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**Subject:** DA 2022 1425; 132A Queens Parade East Newport 2106 WRITTEN  
SUBMISSION: LETTER OF OBJECTION SUBMISSION: BOSHER

**Attachments:** BOSHER WS.docx;

# SUBMISSION: BOSHER

a written submission by way of objection

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134 Queens Parade East  
Newport  
NSW 2106

11 October 2022

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RE: DA 2022 1425; 132A Queens Parade East Newport 2106

WRITTEN SUBMISSION: LETTER OF OBJECTION  
SUBMISSION: BOSHER

Dear Sir,

This document is a written submission by way of objection lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

We are being assisted by a very senior experienced consultant in the preparation of this Written Submission.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, we ask Council to REFUSE this DA.

## CONTENTS

### A. EXECUTIVE SUMMARY

### B. FACTS

#### 1. THE PROPOSAL

2. THE SITE

3. THE LOCALITY

4. STATUTORY CONTROLS

C. CONTENTIONS THAT THE APPLICATION BE REFUSED

1. CONTRARY TO AIMS OF LEP

2. CONTRARY TO ZONE OBJECTIVES

3. GROUND LEVEL EXISTING

4. EXCESSIVE BUILDING HEIGHT

5. EXCESSIVE WALL HEIGHT & NUMBER OF STOREY

6. HERITAGE CONSERVATION

7. LANDSCAPE AREAS

8. STREETSCAPE AND BUILDING DESIGN

9. CARPORT AND GARAGE DESIGN

10. STORMWATER MANAGEMENT

11. IMPACTS UPON ADJOINING PROPERTIES: VIEW LOSS

12. IMPACTS UPON ADJOINING PROPERTIES: PRIVACY

13. IMPACTS UPON ADJOINING PROPERTIES: OVERSHADOWING

14. IMPACTS UPON ADJOINING PROPERTIES: EXCESSIVE BULK & SCALE

15. PUBLIC INTEREST

D. CONTENTIONS THAT MAY BE RESOLVED BY AMENDED PLANS

E. CONTENTIONS THAT RELATE TO INSUFFICIENT INFORMATION

F. REASONS FOR REFUSAL

G. CONCLUSION

## A. EXECUTIVE SUMMARY

The design of the dwelling does not ensure that the existing high levels of amenity to our property is retained.

The proposal is considered to be inappropriate within the streetscape.

The subject site is zoned C4 Environmental Living under the LEP, and there is no reason, unique or otherwise why a fully compliant solution to LEP and DCP controls cannot be designed on the site.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts that result in adverse impacts on our property.

- Visual Privacy
- Solar Loss
- View loss
- Excessive Bulk & Scale
- Unacceptable Landscape Provision

The proposed development fails to meet Council's planning controls, the objectives and the merit assessment provisions relating to:

- Building Height 10.12m v 8.5m [20% non-compliance]
- Wall Height 10.12m v 7.2m [40% non-compliance]
- Number of Storey 3 v 2 [50% non-compliance]
- Rear Setback 6.1m proposed v 6.5m control [6% non-compliance]
- Side Building Envelope East 7.7m proposed with 1.6m setback v 4.2m control
- Side Building Envelope East 8.2m proposed with 3.0m setback v 4.7m control
- Landscape Area: over reliance on roof top planting to accord with landscape area. Impervious landscape treatments higher than 1 metre above ground level (existing) cannot be incorporated into the landscape area calculation.

The Pittwater LEP does not include floor space ratio standards to control building bulk and scale in this residential area of Newport.

Managing building bulk and scale relies on the application of controls relating to building height, building setbacks and building envelopes. All three controls are in substantial non-compliance.

Council's development controls relating to managing building bulk and scale are designed to ensure that buildings are consistent with the height and scale of the desired character of the locality, are compatible with the height and scale of surrounding and nearby development, respond sensitively to the natural topography and allow for reasonable sharing of views and visual amenity.

Council's Pittwater 21 Development Control Plan 2014 (the DCP) with respect to the Newport locality, requires that development respond to the natural environment and minimise the bulk and scale of buildings.

The proposed development represents an unreasonably large dwelling house design, for which there are design alternatives to achieve a reasonable development outcome on the site without having such impacts.

The proposed development does not satisfy the objectives of the zone or contribute to a scale that is consistent with the desired character of the locality and the scale of surrounding development.

A compliant building design would reduce the amenity impacts identified.

We agree with Roseth SC in NSWLEC *Paibum 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."*

The 'legitimate expectation' that we had as a neighbour was for a development that would not result in very poor amenity outcomes caused directly from the non-compliance to building envelope controls.

We want to emphasise the fact that we take no pleasure in objecting to our neighbour's DA.

We are objecting because the proposed DA has a poor impact on the amenity of our property, and the urban design outcomes within the streetscape, and this is caused by the DA being non-compliant to controls.

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

It does seem unreasonable that the Applicants wish to remove our amenity to improve their own, and is proposing non-compliant outcomes that would seriously adversely affect our amenity.

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, does not succeed on merit and is not worthy of the granting of development consent.

We ask Council to seek modifications to this DA as the proposed development does not comply with the planning regime, by non-compliance to development standards, and this non-compliance leads directly to our amenity loss.

If any Amended Plan Submission is made by the Applicant, and re-notification is waived by Council, we ask Council to inform us immediately by email of those amended plans, so that we can inspect those drawings on the Council website.

## B. FACTS

### 1. THE PROPOSAL

The development application seeks approval for the demolition of the existing dwelling and the construction of a new dwelling

### 2. THE SITE

The site is 132a Queens Parade East is a rectangular shaped allotment comprising a total site area of 557.5m<sup>2</sup> with a primary frontage of 18.29m and a depth of 38.44m.

### 3. THE LOCALITY

The existing character of the local area, including the immediate visual catchment (generally within 150 metres of the site) is of a well-established neighbourhood, made up of a heterogeneous mix of dwelling types within domestic landscaped settings.

Our property shares a common boundary with the subject site.

### 4. STATUTORY CONTROLS

The following Environmental Planning Instruments and Development Control Plans are relevant to the assessment of this application:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- SEPP (Building Sustainability Index: BASIX) 2004;
- SEPP (Resilience and Hazards) 2021;
- SEPP (Biodiversity and Conservation) 2021.
- Pittwater Local Environmental Plan 2014 [referred to as LEP in this Submission]
- Pittwater 21 Development Control Plan [referred to as DCP in this Submission]

## C. CONTENTIONS THAT THE APPLICATION BE REFUSED

### 1. CONTRARY TO AIMS OF LEP

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the aims under the LEP.

#### 1.2 Aims of Plan

- *to promote development in Pittwater that is economically, environmentally and socially sustainable,*
- *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,*
- *(j) to protect and promote the health and well-being of current and future residents of Pittwater.*

### 2. CONTRARY TO ZONE OBJECTIVES

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the objectives of the zone of the LEP.

#### Objectives of zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

### 3. GROUND LEVEL [EXISTING]

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to present *ground level (existing)* in accordance with the LEP, and the recent decisions on *ground level (existing)* at the NEWLEC.

The LEP states the following within the LEP Dictionary:

*"ground level (existing) means the existing level of a site at any point."*

Council will note that the applicant has not provided on any DA architectural drawings, in plan, section, or elevation any spot levels from the Registered Surveyors Plans.

There are no heights of any parapet on any DA drawing.

Sections do not contain any RL heights at all!

We attach a summary of the considerations of *ground level (existing)* using the Registered Surveyors spot levels and proposed parapet heights.

- *Ground level (existing)* under the proposed lift and stair core is shown on the Registered Surveyors Plans at RL 47.58m [survey spot]. The height of the parapet of the proposed lift and stair core is scaled at RL 57.7. The Height of Buildings is 10.12m.
- *Ground level (existing)* under the proposed north west corner is shown on the Registered Surveyors Plans at RL 47.59m [survey spot]. The height of the proposed north west corner balustrade detail is scaled at RL 57.1. The Height of Buildings is 9.51m.
- *Ground level (existing)* under the proposed north west parapet detail is shown on the Registered Surveyors Plans at RL 47.04m [survey spot]. The height of the parapet is scaled at RL 56.2. The Height of Buildings is 9.16m.
- *Ground level (existing)* under the proposed north west parapet of the master Bedroom is shown on the Registered Surveyors Plans at RL 48.0m [survey contour]. The height of the parapet is scaled at RL 57.8. The Height of Buildings is 8.80m.





#### 4. CHARACTER

The proposed development should be refused as it is inconsistent with the character of the local area contrary to the provisions of the LEP and DCP.

The proposal does not achieve the desired character of the locality.

The proposed development should be refused due to its excessive bulk and scale and impacts on the character of the locality, adjoining properties and the surrounding environment.

The form and massing of the proposal does not appropriately respond to the low-density character of the surrounding locality.

The form and massing of development is also inconsistent with the provisions of the LEP and DCP which prescribe that new development should complement the predominant building form in the locality.

The proposed development is non-compliant to:

- Building Height 10.12m v 8.5m [20% non-compliance]
- Wall Height 10.12m v 7.2m [40% non-compliance]
- Number of Storey 3 v 2 [50% non-compliance]
- Rear Setback 6.1m proposed v 6.5m control [6% non-compliance]
- Side Building Envelope East 7.7m proposed with 1.6m setback v 4.2m control
- Side Building Envelope East 8.2m proposed with 3.0m setback v 4.7m control
- Landscape Area: over reliance on roof top planting to accord with landscape area. Impervious landscape treatments higher than 1 metre above ground level (existing) cannot be incorporated into the landscape area calculation.

The proposed development is outside the envelope controls.

The proposed development is higher and larger than the immediate neighbours. Our dwelling has a height of building at 7.4m, whilst the proposed development is at 10.12m. The neighbour to the west at #42 Calvert Parade will be presented with non-compliant height and non-compliant side boundary envelope.



The bulk and scale of the development is inconsistent with existing development in the visual catchment.

The level of stepping proposed in the development is inadequate to sufficiently integrate with the landform.

The proposal is not of a height and scale that seeks to achieve the desired future character, does not maintain or enhance local amenity, does not maintain the general dominance of landscape over built form, and does not satisfactorily minimise the adverse effects of bulk and scale of buildings. The proposal is excessive in height, bulk and scale; and does not have adequate regard for the maintenance of existing residential amenity.

The proposal would not be appropriate to the environmental constraints of the site and would not maintain the existing level of residential amenity. The proposal would not recognise, protect, or enhance the natural or visual environment qualities of the locality. The proposal would not protect or conserve the existing landform in order to maintain the landscaped amenity of the locality.

The proposal would not be of a height and scale which is in keeping with the context of the locality, and would not maintain a general dominance of landscape over built form. The proposal would not maintain or enhance local amenity or minimise the adverse effect on bulk and scale.

The external finish to the roof must have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours must not be permitted.

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"*.

The non-compliant elements of the proposed development, particularly caused from non-compliant standards and controls would have most observers finding *'the proposed development offensive, jarring or unsympathetic'*.

## 5. EXCESSIVE BUILDING HEIGHT

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to comply with the building height development standard under the LEP.

The proposed development should be refused due to its excessive height and failure to comply with the *Height of Buildings* set out in the LEP which permits a maximum height of 8.5 metres.

- *Ground level (existing)* under the proposed lift and stair core is shown on the Registered Surveyors Plans at RL 47.58m [survey spot]. The height of the parapet of the proposed lift and stair core is scaled at RL 57.7. The Height of Buildings is 10.12m.
- *Ground level (existing)* under the proposed north west corner is shown on the Registered Surveyors Plans at RL 47.59m [survey spot]. The height of the proposed north west corner balustrade detail is scaled at RL 57.1. The Height of Buildings is 9.51m.
- *Ground level (existing)* under the proposed north west parapet detail is shown on the Registered Surveyors Plans at RL 47.04m [survey spot]. The height of the parapet is scaled at RL 56.2. The Height of Buildings is 9.16m.
- *Ground level (existing)* under the proposed north west parapet of the master Bedroom is shown on the Registered Surveyors Plans at RL 48.0m [survey contour]. The height of the parapet is scaled at RL 57.8. The Height of Buildings is 8.80m.

The proposal is inconsistent with the objectives of the Height of Buildings development standard pursuant to LEP.

LEP 4.3 Height of Buildings states:

- (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 adverse impacts of the proposed development, including on the amenity of neighbouring property and public property, are directly attributable to the exceedance of the height of buildings development standard.

The proposal is inconsistent with the LEP as there is a public benefit in maintaining the Height of Buildings development standard in this particular case.

The proposed portion of the building above the maximum height of 8.5m is not 'minor'. The building does not adequately step down the slope.

The DA seeks for a substantial non-compliance with the Council permissible height as provided for in the LEP. The proposal is supported by a clause 4.6 seeking to justify the breach of the height standard.

We submit that the proposal is excessive and an over development and that the clause 4.6 submissions do not satisfy the pre-requisites in clause 4.6 of the LEP.

In respect of the overall height control, we have considered the applicant's Clause 4.6 and we consider that, in this instance, they have not been able to establish an argument to support their assertion that it is unreasonable and unnecessary to comply with the control.

We submit that the submission fails on the basis of the assessment against the objectives of clause 4.3 and 4.3A, as well as the environmental planning grounds set out. Additionally, we consider that the development does not comply with the objectives of the land use objectives.

In respect of the proposed development, we submit that the built form, which also incorporates other substantial non-compliant breaches will have negative impacts the amenity of neighbours as well as have significant impacts in respect of visual intrusion. Additionally, there is nothing provided for in this development that seeks to minimise the adverse effects of bulk and scale of the building.

We have reviewed the responses to these objectives in the applicant's 4.6 and do not consider they satisfy the objectives. We strongly refute their arguments.

In respect of the compatibility test, unsurprisingly the applicant completely ignores multiple considerations dealing with the understanding of the site in respect of its topography, how it is viewed from neighbouring properties as well as the lack of compatibility with its form and articulation.

We contend that the proposal fails 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. The proposed development has not sought adequate variations to development standards. The proposal is excessive in bulk and scale, and is inconsistent with the desired future character of the area resulting in adverse impacts on the streetscape. The proposal results in an unacceptable dominance of built form over landscape. The proposal fails to minimise the adverse effects of bulk and scale resulting in adverse amenity impacts.

The proposed development should be refused due to its excessive visual impact and impacts on the character of the locality, adjoining properties and the surrounding environment.

The form and massing of the proposal does not appropriately respond to the low-density character of the surrounding locality

The form and massing of development is also inconsistent with the provisions of the DCP which prescribe that new development should complement the predominant building form in the locality.

The proposal would not recognise or protect the natural or visual environment of the area, or maintain a dominance of landscape over built form. The proposal has not been designed to minimise the visual impact on the surrounding environment.

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.”*

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

## 6. EXCESSIVE WALL HEIGHT & NUMBER OF STOREY

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to comply with the control.

The proposed development should be refused due to its excessive height and failure to comply with the Wall Height set out in the controls.

- Wall Height 10.12m v 7.2m [40% non-compliance]
- Number of Storey 3 v 2 [50% non-compliance]

The proposed development is inconsistent with the objectives of the zone and the objectives that underpin the wall height.

The proposal is inconsistent with the objectives of the Wall Height control.

There are insufficient environmental planning grounds to justify its contravention.

The adverse impacts of the proposed development, including on the amenity of neighbouring property and public property, are directly attributable to the exceedance of the wall height control.

The failure of the SEE to demonstrate the outcomes required by the wall height control means that the variation cannot be supported and, therefore, by necessity, the development application should be refused.

The proposal is inconsistent with the LEP and DCP as there is a public benefit in maintaining the Wall Height control in this particular case.

The proposed portion of the building above the maximum wall height is not 'minor'.

We contend that the proposal fails to adequately demonstrate that compliance with each standard or control is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening each of the standards. Variation of the development standards or control is not in the public interest because the proposed development is not consistent with the objectives of each development standard or control nor the objectives of the zone. The proposed development has not sought adequate variations to development standards or controls. The proposal is excessive in bulk and scale, and is inconsistent with the desired future character of the area resulting in adverse impacts on the streetscape. The proposal results in an unacceptable dominance of built form over landscape. The proposal fails to minimise the adverse effects of bulk and scale resulting in adverse amenity impacts.

## 7. HERITAGE CONSERVATION

The overall bulk of the proposal are not sympathetic to the proportions and architectural character of the neighbouring heritage item.

The height of the proposed development in excessive of over 10m is clearly on view from the heritage item.

The proposed wall heights of over 10m will tower over neighbours, and present a jarring outcome to the heritage item.

## 8. LANDSCAPE AREAS

There is an over reliance on roof top planting to accord with the landscape area.

Impervious landscape treatments higher than 1 metre above ground level (existing) cannot be incorporated into the landscape area calculation.

## 9. STREETSCAPE AND BUILDING DESIGN

The height of the proposed development in excessive of over 10m is clearly on view from the streetscape.

The double cantilevered Master Bedroom will present non-compliant heights to the streetscape, and will tower above neighbours wall heights.

The proposal is contrary to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* as it is excessive in scale, has adverse impacts on the visual amenity of the environment, does not positively contribute to the streetscape in terms of an adequately landscaped setting, is a visually dominant addition that is not well integrated into the development design, and is incompatible with the desired future townscape area character.

## 10. CARPORT AND GARAGE DESIGN

The carpark design does not allow the ability to have cars enter and leave in a forward direction.

## 11. STORMWATER MANAGEMENT

We are concerned that there is insufficient OSD to control stormwater.

We are concerned that there are insufficient stormwater pits along the low sides of the boundary to collect surface runoff.

## 12. IMPACTS UPON ADJOINING PROPERTIES: VIEW LOSS

The proposal is contrary to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that it does not satisfy DCP.

New development has not been designed to minimise view loss to the public and to adjoining and adjacent properties while still providing opportunities for views from the development itself, contrary to DCP.

Height poles were not installed to enable an accurate view sharing assessment to be undertaken. The application includes variations to the building height and wall height development standards and has failed to demonstrate the extent of impacts on private views.

The proposed development when considered against the DCP and the NSW Land and Environment Court Planning Principle in *Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC* will result in an unacceptable view impact and will not achieve appropriate view sharing.

The proposed development will result in unacceptable additional view impacts. The view impact is more than moderate when considered against the *Tenacity* planning principle. The view impact could reasonably be avoided by a more considered design that retains the amenity of the proposal, whilst limiting the impact upon the neighbouring properties.

The built form proposed will block scenic, highly valued items or whole views as defined in *Tenacity* terms.

The proposed development will unreasonably obstruct views enjoyed by our property from highly used rooms and from entertainment decks, resulting in inconsistency with the requirements and objectives of the DCP.

The proposed development has not considered the strategic placement of canopy trees to avoid further view loss impacts upon existing view corridors.

The Applicant has not provided an adequate View Impact Analysis which details the extent to which existing views from our property, and other impacted dwellings, are obstructed under the current proposal. The existing documentation accompanying the application is insufficient to undertake a detailed analysis of the proposal against the relevant DCP and NSWLEC guidelines.

We bring to Council's attention a number of recent decisions on view loss grounds:

- FURLONG V NORTHERN BEACHES COUNCIL [2022] NSWLEC 1208 [NSWLEC Dismissal of Appeal]
- DER SARKISSIAN V NORTHERN BEACHES COUNCIL [2021] NSWLEC 1041 [NSWLEC Dismissal of Appeal]
- WENLI WANG V NORTH SYDNEY COUNCIL [2018] NSWLEC 122
- REBEL MH NEUTRAL BAY PTY LTD V NORTH SYDNEY COUNCIL [2018] NSWLEC 191

We contend that the composite consideration from these NSWLEC decisions, gives clear consideration that where view loss occurs across a side boundary caused by non-complaint development, and the view loss is moderate or higher, then the DA is unreasonable.

Other decisions suggest that even when a compliant development causes view loss, and the view is across a side boundary, and when there is an alternative option open to avoid that view loss, and that alternative has not been taken, then the DA is unreasonable.

FURLONG V NORTHERN BEACHES COUNCIL [2022] NSWLEC 1208

We refer to a dismissal of a Class 1 Appeal by NSWLEC Commissioner Dr Peter Walsh on a nearby site in Dee Why on view loss grounds. We refer to *Furlong v Northern Beaches Council* [2022] NSWLEC 1208. [NBC DA 2021/0571, 55 Wheeler Parade Dee Why]

We raise the dismissal by NSWLEC of the Applicant's appeal. The case in question had many similarities to this DA.

NBC DDP refused this DA on 24 November 2021, with Panel members Rod Piggott, Rebecca Englund, Tony Collier and Liza Cordoba, following a Refusal Recommendation of NBC Development Assessment Manager, by the NBC Responsible Officer Jordan Davies, a very senior NBC Planning Officer, that Council



as the consent authority refuses Development Consent to DA2021/0517 for Alterations and additions to a dwelling house on land at Lot B DP 338618, 55 Wheeler Parade Dee Why subject to the conditions that were outlined in the Assessment Report.

The assessment of DA 2020/0517 involved a consideration of a view loss arising from a proposed development that presented a generally compliant envelope to LEP and DCP controls.

The DDP agreed with the recommendation and refused this DA.

The Assessment Report found that:

*" A view assessment is undertaken later in this assessment report and the proposal is found to result in an unsatisfactory view sharing outcome and the application is recommended for refusal for this reason"*

The Assessment Report found that in respect to a compliant envelope:

*" the question to be answered is whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact upon views of neighbours."*

The Assessment Report within the Tenacity Assessment concluded:

*"the view impact looking south-east is considered both severe and devastating from the respective rooms given the significant proportion of the views which are impacted. The aspect looking south and south- east are considered whole, prominent coastal views which are certainly worthy of consideration and at least partial protection. The proposal to remove the vast majority of these views is considered overall to be a severe view impact."*

The DA was recommended for refusal, and DDP refused the DA in full support of the NBC Responsible Officer Assessment Report.

The severity of the view loss that was considered unacceptable by the DDP was clearly stated by the DDP. This level of view loss was considered as 'severe' by the assessing officers and the DDP.

The Applicant appealed this decision.

On 22 April 2022, the appeal on Furlong v Northern Beaches Council [2022] NSWLEC 1208, was dismissed by the NSWLEC Commissioner Dr Peter Walsh. The decision summarised the issues:

*60 Council took me to the findings of Robson J in Wenli Wang v North Sydney Council [2018] NSWLEC 122 ('Wenli Wang').*

*I reproduce pars [70]-[71] below:*

*"70 Applying the fourth step of Tenacity, I repeat that the proposed development complies with the development standards in the LEP and is therefore more reasonable than a development which would have breached them. However, I do also note that there is evidence in the form of the Colville plan that a similar amount*

*of floor space could be provided by a design which reduces the effect on the view from the surrounding properties.*

*71 I consider there is force in the submission of Council that the applicant has taken a circular approach to the fourth step of Tenacity which presupposes a right to the level of amenity achieved by the proposed development. Whilst it is true that a redevelopment similar to that provided in the Colville plan would not provide the same amenity as the proposed development, it would provide a very high level of amenity and enjoy impressive views."*

*61 In the matter before me, I am more inclined to the kind of conclusion expressed at [71] in Wenli Wang. While the proposed development, accommodating the alternative designs suggested by Council (either shifting the master bedroom westwards some 3.5m or sliding the master bedroom to the south to bring about the same view availability effect – see [43]), may not provide the same amenity outcomes as would be the case without such changes, the proposal would still enjoy a very high level of amenity, including in regard to the panoramic views available to the south, especially from living areas. The master bedroom would still enjoy superior views.*

*62 The proposal would bring about a severe view loss impact on 51A Wheeler Parade when there are reasonable design alternatives which would moderate this impact significantly. The proposal does not pay sufficient regard to cl D7 of WDCP which requires view sharing. The proposal before the Court does warrant the grant of consent in the circumstances.*

The key issues in this case considered that the proposal would bring about a more than moderate view loss impact, across a side boundary, when there was a reasonable design alternatives which would moderate this impact significantly.

The proposal did not pay sufficient regard to cl D7 of WDCP which requires view sharing.

#### DER SARKISSIAN V NORTHERN BEACHES COUNCIL [2021] NSWLEC 1041

We refer to a dismissal of a Class 1 Appeal by NSWLEC Commissioner Dr Peter Walsh on a nearby site in Curl Curl on view loss grounds. We refer to Der Sarkissian v Northern Beaches Council [2021] NSWLEC 1041. [NBC DA 2019/0380, 72 Carrington Parade, Curl Curl]

We raise the dismissal by NSWLEC of the Applicant's appeal. The case in question had many similarities to this DA.

- The main view loss concern was to a neighbour immediately behind 72 Carrington Parade, Curl Curl. We are in a similar position immediately behind the subject site.
- The view loss involved side setback controls.
- The view loss at Curl Curl was severe – we would have significant loss of view from our living spaces

The key matters within the Commissioner's Conclusion:

- the determinative issue in this case is view loss
- the proposal would significantly change the amenity enjoyed for the worse.
- both policy controls and view sharing principles suggest the proposal goes too far.
- proposal attempts to achieve too much on a constrained site.
- a reasonable development at the upper level in regard to view sharing and setback policy,
- with good design, there is scope for this to occur while also providing for reasonable floor space on this level.

It is clear that the view loss, on this DA, occurs through a poor consideration on wall height, building height and side boundary envelope controls.

Our commentary on this DA is very similar to Commissioner Walsh in *Der Sarkissian v Northern Beaches Council* [2021] NSWLEC 1041

- the determining issue in this case is view loss – in our case a district view loss
- the proposal would significantly change the amenity enjoyed for the worse.
- policy controls of building height, wall height, side boundary envelope non-compliances and view sharing principles suggest the proposal goes too far.
- proposal attempts to achieve too much on a constrained site.
- a reasonable development at the upper level in regard to view sharing building height, wall height, side boundary envelope policy, would share the view
- with good design, there is scope for view sharing to occur while also providing for reasonable floor space on all levels

We contend that there is no reasonable sharing of views amongst dwellings.

The new development is not designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The proposal has not demonstrated that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.

WENLI WANG V NORTH SYDNEY COUNCIL [2018] NSWLEC 122

This decision, and referenced in *FURLONG*, gives consideration to the assessment of a complaint development.

In this particular case, we are assessing a substantially non-complaint development, however view loss over a side boundary again is a key matter,

REBEL MH NEUTRAL BAY PTY LTD V NORTH SYDNEY COUNCIL [2018] NSWLEC 191

As noted by his Honour, Justice Moore of the Court in *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 (Rebel),

*“the concept of sharing of views does not mean, for the reasons earlier explained, the creation of expansive and attractive views for a new development at the expense of removal of portion of a pleasant outlook from an existing development. This cannot be regarded as “sharing” for the purposes of justifying the permitting of a non-compliant development when the impact of a compliant development would significantly moderate the impact on a potentially affected view”.*

This is a key consideration, and one that parallels the forementioned NSWLEC decisions.

#### TENACITY CONSULTING V WARRINGAH COUNCIL 2004

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

*“A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.”*

The development breaches multiple planning controls and is unreasonable.

- Building Height 10.12m v 8.5m [20% non-compliance]
- Wall Height 10.12m v 7.2m [40% non-compliance]
- Number of Storey 3 v 2 [50% non-compliance]
- Rear Setback 6.1m proposed v 6.5m control [6% non-compliance]
- Side Building Envelope East 7.7m proposed with 1.6m setback v 4.2m control
- Side Building Envelope East 8.2m proposed with 3.0m setback v 4.7m control
- Landscape Area: over reliance on roof top planting to accord with landscape area. Impervious landscape treatments higher than 1 metre above ground level (existing) cannot be incorporated into the landscape area calculation.

We contend that the impact on views arises as a result of non-compliance with one or more planning controls, and the view loss from the highly used rooms and decks is considered unreasonable.

#### APPLICATION OF TENACITY PLANNING PRINCIPLE

We have been unable to consider the full impact of the proposal on the outward private domain views from our property.

Height poles and our montage view loss analysis has yet to be provided by the Applicant.

An assessment in relation to the planning principle of Roseth SC of the Land and Environment Court of New South Wales in Tenacity Consulting v Warringah [2004] NSWLEC 140 - Principles of view sharing: the impact on neighbours (Tenacity) is made.

The steps in Tenacity are sequential and conditional in some cases, meaning that proceeding to further steps may not be required if the conditions for satisfying the preceding threshold is not met.

## STEP 1 VIEWS TO BE AFFECTED

The first step quoted from the judgement in Tenacity is as follows:

*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

An arc of view is available when standing at a central location in the highly used zones including entertainment decks, highly used rooms, and private open spaces on our property.

The composition of the arc is constrained over the subject site boundaries, by built forms and landscape. The central part of the composition includes the subject site. Views include scenic and valued features as defined in Tenacity. The proposed development will take away views for its own benefit. The view is from our highly used rooms towards the view. The extent of view loss exceeds moderate and the features lost are considered to be valued as identified in Step 1 of Tenacity.

## STEP 2: FROM WHERE ARE VIEWS AVAILABLE

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

*The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

The views in all cases are available across the boundary of the subject site, from standing and seated positions. An arc of view is available when standing at highly used zones on our property.

In this respect we make two points: We have no readily obtainable mechanism to reinstate the impacted views from our high used zones if the development as proposed proceeds; and all of the properties in the locality rely on views over adjacent buildings for their outlook, aspect and views towards the view.

### STEP 3: EXTENT OF IMPACT

The next step in the principle is to assess the extent of impact and the locations from which the view loss occurs.

Step 3 as quoted is:

*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

As we rate the extent of view loss is above moderate in our opinion the threshold to proceed to Step 4 of Tenacity is met.

### STEP 4: REASONABLENESS

The planning principle states that consideration should be given to the causes of the visual impact and whether they are reasonable in the circumstances.

Step 4 is quoted below:

*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

NSWLEC Commissioner Walsh in *Balestriere v Council of the City of Ryde* [2021]  
NSWLEC 1600 in relation to the Fourth Step:

*There are three different points to the fourth Tenacity step, concerned with assessing the reasonableness of the impact, which I summarise as follows:*

*Point 1 - Compliance, or otherwise, with planning controls.*

*Point 2 - If there is a non-compliance, then even a moderate impact may be considered unreasonable.*

*Point 3 - For complying proposals: (a) "whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours to bring about impact", and (b) "if the answer to*

*that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable".*

*In respect to Point 3, NSWLEC Commissioner Walsh in Furlong v Northern Beaches Council [2022] NSWLEC 1208 referenced Wenli Wang v North Sydney Council [2018] NSWLEC 122, in considering that if a more skilful design could be achieved arriving at an outcome that achieved 'a very high level of amenity and enjoy impressive views', then a proposed development has gone too far, and must be refused.*

**As the proposed development does not comply with outcomes and controls, that are the most relevant to visual impacts, greater weight would be attributed to the effects caused.**

In our opinion the extent of view loss considered to be the greater than moderate, in relation to the views from our highly used zones of our dwelling. The view is from a location from which it would be reasonable to expect that the existing view, particularly of the view that could be retained especially in the context of a development that does not comply with outcomes and controls. The private domain visual catchment is an arc from which views will be affected as a result of the construction of the proposed development. The proposed development will create view loss in relation to our property. The views most affected are from our highly used zones and include very high scenic and highly valued features as defined in Tenacity. Having applied the tests in the Tenacity planning principle we conclude that we would be exposed to a loss greater than moderate from the highly used rooms. The non-compliance with planning outcomes and controls of the proposed development will contribute to this loss. Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

The proposed development cannot be supported on visual impacts grounds. The proposal incorporates a significant departure from controls, which helps contain building envelope. Additionally, the siting of the proposed development and its distribution of bulk does not assist in achieving view sharing objectives. Where the diminishing of private views can be attributed to a non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. Our assessment finds that view sharing objectives have not been satisfied.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control.

There are architectural solutions that maintains our view, by proposing development that maintains our view, and we identify the precise amendments necessary to overcome this loss.

As noted by his Honour, Justice Moore of the Court in Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 (Rebel),

*"the concept of sharing of views does not mean, for the reasons earlier explained, the creation of expansive and attractive views for a new development at the*

*expense of removal of portion of a pleasant outlook from an existing development. This cannot be regarded as "sharing" for the purposes of justifying the permitting of a non-compliant development when the impact of a compliant development would significantly moderate the impact on a potentially affected view".*

The same unreasonable scenario in Rebel applies to the current DA. The proposed breaching dwelling will take away views from our property (and possibly other adjoining properties) to the considerable benefit of the future occupants of the proposed dwelling. This scenario is not consistent with the principle of View Sharing enunciated by his Honour, Justice Moore in Rebel. The adverse View Loss from our property is one of the negative environmental consequences of the proposed development. The proposed development cannot be supported on visual impacts grounds.

These issues warrant refusal of the DA.

We 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 Registered Surveyor. The Height Poles will need to define: All Roof Forms, and all items on the roof, Extent of all Decks, Extent of Privacy Screens. Height Poles required for all trees. The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

In conclusion, as the dwelling proposed will impact views from our property, the erection of height poles is required to allow an accurate assessment of view impact. The height poles should provide a delineation to identify any elements of the proposed built form that breaches the envelope controls of height and setbacks.

We contend that the proposed development when considered against the DCP and the NSW Land and Environment Court Planning Principle in *Tenacity Consulting Pty Ltd v Warringah Council (2004)* NSWLEC will result in an unacceptable view impact and will not achieve appropriate view sharing.

We contend that the proposal is contrary to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that it does not satisfy the view sharing controls of the DCP.

### 13. IMPACTS UPON ADJOINING PROPERTIES: PRIVACY

The proposed development should be refused as it will have unacceptable impacts upon the amenity of our property, specifically with regard to visual privacy.

The proposed development will result in unacceptable overlooking of the adjoining dwelling, including our living spaces and associated private open space, resulting in inconsistency with the provisions of the DCP and the objectives of the DCP.



The Applicant has not provided an adequate Privacy Impact Analysis which details the extent to which privacy at our property will be adversely impacted by the proposal.

In **Super Studio**, [Super Studio v Waverley Council 2005], NSW LEC considered Privacy Impact from a proposed Roof Terrace. Super Studio suggest that Council should consider:

*“the acceptability of an impact depends not only on the extent of the impact but also on reasonableness of, and necessity for, the development that causes it”*

Most relevant to this DA, Super Studio states:

*“The surrounding houses do not have roof terraces, so a roof terrace would be a new element in the area. This does not mean that it is inappropriate, only that its impact should be assessed with heightened sensitivity. A roof terrace would be acceptable only if its impact were minor or negligible.*

The proposed Roof Terrace will look immediately and directly into all neighbours' properties, including our living spaces.

This is unreasonable and unacceptable.

The privacy implications are severe to devastating in outcome.

The roof deck requires to be deleted, along with the stair leading to the roof deck, as well as the additional built form in the lift and stair core.

An assessment of the privacy impact against the planning principle Meriton v Sydney City Council [2004] NSWLEC 313 follows:

*Principle 1: The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.*

Response: The development is located in a low-density area.

*Principle 2: Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)*

Response: The proposed development result in a privacy impact with the proposed roof decks and windows facing neighbours without sufficient screening devices being provided, considering the proposed windows are directly opposite our windows.

*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 circulation zones and living areas, it is considered that the living areas will result in an unacceptable privacy breach. The proposed windows and roof decks face the private open spaces of the neighbouring dwelling. This 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 and decks 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 better protected. We ask Council to delete the Roof Deck, the access to the roof deck, and the additional stair and lift built form.

*Principle 6: Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.*

Response: As mentioned above, the roof deck requires to be deleted, and the use of privacy devices would reduce the impact of the dwelling.

*Principle 7: Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.*

Response: Additional landscaping may assist in addition to the deletion of the roof deck, and privacy devices.

*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.

In the context of the above principles, the application can be considered to violate the reasonable expectation that the habitable rooms and private open space at our property will remain private. It is therefore reasonably anticipated that the application does not comply with the DCP.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control.

We attach a series of photographs from our property looking at the subject site, highlighting the privacy concerns to the roof top deck and other matters.



3198 - WEST VIEW FROM SOUTH TERRACE LOOKING OVER 132A AND TO QUEENS PARADE.



3208 - WEST VIEW FROM NORTH BEDROOM



3190 - VIEW FROM THE BOTTOM OF THE WEST GLASS PANE IN THE NW CORNER OF THE MAIN BEDROOM



3209 - VIEW FROM SOUTH DOOR OF BATHHOUSE TO SW



3210 - LEVEL VIEW FROM BOTTOM OF WEST PANE AT NW CORNER OF BATHHOUSE  
(NO SHADES ON ANY OF THESE WEST PANES OR OTHER PANES OF THE BATHHOUSE).





3203 - LOOKING SW FROM NORTH DECK

#### 14. IMPACTS UPON ADJOINING PROPERTIES: OVERSHADOWING

The Applicant has not provided adequate Solar Access Diagrams, at one hourly intervals, in plan and elevation of our property, to assess the loss of solar access at mid-winter, to accord with DCP controls and NSWLEC planning principles

We believe that further assessment of the shadow impacts through the production of elevational shadow diagrams or a "View from the Sun" assessment are critical in order to understand the potential future impacts and necessary for Council's reasonable assessment.

The proposed development should be refused as it will have unacceptable impacts upon the amenity of adjoining properties, specifically with regard to overshadowing.

The proposed development will result in unreasonable overshadowing of the windows of our property and the private open space of our property, resulting in non-compliance with the provisions of DCP.

A variation to the DCP is not supported as the objectives of the clause are not achieved.

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."*

We contend that the overshadowing arises out of poor design. The design does not respect envelope controls, and must be considered 'poor design'.

The Applicant has not submitted hourly solar diagrams to fully assess the solar loss. We 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 highly controlled. Building envelope controls have been exceeded.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

The solar diagrams are not complete, but what has been provided shows that the proposed development will overshadow the adjoining dwellings. 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 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 degree 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 well 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 principal 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 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 elsewhere in this Written Submission.

We object to solar loss to our private open space, and to our windows that allow mid-winter solar access into highly used room by non-compliant development controls.

## 15. IMPACTS UPON ADJOINING PROPERTIES: EXCESSIVE BULK & SCALE

Managing building bulk and scale relies on the application of controls relating to building height, building setbacks and building envelopes. All three controls are in substantial non-compliance.

Council's development controls relating to managing building bulk and scale are designed to ensure that buildings are consistent with the height and scale of the desired character of the locality, are compatible with the height and scale of surrounding and nearby development, respond sensitively to the natural topography and allow for reasonable sharing of views and visual amenity.

Council's Pittwater 21 Development Control Plan 2014 (the DCP) with respect to the Newport locality, requires that development respond to the natural environment and minimise the bulk and scale of buildings.

The proposed development fails to meet Council's planning controls, the objectives and the merit assessment provisions relating to:

- Building Height 10.12m v 8.5m [20% non-compliance]
- Wall Height 10.12m v 7.2m [40% non-compliance]
- Number of Storey 3 v 2 [50% non-compliance]
- Rear Setback 6.1m proposed v 6.5m control [6% non-compliance]
- Side Building Envelope East 7.7m proposed with 1.6m setback v 4.2m control
- Side Building Envelope East 8.2m proposed with 3.0m setback v 4.7m control
- Landscape Area: over reliance on roof top planting to accord with landscape area

## 16. PUBLIC INTEREST

The proposal is contrary to the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*. The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest.

### D. CONTENTIONS THAT MAY BE RESOLVED BY AMENDED PLANS

A compliant building design would reduce the amenity impacts identified.

Reduce the proposed development as follow:

1. Delete the roof deck
2. Delete stairs leading to the roof deck
3. Lower roof form over stair and lift core to RL 56.2
4. Relocate Master Bedroom to be positioned above the garage, with a parapet height at RL 56.2

5. Increase Rear Setback to 6.5m
6. Greater eastern side setback to the proposed upper floor to fully accord with Side Boundary Envelope
7. Position a new vehicle turntable behind front setback
8. Privacy Windows: New Windows to have 1.6 high sills, or the window is to be fixed and non-opening and fitted with obscured glazing, with Privacy Screens to be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or all the glass is to be fitted with obscured glazing
9. Privacy Decks: 1.8m privacy screens to all decks facing our property, shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
10. Landscape: New native screening trees along the complete eastern side setback zone, and along the complete northern boundary to RL 56.2. At 1m centres, in 400L pots.

#### E. CONTENTIONS THAT RELATE TO INSUFFICIENT INFORMATION

##### View Impact Analysis

The Applicant has not provided an adequate View Impact Analysis which details the extent to which existing views from our property are obstructed under the current proposal, from the proposed built form and the proposed trees, to accord with DCP controls and NSWLEC planning principles

We ask Council that after amended plans are submitted to reduce the building envelope below building height, wall height, and all envelope controls, 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 Registered Surveyor. The Height Poles will need to define: All Roof Forms, and all items on the roof, Extent of all Decks, Extent of Privacy Screens. Height Poles required for all trees. The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings.

##### Privacy Impact Analysis

The Applicant has not provided an adequate Privacy Impact Analysis, to accord with DCP controls and NSWLEC planning principles.

##### Solar Access Diagrams

The Applicant has not provided adequate Solar Access Diagrams, at one hourly intervals, in plan and elevation of our property, to assess the loss of solar access at mid-winter, to accord with DCP controls and NSWLEC planning principles

We believe that further assessment of the shadow impacts through the production of elevational shadow diagrams or a "View from the Sun" assessment are critical in

order to understand the potential future impacts and necessary for Council's reasonable assessment.

#### Visual Bulk Analysis

The Applicant has not provided adequate montages from our property to assess the visual bulk assessment from the proposed non-compliant envelope.

#### Drawings Incomplete

- There are no demolition drawings.
- There are no survey spot levels on the plans, sections, or elevations.
- Setback dimensions are incomplete.
- There are no levels on the sections.
- There are levels missing on the roofscape to define the heights.
- There are no hourly "View from the Sun" solar loss diagrams.
- There are no stormwater drawings showing stormwater collecting pits around the boundaries

#### F. REASONS FOR REFUSAL

We ask Council to refuse the DA as the proposal is contrary to the Environmental Planning and Assessment Act:

Council is not satisfied that under clause 4.6 of the LEP seeking to justify a contravention of the development standard that the development will be in the public interest because it is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

#### PITTWATER LEP

- 1.2 Aims of Plans  
The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the aims (2a), (2b), (2g), (2i) and (2j) under the LEP.
- 2.3 Zone Objectives  
The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the objectives of the R2 Low

Density Residential zone of *the LEP* as it fails to provide for the housing needs of the community within a low-density residential environment.

- 4.3 Height of Buildings

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to comply with the building height development standard under the LEP

- 4.6 Exceptions to Development Standards

Council is not satisfied that under clause 4.6 of the LEP seeking to justify a contravention of the development standard that the development will be in the public interest because it is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

The written requests submitted pursuant to clause 4.6 of the LEP fails to justify contravention

## PITTWATER DCP

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy objectives and planning controls of DCP:

- Locality
- Heritage Conservation
- Landscaping
- View Sharing
- Solar Access
- Visual Privacy
- Newport Locality
- Character as viewed from a public place
- Scenic protection
- Side and Rear Building Line
- Building Envelope
- Landscape Area

The proposal is contrary to Section 4.15(1)(a) (iv) of the *Environmental Planning and Assessment Act 1979* in that there is insufficient information has been submitted to enable the assessment of the application. The plans include inaccuracies and inconsistencies and insufficient information has been provided in order to enable a detailed assessment.

The proposal is contrary to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that it will have i) an adverse impact through its bulk, scale and siting on the built environment, (ii) through its potential use, adverse social impact in the locality and (iii) through lack of landscape provision, including there being no indigenous tree plantings, adverse impact on the natural environment.

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* in that this area of the site is unsuitable for a development of such excessive bulk and scale.

The proposals are unsuitably located on the site pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

The proposal does not satisfy Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not adequately address the amenity of neighbours

The proposal is contrary to the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*. The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest.

## G. CONCLUSION

The proposed dwelling is not consistent with the intent of the LEP standards and DCP controls as they are reasonably applied to the proposal.

The variations to LEP standards and DCP controls are considered unreasonable in this instance. The cumulative effect on these non-compliances cause considerable amenity loss to our property.

The development will not sit well within the streetscape with non-compliance to LEP standards and DCP controls causing considerable concern. In this regard, the proposal is considered excessive in bulk and scale and would be consider jarring when viewed from the public domain.

It is considered that the proposal is inappropriate on merit and unless amended plans are submitted, this DA must be refused for the following reasons:

- The application has not adequately considered and does not satisfy the various relevant planning controls applicable to the site and the proposed development.
- The proposed dwelling is incompatible with the existing streetscape and development in the local area generally.
- The proposed dwelling will have an unsatisfactory impact on the environmental quality of the land and the amenity of surrounding properties.
- The site is assessed as unsuitable for the proposal, having regard to the relevant land use and planning requirements.

It is considered that the public interest is not served.

The proposed development does not follow the outcomes and controls contained within the adopted legislative framework.



Having given due consideration to the matters pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended, it is considered that there are multiple matters which would prevent Council from granting consent to this proposal in this instance.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts all of which would result in adverse impacts on our property.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, we ask Council to REFUSE this DA.

Yours faithfully,

Tim & Maxine Boshier  
134 Queens Parade East  
Newport  
NSW 2106