

From: [Sez](#)
To: [Planning Panels - Northern Beaches](#)
Subject: 57 Cutler Rd Development Application MOD2025/0189
Date: Tuesday, 10 June 2025 5:00:04 PM
Attachments: [IMG_9182.jpeg](#)



Objection to Development Application MOD2025/0189

57 Cutler Road, Clontarf NSW 2093

I object to Modification Application Mod2025/0189 on the grounds that the development is not "substantially the same" as originally approved under DA2022/1675, multiple compliance breaches have occurred during construction, there are significant amenity impacts including loss of views, privacy, and sunlight, non-compliance with setback requirements and building height limits exists, and the modification seeks to legitimise unauthorised construction.

1. Failure of "Substantially the Same" Test

Under s 4.55(2)(a) of the Environmental Planning and Assessment Act 1979, modifications must be "substantially the same development" as originally approved. The recent Canterbury-Bankstown Council v Realize Architecture [2024] NSWLEC 31 decision establishes that this requires a holistic comparison of the two developments.

Evidence that the Development is Not Substantially the Same

The original approval was for alterations and additions to an existing dwelling, however what has been built is essentially a complete new build including three entirely new concrete floor slabs, complete new western walls comprising two stories of new brickwork, new 3-meter high retaining walls across the entire rear yard, and concrete coverage equivalent to four tennis courts or multi-level shopping parking.

There has been an unauthorised height increase of 1.088 meters (over 1 meter) comprising six additional brick courses (516mm) along the entire eastern wall, 400mm suspended concrete slab depth, and 100mm approved modification increase, totalling 1,016mm plus the 100mm, equaling 1,116mm unauthorised increase.

The fundamental character has changed from the original brick construction clad with sandstone and timber designed to blend with the natural environment to a proposed white rendered box with complete glare that will be jarring and an eyesore. The original curved roof design, intended to minimise visual impact, has been replaced with a straight-edged box extending much further east, south and north.

2. Compliance Breaches and Unauthorised Works

Height Violations

The approved maximum height was 8.5m (already 29% non-compliant in the original approval), while the current proposed height is 9.57m (12.5% variation) and the actual constructed height is approximately 10.6m+ based on the unauthorised additional 1.088m.

Setback Violations

The eastern wall to the third floor cantilevers toward me in the East, South and North rather than away from the eastern boundary, walls have been built **cantilevering off the colonnade new (unapproved) level slab that runs from front to the back in the East** over existing wall positions violating NSW setback laws, and new third-story walls have been built with no setbacks as required by DCP 4.1.4.

Unauthorised Construction Elements

These include a 4-meter concrete slab extension into the rear yard that was not approved, an elevated concrete staircase on the front fence line that was not approved, extensive retaining walls with 2-meter deep concrete footings in protected tree root zones, and a widened driveway allowing huge trucks and pallets side by side. This driveway widening and garden and nature strip removal that was specifically removed from the original approval.

3. Severe Amenity Impacts

Loss of Views

There has been loss of iconic, irreplaceable views including Chinamans Beach and Balmoral Beach, The Spit, Willoughby, Chatswood, CBD Centerpoint and Opera House, and night lights and bushland reserve. Views have been lost across two levels of my property with no view sharing consideration as required by DCP objectives.

Privacy Violations

New windows have been placed directly opposite my existing windows. The office will generate significant noise as both of the Popovac's work from home and lead

big teams on speaker. Mrs Popovac is the lead airport flight controller nationally and is constantly on speaker doing her job. I requested a fixed skylight rather than an opening window to mitigate the significant noise impacts and my loss of privacy and amenity previously and I maintain that need. Level 3 is now higher than my property despite the site being 3-10 meters below natural ground level. There is direct overlooking into my living room, bedrooms, decks, and private garden spaces, resulting in a complete loss of privacy to my rear garden and entry areas.

Loss of Sunlight

There is complete darkness in large areas of my property as the development blocks all north-western light, impacts lower living spaces and the art studio which was bathed in natural light before this build, and violates solar access requirements under DCP 3.4.1.

4. Environmental and Heritage Impacts

Bushland and Wildlife Corridor Destruction

The development is located in a critically endangered littoral rainforest wildlife corridor and has resulted in the removal of protected native trees and vegetation, habitat destruction affecting the established ecosystem, concrete coverage destroying natural ground absorption, and impacts on remnant mature protected species with a 3-meter girth.

Inappropriate Scale for Location

The development is not commensurate with the surrounding low-density residential character. On a 500sqm block, the development is equivalent to a multi-story parking structure, violates the objectives of R2 Low Density Residential zoning, and is inconsistent with Heritage Conservation Area character.

5. Procedural Failures

Inadequate Consultation

Neighbours were not informed of major changes during construction, steel measurements and structural changes were developed over time without proper consultation, there was no explanation of suspended slab construction in modification documents, and totally inadequate architectural drawings show the actual construction. Not specifying levels in different colours to make it transparent.

Misleading Documentation

The architect's claim that the rear wall was just extended from the original is factually incorrect, as the 1.2m concrete wall was from an unauthorised 2020 renovation, not original construction. The modification documents don't reflect actual construction undertaken, and the assessment report fails to address the scale of unauthorised works.

6. Specific DCP Non-Compliances

DCP 4.1.4 Setbacks Objectives Violated

The development fails to maintain streetscape character, destroys amenity through privacy loss, blocked sunlight, and eliminated view sharing, and fails to enhance natural features while destroying native vegetation.

DCP 3.4.3 Maintenance of Views

No proper view sharing assessment was undertaken, significant view loss was not adequately considered, and the development fails to balance private and public interests.

7. Recommendations

The development fails the legal test as it is fundamentally different from the original approval and cannot satisfy s 4.55(2)(a) "substantially the same" test. Compliance action is required as unauthorised construction must be removed or made compliant before any modification can be considered. The modification assessment is inadequate as it fails to address the actual constructed development, and amenity protection is needed as the development causes unreasonable amenity impacts that cannot be mitigated.

If Council is minded to approve any modification, which I oppose, the following must be required: immediate removal of the unauthorized 1.088m height increase, restoration of compliant setbacks, reduction in bulk and scale to match surrounding character, compensation for permanent view loss, rehabilitation of damaged native vegetation, and redesign to achieve proper view sharing.

This modification application is an attempt to legitimise a development that grossly exceeds the original approval scope, violates multiple development standards, destroys established residential amenity, and fails legal requirements for modification approval.

The development as constructed is not substantially the same as originally

approved and represents a fundamental breach of the development consent system.

I urge the Council to refuse this application and require compliance with the original approval conditions.

Kind Regards,

Sez Cardis (55 Cutler Rd Clontarf.)