

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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a written submission by way of objection

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

STRATA COMMITTEE, 280-288 BURNS BAY ROAD, LANE COVE. SP88541.
STRATA COMMITTEE, 290 BURNS BAY ROAD, LANE COVE. SP88982.
STRATA COMMITTEE, 292-298 BURNS BAY ROAD, LANE COVE. SP53852.
STRATA COMMITTEE, 300A – 300C BURNS BAY ROAD, LANE COVE. SP6522.

16 APRIL 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

RE:

SSD-87925706

SSD-100293708

300 BURNS BAY ROAD, LANE COVE HDA

WRITTEN SUBMISSION: LETTER OF OBJECTION

SUBMISSION: TULLOCH

BASE SUBMISSION

[HOLDING SUBMISSION: Further View Impact, Overshadowing Impact & Traffic
Submissions to follow]

Dear Sir/Madam,

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 SSD.

This Submission includes a further document that contains photography from a selective group of Units to assist the Department.

This Submission is also a HOLDING SUBMISSION. My clients have instructed further Reports to be prepared, and these will be forwarded shortly.

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.

I contend that in consideration of State Environmental Planning Policy (Housing) 2021 Chapter 2 Section 20 (Design requirements) Subclause 3, the proposal results in a bulk and scale which is incompatible with the desirable elements of the character of the local area.

There is inadequate information provided with the application to enable The Department to make a proper assessment of the application, to define compliance to the DCP, significantly:

- The Applicant must provide **VIEW IMPACT PHOTOMONTAGES** for the vast number of affected properties in accordance with the NSW Land and Environment Court Policy for Use of Photomontages to all neighbour's windows to highly used rooms and associated external private open spaces, that are located above the LEP 21m HOB height plane and the LEP 21m HOB + 30% Bonus height plane. The analysis must compare the proposed development, existing situation, the LEP 21m HOB, and the LEP 21m HOB + 30% Bonus

provision. A registered survey is required to be completed on all viewpoint locations, with photography taken from every viewpoint, and accurate Photomontages prepared.

- The Applicant must provide a **'VIEW FROM THE SUN' SOLAR ACCESS** analysis of the overshadowing impacts of the development within the site, on 300A – 300C BURNS BAY ROAD, on the vast number of apartments affected, at hourly intervals between 9am and 3pm, at mid-winter and at equinox, comparing the proposed development, existing situation, the LEP 21m HOB, and the LEP 21m HOB + 30% Bonus provision. A schedule must be provided, window by window of all highly used rooms within 300A – 300C BURNS BAY ROAD facing the subject site. A registered survey is required to be completed on 300A – 300C BURNS BAY ROAD on the windows facing the subject site that serve Open Plan Living Room, Kitchens, Study, and highly used rooms

I refer The Department to the list of *SIGNIFICANT LIKELY IMPACTS* in the Contents, with the detail of those matters within Section 4.

There is concern regarding:

- **INCONSISTENCY WITH SEPP & LEP PLANNING CONTROLS**
- **VIEW SHARING**
- **OVERSHADOWING**
- **PRIVACY**
- **VISUAL IMPACT**
- **CAR PARKING, TRAFFIC, PUBLIC TRANSPORT CAPACITY**
- **ENVIRONMENTAL IMPACTS**

The EIS states on Page 107:

“...the proposal will have a visual and view impact, however given the topography and orientation of the site and the ability to pursue a development consistent with the existing height controls and the potential to utilise the Infill Affordable Housing bonus, it is reasonable to expect a large-scale development on the site. A building form compliant with the existing height controls (and the Infill Affordable bonus) would also give rise to visual and view impacts from surrounding areas.”

The EIS has not identified the visual and view impacts considering a compliant built form, with built form breaks to provide visual interest, built form relief, and improved view sharing and solar access outcomes. A proposal at LEP 21m HOB or LEP 21m HOB + 30% Bonus height plane would significantly improve the outcome. On these grounds the proposal must be REFUSED.

The EIS states on Page 107 and 108:

".....It is acknowledged that the proposal will result in overshadowing and solar access impacts to surrounding residential buildings, however the primary living and private open space for dwellings within 300A, 300B, 300C and 302 Burns Bay Road benefit from a south orientation for view access to Lane Cove River and gain their amenity from that outlook. While the primary living spaces and private open space for neighbouring residential buildings are largely unaffected, the existing solar access provision to these living areas and private open space areas for neighbouring buildings are non-compliant with the design criteria of Objective 4A-1 of the ADG. While there are overshadowing impacts to secondary living spaces within neighbouring buildings including dining areas and kitchens, specifically to 300A Burns Bay Road, the ADG does not set a specific solar access requirement for secondary living spaces and these impacts must be balanced against the impacts arising from a scheme that could be delivered on the site under the existing Lane Cove LEP and Housing SEPP bonus provisions."

The EIS has stated that 'the primary living and private open space for dwellings within 300A, 300B, 300C and 302 Burns Bay Road benefit from a south orientation' – however, this is not totally correct. There are multiple living rooms within units of 300A – 300C BURNS BAY ROAD that face north, and rely upon that solar access as their only source of direct sunlight.

Over 125 apartments are affected in 300A, 300B, 300C and 302 Burns Bay Road.

Not only would many units mid-winter solar access be totally extinguished, but equinox would also be very poorly affected as well. Refer Architects Drawings 600/610/620/630/640 series drawings. A proposal at LEP 21m HOB or LEP 21m HOB + 30% Bonus height plane would significantly improve the outcome.

On these grounds the proposal must be REFUSED.

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 SSD.

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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 clients' 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 would result in unreasonable visual, view loss, overshadowing, privacy or traffic impacts to my clients' property and the public domain

The Colliers EIS & Rezoning Report dated 6 March 2026 states:

The application seeks consent for the construction of a 7-15-storey residential flat building comprising 225 residential dwellings, including 34 affordable dwellings for a period of 15 years at 300 Burns Bay Road, Lane Cove (the site).

Proposal Overview

This proposal seeks the following:

Approval of a rezoning request: To support the proposed residential development, a rezoning request is being sought concurrently with the SSDA under the Housing Delivery Authority (HDA) pathway. The rezoning request seeks to amend the Lane Cove Local Environmental Plan 2009 by amending the applicable maximum building height control from 21m to part 38.5m, part 45m and part 54.5m, and floor space ratio (FSR) control from 2:1 FSR to 3.22:1 for the site. These changes will enable a built form that facilitates additional market and affordable housing supply within a well accessible location, in line with the aims of the National Housing Accord.

Development consent for the proposed development: The SSDA seeks concurrent consent for the proposed development, being a high-quality residential scheme comprising a 7-15 storey residential flat building, comprising of 225 dwellings, including 34 affordable dwellings for a period of 15 years (equating to 15% of the overall GFA).

Specifically, SSD-87925706 seeks consent for:

- Construction of a new residential flat building ranging from 7-15 storeys and comprising 225 apartments including:
 - o 191 market apartments;
 - o 34 affordable apartments for a period of 15 years; and
 - o Communal areas at both lower ground, ground level and rooftop levels.
- Car and bicycle parking for residents and visitors at lower ground and two (2) basement levels, including:
 - o 237 car parking spaces;
 - o Garbage storage; and
 - o Plant rooms and other associated services.
- Landscaping improvements including hard and soft landscaping works.

The concurrent rezoning seeks the following amendments to the Lane Cove LEP to facilitate the proposed development:

- Amend the Height of Buildings Map under clause 4.3 to increase the maximum building height from 21m to part 38.5m, part 45m, and part 54.5m; and

- *Amend the Floor Space Ratio Map under clause 4.4 to increase the maximum floor space ratio (FSR) from 2:1 to 3.22:1.*

My clients strongly object to BOTH:

- The Concurrent Rezoning above 21.0m Height of Buildings & above 2.0:1 FSR;
- All built form beyond the SEPP and LEP Standards and DCP controls, and ADG Separation Distances

The proposed major non-compliances:

- HOB 54.5m v 21.0m [2.6x non-compliance]
- FSR 3.22:1 v 2.0:1 [1.6x non-compliance]

The proposed non-compliances allowing IAH 30% Bonus Provisions

- HOB 54.5m v 27.3m [2.0x non-compliance]
- FSR 3.22:1 v 2.6:1 [1.24x non-compliance]

Major Other Non-Compliances:

- Landscape Area [IAH Section 19 [3];
- Visual Privacy Building Separation for Building A & B, level 5 and above, both northern and southern elevations;
- 19% of proposed apartments receive no solar

If approved, this proposal will create the following devastating outcomes:

1. **DEVASTATING OVERSHADOWING TO 49 UNITS AT 300A BURNS BAY ROAD,**
including north facing open living/dining/kitchen/study-bed room windows
facing north and the subject site, and external clothes drying areas:

300A [Entrance 1 – Units 1-30] – 14no Units

- 1-Bed Layout: Floor 2/Unit 6; Floor 3/Unit 10; Floor 4/Unit 14; Floor 5/Unit 18;
Floor 6/Unit 22; Floor 7/Unit 26; Floor 8/Unit 30
- 3-Bed Layout: Floor 2/Unit3; Floor 3/Unit7; Floor 4/Unit11; Floor 5/Unit 15;
Floor 6/Unit 19; Floor 7/Unit 23; Floor 8/Unit 27

300A [Entrance 2 – Units 31-60] – 14no Units

- 1-Bed Layout: Floor 2/ Unit36; Floor 3/ Unit40; Floor 4/Unit 44; Floor 5/Unit 48;
Floor 6/Unit 52; Floor 7/Unit 56; Floor 8/Unit 60
- 3-Bed Layout: Floor 2/Unit 33; Floor 3/Unit37; Floor 4/Unit41; Floor 5/Unit 45;
Floor 6/Unit 49; Floor 7/Unit53; Floor 8/Unit 57

300A [Entrance 3 – Units 61-90] – 21no Units

- 1-Bed Layout: Floor 2/Unit 66; Floor 3/Unit 70; Floor 4/Unit 74; Floor 5/ Unit 78;
Floor 6/Unit 82; Floor 7/Unit 26; Floor 8/Unit 30
- 2-Bed Layout*: Ground Floor/Unit 62; Floor 2/Unit 65; Floor 3/ Unit 69; Floor 4/
Unit 73; Floor 5/ Unit 77; Floor 6/ Unit 81; Floor 7/ Unit 85; Floor 8/ Unit 89.
Note: solar loss to east facing dining/living windows in 300A, Entrance 61-90
only
- 3-Bed Layout: Floor 2/Unit 63; Floor 3/Unit 67; Floor 4/Unit 71; Floor 5/Unit 75;
Floor 6/Unit 79; Floor 7/Unit 83; Floor 8/Unit 87

Typical General Arrangements:
[Registered Surveyor to confirm]



6/300A Burns Bay Road, Lane Cove

PLANS SHOWN ONLY INDICATIVE OF LAYOUT. DIMENSIONS ARE APPROXIMATE.
Measurements are approximate and not to scale. The vendor, agency and supplier will accept no liability for its accuracy. Interested parties are advised to make their own independent enquiries.



11/300A Burns Bay Road, Lane Cove

PLANS SHOWN ONLY INDICATIVE OF LAYOUT. DIMENSIONS ARE APPROXIMATE.
Measurements are approximate and not to scale. The vendor, agency and supplier will accept no liability for its accuracy. Interested parties are advised to make their own independent enquiries.

Raine & Horne



89/300A Burns Bay Road Lane Cove

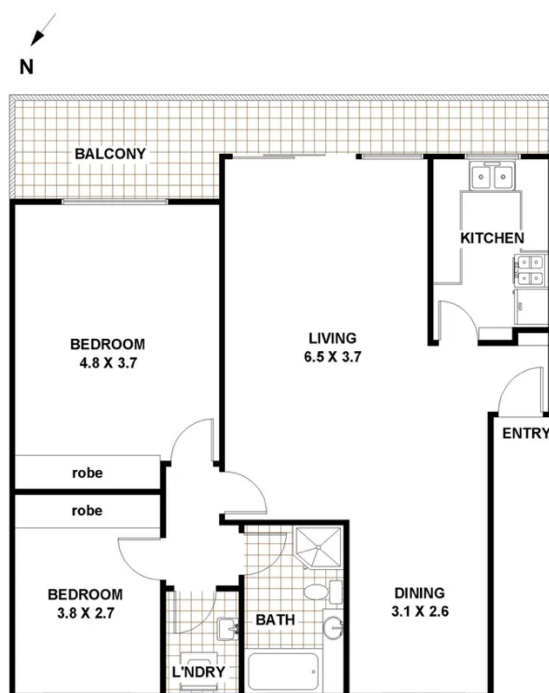
Ray White
Lane Cove

2. **DEVASTATING OVERSHADOWING TO 36 UNITS AT 300B BURNS BAY ROAD,**
including north facing open plan living/dining/study-bed room windows facing
north and the subject site:

- Ground: Units, 1, 2, 13,14, 25,16
- Second: Units 3, 4, 15,16, 27, 28
- Third: Units 5, 6, 17, 18, 29, 30
- Fourth: Units 7, 8, 19, 20, 22, 31, 32
- Fifth: Units 9, 10, 21, 22, 33, 34
- Sixth: Units 11, 12, 23, 24, 35, 36

Typical General Arrangements:
[Registered Surveyor to confirm]

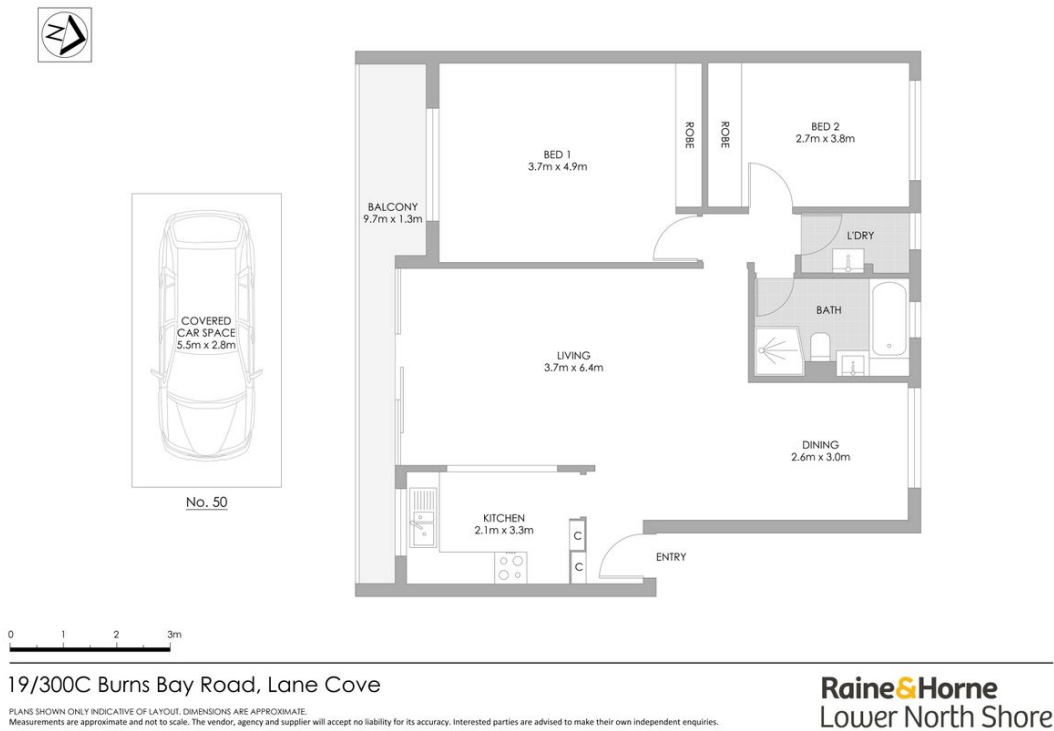
2 / 300B Burns Bay Road Lane Cove



FLOOR PLAN
ALL DIMENSIONS AND LAYOUT ARE APPROXIMATE ONLY.
NO GUARANTEE OR LIABILITY WILL BE ACCEPTED FOR
RELIANCE PLACED ON IT.

3. DEVASTATING OVERSHADOWING TO 40 UNITS AT 300C BURNS BAY ROAD, including north facing open plan living/dining/kitchen/study windows facing north and the subject site:
- Ground: Units, 1, 2, 11, 12, 21, 22, 31, 32
 - Second: Units 3, 4, 13, 14, 23, 24, 33, 34
 - Third: Units 5, 6, 15, 16, 25, 26, 35, 36
 - Fourth: Units 7, 8, 17, 18, 27, 28, 37, 38
 - Fifth: Units 9, 10, 19, 20, 29, 30, 39, 40

Typical General Arrangements:
[Registered Surveyor to confirm]



4. DEVASTATING VIEW LOSS 280-288 BURNS BAY ROAD

Construction Drawings [Sakkara 2013]

Floor FFL @ RL 54.4, RL 51.4, RL 48.4, RL 45.4, RL 42.4

Viewpoints @ RL 56.0, RL 53.0, RL 50.0, RL 47.0, RL 44.0

[Registered Surveyor to confirm]

LEP HOB 21.0m level, at proposed slab level RL 42.7:

[approximately the height of the top of the lift tower on #300 BBR]

view available Level 3, 4, 5, 6 & 7

LEP HOB 21.0m + 30% AH Bonus level, at proposed slab level 49.3:

[approximately 7m above the height of the top of the lift tower on #300 BBR]

view available Level 6 & 7

BUILDING 1 (A)

Level 6: 1501 (Lot 31), 1503 (Lot 33), 1504 (Lot 34), 1506 (Lot 36)

Level 5: 1401 (Lot 25), 1403 (Lot 27), 1404 (Lot 28), 1406 (Lot 30)

BUILDING 2 (B)

Level 7: 2601 (Lot 82), 2602 (Lot 83), 2603 (Lot 84), 2604 (Lot 85)

Level 6: 2501 (Lot 74), 2503 (Lot 76), 2504 (Lot 77), 2505 (Lot 78)

2507 (Lot 80), 2508 (Lot 81)

Level 5: 2401 (Lot 66), 2403 (Lot 68), 2404 (Lot 69), 2405 (Lot 70), 2407 (Lot 72), 2408 (Lot 73)

Level 4: 2301 (Lot 58), 2303 (Lot 60), 2304 (Lot 61), 2305 (Lot 62), 2307 (Lot 64), 2308 (Lot 2308)

5. DEVASTATING VIEW LOSS 290 BURNS BAY ROAD

Construction Drawings [Redshift 2012]

Floor FFL @ RL 45.3, RL 42.25

Viewpoints @ RL 46.9, RL 43.85

[Registered Surveyor to confirm]

LEP HOB 21.0m level, at proposed slab level RL 42.7:

[approximately the height of the top of the lift tower on #300 BBR]

view available 506 and 605.

Top corner most apartments are 506/605 are the most affected.

South Side East Corner: 106, 105, ground floor; 206, 207; 306, 307, 406, 407, 505, 506, 604. 605

Far East Side: obstructed views from top to bottom, 106, 207, 307, 407, 506, 604/605

Inner East Side: Lesser eastern obstruction 601, 501

6. DEVASTATING VIEW LOSS 292-298 BURNS BAY ROAD

Applicant's Survey RL 44.37 gutter

Viewpoints @ c. RL 42.8 - [Registered Surveyor to confirm]

LEP HOB 21.0m level, at proposed slab level RL 42.7:

[approximately the height of the top of the lift tower on #300 BBR]

7. **VISUAL IMPACT FROM PUBLIC DOMAIN:** High Significance of Visual Impact from Public Domain: Burns Bay Reserve, Hughes Park, Burns Bay Road Bus Stop, & Coonah Parade
8. **DEVASTATING VISUAL BULK:** to all my clients' properties
9. **SEVERE OVERSHADOWING OF OPEN SPACES:** Burns Bay Reserve & Hughes Park to the south;
10. **UNACCEPTABLE TRAFFIC OUTCOMES:** to the road network and major intersections, including road safety issues, construction traffic, particularly to Burns Bay Road/Burns Bay Road and Burns Bay Road/Waterview Drive intersections. The proposed 237 spaces, would deliver a considerably extra load on the road system at peak periods, with 37vtph in the morning and 46vtph in the afternoon
11. **INTERSECTION OVERLOAD:** Concern that the Traffic Assessment notes that while the overall Burns Bay Road/Burns Bay Road intersection operate with spare capacity, the minor legs (northwest and southeast) within the intersection operate at a LOS E during both the AM and PM peak periods
12. **HEAVY CONSTRUCTION VEHICLES:** Concern regarding the quantity of heavy construction vehicles proposed to enter and exit the site from Burns Bay Road, resulting from massive increase in built form in a constrained site
13. **BUSHFIRE:** Concern that the proposed APZ/Inner Protection Area will restrict landscape canopy cover. Concern that the high-density development will create a high-risk outcome for all neighbours trying to exit within an emergency
14. **TREE REMOVAL:** proposed Development requires 11 trees of medium and high value to be removed

15. **CONTAMINATION:** concern on mitigation measures

16. **GROUNDWATER:** concern on the groundwater draw down and dewatering plan

MY CLIENTS DEVASTATING OVERSHADOWING & VISUAL BULK CONCERNS

Contrary to the EIS statements, there are multiple units with living area, dining, kitchen, study and private open space areas facing north and the subject site for 300A, 300B, 300C Burns Bay Road.

The extent of the solar loss to living room zones is extreme. Over 125 apartments are affected.



MY CLIENTS DEVASTATING LOSS OF VIEW & VISUAL BULK CONCERNS

This Submission will show multiple devastating view loss caused by non-compliant development.

I show one such Unit, however there are dozens of other units, referred to in this submission that have equal view loss.

The Department will note the following:

- LEP HOB 21.0m level, at proposed slab level RL 42.7:
[approximately the height of the top of the lift tower on #300 BBR]
- LEP HOB 21.0m + 30% AH Bonus level, at proposed slab level 49.3:
[approximately 7m above the height of the top of the lift tower on #300 BBR]

The Department will note:

VIEW TYPE

Water View, Harbour Bridge, City Skyline, Land/Water Interface View, Headland Views, Local Landscape & Skylines.

SEVERITY:

DEVASTATING [to be confirmed after VIA completed]

CAUSE:

Non-compliance to Height of Building LEP HOB 21m & LEP HOB 21m + 30% BONUS & FSR

APPLICANT'S VIEW IMPACT ASSESSMENT [VIA]:

Not completed

280-288 BURNS BAY ROAD, LANE COVE. SP88541. BUILDING 2 (B) Level 7:
UNIT 2604 (Lot 85)



The proposed development above the LEP HOB 21m and LEP HOB 21m + 30% Bonus height plane will create unreasonable view loss.

The Applicant has not provided any VIA from 280-288 BURNS BAY ROAD, BUILDING 2 (B); Level 7: 2601 (Lot 82), 2602 (Lot 83), 2603 (Lot 84), 2604 (Lot 85)

The viewpoints selected by the VIA, are either viewpoints that do not have water views, or lower-level views that are below the 21m HOB level. The VIA is presenting very selective viewpoints that are totally unrepresentative of the water views that are available above the LEP HOB 21m + 30% Bonus height plane, from multiple apartments.

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 SSD.

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 SSD, 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.

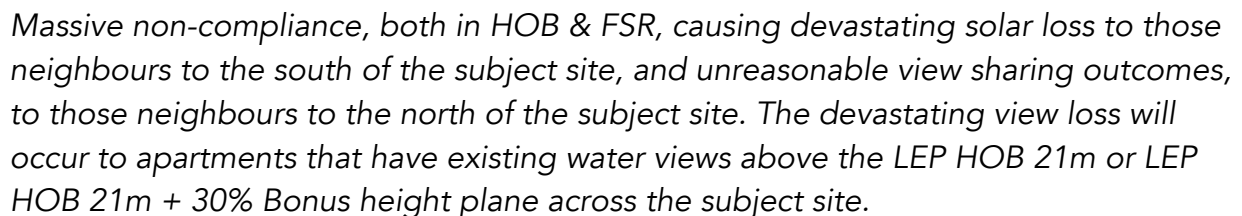
If a consent is granted, the Conditions as found within the Appendix are requested to be considered to be imposed.

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, density, all setbacks, building envelope, landscape.
- ii. The proposed major non-compliances:
 - o HOB 54.5m v 21.0m [2.6x non-compliance]
 - o FSR 3.22:1 v 2.0:1 [1.6x non-compliance]
- iii. The proposed non-compliances allowing IAH 30% Bonus Provisions
 - o HOB 54.5m v 27.3m [2.0x non-compliance]
 - o FSR 3.22:1 v 2.6:1 [1.24x non-compliance]
- iv. Major Other Non-Compliances:

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



B. IN-FILL AFFORDABLE HOUSING BONUS PROVISION

- i. Delete excessive zones of SEPP [Housing] 2021 Chapter 2 Part 2: In-Fill Affordable Housing Bonus Provisions, that cause unreasonable view loss or overshadowing or visual bulk;

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

C. SEPARATION DISTANCES

- i. Comply fully with Apartment Design Guide Objective 3F-1: Minimum required separation distances from buildings to the side and rear boundaries as follows:
 - ii. Up to 12m [4-Storey] - 6m Habitable; 3m Non-habitable;
 - iii. Up to 25m [5-8 Storey] - 9m Habitable; 4.5m Non-habitable;
 - iv. Over 25m [9+Storey] - 12m Habitable; 6m Non-habitable.

Visual Privacy Building Separation for Building A & B, level 5 and above, both northern and southern elevations;

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

D. LANDSCAPE

- i. Increase Landscape Area [IAH Section 19 [3];
- ii. Preserve as many of the 11 existing medium and high-quality trees planned for removal

E. VIEW SHARING

- i. Further reductions to resolve viewing sharing issues, with further built form reduction;

Reason: Neighbours amenity loss

F. OVERSHADOWING

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

Reason: Neighbours amenity loss;

G. PRIVACY DEVICES

- i. Further fixed privacy devices to resolve visual privacy issues where Apartment Design Guide Objective 3F-1 is not achieved
- 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;

H. ACOUSTIC

- i. Further devices to resolve acoustic privacy issues.
- ii. All plant to be enclosed in acoustic barriers, including pool plant;
- 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.

Reason: Neighbours amenity loss;

I. DIMENSIONS AND LEVELS

- i. The SSD 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;

J. FURTHER AMENDMENTS

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

K. CONDITIONS

- i. A full list of conditions to any consent to fully protect my clients' 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 clients' 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. CONCURRENT REZONING

My clients strongly object to BOTH:

- The Concurrent Rezoning above 21.0m Height of Buildings & 2.0:1 FSR;
- All built form beyond the LEP Standards and DCP controls

C. SEPP [HOUSING] 2021 CHAPTER 2 PART 2: IN-FILL AFFORDABLE HOUSING [IAH]

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 proposed development is unsatisfactory with regard to the relevant planning provisions contained in Chapter 2:

CLAUSE 18: MAXIMUM HEIGHT

The proposed development exceeds the maximum height.

CLAUSE 19 [b] MINIMUM LANDSCAPED AREA that is the lesser of

- (i) 35m² per dwelling, or
- (ii) 30% of the site area,

The proposed development does not meet the control.

CLAUSE 19 [c] DEEP SOIL ZONE on at least 15% of the site area, where

- (i) each deep soil zone has minimum dimensions of 3m, and
- (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site

The proposed development does not meet the control.

CLAUSE 20 DESIGN REQUIREMENTS

20 (3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with:

- (a) the desirable elements of the character of the local area, or

(b) for precincts undergoing transition, the desired future character of the precinct.

The proposed development has not achieved compatibility with the desirable elements of character of the local area or the desired future character of the precinct.

The bulk and scale of the proposal, proximity to side boundaries, lack of response to the lower scale development surrounding the site and the extensive site coverage of the application results in a built form that is overly dominant in the streetscape and to neighbouring properties with insufficient landscaped setbacks to soften the significant scale discrepancy between the proposal and adjacent development.

The exaggerated monolithic form exacerbates the scale of the building with insufficient articulation to moderate the building.

The proposal does not recognise the desirable elements of the existing streetscape and built form, fails to protect the amenity of residents. The proposal is incompatible with the character of the local area.

The non-compliant built form particularly to height and setbacks is unacceptable.

The poor amenity outcomes for my clients are directly attributable to these matters.

THE DEPARTMENT OF PLANNING'S PRACTICE NOTE

The Department of Planning's Practice Note in December 2023 in relation to Affordable Housing bonus provisions, clearly states that:

"The full extent of the in-fill affordable housing bonuses may not be achieved on all sites due to site constraints and local impacts. The in-fill affordable housing bonuses should not be treated as an entitlement."

Due to the site constraints and adverse impacts on the amenity of adjoining properties the full extent of the in-fill affordable housing bonuses cannot be achieved and accommodated in the circumstances of this proposed development.

I refer The Department to the NSW Department of Planning, Housing and Infrastructure
dpie.nsw.gov.au,

IN-FILL AFFORDABLE HOUSING – PRACTICE NOTE

<https://www.planning.nsw.gov.au/sites/default/files/2023-12/in-fill-affordable-housing-practice-note.pdf>

RESPONDING TO LOCAL STANDARDS

The full extent of the in-fill affordable housing bonuses may not be achieved on all sites, due to site constraints and local impacts.

*The in-fill affordable housing bonuses **should not be treated as an entitlement.***

DAs that propose in-fill affordable housing will be subject to merit assessment by the consent authority.

The application of the bonuses does not affect a consent authority's responsibility to consider the requirements of relevant EPIs, a development's likely impacts or the suitability of the site for the development. In applying the in-fill affordable housing bonuses, applicants and consent authorities should be flexible in the design response of the development having regard to:

- *the Government's policy intent to deliver more affordable housing through the in-fill affordable housing provisions of the Housing SEPP, and*
- *the impact of the development on the amenity of the site and adjoining land, taking into account the building's height, scale and bulk.*

The in-fill affordable housing bonuses do not override any provision in any LEP or other EPI.

However, local development standards should be applied flexibly and need to be balanced against the need to realise more affordable housing.

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

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

D. SEPP [HOUSING] 2021 CHAPTER 4 DESIGN OF RESIDENTIAL APARTMENT DEVELOPMENT

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 contrary to the relevant provisions of the SEPP [Housing] 2021, in particular, Chapter 4, Design of Residential Apartment Developments [ADG] and Schedule 9: Design Principles for Residential Apartment Development.

Specifically, the proposal involves the following non-compliances which warrant the refusal of the application:

CHAPTER 142: AIMS OF CHAPTER

(1) The aim of this chapter is to improve the design of residential apartment development in New South Wales for the following purposes—
(a) to ensure residential apartment development contributes to the sustainable development of New South Wales by—
(i) providing socially and environmentally sustainable housing, and
(ii) being a long-term asset to the neighbourhood, and
(iii) achieving the urban planning policies for local and regional areas,
(b) to achieve better built form and aesthetics of buildings, streetscapes and public spaces

CHAPTER 147: DETERMINATION OF DEVELOPMENT APPLICATIONS FOR RESIDENTIAL APARTMENT DEVELOPMENT

The proposal is unsatisfactory with regard to the relevant planning provisions contained in Chapter 4.

The non-compliant built form particularly to height and setbacks is unacceptable. The poor amenity outcomes for my clients are attributable to these matters.

CI 147 Determination of development applications and modification applications for residential apartment development

(1) Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—
(a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,
(b) the Apartment Design Guide,

(c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.

SCHEDULE 9

The design quality of the development is not in accordance with the design principles for Residential Apartment Development under Schedule 9 of the SEPP. The proposed development is contrary to the following design principles.

- Principle 1 - Current and Neighbourhood Character
- Principle 2 - Built Form and Scale
- Principle 3 – Density
- Principle 5 – Landscape
- Principle 6 – Amenity
- Principle 9: - Aesthetics

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 design quality of the proposal when evaluated in accordance with the design quality principles is unacceptable, contrary to section 147 (1)(a) of State Environmental Planning Policy (Housing). Consent must not be granted as the proposal does not demonstrate that adequate regard has been given to the design quality principles. In particular, the proposal is inconsistent with the following design quality principles:

Principle 1 - Current and Neighbourhood Character

- The excessive height caused by the Bonus Provisions, along with non-compliant setbacks, does not respond to the desirable elements of the areas existing and future character.
- The exaggerated monolithic form exacerbates the scale of the building with insufficient articulation to moderate the building.

Principle 2 - Built Form and Scale

- The excessive height caused by the Bonus Provisions, along with non-compliant setbacks, does not respond to the desirable elements of the areas existing and future character.
- 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 built form 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.
- The proposed development does not achieve an appropriate built form that contributes to the character of the streetscape or provide appropriate amenity and outlook due to the inadequate setbacks and extensive screening resulting for habitable rooms within the development.

Principle 3 – Density

- The proposed development FSR exceeds the maximum permitted and along with the height breach and insufficient setbacks would result in unacceptable amenity outcomes and a significant overdevelopment of the site.
- The excessive height caused by the Bonus Provisions, along with non-compliant setbacks, does not respond to the desirable elements of the areas existing and future character.

Principle 5 – Landscape

- The proposed development does not achieve good landscape design, causing poor amenity and contextual fit. Specifically:
- Insufficient setbacks, does not respond to the desirable elements of the areas existing character, to allow sufficient deep soil zones;
- Insufficient deep soil is provided;
- Planting on structure is generally limited to fairly narrow, linear garden beds at perimeter edges. Larger shrubs are confined to planter tubs. Soil volumes are not provided
- Impacts to the street trees.

Principle 6 – Amenity

- Adverse amenity impacts caused to neighbours is unreasonable.
- View Analysis
- Overshadowing
- Visual Privacy
- Acoustic Privacy
- Visual Impact

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

Principle 9: - Aesthetics

- The proposed development does not respond to desirable element of the context;
- The base of the building should follow the lot subdivision of the overall site, providing recessed design at each boundary;
- The recessed upper floors are required to be of a different lighter architectural language;
- The additional height caused directly by the Bonus Provisions cause the built form to be significantly out of scale in the streetscape;
- The setbacks to all boundaries are insufficient, and the setback at the upper levels are insufficient;
- The materials selection is inappropriate

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

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;
- 2D Floor Space Ratio;
- 2E Building Depth;
- 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.

Of particular concern is the non-compliance to 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.

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. 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

These matters are expanded upon earlier and also within Sections 4 of this Submission.

E. 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.

F. 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.

G. 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 Coastal Management or Remediation of Land.

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

H. 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.

I. 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;

J. 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 development application should be refused as the proposal exceeds the development standard and it has not been supported by a request to vary pursuant to clause 4.6 of the LEP.

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.

K. 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.

The development application should be refused as the proposal exceeds the development standard and it has not been supported by a request to vary pursuant to clause 4.6 of the LEP.

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

L. 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 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;
- There is an insufficient zone at a maximum of 1:20 for a 6m length to ensure a safe entry;
- There is no waiting bay to position cars waiting to enter the car park;
- A single lane ramp is unsafe;
- 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 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. FORESHORE SCENIC PROTECTION

- The proposed development is inconsistent with the provisions of Foreshore Scenic Protection Area, as the built form and scale of the proposed development exceeds the expected form of new development in the foreshore scenic protection area;
- The proposed development is inconsistent with the Protection of Scenic Values;
- The proposed development is inconsistent with the Preservation of Public Views;
- The proposed development is inconsistent with Minimising Visual impact;
- The proposed development is inconsistent with the Integration with Natural Environment;

- The proposed development is inconsistent with the Desired Future Character of the Locality;

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. VIEW IMPACT

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

In order to assess the extent of private view impacts caused by the Proposal, view Photomontages for the affected properties in accordance with the NSW Land and

Environment Court Policy for Use of Photomontages and/or wire frame diagrams are required.

The proposal is inconsistent with the objectives of the DCP.

The proposed development and landscaping will result in excessive view impacts to adjoining properties and does not constitute a satisfactory view sharing outcome. In this regard, it is contrary to the provisions of the DCP.

The Applicant has not provided adequate Photomontages on the impact of the proposal on views, in particular views from the living areas, entertainment terraces, and highly used rooms of the neighbouring property.

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

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

Tenacity states:

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

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

Tenacity, states the test for reasonableness:

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

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

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

The development breaches multiple planning controls and is unreasonable.

FAILURE TO PROVIDE PHOTOMONTAGES

In order to assess the extent of private view impacts caused by the Proposal, view Photomontages for the affected properties in accordance with the NSW Land and Environment Court Policy for Use of Photomontages and/or wire frame diagrams are required.

It is my opinion that the VIA cannot be relied upon by The Department to make an accurate assessment of the potential visual impacts on the existing character or the potentially severe view loss to my clients' residences. The scope of the assessment is incomplete and inadequate and the methodology for assessment does not follow any recognized guidelines for best practice or conform to NSWLEC Policy: Use of Photomontages and Visualisation Tools 17 May 2024. It is my opinion that the limited scope of assessment and the absence of a best practice methodology result in the VIA significantly understating the visual impact and view loss impacts of the proposal

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

I contend the Photomontages presented have not shown unaltered and real-life baseline, with a summary of metadata so the veracity of imagery presented can be verified, and application of relevant overlays of the proposed development.

The most basic minimum requirement should be:

1. Height & Plan location of camera to be verified and clearly shown on an aerial photograph, along with the sun position at time of photography;
2. A minimum of 4 surveyed points identified in plan, at ground level relating to elements on the photograph and hence to the location of the superimposed building;
3. A minimum of 4 surveyed height points to locate the imposed building in the vertical plan;
4. A series of images to be prepared to explain each photomontaged view, in line with the above stages.

The development application should be refused as the Applicant has not provided Photomontages to define the view loss in accordance with this NSWLEC Policy:

- The computer-generated image provided has not been provided to ensure that the data they present is represented and interpreted accurately;
- The existing image is not an unchanged or unaltered image of the location, viewing angle;

- The photomontage submitted is not the most accurate visual images of the development in its real-world location;
- The photomontage has not visited my clients' property and taken an image from my clients' property;
- A plan showing the location of the camera, target point/viewing angle, and lighting source that corresponds to the location from where the existing image has been taken, is not provided;
- The proposed built envelope and key features of the development cannot be relied upon as the existing image is inaccurate;
- The metadata from the existing image to create an identical 3D computer generated camera has not been adequately provided and what has been provided cannot be verified;
- The environmental conditions of the CGI have not been set to the same parameters as the existing image, as clearly the existing image position has not been verified
- The details of the software used in creating the CGI has not been stated adequately as part of the submission of the photomontage, and no verification can be made;
- A detailed summary of the methodology used to create the photomontage has not been adequately provided, including:
 - survey data
 - site specific topographical data
 - the camera type, lens, focal length or field of view, and sensor used for the purpose of the photograph from which the existing image has been derived;
 - accurate location, alignment and direction of the camera (whether fixed on tripod or drone) and RL of the camera for the existing image;
 - data that was used to prepare the Photomontages, such as: use of relevant plans and data for the depiction of existing buildings or existing elements as shown in the wire frame, block massing model or photorealistic CGI; the means by which terrain has been generated (such as surveyed spot levels and/or contours or by some form of point cloud, or Ground Control Point survey method); any variables applied to the images such as, time of day, lighting and weather conditions; consistency in application of scale and interpretation of the relevant data; rationale for selecting a particular view, use of camera lens or conditions in creating the image. For example, in circumstances where a

development is best depicted with an expanded field of view or panoramic view, the type of panorama head and equipment must be stated, in addition to the data above.

- where a photomontage has used more than one baseline image to represent the existing context (that is where multiple images are 'stitched together'), this must be stated, and the requirements above should be adapted to convey the key data required to verify its accuracy;
- whether any editing software or other visual manipulation has been used in the preparation of the final image, for example an adjustment in contrast, saturation, tilt shift or the like.

Photomontages must be carried out by taking photographs from my clients highly used rooms, on a tripod, using the correct fixed camera, in the sunshine, properly surveyed for precise location and viewing height. The photomontage must use the Registered Surveyors digital survey to accurately locate the viewpoint and the subject site, and the digital drawings of the proposed development. All proposed new tree canopy must be shown to define view loss from future canopy.

The Photomontages must show:

- View reference plan showing where photograph was taken from;
- Photomontage overlaid with basic solid block model of proposed development as 50% transparency or as red outline. This document is used to highlight roof RLs of proposed building and surrounding development;
- Photomontage overlaid with basic solid block model of a more skilful design options as transparency. Include red outline of proposed SSD model;
- Photomontage overlaid with basic solid block model of proposed development;
- Verification Photomontage - Photomontage with computer model of existing development as a 50% transparency overlaid with existing RL's and reference points indicated. This is used for "proof of positioning" and accuracy of perspective of proposed 3D model;
- Provide letter of authentication regarding accuracy of photomontage and construction of 3D model;
- The method used in the construction of a photomontage. Existing buildings are drawn up in 3D and overlaid in the photograph. The position and aspect of the 3D model is verified in the photograph with up to 25 check points that must match exactly. The check points typically to be existing ridge/gutter RLs, roof shapes, boundary fences, power poles and building footprints. These items become the test points for "proof of positioning" which are indicated in the verification photomontage for The Department or NSWLEC.

I contend the Photomontages presented have not shown unaltered and real-life baseline, with a summary of metadata so the veracity of imagery presented can be verified, and application of relevant overlays of the proposed development. This has not been completed.

VIEW SHARING ASSESSMENT & NSWLEC TENACITY CONSULTING V WARRINGAH COUNCIL

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

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

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

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

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

The development breaches multiple planning controls and is unreasonable.

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

APPLICATION OF TENACITY PLANNING PRINCIPLE

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

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

STEP 1 VIEWS TO BE AFFECTED

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

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (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.

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

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

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

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

STEP 2: FROM WHERE ARE VIEWS AVAILABLE

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

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

The views in all cases are available across the boundary of the subject site, from

standing and seated positions. An arc of view is available when standing at highly used zones on the neighbour's property.

STEP 3: EXTENT OF IMPACT

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

Step 3 as quoted is:

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

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

STEP 4: REASONABLENESS

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

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

In *Tenacity* Step 4 is described as below:

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more 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.

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

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

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

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

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

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

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

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

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

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

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

In my opinion the extent of view loss is considered to be greater than moderate, in

relation to the views from the neighbour's highly used zones of the neighbour's dwelling. The view is from a location from which it would be reasonable to expect that the existing view, be retained. The private domain visual catchment is an arc from which views will be affected as a result of the construction of the proposed development. The proposed development will create view loss in relation to the neighbour's property. The views most affected are from the neighbour's highly used zones and include very high scenic and highly valued features as defined in Tenacity. Having applied the tests in the Tenacity planning principle I conclude that neighbour's property would be exposed to a loss greater than moderate from the highly used rooms. The non-compliance with planning outcomes and controls of the proposed development will contribute to this loss. Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

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

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

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

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

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

The same unreasonable scenario in *Rebel* applies to the current SSD. The proposed breaching dwelling will take away views from the neighbour's property (and possibly other adjoining properties) to the considerable benefit of the future occupants of the proposed dwelling. This scenario is not consistent with the principle of View Sharing enunciated by his Honour, Justice Moore in *Rebel*. The adverse View Loss from the

neighbour's property is one of the negative environmental consequences of the proposed development. The proposed development cannot be supported on visual impacts grounds.

These issues warrant refusal of the SSD.

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

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

The following photographs show multiple devastating view loss caused by non-compliant development:

The Department will note the following:

- LEP HOB 21.0m level, at proposed slab level RL 42.7:
[approximately the height of the top of the lift tower on #300 BBR]
- LEP HOB 21.0m + 30% AH Bonus level, at proposed slab level 49.3:
[approximately 7m above the height of the top of the lift tower on #300 BBR]

The Department will note:

VIEW TYPE

Water View, Harbour Bridge, City Skyline, Land/Water Interface View, Headland Views, Local Landscape & Skylines.

SEVERITY:

DEVASTATING [to be confirmed after VIA completed]

CAUSE:

Non-compliance to Height of Building LEP HOB 21m & LEP HOB 21m + 30% BONUS & FSR

APPLICANT'S VIEW IMPACT ASSESSMENT [VIA]:

Not completed

MY CLIENTS DEVASTATING LOSS OF VIEW

280-288 BURNS BAY ROAD, LANE COVE. SP88541. BUILDING 2 (B). Level 7:
UNIT 2601 (Lot 82)



280-288 BURNS BAY ROAD, LANE COVE. SP88541. BUILDING 2 (B) Level 7:
UNIT 2602 (Lot 83)



280-288 BURNS BAY ROAD, LANE COVE. SP88541. BUILDING 2 (B) Level 7:
UNIT 2603 (Lot 84)



280-288 BURNS BAY ROAD, LANE COVE. SP88541. BUILDING 2 (B) Level 7:
UNIT 2604 (Lot 85)



Proposed development above the LEP HOB 21m and LEP HOB 21m + 30% Bonus height plane will create unreasonable view loss.

The Applicant has not provided any VIA from 280-288 BURNS BAY ROAD, BUILDING 2 (B); Level 7: 2601 (Lot 82), 2602 (Lot 83), 2603 (Lot 84), 2604 (Lot 85)

The viewpoints selected by the VIA, are either viewpoints that do not have water views, or lower-level views that are below the 21m HOB level. The VIA is presenting very selective viewpoints that are totally unrepresentative of the water views that are available above the LEP HOB 21m + 30% Bonus height plane, from multiple apartments.

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

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

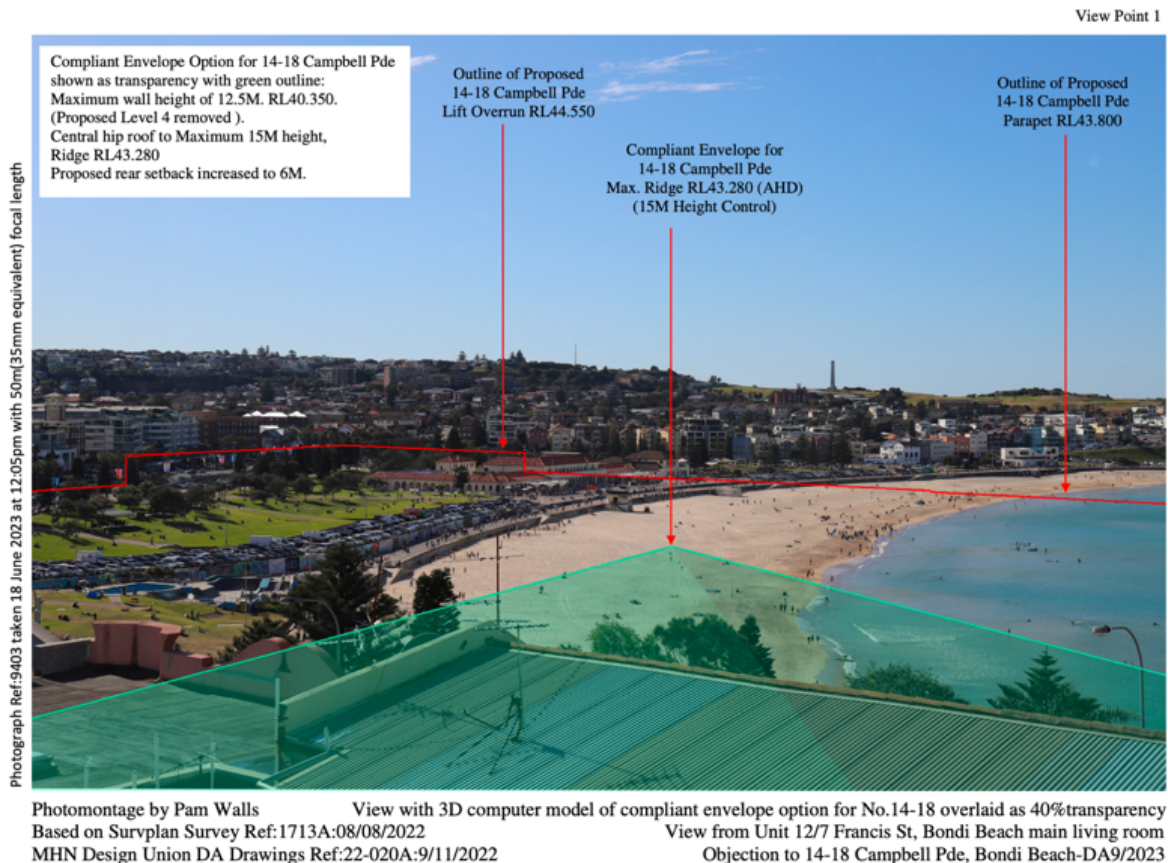
Tenacity continues to be the planning principle; however, my contention is that multiple recent decisions by NSWLEC Commissioners help better define and re-enforce the guiding principles.

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

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

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

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



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

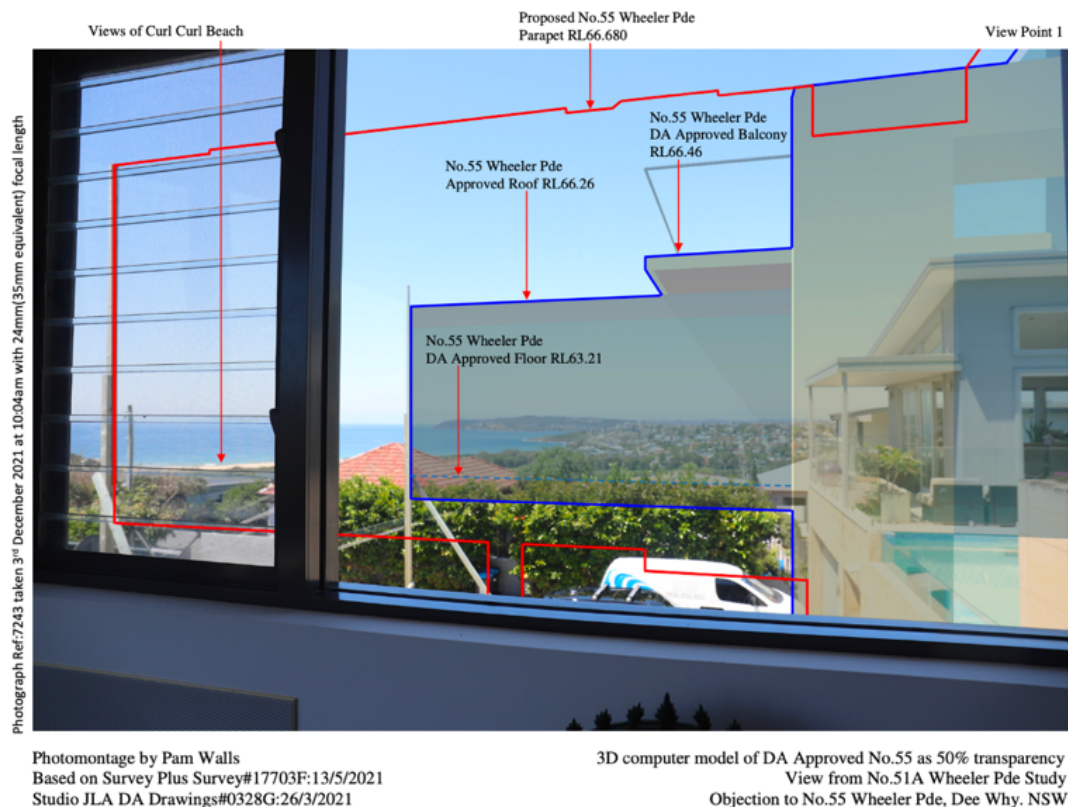
“The controls in the WDCP are not merely building envelope controls, but extend to specific controls concerning the increase of setbacks to minimise view loss, as well as controls requiring the incorporation of design measures to facilitate view sharing. Much of the impact arises from the non-compliance with the control in the WDCP concerning the maximum number of storeys. The control is for a maximum of four storeys with which the proposed development does not comply. Having regard to the Photomontages that have informed the view impact analysis, it is clear from the wireframes that much of the built form that obstructs the views arises from the additional fifth-storey that is contrary to this four-storey controls. It is therefore clearly contemplated that numerical compliance is not sufficient, and additional setbacks

ought to be utilised to minimise view loss.... increasing the side boundary setbacks from that proposed would improve view sharing corridors. The proposed development has not done so....the severe impacts on views from the most affected properties are unacceptable as they are caused by the breach of the storey control, the failure to provide adequate side setbacks at the upper level, and the failure to use any other design measures to facilitate view sharing and minimise view loss. This is contrary to the objective to "minimise view loss from existing developments by proposed development. In accordance with Tenacity at [29], where "an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable".

CASE STUDY: FURLONG V NORTHERN BEACHES COUNCIL [2022] NSWLEC 1208

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

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



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

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

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

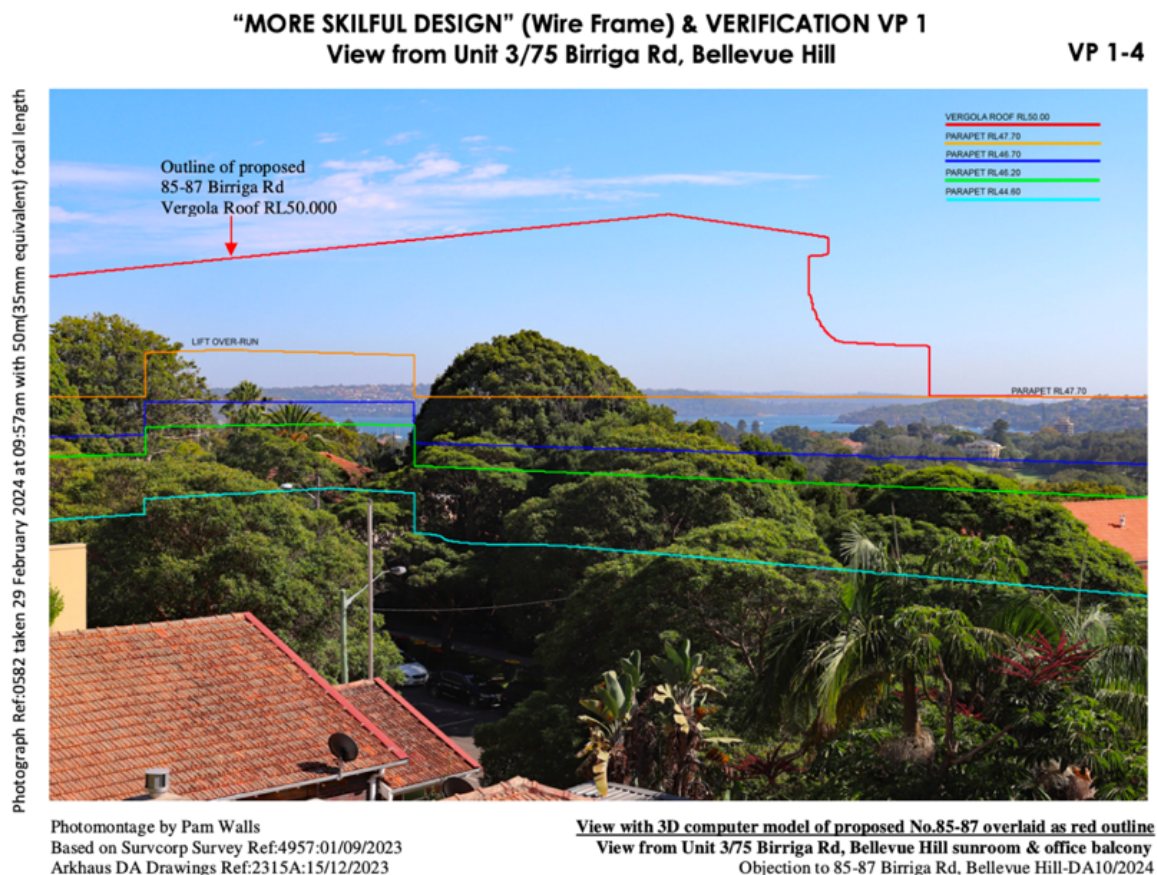
The key-takeaway from this decision is that views that are not perceived from the front and rear boundaries of a property can still be protected if they are of 'high value' and not replicated in other areas of the property. In such circumstances, the loss of 'high

value' views could be considered to cause severe view loss and may be able to be protected.

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

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

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



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

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

Commissioner Pullinger states within cl 23[5]:

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

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

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

CASE STUDY: COLLAROY LIVING PTY LTD V NORTHERN BEACHES COUNCIL [2024] NSWLEC 1352

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

Neighbours would have suffered devastating view loss over the coastal views.



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

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

The Commissioner stated within the findings in CI 87:

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

These reasons primarily include:

- 1. the siting and height of the four pavilions comprising the development;*
- 2. the approximately "like for like" view impacts as between the proposed development and existing dwellings as demonstrated in the VIS; and*

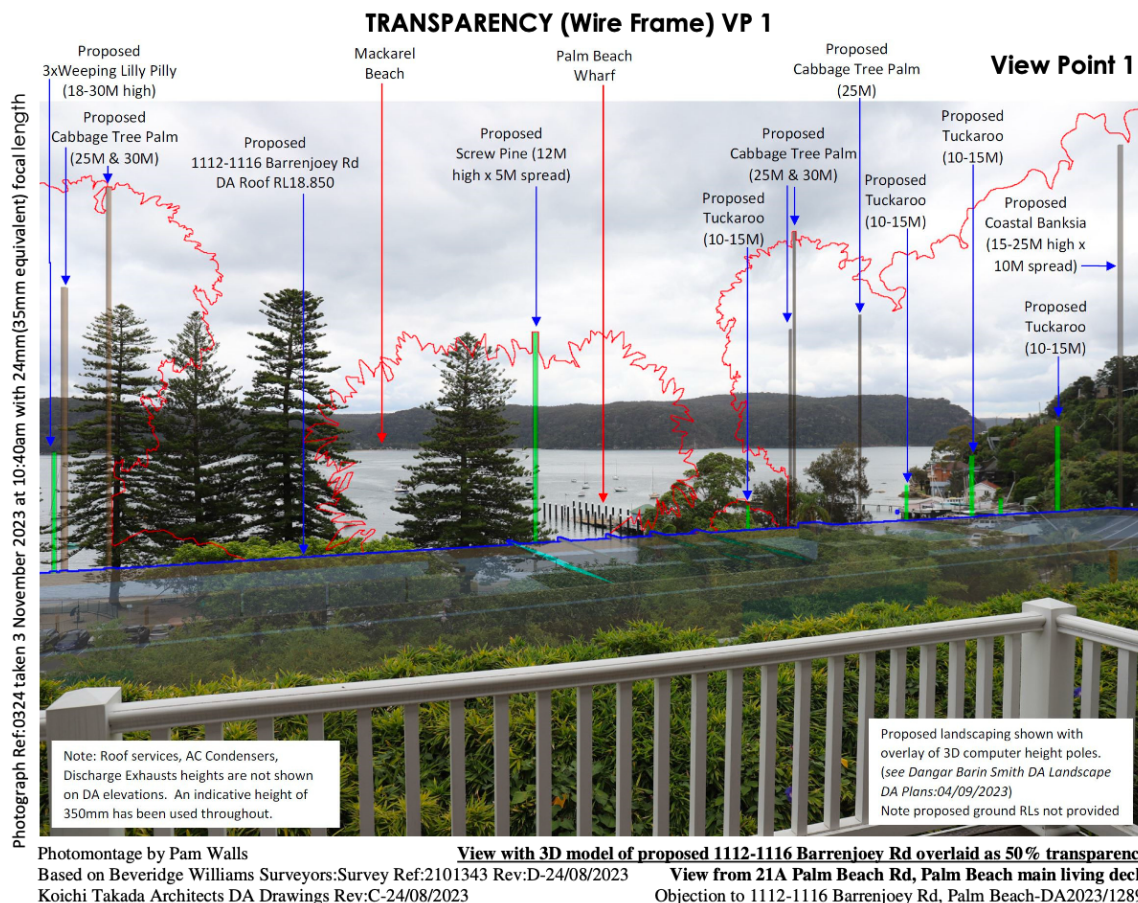
3. *the selection of trees and landscaping to ensure the retention of views.”*

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

CASE STUDY: PALMDEV PTY LTD V NORTHERN BEACHES COUNCIL [2025] NSWLEC

This case involved an Applicant proposing built form that did accord with Height of Building standards.

Neighbours would have suffered moderate to severe view loss over Pittwater, as can be witnessed by the red line on the attached montage.



During the course of the proceedings, an entire floor level was removed, removing the view loss of the near water/beach interface.

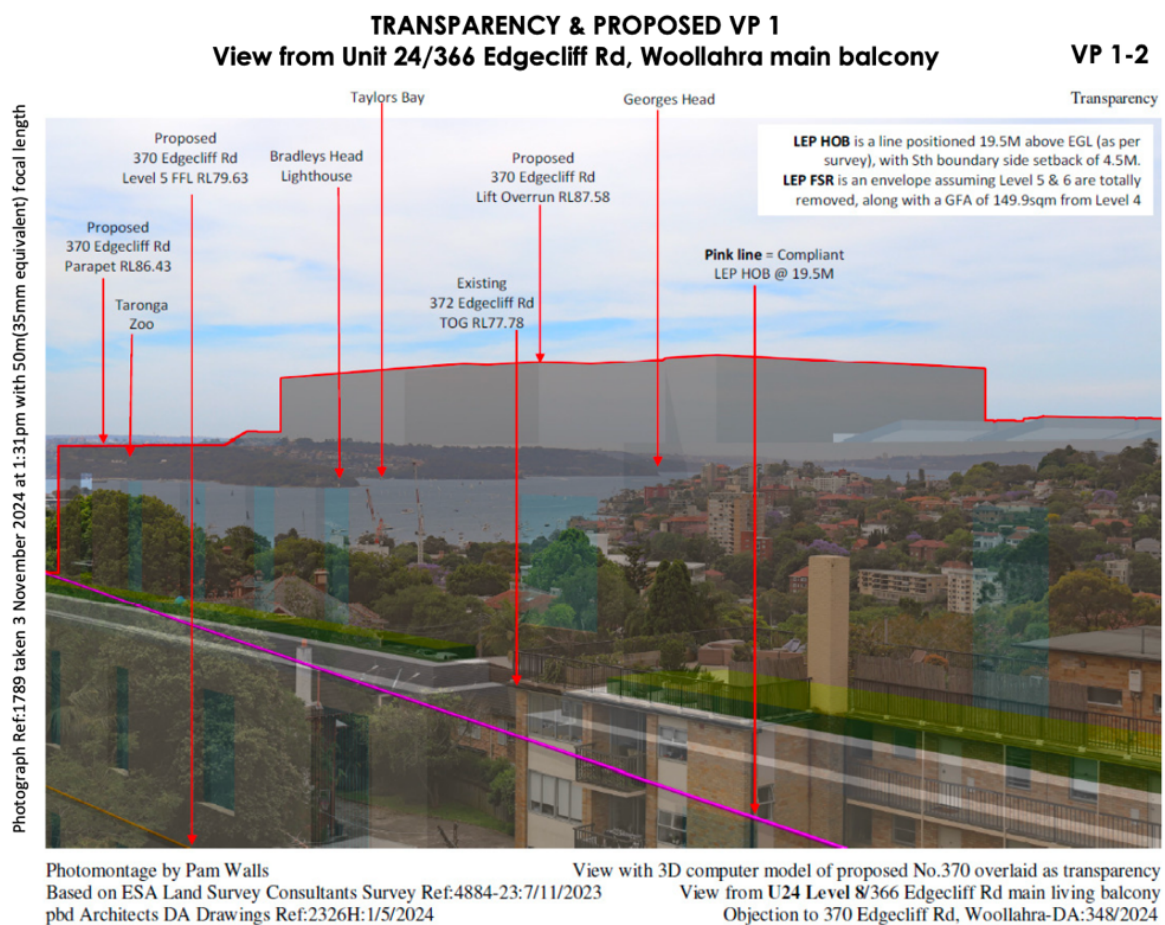
CASE STUDY: PROPERTY: HSN CONSTRUCTION NSW PTY LTD V WOOLLAHRA MUNICIPAL COUNCIL [2025]

This case involved an Applicant proposing a residential flat building with Affordable Housing bonus provisions.

The proposal was generally compliant with envelope controls as allowable under the Affordable Housing bonus provisions.

The Department of Planning's Practice Note in relation to Affordable Housing bonus provisions issued in December 2023 clearly states that:

"The full extent of the in-fill affordable housing bonuses may not be achieved on all sites due to site constraints and local impacts. The in-fill affordable housing bonuses should not be treated as an entitlement."



Woollahra LPP refused the DA in May 2025, due to

- *'adverse impacts of adjoining properties in terms of significant view impacts, overshadowing, daylight access, privacy and visual impact associated with the proposed development';*
- *'the full extent of the in-fill affordable housing bonuses cannot be achieved and accommodated in the circumstances of this case.'*
- *The proposed development will result in devastating impacts on the amenity of neighbouring apartments, in particular in relation to loss of views including harbour, district and sky views and access to daylight and sunlight. The view impacts are predominantly related to the uppermost floor/s of the proposed building, while the non-compliances with building separation controls associated with side and rear setbacks contribute to unacceptable amenity impacts in relation to loss of access to daylight, sunlight, visual impact and a sense of enclosure.*
- *The proposed development is inconsistent with the Chapter 4: Design of Residential Apartment Development, Schedule 9: Design Principles for Residential Apartment Developments, and the Apartment Design Guide. Aims of Chapter 4 and contrary to the design principles set out under Schedule 9 specifically relating to: Design Principle 2 - Built Form and Scale; Design Principle 3 – Density; Design Principle 6 – Amenity*

The DA was eventually heavily amended, within the S34, with significant setbacks at the upper levels to better share the harbour view.

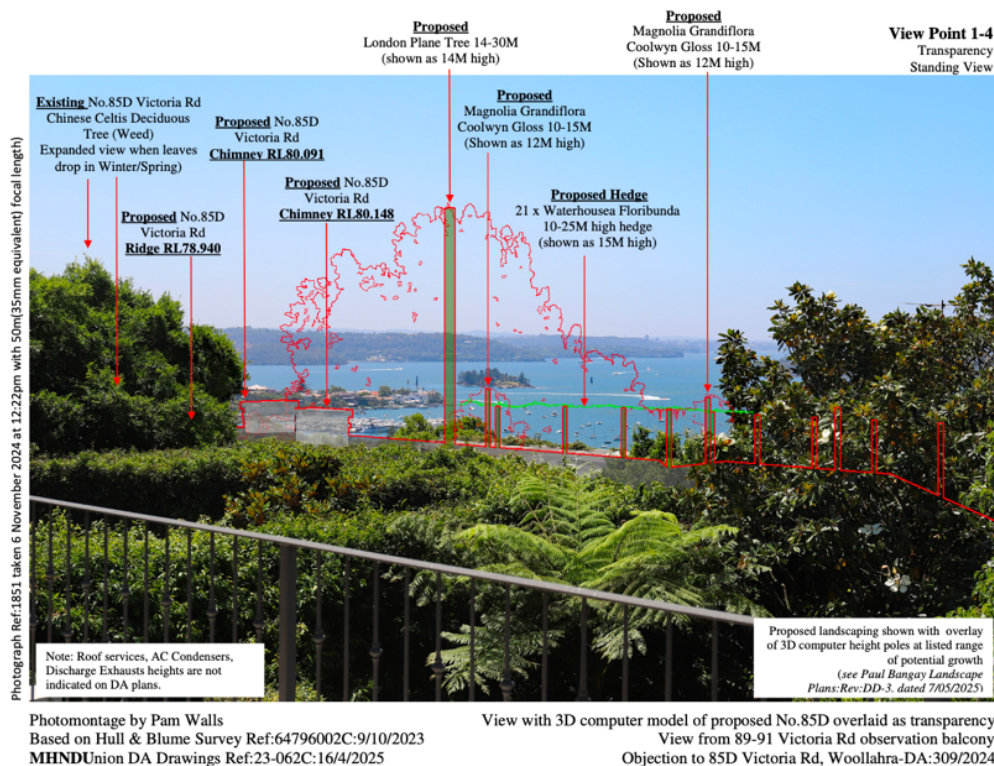
CASE STUDY: PROPERTY: STEPHEN DASH V WOOLLAHRA MUNICIPAL COUNCIL [2025]

This case involved an Applicant proposing a non-compliant multi-storey dwelling house.

The WLPP refused the DA due to excessive view impacts caused by the proposed built form in excess of HOB standards and excessive landscape canopy.

- Height of Buildings: The proposed height of the development including landscaping does not meet the following objective of the Height Standard under Clause 4.3 of the Woollahra LEP 2014: *(d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion*
- Excessive View Impacts to Adjoining Properties: The proposed dwelling and landscaping will result in excessive view impacts to adjoining properties and does not constitute a satisfactory view sharing outcome. In this regard, it is contrary to the following provisions of the Woollahra DCP 2015

Neighbours would suffer view impacts to harbour views, land/water interfaces, headland views, island views, and views over Rose Bay Marina.

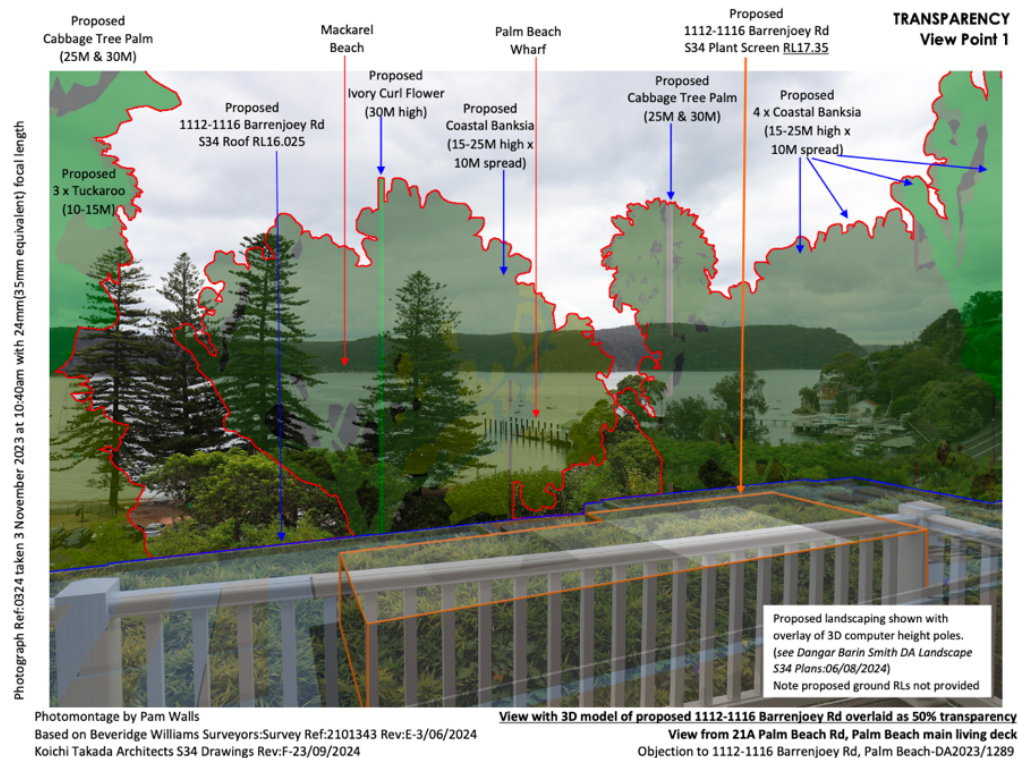


During the course of proceedings amendments were carried out to significantly reduce the built form, and limit the potential view loss from proposed canopy trees.

CASE STUDY; PALMDEV PTY LTD V NORTHERN BEACHES COUNCIL [2025] NSWLEC

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

Neighbours would have suffered a devastating view loss over the Pittwater views.



The matter was resolved by agreement of conditions that included:

Condition 9. Amended Landscape Plan

a) Amended Landscape Plan(s) shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

ii) all proposed trees and vegetation in the rear setback shall not exceed a mature height greater than 5m substitute the proposed species with smaller native tree or shrub alternatives where appropriate

iii) all proposed trees in the side setbacks shall not exceed a mature height greater than the immediately adjacent built form height; substitute the proposed species with smaller native tree alternatives where appropriate,

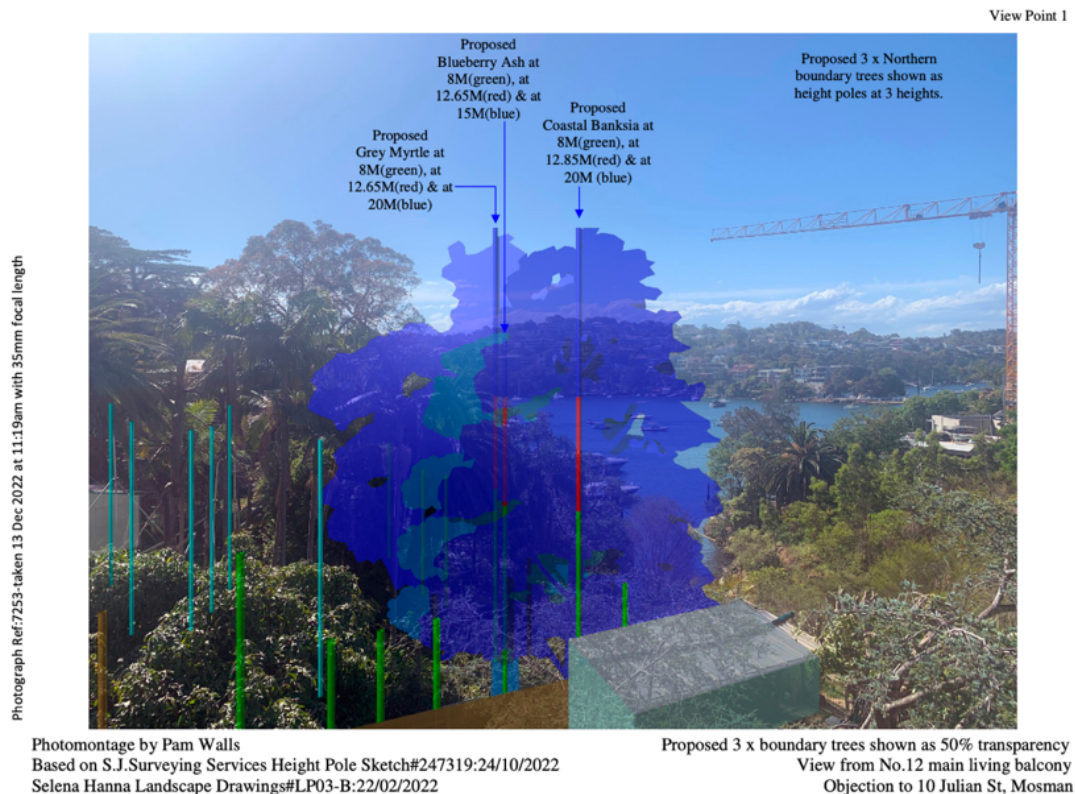
iv) all supplementary vegetation in the side setbacks (i.e. not trees) shall not exceed a mature height greater than the immediately adjacent built form height; substitute the proposed species with smaller alternatives where appropriate,

b) certification shall be submitted to the Certifier that these amendments have been documented. Reason: Landscape amenity.

CASE STUDY: HONG V MOSMAN MUNICIPAL COUNCIL [2023] NSWLEC 1149

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

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



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

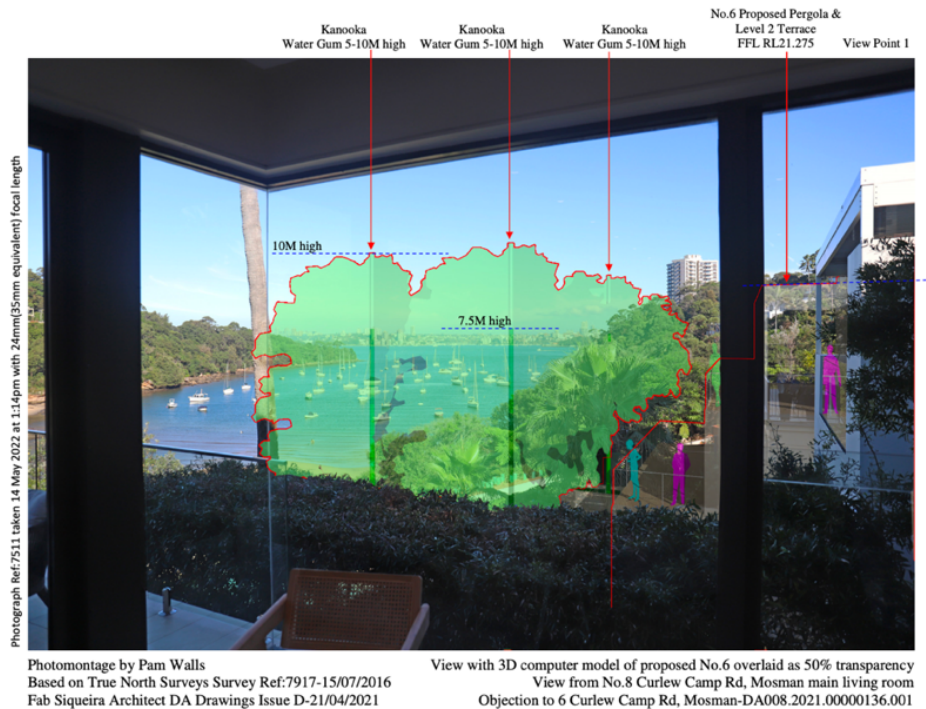
In regard to landscaping and tree protection, I note again that in Court and to some degree of detail, I worked through with the experts the various points of concern raised. This resulted in a number of further agreed alterations to the landscape plan. The Revision C drawings, based on the evidence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

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

CASE STUDY: ZUBANI V MOSMAN MUNICIPAL COUNCIL [2022] NSWLEC 1381

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

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



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

H. OVERSHADOWING IMPACT

- 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. A schedule must be provided, window by window of all highly used rooms within southern neighbours, to clearly identify windows to living/dining/kitchen/study.
- The proposed development fails to provide an adequate Overshadowing Assessment.

I contend that the overshadowing impacts are unacceptable as:

- the proposal does not fully comply with the building height, FSR, 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
- some properties will not receive some direct sunlight to either their living or POS areas on 21 June
- the public domain and street trees will not retain at least 2 hours solar access between 10am and 12pm on June 21

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 1m² 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 Council's controls:

LANE COVE DCP

9am-3pm

OPEN SPACE: 3 hours to be maintained at winter

LIVING ROOMS: 3 hours to be maintain at winter

My clients are very concerned about the overshadowing of 300A – 300C BURNS BAY ROAD, LANE COVE. SP6522, and the failure to provide adequate solar access to 125 Units, to accord with:

Winter 9am-3pm:

- OPEN SPACE: 3 hours to be maintained at winter
- LIVING ROOMS: 3 hours to be maintain at winter
- SOLAR PANELS: 4 hours
- CLOTHES LINES: located at 300A – 300C BURNS BAY ROAD, LANE COVE. SP6522, as follows: 300A: above the roof above each of three entrance section & 300B & 300C: to the east of 300B, and north-east to 300C

The Applicant has not shown View from the Sun Diagrams, at the complying LEP 21m HOB or the LEP 21m + 30% Bonus, with detailed schedules showing compliance to all controls.



300A BURNS BAY ROAD, LANE COVE. SP6522
North facing façade facing the subject site in full equinox sunshine

I. 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 clients' daylight.

J. 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.

K. ACOUSTIC PRIVACY

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

L. 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 clients' property.

M. AIRFLOW

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

N. RESIDENTIAL AMENITY

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

O. BIODIVERSITY & CONSERVATION

- The proposed development has not provided an adequate Biodiversity Development Assessment Report (BDAR) and Vegetation Management Plan (VMP) that assesses any biodiversity impacts associated with the development in accordance with the Biodiversity Conservation Act 2016 and the Biodiversity Assessment Method 2020;
- The proposed development is not consistent with the relevant biodiversity measure conferred by the biodiversity certification;
- 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.

P. GEOTECHNICAL

- The proposed development has not ensured that all excavation, fill and piling removed from the setback zones from my clients' 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 SSD 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 clients' 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.

Q. 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 clients' property. Provide multiple stormwater pits along my clients' 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;

R. 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;

S. BUSHFIRE

- The BAL rating of the subject site appears to be under assessed.

T. 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 ALL nearby sensitive receivers and structures and outline the proposed management and mitigation measures that would be implemented.

U. 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.

V. 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 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

W. CUMULATIVE IMPACTS

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

X. SUITABILITY OF SITE FOR DEVELOPMENT

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

Y. 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 PHOTOMONTAGES for the affected properties in accordance with the NSW Land and Environment Court Policy for Use of Photomontages;
- 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. A schedule must be provided, window by window of all highly used rooms within southern neighbours, to clearly identify windows to living/dining/kitchen/study.
- 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;
- Visual impact
- Privacy impact
- Visual bulk
- Geotechnical
- Transport Assessment – to assess traffic implications;
- Noise And Vibration Assessment – to identify appropriate outcomes;
- Water Management Assessment – updated engineering details to ensure no water flows onto my clients' property;
- Ground And Groundwater Assessment – deeper drilling required to identify risks;
- Qualitative Wind Assessment – additional recommendations to improve the design outcomes for neighbours;
- Contamination & Remediation Assessment – incomplete;
- Ecologically Sustainable Development Assessment – incomplete;
- Biodiversity Assessment – incomplete;
- Bush Fire Risk Assessment – incomplete in respect to mass escape processes

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 Council* [2013] NSWLEC 1141

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

- *How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?*
- *How reasonable is the proposal causing the impact?*
- *How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?*
- *Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?*
- *Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?"*

I contend that the proposed development severely impacts 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 SSD must be refused for the following reasons:

- The application has not adequately considered and does not satisfy the various relevant planning controls applicable to the site and the proposed development;
- The proposed development is incompatible with the existing streetscape and development in the local area generally;

- The proposed development will have an unsatisfactory impact on the environmental quality of the land and the amenity of surrounding properties;
- The site is assessed as unsuitable for the proposal, having regard to the relevant land use and planning requirements;

It is considered that the public interest is not served.

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

Having given due consideration to the matters pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended, it is considered that there are multiple matters which would prevent 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.

The EIS & Rezoning Report reaches a conclusion that is incredible.

The EIS states on page 107 states:

A building form compliant with the existing height controls (and the Infill Affordable bonus) would also give rise to visual and view impacts from surrounding areas. While

the proposal development results in additional visual and view impacts, the development has sought to mitigate these through design measures including: Built form breaks at upper levels to provide visual interest and built form relief; Visual modulation visually separates the built form into three sections; Landscaping to enhance the pedestrian experience; Upper-level setbacks and locating higher built form at the western edge of the site and stepping massing down towards the east.

Comment: The Applicant, nor the author of the EIS, has identified the devastating visual and view impacts caused to hundreds of neighbours. The contempt of the application, in not supplying adequate view impact assessment, and visual assessment is simply an attempt to misrepresent the actual position. There are dozens of neighbours that will completely lose their water views from proposed development above complying envelopes. This is unreasonable and unacceptable. What is worse, is that the EIS has not even addressed the matter. The SSD can only be refused on these grounds.

The EIS & Rezoning Report reaches a conclusion on overshadowing that is incredible.

The EIS on page 107 & 108 states:

It is acknowledged that the proposal will result in overshadowing and solar access impacts to surrounding residential buildings, however the primary living and private open space for dwellings within 300A, 300B, 300C and 302 Burns Bay Road benefit from a south orientation for view access to Lane Cove River and gain their amenity from that outlook. While the primary living spaces and private open space for neighbouring residential buildings are largely unaffected, the existing solar access provision to these living areas and private open space areas for neighbouring buildings are non-compliant with the design criteria of Objective 4A-1 of the ADG. While there are overshadowing impacts to secondary living spaces within neighbouring buildings including dining areas and kitchens, specifically to 300A Burns Bay Road, the ADG does not set a specific solar access requirement for secondary living spaces and these impacts must be balanced against the impacts arising from a scheme that could be delivered on the site under the existing Lane Cove LEP and Housing SEPP bonus provisions.

Comment: This commentary is plainly misrepresenting the actual position as identified within this Submission. The Applicant has not carried out a basic understanding of the hundreds of north facing living room windows facing the subject site within 300A, 300B, 300C and 302 Burns Bay Road that solely rely upon that solar access. The statements made above are totally false. The Applicant has not even bothered to survey the windows, private open spaces and multiple north facing drying zones to be able to even to begin to assess the matter. The Applicant has failed to define the LEP or LEP +30% Bonus outcomes on these windows and other zones to define the

differences between complying envelopes. The SSD can only be refused on these grounds.

I am concerned on the inadequacy of the Traffic Report, and the ability of the surrounding development to cope with the increased traffic demands. My clients are commissioning a Peer Review on that Traffic Report.

I have advised my clients that it is therefore essential to provide the Department with sufficient information to define these devastating amenity losses. These reports will take several weeks to procure, and this matter has been identified to the Department within the first week of the Exhibition Period.

I have not witnessed such an unacceptable EIS on a major scheme. The level of misrepresentation is extreme.

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 SSD 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 SSD.

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 SSD.

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
- Flood Effects caused by Development
- 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 Council's 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 Council. 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;
- Slope Risk Assessment: The slope risk assessment incorporates several hazards and does not appear project or site specific. It does not provide an explanation of how the risk assessment was completed, contrary to AGS 2007, and provides only results which are coincidentally at the "Acceptable" risk criteria of Councils Risk Management Policy, suggesting an actual assessment was not undertaken;
- 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
 - Flood – updated reports and drawings as necessary
 - Bushfire – 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
 - Heritage. Excavation Effects on Adjacent Heritage Buildings (a) Prior to the issue of a Construction Certificate, a detailed methodology is to be submitted to the satisfaction of Council to address excavation effects on adjacent heritage buildings. The detailed methodology must address the following: (i) Present the investigation, inspection and potential support method to be adopted to support the excavation. (ii) Include a Geotechnical Monitoring Plan (GMP), which includes requirements to complete a condition survey of the adjacent buildings. (iii) Consider access restrictions to neighbouring properties. (iv) Include requirements for consultation with affected residents of the adjoining buildings and provide details of a direct contact number for those residents to contact in the event of damage occurring. (v) Include the requirement to monitor the movement of the adjacent buildings at the boundary and the condition of the building during excavation. (vi) Should there be more than 10mm movement at the boundaries with adjacent heritage buildings, excavation must stop immediately and the certifying structural engineer is to: i. submit revised predictions of deformations and damage; and ii. submit a proposal on how to rectify the damage to the satisfaction of Council (vii) The rectification of any damage to the adjacent buildings caused by excavation works is the responsibility of the developer. Any rectification works must make good the building and bring it back to its original condition pre-construction prior to

the issue of the final Occupation Certificate for the residential component of the building. (b) The detailed methodology is to be accompanied by a certificate by a geotechnical and structural engineer confirming that if this methodology is adopted there will be no impact on the structural integrity of the adjacent buildings.

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 Council 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 Council, if Council 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 Council'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
 - Heritage: Sites in the vicinity of a heritage item. A protection strategy for the duration of the construction works, is to be submitted to and approved by Council's Area Planning Manager prior to the issue of any Construction Certificate. The Strategy is to detail how the proposed works will ensure that the adjoining dwellings are to be suitably protected and stabilized during the construction process including from any construction waste, dust, damp, water runoff, vibration or structural disturbance or damage.
 - 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 Council'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