
From: [REDACTED]
Sent: 31/01/2025 4:23:12 PM
To: Council Northernbeaches Mailbox
Cc: Paul McGirr
Subject: TRIMMED: 2024/1698; 71 FLORIDA RD PALM BEACH WRITTEN
SUBMISSION: LETTER OF OBJECTION SUBMISSION: TULLOCH
Attachments: 71 FLORIDA WS.pdf;

Kind regards,

Bill Tulloch BSc[Arch]BArch[Hons1]UNSW RIBA Assoc RAIA
DA Objection Pty Ltd
Director
[REDACTED]

SUBMISSION

a written submission by way of objection

BILL TULLOCH BSC [ARCH] BARCH [HONS1] UNSW RIBA Assoc RAIA
Director
DA Objection Pty Ltd

prepared for

PAUL McGIRR, 73 FLORIDA ROAD PALM BEACH

31 JANUARY 2025

CEO
NORTHERN BEACHES COUNCIL
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RE: 2024/1698
71 FLORIDA RD PALM BEACH
WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: TULLOCH

Dear Sir,

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

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

I have been engaged by my clients to critically review the plans and documentation prepared in support of the above development application and to provide advice in relation to policy compliance and potential residential amenity impacts.

Having considered the subject property and its surrounds and the details of the development application currently before Council, I am of the opinion that the proposal, in its present form, does not warrant support. In addition, I am of the view that amendments would need to be made to the development proposal before Council is in a position to determine the development application by way of approval.

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

I refer to my client's objection dated 24 January 2025, sent by email to Council. My client stated:

Friday, 24 January 2025 11:39 AM

"I am the owner of a small cottage at 73 Florida Road Palm Beach which my family has owned since 1954. The Notice of Proposed Development was dated 2 January 2025 but apparently due to problems with the Postal Service was not received till the afternoon of 13 January 2025. We are not happy with the application including the bulk of the building and its overshadowing effect on my property which is due West of the development proposed. We note the neighbour/applicant has never approached the writer to discuss the proposed application. The building unnecessarily encroaches upon and passes the building line. There are other alternatives including that the building could be developed further towards the rear of the site. Additionally, the proposal takes away all our view to the east. Again, this problem could be solved by moving the building further towards the rear of the site. The other problem with the proposed application is that it is endangering my access from the public road. The plan even appears to permit landscaping encroachment on the public road area. The garage and associated landscaping be at least 1 m back from the front road boundary and there should be no obstruction by landscaping or otherwise between the proposed garage and the public street area affording access to my driveway."

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A. EXECUTIVE SUMMARY

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

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

The proposal is considered to be inappropriate within the streetscape.

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

There is no reason, unique or otherwise why a fully compliant solution to LEP and DCP controls cannot be designed on the site.

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

UNACCEPTABLE OUTCOMES

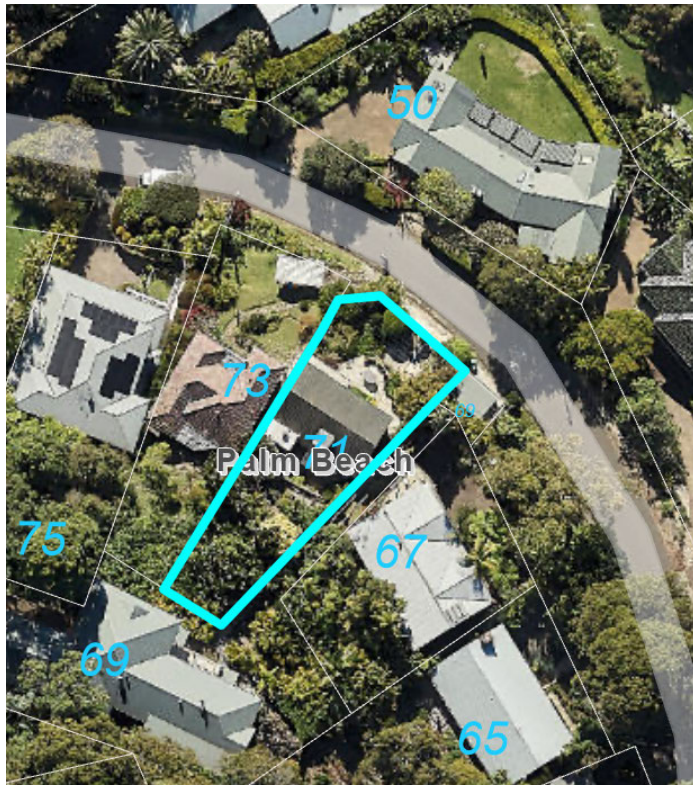
The proposal fails to achieve acceptable outcomes regarding:

- View Sharing- loss of view to the east caused by inappropriate street setback, and excessive tree canopy
- Solar Access – loss of morning sun caused by inappropriate street setback
- Privacy – windows and decks without adequate privacy devices deployed
- Visual Bulk and Scale - caused by inappropriate street setback
- Landscape – proposed new works in Council verge unacceptable
- Traffic, Access and Parking – sightline concerns entry and exit to garaging on the bend
- Engineering – incomplete geotechnical recommendations
- Character & Streetscape – inappropriate outcomes caused by inappropriate street setback

FAILS TO MEET COUNCIL'S PLANNING CONTROLS, THE OBJECTIVES AND THE MERIT ASSESSMENT

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

- Insufficient Front Setback
- Exceedance of Inclined Plane Controls: substantial zones in the upper levels exceed the controls.

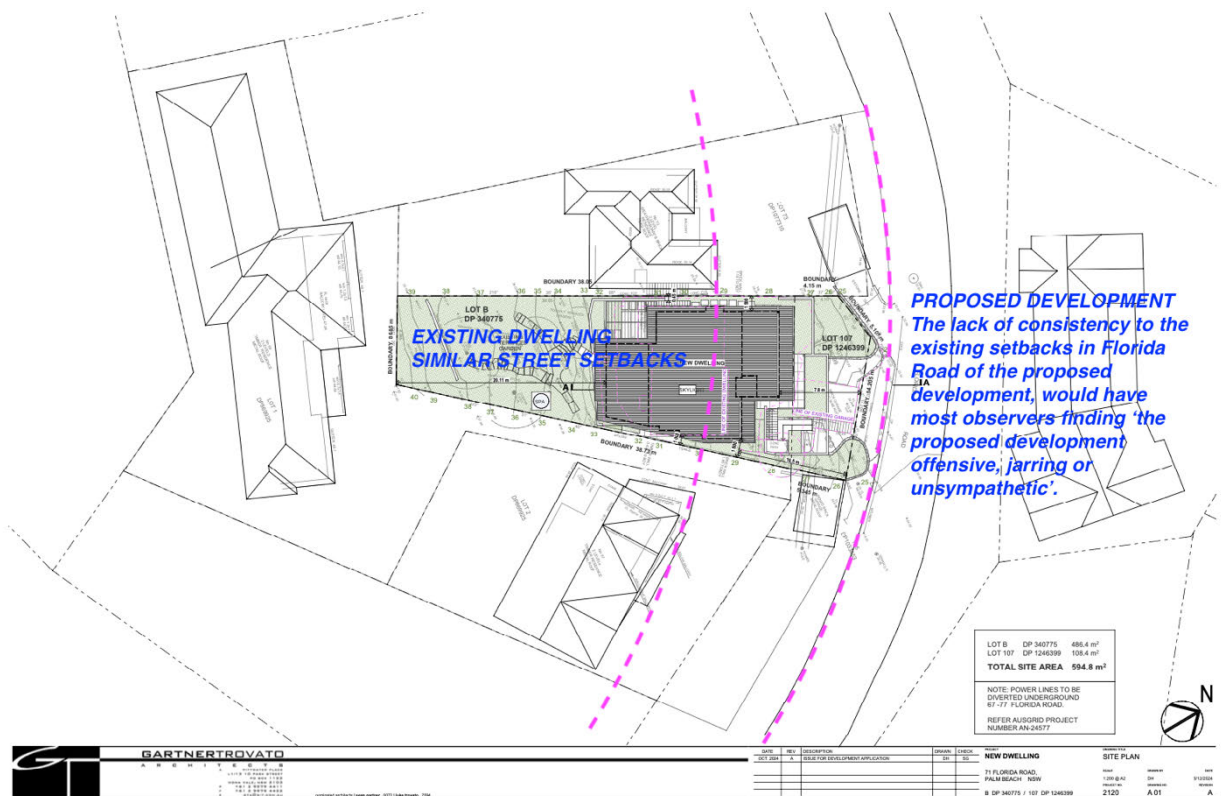


Aerial Setback Analysis: The existing setback of the existing dwelling on the subject site, follows the existing setback of the neighbouring dwellings, as Florida Road turns the corner past the dwellings at 65, 67, 71, 73 & 75 Florida Road. The proposed development presents an unacceptable outcome, projecting well forward from the dominant building line of five dwellings.

In Project Venture Developments v Pittwater Council (2005) NSW LEC 191, NSW LEC considered character:

"...whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site's visual catchment".

The lack of consistency to the existing setbacks in Florida Road of the proposed development, would have most observers finding 'the proposed development offensive, jarring or unsympathetic'.



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

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 leads directly to my clients' amenity loss.

A compliant building design would reduce the amenity impacts identified.

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

Reduce the proposed development as follow:

A. REDUCTION OF BUILT FORM

1. Relocate the built form that responds to the existing front setback of the existing dwelling on the subject site;
2. Delete all built form within Inclined Plane/Side Boundary Envelope to DCP controls
3. Delete built form in Council Verge, setback any walling 1m back from front boundary, and ensure adequate sight lines to the proposed garage
4. Further reductions of built form to achieve a reasonable outcome in respect to view sharing and solar access
5. Delete all excavation in the side setback zone, and to the existing driveway access to #73 Florida Road

B. PRIVACY DEVICES

1. All opening and fixed windows facing my client's property to have windows sills increased to a minimum height of 1.7m measured from the internal floor FFL level;
2. All glazed windows and doors facing the side boundary are to be fitted with translucent/obscure/frosted glazing to a height of not less than 1.7m measured from the internal floor FFL level;
3. 1.7m high fixed louvred privacy screens added to the edge of all balconies facing my clients' property, and extended the full height from finished floor level to the ceiling to any balcony or structure above. Ensure that the screens do not obstruct the view to the east from #73 Florida Road, and not to cause unreasonable solar loss to #73 Florida Road;
4. Fixed louvred privacy screens shall be fixed and angled at a 20-degree acute angle to the angle of the proposed development. All privacy screens are to have fixed louvre blades with a maximum spacing of 25mm, and shall be constructed of materials and colours that complement the finishes and character of the building.

C. LANDSCAPING

1. To maintain view sharing, the proposed trees and plants over 3m in height shall be deleted in the landscape plan, in the front setback zones. Tree planting shall be located to minimise impacts on view loss, with no trees or landscape species removing water views. All trees trimmed annually;

2. Tree canopy planting must be located at least 3m from buildings and 5m from common boundaries, to avoid excessive canopy protruding over neighbour's property. All canopy protruding over neighbour's boundaries trimmed annually;

SITE IS NOT SUITABLE

The site is not suitable for the proposed development pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979. The site is not considered suitable for the proposed development in terms of its size, scale and design, despite it being residential development in the zone.

NOT IN THE PUBLIC INTEREST

Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest. The extent of issues identified with the proposed development are such that the public's interest is not served by way of approval of the development application.

The proposed development represents an unreasonably large building design, for which there are design alternatives to achieve a reasonable development outcome on the site without having such impacts.

VIEW SHARING

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Viewing Sharing of the DCP. The proposed development is not considered to result in the reasonable sharing of views.

Significant concern is raised in relation to view loss to my client's property as a result of the proposed development, and the front setback of this proposal. The proposed development results in loss of views of historic Palm Beach public rock swimming pool to the east, the beach to the east, water views and water/land interface views from #73 Florida Road.

The controls require that new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties and must demonstrate that view sharing is achieved through the application of the Planning Principles established in the NSW Land and Environment Court case *Tenacity Consulting v Warringah Council*.

In *Tenacity*, [*Tenacity Consulting v Warringah Council* 2004], NSW LEC considered Views. *Tenacity* suggest that Council should consider:

"A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result

of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable."

The development breaches multiple planning controls and is unreasonable.

My clients contend that the impact on views arises as a result of non-compliance with one or more planning controls, and the view loss from the highly used rooms and decks is considered unreasonable.

Recent decisions from NSWLEC Decisions make it clear that applicants cannot solely rely upon compliant HOB or FSR outcomes in defence of a poor view sharing outcome. I represented neighbours in the following NSWLEC cases.

NSWLEC Commissioner Joanne Gray dismissal of BONDY RESIDENCE PTY LTD V WAVERLEY COUNCIL [2024] NSWLEC 1297 that *'numerical compliance is not sufficient'*. In this case a compliant HOB was insufficient – non-compliance with number of storey and setback was seen to be unacceptable and unreasonable in respect to view sharing. The controls in any DCP are not merely building envelope controls, but extend to specific controls concerning the increase of setbacks and heights to minimise view loss, as well as controls requiring the incorporation of design measures to facilitate view sharing.

NSWLEC Commissioner Dr Peter Walsh dismissal FURLONG V NORTHERN BEACHES COUNCIL [2022] NSWLEC 1208 suggests that for side boundary views which are of a high value and not replicated in other areas of the property, it is appropriate to protect those views and refuse the proposed development. As the Commissioner noted: *'when there are reasonable design alternatives which would moderate this impact significantly'*, and the applicant has not taken that design path, the proposal is unacceptable and unreasonable in respect to view sharing.

NSWLEC Commissioner Matthew Pullinger agreed in CSKS DEVELOPMENTS PTY LTD V WOOLLAHRA MUNICIPAL COUNCIL [2024] NSWLEC 1801 that a compliant 13.5m HOB was insufficient, and a reduction in height of 4.8m was required, and that outcome *"mitigates against earlier view impacts and is agreed to represent an appropriate response to view sharing"*.

NSWLEC Commissioner Nicola Targett agreed in COLLAROY LIVING PTY LTD V NORTHERN BEACHES COUNCIL [2024] NSWLEC 1352 that a compliant HOB was insufficient, and a reduction in height and 30% reduction in FSR was required, and that outcome *"provides for the reasonable sharing of views"*

Council will fully appreciate the reasoning behind these NSWLEC Decisions – I present them, as clearly the applicant does not seem appear to understand the requirements under the DCP, and the NSWLEC Planning Principle that defines view sharing issues: *TENACITY, [TENACITY CONSULTING V WARRINGAH COUNCIL 2004]*

In relation to Principal four of *TENACITY CONSULTING V WARRINGAH COUNCIL 2004* ('Assessment of the reasonableness of the proposal that is causing the impact'), it is considered that a development which complies with all planning controls would be deemed more reasonable than one that is non-compliant.

The proposal as it currently stands presents numerous non-compliances to LEP and DCP controls, which questions whether a more 'skilful' (or sensitive) design would achieve an improved and acceptable outcome.

Further exploration of an alternative design outcome which would include the amendments mentioned within this submission is therefore encouraged to satisfactorily address the Planning Principles established in the NSW Land and Environment Court case.

There are three different points to the fourth Tenacity step, concerned with assessing the reasonableness of the impact, which I summarise as follows:

Point 1 - Compliance, or otherwise, with planning controls.

Point 2 - If there is a non-compliance, then even a moderate impact may be considered unreasonable.

Point 3 - For complying proposals: (a) "whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours to bring about impact", and (b) "if the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable".

I contend that the question to be answered is whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact upon views of neighbours.

I contend that the view impact is considered above a moderate impact from the respective zones within the property given the significant proportion of the views which are impacted. The views are certainly worthy of consideration and substantial protection. The proposal to remove the vast majority of these views is considered overall to be above a moderate view impact.

The 'more skilful design' solution identified in this Submission, gives the applicant a very high level of amenity, and would enjoy spectacular and impressive views.

COMPLY WITH THE PLANNING REGIME

A compliant building design would reduce the amenity impacts identified.

My clients agree with Roseth SC in *NSWLEC Pafbum v North Sydney Council*:

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

The 'legitimate expectation' that my clients had as a neighbour was for a development that would not result in very poor amenity outcomes caused directly from the non-compliance to building envelope controls.

My clients wish to emphasise the fact that my clients take no pleasure in objecting to their neighbour's DA.

The proposed DA has a deleterious impact on the amenity of their property caused by the DA being non-compliant to controls.

Council and NSWLEC Commissioners regularly concede that development standards and building envelopes provide for maximums and that there is no entitlement to achieve those maximums.

It does seem unreasonable that the Applicants wish to remove my client's amenity to improve their own, and is proposing non-compliant outcomes that would seriously adversely affect my clients' amenity.

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 street 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 prevailing dominant street setbacks of the desired character of the locality, are compatible with the prevailing dominant street setbacks 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.

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.

FUNDAMENTAL PRINCIPLES OF DESIGN EXCELLENCE

The proposed development fails the fundamental principles of design excellence in terms of:

- The proposal is not consistent with existing street frontage setbacks
- The application fails to adequately address environmental impacts of overshadowing, solar access, views and visual privacy
- Context and local character
- Built form, scale and public domain, urban design response
- Architectural expression, in terms of excessive built form in the front setback zone
- The application fails to demonstrate a high standard of architectural design and detailing appropriate to the building type and surrounding character in terms of excessive built form in the front setback zone
- The form and external appearance of the proposed development will not improve the quality of the public domain, in terms of excessive built form in the front setback zone

- The application fails to appropriately address streetscape, in terms of excessive built form in the front setback zone
- The proposed development fails to provide an appropriate bulk, massing and modulation of buildings, in terms of excessive built form in the front setback zone
- The proposed development does not achieve an appropriate interface at ground level between the building and the public domain
- The proposed development fails to demonstrate excellence and integration of landscape design

INCOMPLETE INFORMATION

The proposed development is incapable of consent, as there is a substantial list of incomplete information that has yet to be provided. I refer Council to Section C of this submission - *Contentions that relate to Insufficient Information*

RE-NOTIFICATION

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

DETAILED LIST OF CONDITIONS OF CONSENT

Section D of this submission titled '*Detailed List of Conditions of Consent*', addresses the conditions that my clients seek to any consent.

REASONS FOR REFUSAL

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, my clients ask Council to REFUSE this DA, in accordance with Section E '*Reasons for Refusal*' of this submission.

D. 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.

ZONE C4 ENVIRONMENTAL LIVING

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.

3. BUILDING BULK & SCALE

The proposed development should be refused due to its excessive bulk and scale and its failure to comply with the numerical standards and controls.

The application will result in an unacceptable loss of visual amenity from adjoining private properties, and from the public domain including the foreshore. The loss of visual amenity is due to the excessive bulk and scale of the proposed development.

- The proposal is not consistent with existing street frontage setbacks

The breaches of the building envelope will result in an adverse visual impact when viewed from private and public domains. The numerical non-compliances result in a cumulative impact, that increases the built form, resulting in an overdevelopment of the site. The proposal will present excessive bulk and scale that is not representative of the type of development anticipated by the zone or the applicable controls. The proposal will result in unreasonable bulk and scale for the type of development anticipated in the zone. The proposal fails to minimise the visual impact of development when viewed from adjoining properties and streets.

4. CHARACTER & STREETSCAPE

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 streetscape outcome, presenting non-compliant envelope controls that are visible from the street.

The proposed development is inconsistent with the provisions relating to the desired future character. The proposal, due to its excessive bulk, its impact on the amenity of adjoining properties and users of the public domain, its poor relationship with the subject property and the environment is inconsistent with the objectives with the desired future character provisions of the locality.

- The proposal is not consistent with existing street frontage setbacks

The proposed development will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to visual bulk impact.

The proposed development should be refused due to its excessive bulk, scale and resulting impacts upon the amenity of adjoining properties and the character of the surrounding locality. The proposal does not meet the streetscape character and key elements of the precinct and desired future character. The proposal is excessive in scale, has adverse impacts on the visual amenity of the environment, does not positively contribute to the streetscape in terms of an adequately landscaped setting. The proposal is visually dominant, and is incompatible with the desired future townscape area character.

The non-compliant building envelope will lead to unacceptable visual bulk impact to neighbours. The multiple non-compliances arising from the proposed upper floor level and the non-compliant street setbacks indicates that the proposed development cannot achieve the underlying objectives of this control, resulting in an unacceptable building bulk when viewed from adjoining and nearby properties.

The development presents an inappropriate response to the site and an unsatisfactory response to the desired future character of the area. The proposed development should be refused because it is incompatible with the desirable elements of the current character of the locality and is inconsistent with the standards and controls:

- The design of the proposal does not recognise or complement the desirable elements of the subject site's current character.
- The proposal does not employ a building form that relates to the landform as it does not step down with the slope of the site.
- The proposal offers little visual relief of the resultant building bulk. Such building bulk is not compatible in scale with adjacent and surrounding development.
- The proposal will present as a large building with insufficient building articulation and landscaping to break up and visually reduce the building bulk.
- The proposal will not appear as low density and, therefore, does not achieve consistency or compatibility with the general built form within the locality or the zone. The development does not present as detached in style with distinct building separation and areas of landscaping.

5. INSUFFICIENT SETBACKS

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

- The proposal is not consistent with existing street frontage setbacks

- Inclined Plane

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

The proposal is inconsistent with the objectives of the DCP.

The non-compliance fails:

- To reduce amenity impacts on neighbours
- To provide opportunities for deep soil landscape areas.
- To ensure that development does not become visually dominant.
- To ensure that the scale and bulk of buildings is minimised.

The proposed development results in an encroachment beyond the prescribed building envelope. This non-compliance is indicative of an unacceptable built form and contributes to the severe amenity loss.

The design fails to comply with the building envelope measured at the side boundary. The DCP requires that development be provided within this envelope to ensure reasonable amenity is maintained for neighbours. A significant proportion of the upper level of the proposed development falls outside this building envelope. Together with the failure to respect the dominant street setbacks will result in view loss, excessive bulk and scale, and significant visual impact. I note that the control considered that some flexibility in applying this control should be provided on land where the building footprint has a steeper slope. This site cannot meet the criteria for this variation. In addition, I note that any constraint of topography is ultimately overcome by the proposal given the significant cut of the land form proposed. Under these circumstances, it would be contrary to the policy and inherently unreasonable to allow such a departure from the control.

I note that flexibility in relation to DCP controls may be acceptable where the outcomes of the control are demonstrated to be achieved. In this case, the control is unable to do so because:

- The design cannot achieve the desired future character as demonstrated earlier in this submission; and,
- The street setback of the design is significantly overbearing in relation to the spatial characteristics of the natural environment, and the confronting presentation to the waterway is not sensitive to this important visual catchment.
- By virtue of the unmitigated setback breach and extensive building envelope breach, it is not possible to say that the bulk and scale of the built form has been minimised.
- View loss results from the non-compliant design and a reasonable and equitable sharing of views is not achieved.

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 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 and the street.

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

6. TRAFFIC, ACCESS & PARKING

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as traffic, access and parking issues do not accord with the DCP provisions.

My clients are concerned that the proposed garage:

- Is built within the front setback zone
- Is built without an adequate turning area to allow front in and front out access
- Is built without adequate sight lines - this is particularly important in view of the existing driveway access of #73 Florida Road and problems associated therewith of which Council is already aware, by correspondence from my client directly to Council

Demolition Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.

- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

Implementation of Demolition Traffic Management Plan

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Construction Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by a TfNSW accredited person and submitted to and approved by the Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
The proposed areas within the site to be used for the storage of excavated

materials, construction materials and waste containers during the construction period

- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

7. IMPACTS UPON ADJOINING PROPERTIES: ADVERSE VIEW SHARING IMPACTS

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 proposal is inconsistent with the objectives of the DCP.

View loss is assessed on a Planning Principle established by the NSWLEC within *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*.

In *Tenacity*, NSWLEC considered Views. *Tenacity* is now the NSWLEC Planning Principle that defines the reasonableness of a proposal to view sharing.

Tenacity states:

"A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable."

The development application should be refused as it results in unacceptable view loss from adjoining and nearby residential dwellings.

Tenacity, states the test for reasonableness:

Point 1 - Compliance, or otherwise, with planning controls.

Point 2 - If there is a non-compliance, then even a moderate impact may be considered unreasonable.

Point 3 - For complying proposals: (a) "whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours to bring about impact", and (b) "if the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

The development breaches multiple planning controls and is unreasonable.

FAILURE TO PROVIDE PHOTOMONTAGES

THE Applicant has not provided Photomontages in accordance with NSWLEC Guidelines for Photomontages, that Council would expect to be submitted when view loss occurs.

I ask Council to have the Applicant prepare Photomontages on the following NSWLEC basis:

Use of photomontages

The following requirements for photomontages proposed to be relied on as or as part of expert evidence in Class 1 appeals will apply for proceedings commenced on or after 1 October 2013. The following directions will apply to photomontages from that date:

Requirements for photomontages:

1. Any photomontage proposed to be relied on in an expert report or as demonstrating an expert opinion as an accurate depiction of some intended future change to the present physical position concerning an identified location is to be accompanied by: Existing Photograph. a) A photograph showing the current, unchanged view of the location depicted in the photomontage from the same viewing point as that of the photomontage (the existing photograph); b) A copy of the existing photograph with the wire frame lines depicted so as to demonstrate the data from which the photomontage has been constructed. The wire frame overlay represents the existing surveyed elements which correspond with the same elements in the existing photograph; and c) A 2D plan showing the location of the camera and target point that corresponds to the same location the existing photograph was taken. Survey data. d) Confirmation that accurate 2D/3D survey data has been used to prepare the Photomontages. This is to include confirmation that survey data was used: i. for depiction of existing buildings or existing elements as shown in the wire frame; and ii. to establish an accurate camera location and RL of the camera.

2. Any expert statement or other document demonstrating an expert opinion that proposes to rely on a photomontage is to include details of: a) The name and qualifications of the surveyor who prepared the survey information from which the underlying data for the wire frame from which the photomontage was derived was obtained; and b) The camera type and field of view of the lens used for the purpose of the photograph in (1)(a) from which the photomontage has been derived.

The development application should be refused as the applicant has not provided photomontages to define the view loss.

RECENT REFUSALS THAT ASSIST IN DEFINING OUTCOMES WITHIN *TENACITY CONSULTING V WARRINGAH COUNCIL* 2004

I bring to Council's attention a number of recent appeals on view sharing grounds.

Tenacity continues to be the planning principle, however, my contention is that multiple recent decisions by NSWLEC Commissioners help better define and re-enforce the guiding principles.

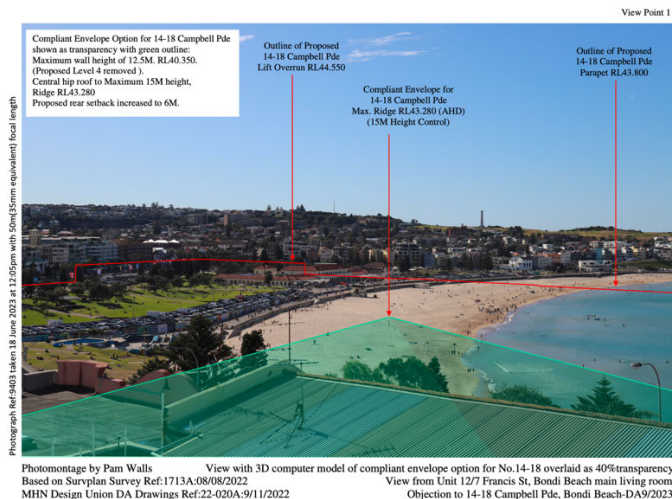
I successfully represented neighbours in better protecting their views in these cases.

FURLONG V NORTHERN BEACHES COUNCIL [2022] NSWLEC 1208 has particular relevance, as a view is lost caused by failure to accord with the dominate street setbacks. There is a more skilful design that relocates the built form to the alignment of the existing dwelling on the subject site, that would give the applicant the same or indeed better amenity, due to improved coastal views.

BONDI RESIDENCE PTY LTD V WAVERLEY COUNCIL [2024] NSWLEC 1297

This case involved an applicant proposing built form that did not accord with setback, wall height and number storey provisions of the DCP. The proposal did conform to Height of Building standards.

My clients would have suffered severe and devastating view loss over Bondi Beach, as can be witnessed by the red line on the attached montage.



The Commissioner in this case did not accept that the assessment of reasonableness of a view impact is confined to a comparison of a so-called “compliant envelope” with what was proposed.

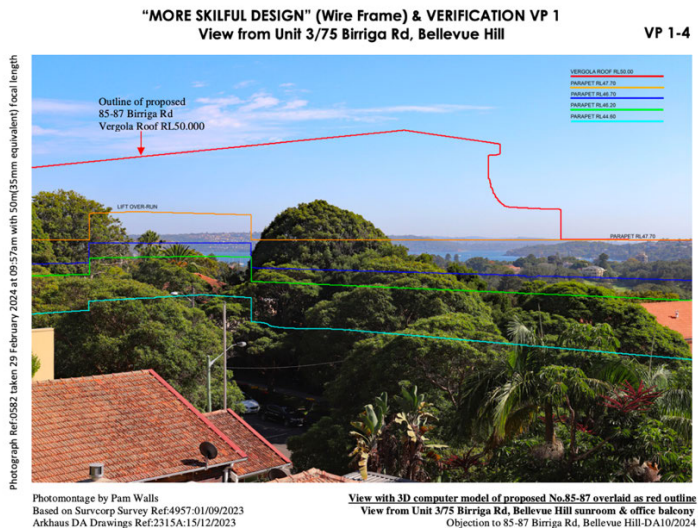
The Commissioner stated:

“The controls in the WDCP are not merely building envelope controls, but extend to specific controls concerning the increase of setbacks to minimise view loss, as well as controls requiring the incorporation of design measures to facilitate view sharing. Much of the impact arises from the non-compliance with the control in the WDCP concerning the maximum number of storeys. The control is for a maximum of four storeys with which the proposed development does not comply. Having regard to the photomontages that have informed the view impact analysis, it is clear from the wireframes that much of the built form that obstructs the views arises from the additional fifth-storey that is contrary to this four-storey controls..it is therefore clearly contemplated that numerical compliance is not sufficient, and additional setbacks ought to be utilised to minimise view loss.... increasing the side boundary setbacks from that proposed would improve view sharing corridors. The proposed development has not done so....the severe impacts on views from the most affected properties are unacceptable as they are caused by the breach of the storey control, the failure to provide adequate side setbacks at the upper level, and the failure to use any other design measures to facilitate view sharing and minimise view loss. This is contrary to the objective to “minimise view loss from existing developments by proposed development. In accordance with Tenacity at [29], 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”.

CSKS DEVELOPMENTS PTY LTD V WOOLLAHRA MUNICIPAL COUNCIL [2024] NSWLEC 1801

This case involved an applicant proposing built form that did accord with FSR standards. The proposal did generally conform to Height of Building standards.

My clients would have suffered devastating view loss over Sydney Harbour, as can be witnessed by the red line on the attached montage.



Changes were made to significantly reduce the overall height of the proposed building, achieved by significantly lowering the ground level and eliminating the roof terraces and associated pergola structure. The agreed amendments also had the effect of reducing the FSR and mitigate against impacts of building scale and view affectation for a number of nearby neighbours.

The amended DA proposed a maximum height of 11.185m in an instance where the relevant development standard for height of building is 13.5m.

Commissioner Pullinger states within cl 23[5]:

"The amended DA's reduced building height mitigates against earlier view impacts and is agreed to represent an appropriate response to view sharing"

From this judgement it can be considered that the assessment of reasonableness of a view impact is not confined to a comparison of a so-called "compliant envelope" with what is proposed, rather than a mitigation against unreasonable view loss.

Commissioner Pullinger in this case agreed that a 4.8m reduction in height below HOB Standards, and a reduction of FSR, was necessary to achieve a more reasonable view sharing outcome.

COLLARROY LIVING PTY LTD V NORTHERN BEACHES COUNCIL [2024] NSWLEC 1352

This case involved an applicant proposing built form that did not accord with FSR. The proposal did generally conform to Height of Building standards.

My clients would have suffered devastating view loss over the coastal views.



During the course of the proceedings, Amended Plans were submitted, including a substantial 30% reduction of the FSR to better resolve the view sharing outcomes, and to provide an:

'approximately "like for like" view impacts as between the proposed development and existing dwellings'.

The Commissioner stated within the findings in CI 87:

"I am satisfied that the Amended Development Application provides for the reasonable sharing of views for the reasons provided by the town planners.

These reasons primarily include:

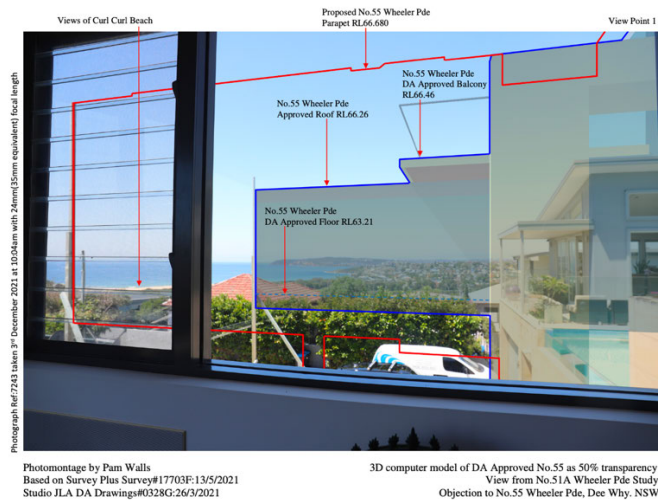
- 1. the siting and height of the four pavilions comprising the development;*
- 2. the approximately "like for like" view impacts as between the proposed development and existing dwellings as demonstrated in the VIS; and*
- 3. the selection of trees and landscaping to ensure the retention of views."*

This decision identified that where excessive FSR is the cause of an unreasonable view sharing, then the Court has found that a substantial reduction of FSR is required to resolve unreasonable view sharing outcomes.

FURLONG V NORTHERN BEACHES COUNCIL [2022] NSWLEC 1208

This case involved an applicant proposing built form that fully accorded with all envelope controls.

My clients would have suffered a severe view loss over the coastal views, across a side boundary.



Commissioner Walsh upheld the Council's decision on the basis that the proposal would bring about "severe view loss impacts" when there was a reasonable design alternative available which would significantly moderate the impact.

The Commissioner found that compliance with development controls does not, of itself, overcome policy settings aimed at reasonable view sharing. The Commissioner held that the proposal "does not pay sufficient regard" to the local development control plan which required view sharing.

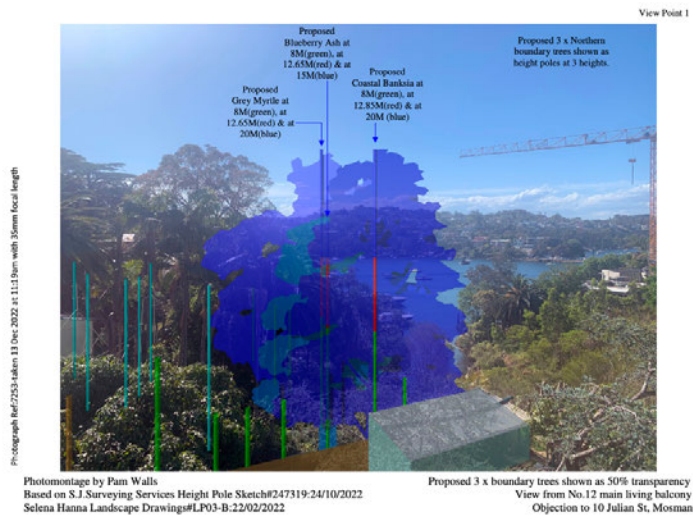
Further, the Commissioner found that a design alternative which shifted the position of the proposed extension by 3.5m was reasonable and would not impede the view to the same extent.

The key-takeaway from this decision is that views that are not perceived from the front and rear boundaries of a property can still be protected if they are of 'high value' and not replicated in other areas of the property. In such circumstances, the loss of 'high value' views could be considered to cause severe view loss and may be able to be protected.

HONG V MOSMAN MUNICIPAL COUNCIL [2023] NSWLEC 1149

This case involved an applicant proposing landscape canopy into the viewing corridors to the harbour

My clients would have suffered a severe view loss over the harbour views.



Commissioner Walsh summarised the matter in cl 30 of his decision:

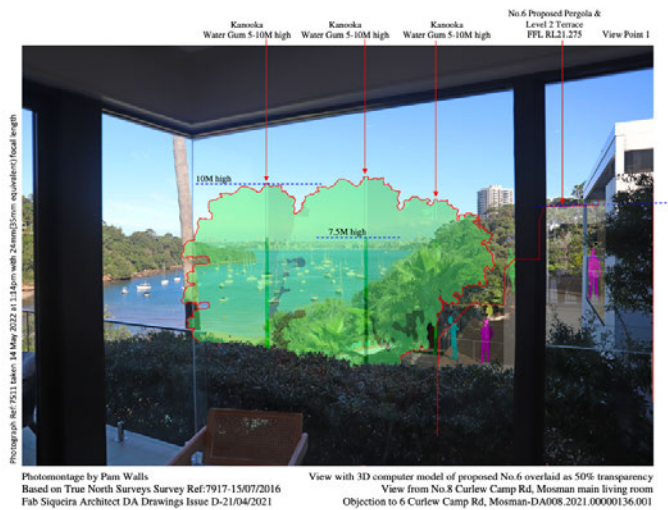
In regard to landscaping and tree protection, I note again that in Court and to some degree of detail, I worked through with the experts the various points of concern raised. This resulted in a number of further agreed alterations to the landscape plan. The Revision C drawings, based on the evidence of the experts but also in my own reading, now provide that appropriate balance between retaining and sometimes enhancing Middle Harbour views, while also providing for a valuable local landscape contribution.

The Revision C drawings required 9 high canopy trees to be deleted and replaced by 3m high species. The condition of consent required a further four transplanted palms to be deleted from the Landscape Plans.

ZUBANI V MOSMAN MUNICIPAL COUNCIL [2022] NSWLEC 1381

This case involved an applicant proposing landscape canopy into the viewing corridors to the harbour

My clients would have suffered a severe view loss over the harbour views.



Commissioner Morris clearly identified that under view sharing any proposal must be mindful *to restrict landscape heights to ensure views are adequately protected.*

VIEW SHARING ASSESSMENT & NSWLEC TENACITY CONSULTING V WARRINGAH COUNCIL

The DCP Controls on View Sharing refers to outcomes that all new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The DCP Outcomes on View Sharing refers to a reasonable sharing of views amongst dwellings. Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.

The DCP states that the proposal must demonstrate that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing, and references the NSWLEC Planning Principle defined *within Tenacity Consulting v Warringah Council 2004*

In *Tenacity*, [*Tenacity Consulting v Warringah Council 2004*], NSW LEC considered Views. *Tenacity* suggest that Council should consider:

"A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable."

The development breaches multiple planning controls and is unreasonable.

My clients contend that the impact on views arises as a result of non-compliance with one or more planning controls, and the view loss from the highly used rooms and decks is considered unreasonable.

APPLICATION OF TENACITY PLANNING PRINCIPLE

I have been unable to consider the impact of the proposal on the outward private domain views from my clients' property.

Height poles or photomontage view loss analysis has yet to be provided by the Applicant.

An assessment in relation to the planning principle of Roseth SC of the Land and Environment Court of New South Wales in *Tenacity Consulting v Warringah [2004]* NSWLEC 140 - Principles of view sharing: the impact on neighbours (*Tenacity*) is made, on a provisional basis ahead of height poles being erected by the Applicant.

The steps in *Tenacity* are sequential and conditional in some cases, meaning that proceeding to further steps may not be required if the conditions for satisfying the preceding threshold is not met.

STEP 1 VIEWS TO BE AFFECTED

The first step quoted from the judgement in Tenacity is as follows:

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

An arc of view is available when standing at a central location in the highly used zones including entertainment decks, highly used rooms, and private open spaces on my clients' property.

The proposed development will impact upon expansive water views, and water views in which the interface between land and water is visible.

The composition of the arc is constrained over the subject site boundaries, by built forms and landscape. The central part of the composition includes the subject site.

Views include scenic and valued features as defined in Tenacity. The proposed development will take away views for its own benefit. The view is from my clients' highly used rooms towards the view. The extent of view loss exceeds moderate and the features lost are considered to be valued as identified in Step 1 of Tenacity.

STEP 2: FROM WHERE ARE VIEWS AVAILABLE

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The views in all cases are available across the boundary of the subject site, from standing and seated positions. An arc of view is available when standing at highly used zones on my clients' property.

STEP 3: EXTENT OF IMPACT

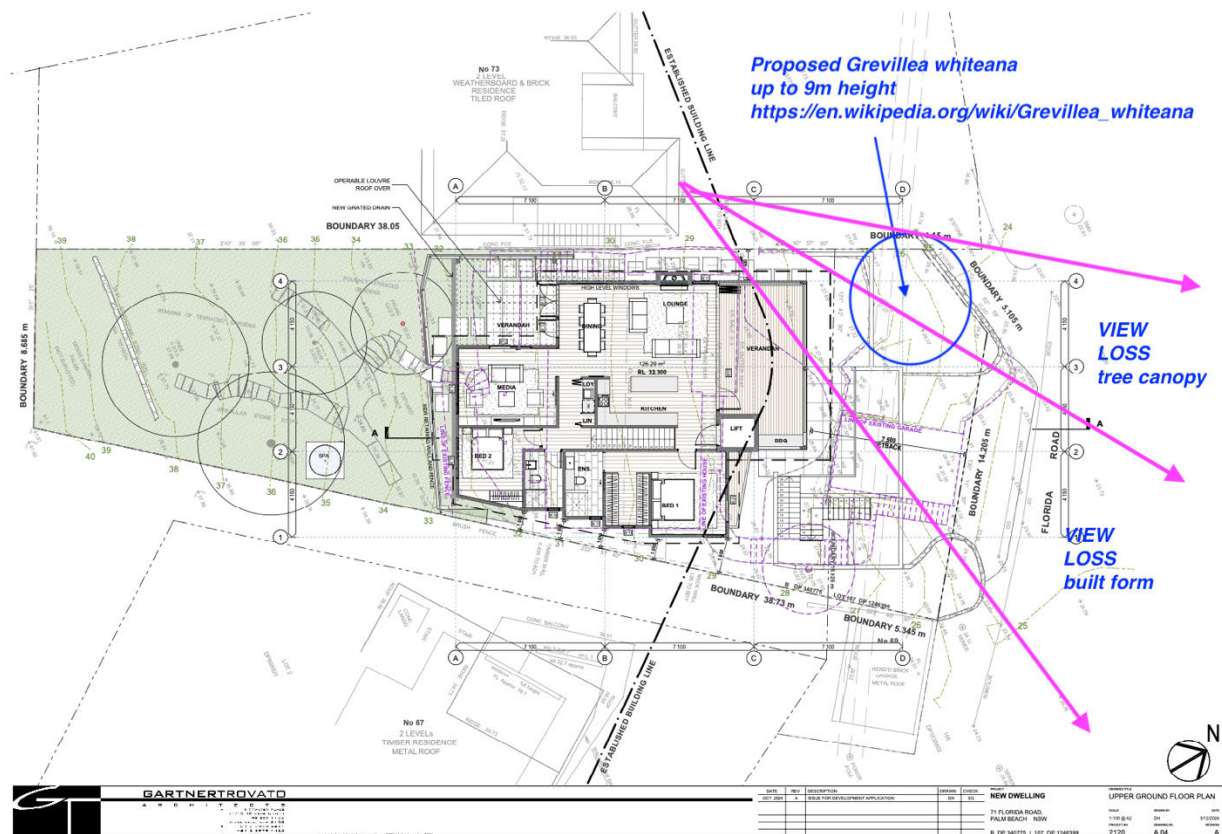
The next step in the principle is to assess the extent of impact and the locations from which the view loss occurs.

Step 3 as quoted is:

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living

areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

As I rate the extent of view loss is above moderate in my opinion the threshold to proceed to Step 4 of Tenacity is met.



Extract Drawing with marked up: Established Building Line incorrectly shown by applicant. Note view loss caused by built form forward of the true existing building line, and by excessive tree canopy.

STEP 4: REASONABLENESS

The planning principle states that consideration should be given to the causes of the visual impact and whether they are reasonable in the circumstances.

The controls require that new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties and must demonstrate that view sharing is achieved through the application of the Planning Principles established in the NSW Land and Environment Court case *Tenacity Consulting v Warringah Council*.

In *Tenacity* Step 4 is described as below:

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

In *Balestriere v Council of the City of Ryde* [2021] NSWLEC 1600 NSWLEC Commissioner Walsh said in relation to the Fourth Step in Tenacity:

There are three different aspects to the fourth Tenacity step, concerned with assessing the reasonableness of the impact, which I summarise as follows:

Point 1 - Compliance, or otherwise, with planning controls.

Point 2 - If there is a non-compliance, then even a moderate impact may be considered unreasonable.

Point 3 - For complying proposals: (a) "whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours to bring about impact", and (b) "if the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

In relation to Principal four set down in the *Tenacity* decision ('Assessment of the reasonableness of the proposal that is causing the impact'), it is considered that a development which complies with all planning controls would be deemed more reasonable than one that is non-compliant.

The proposal as it currently stands presents numerous non-compliances to LEP and DCP controls, which questions whether a more 'skilful' (or sensitive) design would achieve an improved and acceptable outcome.

Further exploration of an alternative design outcome which would include the amendments mentioned within this submission is therefore necessary to satisfactorily address the Planning Principles established in the NSW Land and Environment Court case.

I contend that the view impact results in a greater than moderate impact from the respective zones within the property given the significant proportion of the views which are impacted. The views are certainly worthy of consideration and substantial protection.

The proposal to remove the vast majority of these views is considered overall to be a greater than moderate view impact and I contend that the proposal therefore fails on NSWLEC Tenacity Step 4 Reasonableness.

As the proposed development does not comply with outcomes and controls, that are the most relevant to visual impacts, greater weight would be attributed to the effects caused.

In my opinion the extent of view loss is considered to be greater than moderate, in relation to the views from my clients' highly used zones of my clients' dwelling. The view is from a location from which it would be reasonable to expect that the existing view, particularly of the view that could be retained especially in the context of a development that does not comply with outcomes and controls. The private domain visual catchment is an arc from which views will be affected as a result of the construction of the proposed development. The proposed development will create view loss in relation to my clients' property. The views most affected are from my clients' highly used zones and include very high scenic and highly valued features as defined in Tenacity. Having applied the tests in the Tenacity planning principle I conclude that my clients would be exposed to a loss greater than moderate from the highly used rooms. The non-compliance with planning outcomes and controls of the proposed development will contribute to this loss. Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

The proposed development cannot be supported on visual impacts grounds. The proposal incorporates a significant departure from controls, which helps contain building envelope. Additionally, the siting of the proposed development and its distribution of bulk does not assist in achieving view sharing objectives. Where the diminishing of private views can be attributed to a non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. My assessment finds that view sharing objectives have not been satisfied.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control.

There are architectural solutions that maintain my clients' view. I identify the precise amendments necessary to overcome this loss.

As noted by his Honour, Justice Moore of the Court in *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 (Rebel),

"the concept of sharing of views does not mean, for the reasons earlier explained, the creation of expansive and attractive views for a new development at the expense of removal of portion of a pleasant outlook from an existing development. This cannot be regarded as "sharing" for the purposes of justifying the permitting of a non-compliant development when the impact of a compliant development would significantly moderate the impact on a potentially affected view".

The same unreasonable scenario in Rebel applies to the current DA. The proposed breaching dwelling will take away views from my clients' property (and possibly other adjoining properties) to the considerable benefit of the future occupants of the proposed dwelling. This scenario is not consistent with the principle of View Sharing enunciated by his Honour, Justice Moore in Rebel. The adverse View Loss from my clients' property is one of the negative environmental consequences of the proposed development. The proposed development cannot be supported on visual impacts grounds.

These issues warrant refusal of the DA.

My clients contend that the proposed development when considered against the DCP and the NSW Land and Environment Court Planning Principle in *Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC* will result in an unacceptable view impact and will not achieve appropriate view sharing.

My clients 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.

8. IMPACTS UPON ADJOINING PROPERTIES: SOLAR ACCESS

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 solar access and excessive overshadowing by the non-compliant built form.

The proposal is inconsistent with the objectives of the DCP.

The proposed development presents unacceptable amenity impacts to adjoining properties by way of solar access impacts that arise because of the excessive bulk and scale of the proposal and numerical non-compliance.

- The proposal is not consistent with existing street frontage setbacks, and causes excessive morning solar loss

The Applicant has not provided adequate Solar Access Diagrams, at one hourly intervals, in plan and elevation of my clients' property, to assess the loss of solar access at mid-winter, of my client's windows, private open space, and PV Solar Panels to accord with DCP controls and NSWLEC planning principles

My clients 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.

Shadow diagrams have not included the additional shadow cast by the non-complaint envelope, in plan and elevation. The elevational shadow diagrams must show the position of windows on adjoining properties.

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 my clients' property and the private open space of my clients' 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."

My clients 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. My clients 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 22.5o 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.

My clients object to solar loss to my clients' private open space, and to my clients' windows that fails to allow mid-winter solar access into highly used room by non-compliant development controls.

9. 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 proposal is inconsistent with the objectives of the DCP.

The proposed development should be refused as it will have unacceptable impacts upon the amenity of my clients' property, specifically with regard to visual privacy.

The proposed development will result in unacceptable overlooking of the adjoining dwelling and associated private open space, resulting in inconsistency with the provisions of the DCP and the objectives of the DCP.

The location and design of the proposed balcony and terraces at the upper floor levels and the excessive glazed windows facing the side boundary will result in unacceptable visual and acoustic privacy impacts to adjoining properties.

The Applicant has not provided an adequate Privacy Impact Analysis which details the extent to which privacy at my clients' property will be adversely impacted by the proposal.

The proposed development should be refused because it will result in unacceptable visual privacy impact contrary to the DCP:

- The proposal is inconsistent with the DCP as it does not use appropriate site planning with respect to the location and design of windows and balconies,

such that it results in unreasonable visual privacy impacts to the dwellings of neighbouring properties;

- The proposal does not comply with requirement set out in the DCP as it is not designed to optimise privacy for the occupants of the neighbouring dwellings
- The proposal does not comply with requirement set out in the DCP as it does not orientate living areas, habitable rooms, and windows to limit overlooking.
- The proposal orientates the living areas and main private open space to neighbours
- The floor level of the upper levels, would result in looking over and beyond. The difference in levels will result in direct viewing into the private open spaces of neighbour's dwellings.
- The proposal includes raised private open spaces to the rear, increasing opportunity for overlooking to neighbours.
- The proposal relies on landscaping to the rear to assist with privacy, which should not be used in place of good design, as per the planning principle set by *Super Studio v Waverley Council [2004] NSWLEC 91*.
- The proposal is not consistent with the following objective of the DCP, to ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.

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 my clients' windows and balconies.

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 face 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. My clients ask Council to consider the most appropriate privacy screening measures to be imposed on windows and decks facing my clients' 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.

10. IMPACTS UPON ADJOINING PROPERTIES: ENGINEERING

EXCESSIVE EXCAVATION & GEOTECHNICAL 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 minimal excavation, with excavation proposed too close to the neighbours' property.

I ask Council to engage Council's external geotechnical engineer to review these deficiencies.

The proposal is inconsistent with the objectives of the LEP and DCP.

Insufficient information has been submitted to demonstrate that the proposed development will not adversely impact the structural integrity of the surrounding properties. Insufficient information has been provided to address the geotechnical impacts of the proposal. The development involves extensive excavation for the basement. A geotechnical report by a suitably qualified Geotechnical Engineer shall be submitted addressing the geotechnical impacts of the proposal. The report must address any impact to the potential impact on the neighbouring properties due to the proposed basement excavation and provide recommendations to ensure no adverse effects. The applicant has not provided sufficient information for Council to be satisfied that the earthworks will not result in adverse impacts to the watercourse and drainage patterns on the site and the impacts on adjoining properties. The proposed development provides excessive excavation. The excavation should be removed within the setback zones. The excavation should be reduced elsewhere to reduce the risks.

The Geotechnical Report has not provided adequate recommendations to protect my client's property.

AMENDMENTS TO DA DRAWINGS

The DA drawings do not show in plan and section adequate widths for the piling that is required. Engineering advice must be sort to ensure that the architectural drawings allow sufficient zones in plan and section for the piling requirements.

INADEQUATE RECOMMENDATIONS

The Geotechnical Report has not provided adequate recommendations to protect my client's property from potential land slip and damage to my clients' property. The Geotechnical report requires further recommendations on the following matters:

- EXCESSIVE EXCAVATION ON BOUNDARY
There should be no excavation in the side boundary. No piling is shown on drawings in the Geotech Report to support proposed excavation on boundary.
- INCOMPLETE INTRUSIVE GEOTECHNICAL INVESTIGATIONS
The Geotechnical Report is limited by the preliminary intent of the study and the fact that no intrusive investigation has been undertaken at this stage. There is no certainty to the geotechnical model and groundwater model, nor any preliminary design parameters. There is no understanding as to the depth to bedrock, and the rock conditions, the nature of soil conditions, or groundwater conditions at the maximum depth of excavation
- INCOMPLETE GEOTECHNICAL MONITOR PLAN
The Geotechnical Report does not include any recommendations on a monitoring plan;
- EXCESSIVE VIBRATION LIMITS
The Geotechnical Report does not include any adequate recommendations on vibration limits to my client's older dwelling and garage. I contend that the maximum should be reduced to 3mm/sec.
- LACK OF FULL-TIME MONITORING OF THE VIBRATION
The Geotechnical Report does not include any recommendations on monitoring of the vibration limits
- INCOMPLETE DILAPIDATION REPORT RECOMMENDATIONS
The Geotechnical Report does not include any adequate recommendations on dilapidation
- EXCLUSION OF ANCHORS UNDER MY CLIENTS' PROPERTY,
The Geotechnical Report does not include any recommendations on excluding ground anchors under my client's property
- INADEQUATE GROUNDWATER CONSIDERATION
The Geotechnical Report does not include any recommendations on groundwater
- INSUFFICIENT MECHANISMS TO PREVENT THE CONTRACTOR TO UNDERTAKE VARIATIONS TO THE SUPPORT SYSTEM PROPOSED, PARTICULARLY THE TYPES OF PILING SUCH AS SECANT PILES CONTINUOUS FLIGHT AUGER [CFA] TECHNIQUES.
The Geotechnical Report does not restrict piling to a given type.

My clients ask for the Geotechnical Report to be updated to include all these matters, and the recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report.

The geotechnical report supplied is based on very limited investigation.

The Geotechnical Report is considered to be incomplete. My clients ask Council to request that the applicant provides greater detail on any outstanding items as follows: Site Description; Published Data, Geology, Hydrogeology, Acid Sulfate Soils, Council

Landslide Risk Map; Field Work: Field Work Methods; Field Work Results; Boreholes; Dynamic Cone Penetrometer Tests; Mapping and Inspection; Laboratory Testing; Proposed Development Details; Interpreted Geotechnical Model; Comments: Geotechnical assessment; Site Specific Risk Assessment; Stability and Slope Risk Assessment; Risk analysis; Excavation Methodology & Monitoring; Excavation Support; Batter Slopes and Vertical Rock Excavations; Retaining & Shoring Structures; New footings; Earth Pressure Design; Passive Resistance for Shoring Piles; Ground Anchors; Disposal of Excavated Material; Excavation Vibration and Dilapidation Surveys; Foundations; Design; Seismic Design; Hydrogeological Conditions and Site Drainage; Building Adjacent to Sydney Water Sewer; Additional Requirements; Limitations; Drawings, Field Work Results, Site Photographs, Hillside Construction Guidelines

CONDITIONS TO ANY CONSENT

My clients ask for the following conditions to any consent:

DILAPIDATION REPORT – PRIVATE ASSETS

Dilapidation Reports are to be undertaken on all adjoining owner's properties.

The report shall document and provide photographs and defect descriptions that clearly depict any existing damage. The defect descriptions shall describe the location, length, width, shape etc of the defect. Any damage not shown in these reports will be taken to have been caused as a result of the site works undertaken, unless an alternative cause can be identified. The Dilapidation Reports shall be carried out prior to the issue of the Construction Certificate.

The Dilapidation Reports are to be prepared by a suitably Qualified Chartered (CPEng) Professional Civil, Structural or Geotechnical Engineer who is registered on the National Engineers Register (NER).

A copy of the relevant reports shall be submitted to the owners of all properties inspected and to Council as a record. Where two documented attempts have been made to gain access to a property and the owner has failed to respond, this is considered to represent refusal of access by the owner.

If an owner refuses access, or is deemed to refuse access for the purposes of this condition, this condition is deemed to be satisfied in respect of that property.

VIBRATION LIMIT THRESHOLD

The vibration limit threshold for older dwellings is to be 3mm/s unless alternative thresholds can be demonstrated following completion of dilapidation reports. The vibration limit threshold for the remainder the site shall be 5mm/s

SUPPORT AND PROTECTION FOR ADJOINING BUILDINGS

If an excavation associated with the approved development extends below the level of the base of the footings of a building on an adjoining allotment of land, the person having the benefit of the development consent shall, at the person's own expense, comply with the requirements of clause 74 of the Environmental Planning and

Assessment Regulation 2021, articulated at Condition 4(e). Details shall be submitted to the Certifier prior to the issue of a Construction Certificate.

NUMERICAL ANALYSIS OF PROPOSED RETENTION SYSTEM

Following completion of dilapidation surveys and the Builder's Work Method Statement, if the dilapidation surveys reveal any pre-existing conditions in the adjoining buildings which are likely to be adversely impacted by predicted movements, or the Builder's work methodology assessed is different from methodologies assessed in the geotechnical reports, the numerical analysis and associated documentation must be reviewed and updated, if required. The review and any further analysis must be completed by a suitably Qualified Chartered (CPEng) Professional Structural or Geotechnical Engineer who is registered on the National Engineers Register (NER). The results of the analysis must be presented in a report and must assess the potential impact of the proposed development on adjoining structures and demonstrate the suitability of the proposed retention system and construction sequencing. The numerical analysis and report must be carried out prior to the issue of the Construction Certificate.

Condition reason: To confirm the design intent remains valid for protection of adjoining structures.

GEOTECHNICAL MONITORING AND CONTINGENCY PROGRAM

Following completion of dilapidation surveys and the Builder's Work Method Statement, if the dilapidation surveys reveal any pre-existing conditions in the adjoining buildings which are likely to be adversely impacted by predicted movements, or the Builder's work methodology assessed is different from methodologies assessed in the geotechnical reports, the Geotechnical Monitoring and Contingency Plan and associated documentation must be reviewed and updated, if required. The review and updating of the Geotechnical Monitoring and Construction Plan must be prepared by a suitably Qualified Chartered (CPEng) Professional Geotechnical Engineer who is registered on the National Engineers Register (NER). The results of the review must be presented in an updated report and take account of dilapidation survey and the Builders Work Method Statement. The review of the Geotechnical Monitoring and Construction Plan must be carried out prior to the issue of the Construction Certificate.

The Geotechnical Monitoring & Contingency Plan, must include full details relating to: geotechnical monitoring; monitoring requirements: inclinometer & vibration; dilapidation surveys; vibration monitoring; vibration limits; proposed monitoring locations; vibration monitoring instrumentation; monitoring frequency; work procedure; temporary embankment earthworks; geotechnical inspection and testing authority; inspection and approval of material to be placed; observation of the placement of engineered fill; placement of geogrids; gita reporting requirements; perimeter shoring pile walls; excavation; installation of slabs; groundwater; behind wall services; visual monitoring of road pavements and stormwater drains; monitoring of induced movements; footings.

The Implementation Plan, must include full details relating to: Monitoring program including various pre-set acceptable limits, location and type of monitoring systems and recommended hold points; Contingency Plan including details of measures to be adopted to restore groundwater level or to provide any necessary additional support; Construction Methodology to address all aspects of the construction process relating to the geotechnical and hydrogeological requirements. This includes: A design statement and supporting drawings that shows the design measures proposed to minimise risks and to ensure that no adverse impacts will occur; Structural report of the proposed support and retention measures that confirms the structural adequacy of any adjacent structure including any necessary additional support for the structure; All the above reports shall be prepared by a suitably qualified and experienced structural engineer based on the findings of the geotechnical investigation report. In summary, the reports shall include the following details: Location of nearby foundations/footings (site and neighbouring properties) including any existing boundary walls and structures - the engineer must provide design solutions showing that the footings of all existing structures will not be disturbed or undermined by the proposed excavation; Recommendations on methods of excavation and appropriate construction techniques, to ameliorate any potential adverse impacts to adjoining properties; Recommendations as to appropriate temporary and permanent site support and retention measures – all support and retention measures shall be wholly located within the subject site; Prediction of ground settlements in areas adjacent to the development site resulting from temporary and permanent site support and retention measures – the engineer shall demonstrate that the proposed settlement will have no adverse impact on the surrounding properties and infrastructure; Prediction of potential vibration caused by methods of excavation and recommendations on appropriate plant, equipment and construction methods to limit vibration; Permanent earth or rock anchors will not be consented by my client on or below their property; Method and rate of dewatering where required; Certification to confirm that the structural adequacy of all adjoining structures will not be adversely affected and compromised; Should underpinning works be determined to be carried out to the footing of any neighbouring structures including any boundary walls, details and procedures of such underpinning works shall be included in the reports. In addition, written owner consent from the adjoining property owners is also required to be submitted in order for these works to be carried out; Alternatively, the structural engineer shall provide an engineering solution to preclude the necessity to underpinning works caused by the proposal and certify that underpinning works to neighbouring structures are not required.

RETENTION AND EXCAVATION METHODOLOGY

A retention and excavation methodology shall be prepared to clearly define the proposed retention and excavation techniques that will be adopted during construction. This methodology shall be prepared by the builder in conjunction with the retention and excavation contractors and shall clearly specify the proposed staging of the works and the equipment proposed to be used. This methodology shall also incorporate the requirements of the Geotechnical Monitoring and Construction Plan. The preparation of the monitoring program shall be carried out prior to the issue of the Construction Certificate. This is to confirm that the design sequencing will be adopted during construction and to manage the constructability risks associated with the construction of the retention system and the completion of excavation.

CONDITIONS WHICH MUST BE SATISFIED DURING ANY DEVELOPMENT WORK

Compliance with Geotechnical Monitoring and Contingency Plan

The Geotechnical Monitoring and Contingency Plan must be complied with during construction. Amendment of the program may be made where agreed to by the author and documented by the author. If amendment is required, a copy of the amendments to the Geotechnical Monitoring and Contingency Plan shall be submitted to Council. Condition reason: To confirm that construction requirements are being met.

REVIEW OF EXCAVATION AND RETENTION METHODOLOGY

The excavation and retention methodology shall be reviewed by a suitably Qualified Chartered (CPEng) Professional Geotechnical Engineer who is registered on the National Engineers Register (NER). The review and approval of the retention and excavation methodology shall be carried out prior to the issue of the Construction Certificate. Condition reason: To confirm that the design sequencing will be adopted during construction and to manage the constructability risks associated with the construction of the retention system and the completion of excavation.

GEOTECHNICAL REPORT RECOMMENDATIONS HAVE BEEN INCORPORATED INTO DESIGNS AND STRUCTURAL PLANS

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. A detailed construction methodology for the retention of the southern boundary is to be included in the structural drawings. Prior to issue of the Construction Certificate, All Council Forms is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate. Reason: To ensure geotechnical risk is mitigated appropriately.

SIGNIFICANT DEFLECTIONS IN THE EXCAVATION SUPPORT SYSTEM ARE TO BE EXPECTED FOR THE DEEP EXCAVATION

Council will also be aware, that excavation induced ground movements are known to occur through stress release following removal of confining rock/soil. It is well known that these deflections cannot be prevented even with pre-excavation support systems and will extend beyond the excavation perimeter. The deflections at the centre crest of excavations have been found within areas of Sydney at ratios of between 0.50mm and 2.00mm of lateral deflection, per metre depth of excavation (D). As such, significant deflections in the excavation support system are to be expected for the deep excavation. This deflection is likely to propagate upslope, and to the sides, allowing ground movement within an area which is located at the base of a slope within a landslide designated area. The proposed length and scale of the excavation will ensure that a braced excavation support system will be very difficult to implement. I am concerned that the permanent bracing of the piled support wall is not apparent, as there is limited structural cross shear walls shown perpendicular to the piled support wall. I am concerned that the proposed development presented within the DA drawings has not co-ordinated the geotechnical requirements and structural engineering requirements, and this may lead to the DA drawings as proposed not being able to be implemented, causing risk to my clients, and perhaps future approval for greater building envelopes to resolve these matters. I am concerned that the

architectural DA drawings do not show zones for a braced excavation support system of the piled support wall. Anchored shotcrete walls will deflect significantly more than a piled support wall therefore increasing the probability of excess deflection at the common boundary and beyond. These matters increase the risk levels to the neighbouring property. What is proposed will present unacceptable lateral movement that will be encountered within a slope designated as being highly susceptible to landslides. The Architectural DA drawings have not co-ordinated the geotechnical and structural requirements, and I contend renders the DA incomplete. Council does not have before them sufficient material to properly assess these matters. Due to the excessive depth of construction, I contend that there has been insufficient material submitted to enable Council to assess whether the risks have been reduced to satisfy the requirements of the LEP and DCP. I consider the following additional drawings and reports must be submitted:

- Outline Structural Shoring Design for retention piles, permanent buttress walls, whalers, capping beams and temporary supports considering that no anchors will be allowed under the neighbour's properties.
- Geotechnical Finite Element Analysis, such as a Plaxis 3D Model, to define the likely lateral and vertical movements outcomes
- Construction Methodology, including a detailed methodology on 'how' the piling map will be safely built, and positioned at the high end of the site

STORMWATER 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 stormwater control outcomes.

The proposal is inconsistent with the objectives of the LEP and DCP.

My clients ask Council to consider the stormwater design and the OSD.

My clients ask Council to ensure that there are stormwater pits to collect surface and sub surface stormwater along the perimeter of the subject site.

Due to the steepness of the slope, and the overland stormwater concerns, a cut off drain be installed across the upper reaches of the site to catch surface flows from the slope above. A suitable location for this cut off drain would be near the uphill side of the proposed new house. The captured flows from this drain should be piped to the street. As current modelling indicates weather conditions on the East Coast will become more extreme into the future all drains, pits and associated plumbing are to be oversized and designed to cope with extreme prolonged rainfall events. The drain is to be the first thing constructed on the site as part of the development and is to be designed by a stormwater or civil engineer in consultation with the geotechnical consultant.

My clients are extremely concerned that the proposed stormwater drawings do not show adequate collection of stormwater along the boundaries of the subject site, to retain the stormwater washing across the subject site onto my client's property.

I request that the onsite stormwater system is increased with large pits, cut off drains and large pipework to collect all stormwater on the subject site to accord with the 1% AEP.

The proposed development is not supported by sufficient information to demonstrate compliance with Council's stormwater management requirements regarding the provision of onsite stormwater detention (OSD).

A DRAINS model is required for development. The pre-existing flow condition is to be modelled as state of nature up to the 1/100 AEP storm event.

- The stormwater drainage plans are to detail all the minimum information as required by the DCP;
- The drainage catchment plan should also include the footpath catchment area that will drain into the development site and is to be included into the site OSD Drains model calculations.
- Calculations in the form of a Hydraulic Grade Line analysis are required to demonstrate that the OSD tank pipe outlet is not affected by tail water levels from any proposed extension works. The OSD pipe outlet is free draining to demonstrate the proposed OSD storage tank volumes are not compromised.

11. PUBLIC INTEREST

Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not within the public's interest.

The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest.

The proposed development is contrary to the provisions of relevant environmental planning instruments, development control plans and design guidelines. The proposed development represents numerous non-compliances and inconsistencies with State and Council policy. No circumstances exist that would justify the non-compliances and inconsistencies with these policies.

E. CONTENTIONS THAT RELATE TO INSUFFICIENT & INADEQUATE INFORMATION

The applicant has not submitted sufficient and/or adequate information under Part 6, Division 1 Clause 54 of the EPA Regulation 2000 to enable a reasonable assessment under the applicable legislation.

The application lacks sufficient detail to make an informed assessment particularly with respect to determining the extent of the following matters and the relationship and impact to adjoining neighbours.

FAILURE TO PROVIDE PHOTOMONTAGES OR HEIGHT POLES

THE Applicant has not provided Photomontages in accordance with NSWLEC Guidelines for Photomontages, that Council would expect to be submitted when view loss occurs.

I ask Council to have the Applicant prepare Photomontages on the following NSWLEC basis:

Use of photomontages

The following requirements for photomontages proposed to be relied on as or as part of expert evidence in Class 1 appeals will apply for proceedings commenced on or after 1 October 2013. The following directions will apply to photomontages from that date:

Requirements for photomontages:

1. Any photomontage proposed to be relied on in an expert report or as demonstrating an expert opinion as an accurate depiction of some intended future change to the present physical position concerning an identified location is to be accompanied by:

Existing Photograph.

a) A photograph showing the current, unchanged view of the location depicted in the photomontage from the same viewing point as that of the photomontage (the existing photograph);

b) A copy of the existing photograph with the wire frame lines depicted so as to demonstrate the data from which the photomontage has been constructed. The wire frame overlay represents the existing surveyed elements which correspond with the same elements in the existing photograph; and

c) A 2D plan showing the location of the camera and target point that corresponds to the same location the existing photograph was taken.

Survey data.

d) Confirmation that accurate 2D/3D survey data has been used to prepare the Photomontages. This is to include confirmation that survey data was used:

- i. for depiction of existing buildings or existing elements as shown in the wire frame; and*
- ii. to establish an accurate camera location and RL of the camera.*

2. Any expert statement or other document demonstrating an expert opinion that proposes to rely on a photomontage is to include details of:

a) The name and qualifications of the surveyor who prepared the survey information from which the underlying data for the wire frame from which the photomontage was derived was obtained; and

b) The camera type and field of view of the lens used for the purpose of the photograph in (1)(a) from which the photomontage has been derived.

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

My clients ask Council that after amended plans are submitted to reduce the building envelope to dominate street setback, 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.

SOLAR ACCESS DIAGRAMS

The application fails to provide sufficient information to demonstrate that the neighbouring dwellings will receive the minimum number of hours set out within the DCP of direct sunlight to windows and private open space areas on 21 June.

The Applicant has not provided adequate Solar Access Diagrams, at 30-minute intervals, in plan and elevation of my clients' property, to assess the loss of solar access at mid-winter, to accord with DCP controls and NSWLEC planning principles.

The proposed development provides insufficient information to adequately assess whether the development complies or otherwise with the controls. The solar and shadow diagrams appear to be incorrect and do not adequately demonstrate the shadow cast over the site and neighbouring property. The length of the winter shadows appears to be underestimated and the solar diagrams do not appear to take into consideration the topography of the site. In order to properly calculate the solar access to the proposed development and any overshadowing impacts to neighbouring sites 3-D modelling of views from the sun at 30-minute intervals must be submitted illustrating the overshadowing impacts of the neighbouring residential units.

My clients 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.

PRIVACY IMPACT ANALYSIS

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

The architectural drawings do not provide side setback dimensions nor identify the nature of the rooms on the adjoining properties to enable a proper assessment of the impacts of the proposed development and consequently the application has failed demonstrate that the development is suitable for the site and that it will have acceptable environmental impacts on the built environment. Additional dimensions are required to be provided with adequate level of information clearly indicated depicting the separation of buildings and internal layouts of rooms on adjoining properties in order to confirm compliance with objectives and controls.

VISUAL BULK ANALYSIS

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

CONSTRUCTION AND DEMOLITION - TRAFFIC MANAGEMENT PLAN

Not submitted.

GEOTECHNICAL

The Applicant has not provided adequate protection to my clients' property from excessive excavation and potential land slip and damage to my clients' property, including excessive vibration limits, lack of full-time monitoring of the vibration, incomplete dilapidation report recommendations, incomplete attenuation methods of excavation, exclusion of excavation in the setback zone, exclusion of anchors under my clients' property, and incomplete consideration of battering in the setback zone. The geotechnical requirements referred to earlier must be added to the Geotechnical Report. My clients ask for the Geotechnical Report to be updated to include these matters, and 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.

EXTERNAL PLANT

Details of all external plant and equipment including air conditioning units/condensers has not been provided.

Air conditioning units to the façade, roof or balconies of the building will not be acceptable.

STORMWATER

The application does not provide adequate information in respect to stormwater drainage

FLUE

Delete solid fuel appliances (wood fired) due to the potential public health impacts of wood smoke.

1. Provide evidence that the flue pipe will extend not less than 4.6m above the top of the floor protector.
2. If the flue is 3m or less in horizontal distance from the highest point of the roof, is the top of the flue at least 600mm above the highest point of the roof?
3. If the flue is over 3m metres in horizontal distance from the highest point of the roof, is the height of the flue at least 1000mm above the roof penetration?
4. Provide council evidence that the topography of the site or likely weather patterns or configuration of nearby dwelling/s indicate a potential to cause a smoke nuisance? (Include on site plan)
5. Provide evidence that there are not any significant trees or other environmental or structural factors in the immediate vicinity that may cause a smoke down draught? (Include on site plan)
6. The application must contain site, floor and elevation plans drawn to a scale of 1:100 or 1:200 clearly demonstrating the location of the proposed heater and the proposed flue in relation to the roof line of the dwelling and the closest neighbouring dwelling/building.
7. Provide detailed evidence to Council that the application contains specifications of the appliance to be installed indicating compliance with AS/NZS 2918:2001 and the Building Code of Australia?
8. provide evidence that the proposed heater will meet the emission control requirements of AS 4013.1999/AS 4013.2014?
9. provide evidence that the installation will meet the requirements of AS/NZS 2918.2001

ESTIMATED COST OF DEVELOPMENT

Based on the information provided, having regard to Clause 256 of the EP&A Regulation 202, Council may determine that the estimated value of work is underestimated and the fee paid is inadequate.

F. DETAILED LIST OF CONDITIONS OF CONSENT

CONDITIONS OF ANY CONSENT

Deferred Commencement Conditions:

1. Complete all amendments as identified within '*Request For Amended Plans To Be Submitted To Better Address Impacts Upon Adjoining Properties*' within Executive Summary, including reductions in built form, additional privacy devices, and improved landscaping
2. Complete all amendments to achieve a reasonable view sharing and solar access outcome;
3. Complete all amendments to achieve a reasonable privacy outcome, as those identified above in item 1;
4. Complete all amendments to achieve engineering outcomes, with all conditions noted within *Impacts Upon Adjoining Properties: Engineering* to be included in Engineering Reports, or made conditions of consent.

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

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

- o Acoustic Certification of Mechanical Plant and Equipment
- o Arborists Documentation and Compliance Checklist
- o BASIX Commitments
- o Checking Construction Certificate Plans – Protecting Assets Owned by Sydney Water
- o Construction Certificate Required Prior to Any Demolition
- o Electric vehicle circuitry and electric vehicle charging point requirements
- o Engineer Certification
- o Establishment of Tree Protection Zone (TPZ) Fence
- o Geotechnical and Hydrogeological Design, Certification and Monitoring
- o Ground Anchors
- o Identification of Hazardous Material
- o Light and Ventilation
- o No Underpinning works
- o Noise Control - Acoustic Protection of adjoining residential units-Operation of Air Conditioning Plant
- o Parking Facilities
- o Payment of Long Service Levy, Security, Contributions and Fees
- o Professional Engineering Details
- o Public Road Assets Prior to Any Work/Demolition
- o Road and Public Domain Works
- o Soil and Water Management Plan – Submission and Approval

- Stormwater Management Plan
- Tree Management Plan
- Ventilation - Internal Sanitary Rooms
- Utility Services Generally
- Waste Storage – Per Single Dwelling
- Noise Control - Swimming pool/spa pool pumps and associated equipment [if consented]
- Swimming and Spa Pools – Backwash [if consented]
- Swimming and Spa Pools – Child Resistant Barriers [if consented]

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

- AC Units be to located away from my client's property.
- All Solar Panels and PV systems are to be treated with antireflective glass. Solar glass is to be stippled and light-trapping, with photon-absorbent solar cell attached to the rear side. Angle of reflectivity to neighbours must be considered within final detailed design at construction certificate stage, considering the view from neighbours to the subject site.
- Adjoining Buildings Founded on Loose Foundation Materials
- Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)
- Compliance with Building Code of Australia and insurance requirements
- Dilapidation Reports for Existing Buildings: A photographic survey and dilapidation report of my clients adjoining property detailing the physical condition of the property, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, MUST BE submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person and a copy to be given to the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Principal Certifier, prior to the issue of any Construction Certificate.
- Geotechnical Report: Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following: a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum; b) the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended; c) the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site); d) the existing groundwater levels in relation to the basement structure, where influenced; e) the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be

utilised in controlling groundwater. Where it is considered there is the potential for the development to create a "dam" for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and f) recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages. The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/ hydrogeological engineer with previous experience in such investigations and reporting. It is the responsibility of the consulting geotechnical/ hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate. The design principles for the geotechnical report are as follows: a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure; b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure; c) no changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure; d) vibration is to be minimised or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development; e) appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and f) an adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage. The report, satisfying the requirements of this condition, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

- Erosion and Sediment Controls – Installation
- Establishment of Boundary Location, Building Location and Datum
- Home Building Act 1989
- Notification of Home Building Act 1989 requirements
- Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection
- Site Signs
- Engineer's Certification of Plans
- Structural adequacy & Excavation work
- Toilet Facilities
- Works (Construction) Zone – Approval and Implementation

- Sites in the vicinity of a heritage item. A protection strategy for the duration of the construction works, is to be submitted to and approved by Council's Area Planning Manager prior to the issue of any Construction Certificate. The Strategy is to detail how the proposed works will ensure that the adjoining dwellings are to be suitably protected and stabilized during the construction process including from any construction waste, dust, damp, water runoff, vibration or structural disturbance or damage.
- Demolition, excavation and construction noise and vibration management plan. A site-specific noise management plan must be submitted to the council for comment and approval prior to issue of any construction certificate.
- Landscape of the site. a landscape design documentation package and technical specification for construction by a registered landscape architect, must be submitted to and approved by council's area coordinator planning assessments / area planning manager prior to the issue of a construction certificate.
- Reflectivity. Prior to issue of the Construction Certificate the Registered Certifier must ensure that the visible light reflectivity from building materials used on the facade of the building does not exceed 20%.
- Notification of excavation works or use of high noise emission appliances/plant. The immediately adjoining neighbours must be given a minimum of 48 hours notice that excavation, shoring or underpinning works or use of high noise emission appliances / plant are about to commence.

Conditions which must be satisfied during any development work

- Asbestos Removal Signage
- Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum
- Survey. All footings, walls and floor slabs adjacent to a boundary must be set out by a registered surveyor. On commencement of brickwork or wall construction a survey and report, prepared by a Registered Surveyor, must be submitted to the Principal Certifier indicating the position of external walls in relation to the boundaries of the allotment. Any encroachments by the subject building over adjoining boundaries or roads must be removed prior to continuation of building construction work. Reason To ensure the development does not encroach onto neighbouring properties.
- Classification of Hazardous Waste
- Compliance with Australian Standard for Demolition
- Compliance with BCA and Insurance Requirements under the Home Building Act 1989
- Compliance with Council's Specification for Roadworks, Drainage and
- Compliance with Geotechnical / Hydrogeological Monitoring Program
- Miscellaneous Works, Road Works and, Work within the Road and Footway
- Critical Stage Inspections
- Disposal of Site Water During Construction
- Disposal of Asbestos and Hazardous Waste
- Dust Mitigation
- Erosion and Sediment Controls – Maintenance
- Footings in the vicinity of trees
- Hand excavation within tree root zones
- Hours of Work –Amenity of the Neighbourhood
- Installation of stormwater pipes and pits in the vicinity of trees

- Level changes in the vicinity of trees
- Notification of Asbestos Removal
- Maintenance of Environmental Controls
- Placement and Use of Skip Bins
- Prohibition of Burning
- Public Footpaths – Safety, Access and Maintenance
- Replacement/Supplementary trees which must be planted
- Requirement to Notify about New Evidence
- Site Cranes
- Site Waste Minimisation and Management – Construction
- Site Waste Minimisation and Management – Demolition
- Support of Adjoining Land and Buildings
- Tree Preservation
- Vibration: Monitoring Construction Vibration. Vibrations associated with demolition, excavation and construction works are limited to a tolerance of 3mm/s PPV (peak particle velocity) at the property boundaries (or at sea cliff or cliff adjacent to the subject property). Vibration monitoring equipment is to be installed by a registered Geotechnical Engineer throughout the site and along the boundaries to verify that vibration is within the limits of the maximum tolerance. The vibration monitoring equipment must include a light/alarm, so the site foreman and equipment operator are alerted to the fact that vibration limits have been exceeded. Where the vibration tolerances have been exceeded, works shall cease until a change in construction / excavation methodology are implemented to ensure compliance. It also must log and record vibrations throughout the excavation and construction works so that compliance may be verified. Any monitoring devices are to be installed at the footing level of any adjacent structures. Reason: To restrict vibration impacts.

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

- Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification that the height of the building accords with the consent, to the satisfaction of the Principal Certifier. Reason. To ensure the constructed development complies with the approved height.
- Amenity Landscaping
- Certification of Electric Vehicle Charging System
- Commissioning and Certification of Public Infrastructure Works
- Commissioning and Certification of Systems and Works
- Occupation Certificate (section 6.9 of the Act)
- Letter Box
- Swimming and Spa Pools – Permanent Child Resistant Barriers and other Matters [if consented]
- Swimming Pool Fencing [if consented]

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

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

- Road Works (including footpaths)
- Compliance with the acoustic report prior to construction and or occupation certificates

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

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

Advising

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

G. REASONS FOR REFUSAL

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

Contentions that the application be refused as listed within this submission.

1. Council is not satisfied that under clause 4.6 of the LEP seeking to justify a contravention of the development standard that the development will be in the public interest because it is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
2. 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:
 - o Aims of Plan
 - o Zone Objectives
 - o Earthworks
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 DCP:
 - o View Sharing
 - o Solar Access
 - o Visual Privacy
 - o Acoustic Privacy
 - o Setbacks
 - o Inclined Planes
 - o Landscape
 - o Geotechnical
 - o Stormwater
 - o Access & Parking
 - o Site Works Management
4. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the plans and documentation are misleading as they do not clearly portray the true extent of works proposed. The plans include inaccuracies and inconsistencies and insufficient information has been provided in order to enable a detailed assessment. Dimensions to boundaries have not been shown in all locations of all proposed built elements. Levels on all proposed works have not been shown.
5. 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

6. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that it will have an adverse impact through its bulk, scale and siting on the built environment, and through lack of landscape provision, and adverse impact on the natural environment. The proposed development will have a detrimental impact on the visual amenity of the adjoining properties by virtue of the excessive building bulk, scale and mass of the upper floor and its associated non-compliant envelope.
7. 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.
8. The proposals are unsuitably located on the site pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
9. 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
10. The proposal is contrary to the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*. The proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The development does not represent orderly development of appropriate bulk, scale or amenity impact in the locality and approval of such a development would be prejudicial to local present and future amenity as well as desired future character and therefore is not in the public interest. The proposed development will have a detrimental impact on the amenity of adjoining residential properties, and for this reason is contrary to the public interest.

H. CONCLUSION

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

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

The 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?"

I contend that the proposed development severely impacts my clients' property, and in terms of amenity, there is excessive sunlight, view or privacy loss. The loss is unreasonable. My clients' property is not vulnerable to the loss that is presented. The loss arises out of poor design, either through non-compliance to envelope controls or poorly located built form.

It is considered that the proposal is inappropriate on merit and unless amended plans are submitted, this DA must be refused for the following reasons:

- The application has not adequately considered and does not satisfy the various relevant planning controls applicable to the site and the proposed development.
- The proposed development is incompatible with the existing streetscape and development in the local area generally.
- The proposed development will have an unsatisfactory impact on the environmental quality of the land and the amenity of surrounding properties.
- The site is assessed as unsuitable for the proposal, having regard to the relevant land use and planning requirements.

It is considered that the public interest is not served.

The proposed development does not follow the outcomes and controls contained within the adopted legislative framework.

Having given due consideration to the matters pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended, it is considered that there are multiple matters which would prevent Council from granting consent to this proposal in this instance.

The proposed development represents an overdevelopment of the site and an unbalanced range of amenity impacts all of which would result in adverse impacts on my clients' property. Primarily,

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact

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

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

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

I ask that if Council in their assessment of this application reveals unsupported issues, which prevent Council from supporting the proposal in its current form, and writes to the applicant describing these matters, I ask for that letter to be forwarded to me.

My clients trust that Council will support my clients' submission and direct the proponent to modify the DA plans, as outlined above. My clients ask Council Officers to inspect the development site from my clients' property so that Council can fully assess the DA.

It is requested that Council inform both myself, and my clients directly, of any amended plans, updates or Panel meeting dates. My clients request that they present to the Panel, should the DA proceed to the LPP.

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

Yours faithfully,

Bill Tulloch

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