

# SUBMISSION

a written submission by way of objection

BILL TULLOCH BSC [ARCH] BARCH [HONS1] UNSW RIBA Assoc RAIA

Director

DA Objection Pty Ltd

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Director  
DA Objection Pty Ltd  
prepared for

LAUREN DALLA AND MURRAY CLARE 5/199 WEST STREET, CROWS NEST 2065  
NICOLIN COLLINGRIDGE 4/199 WEST STREET, CROWS NEST 2065  
MERYL HARE 16 ROSALIND STREET, CAMMERAY 2062  
ALLISON AND BRENDEN MEYER 12 ROSALIND STREET, CAMMERAY 2062  
MIAO ZHANG AND QIAN LI 14 ROSALIND STREET, CAMMERAY 2062

22 MARCH 2026

MINISTER FOR PLANNING AND PUBLIC SPACES  
THE DEPARTMENT OF PLANNING, HOUSING AND INFRASTRUCTURE (THE  
DEPARTMENT)  
4 PARRAMATTA SQUARE,  
12 DARCEY STREET,  
PARRAMATTA NSW 2150

Att: Najeeb Kobeissi

RE: SSD-96505456  
19-23 ROSALIND STREET, CAMMERAY  
CAMMERAY SENIORS LIVING  
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 to prepare an objection to this DA.

I have critically reviewed 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 The Department, 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 The Department is in a position to determine the development application by way of approval.

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

There is concern regarding:

- Built Form & Urban Design
- Traffic & Transport
- Landscape
- Heritage
- Environmental Amenity
- Visual Impact
- Overshadowing Impact
- Loss of Daylight
- Visual Privacy
- Acoustic Privacy
- Sense of Enclosure
- Airflow
- Residential Amenity
- Biodiversity & Conservation
- Geotechnical
- Water Management
- Ground & Groundwater Conditions
- Noise & Vibration
- Contamination & Remediation
- Waste
- Cumulative Impacts
- Suitability of Site for Development
- Public Interest
- Land Owners Consent
- Consultation Process

My clients seek amendments that generally lower the height of the proposed development, increase setbacks, improve landscaped outcomes, and to better resolve all amenity impacts to their property.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, I ask The Department to REFUSE this DA.

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## 1. EXECUTIVE SUMMARY

The design of the proposed development does not ensure that the existing high levels of amenity to the neighbouring 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 bulk, scale, density and height of the proposed development is excessive 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 Development Standards and 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 neighbouring property.

There is considerable amenity loss to my client's property.

The proposed development should be REFUSED as:

- the development provides a bulk and scale that does not align with the planning controls for the site in density, height and setbacks;
- the development would be inconsistent with the current and desired future character due to the non-compliances;
- the development does not provide sufficient landscaped setbacks to contribute to the landscaped garden character;
- the development does not provide sufficient setbacks and heights to maintain an appropriate built-form relationship with the neighbouring properties to the west and south that have been required to respond to an 8.5m HOB development standard;
- the development would result in unreasonable visual, overshadowing, privacy or traffic impacts to my client's property and the public domain;
- the development does not [minimise traffic and parking impacts](#);
- the development does not accord with Seniors Housing Design Guide 16.1.3 that states: *The design should enhance the streetscape and proudly integrate into the existing context*;
- the development does not accord with the Design Guidance provided for Objective 3F-1 of the ADG states that at the boundary between a change in zone from a high-density zone to a lower density area, increase the building setback from the boundary by 3m. The neighbours to the west and south of

the subject site, that has been required to respond, and need to continue to respond, to an 8.5m HOB development standard

It is concluded that the height, bulk and scale of the proposal is out of character with the surrounding area, and there would be significant amenity impacts to surrounding residential properties.

This is caused by the extent of height variation that does not respond in any way to the development standard for height on the site, and is reminiscent of a Planning Proposal which seeks to completely amend the 'Height of Building' that applies to the site.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, I ask The Department to REFUSE this DA.

## 2. AMENDED PLANS

My clients seek amendments that generally lower the height of the proposed development, increase setbacks, improve landscaped outcomes, and to better resolve all amenity impacts to their property.

My clients make a request for Amended Plans to be submitted to better address impacts upon their property. I ask The Department to seek modifications to this DA, as the proposed development does not comply with the planning regime, by non-compliance to standards and controls, and this non-compliance leads directly to amenity loss.

A compliant building design would reduce the amenity impacts identified. The proposal fails when assessed against the matters raised in this submission. Amenity impacts on the surrounding locality, including view loss and view sharing, solar access, visual privacy, and other impacts must be addressed.

A high level of environmental amenity for any surrounding residential land uses must be demonstrated.

If a consent is granted, the Conditions as found within the Appendix are requested to be considered to be imposed.

Amended Plans to be submitted to complete the following:

### A. FULLY COMPLYING DEVELOPMENT

- i. Reduce proposed development back to a fully complying development to all numerical standards and controls on: height, all setbacks, building envelope, landscape.
- ii. Main numerical non-compliance, and request to bring proposed back to full compliance:
  - o Height: maximum 15.8m HOB;
  - o Separation Distance: Objective 3F-1 of the ADG, plus additional 3m for change in zone for privacy, otherwise, Setbacks: 4.5m & 6.0m above 10m;
  - o Two-Storey to the streetscape;
  - o Landscape: 4.5m setback to side and rear setbacks in complete deep soil zone, with canopy trees to ADG controls;

Reason: To accord with SEPP, LEP & DCP, and the objectives, to reduce amenity impacts to neighbours, and to reduce overdevelopment;

## B. STREET ELEVATION BUILT FORM PREFERRED OUTCOMES

- i. The maximum wall height at the street elevation is to be 7.2m [two-storey], consistent with the streetscape, that is predominantly one/two/three storey;
- ii. Development above the wall height along the street frontage should be setback by a minimum of 3m;

## C. HEIGHT

- o Clause 4.3 NSLEP 2013 sets the maximum building height on the site of 12m measured about existing ground level. It is understood that the Applicant is seeking permissibility under the SEPP (Housing) 2021 for the additional 3.8m above the NSLEP Clause 4.3 control for benefit of seniors housing. The proposed height is greater than 15.8m for proposed building B.
- o No part of the proposed built form is to be above the Seniors Housing Bonus 15.8m HOB provision;

Reason: Neighbours' amenity loss, and to reduce overdevelopment;

## D. SEPARATION DISTANCES

Side setbacks should be provided in accordance with the building separation requirements in Chapter 4 of the Housing SEPP and the ADG:

Up to four storeys (approximately 12m):

- o 12m between habitable rooms/balconies
- o 9m between habitable and non-habitable rooms
- o 6m between non-habitable rooms

Five to eight storeys (approximately 25m):

- o 18m between habitable rooms/balconies
- o 12m between habitable and non-habitable rooms
- o 9m between non-habitable rooms
- o the development does not accord with the Design Guidance provided for Objective 3F-1 of the ADG states that at the boundary between a change in zone from apartment buildings to a lower density area, increase the building

setback from the boundary by 3m. The neighbours to the west and south of the subject site, that has been required to respond, and need to continue to respond, to an 8.5m HOB development standard.

Reason: To accord with SEPP, Privacy, to reduce amenity impacts to neighbours, and to reduce overdevelopment

## E. SETBACKS

- i. 4.5m Setback: Ground, First, Second
- ii. 6.0m Setback: Third & Above

Reason: Setbacks (s1.4.6)

As the proposal is for seniors housing, SEPP(Housing) 2021 Part 5 Division 3 (Clause 87) allows for an additional 3.8m above the maximum height permissible (12m) under Clause 4.3 of NSLEP 2013. The height permissible by the SEPP is therefore equivalent to 15.8m. The DCP setback requirements stipulate different setback requirements for land with a height limit greater or lesser than 12m for the purposes of seniors housing. The minimum side setback required for land (for the purposes of a seniors housing) with a height limit greater than 12m is to be 4.5m (up to 10m) and 6m setback (above 3rd storey). The proposed side setbacks are non-compliant with 4.5m and 6m respectively. Chapter 4 of the Housing SEPP and the ADG Separation distances must be complied with as stated above, in addition to the DCP Setbacks.

## F. LANDSCAPE

- i. 4.5m Setback along west and south boundary to the neighbours within the 8.5m HOB development standard zones, for greater deep soil planting.
- ii. No excavation or piling zones within the 4.5m setback zone to ensure clear 4.5m dimension for deep soil zones.
- iii. Comply with Site Coverage, by deletion of built form along west and south boundary to allow greater deep soil zones to the neighbours within the 8.5m HOB development standard zones. A maximum site coverage of 45% is permissible on the Site. The proposed site coverage stated in the proposed plans set is 51%. Site coverage is given a significant weighting in development assessment as North Sydney Council that does not have a floor space ratio control.
- iv. Tree planting rate within the ADG (1 large tree or 2 medium trees per 80m<sup>2</sup> of deep soil zone) has not been provided.
- v. Protect NRZ & SRZ of neighbour's trees

Reason: Neighbours amenity loss;

## G. OVERSHADOWING

Further reductions to resolve overshadowing loss issues, with further built form reduction;

Reason: Neighbours amenity loss;

## H. PRIVACY DEVICES

- i. Further fixed privacy devices to resolve visual privacy issues.
- ii. All privacy screens, facing the Side Boundary, in all locations, are to be a fixed barrier, at least 1.6m in height above the internal FFL, with no individual opening larger than 30mm and a total opening area no more than 30% of the surface area.
- iii. All windows and balconies must be protected with fixed privacy screens.

Reason: Neighbours amenity loss;

## I. ACOUSTIC

- i. Further devices to resolve acoustic privacy issues.
- ii. All plant to be enclosed in acoustic barriers;
- iii. Procurement of 'quiet' plant and for A/C condensers select plant with 'silent' night operating modes. Strategic positioning of plantroom air intake/discharge openings away from sensitive neighbouring premises, maximising the intervening shielding between the opening and sensitive neighbouring premises. Installation of commercially available acoustic louvres to the air intake/discharge openings of the plantroom. Typically, 300mm to 600mm deep acoustic louvres such as Fantech SBL1/2. Installation of commercially available sound attenuators to intake and discharge sides of the exhaust and supply air fans. Typically, 1m to 2m long circular silencers. Where necessary provide acoustically line rigid ductwork to intake and/or discharge side of fans. Line the surfaces of walls and/or ceiling of plantroom with sound absorptive material such as 50mm glasswool insulation (minimum density 32kg/m<sup>3</sup>) with a perforated foil facing equivalent to 50mm Bradford Supertel. To minimise potential transfer of vibration/structure-borne noise to noise-sensitive spaces within the development, Vibration isolate A/C condensers off plantroom floor with neoprene pads or mounts; Vibration isolate exhaust and supply fans off support structure with neoprene cupped spring mounts or hangers. Provide flexible connections between fans and rigid ductwork. Rigid ductwork associated with exhaust and supply air fan shall be vibration isolated off slab

soffit with neoprene hangers. All mechanical plant shall have their noise specifications and proposed locations checked prior to installation. Acoustic assessment of mechanical plant equipment will be required to be undertaken during the detail design phase of the development to ensure that they shall not either singularly or in total emit noise levels which exceed the noise limits

Reason: Neighbours amenity loss;

## **J. EXCAVATION SUPPORT SYSTEM**

- i. The DA drawings has not shown sufficient width for the shoring piles and drained cavities on DA drawings. A zone of 1200mm-1350mm should be shown.
- ii. The Geotechnical Report defines CFA Piles of 450mm – 600mm, around all zones to the excavated zones. These CFA Plies will be required to offset from the existing retaining walls footings. These are not shown on the DA drawings.
- iii. The Geotechnical Report defines Drained Cavities of [say] 750mm. These are not shown on the DA drawings.

Reason: reduction of excavation risks, neighbour's amenity loss;

## **K. DILAPIDATION REPORTS**

- i. A photographic survey and dilapidation report of 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, and before any demolition takes place.
- ii. 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.
- iii. A copy of the report is to be provided to The Department, if The Department is not the Principal Certifier, prior to the issue of any Construction Certificate.
- iv. A second Dilapidation Report/s, including a photographic survey must then be submitted at least one month after the completion of demolition/excavation works, and any damage made good within two weeks.
- v. A third Dilapidation Report/s, including a photographic survey must then be submitted at completion, and prior to the occupation certificate being issued, and any damage made good prior to the occupation certificate being issued.

Reason: Protection of neighbour's assets.

## **L. VIBRATION, ATTENUATION METHODS, MONITORING PLANS & CONTINGENCY PLANS**

- i. The vibration associated with the proposed excavation as measured at the existing rock face must be limited to 5mm/s, and below 3mm/sec for heritage or fragile neighbouring buildings. Ground vibration can be strongly perceptible to humans at levels above 2.5 mm/s peak particle velocity (PPV), and a request for vibrations not to exceed 2mm/sec at my client's boundary;
- ii. A Vibration Monitoring Plan accompanied by a certificate prepared by a geotechnical engineer is to be submitted to the satisfaction of The Department.
- iii. Update Geotechnical report with assessed limits, trigger levels, and response actions;
- iv. Update Geotechnical Report to include sufficient recommendations on attenuation methods to reduce the risks such as rock sawing along perimeters with double attenuation cuts. No excavator hammer to face my client's boundary. Considerable caution should be taken during construction works as the poorly compacted fill and loose sands are likely to extend across the site boundaries.

Reason: Protection of neighbour's assets.

## **M. WATER MANAGEMENT**

- i. The proposed development has not adequately demonstrated how stormwater will be collected on the subject site to avoid spilling into my client's property.
- ii. Provide multiple, deep, stormwater pits along my client's boundary to collect stormwater, with connecting surface and subsurface drains, connected by oversized pipework to the OSD system;
- iii. Provide drained basement modelled data to support a hydrogeological review;
- iv. Provide a preliminary hydrology study to determine if the proposed activity is likely to affect the groundwater levels.
- v. Concern is expressed to whether the proposal is 'Nominated Integrated Development' and approval is required from WaterNSW under s90(2) of the Water Management Act 2000.

Reason: Protection of neighbour's assets.

## **N. DIMENSIONS AND LEVELS**

- i. The DA drawings require additional dimensions to ensure that all proposed setbacks are clearly dimensioned on every plan drawing from the boundary, and all elevations contain precise RL levels to every feature.

Reason: to ensure that future compliance to any consent can be achieved;

## **O. FURTHER AMENDMENTS**

- i. To resolve all matters raised in the Submission;

## **P. CONDITIONS**

- i. A full list of conditions to any consent to fully protect my client's interests, as identified in the appendix

### 3. STATUTORY CONTEXT

The proposed development has not addressed all relevant legislation, environmental planning instruments (EPIs) (including drafts), plans, policies, guidelines and planning circulars.

The proposed development has not identified compliance with applicable development standards and has not provided a detailed justification for non-compliances.

The following statutory controls are relevant to the assessment of this application:

#### A. EPAA 1979

The proposed development is inconsistent with the relevant Objects of the Act as listed under Section 1.3 of the EP&A Act and will result in unjust or significant environmental impact, in respect to severe environmental amenity impacts to my client's property.

- The proposal is unsatisfactory having regard to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the development will cause adverse impacts upon the built environment with respect to the impact upon the streetscape, amenity for future occupants and to adjoining properties.
- The proposal is unsatisfactory having regard to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the development will cause adverse impacts upon the natural environment in respect to existing trees on adjoining properties and street trees.
- The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 in that the proposed development in its current form is not suitable for the site.
- The proposed development is considered unacceptable pursuant to the provisions of Section 4.15(1) (e) of the Environmental Planning and Assessment Act 1979 as the proposal in its current form given its siting, location, design, bulk and scale and massing, is not in the public interest as it is inconsistent with the relevant planning controls in relation to the adverse impacts on the streetscape, and amenity of immediately adjoining properties. The proposal also lacks good urban design and will negatively affect the character and nature

of the neighbourhood. It is considered to be an inappropriate outcome for the site and will establish an undesirable precedent in the area which will not be in the public interest.

## **B. SEPP [HOUSING] 2021 CHAPTER 2, PART 3 RETENTION OF EXISTING AFFORDABLE RENTAL HOUSING**

Part 3 'Retention of existing affordable rental housing' of the SEPP requires a consent authority to consider whether there would be a loss of affordable rental housing as a consequence of the proposed development, which involves the demolition of three flat buildings that have a total of 54 apartments.

Concern is also raised regarding the social impacts of the development that is likely to result in the net loss of accommodation in the Council Area.

A comprehensive assessment on its current usage and whether any of these dwellings are classified as affordable housing should be provided with any future application, so that an appropriate assessment may be made on the loss of affordable housing and what, if any, contribution may be required to offset this potential loss under the SEPP.

Evidence must also be provided to The Department with any future application of the current rental rates for each apartment to establish whether the apartments rental levels are above or below the median rental level. A management plan should also be prepared for the relocation of any affordable/vulnerable residents.

## **C. SEPP [HOUSING] 2021 CHAPTER 3 DIVERSE HOUSING; PART 5: HOUSING FOR SENIORS & PEOPLE WITH A DISABILITY [SENIORS]**

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the SEPP.

SEPP (Housing) 2021 Chapter 3, Part 5 of this SEPP pertains to housing for seniors and people with a disability.

The proposal fails to accord with:

### **DEVELOPMENT STANDARDS**

Clause 4.3 NSLEP 2013 sets the maximum building height on the site of 12m measured about existing ground level. It is understood that the Applicant is seeking

permissibility under the SEPP (Housing) 2021 for the additional 3.8m above the NSLEP Clause 4.3 control for benefit of seniors housing. The proposed height is greater than 15.8m for proposed building B.

No part of the proposed built form is to be above the Seniors Housing Bonus 15.8m HOB Standard;

## **SECTION 87(2)**

This section allows for “one or more” of:

- Additional FSR
- Additional Height (3.8m)

FSR is not applicable to the site, and the proposal requests an additional height, equating to 12.3m.

Concern is raised about the applicability of Section 87, given there is no relevant additional floor space ratio, and the proposal does not meet the requirement for 3.8m additional height. It is therefore queried whether Section 87 is applicable to this application.

## **ADEQUATE ACCESS TO FACILITIES AND SERVICES BY A TRANSPORT SERVICE**

Under Division 4, Clause 93, development consent must not be granted for development for the purposes of an independent living unit unless there is adequate access to facilities and services by a transport service (that complies with subsection 2), or on site. The Applicant is required to address this clause in the SEE, along with Clause 95 Water and Sewer.

## **SENIORS HOUSING DESIGN GUIDE**

Under Division 5, Clause 97 Design of Seniors Housing, Council must consider the Seniors Housing Design Guide, published by the Department in December 2023. The Applicant is required to address how the proposal satisfies Seniors Housing Design Guide and the design principles set out in Schedule 8 below.

The proposed development does not accord with Seniors Housing Design Guide.

Significant concern is expressed on the following;

## **PART 2 GUIDANCE CHAPTERS**

### **Chapter 3.1 Environmental Conditions**

## Chapter 3.2 Planning for Environmental Constraints

### PART 3 DENSITY & RELATED DESIGN PRINCIPLES

Chapter 4.1 Urban Identity

Chapter 4.2 Typology & Scale

Chapter 4.3 Setbacks

Chapter 4.4 Height

Chapter 4.5 Storeys

Chapter 5 Heritage

Chapter 8 Options for Different Types & Configurations of Densities for Seniors Housing

Chapter 9 Determining Density

Chapter 10 Designing for Different Densities

Chapter 11 Guidance Examples for Seniors Housing Configurations with Different Densities

Chapter 12 Design Principles for Residential Care Facilities

Chapter 13 Design Principles for Independent Living

Chapter 16 Design Principles for Independent Living for High Density

- Neighbourhood Amenity
- Visual & Acoustic Privacy
- Solar Access

Of great concern, the proposal also does not show 'reasonable compliance' with Chapter 16 of the Seniors Housing Design Guide:

- Neighbourhood Amenity
- Visual & Acoustic Privacy
- Solar Access

### SCHEDULE 8 DESIGN PRINCIPLES FOR SENIORS HOUSING

Development consent must not be granted to development for the purposes of seniors housing unless the consent authority is satisfied the design of the seniors housing demonstrates that adequate consideration has been given to the design principles for seniors housing set out in Schedule 8.

The proposed development does not comply with the following:

### SCHEDULE 8 DESIGN PRINCIPLES FOR SENIORS HOUSING

*1 Neighbourhood amenity and streetscape  
Seniors housing should be designed as follows—*

- (a) to recognise the operational, functional and economic requirements of residential care facilities, which typically require a different building shape from other residential accommodation,*
- (b) to recognise the desirable elements of—*
  - (i) the location's current character, or*
  - (ii) for precincts undergoing a transition—the future character of the location so new buildings contribute to the quality and identity of the area,*
- (c) to complement heritage conservation areas and heritage items in the area,*
- (d) to maintain reasonable neighbourhood amenity and appropriate residential character by—*
  - (i) providing building setbacks to reduce bulk and overshadowing, and*
  - (ii) using building form and siting that relates to the site's land form, and*
  - (iii) adopting building heights at the street frontage that are compatible in scale with adjacent buildings, and*
  - (iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours,*
- (e) to set back the front building on the site generally in line with the existing building line,*
- (f) to include plants reasonably similar to other plants in the street,*
- (g) to retain, wherever reasonable, significant trees,*
- (h) to prevent the construction of a building in a riparian zone.*

Comment: New developments are to adopt building heights at the street frontage that are compatible in scale with adjacent buildings. Adjoining developments are generally one, two to three storeys and the proposal seek four storeys to Building A. The Applicant is to justify in the SEE how the proposal maintains reasonable residential character and neighbourhood amenity. The Applicant is requested to submit photomontages of the proposal (excluding street trees) within the streetscape for a proper assessment of the impact of the scale and massing on the streetscape and whether the fourth storey setback is sufficient to allow Building A to retain compatibility with other developments in the streetscape. The Applicant is also to justify how the proposal retains, where possible, significant trees.

## *2 Visual and acoustic privacy*

*Seniors housing should be designed to consider the visual and acoustic privacy of adjacent neighbours and all residents of the seniors housing by—*

- (a) using appropriate site planning, including considering the location and design of windows and balconies, the use of screening devices and landscaping, and*
- (b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.*

Comment: The proposed development does not comply.

### *3 Solar access and design for climate*

*The design of seniors housing should—*

- (a) for development involving the erection of a new building—provide residents of the building with adequate daylight in a way that does not adversely impact the amount of daylight in neighbouring buildings, and*
- (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction.*

Comment: The proposed development does not comply.

## **SCHEDULE 9 DESIGN PRINCIPLES FOR RESIDENTIAL APARTMENT DEVELOPMENT**

The Applicant has not adequately addressed Schedule 9 of this SEPP as the proposal constitutes a residential apartment development. Key concerns raised regarding this proposal are noted as follows:

- the compatibility with the surrounding buildings and streetscape;
- building articulation;

## **SENIORS HOUSING DESIGN GUIDE – INDEPENDENT LIVING FOR HIGH DENSITY**

The Applicant is required to address the following 9 design principles within the Seniors Housing Design Guide. These matters have not been adequately addressed:

- Neighbourhood amenity and streetscape
- Solar access and design for climate
- Open space and landscape
- Address how ambulance service can easily access residents in an emergency.
- Basement access and carparking – meet future potential need of electric vehicles with easy-to-reach car charging points, potential share car schemes owned by the development, clear sightlines for each direction of vehicle movement, increasing the amount of parking spaces that may be flexible for conversion into disabled car parking in the future due to increase with ageing in place; legible signage in carpark; storage for individual units.
- Retain as much existing trees for screen planting and integrate more landscape elements.

## APARTMENT DESIGN GUIDE

The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as there are numerous inconsistencies with the Apartment Design Guide pursuant to section 147 (1)(b) of State Environmental Planning Policy (Housing) 2021, which result in an unsatisfactory impact to amenity, adjoining properties and the streetscape.

The proposed development is contrary to the following relevant objectives and design criteria of the Apartment Design Guide:

- 2A Primary Controls;
- 2B Building Envelopes;
- 2C Building Height;
- 2F Building Separation;
- 2G Street Setbacks;
- 2H Side & Rear Setbacks.

The proposed development is inconsistent with the relevant objectives and design guidance of Part 3 of the Apartment Design Guide, in particular to neighbour's residential amenity.

- 3A Site Analysis;
- 3B Orientation;
- 3C Public Domain Interface;
- 3D Communal & Public Open Space;
- 3E Deep Soil Zones;
- 3F Visual Privacy;
- 3G Pedestrian Access & Entries;
- 3H Vehicle Access;
- 3J Bicycle & Car Parking.

- iii. Of particular concern is the non-compliance to Apartment Design Guide Objective 3F-1: Separation between windows and balconies is provided to ensure visual privacy is achieved. Of particular concern is the non-compliance to Apartment Design Guide Objective 3F-1: Separation between windows and balconies is provided to ensure visual privacy is achieved. Side setbacks should be provided in accordance with the building separation requirements in Chapter 4 of the Housing SEPP and the ADG:

Up to four storeys (approximately 12m):

- 12m between habitable rooms/balconies
- 9m between habitable and non-habitable rooms

- 6m between non-habitable rooms

Five to eight storeys (approximately 25m):

- 18m between habitable rooms/balconies
- 12m between habitable and non-habitable rooms
- 9m between non-habitable rooms
- the development does not accord with the Design Guidance provided for Objective 3F-1 of the ADG states that at the boundary between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3m. The neighbours to the west and south of the subject site, that has been required to respond, and need to continue to respond, to an 8.5m HOB development standard.

These matters are expanded upon in Sections 4 of this Submission.

#### **D. SEPP (BIODIVERSITY AND CONSERVATION) 2021**

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the SEPP.

The proposal is unsatisfactory with regard to the relevant planning provisions contained in the SEPP.

The proposal fails to fully satisfy the relevant provisions prescribed by Chapter 6 – Sydney Harbour Catchment of the Biodiversity and Conservation SEPP 2021 and the applicable Sydney Harbour DCP 2005.

Concern is raised on:

- to protect the biodiversity values of trees and other vegetation in non-rural areas of the state;
- to preserve the amenity of non-rural areas of the state through the preservation of trees and other vegetation.

#### **E. SEPP (TRANSPORT AND INFRASTRUCTURE) 2021**

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the SEPP.

The proposal is unsatisfactory with regard to the relevant planning provisions contained in the SEPP.

Concern is raised on the Construction Traffic Management Plan (CTMP), and ask The Department to consider these matters closely.

#### **F. SEPP [RESILIENCE & HAZARDS] 2021**

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the SEPP.

The proposal is unsatisfactory with regard to the relevant planning provisions contained in the SEPP.

Concern is raised on Remediation of Land.

My clients ask The Department to fully assess the compliance required, and impose conditions as necessary to any consent.

#### **G. LEP: CONTRARY TO THE AIMS OF PLAN**

The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is contrary to the objectives of the aims of plan of the LEP in that the proposal is inconsistent with:

- its context and does not enhance the amenity of the environment;
- the desired future character in terms of its bulk and scale;
- the residential amenity of adjoining properties in terms of visual and acoustic privacy and solar access.

#### **H. LEP: INCONSISTENT WITH THE OBJECTIVES OF THE ZONE**

The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the objectives of the zone pursuant to the LEP in that the proposal:

- compromises the amenity of the surrounding area;
- does not ensure a high level of residential amenity is achieved and maintained;

## I. LEP: CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARD

The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the variation to the development standard pursuant to Clause 4.6(3) has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case or that there are sufficient environmental planning grounds to justify the contravention of the development standard. The proposed development as a whole does not ensure that a high level of amenity is achieved and maintained. The Clause 4.6 Statement in respect to the non-compliance with the development standard is not considered to be well founded.

Clause 4.6 enables the applicant to request a variation to the applicable Development Standards listed under Part 4 of the LEP pursuant to the objectives of the relevant Standard and zone and in accordance with the principles established by the NSW Land and Environment Court. A request to vary a development Standard is not a guarantee that the variation would be supported as this needs to be considered by The Department in terms of context, impact and public interest and whether the request demonstrates sufficient environmental planning grounds for the variation.

The submitted written variation request under cl.4.6 of the LEP seeking to justify the contravention of the development standard is not well-founded.

Development consent must not be granted to development that contravenes a development standard unless The Department is satisfied the applicant has demonstrated that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- there are sufficient environmental planning grounds to justify the contravention of the development standard.

The proposal is inconsistent with the objectives of the Development Standards and fails the Clause 4.6 Exceptions to Development Standards provisions.

I contend that:

- The development compromises amenity impacts on neighbours;
- The development does not minimise visual impact;
- The impacts are not consistent with the impacts that may be reasonably expected under the controls;

- The proposal's height and bulk do not relate to the height and bulk desired under the relevant controls;
- The area has a predominant existing character and the planning controls are likely to maintain it;
- The proposal does not fit into the existing character of the area;
- The proposal is inconsistent with the bulk and character intended by the planning controls;
- The proposal looks inappropriate in its context.

The proposed development 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.

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

#### **J. LEP: FAILS TO ACHIEVE CONSISTENCY**

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 and fails to satisfy the objectives of the zone of the LEP.

The proposal is non-compliant to:

- Principal Development Standards,
- Miscellaneous Provisions, and
- Inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards.

These matters are expanded upon in Sections 4 of this Submission.

#### **K. DCP: FAILS TO ACHIEVE CONSISTENCY**

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 controls set out within the DCP.

The proposal is inconsistent with the objectives of the DCP.

The proposal does not comply with the controls set out within sections of the DCP relating to Low and Mid-Rise Housing Areas.

These matters are expanded upon in Sections 4 of this Submission.

## 4. SIGNIFICANT LIKELY IMPACTS

### A. BUILT FORM AND URBAN DESIGN

- The proposed development has not demonstrated how the proposed built form (layout, height, density, bulk, scale, separation, setbacks, interface and articulation) addresses and responds to the context, site characteristics, streetscape and existing and future character of the locality.
- The proposed development has excessive height and along with non-compliant setbacks, does not respond to the desirable elements of the areas existing character, which are contrary to the objectives and requirements of the LEP & DCP.
- The setbacks of the proposed development are inadequate. The development provides a lack of separation between buildings and fails to protect and minimise adverse amenity impacts on adjoining private properties and public land.
- Building massing has not been sufficiently distributed and broken down into smaller elements to reflect the scale and pattern of the local character.
- The built form does not have a recessive upper level, there should be significant reductions in building bulk at the upper level.
- The Housing SEPP requires the consent authority to consider whether a development's design is compatible with the existing character of the local area, or with the desired future character in precincts undergoing transition. The desired future character of the area is informed by the LEP HOB and FSR provisions, as well as the HCA, ADG and DCP.
- I contend that the proposal is not compatible with the current and desired future character of the area
- The proposed development fails to maintain the amenity of neighbours
- The proposed development does not achieve appropriate building alignments or proportions in its manipulation of building elements to achieve an adequate response to the lower scale elements evident in the streetscapes;
- The proposed development is not responsive to the original lot pattern or finer grain character of the smaller dwellings in proximity in terms of articulation, proportions or finer built form elements;
- The proposed development does not acknowledge or moderate its massing and architecture to address the significant scale differences or its dominant height and form adjacent to neighbouring properties.

### B. TRAFFIC & TRANSPORT

- The proposed development fails to provide safe entry and exit to the proposed development;

- The deep basements present concerns to earthworks, to minimise risks and impacts relating to excavation, subterranean buildings and dewatering works.
- The proposed development has not provided an adequate Transport Impact Assessment (TIA) in accordance with the processes and methodology recommended in the *Guide to Transport Impact Assessment* (GITA) published by TfNS;
- The proposed development has not provided an adequate a Traffic and Parking Impact Assessment, Construction Traffic Management Plan and Green Travel Plan

## C. LANDSCAPE

- The proposed landscape area is inadequate to ensure an appropriate landscape setting is provided proportionate to the scale and density of the building.
- The proposed development does not achieve good landscape design, causing poor amenity and contextual fit;
- The proposed development has insufficient setbacks and does not respond to the desirable elements of the areas existing character, to allow sufficient deep soil zones and landscape;
- The proposed development has excessive planting on structure;
- The proposed development has failed to provide an adequate Arboricultural Impact Assessment that assesses the number, location, condition and significance of trees to be removed and retained including, the existing canopy coverage to be retained on-site, and recommendations on tree root mapping required;
- The proposed development has excessive removal of site trees;
- The proposed development has failed to provide evidence that opportunities to retain significant trees have been explored and/or inform the plan;
- The proposed development has unacceptable impacts to the root zones of neighbour's trees;
- The proposed development has failed to provide an adequate landscape plan, that details the proposed site planting, including location, number and species of plantings, RL level of all planting, heights of trees at maturity and proposed canopy coverage (as a percentage of the site area).

## D. HERITAGE

- The proposed development fails to conserve the environmental heritage of the area, and fails to conserve the heritage significance of heritage items and/or heritage conservation areas, including associated fabric, settings and views;
- The proposed development results in a built form which is not subservient to the heritage item or contributory items;

- The proposed development results in a massing that will overwhelm the heritage item or contributory items;
- The proposed development results in a design that is not sympathetic to the proportions and architectural character of the neighbouring heritage item or contributory items.
- The proposed development is considered to be inconsistent with the LEP & DCP as its scale and intensity are incompatible with the character of the area and do not respect the scale of the adjacent heritage item.
- The proposed development exceeds acceptable limits for height, bulk, and scale, setting an undesirable precedent for further overdevelopment in an area that requires sensitivity to its surroundings.
- The proposed development excessive height and non-compliant setbacks do not respond to the desirable built form or the area's existing character, nor does the development achieve appropriate building alignments or proportions.
- The proposed development does not retain and conserve environmental heritage and cultural significance of the area, and does not ensure that development in the vicinity of heritage items, is of an appropriate form and design so as not to detract from their significance.
- The materiality, scale, form, articulation and colours do not minimise visual impacts on surrounding heritage items and streetscapes

## **E. ENVIRONMENTAL AMENITY**

- The proposed development does not provide a high level of environmental amenity for the surrounding neighbours;
- The proposed development has not adequately assessed amenity impacts on the surrounding locality, including view sharing, solar access, visual privacy, acoustic privacy, as well as wind, lighting and reflectivity impacts.

## **F. VISUAL IMPACT**

- The proposed development has not provided a visual analysis of the development from key viewpoints, including photomontages or perspectives showing the proposed and likely future development;
- The proposed development results in significant visual impact not anticipated by the planning controls;
- The proposed development has failed to provide a visual impact assessment that addresses the visual impacts of the development on the existing catchment;

- The proposed development has not provided an assessment of the development's relationship to the townscape or skyline, identifying visual magnitude or visual sensitivity;
- The proposed development has primary viewpoints that will rate high on visual magnitude, viewpoint sensitivity, and scenic quality of the landscape, resulting in high visual impacts;
- The proposed development has not completed an assessment to evaluate height transitions, façade rhythm, colour and materiality, roofline silhouette, and visual absorption capacity;
- The proposed development has not completed sufficient assessment to the proposal's visual contribution to the public domain.

## G. OVERSHADOWING IMPACT

The proposed development fails to provide an adequate Overshadowing Assessment.

The solar diagrams do not have Winter Solstice applied to the diagrams. I assume these are Winter Solstice, but they are not labelled in that fashion.

I contend that the overshadowing impacts are unacceptable as:

- the proposal does not fully comply with the building height, setback and other envelope controls and the overshadowing impacts are inconsistent with the built form contemplated by the development standards applying to the site;
- overshadowing impacts to developments to the south are avoidable

The overshadowing impacts are unreasonable and avoidable in the context of the site location, and the planning controls which envisage a more modest residential development on this site.

The ADG provides design guidance around minimising overshadowing to neighbouring development. The ADG recommends that overshadowing be minimised to the south or downhill by increased upper-level setbacks.

### APARTMENT DESIGN GUIDE: OBJECTIVE 3B-2: OVERSHADOWING OF NEIGHBOURS PROPERTIES IS MINIMALISED DURING MID-WINTER

- Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public open space and 4A Solar and daylight access;

- Solar access to living rooms, balconies and private open spaces of neighbours should be considered;
- Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%;
- If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums contained in section 3F Visual privacy;
- Overshadowing should be minimised to the south or down-hill by increased upper-level setbacks;
- It is optimal to orientate buildings at 90 degrees to the boundary with neighbouring properties to minimise overshadowing and privacy impacts, particularly where minimum setbacks are used and where buildings are higher than the adjoining development;
- A minimum of 4 hours of solar access should be retained to solar collectors on neighbouring buildings.

In accordance with the Apartment Design Guide parts:

- Part 3D - Communal and Public Open Space
- Part 4A - Solar and Daylight Access

The State Environmental Planning Policy (SEPP) 65 supported by the Apartment Design Guide - Part 03 and 04 is relevant to the assessment of the daylight access into the residential component of the proposed development. The above regulation states that:

- Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.
- In all other areas, living rooms and private open spaces of at least 70% of the apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter.
- A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3 pm at mid-winter.
- Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).
- The ADG also outlines the following design guidance: To maximise the benefit to residents of direct sunlight within living rooms and private open spaces, a minimum of 1m<sup>2</sup> of direct sunlight, measured at 1m above floor level is achieved for at least 15 minutes.

The ADG recommends that overshadowing of neighbouring properties is minimised during mid-winter. It recommends that living areas and private open space (POS) of neighbouring properties should receive two hours of solar access between 9am and 3pm mid-winter.

The proposed development does not satisfy The Departments controls:

NORTH SYDNEY DCP

9am-3pm

OPEN SPACE: 3 hours to be maintained at winter

LIVING ROOMS: 3 hours to be maintain at winter

SOLAR PANELS: 3 hours

## H. LOSS OF DAYLIGHT

- The proposed development presents non-compliant built form represented by height, density, setback and envelope controls that will have an adverse effect to my client's daylight.

## I. VISUAL PRIVACY

- The proposed development windows and balconies facing my client/s boundary have not been provided with adequate privacy devices;
- All privacy screens, facing the Side Boundary, in all locations, are to be a fixed barrier, at least 1.6m in height above the internal FFL, with no individual opening larger than 30mm and a total opening area no more than 30% of the surface area. All windows and balconies must be protected with fixed privacy screens;
- Apartment Design Guide Objective 3F-1:  
Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:

Up to 12m [4-Storey] - 6m Habitable; 3m Non-Habitable

Up to 25m [5-8 Storey] - 9m Habitable; 4.5m Non-Habitable

over 25m [9+Storey] - 12m Habitable; 6m Non-Habitable

Additional 3m increased separation when adjacent to different zones.

- Building Separation. Increase rear setbacks at all levels by 3m. The rear boundary of the site adjoins properties that are zoned R3 and as such forms a

zone boundary interface to a lower density zone. The Design Guidance provided for Objective 3F-1 of the ADG states that *“at the boundary between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3m”*

#### **J. ACOUSTIC PRIVACY**

- The proposed development has not provided sufficient acoustic treatment to all mechanical plant.

#### **K. SENSE OF ENCLOSURE**

- The non-compliant built form represented by the height, density, setback and envelope controls will have an adverse effect of a sense of enclosure to my client's property.

#### **L. AIRFLOW**

- The non-compliant built form represented by the height, density, setback and envelope controls will have an adverse effect on airflow to my client's property.

#### **M. RESIDENTIAL AMENITY**

- The proposed development has not provided sufficient residential amenity to the occupants of the development.

#### **N. BIODIVERSITY & CONSERVATION**

- The proposed development fails to protect native fauna and flora and the ecological processes necessary for their continued existence.
- The removal or modification of mature habitat trees within or adjacent to the site would therefore likely result in direct and significant impacts on local biodiversity. Native vegetation within and adjoining the site to maintain ecological connectivity and the viability of local wildlife populations.

## O. GEOTECHNICAL

- The proposed development has not ensured that all excavation, fill and piling removed from the setback zones from my client's boundary on all drawings. A zone of 1200mm to 1350mm should be shown setback 1500mm from the side boundary;
- The proposed development has not shown sufficient width for the shoring piles on DA drawings. Are the piles required 450mm or 600mm;
- The proposed development has not shown sufficient width for the Drained Cavity that should be 600mm-750mm, on all forms of subsoil;
- The Department to consider the adequacy of the Geotechnical Report with further detail required such as:
  - Detailed Dilapidation Specification for my client's property;
  - Vibration - <5mm/s, and <3mm/sec for heritage or fragile neighbouring buildings;
  - Vibration effects of soil or clay surfaces, for excavation and demolition
  - Vibration Management;
  - Monitoring Plans & Contingency Plans, with assessed limits, trigger levels, and response actions;
  - No Ground Anchors under neighbour's properties;
  - Induced Ground Movements;
  - Induced settlement of loose sands around the site due to construction vibration;
  - Lateral Ground Movements from retaining wall deformation;
  - Basement Excavation Planning
  - Design Construction Stage Ground Deformation;
  - Groundwater Drawdown, with risks to possible structural integrity, subsidence and damage to neighbouring properties, particularly those built on shallow footings;
  - Hydrological Assessment of Subsurface Flow Conditions;
  - Geological Profile;
  - Intrusive Investigations;
  - Geotechnical Model and Groundwater Model;
  - Depth of Excavation;
  - Excavation Techniques;
  - Zone of Influence;
  - Pre Excavation Support;
  - Slope Risk Assessment - AGS Guidelines;
  - Attenuation Methods;
  - Battering;
  - Piling Types;

- Geotechnical monitoring and contingency plan and three - dimensional (3D) numerical analysis report
- Structural Statement- shoring design - temporary retention
- Design Life
- Recommendations in respect to completion of a supplementary geotechnical investigation and geotechnical and hydrogeological monitoring program; Installation of vibration monitoring and shoring deflection monitoring; Geotechnical inspections of cut rock faces to detail any necessary stabilisation measures; Geotechnical footing inspections; Monitoring of groundwater seepage into bulk excavation; Witnessing proof-testing of anchors.

## **P. WATER MANAGEMENT**

- The proposed development has not adequately provided a hydrogeological review to consider how the drained basement will be engineered.
- The proposed development has not adequately demonstrated how stormwater will be collected on the subject site to avoid spilling into my client's property. Provide multiple stormwater pits along my client's boundary to collect stormwater;
- The proposed development has not adequately detailed the proposed drainage design and servicing infrastructure to be incorporated as part of the development (stormwater and wastewater);
- The proposed development has not adequately demonstrated how the development complies with The Department's drainage requirements and has not identified the proposed stormwater treatment and water quality management measures to minimise adverse environmental impacts;

## **Q. GROUND AND GROUNDWATER CONDITIONS**

- The Applicant has failed to accord with WaterNSW's matters in relation to dewatering. No General Terms of Approval (GTA) are issued under Section 90 of the Water Management Act.
- The proposed development has not provided an adequate Groundwater Impact Assessment;
- The proposed development has not provided an adequate Salinity Management Plan or Acid Sulfate Soil Management Plan with appropriate management measures and strategies.
- The proposed development has not assessed the potential impacts on soil resources;
- The proposed development has not quantified the groundwater take from aquifer interception activities;

- The proposed development has not assessed the impacts of groundwater take where the volume exceeds 3ML/yr;

## **R. NOISE & VIBRATION**

- The proposed development has not provided an adequate noise and vibration impact assessment prepared in accordance with the relevant NSW Environment Protection Authority (EPA) guidelines. The assessment must detail construction and operational noise and vibration impacts on nearby sensitive receivers and structures and outline the proposed management and mitigation measures that would be implemented.

## **S. CONTAMINATION & REMEDIATION**

- The proposed development has not provided an adequate soil and groundwater contamination report, to demonstrate that the site is suitable, or will be suitable, after remediation, for the development.

## **T. WASTE**

- The proposed development has not provided adequate measure to be implemented to manage, reuse, recycle and safely dispose of waste, including in accordance with any council waste management requirements.
- The proposed development has not identified appropriately sited waste storage areas, collection access paths/roads, and appropriate servicing arrangements for the site

## **U. CUMULATIVE IMPACTS**

- The proposed development has presented cumulative impacts that is unreasonable, and the DA should be refused.

## **V. SUITABILITY OF SITE FOR DEVELOPMENT**

- The site is unsuitable for the proposed development for the reasons stated above.

## W. PUBLIC INTEREST

- The proposed development is not in the public interest for the reasons stated above.

## 5. INSUFFICIENT INFORMATION

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.

- The Applicant must provide a 'View from the Sun' solar access analysis of the overshadowing impacts of the development within the site, on surrounding properties during winter solstice, at hourly intervals between 9am and 3pm, comparing the proposed development, existing situation and where applicable, a development with no bonuses applied
- Registered survey detail – to show lowest levels under existing dwelling, and all windows and private open space to neighbours affected by solar loss;
- Height assessment – reassessed after survey work is completed

## 6. CONCLUSION

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

The variations to SEPP, the LEP standards and DCP controls are considered unreasonable in this instance. The cumulative effect on these non-compliances causes considerable amenity loss.

The development will not sit well within the streetscape with non-compliance to SEPP, the 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 The Department* [2013] NSWLEC 1141

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

- o 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?*
- o How reasonable is the proposal causing the impact?*
- o How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?*
- o 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?*
- o 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 the amenity, in terms of excessive sunlight, view loss or privacy loss. The loss is unreasonable. 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:

- o 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 The Department 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. 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 Legislation & Environmental Planning Instruments;
- 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 The Department in their assessment of this application reveals unsupported issues, which prevent The Department 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 my client.

I trust that The Department will support this submission and direct the proponent to modify the DA plans, as outlined above. I ask The Department to inspect the development site from all affected properties so that The Department can fully assess the DA.

It is requested that The Department inform my client, of any amended plans, updates or Panel meeting dates.

My clients seek amendments that generally lower the height of the proposed development, increase setbacks, improve landscaped outcomes, and to better resolve all amenity impacts to their property.

Unless the Applicant submits Amended Plans to resolve all of the adverse amenity impacts raised within this Submission, I ask The Department to REFUSE this DA.

Yours faithfully,

*Bill Tulloch*

Bill Tulloch BSc [Arch] BArch [Hons1] UNSW RIBA Assoc RAIA  
Director  
DA Objection Pty Ltd  
PO Box 440 Mona Vale NSW 1660

## APPENDIX

### CONDITIONS OF CONSENT

The Department to consider a full range of conditions of consent to better protect neighbour's amenity:

#### General Conditions

- Approved Plans & Documentation
- Compliance with Ausgrid, TfNSW, WaterNSW
- Approved Land Uses
- Prescribed Conditions
- General Requirements

#### Before CC

- Amended Architectural Plan
- Amended Landscape Plan
- Amended Geotechnical Report
- Boundary Identification Survey
- Building Components & Structural Soundness
- Car Parking
- Car Parking Standards
- Compliance with Standards
- Compliance with the Acoustic Report
- Construction Pedestrian Traffic Management Plan
- Construction Traffic Management Plan
- Detailed Design of Stormwater Treatment Measures – Major
- Demolition, Excavation and Construction Noise and Vibration Management Plan
- Emergency Response
- Fencing
- Floor Levels
- Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans
- Landscape Maintenance Plan
- Mechanical Plant and Equipment
- On Slab Landscape Works
- Pedestrian Conflict Management
- Pedestrian Sight Distance at Property Boundary

- Removal of Redundant Driveways
- Services and Fire Hydrant Enclosure
- Shoring of Road Reserve
- Site Consolidation
- Storage of Goods
- Stormwater Disposal
- Submission of Engineering Plans
- Sydney Water Tap In
- Tanking of Basement Level
- Transport for NSW Requirements
- Tree Protection Specification and Protection Plan
- Utilities Services
- Vehicle Access and Parking
- Waste and Service Vehicle Access (8.8m Medium Rigid Vehicle)
- Update Geotechnical Report with further detail, such as:
  - Induced Ground Movements: due to retaining wall deformation as the excavation progress;
  - Induced Ground Settlement: due to construction stage dewatering works lowering groundwater levels outside the site perimeters;
  - Induced settlement of loose sands around the site due to construction vibration;
  - Lateral Ground Movements: from retaining wall deformation;
  - Basement Excavation Planning and Design: specific geotechnical retaining wall deformation, groundwater drawdown/settlement, and vibration impact assessment be carried out;
  - Construction Stage Ground Deformation;
  - Groundwater Drawdown,
  - Vibration Management;
  - Monitoring Plans & Contingency Plans, with assessed limits, trigger levels, and response actions;
  - Hydrological Assessment of Subsurface Flow Conditions
  - Engineering Details, Installation Details,
  - Vibration: The vibration associated with the proposed excavation as measured at the existing rock face must be limited to 5mm/s, and below 3mm/sec for heritage or fragile neighbouring buildings. A Vibration Monitoring Plan accompanied by a certificate prepared by a geotechnical engineer is to be submitted to the satisfaction of The Department. Ground vibration can be strongly perceptible to humans at levels above 2.5 mm/s peak particle velocity (PPV);
  - Ground Anchors: No ground anchors under neighbours' property;
  - Check geological profile is incorrect;

- Intrusive 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;
- Geotechnical Model and Groundwater Model: There is no certainty to the geotechnical model and groundwater model, nor any preliminary design parameters;
- Depth of Excavation: The depth of the excavation is not identified, nor any sections to define the works. There is no understanding as to the depth to bedrock, and the rock conditions, the nature of soil conditions, or groundwater conditions;
- Excavation Techniques: The Geotechnical Report does not include sufficient recommendations, relating to the excavation techniques, forms of retaining walls, and methods to reduce the risks;
- Monitoring: The Report provides no discussion on excavation stability, with no conditions or monitoring methodologies outlined;
- Zone of Influence: The proposed excavation undermines the 'zone of influence' for the neighbouring property however the report provides only temporary batter slopes which are generic and do not appear site or project specific;
- Pre Excavation Support: It is evident that excavation has potential for detrimental and unacceptable impact to the neighbouring property and boundary however the report provides no detail or recommendations on pre-excavation support systems or monitoring;
- Dilapidation The Geotechnical Report does not include any sufficient recommendations on dilapidation;
- Attenuation Methods: The Geotechnical Report does not include sufficient recommendations on attenuation methods to reduce the risks such as rock sawing along perimeters with double attenuation cuts. Considerable caution should be taken during construction works as the poorly compacted fill and loose sands are likely to extend across the site boundaries;
- Battering in Side Setbacks. The Geotechnical Report does not include any recommendations on excavating in the side setback zones. The Geotechnical Report does not include any recommendations in respect to battering;
- Groundwater: The Geotechnical Report does not include any recommendations on groundwater. Bore holes to insufficient depth;
- Piling Types: 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;

- Design Life: no details on design life or maintenance and limited conditions to be applied to the design and construction.
  - All matters raised within Geotechnical Report
- 
- Stormwater – updated reports and drawings as necessary
  - Noise – updated reports and drawings as necessary
  - Contamination – updated reports and drawings as necessary
  - Waste – updated reports and drawings as necessary
  - Construction – updated reports and drawings as necessary
  - BCA – updated reports and drawings as necessary
  - Accessibility – updated reports and drawings as necessary
  - Safety & Security – updated reports and drawings as necessary

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

- AC Units be to located away from the neighbouring property.
- Acoustic Certification of Mechanical Plant and Equipment
- Adjoining Buildings Founded on Loose Foundation Materials
- 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.
- Arborists Documentation and Compliance Checklist
- BASIX Commitments
- Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principle Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)
- Checking Construction Certificate Plans – Protecting Assets Owned by Sydney Water
- Compliance with Building Code of Australia and insurance requirements
- Construction Certificate Required Prior to Any Demolition
- Demolition Traffic Management Plan
- Demolition, excavation and construction noise and vibration management plan. A site-specific noise management plan must be submitted to The Department for comment and approval prior to issue of any construction certificate.
- Dewatering
- Dilapidation Reports for Existing Buildings: A photographic survey and dilapidation report of 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 The Department, if The Department is not the Principal Certifier, prior to the issue of any Construction Certificate. A second Dilapidation Report/s, including a photographic survey must then be submitted at least one month after the completion of demolition/excavation works. A third Dilapidation Report/s, including a photographic survey must then be submitted at completion, and prior to the occupation certificate being issued, and any damage made good prior to the occupation certificate being issued.

- Electric vehicle circuitry and electric vehicle charging point requirements
- Engineer Certification
- Engineer's Certification of Plans
- Erosion and Sediment Controls – Installation
- Establishment of Boundary Location, Building Location and Datum
- Establishment of Tree Protection Zone (TPZ) Fence
- Geotechnical and Hydrogeological Design, Certification and Monitoring
- Geotechnical Report.
- Ground Anchors
- Hazardous Building Materials Survey
- Home Building Act 1989
- Identification of Hazardous Material
- 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 The Department's area coordinator planning assessments / area planning manager prior to the issue of a construction certificate.
- Light and Ventilation
- No Underpinning works
- Noise Control - Acoustic Protection of adjoining residential units-Operation of Air Conditioning Plant
- Noise Control - Swimming pool/spa pool pumps and associated equipment [if consented]
- 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.
- Notification of Home Building Act 1989 requirements
- Parking Facilities

- Payment of Long Service Levy, Security, Contributions and Fees
- Pre-Construction Dilapidation Reports
- Professional Engineering Details
- Project Arborist
- Public Road Assets Prior to Any Work/Demolition
- 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%.
- Road and Public Domain Works
- Road Occupancy Licence (ROL) from Transport for NSW
- Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection
- Sediment and Erosion Controls
- Site Signs
- Soil and Water Management Plan – Submission and Approval
- Stormwater Management Plan
- Structural adequacy & Excavation work
- Swimming and Spa Pools – Backwash [if consented]
- Swimming and Spa Pools – Child Resistant Barriers [if consented]
- Toilet Facilities
- Tree Management Plan
- Utility Services Generally
- Ventilation - Internal Sanitary Rooms
- Waste Storage – Per Single Dwelling
- WaterNSW General Terms of Approval
- Work Zones and Permits
- Works (Construction) Zone – Approval and Implementation

Conditions which must be satisfied during any development work

- Acid Sulfate Soils
- Asbestos Removal Signage
- Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum
- Classification of Hazardous Waste
- Compliance with Australian Standard for Demolition
- Compliance with BCA and Insurance Requirements under the Home Building Act 1989
- Compliance with Geotechnical / Hydrogeological Monitoring Program
- Compliance with Preliminary Site Investigation Report
- Compliance with The Department's Specification for Roadworks, Drainage and Miscellaneous Works,
- Condition of Trees

- Critical Stage Inspections
- Disposal of Asbestos and Hazardous Waste
- Disposal of Site Water During Construction
- 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
- Implementation of Construction Traffic Management Plan
- Implementation of Demolition Traffic Management Plan
- Imported Fill
- Installation of stormwater pipes and pits in the vicinity of trees
- Level changes in the vicinity of trees
- Maintenance of Environmental Controls
- Maintenance of Sediment and Erosion Controls
- Notification of Asbestos Removal
- Off-site Disposal of Contaminated Material
- Off-site Disposal of Contaminated Soil – Chain of Custody
- Ongoing Management of Road Reserve
- Placement and Use of Skip Bins
- Prohibition of Burning
- Protection of Existing Street Trees
- Protection of Sites of Significance
- Public Footpaths – Safety, Access and Maintenance
- Removing, Handling and Disposing of Asbestos
- Replacement/Supplementary trees which must be planted
- Requirement to Notify About New Acid Sulfate Soils Evidence
- Requirement to Notify about New Contamination Evidence
- Requirement to Notify about New Evidence
- Road Reserve
- Road Works and, Work within the Road and Footway
- Site Contamination
- Site Contamination – Acid Sulfate Soils
- Site Cranes
- Site Waste Minimisation and Management – Construction
- Site Waste Minimisation and Management – Demolition
- Staff and Contractor Parking
- Support of Adjoining Land and Buildings
- Survey Certificate
- 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.

- Tree and Vegetation Protection
- 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.

Conditions which must be satisfied prior to any occupation or use of the building:

- Acid Sulfate Soil Management Confirmation
- Acoustic Design Recommendations
- Allocated Parking Spaces (Retail/Commercial)
- Amenity Landscaping
- Approval
- Building Components and Structural Soundness
- Building Height & FSR: Registered Surveyors Certification
- Building Number(s)
- Certification for the Installation of Stormwater Treatment Measures
- Certification of Civil Works and Works as Executed Data in Accordance with Roads Act
- Certification of Electric Vehicle Charging System
- Certification of Works as Executed
- Commissioning and Certification of Public Infrastructure Works
- Commissioning and Certification of Systems and Works
- Compliance with the acoustic report prior to construction and or occupation certificates
- Condition of Retained Vegetation

- Construction of Works in Road Reserve
- Disabled Parking Spaces
- Encroachments – Neighbouring Properties. No portion of the proposed structure shall encroach onto the adjoining properties.
- Fulfillment of BASIX Commitments – clause 154B of the Regulation
- Geotechnical Certification Prior to Occupation Certificate
- Kitchen Design, Construction and Fit Out of Food Premises Certification
- Landscape Completion
- Landscaping
- Letter Box
- Loading and Delivery Management Plan
- Mechanical Ventilation Certification
- Occupation Certificate (section 6.9 of the Act)
- Positive Covenant and Works-As-Executed Certification of Stormwater Systems
- Positive Covenant for the Maintenance of Stormwater Pump-out Facilities
- Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures
- Post-Construction Dilapidation Report
- 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.
- Registration of Food Business
- Removal of Ancillary Works and Structures
- Road Works (including footpaths)
- Shared Zone Bollard
- Signage and Line-marking – Internal
- Stormwater Disposal
- Stormwater Treatment Measures Operation and Maintenance Plan
- Street Tree Planting
- Swimming and Spa Pools – Permanent Child Resistant Barriers and other Matters [if consented]
- Swimming Pool Fencing [if consented]
- Sydney Water
- Works as Executed Drawings – Stormwater Treatment Measures

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

- 'No Entry' Signage
- Deliveries and Waste/Recycling Collection
- Flood Emergency Response Procedure

- Hours of Operation
- Implementation of Loading Dock Management Plan
- Landscape Maintenance
- Maintenance of BASIX Commitments
- Maintenance of Stormwater Treatment Measures
- 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
- Ongoing Noise Management
- Ongoing Operation
- Outdoor Lighting – Residential
- Outdoor Lighting – Roof Terraces [if consented]
- Parking Enclosure
- Parking Spaces
- 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
- Recycling of Demolition and Building Material
- Release of Security
- Roads Act 1993 Application
- SafeWork NSW Requirements
- Workcover requirements