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**Sent:** 8/02/2022 7:25:32 AM

**Subject:** RE: DA 2022 0033; 30A Addison Rd Manly WRITTEN SUBMISSION: LETTER  
OF OBJECTION SUBMISSION: JOHNS & BOLDING

**Attachments:** BOLDING WS.docx;

SUBMISSION: JOHNS & BOLDING

a written submission by way of objection

Lee Johns & Michelle Bolding  
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7 February 2022

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RE: DA 2022 0033; 30A Addison Rd Manly  
WRITTEN SUBMISSION: LETTER OF OBJECTION  
SUBMISSION: JOHNS & BOLDING

Dear Sir,

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

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.

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

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## 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 harbourside setting.

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.

- View Loss
- Visual Privacy
- Excessive Bulk & Scale
- Preservation of Trees

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

- FSR 0.75:1 [25% non-compliance]
- Building Height 11.1m [31% non-compliance]
- Wall Height 10.6m [35% non-compliance]
- Number of Storey 3 [50% non-compliance]
- Rear Setback: Exceeds Foreshore Building Line by 3.6m

- Side Setback 1.338m v 3m for habitable rooms [124% non-compliance], non-compliance to 1/3 wall height control

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.

A compliant building design would reduce the amenity impacts identified.

We 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."*

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, 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 Applicant wishes to remove our amenity to improve his 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, the subject of this Submission, 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.

## **FACTS**

### **1. THE PROPOSAL**

The development application seeks approval for Demolition of a dwelling and detached garage, construction of a new two and part three storey dwelling and associated landscaping.

### **2. THE SITE**

The site is legally identified as Lot B in DP 360797 (30A) Addison Road, Manly NSW.

The site is a battle-axe lot with long access handle to the dwelling from Addison Road.

The lot has a frontage to the waterfront at the south-eastern boundary and sits in an elevated position upon the escarpment; the dwellings in this location are all visually prominent to the public realm of Little Manly Cove.

### **3. THE LOCALITY & OUR PROPERTY**

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. THE 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.
- SEPPs
- LEP
- DCP

## **CONTENTIONS THAT WARRANT THE REFUSAL OF THE APPLICATION**

### **1. LACK OF STATUTORY POWER**

The development application should be refused as the proposal exceeds the maximum floor space ratio development standard prescribed by the LEP and it has not been supported by a request to vary pursuant to clause 4.6 of the LEP.

The development application should be refused as the proposal exceeds the building height development standard prescribed by the LEP and it has not been supported by an adequate request to vary pursuant to clause 4.6 of the LEP. The height is understated within the variation request under Clause 4.6. View Loss and Privacy Loss has not been addressed.

### **2. 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:

- FSR
- Building Height
- Wall Height
- Number of Storey
- Rear Setback
- Side Setback

The proposed development is outside the envelope controls.

The proposed development is higher and larger than the immediate neighbours that are single dwellings.

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 proposed roof terrace is unacceptable.

The roof terrace causes considerable visual and acoustic privacy concerns.

The roof terrace exceeds building height and also causes view loss to the harbour.

No other property on the foreshore has a roof terrace, and therefore the roof terrace is not consistent with the character of the area.

Erecting privacy screens to the roof terrace would only increase the loss of harbour view.

The proposed development already is proposing three large entertainment decks and a fourth roof terrace is both unreasonable and unacceptable.

We ask for the complete removal of the roof terrace.

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'*.

Council will recall that refusals were recently issued by NBLPP and DDP against numerous DA on proposed development that presented similar non-compliance, amenity loss, and unacceptable character. Many other DA have been withdrawn for similar concerns based upon Council Officer's concerns;

2021/1164 Bilgola [view loss, privacy]  
2021/0905 Dee Why [privacy]  
2021/0782 Seaforth [withdrawn: view, solar, privacy]  
2021/0517 Dee Why [view loss]  
2021/0442 Collaroy Plateau [view loss]  
2021/0365 Balgowlah Heights [withdrawn: solar, privacy]  
2021/0046 Allambie [privacy]  
2021/0197 Palm Beach [withdrawn: view, solar, privacy]  
2020/1726 Clareville [withdrawn: view, solar, privacy]  
2020/1690 Freshwater [withdrawn: view, solar, privacy]  
2020/1596 Palm Beach [amenity]  
2020/1571 Manly [solar and privacy]  
2020/1474 Balgowlah Heights [withdrawn: solar, privacy]  
2020/1380 Balgowlah [solar and privacy]  
2020/1338 Manly [view loss]  
2020/1136 Palm Beach [view]  
2020/0950 Manly [withdrawn: solar, privacy]  
2020/0884 Manly [privacy]  
2020/0846 Manly [solar]  
2020/0684 Queenscliff [solar and privacy]  
2020/0449 Queenscliff [solar and privacy]  
2020/0126 Seaforth [solar and privacy]

### **3. FSR**

The proposed development should be refused due to its excessive FSR and failure to comply with the FSR set out in the LEP.

The development application should be refused as the proposal exceeds the maximum floor space ratio development standard prescribed by the LEP and it has not been supported by a request to vary pursuant to clause 4.6 of the LEP.

The FSR calculation has included the large access handle in the site area.

The GFA is 409.24sqm. We have assessed the site area excluding the access handle to be 547sqm [13.69m x 40.00m], representing a FSR of 0.75:1.

As the access handle is a roadway that serves 6 properties, with multiple easements, in terms of Right of Carriageway and Right of Footpath, we contend that it is unreasonable for the access handle to be included within FSR calculations. We

contend that LEP Clause 4.5 [4] [a] *Exclusions from Site Area* must be considered, as the extensive easement restrictions makes proposed development on the accessway highly prohibitive.

The adverse impacts of the proposed development, including on the amenity of neighbouring property, are directly attributable to the exceedance of the FSR development standard.

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

We bring to Council's consideration *Salanitro-Chafei v Ashfield Council* [2005] NSWLEC 366.

We contend that the proposed development '*appears so incongruous in its surrounding*' due to the excessive FSR.

Commissioner Roseth within *Salanitro-Chafei* stated the following:

*26 The standard of 0.5:1 FSR has found expression in numerous planning instruments and policies whose aim is to integrate increased density housing into low-density residential areas without destroying the existing open character. The Seniors Living State Environmental Planning Policy adopts a FSR of 0.5:1 as a "deemed to comply" standard. State Environmental Planning Policy 53 – Metropolitan Residential Development adopts it as the maximum permissible density in relation to dual occupancy. Many local planning instruments and policies guiding dual occupancy development in suburban areas also contain a maximum FSR control of 0.5:1*  
*27 The above suggests that there is a general acceptance by the planning profession that an open suburban character is most easily maintained when the FSR of buildings does not exceed 0.5:1. The question raised above may therefore be answered thus:*

*The upper level of density that is compatible with the character of typical single-dwelling areas is around 0.5:1. Higher densities tend to produce urban rather than suburban character. This is not to say that a building with a higher FSR than 0.5:1 is necessarily inappropriate in a suburban area; only that once 0.5:1 is exceeded, it requires high levels of design skill to make a building fit into its surroundings.*

*28 The proposed building has a FSR significantly in excess of 0.5:1. It does not exhibit any special design skills. This is one of the explanations why it appears so incongruous in its surroundings.*

The subject site is in a highly protected zone on the harbour, and we contend that an FSR at 0.75:1 is unreasonable and unacceptable.

We contend that the FSR fails to comply with the objectives of FSR set out in the LEP:

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

*(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

*(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain

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

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

#### 4. BUILDING HEIGHT

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.

- We are very concerned to the proposed height of the dwelling. The Building Height is **11.1m** to the proposed eastern corner parapet at RL 17.7. Council will note that the Registered Surveyors mark 6.58 EC to south-eastern boundary, immediate adjacent to the proposed parapet at RL 17.7.
- We are very concerned to the proposed height of the Roof Terrace Parapet at RL 19.5. The Building Height is **10.4m** to the proposed eastern corner at RL 19.5. Council will note that the Registered Surveyors mark 9.11 to south-eastern boundary, immediate adjacent to the proposed parapet at RL 19.5.
- We are very concerned to the proposed height of the Roof Terrace Balustrade at RL 18.6. The Building Height is **9.6m** to the proposed eastern corner at RL 18.6. Council will note that the Registered Surveyors mark 8.99 to south-eastern boundary, immediate adjacent to the proposed parapet at RL 18.6.

The excessive building height causes view loss, and causes unreasonable bulk and scale. The proposed parapet at RL 19.5m, is 2.1m higher than the existing roof and will cause considerable view loss.

We are very concerned to the very poor privacy outcomes of the elevated roof terrace that is over 10.4m in building height to the parapet at RL 19.5, and is 2.1m higher than the existing level of the existing roof.

We are concerned that the 3D 'height blankets', and the 'ground level existing' and 8.5m building height lines on elevations and sections are incorrectly drawn. The 'ground level existing' spot heights from the registered surveyor's survey drawings have not been shown correctly on the DA drawings.

The submitted cl 4.6 written request which seeks to vary the height of buildings development standard has not demonstrated that the proposed development is consistent with the objectives of the zone and the objectives that underpin the height of buildings development standard.

The failure of the submitted cl 4.6 written request to demonstrate the outcomes required by the LEP means that the variation cannot be supported and, therefore, by necessity, the development application should be refused.

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

The submitted cl 4.6 written request is not well founded as it does not demonstrate that compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case or that 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 height of buildings development standard.

The failure of the submitted cl 4.6 written request to demonstrate the outcomes required by the LEP means that the variation cannot be supported and, therefore, by necessity, the development application should be refused.

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.

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.

## **5. WALL HEIGHT**

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

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.

- We are very concerned to the proposed wall height of the dwelling. The Wall Height is **10.6m** to the wall height under the proposed eastern corner parapet at RL 17.7. Council will note that the Registered Surveyors mark 6.58 EC to south-eastern boundary, immediate adjacent to the proposed parapet at RL 17.7.

There are insufficient environmental planning grounds to justify its contravention.

The adverse impacts of the proposed development, including on the amenity of neighbouring 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.

## **6. NUMBER OF STOREY**

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

The proposed development is inconsistent with the objectives of the zone and the objectives that underpin the number of storey.

The proposal is inconsistent with the objectives of the 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 control.

The failure of the SEE to demonstrate the outcomes required by the 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 control in this particular case.

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. SETBACK**

The proposed development should be refused as it is significantly non-compliant with side setback of the DCP. The development application proposes major non-compliances with the side setback on both sides.

The proposed development does not provide appropriate side or rear setbacks. This leads to inconsistency with the character of the area and unreasonable privacy impacts.

- Rear Setback: Exceeds Foreshore Building Line by 3.6m
- Side Setback 1.338m v 3m for habitable rooms [124% non-compliance]

The proposal will result in an unsatisfactory scale of built form that will be disproportionate and unsuitable to the dimensions of the site and neighbouring residential development.

The height and bulk of the development will result in unreasonable impacts upon the amenity of neighbouring properties with regard to visual dominance.

The excessive built form of the proposal results in a development where the building mass becomes visually dominant and imposing, particularly when viewed from the visual catchment of neighbouring properties

The cumulative effect of the non-compliances with setback and other development standard result in an over development of the site with the site being not suitable for the scale and bulk of the proposal.

## **8. IMPACTS UPON ADJOINING PROPERTIES: VIEW LOSS**

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 above 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 property.

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 water 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.

The proposal may also cause potential view loss of the water views from the public road, and may cause potential view loss from other neighbours who have not been notified of this DA.

### **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 – our loss would be also be the moderate or above: we would have significant loss from our main entertainment deck

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 achieves 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 water and water/land interface 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 achieves 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.

We also refer to two recent DA that were refused by NBC DDP:

DA 2020/1338 55 BOWER STREET, MANLY

We bring to the attention of Council a recent refusal by NBC DDP on 24 March 2021, following a Refusal Recommendation of NBC Development Assessment Manager,

by NBC Reporting Manager Anna Williams, a very senior and highly experienced NBC Planning Officer, and the NBC Responsible Officer Rebecca Englund, a very senior NBC Planning Officer, that Council as the consent authority refuses Development Consent to DA2020/1338 for Alterations and additions to a dwelling house on land at Lot 63 DP 8075, 55 Bower Street, Manly, subject to the conditions that were outlined in the Assessment Report.

The assessment of DA 2020/1338 involved a consideration of a view loss arising from a proposed development that presented a non-compliant envelope to LEP and DCP controls.

The DDP agreed with the recommendation and refused this DA.

The DDP Panel that refused this DA were three of the most senior DDP members: Peter Robinson Executive Manager Development Assessment, Lashta Haidari Manager Development Assessment, and Liza Cordoba Manager Strategic & Place Planning

The Assessment Report found that:

*'the impact associated with the non-compliant built form, specifically the proposed upper floor, is unreasonable and the objectives of the relevant standards and controls are not achieved.'*

The Assessment Report within the Tenacity Assessment concluded:

*Whilst the level of impact is categorised as moderate at worst, the impact would be reduced with a compliant or near compliant design.*

*There is also a question as to whether a more skilful design could reduce the level of impact for adjoining properties.....that a more skilful design could lessen the impact.*

*The proposal is also considered to be inconsistent with the requirements of this control, which require views between buildings to be maximised, in addition to those objectives that seeks to provide for view sharing between properties and to maximise disruption and loss of views."*

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

We contend that this DA Refusal by the DDP sets a benchmark of the custom and practice of Council in consideration of all view loss concerns.

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 'moderate' by the assessing officers and the DDP. The photographs are shown from page 156 of the DDP Agenda, 24 March 2021.

We contend our view loss is of a severity equal or worse than this view loss.

In Q4 2021, a S82A DA has been submitted, with Amended Plans, presenting a 'more skilful design' solution to maintain an important view to Freshwater Beach.

DA 2021/0517 55 WHEELER PARADE DEE WHY

We bring to the attention of Council a recent refusal by NBC DDP 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 non-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.

We contend that this DA Refusal by the DDP sets a further benchmark of the custom and practice of Council in consideration of all view loss concerns.

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.

#### 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.

- FSR
- Building Height
- Wall Height
- Number of Storey
- Rear Setback
- Side Setback

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 able to consider the 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 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.



*View from our highly used Entertainment Deck. This is our only view to the harbour. The roof top terrace, stair and raised structures will take harbour view. The increase in height of the proposed building, along with the additional built form and roof built into the foreshore setback zone will take more harbour view. The non-compliant side setbacks will take more harbour view. The development breaches multiple planning controls and is unreasonable: FSR, Building Height, Wall Height, Number of Storey, Rear Setback, Side Setback*

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.*

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.

Height Poles: 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.

## **9. 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 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.

We are very concerned to the proposed roof top terrace, that is positioned above maximum building heights. We ask for the roof top terrace to be deleted in full.

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 Terrace directly facing neighbour's bedrooms, living rooms and private open space.

*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 proposed development result in a privacy impact with the proposed Roof Terrace directly facing neighbour's bedrooms, living rooms and private open space. The proposed roof terrace facing the rear private open spaces for the neighbouring dwelling and will result in an unacceptable level of privacy impact.

*Principle 4: Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.*

Response: The proposed development is a new development and the proposed roof terrace has 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 terrace.

*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 deletion of the roof terrace 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: Maintaining the existing landscaping would 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.*

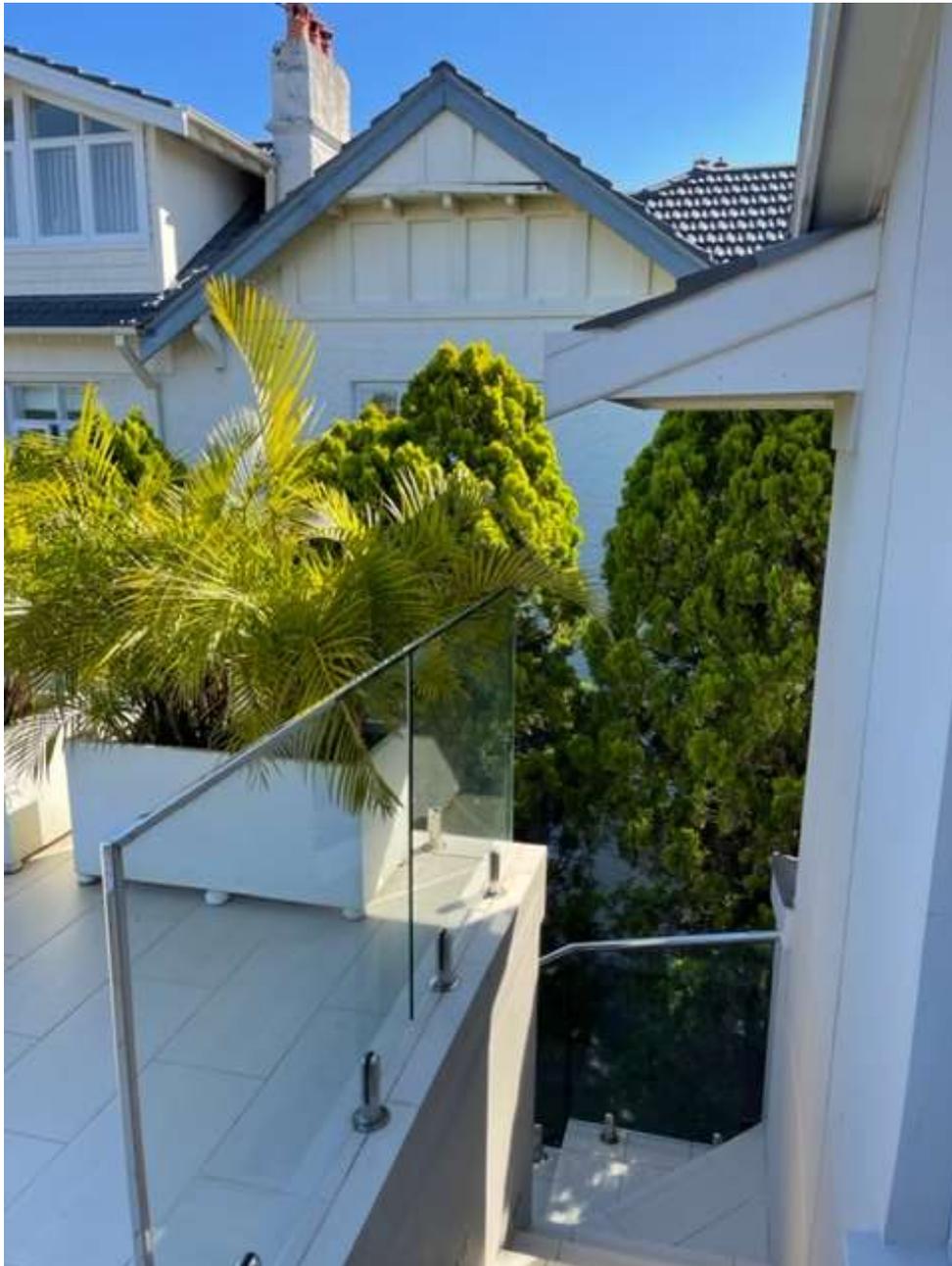
Response: The area is not undergoing change that would warrant privacy impact such as the one presented.

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.

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.

The following photos clearly show the amenity provided by the group of 17 *Thuja orientalis* adjacent the shared driveway. These trees are greater than 5m in height, and are considered to be significant trees.





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.*

### **Commentary:**

The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal. The roof terrace creates severe privacy impacts, as well as above moderate view loss. There is little necessity for the roof terrace, as there already are three terraces at other floor levels. We contend that the same conclusion in Super Studio must be reached in this DA:

*“...the combination of overlooking and the added potential for noise disturbance makes the impact of the proposed roof terrace unacceptable.”*

## **10. IMPACTS UPON ADJOINING PROPERTIES: EXCESSIVE BULK & SCALE**

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."*

Commentary:

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

## **11. IMPACTS UPON ADJOINING PROPERTIES: LANDSCAPING**

We ask for the preservation and full retention of the group of 17 Thuja orientalis trees adjacent the shared driveway. These trees are greater than 5m in height, and are considered to be significant trees

*"over 5m in height and, that impacts on the streetscape by virtue of its size, appearance, type, age, condition and heritage/cultural significance."*

These trees are in good health, and high amenity value as they provide significant privacy screening and general amenity value to all neighbours.

These trees are not in the 'footprint' as the Arborist suggests.

We ask for full retention and protection.

There are currently 17 Thuja Oriental mature trees which should be left as they are. They will not impede the new build whatsoever and there are at least 6 residences that benefit from them. They have been carefully curated in a line that exists for 40m in a uniform formation. They vary in height but we calculate them to be up to 7 metres tall in a good section of them. They are approximately 20 years of age.

We and the existing neighbours would place a "High" amenity value to them, whereas in the Arborist report it has them as "low". They provide tremendous amenity to local residents. These evergreen trees have been described by arborists as ideal trees for reducing noise and providing privacy. The trees and the surrounding undergrowth provide natural invaluable habitat for many species of local wildlife such as possums, endangered long nosed bandicoots and cockatoos. They provide great shading properties for 30 Addison and 28 Addison by absorbing direct sunlight in the afternoon and assisting the environmental efficiency of the house. The Thuja Oriental grows around 50cm per year and our arborist would estimate that it would take 20 years to regrow younger trees to this level of maturity. Their loss would be unreasonable and unacceptable for local amenity, privacy, the temperature and energy efficiency of both 30 Addison Road and 28 (units 1, 2 and 3) Addison Road.

The common driveway which the 17 Thuja Orientals straddle services 6 different residences. Their removal would be gross overdevelopment. There already exists two concrete strips along the current driveway which are suitable as a pathway. There is no need to fell these 17 existing trees in order to build another 3rd path way. There is no doubt that their removal will have a detrimental impact on the

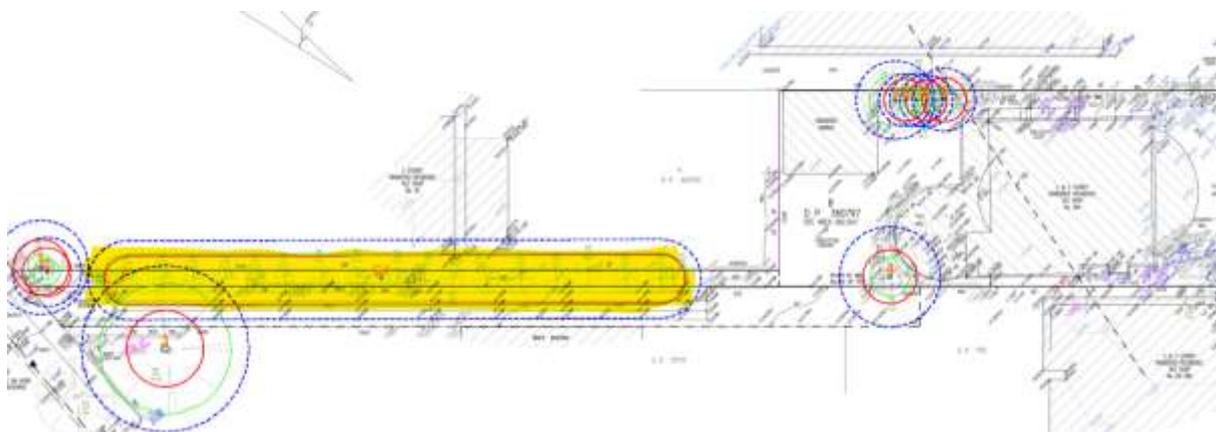
streetscape by virtue of their size and maturity as well as a loss of natural habitat for the native flora and fauna.

If the DA was to be approved and the 17 trees removed, the result would be that from the outdoor balcony in front of the master bedroom of 30 Addison Road we could see into the habitable areas of 1/28, 2/28 and 3/28 bedrooms and living areas. Similarly, those 3 residences could see into the master bedroom and 2/28 would have un interrupted views into the lounge area of 30 Addison Road. In addition, if these trees were removed, pedestrians on the common driveway would be able to see directly into the highly utilised living, dining, and kitchen areas at the rear of 30 Addison Rd.

The proposal includes the replacement of the 17 trees with small Agapanthus which would not be appropriate in height or form.

In the Statement of Environmental Effects on page 8 it erroneously describes "There are no significant mature trees upon the land and no remnant native vegetation." We would argue that the 17 trees in G1 fit this description.

The DA actually proposes the removal of every tree that currently exists on 30A Addison Road. The 3 trees they have as "retain and protect" are not actually on the land of 30A Addison. We propose that these 17 trees in G1 should be amended to Retain and Protect. We find the reasoning for the keeping/removal of other trees in the report as logical and reasonable.



*Extract from Arborist Report: The group of 17 Thuja orientalis adjacent the shared driveway that require to be protected*



17 Thuja Orientals: cockatoos frequent the trees especially in Spring and Summer.



*17 Thuja Orientals along a 40m line of trees along the fence of 30 Addison Road. The common drive way acts for 6 residences.*



*17 Thuja Orientals along a 40m line of trees along the fence of 30 Addison Road. The common drive way acts for 6 residences.*

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

The landscape component of the proposal must not be supported due to the significant impacts of proposed works on existing trees and vegetation.

Any encroachment into the TPZ of existing trees by greater than 10%, or any encroachment into the SRZ, is deemed to be major, and therefore requires a tree root investigation in accordance with AS4970-2009.

Trees in neighbouring properties are considered prescribed, irrespective of species and height, and must therefore be protected and retained throughout proposed works. Any negative impacts towards the short-term and long-term health of these

trees must not be supported. Neighbouring trees within 5m of the development and are required to be assessed by an AQ5 Arborist to determine impacts to TPZ and feasibility of retention.

We contend that the proposed retained trees have not had adequate tree root investigation in accordance with AS4970-2009.

We contend that the trees in neighbouring properties have not had adequate tree root investigation in accordance with AS4970-2009.

The landscape scheme, based on the architectural design layout, does not provide adequate landscape areas of deep soil that are not restricted by building proximity, to meet the requirements of the DCP.

There are significant impacts of proposed works on trees to be retained, as well as insufficient canopy trees proposed to compensate the removal of significant trees within the site.

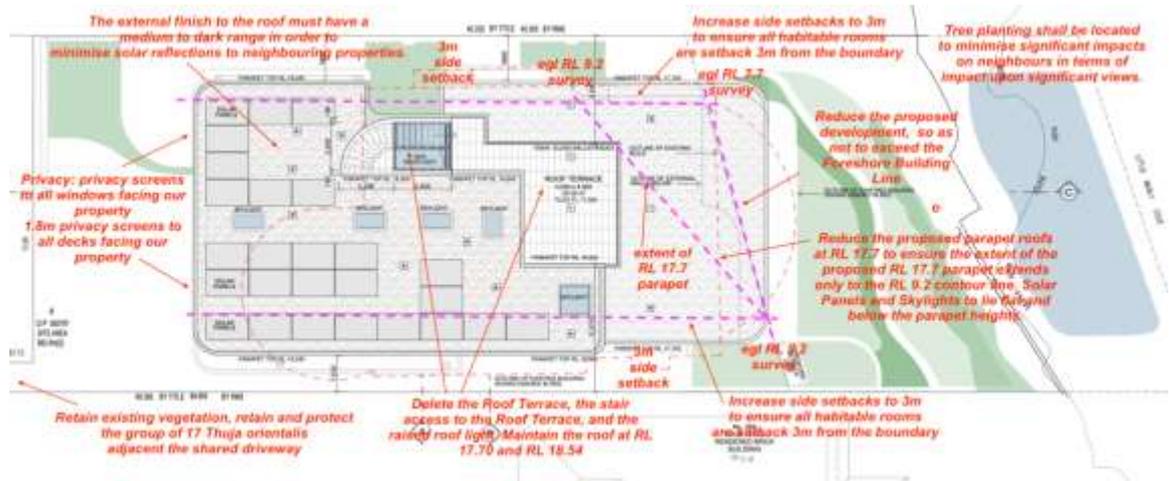
The proposed development does not provide an adequate setback area which would permit the planting of appropriate vegetation which could offer visual screening.

## **12. CONTENTIONS THAT MAY BE RESOLVED BY AMENDED PLANS: DESIGN ALTERNATIVES**

A compliant building design would reduce the amenity impacts identified. Reduce the proposed development as follow:

- Delete the Roof Terrace, the stair access to the Roof Terrace, and the raised roof light. Maintain the roof at RL 17.70 and RL 18.54
- Retain and protect the group of 17 Thuja orientalis adjacent the shared driveway
- Reduce the extent of the proposed parapet roof at RL 17.7 to ensure the extent of the proposed RL 17.7 parapet extends only to the RL 9.2 contour line. Solar Panels and Skylights to lie flat and below the parapet heights.
- Reduce the proposed development, so as not to exceed the Foreshore Building Line
- Increase side setbacks to 3m to ensure all habitable rooms are setback 3m from the boundary
- Privacy: privacy screens to all windows facing our property
- Privacy: 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.
- Landscaping: all new trees are to be small trees, with a mature height of no more than 6.0m above natural ground
- Landscaping: Tree planting shall be located to minimise significant impacts on neighbours in terms of impact upon significant views.
- Roof: 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.

- consider a more skilful design that could provide the applicant with the same development potential and amenity and reduce the impact upon views of neighbours.
- consider a more skilful design that could provide the applicant with the same development potential and amenity and reduce the impact upon privacy loss to neighbours.



Mark-Up Roof Plan with Amended Plan Summary

### 13. CONTENTIONS THAT RELATE TO A LACK OF INFORMATION

#### View Impact Analysis

The Applicant has not provided an adequate View Impact Analysis which details the extent to which existing water 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.

#### 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.

*Riparian: Aquatic Ecology Report outstanding including a Construction and Environmental Management Plan*

*This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater.*

*The site sits above the rocky intertidal foreshore of Little Manly Cove which adjoins North Harbour Aquatic Reserve. The marine environment lies less than 10 meters from the property boundary and is the recipient of all stormwater and overland flow from the site. The rocky foreshore and aquatic environment is potential habitat for little penguins as well as other sensitive marine flora and fauna. Given the sensitive nature of the receiving environment and the iconic location, there is currently insufficient information to satisfy Council that all threats and risks to the marine environment and the biodiversity within it have been considered and protection measures developed for implementation during the demolition and completion of the project.*

*Council will require an Aquatic Ecology Report that includes a Construction and Environmental Management Plan which describes details on best practice measures to protect the environment from all aspects of demolition and construction processes.*

## **14. 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.

### MANLY 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), (2f), and (2g) 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 C4

Environmental 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, and does not meet the objectives in relation to minimising disruption to views
- 4.4 Floor Space Ratio  
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 FSR development standard under the LEP, and does not meet the objectives in relation to minimising disruption to views and other environmental impacts on the use and enjoyment of adjoining land
- 4.6 Exceptions to Development Standards  
The written requests submitted pursuant to clause 4.6 of *Local Environmental Plan* fails to justify contravention
- 6.9 Foreshore Scenic Protection  
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 standard, as it fails to satisfy the objectives (1) and (3), particularly the loss of views from a public place to the foreshore
- 6.10 Limited Development on Foreshore Area  
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 standard, as it fails to satisfy the objectives particularly the loss of views from a public place to the foreshore

## MANLY 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:

- 1.7 Aims and Objectives of this Plan
- 3.1.1 Streetscape (Residential areas)
- 3.3.1 Landscaping
- 3.3.2 Preservation of trees
- 3.4.2 Privacy and Security
- 3.4.3 Maintenance of Views
- 4.1.2.1 Wall Height
- 4.1.2.2 Number of Storeys
- 4.1.2.3 Roof Height
- 4.1.4 Setbacks (front, side and rear) and Building Separation
- 4.1.4.2 Side setbacks
- 4.1.4.4 Rear Setback
- 4.1.5 Open space & Landscaping
- 4.1.8 Development on Sloping Sites
- 5.4.1 Foreshores Scenic Protection

Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005 Harbour Foreshores & Waterways Area

The proposal would not satisfy the matters for consideration under Part 2 Clause 14 and Part 3 Division 2 of the SEPP: Sydney Harbour Catchment, or the requirements of the Sydney Harbour Foreshores and Waterways Area Development Control Plan

Coastal Management Act 2016

The proposal would not satisfy the matters for consideration under Clause 3 of the Coastal Management Act 2016.

SEPP (Coastal Management) 2018

The proposal would not satisfy the matters for consideration under SEPP CM 2018 Clause 14 in respect to loss of views from public places to the foreshore; Clause 13 Coastal Environmental 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 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.

## 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 considered 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 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,

Lee Johns & Michelle Bolding  
30 Addison Road

Manly NSW 2095