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Principal Objection

No. 20 Beatty Street, Balgowlah Heights

DA2024/0635

Ref: OBJ53-A2(PO) Beatty St 20

Date: 15 July 2024

Prepared for:

The General Manager

C/O: Mr Maxwell Duncan

Northern Beaches Council

Summary

This planning submission responds to Council's request for comment in accordance with the public exhibition of **DA2024/0635** at **No. 20 Beatty Street, Balgowlah Heights**. It has been prepared on behalf of our Clients, **Mr Geoffrey Watkinson** and **Mrs Janet Ladlow**, owners of **No. 16 Beatty Street, Balgowlah Heights**, located adjacent of the subject site. The official DA description notes the project entails:

New - Alterations and additions to a dwelling house including a swimming pool

Accordingly, iObject conducted a preliminary audit of the DA against the relevant state and local planning controls, including the following planning instruments:

- **Manly Local Environmental Plan 2013**
- **Manly Development Control Plans 2013**

Subsequently, multiple issues were uncovered as part of this process that would likely pose a nuisance or significantly disrupt our Clients' amenity. These issues were unfortunately were not properly evaluated in the applicant's Statement of Environmental Effects (SEE), which utilised absentia and/or misrepresentation to describe a future development scenario that would pose minimal impact on surrounding properties. This submission therefore offers an alternative professional appraisal based on recognised planning grounds for the following issues:

1. Storeys & Wall Height
2. Floor Space Ratio
3. Scenic Protection
4. Privacy

- 5. Local Character
- 6. View Loss
- 7. Height
- 8. Solar Access

Submission Details

DA Reference	DA2024/0635
DA Address	No. 20 Beatty Street, Balgowlah Heights
Client	Mr Geoffrey Watkinson and Mrs Janet Ladlow Owners of: No. 16 Beatty Street, Balgowlah Heights
Stage	Principal Objection (Stage A2)
DA Description	<i>New - Alterations and additions to a dwelling house including a swimming pool</i>

Planning Grounds

1. Storeys & Wall Height

DCP 4.1.2.1 Wall Height | DCP 4.1.2.2 Number of Storeys

Relevant Objectives of DCP 4.1.1 are as follows:

- 2. To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.*
- 3. To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.*
- 4. To maintain the character of the locality and streetscape.*

Wall Height

The proposal will result in a significant non-compliance with the 7.7-metre DCP wall height control, with the rear of the proposed building seeking up to 9.3 metres in wall height. The surplus wall height will result in a scale of development that would be highly visible from numerous locations, including from public and private locations. The resulting building will both negatively affect the outlook from the rear of No. 16 Beatty Street, presenting as overbearing bulk. This may cause occupants of No. 16 to feel hemmed-in when utilising rear POS's, resulting in a negative sense of enclosure.

Departure thus from the applicable wall height may also impair access to views from No. 16 looking across the subject site (from the rear of No. 16 looking north). In addition, this wall height non-compliance appears to be linked to the overshadowing impacts upon No. 16, as discussed below.

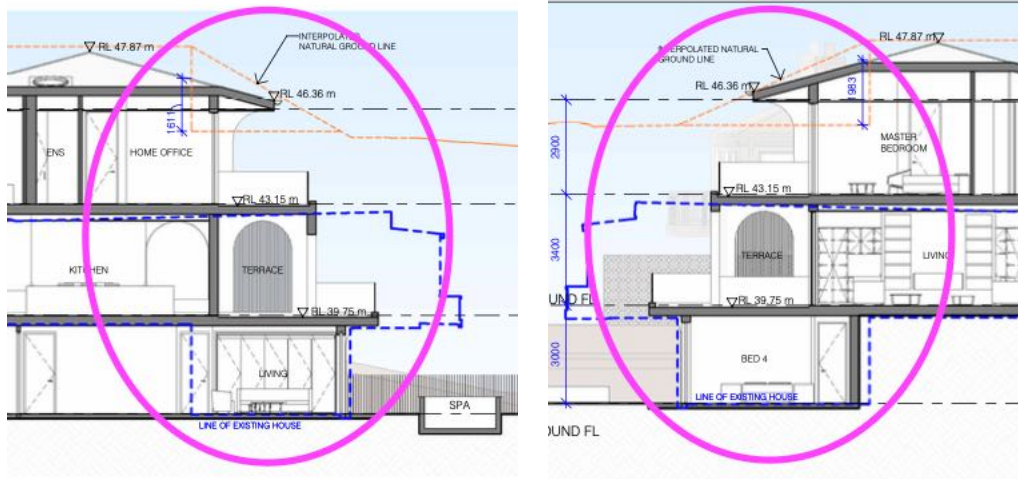


Figure 1: Rear of the proposed dwelling – long sections 01 and 02 (Source: iObject 2024)

Storeys

DCP 4.1.2.2 stipulates buildings must not exceed two (2) storeys, which applies to the subject site. The proposed new rear section is equivalent to three-storeys, in contravention of this storey limit. unnecessarily causing excessive building scale. End of dwelling 3 storeys, as dining room not considered basement, since above EGL

The proposed rear section of the building is considered out-of-step with the prevailing character of the locality, with houses in and around Beatty Street often carrying a maximum two-storey scale. Whilst there are some examples on steeper sites in the area presenting as three-storeys, many of these were approved under historic planning framework, and no longer carry weight for any precedence.

Importantly, there is a distinct pattern of scale when considering surrounding upper floors, which are generally modest with a significant first floor setback and unobtrusive to principal building forms. The proposed design on the other hand does little to provide appropriate stepping however that would otherwise offer some deference to nearby two-storey forms.

Notably, side elevations shall appear long and continuous without incorporating appropriate visible breaks or stepping, offering little visual interest to surrounding properties.

- A. **Proposed Solution:** That a revised design be requested, reducing the maximum wall height and storey height to comply with DCP controls.

2. Floor Space Ratio

LEP Clause 4.4 Floor Space Ratio

The objectives of LEP Clause 4.4 are as follows:

- (a) To retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*
- (b) To maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*
- (c) To require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*
- (d) To ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

The proposed development does not comply with the Floor Space Ratio (FSR) development standard and has been accompanied by a formal request to vary the control (Clause 4.6 application). Clause 4.4 requires a maximum FSR of 0.40:1, however 0.50:1 is proposed, representing a 27% exceedance. In particular, the FSR non-compliance will translate to additional building bulk and overshadowing.

Contrary to the Clause 4.6 Application seeking to vary the FSR standard, exceedance of the control will in fact create additional building bulk resulting in unreasonable environmental amenity impacts in terms of visual amenity for No. 16 adjacent.

Excessive upper floor floor area, and general lengthening of the dwelling will unnecessarily add to the structure's visual dominance, as viewed from adjacent properties, as well as the foreshore.

As further described in this submission, the proposal is considered incompatible with the bulk and scale of the desired character of the locality. The onuses of proof therefore cannot be met then to allow a Clause 4.6 in this case, due to the proposal's following performance against these two key tests:

- **Compliance with the development standard is considered reasonable and necessary**
- **Sufficient environmental planning grounds do not exist to justify contravening the development standard.**

B. **Proposed Solution:** New design reducing the proposed FSR to comply with the standard.

3. Scenic Protection

LEP 6.9 Foreshore scenic protection area

The proposal will visually dominate the natural environment when viewed from surrounding vantage points, including from Fairlight and Manly. Without following the natural topography with adequate setting back of upper floor massing, the proposal will upset this delicate balance between the built and natural environment, thereby eroding the visual quality of the foreshore.

The subject site and surrounding sites are located within a Foreshore Scenic Protection Area. The Objective of LEP 6.9 is to protect visual aesthetic amenity and views to and from Sydney Harbour, the Pacific Ocean and the foreshore in Manly.

Emblematic of the scenic quality of this part of Balgowlah Heights is the headland topography, which is marked by corridors of vegetation interspersed between lines of built forms. Notably, most dwelling forms have an unimposing appearance on the landscape (when compared to other Harbourside suburbs like Double Bay, which is dominated by large imposing structures). Discernability of the topography, vegetation and ridgeline is thus essential to providing the right balance in protecting the visual quality of this area.



Figure 2: View of Balgowlah Heights from Fairlight foreshore (Source: iObject 2024)



Figure 3: View of the subject site (centre, above blue scaffolding) and surrounds from Fairlight foreshore (Source: iObject 2024)

Per Subclause 3(b) of LEP 6.9, consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that measures have been incorporated into the design that protect and improve scenic qualities of the coastline. The proposed rear section of the development will be highly visible from the public domain, including from Humback Rocks on the opposite side of North Harbour from the subject site. Not only does the poor design quality run contrary to Subclause 3(b), however it will degrade the overall scenic quality of the area when viewed from public spaces, but also from surrounding private properties as well.

In summary, in addition to perpetuating existing design flaws, the proposal does little to uphold the special significance and scenic value of the locality. Given its numerous defects described in other sections, the proposal as it stands cannot be recommended on the ground that it fails to protect the special features of the foreshore area.

Proposed Solution: Re-work the design in line with LEP controls relating to foreshore scenic protection.

4. Privacy

DCP 3.4.2.1 Window Design and Orientation | DCP 3.4.2.2 Balconies and Terraces | DCP 3.4.2.3 Acoustical Privacy (Noise Nuisance)

The objectives of DCP 3.4 state the following:

- 1. To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.*
- 2. To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.*



Figure 4: No. 16's north-western ground floor living room and first floor master bedroom/sitting room windows (Source: iObject 2024)

Rear Upper Terrace Overlooking

The rather large unscreened upper floor rear balcony will likely cause overlooking to the adjacent private open spaces and windows of No. 16. The design of the first-floor terrace will likely allow a person standing at its eastern edge a direct view into the rear first floor terrace of No. 16, as well as the first-floor master bedroom and study. In addition, overlooking into the main ground floor living room and private open spaces (POS's) will be unfettered.

Control b) of DCP 3.4.2.2 suggests recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy. The proximity of the elevated terrace to No. 16's sensitive areas is linked to the privacy issue, which could be somewhat ameliorated with the help of side recessing to prevent unwanted overlooking. A major reconfiguration of the terrace would thus assist in addressing this issue.

Noise

Concern is also raised about the potential noise nuisance owing to the first-floor terrace's height and location, allowing for broad transmission of noise. Coupled with the multiplication of guest capacity, the proposed terrace configuration will mean entertainment there will likely result in unreasonable levels of acoustic privacy for dwellings of neighbouring properties, including No. 16.

Given sufficient open space exists at ground to accommodate a large entertainment space for this purpose, the design, height and location is seen as unwarranted. Compounded by the likely introduction of a BBQ and/or music, the proposal will have a detrimental impact on acoustic privacy.

Window Overlooking

Broad overlooking to No. 16's main rear balcony may occur with the proposed new GL-01 window to the eastern elevation. GL-01 is not a highlight window, as labelled on the upper ground floor plan. This fenestration configuration will enable direct overlooking into No. 16's rear first floor terrace, as well as some potential cross-views into surrounding windows.

Proposed Solutions

- C. Relocate and reconfigure Window GL-01 away from No. 16's first floor rear terrace and convert into a highlight window.
- D. Reduce the overall size of the proposed first-floor terrace, including via increased side setbacks and planter boxes.

5. Local Character

DCP 3.1.1.1 Complementary Design and Visual Improvement

The objectives of DCP 3.1 are as follows:

- (1) *To minimise any negative visual impact of walls, fences and carparking on the street frontage.*
- (2) *To ensure development generally viewed from the street complements the identified streetscape.*
- (3) *To encourage soft landscape alternatives when front fences and walls may not be appropriate.*

Control ii) of the DCP Subsection stipulates development should be designed to:

ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;

The development will likely result in increased negative impacts on the character of the locality and the amenity of the adjoining dwelling at No. 16. There has been little attempt to incorporate common elements from the locality into the proposed design, such as windows on the street elevation, masonry exterior, or stepped and/or articulated forms consistent with surrounding built forms.

DCP 3.1.1.1 offers detailed controls relating to the desired future character of the area. Notably, elements such as massing, design, materials and fenestration fail to meet the design requirement set by these DCP controls. An exposé of the deficiencies inherent in the design, evaluated against these controls are discussed in **Table 1** below:

Table 1: Streetscape Character Analysis

Element	Control	Existing	Proposed	Compliance
Complementarity	<i>i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;</i>	Traditional building forms are commonplace in the streetscape, providing a consistent design approach that is often mutually complimentary by using an assortment of traditional forms. This locale generally contains limited architectural styles, involving elements of the Mediterranean Villa style.	The proposed street elevation will present as closed and unwelcoming in appearance, with no discernible openings.	No
Scenic Amenity	<i>ii) ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;</i>	The predominant use of pitched roof forms and stepped massing down the slope assists in offering an appropriate visual transitioning to soften the impact of building bulk.	Full form dwelling with massing that does not step-down the slope towards, which is considered unsympathetic to the scenic amenity of the headland locale.	No

Height	<i>iii) maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;</i>	Most houses in the immediate vicinity of the subject site are of a two-storey scale, and not disruptive of the natural slope.	The proposal involves a maximum height of 10.1 metres, representing a departure from the LEP height control of 8.5m. In addition, a significant breach of the wall height control at the rear of the site is sought. The resulting height does not attempt to provide visual relief when compared to compliant dwellings nearby.	No
Elevated Structures	<i>iv) avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like.</i>	Elevated POS structures generally follow a pattern whereby generous rear setbacks prevent under-crofts, with first floor setbacks generally increasing as wall heights increase.	The first-floor terrace design rejects surrounding patterns of stepping or inclined forms by resisting attempts to recess building bulk at the rear of the first floor.	No

Innovation	vi) visually improve existing streetscapes through innovative design solutions	Most house contain windows to the street elevation, which assists helps with casual surveillance.	The proposed innovation utilising timber battens to the front elevation will likely yield to a closed and unwelcoming feeling, whilst reducing the availability of casual surveillance.	No
Materials & Finishes	vii) incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged.	The street contains a predominance of masonry (face brick or cement rendered) built forms, often with terracotta roofs.	The proposal seeks to utilise timber batten for a significant proportion of its public-facing external walls.	No



Figure 5: Streetscape example nearby (Source: iObject 2024)

Contrary to the Objectives of this DCP Subsection, the proposal cannot be deemed to be of a high visual quality. Rather than enhancing the streetscape by complementing surrounding development, the design uses a dissimilar massing, style and siting arrangement that competes with the existing aesthetic. Unfortunately, the significant wall height and lack of rear setbacks will mean the loss of visual amenity for the adjacent occupants of No. 16 – both in terms of visual outlook, solar access, and view loss. In summary, the proposed composition will result in a low quality built form which is out-of-step with the streetscape, whilst conflicting with surrounding development patterns.

- E. **Proposed Solution:** The proposal must be significantly re-worked into a new design that makes meaningful contributions to the safeguarding of the character of the area, in line with the surrounding streetscape patterns.

6. View Loss

DCP 3.4.3 Maintenance of Views | *Tenacity Consulting v Waringah [2004] NSWLEC 140*

The objectives of DCP 3 are as follows:

- (1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.*
- (2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.*

View Impact Analysis

As the proposal must demonstrate that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing, a summary review of *Tenacity Consulting v Waringah [2004] NSWLEC 140* is offered below:

1. Assessment of views to be affected

Based on an inspection of the neighbouring site at No. 16 in combination with a review of submitted plans, No. 16 currently enjoys views to the north across the subject site, accordingly:

- A. **Main view:** North Harbour and Manly/Fairlight foreshore
- B. **Secondary views:** Balgowlah and Fairlight districts and surrounds, including ridgelines.

The Secondary View is still considered significant, capturing the ridgeline and associated vegetation, and mostly unobscured. This view across the subject site is considered whole and thus of high value compared to a situation where dense vegetation partially-obscures the view (which does not occur in this case).

2. From what part of the property the views are obtained?

Views to be affected are obtained chiefly from the following viewpoints at No. 34, ranked by view capture value:

1. Master bedroom/sitting room (first floor)
2. First floor rear terrace

It is noted all the viewpoints described above are derived from a standing position.



Figure 6: View across subject site from No. 16's first floor master bedroom towards the north (Source: iObject 2024)

3. Extent of the impact

The proposed view impacts will likely be extensive, with the Secondary Views to be appreciably affected by the proposal.

The view capture points constitute spaces where occupants spend so much of their time. The location of the building and its breadth, when viewed from the eastern elevation will cause the structure to visually replace or intrude upon the Secondary Views. The building element of concern is located at the front part of the proposed first floor and roof.

4. Reasonableness of the proposal

Potential view impacts from the proposed development partly arise from non-compliances with the DCP and LEP controls described in this submission, particularly:

- *DCP 4.1.2.1 Wall Height | DCP 4.1.2.2 Number of Storeys*
- *LEP Clause 4.4 Floor Space Ratio*
- *LEP 6.9 Foreshore scenic protection area*
- *LEP 4.3 Height of buildings*

Based on the above evaluation, the proposed new dwelling cannot be justified as having been designed as a building with minimal visual bulk and massing, as compared to many other existing buildings in the area.

The development will severely restrict views from the existing dwelling at No. 16. The siting and height of the proposed top floor therefore cannot be reasonably justified against the Land and Environment Court's planning principles for view sharing.

Summary of View Impacts

Based on examination of the evidence provided, the DA as it stands will cause a major obstruction to the vast majority of our Clients' Secondary Views. It can be concluded therefore that the proposal has not been designed to allow for view sharing, and thus does not comply with DCP Subsection, nor its Objectives.

Proposed Solutions

- F. It is requested that a Tenacity Assessment occur in relation to the serious view loss concerns raised in accordance with the NSW Planning Principle based on *Tenacity Consulting v Warringah* [2004] NSWLEC 140.
- G. Recessing of the proposed first floor at the rear, including the associated terrace and roof structure to allow for view sharing.

7. Height

LEP 4.3 Height of buildings

The objectives of LEP 4.3 state:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following—*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or conservation zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

The proposed maximum height of the dwelling will stand at 10.1 metres, representing a departure from the LEP height control of 8.5m. The DA has been accompanied by a formal request to vary the control (Clause 4.6 application). Although located at the decline of

the slope, this 1.6-metre non-compliance will likely result in unreasonable amenity impacts to No. 16 in terms of visual bulk, view loss, solar access and/or outlook.

The 19% exceedance will unnecessarily translate to additional building scale above that which is considered reasonable for this location. In opposition to the slope, the proposal does not seek appropriate stepping to follow the topography, which will cause detrimental impacts to visual outlook and scenic protection, as described above.

The exceedance will not conform with prevailing building heights and the desired future streetscape character in the locality, as discussed. This will result in unnecessary additional bulk at the rear of the building.

Views from nearby residential development to public spaces (including the harbour and foreshores) will be disrupted by this design decision. Furthermore, solar access to private open spaces of the adjacent dwelling at No. 16 will be severely impacted as a result.

The proposal's height non-compliance will therefore fall short of the Objectives of LEP 4.3 in relation to overall height. Contrary to the Clause 4.6 Application seeking to vary the FSR standard, the above analysis thus demonstrates the onuses of proof cannot be met to allow a Clause 4.6, given the proposal's performance against these two key tests:

- *Compliance with the development standard is considered reasonable and necessary in this situation.*
- *Sufficient environmental planning grounds do not exist to justify contravening the development standard.*

H. **Proposed Solution:** New design reducing the proposed height to comply with the LEP standard.

8. Solar Access

DCP 3.4.1.1 Overshadowing Adjoining Open Space

The objectives of DCP 3.4 are as follows:

- 1. To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.*
- 2. To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.*

In relation to providing sunlight to adjacent private open space (POS), Control C1(a) of DCP 3.4.1.1 requires development to be designed so that:

New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June)

Private Open Space

The principal private open space (PPOS) of No. 16 during winter is the first floor rear balcony, accessible via the study. Residents currently enjoy almost full solar access to this area from 9am to 3pm during the winter solstice.

Contrary to the above Control, the proposed development scenario will mean for more than half the day (12 midday to 3pm), the PPOS will have more than one third of the existing sunlight eliminated. Being a frequently-used are for outdoor recreation during winter – and no available substitute, the future scenario reflects a non-compliance that would cause significant harm to neighbouring amenity.

The likely causes of the expected solar access non-compliance include the non-compliant DCP rear wall height, LEP height, and proximity of this offending section to the

eastern side boundary. These linked issues if resolved would otherwise preserve the solar access corridor that the PPOS depends upon. Without a sufficient upper floor rear setback and height conformities, new overshadowing to No. 16 will be introduced without abatement.

The proposal unmistakably represents a significant solar access encroachment upon the adjacent eastern neighbour. The proposed height and proximity of the new dwelling will transform the PPOS from having continuous northern sunlight to being severely restricted with only small strips of solar access provided just in the morning.



Figure 7: No. 16's first floor rear terrace (Source: iObject 2024)

These new impacts constitute a deviation from Objective 1 of this DCP Section to protect the amenity of existing and future reside residents in terms of solar access. To remedy this situation, major design reconfiguration will be necessary to address the degree of overshadowing expected.

- I. **Proposed Solution:** Major redesign of the proposal to ensure No. 16's rear first floor terrace receives at least two thirds of the existing sunlight during mid-winter.

Conclusion

Based on the above preliminary evaluation of **DA2024/0635**, significant non-compliances occur that urgently require addressing in relation to Storeys & Wall Height, Floor Space Ratio, Scenic Protection, Privacy, Local Character, View Loss, Height and Solar Access. These non-compliances will contribute to excessive building bulk and unnecessarily overshadow the neighbouring property to the east, whilst infringing upon privacy. Therefore, the proposal as it stands does not merit approval without meaningful design changes that remedy these non-compliances.

Composed by:



Matthew Powell

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PRINCIPAL TOWN PLANNER

