2022/509103

From:	Kerry Nash - KN Planning
Sent:	17/08/2022 6:24:32 PM
To:	[redacted] Council Northernbeaches Mailbox
Cc:	James Lloyd
Subject:	Objection to DA2022-1164 re 34-35 South Steyne Manly on behalf of S Dawson
Attachments:	KN59003 Objection re DA2022-1164 34-35 South Steyne Manly Dawson 17.08.22.pdf;

Council – please acknowledge receipt of attached objection. Kerry Nash

KN PLANNING PTY LIMITED

Ref: KN590/03

17 August 2022

General Manager
Northern Beaches Council
PO Box 82
MANLY NSW 1655

Attention: Alex Keller

Dear Alex Keller

Re: Development Application No DA2022/1164
34-35 South Steyne Manly
Objection to proposed development

KN Planning Pty Limited has been engaged by the owner of Apartment 633 in the Peninsula - Beachside building at 25 Wentworth Street Manly, Ms Rosemary Dawson, to prepare a submission of objection in respect to the proposed development embodied in Development Application DA2022/1164 on land at 34-35 South Steyne Manly.

The location of the Apartment 633 relative to the proposed development site is indicated on the aerial photograph at *Figure 1*.

The primary concerns arising from the proposed development are:-

1. Unacceptable view impacts;
2. Building height non-compliance under clause 4.3 of Manly LEP 2013;
3. Other matters of concern.

1. Unacceptable view impacts

The author has had access to photographs taken from Apartment 633 to assess likely view impacts based on the information available in the development application and in accordance with the view sharing principles set out in Part 3.4.3 of the Manly DCP 2013.

The New South Wales Land and Environment Court has established a planning principle involving a four step process to assist in the assessment of view loss impacts through *Tenacity Consulting v. Warringah Council [2004] NSWLEC 140*, namely:-

"The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. 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, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured."

Response:

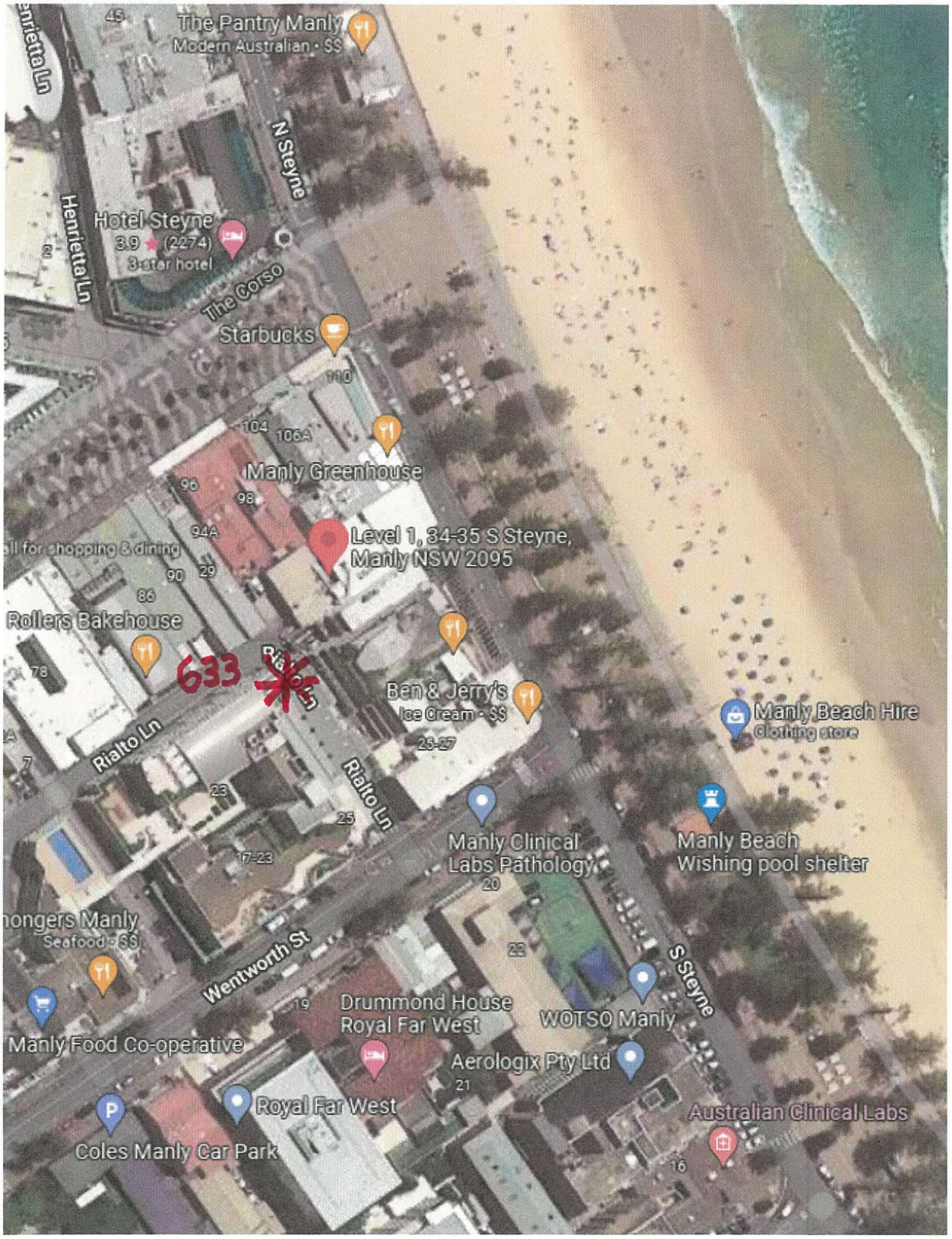
The proposal impacts on views east over the subject site of the land/water interface with Manly Beach, Norfolk Island Pines and Tasman Sea – this view is a whole view and an iconic view. Broader views of the Tasman Sea and north-east towards Queenscliff Beach/Freshwater are not impacted significantly by the proposed development.

[redacted]
Mr Kerry Nash
Dr Adrienne Keane

PO Box 3372
WAREEMBA NSW 2046

[redacted]

[redacted]


The Pantry Manly
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Henrietta Ln
Hotel Steyne
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3-star hotel
The Corso
Starbucks
Manly Greenhouse
Level 1, 34-35 S Steyne, Manly NSW 2095
Rollers Bakehouse
633
Rialto Ln
Ben & Jerry's
Ice Cream · $$
Manly Beach Hire
Clothing store
Manly Clinical Labs Pathology
Manly Beach Wishing pool shelter
Wentworth St
S Steyne
Drummond House Royal Far West
WOTSO Manly
Manly Food Co-operative
Aerologix Pty Ltd
Royal Far West
Coles Manly Car Park
Australian Clinical Labs

Figure 1

"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."

Response:

The views are enjoyed over the subject site (from Rialto Lane to South Steyne frontage) from a sitting and standing position in the living room and on the adjoining balcony as indicated on the *Photographs 1, 2 and 3.* The photographs were taken from a standing position.

"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."

Response:

The impact of the proposed development on the views currently enjoyed by the owner of Apartment 633 are assessed in the following terms:

Balcony – loss of land and water interface with Manly Beach at high and low tide and the lower portions of Norfolk Island Pines along South Steyne *(Photograph 4).* The assessment of view loss is relatively accurate as the lift overrun on the adjoining building (33 South Steyne) has a surveyed height of RL18.75 which is 25cm lower than the proposed rear roof line and generally in line with the eastern façade of the proposed upper level (RL19.00), as evidenced by the extract from the Plan of Survey at *Figure 2.*

The elevated swimming pool on the roof at RL16.950 should not impact on the views from Apartment 633.

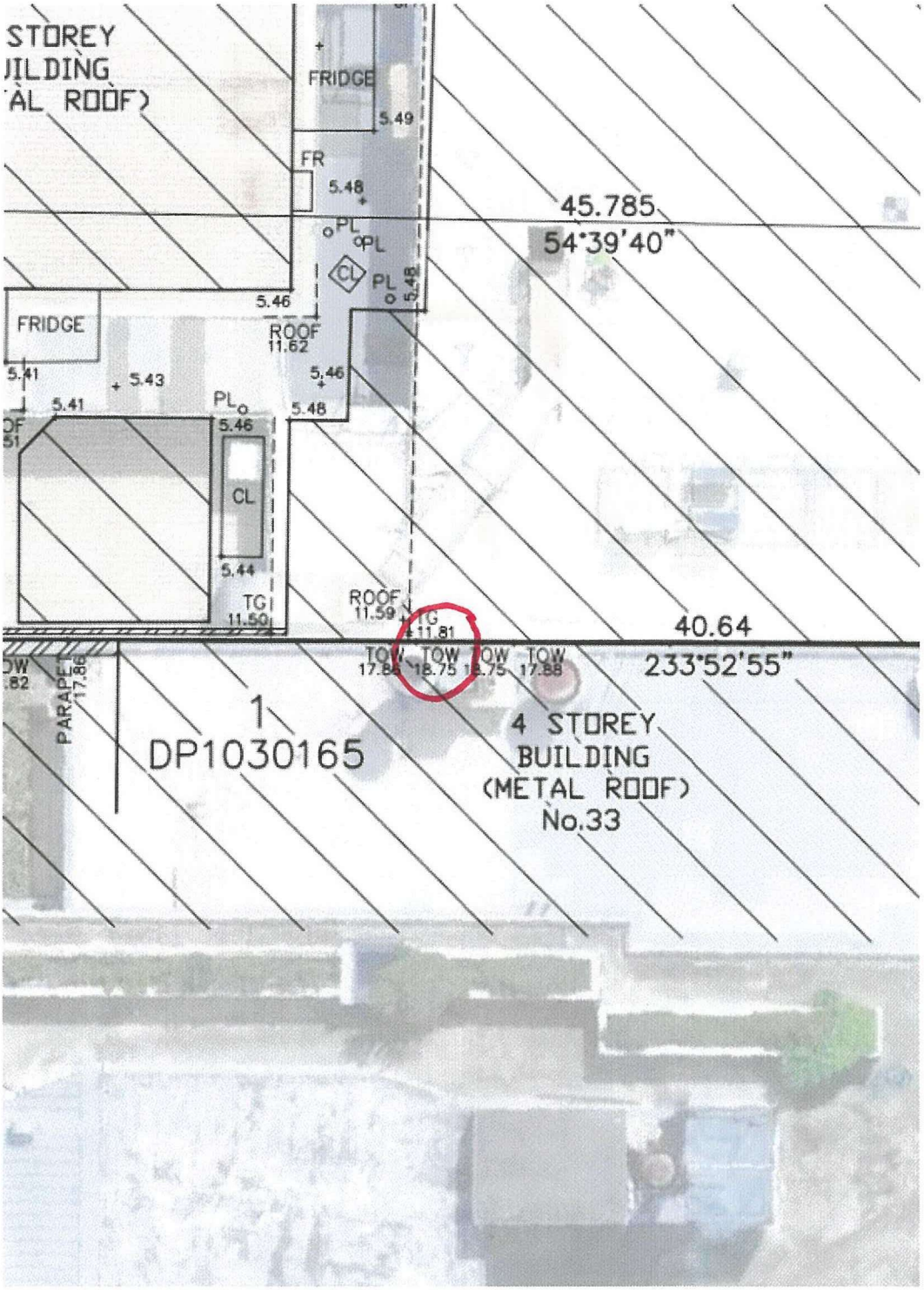
The view loss impact in qualitative terms is severe, as whilst the distant Tasman Sea and Queenscliff Beach /Freshwater views are retained the land/water interface with Manly Beach and its interaction with swimmers, boardriders and the ocean waves will be lost.

Living Room – 100% loss of land and water interface of Manly Beach as detailed above *(Photograph 5).* Distant views of Tasman Sea retained - impact severe for the reasons detailed above.

"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 skillful 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."

Response:

The view loss impacts detailed above are directly related to the proposal's non-compliance with the 12-metre building height development standard under Clause 4.3 of the Manly LEP 2013.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BUILDING
(METAL ROOF)
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Figure 2

The extent of non-compliance is substantial – the 12-metre height standard at the rear portion of the site is at RL17.00; the proposed building height for the rear portion of the development is RL19.00 with the lift overrun height above the upper roof level not indicated on the drawings.

The elevated swimming pool structure on the roof at RL16.950 is setback from the front façade and should not impact on view loss, however no details are provided in respect to any pool fence required under the Regulations.

Furthermore, for the reasons detailed in (2) below it is considered that the justification for the non-compliance with the building height development standard is not well founded and should be refused by Council.

Given the view loss impacts detailed above, it is considered that the non-compliance with the building height development standard would be considered unreasonable in the context of the *Tenacity principles,* as a development, compliant with the building height standard, would significantly reduce the adverse view impacts on Apartment 633.

Also relevant to any view loss/maintenance of views considerations are the objectives and controls under Part 3.4.3 of the Manly DCP 2013, namely:

Objective 1: To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2: To minimize disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ***ocean,*** *bushland, open space and recognized landmarks or buildings from both private property and public places (including roads and footpaths).*

Objective 3: To minimize loss of views, including accumulated view loss 'view creep' whilst recognizing development may take place in accordance with the other provisions of this Plan".

The proposal fails to satisfy Objectives 1, 2 and 3 above for the reasons detailed above.

2. Building height standard non-compliance

The proposed development does not comply with the 10 and 12 metre height standards applying to the site under Clause 4.3 of the Manly LEP 2013. The extent of non-compliance is as follows:

Control 10.00 metres - RL15.00; proposal - RL16.30 (front façade) and RL16.950 (elevated swimming pool);

Control 12.00 metres -RL17.00; proposal - RL19.00 and lift overrun unknown.

The non-compliance with the 12-metre height control is the factor that impacts on the view loss currently enjoyed from Apartment 633. The non-compliance with the 10 metre high standard does not impact on the view loss from Apartment 633 as it falls within the 'shadow' of the non-complying roof form at RL19.00.

The Clause 4.6 submission lodged with the development application is flawed and not well founded as the proposal clearly fails to satisfy the objectives of the building height standard, in particular objective 4.3(1)(c)(ii) which states:

(c) to minimize disruption to the following:

(ii) views from nearby residential development to public spaces (including the harbour and foreshores)

For the reasons detailed in (1) above, view loss impacts on Apartment 633 do not achieve the outcomes sought under objective 4.3(1)(c)(ii) of the Manly LEP 2013 and accordingly the clause 4.6 submission fails to satisfy clause 4.6(3)(a) in the context of *Wehbe's "first way"*. Accordingly, the clause 4.6 submission justifying the non-compliance with the building height standard fails and should not be supported by Council.

The Applicants clause 4.6(4) submission is also considered deficient in the context of the Court of Appeal decision in *RebelMH Neutral Pty Limited v North Sydney Council [2019] NSWCA 130.*

3. Other matters of concern

There are a number of matters of concern relating to the proposal that are likely to impact on the residents of the Peninsula -Beachside building in general and Apartment 633 in particular, namely:

i) Potential noise and disturbance impacts from the uncontrolled use of the proposed rooftop swimming pool. A condition requiring use of the pool to be prohibited between 10.00pm and 7.00am, 7 days a week would address this concern.
ii) The extent of excavation proposed to provide two basements for parking and commercial use will have the potential to impact on the structural integrity of adjoining and adjacent buildings. Specific conditions are needed to ensure excavation methodology is appropriate to the site circumstances.
iii) The management of demolition, excavation and construction on the site will need to specifically address the need for Rialto Lane to be able to function unimpeded throughout the day as it is fundamental for the servicing of retail and commercial entities adjoining and for egress from the Peninsula car parking area.
iv) Given the height and proximity of the Peninsula building to the subject site, the location and operation of the proposed crane is of particular concern as to the potential for adverse impacts on the building and the safety of residents.

Summary

The proposed development will have a severe impact on the views currently enjoyed from Apartment 633 of Manly Beach.

The substantial non-compliance of the building height standard directly contributes to the view loss and is clearly contrary to the building height objectives under clause 4.3(1)(c)(ii) of the Manly LEP 2013 thereby failing the requirements under clause 4.6(3)(a). Accordingly, the Clause 4.6 submission is flawed and not well founded and should not be supported by Council.

Such amenity impacts arising from the proposed development are unacceptable and would justify the refusal of the development application by Northern Beaches Council.

Yours faithfully

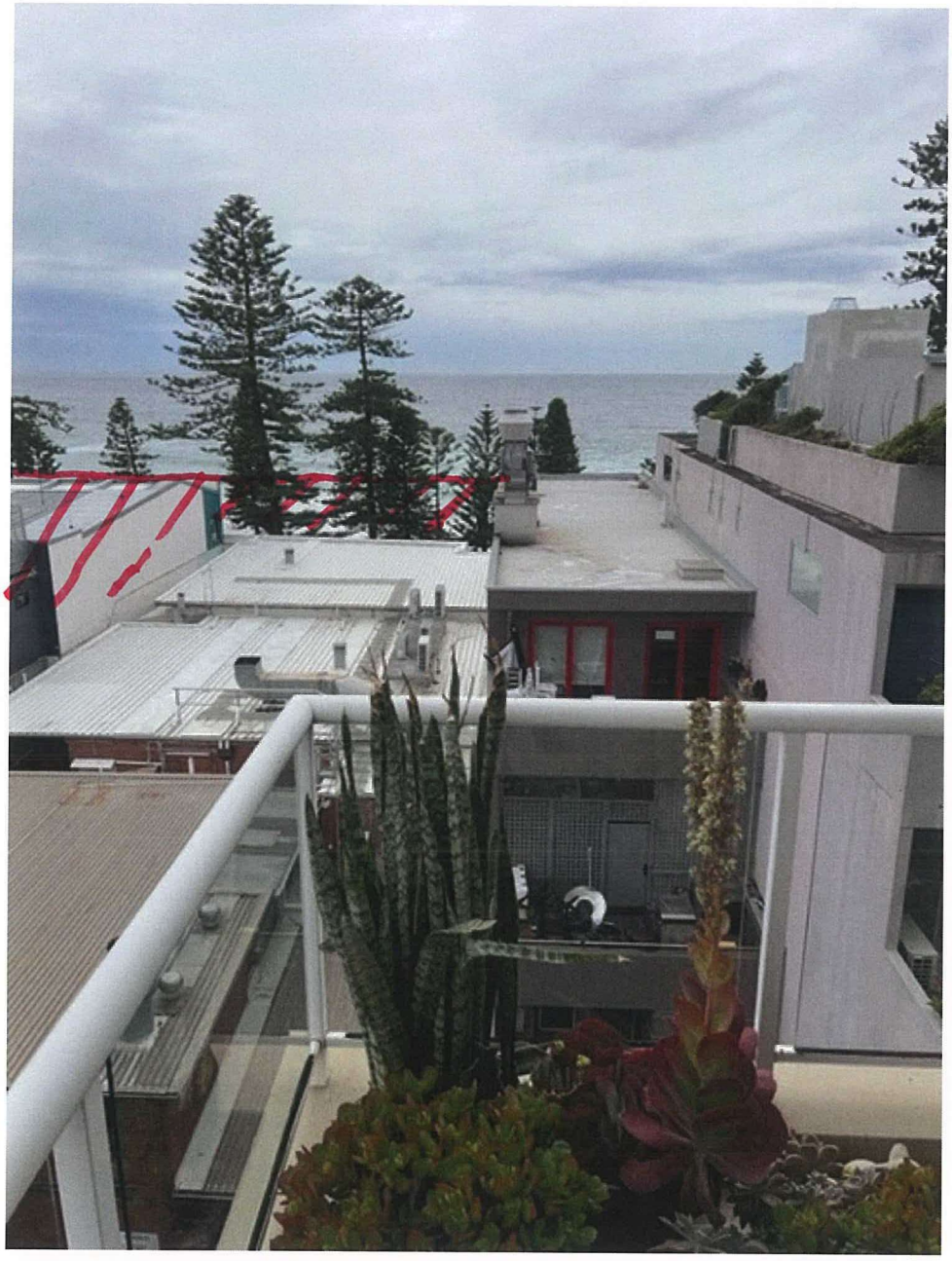
Kerry Nash
Director

cc Ms Rosemary Dawson

Photograph 1: Apartment 633 – view standing from living room

Photograph 2: Apartment 633 – view standing from balcony

Photograph 3: Apartment 633 – balcony



Photograph 4: Apartment 633 – view loss impact standing

Photograph 5: Apartment 633 – view loss impact living room standing.