
From: [REDACTED]
Sent: 23/08/2023 9:44:56 PM
To: Council Northernbeaches Mailbox
Cc: [REDACTED]
Subject: TRIMMED: DA 2022 2246 206 HUDSON PARADE CLAREVILLE NSW
2107 WRITTEN SUBMISSION: LETTER OF OBJECTION SUBMISSION:
TULLOCH
Attachments: 206 HUDSON AMENDED WS.pdf;

Kind regards,

Bill Tulloch BSc[Arch]BArch[Hons1]UNSW RIBA RAIA
[REDACTED]

SUBMISSION

a written submission by way of objection

BILL TULLOCH BSc [Arch] BArch [Hons1] UNSW RIBA RAIA

prepared for

ROBERT & LYN CHALMERS, 208 HUDSON PARADE, CLAREVILLE NSW 2107

23 AUGUST 2023

Northern Beaches Council
PO Box 82
Manly
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RE: DA 2022 2246
206 HUDSON PARADE CLAREVILLE NSW 2107
WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: TULLOCH

Dear Sir,

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

I have been instructed by my clients to prepare an objection to this DA.

I refer to my submission dated 22 January 2023, that remains the basis of objection.

Amended Plans have been submitted, as well as Clause 4.6 Variations.

The design of the proposed development does not ensure that the existing high levels of amenity to my clients' property are retained.

Having reviewed the documentation prepared in support of the application and determined the juxtaposition of adjoining properties I feel compelled to object to the application in its current form.

The proposal is considered to be inappropriate within the streetscape.

The bulk, scale, density and height of the proposed development is excessive and inconsistent with the established and desired future streetscape character of the locality.

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 my clients' property.

- View loss
- Visual Privacy
- Solar Loss
- Visual Bulk
- Engineering Concerns relating to Land Slip

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

- Foreshore Building Line: Exceeds control by >2.3m
- Landscape Area: Proposed 51.84% v Control 60.0% [16% non-compliance]
- Building Height: Proposed Roof @ 25.06m, exceeds existing levels of 16.56m, and exceeds HOB
- Building Height: Proposed Roof @ 21.91m, exceeds existing levels of 13.41m, and exceeds HOB
- Southern Side Boundary Envelope: 8.5m wall height with 2.5m setback [2.5m non-compliance]
- Wall Height: Proposed 8.5m v Control 7.2m [18% non-compliance]
- Number of Storey: Proposed Four: Control Two [100% non-compliance]
- Front Setback: Proposed 4.825m v Control 6.5m [35% non-compliance]
- Side Setback: Proposed 1.5m v 2.5m Control [66% non-compliance]

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.

The Applicant has not provided adequate protection to my clients' property from excessive excavation and potential land slip and damage to my clients' property, including inadequate geotechnical investigations, incomplete geotechnical recommendations, incomplete geotechnical monitor plan, excessive vibration limits, lack of full-time monitoring of the vibration, incomplete dilapidation report recommendations, incomplete attenuation methods of excavation, exclusion of excavation in the setback zone, exclusion of anchors under my clients' property, and incomplete consideration of battering in the setback zone.

REQUEST FOR AMENDED PLANS TO BE SUBMITTED TO BETTER ADDRESS IMPACTS UPON ADJOINING PROPERTIES

I contend that further amendments are required.

A compliant building design would reduce the amenity impacts identified.

Prepare and submit further supporting information and amendments to the assessing officer directly addressing the issues.

Reduce the proposed development as follows:

1. REDUCTION OF BUILT FORM

- Delete all built form in the Foreshore Area
- Reduce the Building Height to 8.5m
- Increase Landscape Area to 60%, by deletion of all built form in the Foreshore Area, and increasing the front setback to 6.5m and southern side setback to 2.5m
- Delete all built form within Side Boundary Envelope or Inclined Plane zone
- Decrease excavation by deletion of all zones in the Foreshore Area, and all zones in the 2.5m side setback zone;
- In order to adequately reduce the extent of the non-compliance and associated visual impacts upon the adjoining property to the north, the upper floor level must have a side setback of 4.0m from side boundary.

2. PRIVACY DEVICES

- Window W06 is excessive in size, and requires a sill height of 1.6m, above the First Floor FFL
- Window W05 is excessive in size, and requires a sill height of 1.6m, above the First Floor FFL.
- Privacy Screens to be shall be of fixed panels or battens or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development
- Full height privacy screen to southern end of pool

3. LANDSCAPING

- Delete 2 new Banksia integrifolia out of viewing corridor to the south-west of the proposed pool
- Delete screen planting to the west of the pool

4. OTHER MATTERS/CONDITIONS OF ANY CONSENT

My client asks for a complete set of Conditions to be included within any consent, including, but not limited to, the following:

Conditions which must be satisfied prior to the demolition of any building or construction

- Acoustic Certification of Mechanical Plant and Equipment
- Arborists Documentation and Compliance Checklist
- BASIX Commitments
- Checking Construction Certificate Plans – Protecting Assets Owned by Sydney Water
- Construction Certificate Required Prior to Any Demolition
- Demolition and Construction Management Plan
- Electric vehicle circuitry and electric vehicle charging point requirements
- Engineer Certification
- Establishment of Tree Protection Zone (TPZ) Fence
- Geotechnical and Hydrogeological Design, Certification and Monitoring
- Ground Anchors
- Identification of Hazardous Material
- Light and Ventilation
- No Underpinning works
- Noise Control - Acoustic Protection of adjoining residential units-Operation of Air Conditioning Plant
- Noise Control - Swimming pool/spa pool pumps and associated equipment
- Parking Facilities
- Payment of Long Service Levy, Security, Contributions and Fees
- Professional Engineering Details
- Public Road Assets Prior to Any Work/Demolition
- Road and Public Domain Works
- Soil and Water Management Plan – Submission and Approval
- Stormwater Management Plan
- Swimming and Spa Pools – Backwash
- Swimming and Spa Pools – Child Resistant Barriers
- Tree Management Plan
- Ventilation - Internal Sanitary Rooms
- Utility Services Generally
- Waste Storage – Per Single Dwelling

Conditions which must be satisfied prior to the commencement of any development work

- Adjoining Buildings Founded on Loose Foundation Materials
- Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)
- Compliance with Building Code of Australia and insurance requirements under the
- Dilapidation Reports for Existing Buildings
- Erosion and Sediment Controls – Installation
- Establishment of Boundary Location, Building Location and Datum
- Home Building Act 1989
- Notification of Home Building Act 1989 requirements
- Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection
- Site Signs

- Toilet Facilities
- Works (Construction) Zone – Approval and Implementation

Conditions which must be satisfied during any development work

- Asbestos Removal Signage
- Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum
- Classification of Hazardous Waste
- Compliance with Australian Standard for Demolition
- Compliance with BCA and Insurance Requirements under the Home Building Act 1989
- Compliance with Council's Specification for Roadworks, Drainage and
- Compliance with Geotechnical / Hydrogeological Monitoring Program
- Miscellaneous Works, Road Works and, Work within the Road and Footway
- Critical Stage Inspections
- Disposal of Site Water During Construction
- Disposal of Asbestos and Hazardous Waste
- Dust Mitigation
- Erosion and Sediment Controls – Maintenance
- Footings in the vicinity of trees
- Hand excavation within tree root zones
- Hours of Work –Amenity of the Neighbourhood
- Installation of stormwater pipes and pits in the vicinity of trees
- Level changes in the vicinity of trees
- Notification of Asbestos Removal
- Maintenance of Environmental Controls
- Placement and Use of Skip Bins
- Prohibition of Burning
- Public Footpaths – Safety, Access and Maintenance
- Replacement/Supplementary trees which must be planted
- Requirement to Notify about New Evidence
- Site Cranes
- Site Waste Minimisation and Management – Construction
- Site Waste Minimisation and Management – Demolition
- Support of Adjoining Land and Buildings
- Tree Preservation
- Vibration Monitoring

Conditions which must be satisfied prior to any occupation or use of the building
(Part 6 of the Act and Part 8 Division 3 of the Regulation)

- Amenity Landscaping
- Certification of Electric Vehicle Charging System
- Commissioning and Certification of Public Infrastructure Works
- Commissioning and Certification of Systems and Works
- Occupation Certificate (section 6.9 of the Act)
- Letter Box

- Swimming and Spa Pools – Permanent Child Resistant Barriers and other Matters
- Swimming Pool Fencing

Conditions which must be satisfied prior to the issue of the Occupation Certificate for the whole of the building

- Fulfillment of BASIX Commitments – clause 154B of the Regulation
- Landscaping
- Positive Covenant and Works-As-Executed Certification of Stormwater Systems
- Removal of Ancillary Works and Structures
- Road Works (including footpaths)

Conditions which must be satisfied during the ongoing use of the development

- Maintenance of BASIX Commitments
- Noise Control
- Noise from mechanical plant and equipment, including swimming pool plant
- Ongoing Maintenance of the Onsite Stormwater Detention (OSD) System, Rain Garden and Rainwater Tank
- Outdoor Lighting – Residential
- Outdoor Lighting – Roof Terraces
- Swimming and Spa Pools – Maintenance

Advising

- Asbestos Removal, Repair or Disturbance
- Builder's Licences and Owner-builders Permits
- Building Standards - Guide to Standards and Tolerances
- Commonwealth Disability Discrimination Act 1992
- Criminal Offences – Breach of Development Consent and Environmental Laws
- Dial Before You Dig
- Dilapidation Report
- Dividing Fences
- Lead Paint
- NSW Police Service and Road Closures
- Pruning or Removing a Tree Growing on Private Property
- Pruning or Removing a Tree Growing on Private Property
- Recycling of Demolition and Building Material
- Release of Security
- Roads Act 1993 Application
- SafeWork NSW Requirements
- Workcover requirements

REASONS FOR REFUSAL

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

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021. Particulars:
 - The proposed development is likely to cause an adverse impact on the visual amenity and scenic qualities of the area, a matter for consideration under Section 2.11 Development on land within the coastal use area.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone C4 of the Pittwater Local Environmental Plan 2014. Particulars:
 - Contravention of PLEP 2014 Clause 7.8 Limited development on foreshore area and P21DCP Landscaped Area result in a proposal that does not provide for residential development of a low density and scale integrated with the landform and landscape, resulting in a visually prominent built form.
 - The proposal is inconsistent with the objectives of the C4 zone.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental Plan 2014. Particulars:
 - The proposed modifications are not permitted under Clause 7.8 Limited development on foreshore area as they do not represent exclusions under Clause 7.8(2).
 - Compliance with this standard is considered to be reasonable and necessary, given the site zoning as C4 Zone, the existing dwelling's intrusion into the foreshore area and the variation proposed to the non-landscaped area control.
 - The environmental planning grounds advanced to justify a variation to Clause 7.8 Limited development on foreshore area of the PLEP 2014 are not sufficient. The merits of the variation have been assessed with regard to the objectives of the development standard and underlying objectives of the C4 Zone. The proposal is considered to be inconsistent with the objectives and provisions of Clause 7.8 - Limited development on foreshore area and the objectives of the C4 Zone.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Locality of the Pittwater 21 Development Control Plan. Particulars:

- The proposed development is considered to be inconsistent with the desired future character statement of the Pittwater Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Scenic Protection - General of the Pittwater 21 Development Control Plan. Particulars:
 - The proposed development is not considered to minimise visual impact on the natural environment when viewed from any waterway and is inconsistent with this Clause, resulting from contravention of PLEP 2014 Clause 7.8 Limited development on foreshore area and P21DCP Landscaped Area.
 6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of DCP Landscaped Area of the Pittwater 21 Development Control Plan. Particulars:
 - The proposal does not achieve the 60% landscape area whilst encroachment into the foreshore area.
 7. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not within the public's interest. Particulars:
 - It is considered that the proposal would result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community, and is therefore not in the public interest
 8. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979
 9. Adverse visual impacts to adjoining properties. The proposal raises the potential for adverse visual impacts and associated view impacts to the adjoining properties. In this regard, the proposal is contrary to the provisions of the aims of the LEP
 10. Adverse solar impacts to adjoining properties. The proposal raises the potential for adverse visual impacts and associated solar impacts to the adjoining properties. In this regard, the proposal is contrary to the provisions of the aims of the LEP.
 11. Adverse visual and acoustic privacy impacts to adjoining properties. The proposal does not demonstrate effective mitigation of overlooking to adjoining properties from balconies and windows.
 12. The extent of excavation is excessive. The proposal is contrary to the objective of the DCP, in that it does not minimise excavation and has potential adverse impacts on existing and proposed vegetation.

13. 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.
14. 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 LEP:
- Aims of Plan
 - Zone Objectives
 - Height of Buildings
 - Exceptions to Development Standards
 - Earthworks
 - Geotechnical Hazards
 - Limited Development on Foreshore Area
15. 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:
- Excessive Wall Height & Number of Storey
 - Unacceptable Building Separation
 - Insufficient Landscape Areas
 - Poor Strategic Positioning of Tree Canopy
 - Poor Garage Design
 - Excessive Swimming Pool Envelope
 - Excessive Excavation & Geotechnical Concerns
 - Stormwater Concerns
 - Poor Streetscape Outcomes
 - Impacts Upon Adjoining Properties: View Loss
 - Impacts Upon Adjoining Properties: Overshadowing
 - Impacts Upon Adjoining Properties: Privacy
 - Impacts Upon Adjoining Properties: Visual Bulk
16. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the plans and documentation are misleading as they do not clearly portray the true extent of works proposed. The plans include inaccuracies and inconsistencies and insufficient information has been provided in order to enable a detailed assessment. Dimensions to boundaries have not been shown in all locations of all proposed built elements. Levels on all proposed works have not been shown.
17. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the proposal would not satisfy the matters for consideration under Biodiversity & Conservation SEPP 2021 and Resilience & Hazards SEPP 2021

18. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that it will have an adverse impact through its bulk, scale and siting on the built environment, and through lack of landscape provision, and adverse impact on the natural environment. The proposed development will have a detrimental impact on the visual amenity of the adjoining properties by virtue of the excessive building bulk, scale and mass of the upper floor and its associated non-compliant envelope.
19. 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.
20. The proposals are unsuitably located on the site pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
21. 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
22. 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. The proposed development will have a detrimental impact on the amenity of adjoining residential properties, and for this reason is contrary to 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 causes considerable amenity loss to my clients' property.

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 my clients' property. Primarily,

- The development compromises amenity impacts on neighbours

- The development compromises private views and solar loss
- The development does not minimise visual impact

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the DCP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the EPAA1979

The proposed development does not satisfy the appropriate controls. Furthermore, the proposal would result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community, and is therefore not in the public interest. The proposal therefore must be refused.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

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

Yours faithfully,

Bill Tulloch

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