

TUESDAY PROJECTS

TOWN PLANNING



Submission

SSD-17424905 – 20 Avon Road, Pymble

4 December 2021

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Project Details

Client: Owner of 57A Pymble Avenue, Pymble
Subject land: 20 Avon Road, Pymble
Lot Description: Lot 1, Deposited Plan 69541
Local Government Area: Ku-ring-gai Council
Project Title: Grey House Precinct, Pymble Ladies College
Project Description: The redevelopment of the Grey House Precinct within the grounds of the established College.

The report is prepared by

Emma Rogerson
Specialist Town Planner
Master of Urbanism (Urban and Regional Planning) (USYD)
Bachelor of Architecture and Environments (USYD)
Planning Institute of Australia (Assoc.)



I certify that the contents of this report to the best of my knowledge, has been prepared as follows:

- In accordance with, and with consideration to, the Environmental Planning and Assessment Act 1979;
- To the best of my knowledge the information contained in this report is neither false nor misleading.

Emma Rogerson

Signed: 4 December 2021

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1. Introduction

Neither the property owner of 57A Pymble Avenue, Pymble nor the author of this submission have made any political donations in the past 2 years.

The property owner of 57A Pymble Avenue, Pymble have engaged Emma Rogerson of Tuesday Projects to undertake an assessment of SSD-17424905 concerning the redevelopment of the Grey House Precinct at Pymble Ladies College, 20 Avon Road, Pymble on Lot 1, Deposited Plan 69541.



Figure 1 – Site Locality Map (Google Maps, 2021)

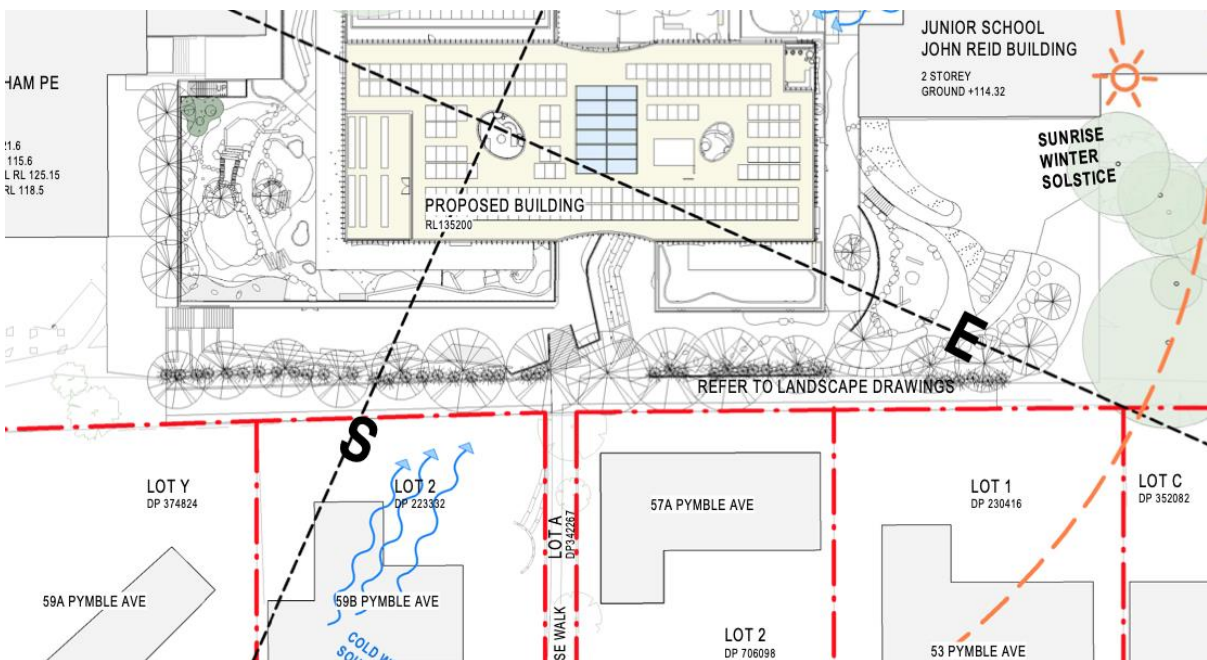


Figure 2 – Site Locality Map (BVN Architects, 2021)

The Grey House Precinct proposes to incorporate the following on site:

- Junior School classrooms (Years 5 and 6);
- Science, Technology Engineering and Mathematics (STEM) labs;
- Health and wellbeing facilities (consulting rooms and wards);
- Dance academy;
- Out of School Hours Care (OSHC) facilities;
- Early Learning Centre (ELC); and
- Outdoor learning spaces.

This assessment is based on a review of the development application plans and documents available for inspection on the NSW Planning Portal website and a site visit.

The Grey House Precinct proposal at 20 Avon Road, Pymble raises considerable concerns regarding overshadowing, overlooking, acoustic privacy, vehicular and pedestrian traffic congestion, visual bulk and scale and incompatibility with its surroundings. Consequently, it will pose an unacceptable impact on the residential amenity of its southerly neighbours, and of the character and safety of the locality.

The exceptionally close proximity of the new 5-storey building (which is in reality actually 6-storeys higher than the ground level of 57A Pymble Avenue) to its southern boundary exacerbates the adverse impact that the new structure will have on its southerly neighbours. The distance from the shared boundary with 57A Pymble Avenue to the start of the new structure is only 12.3m, with the highest floor located less than 20m away.

2. Solar Access and Overshadowing

At present, the principal private open space (PPOS) and primary internal habitable rooms of 57A Pymble Avenue, Pymble receive pleasant sunlight throughout the day during the year. This includes sunlight until 4pm during the Winter Solstice, sunlight until after 6pm during the Autumn/Spring equinoxes, and sunlight under after 7pm during the Summer Solstice. The property has been skilfully designed to maximise this northern aspect, in order to reduce the reliance on artificial heating and lighting, and to provide for a pleasant, light home.

Whilst the battle-axe nature of 57A Pymble Avenue allows for an area in front of each main dwelling to be used for passive recreation with a greater extent of privacy than standard street facing lots have, the areas to the rear are substantially more important. This is because the rear outdoor space is directly accessible from the primary internal living areas, contains the most visual and acoustic privacy, and is more frequently utilised, rendering it the principle private open space (PPOS) area.

The works proposed under SSD-17424905 will substantially decrease the amount of sunlight received by the PPOS and primary living rooms of 57A Pymble Avenue from midday onwards. As per the proposed shadow diagrams shown in figures 3 and 4, there is severe overshadowing by the

Grey House building throughout the entire afternoon, caused by the minimal proposed southern setback, substantial scale and bulk, and the sloping terrain which naturally elevates the development site.

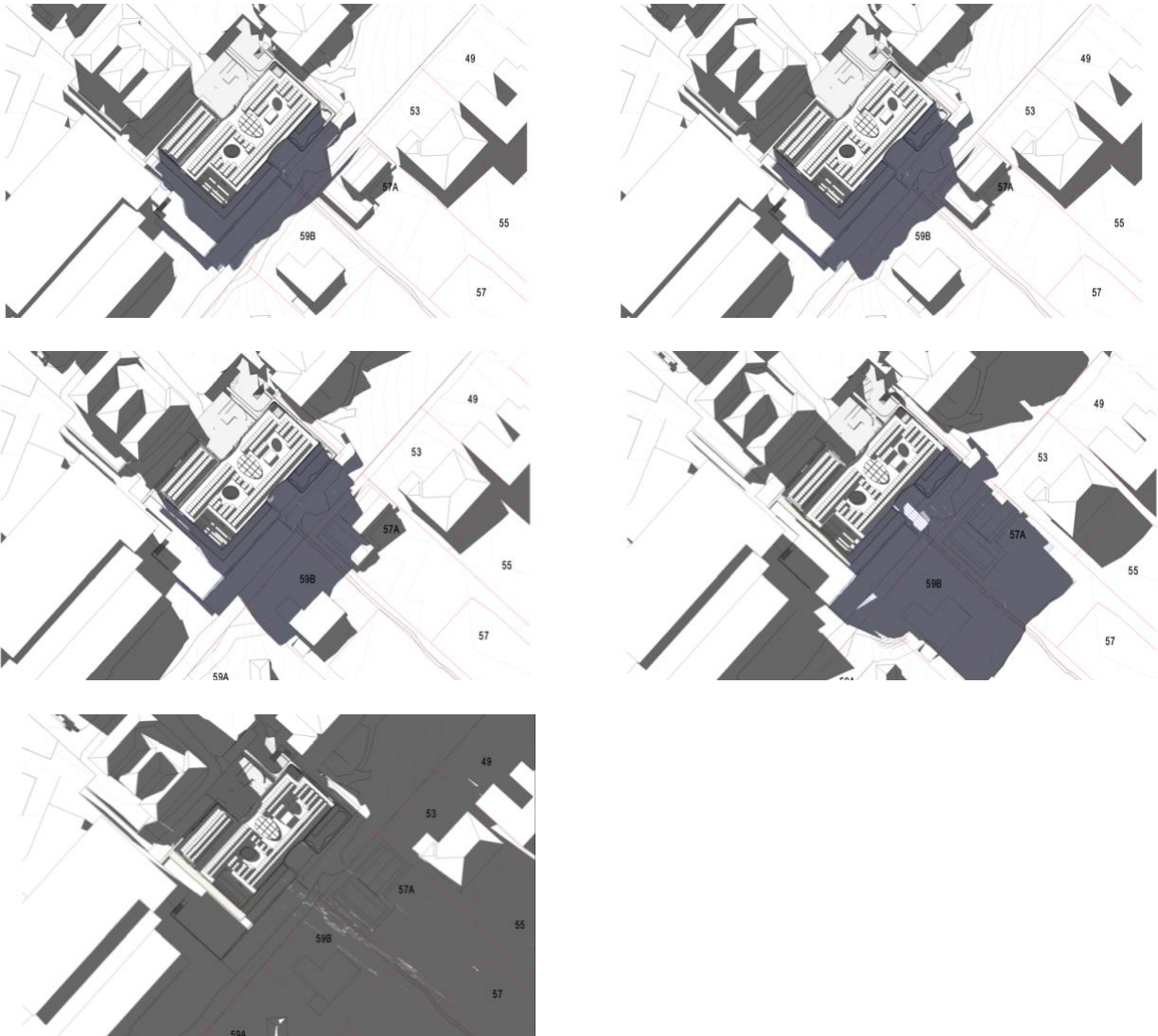


Figure 3 – Proposed Winter Shadow Diagrams from 12:30pm – 4pm (BVN Architecture, September 2021)

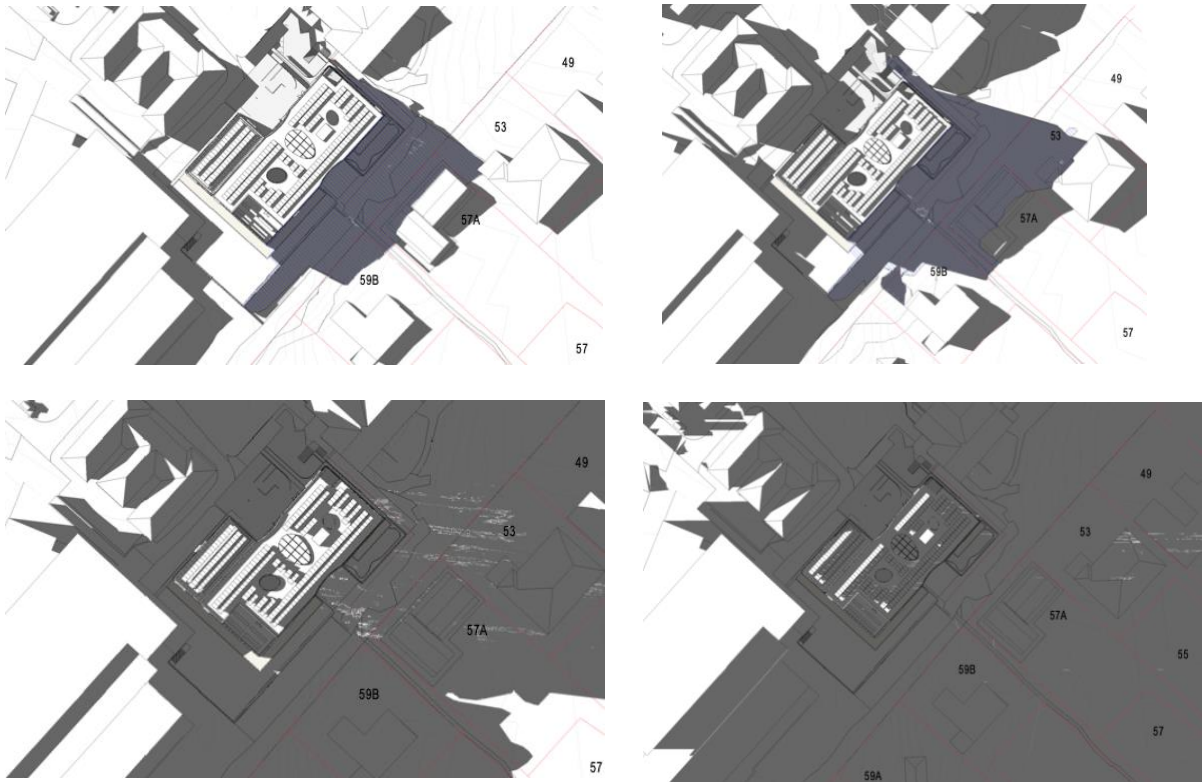


Figure 4 – Proposed Autumn/Spring Shadow Diagrams from 3pm – 6pm (BVN Architecture, 2021)

57A Pymble Avenue features a significantly lower natural ground level than the land at 20 Avon Road, facilitated by a historical excavation and retaining wall installation which positions 57A Pymble Avenue an entire storey below its neighbours to the north and west. The survey submitted (excerpt in figure 5 below) shows the ground level of 20 Avon Road to be the same relative level (RL) as the ground floor roof gutter at 57A Pymble Avenue. This unique context demands special consideration by the proponents of this Application.

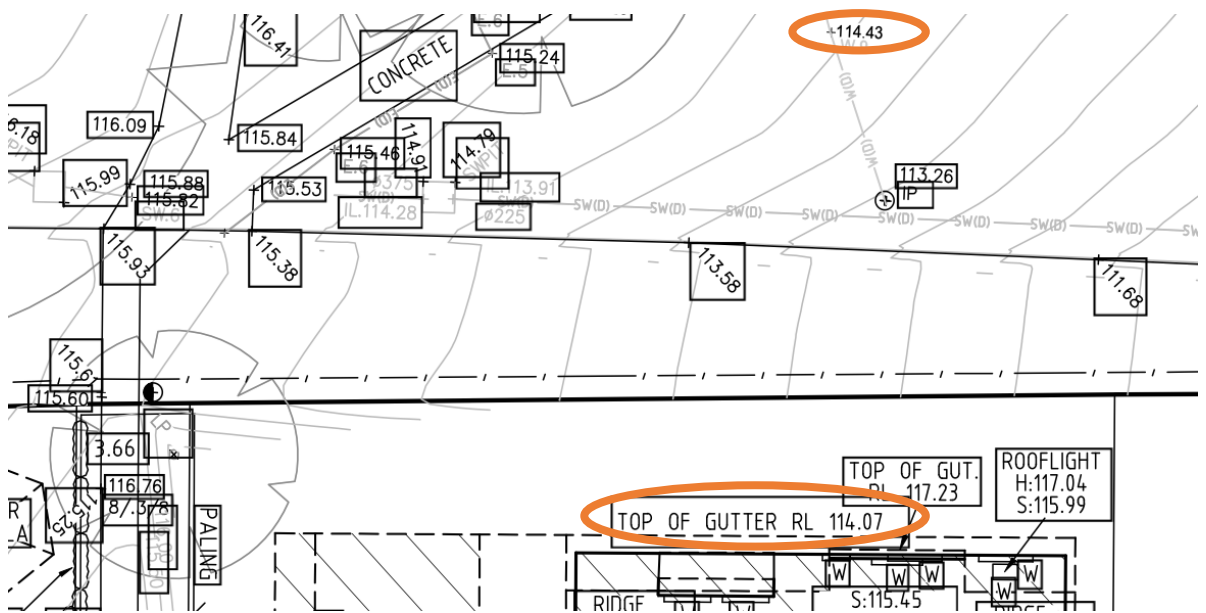


Figure 5 – Survey (LTSL, 2021)



Figure 6 – Terrain difference between 57A Pymble Avenue and 20 Avon Road

It is acknowledged that the *Ku-ring-gai Development Control Plan (DCP) 2015* does not apply in the instance of State Significant Development (SSD). As such, “reasonable sunlight” should be subject to consideration against Planning Principles established in *The Benevolent Society v Waverley Council (2010) NSWLEC 1082* and *Parsonage v Ku-ring-gai (2004) NSWLEC 347*.

Senior Commissioner Moore established the Planning Principles to properly assess the impact of solar access to open space in *The Benevolent Society v Waverley Council (2010) NSWLEC 1082*, concluding that:

“overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guideline” and,

“for private open space to be assessed as receiving adequate sunlight, regard should be had to the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space.”

The overshadowing by SSD-17424905 is a direct result of “poor design” given the ability for a development to reasonably occur on a smaller scale, at a much greater setback away from the neighbouring residential properties. The Environmental Impact Statement (EIS) prepared by WillowTree Planning dated October 2021 clarifies that no increase in student (Kindergarten to Year 12) numbers is proposed under this application. Given the existing approval for the site at present to operate with its current student capacity with its current infrastructure, the construction of a new

building of the proposed scale and with the proposed negative shadowing impact on its southerly neighbours is not justified, and is not considered an appropriate design.

The direct correlation between the proposed building scale and location, and overshadowing impact on the surrounding residents is important.

Furthermore, the rear garden PPOS of 57A Pymble Avenue which is being overshadowed is the only high quality private open space areas for the site, given that it is directly accessible from the primary living area of the dwelling, rendering the area frequently used and important for the current and future residents.

In addition, Senior Commissioner Roseth concludes in *Parsonage v Ku-ring-gai (2004) NSWLEC 347* that numerical guidelines should be applied with a great deal of judgement with the following example provided:

“Consider a dwelling that now receives sunlight all day. Taking away that sunlight from 9am till noon would satisfy most guidelines; and yet the occupants of such a dwelling are likely to perceive it as a devastating impact on their dwelling’s amenity”

The above example is identical to the circumstances imposed by SSD-17424905 on the rear garden and north-facing internal living area of 57A Pymble Avenue, Pymble. As highlighted within the shadow diagrams prepared by BVN Architecture dated September 2021 in figure 4, the proposal will block significant sunlight from midday onwards. **This will have a detrimental impact on the current and future residents, and cannot be supported.**

It can therefore be reasonably concluded that SSD-17424905 will impose an unjustified overshadowing impact on the rear garden and habitable rooms of 57A Pymble Avenue, Pymble that cannot be supported, in accordance with an assessment using the findings under *The Benevolent Society v Waverley Council (2010) NSWLEC 1082* and *Parsonage v Ku-ring-gai (2004) NSWLEC 347*.

3. Visual Privacy and Overlooking

Windows along the southern-eastern elevation of the building proposed under SSD-17424905 are expected to allow for direct views into the principle private open space, and primary habitable living areas of 57A Pymble Avenue, Pymble. Figures 8 and 9 detail these views, straight into the shared living spaces of the single dwelling to the south, resulting in a substantial and unacceptable visual privacy breach. Figure 6 shows the upper floor windows at 57A Pymble which are at risk. The views will be particularly close, given the minimal southern setback proposed (only 12.3m-19.5m).

The raised nature of the terrain, with a ground level that is an entire storey higher than the ground level of 57A Pymble Avenue, worsens any overlooking further as every new storey (including the proposed ground floor) will gain views into the important living spaces of the southerly neighbour.

Large unobstructed glazing panels and the south-facing outdoor learning area on the first floor (“level 01” on the Architectural Drawings) will cause the most issues for 57A Pymble Avenue, as per figure 7.



Figure 7 – Areas of most concern for 57A Pymble Avenue along southern elevation

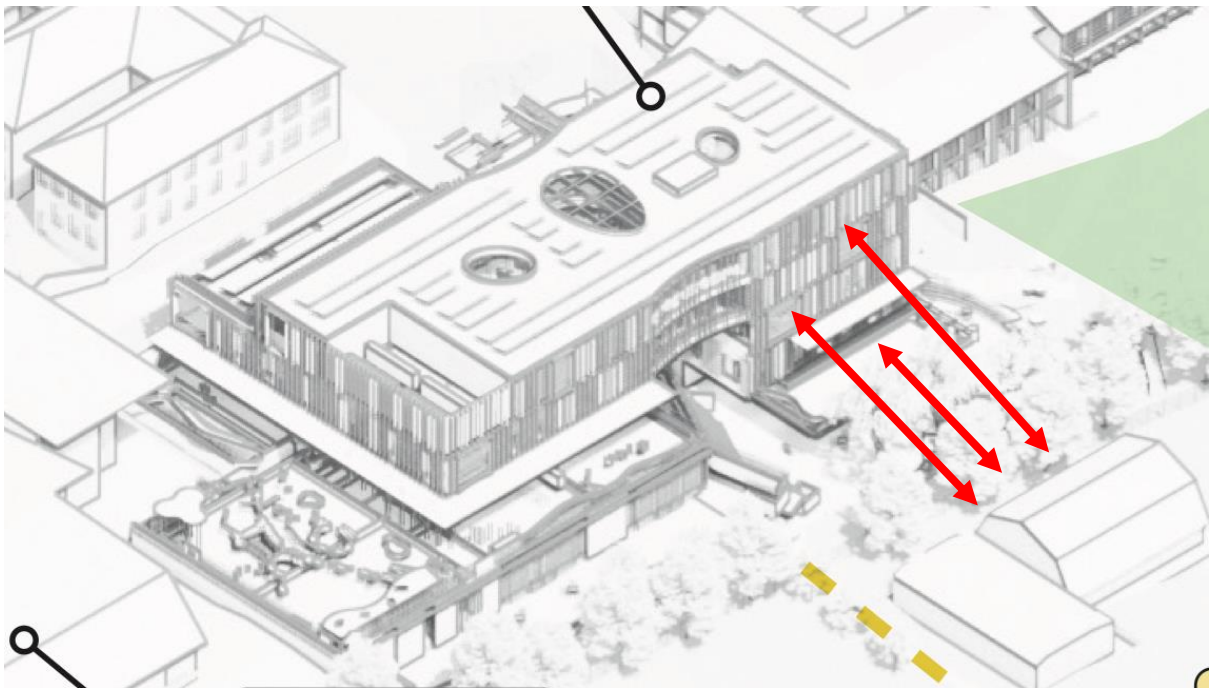


Figure 8 – Overlooking Diagram using proponents massing sketch from page 33 of the Architectural Design Report.

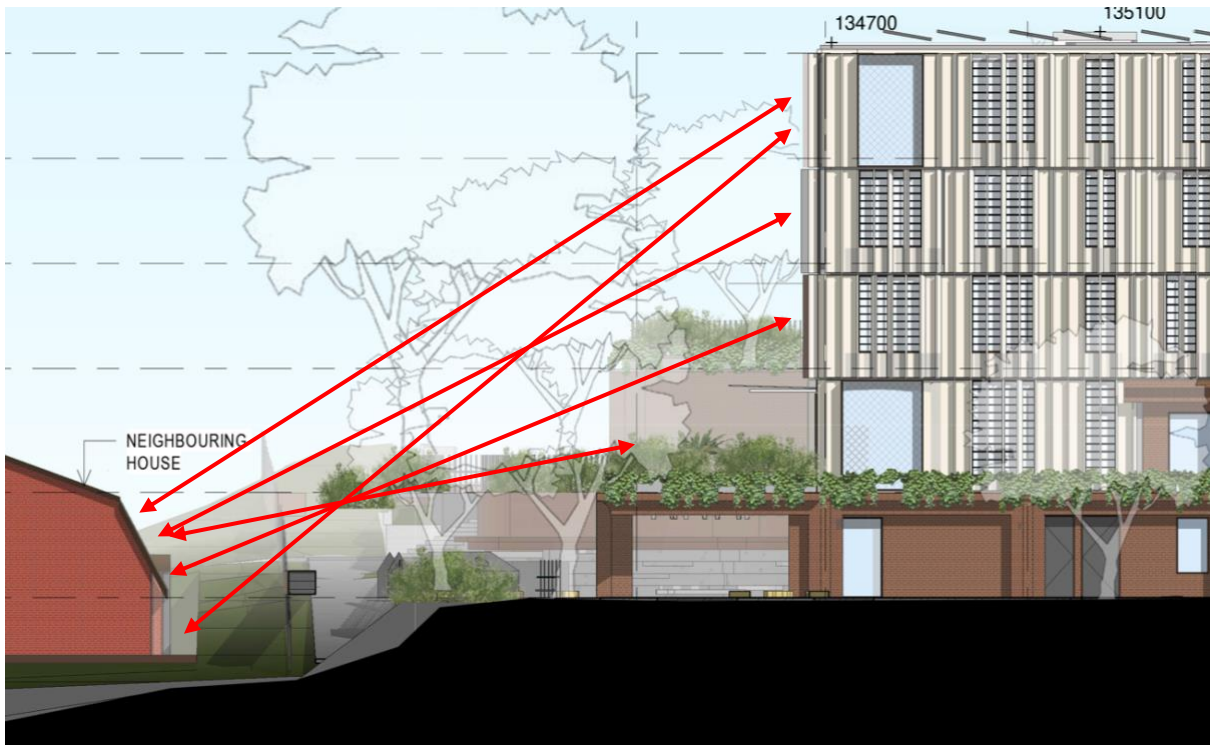


Figure 9 – Overlooking Diagram along eastern elevation.

Under *Meriton v Sydney City Council* [2004] NSWLEC 313 SC Roseth concludes that the matters of “**density, separation, use and design**” should be primary considerations when assessing privacy.

Roseth states that the principles discussed below may be applied when assessing privacy:

Assessment Principle	Comment
<p>1. Ease of Privacy Retainment</p> <p>The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.</p>	<p>57A Pymble Avenue, the site subject to privacy loss contains a single dwelling house and is located within an R2 Low Density Residential zone, with development in the area rarely exceeding two-storeys. It therefore remains a reasonable expectation that the PPOS and primary living space of 57A Pymble Avenue should retain its privacy.</p>
<p>2. Separation</p> <p>Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to</p>	<p>SSD-17424905 could improve the physical separation between the position of overlooking (south-facing windows) and the rear garden and living spaces of its southerly neighbour, however, given the other amenity impacts (overshadowing,</p>

<p>each other. Conversely, in a low-density area, the <i>objective</i> should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)</p>	<p>visual bulk, noise increase and traffic concerns) that a development of any form in this location would pose, merely overcoming the privacy issue of increased physical separation is considered inadequate.</p>
<p>3. Use of Space</p> <p>The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.</p>	<p>The area of outdoor space within the rear setback of 57A Pymble Avenue is highly important as it is directly connected to the internal living spaces and are most frequently used out of other areas on site. The primary living area is also located along the northern end of the dwelling, maximising the northern aspect, rendering it highly worthy of retaining high levels of visual privacy.</p>
<p>4. Poor Design</p> <p>Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.</p>	<p>An alternative design which does not sacrifice the privacy of its southerly neighbours could be possible. Refer to the Recommendations of this submission.</p>
<p>5. Hierarchy of Space</p> <p>Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.</p>	<p>The most frequently used portion of POS is subject to overlooking.</p>
<p>6. Additional Solutions</p> <p>Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.</p>	<p>Fixed screening and heavy vegetation is considered inadequate given the remaining substantial visual bulk and solar access overshadowing impact that a bulk as proposed would have.</p>
<p>7. Landscaping</p> <p>Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within</p>	

a development is valuable, planting proposed in a landscaping plan should be given little weight.	
<p>8. Change</p> <p>In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.</p>	<p>The area surrounding the development site is not undergoing considerable change. In fact, future development should retain the established character of the highly valued and adjoining Pymble Avenue Heritage Conservation Area, and in doing so, retain visual and acoustic privacy.</p>

In accordance with *Meriton v Sydney City Council [2004] NSWLEC 313*, a development of such scale and minimal southern setback cannot be supported in its current form.

4. Acoustic Privacy

There are concerns for the acoustic amenity for neighbours along Pymble Avenue during both the construction phase and on-going usage of the proposed Grey House Precinct redevelopment proposed.

A number of residents of Pymble Avenue whose properties share a rear boundary with 20 Avon Road are already impacted by the day to day current activity at the College caused by students using the Grey House Walk to enter and exit the site, and using the turf along the southern boundary (shared with residents of Pymble Avenue) for recreation and/or classes.

The increase of overall site capacity (990 additional persons), introduction of pre-kindergarten aged children who are typically louder than older students, and the serious intensification of usage of the area directly to the north and west of 57A Pymble Avenue is expected to adversely impact residents. There will be an increase in noise pollution between the internal (with operable windows) and external spaces of the Grey House Precinct area and the primary living areas, bedroom and study at 57A Pymble Avenue.

The construction stage is concerning for surrounding residents who will be home during construction hours. Given the large senior demographic of the area and tendency for working residents to work from home in the area, continuous noise and vibration disturbance from excavation and multi-storey construction activity at such close proximity is unacceptable without adequate mitigation.

5. Pedestrian and Vehicular Traffic

Whilst the EIS accompanying the Development Application clarifies that no increase in student or staff numbers from Kindergarten to Year 12 is proposed, it admits on page 40 that a pre-kindergarten stream and facilities open for use by the general community under this proposal will allow the Grey House Precinct to welcome a possible 990 persons. This increase in site users within such close proximity to 57A Pymble Avenue will undoubtedly result in an intensification of pedestrian and vehicle movements along Pymble Avenue and the Grey House Walk.

At present, Pymble Avenue and the Grey House Walk is subject to heavy usage during school day mornings and afternoons. This existing usage includes illegal usage of private driveways by parents of school users as well as heavy congestion and on-street parking stress along Pymble Avenue, Golf Parade and Avon Road. These things result in unsafe and unpredictable vehicle movements which conflicts with heavy pedestrian activity from school students and staff who use the Grey House Walk entrance off Pymble Avenue.

The addition of a possible 990 persons to the existing site will only exacerbate the aforementioned vehicular and pedestrian concerns, impacting the fair access to on-street parking and reasonable traffic for local residents, and on the general safety for drivers, passengers and pedestrians during peak school times.

6. Visual Bulk and Scale

The Grey House Precinct redevelopment will appear bulky and obtrusive from the primary living spaces of 57A Pymble Avenue. As shown in figure 10, the extent of extrusion will provide the current and future residents of 57A Pymble Avenue and other neighbouring sites with a feeling of enclosure from their primary habitable spaces and rear garden principle private open spaces.

The minimal southern setbacks proposed, ranging from only 12.3m – 19.5m for a 5 storey building (6 storeys higher than the ground floor of 57A Pymble Avenue due to the terrain difference) exacerbate the visual bulk issues.



Figure 10 – Proposed visual bulk impact from first floor of 57A Pymble Avenue (Emma Rogerson, 2021)

The Visual Impact Statement submitted by the applicants of this Development Application describes the visual impact for 57A Pymble Avenue as “high/moderate”. This should in fact be escalated to “very high/severe” given the extent of vertical and horizontal extrusion within such close proximity to 57A Pymble Avenue, which will have the appearance of a 6-storey building given the terrain difference.

A staggered setback and slight floorplate reconfiguration, as briefly explored within the alternative options 3, 4 and 5 described on Page 10 of the Architectural Design Report will undoubtedly improve the visual impact and lessen overshadowing for 57A Pymble Avenue, and should therefore be applied as per the Recommendations of this submission.

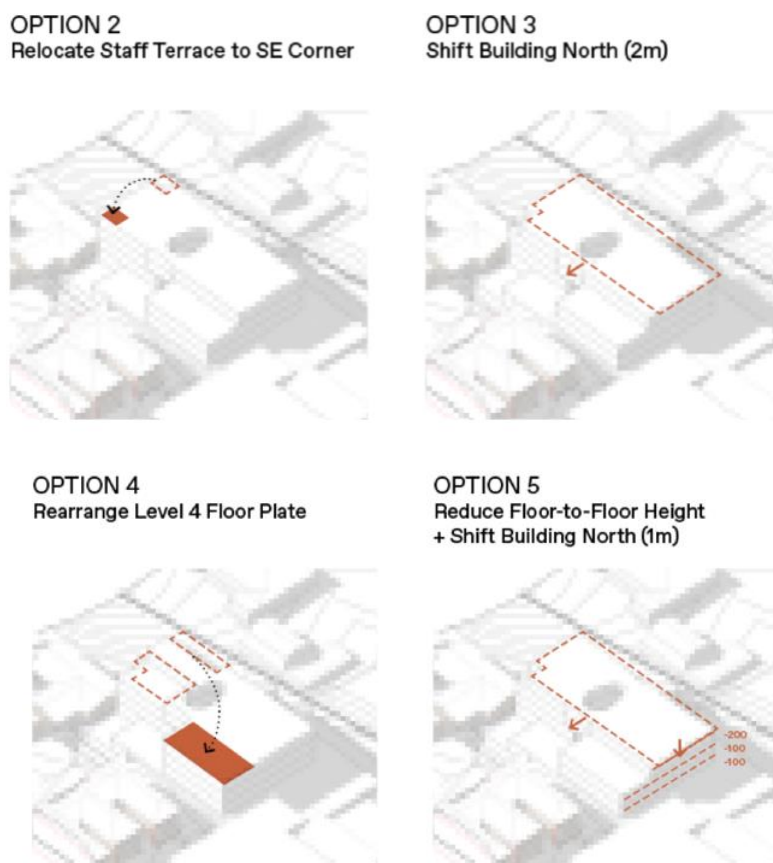


Figure 11 – Alternative options explored by the applicants but not adopted despite a proven decrease in adverse impact for southerly neighbours

7. Compatibility with Character of the Surroundings and Neighbouring R2 Zone Objectives

The development site at 20 Avon Road, Pymble has been identified under the Ku-ring-gai Local Environmental Plan (Local Centres) 2012 to be within an SP2 land use zone. The specific area on site subject of the proposed Grey House Precinct building directly adjoins a zone boundary with an R2 Low Density Residential Zone, as per figure 11. As such, the Planning Principles established under *Seaside Property Developments Pty Ltd v Wyong Shire Council [2004] NSWLEC 117* apply to this circumstance.

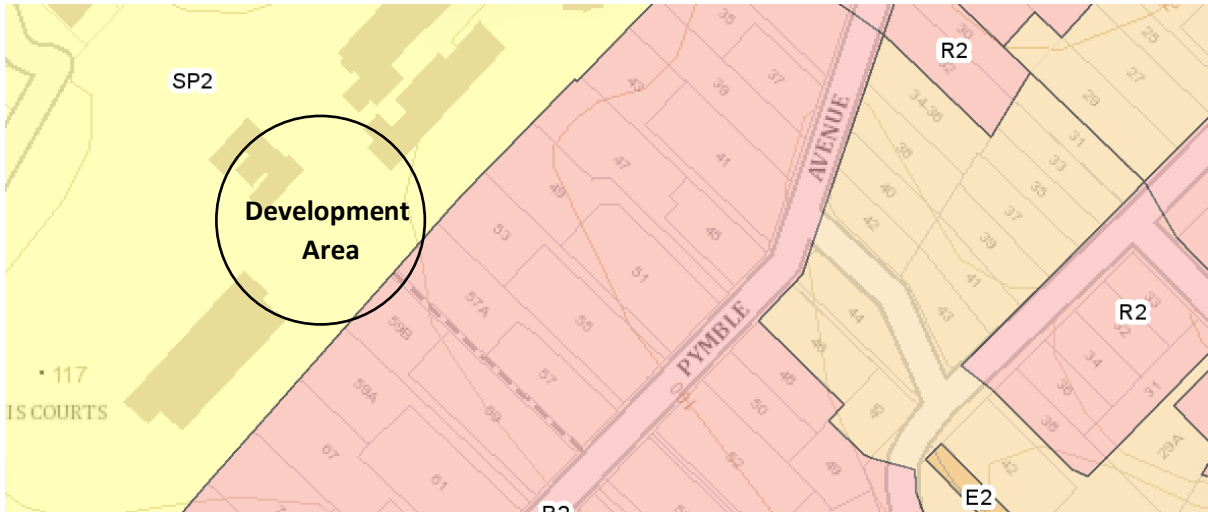


Figure 12 – Land use zone map (NSW Planning Portal)

Under *Seaside Property Developments Pty Ltd v Wyong Shire Council [2004] NSWLEC 117*, it is concluded that at a zone interface “any development proposal in one zone needs to recognise and take into account the form of existing development and/or development likely to occur in an adjoining different zone”.

As such, the R2 Low Density Residential land use zone objectives under the Ku-ring-gai Local Environmental Plan 2015 (the relevant LEP applicable to the properties located along the north-western side of Pymble Avenue) must be considered.

R2 Zone Objective	Comment
To provide for the housing needs of the community within a low density residential environment.	<p>The housing needs of the residential community residing along Pymble Avenue are as follows:</p> <ul style="list-style-type: none"> - Adequate access to sunlight in POS and internal living rooms. - Access to privacy for garden and living rooms spaces. - Traffic management (ie. no congestion or on-street parking issues). - Retention of the leafy character of Pymble. - Noise management to provide acoustic privacy for residents. <p>The proposal as described under SSD-17424905 does not provide for any of the above needs as it overshadows and directly overlooks the living area of 57A Pymble Avenue, proposes to remove a number of mature trees, and will likely result in</p>

	increased foot and vehicle traffic, congestion and parking concerns.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	N/A – the proposal does not prevent any non-residential land uses from being carried out on either sites (development site and those to the south)
To provide for housing that is compatible with the existing environmental and built character of Ku-ring-gai.	The construction of a building with high visual bulk, that facilitates the removal of many mature trees of high landscape value, the overlooking and overshadowing of the living spaces of 57A Pymble Avenue, and is likely to increase traffic concerns is not considered to be compatible with the existing environmental and built character of the Ku-ring-gai LGA.

8. Recommendations

A more skilful design by way of reconfiguration and minor scale reduction can mitigate the concerns raised in this submission for 57A Pymble Avenue, Pymble. Actions a – g provide a suitable scheme which largely solves concerns raised within this letter and allow for development at 20 Avon Road, Pymble.

- a) **Action:** Remove the upper floor.
Outcome: This will assist to mitigate visual bulk, overshadowing and privacy issues for 57A Pymble Avenue, and other southerly neighbours.
- b) **Action:** Increase the southern setback of floors “level 02” and “level 03” from 19.5m to 25m.
Outcome: This will assist to mitigate visual bulk, overshadowing and privacy issues for 57A Pymble Avenue, and other southerly neighbours.
- c) **Action:** Remove the “level 01” outdoor learning area and make this space non-trafficable.
Outcome: This results in increased visual privacy and acoustic mitigation for 57A Pymble Avenue.
- d) **Action:** Make south-facing large glazing panels on eastern wing frosted, or small windows.
Outcome: This will assist to mitigate privacy issues for 57A Pymble Avenue.
- e) **Action:** Prepare shadow diagrams considering the maximum mature height and spread of the proposed trees between the Grey House building and 57A Pymble Avenue. Plantings should offer privacy without providing additional shadow for No. 57A.
Outcome: To ensure that privacy mitigation measures (ie. proposed landscape screening) does not sacrifice solar access for 57A Pymble Avenue.
- f) **Action:** Construction should be limited to Monday – Friday only.
Outcome: To reduce the impact of construction for surrounding neighbours.

g) **Action:** Tradesmen and tradeswomen should not be allowed to use Grey House Walk during construction to access the site.

Outcome: To reduce the likelihood of dozens of construction workers parking along Pymble Avenue and causing safety and security concerns with the additional pedestrian and vehicle traffic.

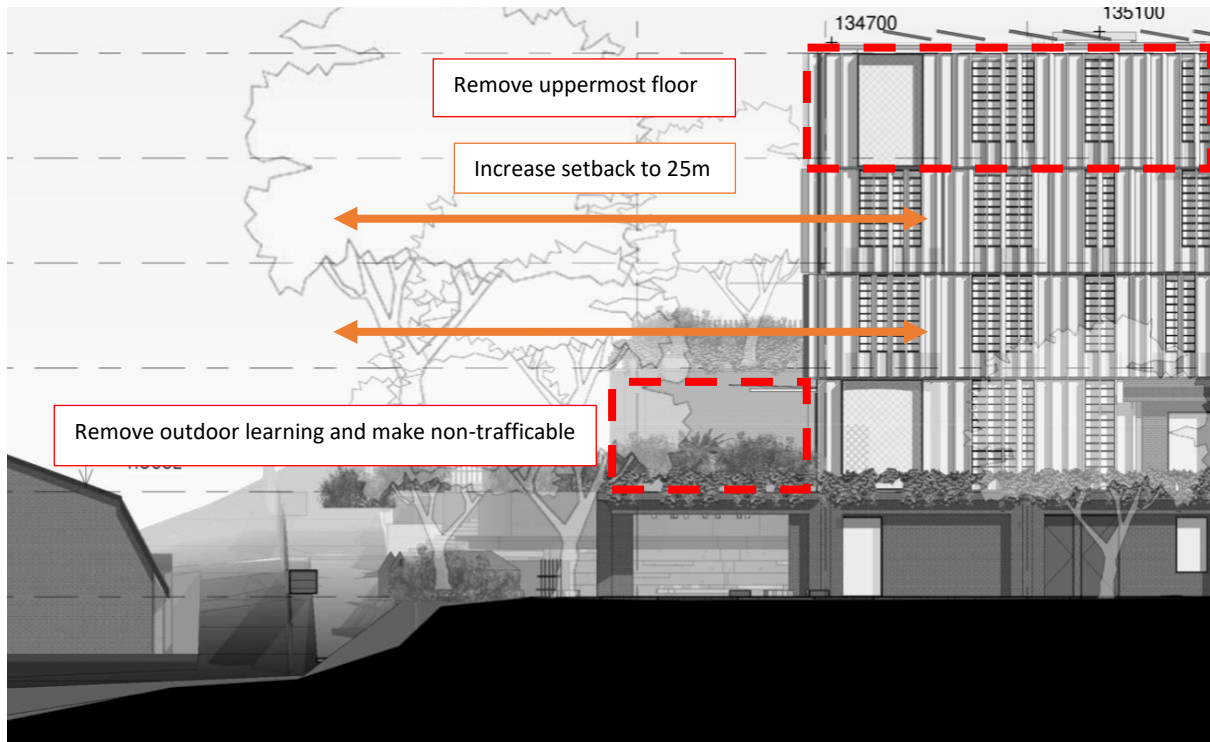


Figure 13 – Recommendations along eastern elevation

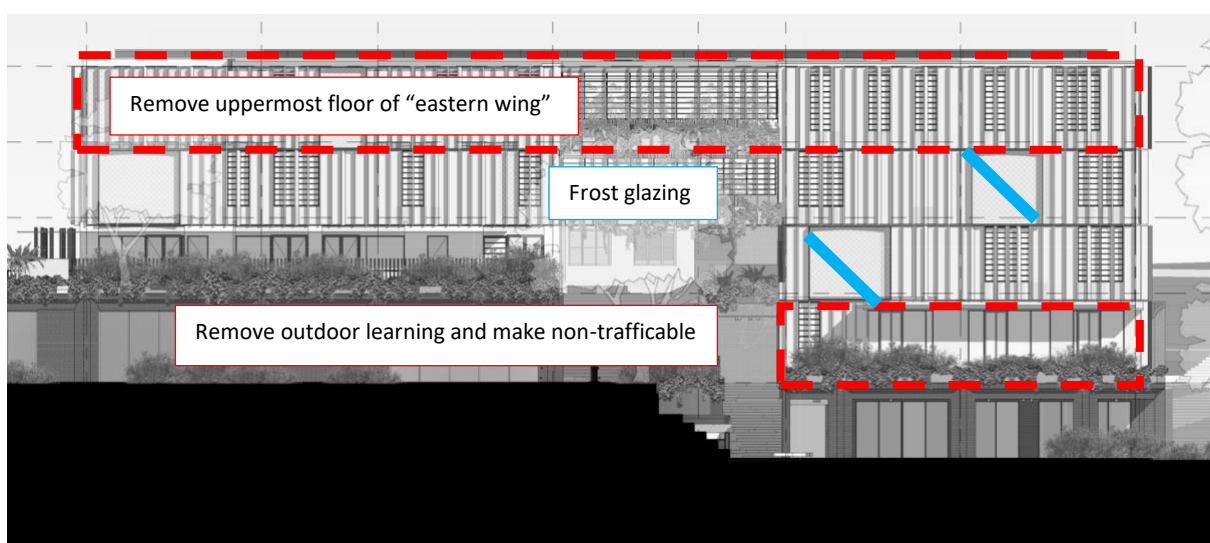


Figure 14 – Recommendations along southern elevation

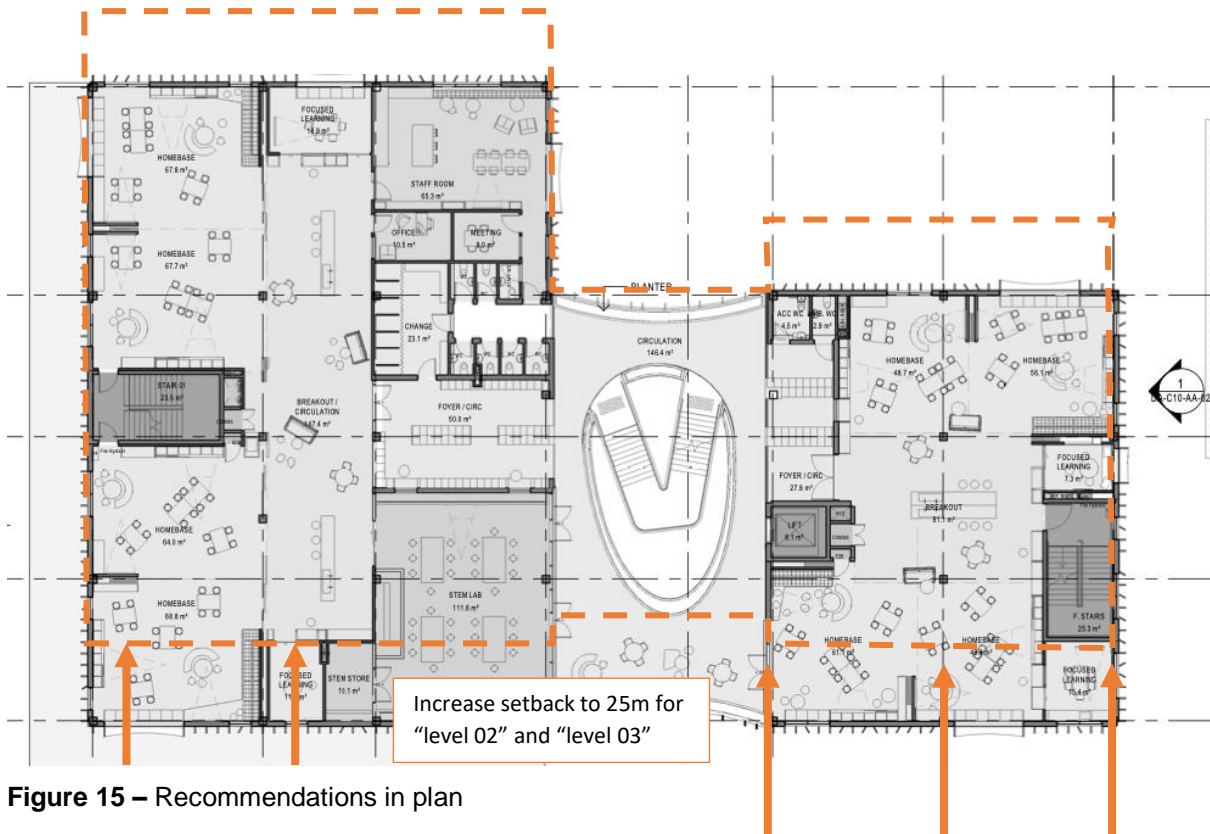


Figure 15 – Recommendations in plan

9. Conclusion

Strong concerns are held for the proposed development and it is believed that it cannot be supported in its current form. The development will have an adverse impact on the residential amenity of southerly neighbours and the character and safety of the wider locality. A development of this scale cannot be supported on this site. It is therefore requested that the proposed development in its current form be adjusted. Any future development on the site should ensure compatibility with the local area and address the issues raised in this submission.

The owner of 57A Pymble Avenue, Pymble invites the determining authority to conduct a site inspection on their property to best understand the perspective of the discussed concerns. Please contact the owner of 57A Pymble Avenue, Pymble through Emma Rogerson of Tuesday Projects (emma@tuesdayprojects.com.au) to arrange a visit.

Kind regards,

Emma Rogerson
Master of Urbanism (Urban and Regional Planning) (USYD)
Bachelor of Architecture and Environments (USYD)
Planning Institute of Australia (Assoc.)
Town Planner

