

SUBMISSION: STILL & MCCROSSIN

a written submission by way of objection

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RE: DA 2022/1715
60 HUDSON PARADE CLAREVILLE NSW 2107
WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: Michael STILL and Maria MCCROSSIN

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 Maria McCrossin & Michael Still, 62 Hudson Parade, Clareville to prepare an objection to this DA.

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.

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A. EXECUTIVE SUMMARY

The design of the dwelling does not ensure that the existing high levels of amenity to my clients' property at 62 Hudson Pde is retained.

The proposal is considered to be inappropriate within the streetscape.

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

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

- View loss
- Visual Privacy
- Solar Loss
- Visual Bulk

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

- Building Height: Proposed 9.75m v Control 8.5m [15% non-compliance] RL 16.35 - RL6.6 underside of lowest slab
- Landscape Area: Proposed 40% v Control 60% [50% non-compliance]
- Number of Storey: Proposed Three: Control Two [50% non-compliance]
- Front Setback: Proposed 1.8m v Control 6.5m [360% non-compliance]
- Rear Setback: Proposed 2.2m Boatshed
- Southern Side Boundary Envelope SW Corner of Proposed new build Upper Level 5.5m height, requires a 2m setback

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.

My clients' concerns are:

- Partial destruction of a notable Bruce Rickard Gem
- Heritage Conservation Concerns

- Unacceptable Character
- The relentless 50m Southern Façade
- Excessive Building Height
- Unacceptable Building Separation
- Insufficient Landscape Areas
- Excessive Removal of Native Trees
- Unacceptable Waterfront Development
- Impacts Upon Adjoining Properties: View Loss, Privacy, Overshadowing, and Visual Bulk Impact

A compliant building design would reduce the amenity impacts identified.

My clients note and agree with Roseth SC in *Patburn v North Sydney Council* [2005] NSWLEC 444.

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

That '*legitimate expectation*' in this case is particularly relevant because the non-compliant development proposed, if approved, would result in very poor amenity outcomes for my clients' property that would be directly attributable to having allowed a development to proceed which does not comply in very substantial respects with building envelope controls.

My clients wish to emphasise the fact that they take no pleasure in objecting to their neighbour's DA. However, because the proposed DA has such a deleterious impact on the amenity of their property, as well as the urban design outcomes within the streetscape, caused by the DA being non-compliant to controls, it is necessary.

If the DA was fully or even substantially compliant to all development controls they recognise that their rights with respect to any resulting amenity loss to no.62 would be more limited. However, it does seem unreasonable that their neighbour's DA proposes non-compliant outcomes to the benefit of no.60 that would seriously adversely affect the existing amenity enjoyed by no.62.

The LEP does not include floor space ratio standards to control building bulk and scale in this residential area. Managing building bulk and scale relies on the application of controls relating to landscaped area, building height and building setbacks and building envelopes.

Council's development controls relating to managing building bulk and scale are designed to ensure that buildings are consistent with the height and scale of the desired character of the locality, are compatible with the height and scale of

surrounding and nearby development, respond sensitively to the natural topography and allow for reasonable sharing of views and visual amenity.

Council's DCP with respect to the locality, requires that development respond to the natural environment and minimise the bulk and scale of buildings. The proposed development in its current form does not achieve this and provides inadequate pervious landscaped area at ground level.

Council will note that the proposed development is attempting to present a reasonably compliant built form to height controls and side/rear setback controls, whilst proposing a considerable non-compliant outcome in respect to the 60% Landscape Area control, front setback and side boundary envelope controls.

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

My clients 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 would lead directly to amenity loss at 62 Hudson Pde.

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

B. FACTS

1. THE PROPOSAL

The development application seeks approval for alterations and additions to an existing dwelling house and new boatshed and swimming pool

2. THE SITE

The site is legally identified as Lot 56 in DP 7794, 60 Hudson Parade, Clareville.

3. THE LOCALITY

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

My client's property shares a common boundary with the subject site.

4. STATUTORY CONTROLS

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

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000

- SEPP (Building Sustainability Index: BASIX) 2004;
- SEPP (Resilience and Hazards) 2021;
- SEPP (Biodiversity and Conservation) 2021.

- Pittwater Local Environmental Plan 2014 [referred to as LEP in this Submission]
- Pittwater 21 Development Control Plan [referred to as DCP in this Submission]

C. CONTENTIONS THAT THE APPLICATION BE REFUSED

1. CONTRARY TO AIMS OF LEP

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

2. CONTRARY TO ZONE OBJECTIVES

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

The site is zoned C4 Environmental Living pursuant to the provisions of the Pittwater Local Environmental Plan 2014.

Dwelling Houses are permissible with consent in the C4 zone. The specific objectives of the zone are identified as follows:

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

The proposed development has not provided a design solution that responds to these objectives.

We will contend in this submission that the proposed development fails under numerous headings including: Partial destruction of a notable Bruce Rickard Gem, Unacceptable Character; The relentless 50m Southern Façade; Excessive Building Height; Unacceptable Building Separation; Insufficient Landscape Areas; Excessive Removal of Native Trees; Unacceptable Waterfront Development; Heritage Conservation Concerns; Impacts Upon Adjoining Properties: View Loss, Privacy, Overshadowing, and Visual Bulk Impact.

The objectives of the zone have not been met.

3. DESTRUCTION OF A NOTABLE BRUCE RICKARD GEM: HERITAGE CONSERVATION CONCERNS

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to protect a notable Architects dwelling.

Bruce Rickard was one the most significant Australian architects of the 20th Century.

His practice spanned 60 years and produced some of the most notable and recognisable houses of the period.

Rickards's '*60 Hudson*' demonstrates Rickard's exploration of Australian Organic Architecture.

The house uses concrete to both propel the house upward into the tree canopies, via thin circular concrete columns, and also outwards towards the views via sculpted concrete floor plates.

The columns are an interesting feature that have a Japanese-like sensibility that moves a large portion of the house away from landscape.

In its simplest form *60 Hudson* follows the same path as the Curry House in Bayview – they are both elevated pavilions placed in the tree canopies.

This concept allows the trees and long views to enter as borrowed space into the interior spaces – creating an unparalleled immediacy to the water and trees, which makes these spaces some of Rickard's best work.

Bruce Rickard has left Australia a refined portfolio of work that maintains a timeless set of houses with a deep connection to the Australian landscape.

He was a true patron of Sydney, and especially the Northern Beaches.

His designs were deeply rooted in the concepts of Frank Lloyd Wright. This, at times, led to his work being dismissed as either mimicking Wright or not modern enough, which made his architecture difficult to categorise.

It was this unique mix and immense love for the Australian natural environment that allowed his design style to mature to something undeniably Australian, free from any shadow of Wright's influence.

The concepts that Bruce Rickard looked to decipher in his work are morals that all architects should look to continue to pursue for the greater good of Australian design.

The proposed development demolishes the roof structures and proposes to '*raise the roof*', destroying the proportionality of the upper level.

The proposed development demolishes the eastern wing completely, and proposes to build a new structure that is out of scale with the retained portions of the Rickard dwelling. The proposed development pushes the built form to within a 1m of the southern boundary, and attempts to copy the style of the original without success.

The proposed development plans to remove eight important trees that are protected under NBC Tree Management Policy: T1, T2, T9, T10, T11, T14, T16 and T17.

Somewhat cynical to Rickard's careful exploration of Australian Organic Architecture, the proposal removes the three large, 20m high, Spotted Gums facing Pittwater, that Rickard carefully worked into his original composition.

It could be considered that the Applicant is simply 'view chasing' in this respect, by removing the large Spotted Gums that are such a feature to Pittwater and incorporated by Bruce Rickard in all his architectural work.

Rickard was both a professional Architect and Landscape Architect, and it is of great concern that the proposals plan to simply erase Rickard's careful exploration of his Australian Organic Architecture – as he liked to describe his work.

Five other protected trees under NBC Tree Management Policy are also planned for removal in the front street setback zones, to make way for excessive built form in the streetscape zone, completing the destruction.

There are no Spotted Gums planned to be planted to replace these three 20m high trees facing Pittwater.

There are some canopy trees to be planted, however the Landscape Plan is very unclear where these will be positioned – they appear not to be facing Pittwater!

My clients believe it is appropriate given the architectural significance of the existing house and the protected gums to ask for the full retention of the original Bruce Rickard dwelling, along with the full protection of the three Spotted Gums facing Pittwater, along with the full protection of all eight trees that are protected under NBC Tree Management Policy: T1, T2, T9, T10, T11, T14, T16 and T17, that provide the landscape setting that Bruce Rickard designed.

4. HERITAGE CONSERVATION CONCERNS

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it **fails to provide adequate heritage conservation outcomes**.

My clients ask Council to consider placing the Bruce Rickard House on the State **Heritage Register**.

The current development application, if approved would have significant impacts upon the heritage values of the existing building.

The existing building is considered as being of potential heritage significance and we contend that the applicant is required to provide a heritage report as part of this application, that investigates the history of the site and property and assesses its significance against NSW Heritage's criterion and the impact of the proposal upon the heritage values of the building.

The proposed development **does not conserve the environmental heritage of Avalon** and does not conserve the significance of the Bruce Rickard House including settings and views.

5. CHARACTER

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

The proposed development fails to maintain the character of the area.

As noted previously the original Bruce Rickard design, the existing dwelling uses concrete to both propel the house upward into the tree canopies, via thin circular concrete columns, and also outwards towards the views via sculpted concrete floor plates. The columns are an interesting feature that have a Japanese-like sensibility that moves a large portion of the house away from landscape. In its simplest form 60 Hudson follows the same path as the Curry House in Bayview – they are both elevated pavilions placed in the tree canopies.

What the proposed development does is to destroy that sensitive design, by demolition of the original roof that was carefully proportioned to the base of the building. It then overdevelops a new built form that tries to copy the original design, but fails to do so in any successful way.

The proposed development removes eight trees that are protected under NBC Tree Management Policy, including the important three Spotted Gums facing Pittwater.

The proposed development provides a 50m long relentless southern elevation, with non-compliant height and building separation, and continues the built form into the front setback zone, destroying more protected trees along the way.

The proposal suggests that the design is a 'pavilion style' concept. If the design solution ends with a relentless 50m long wall to the neighbour, and that 'Great Wall' can be viewed from the street and the water, it is unconvincing to consider that this design outcome is in harmony with the desired future character statement within the DCP.

The proposed development also provides an oversized and unacceptable waterfront development, out of scale and in non-compliance with controls.

The proposed development fails to maintain existing and new native vegetation, including canopy trees, integrated with development.

The objective of the DCP in this area is that there will be houses amongst the trees and not trees amongst the houses.

The property is located within the Avalon Beach Locality.

The desired future character of the Avalon Beach Locality will remain primarily a low-density residential area.

“The most important desired future character is that Avalon Beach will continue to provide an informal relaxed casual seaside environment. The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

Most houses are set back from the street with low or no fencing and vegetation is used extensively to delineate boundary lines. Special front building line setbacks have been implemented along Avalon Parade to maintain the unique character of this street. This, coupled with the extensive street planting of canopy trees, gives the locality a leafy character that should be maintained and enhanced.

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to provide architectural relief to a southern façade that is over 50m in length.



The proposed development does not architecturally read as two pavilions, but a relentless 50m long façade facing my clients' property and viewed from the street and Pittwater.

7. EXCESSIVE BUILDING HEIGHT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, NSW LEC considered that relevant to assessment of the character of a development was:

“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 excessive heights would in my clients' submission, have most observers finding *‘the proposed development offensive, jarring or unsympathetic’*.

8. UNACCEPTABLE BUILDING SEPARATION

The proposed development should be **refused** as it is significantly and substantively non-compliant with setback of the DCP.

- Front
- Rear
- Side Boundary Envelope

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

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.

9. INSUFFICIENT LANDSCAPE AREAS

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it **fails to provide adequate landscape area**.

Council's DCP with respect to the locality, requires that development respond to the natural environment and minimise the bulk and scale of buildings. The proposed development in its current form does not achieve this and provides inadequate pervious landscaped area at ground level.

The DCP calls for 60% of the site to be landscaped area.

The **calculation** by the Applicant appears woefully **incorrect**.

- Zones of soil **under built form** are not to be included within calculations;
- **Elevated structures** with planting are not to be included within calculations;
- **Hard Surfaces and pools** are not to be included within calculations;

We **ask** that the applicant **provides an area calculation drawing**, based upon the Roof Plan, to define the deep soil zones that accord with the very important 60% control.

10. EXCESSIVE REMOVAL OF NATIVE TREES

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it **fails to retain existing native trees**.

The proposal removes the following trees:

7.4 Trees Proposed for Removal:

The following trees are proposed for removal:

- Tree T1 - *Allocasuarina torulosa* (Forest Sheoak)
- T2 - *Corymbia maculata* (Spotted Gum)
- T5 - *Celtis sinensis* (Chinese Hackberry)
- T7 - *Jacaranda mimosifolia* (Jacaranda)
- T9 - *Acacia fimbriata* (Fringed Wattle)
- T10 - *Eucalyptus crebra* (Narrow leaved Ironbark)
- T11 - *Golchidion ferdinandi* (Cheese Tree)
- T12 - *Jacaranda mimosifolia* (Jacaranda)
- T13 - *Jacaranda mimosifolia* (Jacaranda)
- T14 - *Corymbia maculata* (Spotted Gum)
- T16 - *Corymbia maculata* (Spotted Gum)
- T17 - *Corymbia maculata* (Spotted Gum)

Of the trees listed above trees T1, T2, T9, T10, T11, T14, T16 and T17 are covered by Councils Tree Management Policy.

We **ask** for **eight of the important protected trees that are protected under NBC Tree Management Policy to remain**: T1, T2, T9, T10, T11, T14, T16 and T17.

We ask that **Council commission a peer review on condition of the three 20m high Spotted Gums in the Pittwater setback zone**, that are proposed to be removed – perhaps more for ‘view chasing’ than any other requirement.

The proposal also builds into the **SRZ** and **TPZ** of the following trees according to the Arborist Report:

- T3 Major Encroachment
- T15 Minor Encroachment

We are **very concerned** that the proposal also builds into the **SRZ** and **TPZ** of the following trees on our property:

- Tree G
- Tree H

- Tree I
- Tree J
- Tree K
- Tree L

These are all well established trees which will be rendered unstable if their root systems are disturbed.

We ask for the **development to be redesigned** to:

- Retain the important protected trees that are protected under NBC Tree Management Policy to remain: T1, T2, T9, T10, T11, T14, T16 and T17.
- Remove the major and minor encroachment of T3 and T15
- **No** encroachment of the **SRZ** or **TRZ** of any neighbours' trees: Trees G, H, I, J, K & L

We ask for three new additional Spotted Gums be planted in the Pittwater setback zone, to ensure that the future character of the area is better protected.

11. UNACCEPTABLE WATERFRONT DEVELOPMENT

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide an outcome to accord with DCP D15.15.

The Boatshed needs to reduce to the allowable size of 4m in width and 6m in length.

The Boatshed is below the EPL.

The Boatshed is positioned directly within the **SRZ** and **TPZ** zone of Tree 15, 16 and 17, the three 20m high Spotted Gums.

We contend that **all of these three Spotted Gums** must remain, and therefore the proposed Boatshed must be reduced to 6m x 4m and **repositioned to the northern side boundary** to avoid the SRZ and TPZ of these trees.

12. IMPACTS UPON ADJOINING PROPERTIES: **VIEW LOSS**

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to achieve an appropriate view sharing outcome to neighbours.

The Applicant has **not provided** an adequate **View Impact Analysis** which details the extent to which existing water views from my clients' 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.

The SEE has not considered the loss of street view loss from the public domain. The impact on public domain views has not been assessed by the applicant. We refer to *Rose Bay Marina Pty Limited v Woollahra Municipal Council* 2013 NSWLEC 1046. We contend that the public domain street view will be completely lost.

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

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

We contend that the composite consideration from these NSWLEC decisions, provides the legal basis for the proposition that where view loss occurs across a side boundary caused by **non-compliant** development, and the view loss is moderate or higher, then the DA is **unreasonable**.

There is other relevant legal authority supporting the contention that even when a compliant development causes view loss, and the view is across a side boundary, and when there is an alternative option open to avoid that view loss, and that alternative has not been taken, then the DA is unreasonable.

In **Tenacity**, [*Tenacity Consulting v Warringah Council* 2004], NSW LEC considered Views. The decision in **Tenacity** which is applicable to Council's consideration of the impact of this proposed development stated:

*"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.**"*

This development proposal **breaches multiple planning controls** and is **unreasonable**.

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 unreasonable.

APPLICATION OF TENACITY PLANNING PRINCIPLE

We have been **unable** 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 not been provided by the Applicant.

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

13. IMPACTS UPON ADJOINING PROPERTIES: **PRIVACY**

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to visual 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 **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 concerned about the three new large windows above the fence line height without privacy devices. **We ask for these windows to have sill levels raised to 1.6m above FFL.**

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 results in a privacy impact with the proposed windows facing neighbours without sufficient screening devices being provided, considering the proposed windows are directly opposite our windows.

Principle 3: The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.

Response: The windows in question are windows of the main circulation zones and living areas, it is considered that the living areas will result in an unacceptable privacy breach. The proposed windows and decks 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 windows have been designed without any consideration to the privacy of the neighbouring property.

Principle 5: Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.

Response: It is considered that the private open space of the neighbouring dwellings could be better protected. We ask Council to consider the most appropriate privacy screening measures to be imposed on windows and decks facing our property, including landscaping.

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 use of privacy devices would reduce the impact of the dwelling.

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

Response: Additional landscaping may assist in addition to privacy devices.

Principle 8: In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.

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

Comment: As the development is considered to result in an unacceptable privacy impact due to the design, it is requested that the proposed development be redesigned to reduce amenity impact on the neighbouring properties.

In the context of the above principles, the application can be considered to violate the reasonable expectation that the habitable rooms and private open space at my clients' 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.

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

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to overshadowing.

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

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

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

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

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

In *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 the LEC consolidated and revised planning principle on solar access is now in the following terms:

"Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours."

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

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

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

The planning principle *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 is used to assess overshadowing for development application. An assessment against the planning principle is provided as follows:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

The density of the area is highly controlled. Building envelope controls have been exceeded.

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

The solar diagrams are not complete, but what has been provided shows that the proposed development will overshadow the adjoining dwellings. The amount of sunlight that will be lost will only be able to be fully considered once solar elevational drawings are submitted. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

The proposed development has been designed without considering the amenity of the neighbouring properties. It is considered that a more skilful design, with a compliant envelope control, could have been adopted that would have reduced the impact on the neighbouring properties. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *To be assessed as being in sunlight, the sun should strike a vertical surface at a horizontal angle of 22.5° or more. (This is because sunlight at extremely oblique angles has little effect.) For a window, door or glass wall to be assessed as being in sunlight, half of its area should be in sunlight. For private open space to be assessed as being in sunlight, either half its area or a useable strip adjoining the living area should be in sunlight, depending on the size of the space. The amount of sunlight on private open space should be measured at ground level.*

This can only be fully assessed once elevational solar drawings at hourly intervals are submitted. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

There is no major overshadowing as a result of vegetation

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

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

The assessment of the development against the planning principal results in the development not complying with the solar access controls and therefore amended plans should be requested to reduce the overshadowing impact on the adjoining neighbour. It is suggested that a more skilful design of the development, with a compliant envelope control, would result in less impact in regard to solar access. It is requested that Council seek amended plans for the development to reduce the impact of the development, and these matters are addressed elsewhere in this Written Submission.

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

15. IMPACTS UPON ADJOINING PROPERTIES: **VISUAL BULK IMPACT**

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to visual bulk impact.

The non-complaint building envelope will lead to unacceptable visual bulk impact to neighbours.

16. **PUBLIC INTEREST**

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

D. CONTENTIONS THAT RELATE TO INSUFFICIENT INFORMATION

Landscape Area Calculation:

Not provided

Proposed Canopy Tree Locations:

Not provided

Rainwater Collection from proposed new raised roof:

No details are provided

View Impact Analysis:

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

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

Privacy Impact Analysis:

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

Solar Access Diagrams:

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

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

Visual Bulk Analysis:

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

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

A compliant building design would reduce the amenity impacts identified.

We submit the proposed development be reduced at least in the following respects:

1. REDUCTION OF BUILT FORM

- **Preserve & maintain** the existing **Bruce Rickard Dwelling**, with no demolition of any zone, including **no demolition of the roof. No extension** of the existing **Bruce Rickard Dwelling**.
- New secondary pavilion of accommodation to be reduced in size and comply with setback controls, to ensure 60% landscape area outcome.
- **Relocate the connecting 'Gallery' to a central location in the middle of the site**, to avoid the 50m long relentless wall to the south. Increase the southern side setback of the southern elevation of the 'Gallery' to 5.5m, to align with the existing entry to the existing Bruce Rickard Dwelling, and to use materials in dark tones to ensure the 'Gallery' recedes in view from the south. Locate three, 8m high canopy native trees in the larger 5.5m setback zone facing the 'Gallery', with dense understorey planting.
- **New works to fully comply** with **Height, Setback, Side Boundary Envelope controls**.
- **Increase** Landscape Area **to 60%** to achieve compliance.
- **Reduce Boatshed** to the maximum allowable size of 6m x 4m, and **relocate** to the northern boundary to preserve protected trees.

2. LANDSCAPING

- **Retain the important protected trees** that are protected under NBC Tree Management Policy: T1, T2, T9, T10, T11, T14, T16 and T17.
- Remove the major and minor encroachment of T3 and T15
- Provide three new Spotted Gums [400L] in the Pittwater Setback zone
- **No encroachment of any neighbours' trees:** Trees G, H, I, J, K & L
- Landscaping: additional 15 tree canopy local native planting throughout the property located at least 3 metres from buildings and 1.5m from common boundaries to offset loss of tree canopy, and reduce the built form and establish an appropriate setting where landscape is prominent
- Landscaping: additional 5m high planting for screening along the south boundaries, to reduce the built form and establish an appropriate setting where landscape is prominent.

3. PRIVACY DEVICES

- **Privacy Windows:** New Windows to have 1.65 high sills, measured from the internal FFL, or the window is to be fixed and non-opening and fitted with obscured glazing to 1.65m height above internal FFL

4. OTHER MATTERS/CONDITIONS OF ANY CONSENT

- Dilapidation reports, including photographic surveys, of the adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items. The dilapidation report is to be prepared by a suitably

qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing. Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must: compare the post-construction report with the pre-construction report, clearly identify any recent damage and whether or not it is likely to be the result of the development works, should any damage have occurred, suggested remediation methods.

- The Applicant must provide a certificate to ensure the recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report are to be incorporated into the construction plans. The certificate shall be prepared by a qualified geotechnical engineer.
- The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.
- The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Council's Water Management for Development Policy. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.
- Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.
- The development is required to be carried out in accordance with all relevant Australian Standards.
- A survey certificate prepared by a Registered Surveyor at the following stages of construction: (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details. (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid. (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.
- All plant and equipment is to be located within the basement of the building and is not to be located on balconies or the roof. Plans and specifications complying with this condition must be submitted to the Certifying Authority for Approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition. Reason: Minimise impact on surrounding properties, improved visual appearance and amenity for locality

F. REASONS FOR REFUSAL

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

1. Council cannot be 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.
2. The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate heritage conservation outcomes. The current application will have significant impacts upon the heritage values of the existing building. The existing building is considered as being of potential heritage significance and we contend that **the applicant is required to provide a heritage report as part of this application**, that investigates the history of the site and property and assesses its significance against NSW Heritage's criterion and the impact of the proposal upon the heritage values of the building. The proposed development does not conserve the environmental heritage of Avalon and does not conserve the significance of the Bruce Rickard House including settings and views.
3. 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
 - Heritage Conservation
 - Biodiversity
 - Limited Development on Foreshore Area
4. 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 Storeys
 - Unacceptable Building Separation
 - Insufficient Landscape Areas
 - Excessive Removal of Native Trees
 - Poor Garage Design
 - Excessive Swimming Pool Envelope
 - Excessive Excavation & Geotechnical Concerns
 - Stormwater Concerns
 - Poor Streetscape Outcomes
 - Heritage Conservation Concerns
 - Impacts Upon Adjoining Properties: View Loss
 - Impacts Upon Adjoining Properties: Privacy
 - Impacts Upon Adjoining Properties: Overshadowing
 - Impacts Upon Adjoining Properties: Visual Bulk
 - A4.1 Avalon Beach Locality
 - B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community

- B4.22 Preservation of Trees and Bushland Vegetation
- B6.1 Access Driveways
- B6.2 Internal Driveways
- B6.3 Off-Street Vehicle Parking Requirements
- B8.1 Construction and Demolition - Excavation and Landfill
- C1.1 Landscaping
- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.6 Acoustic Privacy
- C1.25 Plant, Equipment Boxes and lift Over-Run
- D Locality Specific Development Controls
- D1 Avalon Beach Locality
- D1.1 Character as viewed from a public place
- D1.8 Front Building Line
- D1.9 Side and Rear Building line
- D 1.11 Building Envelope
- D1.14 Landscaped Area - Environmentally Sensitive Land
- D1.20 Scenic Protection Category One Areas

5. 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** to enable a detailed assessment. Insufficient information has been submitted to enable a proper assessment of this application.

6. 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.

7. 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, through its potential use, adverse social impact in the locality and through lack of landscape provision, and adverse impact on the natural environment.

8. 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.

9. The proposals are unsuitably located on the site pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
10. 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.
11. The proposal is contrary to the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*. The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest.

G. CONCLUSION

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

The variations to LEP standards and DCP controls are considered unreasonable in this instance. The cumulative effect on these proposed non-compliances would cause considerable amenity loss to my clients' 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.

Commissioner Moore revised the NSWLEC planning principle for assessing impacts on neighbouring properties within *Davies v Penrith City Council* [2013] NSWLEC 1141

"The following questions are relevant to the assessment of impacts on neighbouring properties:

How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?

How reasonable is the proposal causing the impact?

How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?

Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?

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

We contend that the proposed development would **severely** impact the amenity of 62 Hudson Pde, as there would be excessive sunlight, view and privacy loss. Such loss

would be an unreasonable outcome as my clients' property is not otherwise vulnerable to that loss which would arise directly from poor design, due to non-compliance (and indeed lack of regard) to applicable envelope controls and poorly located built form as has been proposed by the applicant.

We consider that the proposal is inappropriate on merit and unless amended plans that are substantially compliant with all relevant controls 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.

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it **fails to provide adequate heritage conservation outcomes**. The current application will have significant impacts upon the heritage values of the existing building. The existing building is considered as being of potential heritage significance and we contend that the applicant is required to provide a heritage report as part of this application, that investigates the history of the site and property and assesses its significance against NSW Heritage's criterion and the impact of the proposal upon the heritage values of the building.

The proposed development does not conserve the environmental heritage of Avalon and does not conserve the significance of the Bruce Rickard House including settings and views.

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 adjoining 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.

We trust that Council will support this submission and either refuse this application or direct the proponent to modify the DA plans, as outlined above and to achieve

compliance. My clients ask Council Officers to inspect the development site from 62 Hudson Pde so that Council can fully assess the DA.

Yours faithfully,

Bill Tulloch

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