-compliant to the main controls?

I am concerned that the proposed development does not accord with this main AGP controls

- Site Analysis 3A-1.  
No adequate site analysis has been completed identifying the main envelope controls in plan and section, nor has the proposed development considered my Terrace or my Balcony that face the subject site.
- Orientation 3B-1, 3B-2  
The orientation of the Units presents the majority of the Units without any northerly aspect
- Public Domain Interface 3C-1,3C-2  
The public domain interface is compromised by non-compliance to front building line and setback controls, leaving a cramped zone at the public interface
- Communal and Public Open space 3D-1, 3D-2, 3D-3  
There is inadequate communal and public open space and this is caused by non-compliance to front building line and setback controls, leaving a cramped zone at the public interface, as no consideration of communal space at the upper levels, and replacing those zones by non-compliant density
- Deep Soil Zones 3E-1  
There is no deep soil planting within the site, and this leads to a building that has not been softened by landscape. More compliant front building line and setback controls would allow greater zones for landscape around the perimeter of the development
- Visual Privacy 3F-1, 3F-2  
Non-compliance to rear building line and setback controls, coupled with excessive heights and non-compliance to envelope controls, places proposed Units considerably closer to neighbours than a compliant envelope.
- Facades 4M-1, 4M-2  
The facades have zones where solid wall surfaces prevail. The 11.2m high structure is highly visible from all four roads leading to the site. The façade facing my property completely blocks my Terrace from air, daylight and view
- Roof Design 4N-1  
The roof plant screen is highly visible, and blocks view
- Landscape Design 4O-1, 4O-2  
There is zero landscape provision on the subject site, with no deep soil planting. This is a major deficiency of the design.

## SECTION 7: ENVIRONMENTAL PLANNING INSTRUMENTS LEP & DCP

The following matters are relevant to the development under the LEP 2012:

Provision	Compliance	Consideration
1.2 Aims of Plan	No	The proposal does not comply with the aims of the plan.
Zone B1 Neighbourhood Centre	No	The proposal does not satisfy the zone objectives.
4.3 Height of Buildings	No	A maximum height of <b>8.5m</b> is permitted.  <b>A height at 11.2m is proposed.</b>
4.5A Density controls for certain residential accommodation	No	A maximum of one dwelling per 150sqm of site area is the control, allowing <b>6 Units</b> .  <b>8 Units are proposed</b>
4.6 Exceptions to development standards	See discussion	The application is accompanied by written requests pursuant to Clause 4.6 to vary the height of building development standards.

### LEP 1.2 AIMS OF PLAN

In these proposals the local amenity and environmental outcomes would be challenged by non-compliance.

I contend that the proposed development does adversely affect the character or amenity of the area or its existing permanent residential population by view loss, and other amenity losses.

I contend that the DA fails the aims of this control as follows:

#### *1.2 Aims of Plan*

- (a) to promote development in Pittwater that is economically, environmentally and socially sustainable,*
- (b) to ensure development is consistent with the desired character of Pittwater's localities,*
- (g) to protect and enhance Pittwater's natural environment and recreation areas,*
- (i) to minimise risks to the community in areas subject to environmental hazards including climate change,*
- (j) to protect and promote the health and ill-being of current and future residents of Pittwater.*

The requirements under this clause clearly have not been met.

The proposal exceeds the maximum height in the relevant clauses of the LEP. The proposal therefore is of a larger building envelope than what is provided for by the existing controls and presents excessive bulk and scale onto surrounding properties in a manner which is not consistent with the desired future character of the locality.

## **LEP 2.3 ZONE B1 NEIGHBOURHOOD CENTRE**

Objectives of zone

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- To provide healthy, attractive, vibrant and safe neighbourhood centres.*

The proposal is not 'small scale' and that is the major problem.

Non-compliance to multiple controls makes this self-evident.

- LEP 4.3 Building Height 11.2 v 8.5m [32% non-compliance]
- LEP 4.5A Density Controls 8 Units v 6.2 Units [29% non-compliance]
- DCP C1.1 Landscaping 20% v 0% [>1000% non-compliance]
- DCP D3.6 Front building line 3.5m v 2.7m [30% non-compliance]
- DCP D3.7 Side and rear building line 3.0m v 0 [>1000% non-compliance]
- DCP D3.9 Building Envelope 4.2m+45deg. [major non-compliance]

## **LEP 4.3 HEIGHT OF BUILDINGS**

*(1) The objectives of this clause are as follows:*

*(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

The total disregard to the heights of neighbour's dwellings at below 8.5m maximum building height, shows complete contempt to the compliance to development standards.

The extent of the non-compliance runs the complete elevational width of the proposed dwelling, and exceeds the control by over 2.88m.

The objectives of this clause have not been met:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

*Comment: The height and scale of the proposed development is not consistent with the desired character of the locality, with both neighbours dwelling maintaining strict compliance with the 8.5m development standard.*

- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

*Comment: The height and scale of the proposed development is not consistent with the desired character of the locality, with both neighbours dwelling maintaining strict compliance with the 8.5m development standard.*

- (c) to minimise any overshadowing of neighbouring properties,*

*The excessive additional height of 2.88m casts considerable additional shadow. I refer to that matter later in this Submission.*

- (d) to allow for the reasonable sharing of views*

*The excessive height represented by the above envelope description, takes Tenacity Views from my residence in a devastating manner. I refer to that matter later in this Submission.*

- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*

The excessive additional height of 2.88m, and the failure of the building to step down the slope to follow the topography is a major failure of the proposed development

*(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

The visual impacts of this proposed development on the natural environment of this highly visible area creates a jarring effect to the landscape.

I bring to the attention of Council previous refusals of Shop Top Housing DA, where similar non-compliant maximum building heights above controls I re express reasons for refusal by Council.

- DA 2019 0512, requested additional units above the maximum building height and that DA was refused by NBLPP on 1 April 2020.
- DA 2019 0845, requested additional units above the maximum building height and that DA was refused by NBLPP on 5 February 2020.
- DA 2019 0663, requested additional units above the maximum building height and that DA was refused by NBLPP on 27 November 2019.

There is consistency within Council to refuse Shop Top Housing DA where they exceed the maximum building height, and in this particular DA the excessive height causes amenity harm. DA 2018 1870, and DA 2018 1669 are other recent refusals by NBLPP.

I bring to the attention of Council Officer's deliberation on another Shop Top Housing DA in Whale Beach, in a sensitive area, where strict adherence to the main height, setback and envelope controls is being enforced through amended plan submission:

- DA 2020 0442; 231 Whale Beach Road Whale Beach

Not only does the proposed development grossly exceed maximum building height in a sensitive zone, but it also exceeds density controls. I address that in the following section.

On these matters alone the DA must be REFUSED.

#### **LEP 4.5A DENSITY CONTROLS FOR CERTAIN RESIDENTIAL ACCOMMODATION**

*(1) The objectives of this clause are as follows—*

*(a) to achieve planned residential density in certain zones,*

*(b) to ensure building density is consistent with the desired character of the locality.*

*(2) Development consent must not be granted to development for a purpose specified in Column 1 of the table to this clause on land in the zone shown opposite that development in Column 2 of that table unless the development complies with the density requirements specified in Column 3 of that table:*

- *Shop Top Housing*
- *B1 Neighbourhood Centre*
- *A maximum of one dwelling per 150sqm of site area*

The proposed development exceeds this control.

The Site area is 930sqm, and that only supports 6 Units.

8 Units are proposed, and therefore does not comply with the development standard.

The building density is not consistent with the desired character of the locality, and this is amply demonstrated by the non-compliance to multiple LEP and DCP controls, and the poor streetscape outcomes with a 11.2m high development clearly visible from all four surrounding streets that are within a highly protected E4 Environmental Living Zone.

On these matters alone the DA must be REFUSED.

#### **LEP CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**

Based upon the failure to accord with any of the objectives of Objectives of Heights of Buildings, the Clause 4.6 Application must fail.

*(1) The objectives of this clause are as follows:*

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Clause 4.6(4)(a)(i) assessment:

The written request fails to adequately address the matters contained in Clause 4.6(3)(a) and (b) as follows:

- The height of the building is in excess of 8.5m, and rises to 11.2m
- There are insufficient environmental planning grounds to justify contravening the height of buildings development standard nor has it been established as reasonable or unnecessary;

- The assessment does not agree with the applicant's statement that excavation is limited and is an appropriate response to the topography of the site. The assessment finds that the proposal involves excessive cut which is not appropriate for the site or its surrounds;
- The bulk and scale of the proposed development is out of character with the area;
- The proposed development would result in adverse amenity impacts for the surrounding area;
- The proposed development results in a dominance of built form over landscape; and
- The proposal results in amenity loss for an adjoining property

Clause 4.6(4)(a)(ii) assessment:

Clause 4.6(4)(a)(ii) requires the consent authority to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone in which the development is proposed to be carried out.

The proposed development is considered against the objectives of the height of buildings development standard, as described below:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*
- (i) to share public and private views:*

Consideration:

- The proposed development is poorly designed so as to not minimise its visual impact.
- The proposal is excessive in height, and includes a departure from the heights of buildings development standards;
- The proposed new development is poorly designed and is not compatible with the desired future character of the area in terms of building height and roof form;
- The proposal would have an adverse impact on its surrounds.
- The proposed development has not been skilfully designed to minimise adverse bulk and scale impacts;
- The proposal has not minimised the adverse effects of bulk and scale;
- The proposal does not provide adequate spatial relief to adjoining properties;
- The proposal results in a dominance of built form over landscape; and
- The proposal includes substantial departures from the building envelope development standards which contribute to excessive bulk.

Statement as to satisfaction:

The assessment of any request for variation against the objectives of the development standard finds that the objectives of the development standard are not satisfied.

Statement as to satisfaction:

The assessment of this request for variation against the objectives of the zone finds that the objectives of the zone are not satisfied.

## SECTION 8: PITTWATER DEVELOPMENT CONTROL PLAN 2014

The following matters are relevant to the development under **PDCP 2014**:

Provision	Compliance with Control	Compliance with Objectives
A4.3 Bilgola Locality	No	No
C1.1 Landscaping	No	No
C1.4 Solar Access	No	No
C1.5 Visual Privacy	No	No
C1.6 Acoustic Privacy	No	No
C1.24 Public Road Reserve – Landscaping & Infrastructure	No	No
C1.25 Plant, Equipment Boxes and lift Over-Run	No	No
D Locality Specific Development Controls		
D3 Bilgola Locality	No	No
D3.1 Character as viewed from a public place	No	No
D3.6 Front Building Line	No	No
D3.7 Side and Rear Building line	No	No
D3.9 Building Envelope	No	No
D3.15 Scenic Protection Category One Areas	No	No

### A4.3 BILGOLA LOCALITY

Desired Future Character

*The Bilgola locality will remain primarily a low-density residential area with dwelling houses a*

*maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.*

The DCP makes it very clear that the locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

The proposed development despite being controlled by 8.5m maximum building heights, and numerous envelope controls, and landscape controls, ignores the desired future character of defined and the heavily controlled by DCP and LEP controls.

## **C1.1 LANDSCAPING**

*A built form softened and complemented by landscaping. (En)*

*Landscaping reflects the scale and form of development. (En)*

*Retention of canopy trees by encouraging the use of pier and beam footings. (En)*

*Development results in retention of existing native vegetation. (En)*

*Landscaping results in the long-term retention of Pittwater's locally native tree canopy. (En)*

*Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species (En)*

*Landscaping enhances habitat and amenity value. (En, S)*

*Landscaping results in reduced risk of landslip. (En, Ec)*

*Landscaping results in low watering requirement. (En)*

The proposal does not maintain a general dominance of landscape over built form. The landscaped area is set at ZERO!

The proposed development would result in a built form that would have a number of adverse amenity impacts on surrounding properties, as identified within this Submission.

## **C1.4 SOLAR ACCESS**

### **Outcomes**

*Residential development is sited and designed to maximise solar access during mid-winter. (En)*

*A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)*

*Reduce usage and/dependence for artificial lighting. (En)*

### **Controls**

*The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.*

*Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).*

*Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid winter.*

*Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.*

*The proposal must demonstrate that appropriate solar access is achieved through the application of the Land and Environment Court planning principle for solar access.*

The proposed development takes solar access by non-compliant development, and that is totally unreasonable and unacceptable.

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.”*

I contend that the overshadowing arises out of poor design. The design does not respect building height, and multiple envelope controls, and must be considered ‘poor design’.

The Applicant has not submitted hourly solar diagrams to fully assess the solar loss. I ask Council to obtain these diagrams.

The loss of sunlight is directly attributable to the non-compliant envelope.

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 follows:

- *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 a highly controlled B1 Zone, of maximum building heights, setbacks, envelope controls and landscape controls that have all been exceeded.

- *The amount of sunlight lost should be taken into account, as ill 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. The amount of sunlight that will be lost will only be able to be fully considered once solar elevational drawings are submitted. 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, with a compliant building height and envelope control, 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 22.5° 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. 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 ill as the existing development.*

The area is not currently undergoing change, the LEP and DCP controls have not altered for many years.

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. It is suggested that a more skilful design of the

development, with a compliant building height, and envelope control, would result in less impact in regard to solar access. It is requested that Council seek amended plans for the development to reduce the impact of the development, and these matters are addressed latter in this Written Submission.

The windows in question are my highly used rooms, and my private open space. What has been submitted gives the very clear indication that the outcome is not in accordance with controls.

## **C1.5 VISUAL PRIVACY**

### **Outcomes**

*Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)*  
*A sense of territory and safety is provided for residents. (S)*

### **Controls**

*Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).*

*Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.*

*Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.*

The development's design does not adequately preserve the privacy of the neighbouring properties.

The terraces and floor plates above the overall height controls and boundary envelope controls do not assist with achieving the privacy objectives

There are a number of windows and decks that have a direct sight line to windows and decks on my property.

I am concerned to the glazed surfaces facing my property.

I ask for these to be protected by privacy screens.

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, with 8.5m building height, setback, and side boundary envelope control.

*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.

*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 main living areas, it is considered that the living areas will result in an unacceptable privacy breach. The proposed windows facing the 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 privacy screens.

*Principle 6: Apart from adequate separation, the most effective way to protect privacy is by the 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 privacy screens would reduce the impact of the development.

*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 light.*

Response: Little landscaping is proposed, and would not greatly assist.

*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.

As Dickson C pointed out in *Rose & Sanchez v Woollahra Municipal Council* [2016] NSWLEC 1348 (19 August 2016) at [78]:

*In applying these criteria Meriton v Sydney City Council [2004] NSWLEC 313 at [45] clarifies the scope of visual privacy in the context of residential design as: the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.*

That is my great concern - the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.

## **C1.6 ACOUSTIC PRIVACY**

### **Outcomes**

*Noise is substantially contained within each dwelling and noise from any communal or private open space areas are limited. (S)*

*Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or private open space areas (S)*

### **Controls**

*Noise-sensitive rooms, such as bedrooms, should be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like.*

*Noise generating plants including pool/spa motors, air conditioning units and the like shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.*

*Developments must comply in all respects with the Protection of the Environment Operations Act 1997, and other relevant legislation.*

I am concerned regarding noise from roof plant.

I am also concerned that proper hours of operation for servicing vehicles, waste removal vehicles, and external seating of cafes and restaurants to be restricted from 7am to 6pm.

Council must obtain a more detailed Acoustic Report to advise on the noise generation to my residence from these operations.

I am concerned that other residential apartments are positioned such that there will be little acoustic separation.

#### **C1.25 PLANT, EQUIPMENT BOXES AND LIFT OVER-RUN**

##### **Outcomes**

*To achieve the desired future character of the Locality.*

*The bulk and scale of the built form is minimised. (En, S)*

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

*To achieve reduction in visual clutter. (En, S)*

*The appropriate location and design of noise generating equipment.*

##### **Controls**

*Where provided, plant and equipment boxes, air conditioning units and lift over-runs are to be integrated internally into the design fabric of the built form of the building. Council does not encourage air conditioning units on the roof of residential flat buildings and multi dwelling housing. The location of air conditioning units shall be indicated on development assessment plans for approval at the time of Development Application lodgement.*

*Locate and design all noise generating equipment such as mechanical plant rooms, mechanical equipment, air conditioning units, mechanical ventilation from car parks, driveway entry shutters, garbage collection areas or similar to protect the acoustic privacy of workers, residents and neighbours.*

I am concerned regarding the noise generating equipment, and I ask for strict compliance to standards.

I assume that one or more of the retail outlets will be used for food preparation. Sydney Water will require a grease trap, and as they are the regulators, they will demand each of the food outlets to

install a minimum 1000 litre grease trap. Also, each grease trap will have to be pumped out by a service tanker every 12 weeks. Could the Developer locate the grease traps on the DA drawings.

## D LOCALITY SPECIFIC DEVELOPMENT CONTROLS

### D3.1 Character as viewed from a public place

I am concerned that the outcomes and controls on this clause have not been properly assessed by the Developer.

#### **Outcomes**

*To achieve the desired future character of the Locality.*

*To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)*

*To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

*The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)*

*High quality buildings designed and built for the natural context and any natural hazards. (En, S)*

*Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)*

*To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.*

*To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.*

*To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)*

#### **Controls**

*Buildings which front the street must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality. Blank street frontage facades without windows shall not be permitted.*

*Walls without articulation shall not have a length greater than 8 metres to any street frontage.*

*Any building facade to a public place must incorporate at least two of the following design features:*

- i. entry feature or portico;*
- ii. awnings or other features over windows;*

- iii. *verandahs, balconies or window box treatment to any first floor element;*
- iv. *recessing or projecting architectural elements;*
- v. *open, deep verandahs; or*
- vi. *verandahs, pergolas or similar features above garage doors.*

*The bulk and scale of buildings must be minimised.*

*Garages, carports and other parking structures including hardstand areas should not be the dominant site feature when viewed from a public place. Parking structures must be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser.*

*Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.*

*Television antennas, satellite dishes and other telecommunications equipment must be minimised and screened as far as possible from public view.*

*General service facilities must be located underground.*

*Attempts should be made to conceal all electrical cabling and the like. No conduit or sanitary plumbing is allowed on facades of buildings visible from a public space.*

I contend that the proposed development fails to meet these requirements:

- *To achieve the desired future character of the Locality.*  
The character of an urban 3-storey 11.2m high development, that has no landscape provision, with no setback or envelope control adherence is not the desired future character of the locality
- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)*  
There is no sensitivity to the general one and two storey residence scale, nor the scale of the remaining commercial property on the island site.
- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*  
Scale and Density is not in keeping with the area, providing an urban solution more suited to Dee Why town centre, rather than the leafy Bilgola Plateau.
- *The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)*  
There is no landscaping on site, but simply a few street trees.
- *High quality buildings designed and built for the natural context and any natural hazards. (En, S)*

The building has not been designed for the character of Bilgola Plateau, but one of a more urban environment town centre.

- *Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)*

The building will read as a 11.2m high 'block' structure from the main street approaches, when all three levels and the plant screen will be fully on display.

### **D3.2 Scenic protection - General**

#### **Outcomes**

*Achieve the desired future character of the Locality.*

*Scenic bushland and geographical landforms are the predominant features of Bilgola with the built form being the secondary component of the visual catchment. (En, S)*

*Preserve scenic quality as part of the recreational amenity. (S)*

#### **Controls**

*Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.*

As referred to above the proposed development does not achieve the desired future character of the Locality, nor the scenic bushland and geographical landforms are the predominant features of Bilgola with the built form being the secondary component of the visual catchment, nor preserve scenic quality as part of the recreational amenity. There will be very poor impacts from viewing a 11.2m high block structure from surrounding streetscape.

### **D3.6 Front building line**

#### **Outcomes**

*Achieve the desired future character of the Locality.*

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

*The amenity of residential development adjoining a main road is maintained. (S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

*Vehicle manoeuvring in a forward direction is facilitated. (S)*

*To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

*To encourage attractive street frontages and improve pedestrian amenity.*

*To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*

#### **Controls**

*The minimum front building line shall be in accordance with the following table.*

Land zoned B1 Neighbourhood Centre	3.5m
------------------------------------	------

The proposed development does not achieve the desired future character of the Locality, with the amenity of residential development adjoining a main road is not maintained. The proposed development does not enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment and does not ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.

The front building line has ZERO front building line setback in the majority of the site.

### D3.7 Side and rear building line

#### Outcomes

*To achieve the desired future character of the Locality. (S)*

*The bulk and scale of the built form is minimised. (En, S)*

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

*To encourage view sharing through complimentary siting of buildings, responsive design and Ill-positioned landscaping.*

*To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)*

*Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)*

*Flexibility in the siting of buildings and access. (En, S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

*To ensure a landscaped buffer between commercial and residential zones is established.*

#### Controls

*The minimum side and rear building line for built structures including pools and parking structures other than driveways, fences and retaining walls, shall be in accordance with the following table:*

Land zoned B1 Neighbourhood Centre adjoining land zoned R2 Low Density Residential, E4 Environmental Living, RE1 Public Recreation, or E2 Environmental Conservation	3.0m along that adjoining side or rear boundary.
--	--

*For residential flat buildings and multi dwelling housing:*

*Where the wall height is 3 metres or less, the minimum side and rear boundary setback shall be 3 metres.*

Where the wall height is more than 3 metres above ground level (existing) the minimum distance from any point on the external wall of the building and a side or rear boundary shall not be less than the distance calculated in accordance with the following:

$$S = 3 + \frac{H - 2}{4}$$

where

*S* = the distance in metres

*H* = the height of the wall at that point measured in metres above existing ground level

Side and rear setbacks for residential flat buildings and multi dwelling housing may be varied under the following circumstances provided Council is satisfied that the adjoining properties will not be adversely affected and that the outcomes of this clause are achieved:

Where it can be demonstrated that the objectives of the controls can be achieved without strict adherence to the standards.

Where the site constraints make strict adherence to the setback impractical and the applicant can demonstrate that development complies with the objectives of this DCP.

Where strict compliance with these requirements will adversely impact on the views of adjoining residential properties.

Minor encroachments into setback areas are permissible, including roof eaves, sunhoods, gutters, downpipes, chimneys, light fittings, electricity and gas meters, TV aerials and satellite dishes.

The proposed development has ZERO setback in the majority of the site, and fails to accord with outcomes and controls.

This is a major concern particularly the 'zero' rear setback. The proposed development present blank wall surfaces to cover my Terrace and my Balcony, destroying my access to air, solar, and view.

### **D3.9 Building envelope**

#### **Outcomes**

*To achieve the desired future character of the Locality. (S)*

*To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

*To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*

*The bulk and scale of the built form is minimised. (En, S)*

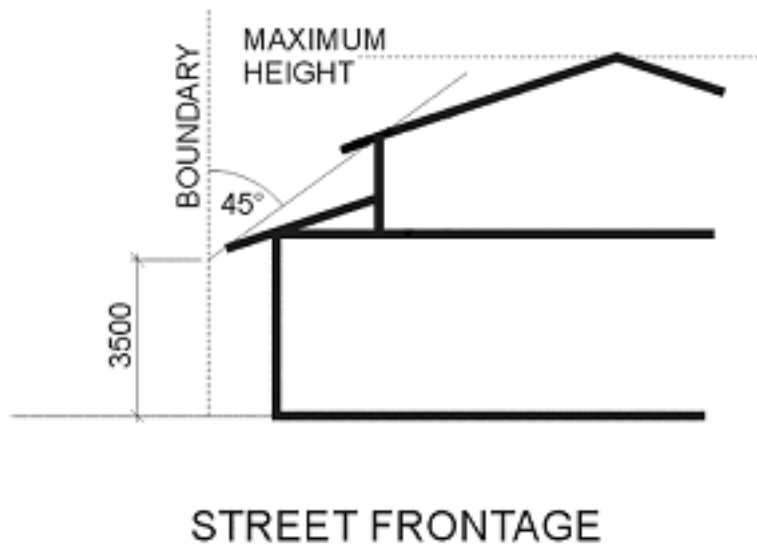
*Equitable preservation of views and vistas to and/or from public/private places. (S)*

*To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

#### **Controls**

*Buildings are to be sited within the following envelope:*



*Residential flat buildings and multi dwelling housing:*

*Planes are to be projected at 45 degrees from a height of 4.2 metres above ground level (existing) at the side boundaries to the maximum building height (refer to Pittwater Local Environmental Plan 2014).*

The proposed development has ignored the 4.2m + 45 Deg consideration, and in doing so had not accorded with outcomes.

This is a major concern particularly the 'zero' rear boundary setback. The proposed development present blank wall surfaces to cover my Terrace and my Balcony, destroying my access to air, solar, and view.

### **D3.10 Landscaped Area - General**

#### **Outcomes**

*Achieve the desired future character of the Locality. (S)*

*The bulk and scale of the built form is minimised. (En, S)*

*A reasonable level of amenity and solar access is provided and maintained. (En, S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

*Conservation of natural vegetation and biodiversity. (En)*

*Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)*

*To preserve and enhance the rural and bushland character of the area. (En, S)*

*Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management. (En, S)*

### **Controls**

*The total landscaped area on land zoned R2 Low Density Residential shall be 50% of the site area.*

The proposed development has ignored the landscape provision consideration, and in doing so had not accorded with outcomes.

## **D3.15 Scenic Protection Category One Areas**

### **Outcomes**

*To achieve the desired future character of the Locality.*

*Achieve the desired future character of the Locality. (En,S)*

*To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront. (En,S).*

*Maintenance and enhancement of the tree canopy. (En,S)*

*Colours and materials recede into a well vegetated natural environment. (En,S)*

*To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component. (En, S)*

*To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.*

*To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

*To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.*

*Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.*

### **Controls**

*Screen planting shall be located between structures and boundaries facing waterways.*

*Canopy trees are required between dwellings and boundaries facing waterways and waterfront reserves.*

*Development is to minimise the impact on existing significant vegetation.*

*The applicant shall demonstrate the retention and regeneration of existing native vegetation outside of the immediate area required to carry out the development.*

*The development is to incorporate measures for planting and maintenance of native vegetation within those areas which are already cleared, and which are not required to be cleared to allow for the development.*

*The siting, building form, orientation and scale of the development shall not compromise the visual*

*integrity of the site by removal of canopy trees along ridges and upper slopes.*

*The development must incorporate the use of unobtrusive and non-reflective materials and the colours of exterior surfaces shall help blend structures into the natural environment.*

*Applicants are to demonstrate that proposed colours and materials will be dark and earthy.*

The proposed development has not accorded with outcomes and controls.

## **SECTION 9: NSW LEC PLANNING PRINCIPLES**

I bring to the attention of Council numerous **NSW LEC Planning Principles** that have relevance to this DA.

In **Veloshin**, [**Veloshin v Randwick Council 2007**], NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

*“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”*

### **Commentary:**

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

In **Davies**, [**Davies v Penrith City Council 2013**], NSW LEC considered General Impact. Davies suggest that Council should consider:

*“Would it require the loss of reasonable development potential to avoid the impact?”*

*Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?*

*Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?”*

### **Commentary:**

The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal.

In **Veloshin, [Veloshin v Randwick Council 2007]**, NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

*“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”*

**Commentary:**

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

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”*

**Commentary:**

The non-compliant elements of the proposed development, particularly caused from the substantial non-compliance all envelope controls finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context’*

**SECTION 10: AMENDED PLANS: PROPOSED CONDITIONS OF CONSENT TO ANY APPROVAL:**

I ask that Council request that the Applicant submit Amended Plans to resolve these matters in full, prior to determination.

These conditions would preferably all be dealt with under resubmission of Amended Plans, or by a withdrawal of this DA and a submission of a new DA.

I present them for Council’s consideration.

- Reduce wall height at street frontages to a maximum of RL 148.87 to match neighbours parapet and to reduce scale and bulk
- Delete all units at Level 2, and the roof to become non-trafficable
- Position roof plant centrally, and no higher than RL 150.0 [8.5m above contour 141.5]

- Building Height to reduce to 8.5m to LEP 4.3 Building Height
- Reduced number of Units to a maximum of 6 to comply with LEP 4.5A Density Controls
- Adherence to DCP D3.9 Building Envelope to 45 degree
- Adherence to DCP D3.6 Front building line to 3.5m
- Adherence to DCP D3.7 Side and rear building line to 3.0m
- Adherence to DCP C1.1 Landscaping to better screen proposed development
- **new parapet not to exceed RL 147.1 to be positioned under the sill level of the Terrace facing the subject site.**
- Privacy screens to residential units facing my property
- External seating to be time limited: 7am to 6pm, and acoustic levels not to exceed 33 + 5 dB[A]
- Deliveries and Waste Removal to be time limited: 7am to 6pm, and acoustic levels not to exceed 33 + 5 dB[A]
- Roof Plant compliance

## SECTION 11

### ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

Applicable regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia and *Home Building Act 1989*, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection may be addressed by appropriate consent conditions in the event of an approval.

### LIKELY IMPACTS OF THE DEVELOPMENT

This assessment has found that the proposal will have a detrimental impact on the natural and built environments pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.

### SUITABILITY OF THE SITE

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

### PUBLIC INTEREST

The proposal is not in the public interest because it results in a development of excessive bulk and scale which has adverse amenity impacts on adjoining properties and the broader locality.

## SECTION 12: CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, Council's LEP & DCP and other relevant policies.

The applicant's written requests pursuant to clause 4.6 of Council's LEP does not adequately address the matters required to be demonstrated in subclause 4.6(3). The assessment of the written requests has found that the proposed development will not be in the public interest as defined by clause 4.6 of the LEP because it is not consistent with the objectives of the particular standards and the objectives for development within the zone in which the development is proposed to be carried out.

The application must be recommended for refusal.

The proposed development does not satisfy the relevant objectives of the LEP and the relevant outcomes and controls contained in the DCP as they are reasonably applied to an application proposing this type of development.

- LEP 4.3 Building Height 11.2 v 8.5m [32% non-compliance]
- LEP 4.5A Density Controls 8 Units v 6.2 Units [29% non-compliance]
- DCP C1.1 Landscaping 20% v 0% [>1000% non-compliance]
- DCP D3.6 Front building line 3.5m v 2.7m [30% non-compliance]
- DCP D3.7 Side and rear building line 3.0m v 0 [>1000% non-compliance]
- DCP D3.9 Building Envelope 4.2m+45deg. [major non-compliance]

If the Applicant does not give Council immediate confirmation that the above matters will be rectified by resubmission of Amended Plans based upon my consideration of a more skilful design, and corrects all incorrect information on the DA drawings, then Council has no other option than to **REFUSE** this DA for the reasons stated in this Written Submission.

In assessing the impact of a development proposal upon a neighbouring property, what was said by Roseth SC in *Pafbum v North Sydney Council* [2005] NSWLEC 444 (16 August 2005), at [19]-[24], is extremely helpful:

*19 Several judgments of this Court have dealt with the principles to be applied to the assessment of impacts on neighbouring properties. Tenacity Consulting v Warringah [2004] NSWLEC 140 dealt with the assessment of views loss; Parsonage v Ku-ring-gai Council [2004] NSWLEC 347 dealt with the assessment of overshadowing; while Meriton v Sydney City Council [2004] NSWLEC 313 and Super Studio v Waverley Council [2004] NSWLEC 91 dealt with the assessment of overlooking.*

*20 Five common themes run through the above principles. The first theme is that change in impact may be as important as the magnitude of impact.*

*21 The second theme is that in assessing an impact, one should balance the magnitude of the impact with the necessity and reasonableness of the proposal that creates it.*

*22 The third theme is that in assessing an impact one should take into consideration the vulnerability of the property receiving the impact.*

*23 The fourth theme is that the skill with which a proposal has been designed is relevant to the assessments of its impacts. Even a small impact should be avoided if a more skilful design can reduce or eliminate it.*

*24 The fifth theme is that an impact that arises from a proposal that fails to comply with planning controls is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.*

In the case of the present development proposal:

1. the magnitude of impact upon the amenity, use and enjoyment by us of my property is certainly not insignificant, in that:
  - the visual privacy impacts from the proposed elevated units into my property well above maximum building height, well above density controls, and positioned within the building envelope control, within the front building line control, and within the setback controls.
  - the solar loss impacts from the non-compliant envelope into my property well above maximum building height, well above density controls, and positioned within the building envelope control, within the front building line control, and within the setback controls.
  - the acoustic privacy impacts of noise from external restaurant seating, deliveries and waste collection, and from external plant
  - the poor streetscape outcomes from a proposed building envelope that exceeds all built form envelope controls, including Excessive Building Height, Density Control, Building Envelope, Front Building Line, Setbacks, and landscaping
  - an amended scheme which was more compliant with these controls would result in more reasonable amenity outcome;
2. my property is vulnerable, being directly adjacent and to the north-west of the subject site;
3. the lack of attention in the design of the development proposal as regards the impacts of the proposed development on my property in terms of height, bulk, visual privacy, acoustic privacy, overshadowing is relevant to the assessments of those impacts, such that even a small impact should be avoided if a more skilful design can reduce or eliminate it;

4. the fact that the proposal fails to comply with a number of important planning controls is much more difficult to justify than would otherwise be the case with a complying proposal; and
5. the proposal involves non-compliance with a number of principal planning control and this is an indicator of overdevelopment of the site.

In summary, I have, as Roseth SC pointed out in Pafbum, a legitimate expectation that the development to take place on the subject property '*will comply with the planning regime*' in the present circumstances.

In addition, the close proximity of the proposed development to my property and the overall height of the proposed development will create an unacceptable privacy impact, as respect to the use and enjoyment of my land.

The proposed development requires significant modification so as to render it acceptable and consistent with the current planning controls.

The outcome is a building that causes poor amenity outcomes and other amenity loss concerns due to non-compliance to multiple residential outcomes and controls.

The development does not satisfy the objectives of the standard and will present poor residential amenity consequences.

The identified non-compliances have not been appropriately justified having regard to the associated objectives, outcomes and controls.

The subject site is of a large size, and there is no reason, unique or otherwise, why a fully compliant solution cannot be designed on the site, to avoid amenity loss.

Having given due consideration to the relevant considerations pursuant to 4.15 of the Environmental Planning & Assessment Act 1979 (as amended) it has not been demonstrated that the proposed development is appropriate for approval.

This application results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

In consideration of the proposal and the merit consideration of the development, the proposal is not considered to be consistent with the objectives, outcomes and controls of the DCP and objectives, aims, outcomes and controls of the LEP.

The resultant development is not considered to be an appropriate outcome for the site as it fails the balance between the development of the site and the maintenance of a reasonable level of amenity for adjoining properties.

The processes and assessments have not been satisfactorily addressed.

The DA scheme submitted requires to be amended, and I ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, then I ask Council to simply issue a refusal.

I expect that the final determination will be carried out by the LPP, due to the numerous excessive non-compliances to outcomes and controls, if not refused earlier for the reasons stated within this Submission.

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

I expect that on such a sensitive site, the Applicant should be charged by Council to deliver a totally compliant scheme to LEP and DCP outcomes and controls.

There is no excuse that neighbours amenity must suffer due to non-compliance to the controls.

I contend that the Development Application is not in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, LEP and DCP and other relevant policies.

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, LEP & DCP and other relevant policies.

I will welcome the opportunity to further expand on any of the issues once Amended Plans are submitted, and once templates and height poles are erected based upon the reductions identified within this Submission.

If this does not occur the Development Application should be REFUSED by Council.

Yours faithfully,

**Mr Barrie Sutherland**  
**3/1 Bilambie Ave**  
**Bilgola Plateau**

## SECTION 13: APPENDIX A CONDITIONS OF CONSENT

Compliance with other Departments, Authority or Service Requirement

Prescribed Conditions

- Reduce wall height at street frontages to a maximum of RL 148.87 to match neighbours parapet and to reduce scale and bulk
- Delete all units at Level 2, and the roof to become non-trafficable
- Position roof plant centrally, and no higher than RL 150.0 [8.5m above contour 141.5]
- Building Height to reduce to 8.5m to [LEP 4.3 Building Height](#)
- Reduced number of Units to a maximum of 6 to comply with [LEP 4.5A Density Controls](#)
- Adherence to [DCP D3.9 Building Envelope to 45 degree](#)
- Adherence to [DCP D3.6 Front building line to 3.5m](#)
- Adherence to [DCP D3.7 Side and rear building line to 3.0m](#)
- Adherence to [DCP C1.1 Landscaping](#) to better screen proposed development
- **new parapet not to exceed RL 147.1 to be positioned under the sill level of the Terrace facing the subject site.**
- Privacy screens to residential units facing my property
- External seating to be time limited: 7am to 6pm, and acoustic levels not to exceed 33 + 5 dB[A]
- Deliveries and Waste Removal to be time limited: 7am to 6pm, and acoustic levels not to exceed 33 + 5 dB[A]
- Roof Plant compliance

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 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 least above in main body of Submission*]

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.

Pre-commencement Dilapidation Report

Compliance with standards [demolition]

Compliance with standards

Boundary Identification Survey

Structural Adequacy & Excavation Work

Geotechnical Report Recommendations to be incorporated into designs and structural plans

Engineering Assessment

Engineers Certification of Plans, including all retaining walls

Tanking of Basement Level

Installation & Maintenance of Sediment & Erosion Control

Demolition Traffic Management Plan

Construction Traffic Management Plan

Waste Management Plan

Waste & Recycling Requirements

Public Domain Plan

Soil and Water Management Program

Shoring of Council's Road Reserve

Vehicle Crossing Application

Pedestrian sight distance at property boundary

Location of security gate and intercom system

Minimum driveway width

Access driveway

Allocation of parking spaces

On-site Stormwater Detention Details

Stormwater Disposal

Sydney Water

Water Quality Management

External finishes to Roof

Colours & Materials

New Landscaping Plan

Project Arboreast

Tree Protection

Tree Trunk, Root and Branch Protection  
Root Mapping  
Tree Removal within the Road Reserve  
On slab landscape planting and associated works

Mechanical plant location  
AC Condenser Units

Design Impact on processes and public/private amenity  
No excavation within 1m of boundary  
Protection of Neighbours assets

Pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the boundary

Plant room and equipment for operational conditions - Noise and vibrations

Noise from all plant rooms including roof top mechanical plant room, mechanical ventilation for car parks, extraction units and exhaust fans, air condition units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open.

Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

No further roof plant area or installation than shown on the DA drawings to be allowed to be added by Modification DA in the future under any circumstances.

### **Conditions that must be addressed prior to any commencement**

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

Pedestrian Sight Distance at Property Boundary  
Demolition and Construction Traffic Management Plan  
On Street Work Zones and Permits  
Kerbside Parking Restrictions

Project Arboreast  
Tree Removal  
Tree Removal in the road reserve  
Tree Trunk, Branch, and Root Protection

Tree protection  
Tree and vegetation removal from property

### **Conditions to be complied with during demolition and building works**

Road Reserve  
Removing, handling and disposing of asbestos  
Demolition works – Asbestos  
Contamination management

Property Boundary levels  
Survey Certificate

Implementation of Demolition Traffic Management Plan  
Implementation of Construction Traffic Management Plan  
Traffic Control during Road Works  
Vehicle Crossings  
Footpath Construction

Geotechnical issues  
Detailed Site Investigation, Remedial Action Plan & Validation  
Installation and maintenance of sediment controls  
Building materials  
Rock Breaking  
Protection of adjoining property  
Vibration at 2.5mm/sec with a halt at 2.0mm/sec  
No excavation within 3m of boundary

Waste Management during development  
Waste/Recycling Requirements

Tree Protection –Supervision of Works  
Tree and vegetation protection  
Tree Condition  
Native vegetation protection  
Protection of rock and sites of significance  
Aboriginal heritage

Protection of Sites of Significance  
Notification of Inspections

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

Post Construction Dilapidation Report

Validation for Remediation

Certification of Structures

Geotechnical Certificate

Environmental Reports Certification

Landscape Completion Certification

Certification of Civil Works & Works as executed data on council land

Fire Safety Matters

Retaining Wall

Required Planting

Positive Covenant and Restriction as to User for On-site stormwater disposal structures

Positive Covenant for the maintenance of stormwater pump out facilities

Contamination Remediation, Validation and Site Audit Statement

Reinstating the damaged road reserve during construction

Condition of retained vegetation

Stormwater disposal

Works as executed drawings - stormwater

Installation of solid fuel burning heaters:

Certification of solid fuel burning heaters

Required Tree Planting

Required Planting

Acoustic treatment of pool filter

Noise Nuisance from plant

Lighting Nuisance

Swimming pool requirements

Garbage and Recycling Facilities

House number Building Number

Waste Management Confirmation

Waste and Recycling Facilities Certificate of Compliance

Waste/Recycling Compliance Documentation

Positive Covenant for Waste Services

Authorisation of legal documentation required for waste services

Privacy Screens

Reinstatement of Kerbs

Control of noise, odour and vibrations from equipment within plant rooms and ventilation systems connected with the building to ensure noise and vibration from this equipment does not impact on the health and ill-being of persons living within the complex and other surrounding premises.

Noise and vibrations. Noise from all plant must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open. Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

Mechanical Ventilation certification: Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668: the use of mechanical ventilation.

### **Ongoing Conditions that must be complied with at all times**

Approved Land Use

Maintenance of solid fuel heater

Operation of solid fuel heaters

Landscape maintenance

Landscaping adjoining vehicular access

Maintenance of stormwater treatment measures

Retention of Natural Features

No additional trees or scrub planting in viewing or solar access corridors of neighbours

Environmental and Priority Weed Control

Control of weeds

No planting environmental Weed

Maintain fauna access and landscaping provisions

Works to cease if heritage item found

Dead or injured wildlife

Noise

Noise Nuisance from plant

Swimming pool filter, pump and AC units [noise]

Outdoor lighting

Lighting Nuisance

Plant room and equipment for operational conditions - Noise and vibrations

Loading and Unloading vehicles

