

# Attachment D1

**Submissions**

**From:** Chris Aronsten <[REDACTED]> on behalf of Chris Aronsten <[REDACTED]>  
<[REDACTED]>>

**Sent on:** Monday, April 22, 2024 10:02:25 AM

**To:** dasubmissions@cityofsydney.nsw.gov.au

**Subject:** Submission - D/2024/230 - 355-357 Liverpool Street DARLINGHURST NSW 2010 - Attention James Cooper

**Caution:** This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

Hi James,

I reside at 26/5 Darley St, Darlinghurst and also own the apartment.

I wish to strongly object to this development for the following reasons:

My unit has south and west-facing windows. My west-facing window will be **completely blocked** by this proposed development. I will lose a valuable view of the city skyline and a crucial source of natural light and ventilation, as my only other windows face south. It will also mean a loss of privacy.

My south-facing windows receive a significant amount of reflected light from the outside wall of 7 Darley Street. Shadows cast by the proposed development would severely reduce this light. The combination of these two factors will leave me with a much darker apartment and an unacceptable loss of amenity.

Construction and demolition vehicle movements in Darley Place (single lane) will mean not being able to open my south facing windows due to noise and vehicle pollution during the day. I work at home and this is an unacceptable loss of peace and quiet. In combination with the proposed development at 349 Liverpool street this would be intolerable.

After construction, car movements outlined on the DA do not take into account the proposed development at 349 Liverpool st, which add a further 16 car spaces. Queuing and noise in Darley Place would be unacceptably noisy. If the two developments go ahead at the same time, the noise and pollution would also be totally intolerable.

The city skyline view from my rooftop would also be completely blocked, reducing amenity and the value of my apartment. Plans to develop out rooftop would also be ruined due to the loss of views.

Shadowing from the proposed development would also render the rooftop clotheslines unusable for much of the year.

Sincerely,

Chris

**From:** David Latham <[REDACTED]> on behalf of David Latham  
<[REDACTED]> <David Latham <[REDACTED]>>>  
**Sent on:** Monday, April 22, 2024 1:34:11 PM  
**To:** council@cityofsydney.nsw.gov.au  
**Subject:** Objection Letter to D/2024/230  
**Attachments:** Objection Letter to D2024230..pdf (26.55 KB)

**Caution:** This email came from outside the organization. Don't click links or open attachments unless you know the sender, and were expecting this email.

Attention:- James Cooper and Sydney City Council.

Please find attached my objections to D/2024/230 proposed by X.Pace Design Group P.L. for 355 to 357 Liverpool Street, Darlinghurst, NSW 2010.

Thank you for your serious consideration. Sincerely, David Latham and Assaad Ayoub  
59/3-5 Darley Street, Darlinghurst, NSW 2010.

David Latham and Assaad Ayoub

59 "Ballina"  
3-5 Darley Street, Darlinghurst,  
Darlinghurst, NSW 2010

D -  
A -

22 April 2024

Attention:- James Cooper  
City of Sydney Council,  
Sydney NSW 2000

Dear James and Sydney City Council

**Re:- D/2024/230 By X.Pace Design Group Pty Ltd**

**Site Address: 355-357 Liverpool Street, Darlinghurst, NSW 2010**

**Proposed demolition, excavation and Construction of residential Flat building**

I wish to strongly object to this proposed development on all the same grounds outlined by AGP Planning regarding the development of 349 Liverpool St, Darlinghurst.

The proposal is over scale, over height and will block ventilation and light to 3-5 Darley Street, Darlinghurst.

The proposal will completely block some windows on the west side in 3-5 Darley Street - wiping out sunlight, air and views - surly this is totally unacceptable!

It will impact on the foundations of 3-5 Darley Street through excavation works.

It will impact with potential structural damage to 3-5 Darley St. through excavation and construction.

It will impact on the heritage zone of the area and it's heritage buildings.

Sincerely yours,

**David Latham and Assaad Ayoub**

**From:** James Cooper <JCooper@cityofsydney.nsw.gov.au> on behalf of James Cooper <JCooper@cityofsydney.nsw.gov.au> <James Cooper <JCooper@cityofsydney.nsw.gov.au>>  
**Sent on:** Monday, April 29, 2024 8:57:36 AM  
**To:** DAsubmissions <DAsubmissions@cityofsydney.nsw.gov.au>  
**Subject:** FW: D/2024/230 - 355-357 Liverpool St Darlinghurst

---

**From:** Paul Paterson <[REDACTED]>  
**Sent:** Monday, April 29, 2024 6:14 AM  
**To:** James Cooper <JCooper@cityofsydney.nsw.gov.au>  
**Subject:** D/2024/230 - 355-357 Liverpool St Darlinghurst

**Caution:** This email came from outside the organization. Don't click links or open attachments unless you know the sender, and were expecting this email.

Dear Mr Cooper

Dr Paul & Mrs Beatrice Paterson  
253 Forbes St Darlinghurst 2010  
29 April 2024

We strongly oppose the Development Plan D/2024/230 for the iconic Patteson building at 355-357 Liverpool St Darlinghurst on the following grounds:

- The additional height of the building, along with the proposed 7 storey development of the site next door, will turn this section of Liverpool St into a darkened urban canyon
- Gross disregard for historic amenity of the iconic Patteson building, in conjunction with the irreparable destruction of the historic character of 260 Liverpool St that is currently taking place
- An unacceptable level of resident vehicle traffic in very narrow Darley Lane if the enlarged buildings with extensive underground parking are occupied
- An unacceptable level of risk of serious structural damage to the contiguous apartment building during the build including the 2-level excavation for the underground carpark
- Serious permanent loss of value for the apartments in the block next door
- An unacceptable level of disruption and loss of amenity for all local residents during the protracted build process

**From:** Hamish Axa [REDACTED] > on behalf of Hamish Axa  
<[REDACTED]> <Hamish Axa <[REDACTED]>>

**Sent on:** Tuesday, April 30, 2024 10:20:44 AM

**To:** dasubmissions@cityofsydney.nsw.gov.au; Hamish Axa [REDACTED] >

**Subject:** Submission - D/2024/230 - 355-357 Liverpool Street DARLINGHURST NSW 2010 - Attention James Cooper

**Caution:** This email came from outside the organization. Don't click links or open attachments unless you know the sender, and were expecting this email.

Hi James,

I am the owner of 4/5 Darley Street and would like to submit my objection, because of concerns regarding the impact the proposed development will have on the building. I have been advised by my strata corporation that this development project would have negative effects on our property.

Thank you for your time.

Regards,  
Hamish Axa

**From:** [REDACTED] > on behalf of [REDACTED]  
<[REDACTED]> [REDACTED] <[REDACTED]>>  
**Sent on:** Wednesday, May 1, 2024 12:15:46 PM  
**To:** council@cityofsydney.nsw.gov.au  
**CC:** Joseph Alam [REDACTED] >; [REDACTED] [REDACTED] >  
**Subject:** Objection to D/2024/230 355-357 Liverpool Street, Darlinghurst  
**Attachments:** Ltr to City of Sydney re Objections to D 2024 230 - 355 to 357 Liverpool Street, Darlinghurst.pdf (220.25 KB)

**Caution:** This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

Attention Mr James Cooper

Please find attached my response to the Notice of Development Application noted above.

Note, instructions re identifying information to be kept private, should include but not limited to: my name, email address, residential address and Ballina 3-5 Darley Street Unit number. Plus any information that Council may have that could identify me.

Mr Cooper, please contact me should you have any questions.

Yours sincerely

[REDACTED]

30 April 2024

Attention: James Cooper  
City of Sydney  
456 Kent Street  
Sydney NSW 2001

Cc: Joseph Alam, Sarraf Strata – [REDACTED]

**Re: Objections to D/2024 /230**

**Site Address: 355-357 Liverpool Street, Darlinghurst NSW 2010**

Thank you for the Development Application Notice dated 11 April 2024 with comments due by 10 May 2024.

**Note, instructions: please ensure that my personal information is withheld i.e. kept private and this includes my name, address, and Ballina Unit number.**

In response, please note the following Objections to the proposed development, stated above.

For context, I am the owner of [REDACTED] a 26sqm studio on the 4<sup>th</sup> Floor (of the tall building), Ballina 3-5 Darley Street, Darlinghurst. At the time of purchase in 1996, Darlinghurst was best described as a gritty neighbourhood but has evolved into a safe, friendly, quiet, and clean village. I have lived in Unit 60 periodically over the past 25 years.

As you may know the Sydney Local Environmental Plan 2012 lists Ballina Flats at 5 Darley Street as a “Heritage item”.

**Objections**

I understand that the proposed development at 355-357 Liverpool Street, will require the demolition of the existing apartment building and the construction of some nineteen apartments across seven floors which will exceed the height of the existing and adjacent building at 349 Liverpool Street. This proposed development will also include sixteen car spaces.

1. Object to Density and Congestion

a) Density

The increase in number and/or size of apartments in “towers” on this site suggests High Density of residential apartments which will impact the quiet enjoyment of residents in the neighbouring, existing Ballina residential complex.

The balconies featured on the DA plans indicates they are East facing, which is in close proximity of the existing Ballina residential complex. This impacts on the privacy of those West facing Studio residents in Ballina.

b) Traffic Congestion

As you are aware, Ballina has 72 Studio Units and NO car spaces. Given the proximity to public transport, amenities such as restaurants, bottle shops,



supermarkets and schools, why is it necessary that this development has sixteen car spaces?

Darley Street and Darley Place does not have the capacity to accommodate any further i.e. additional vehicular traffic including residents, visitors and the Waste collection trucks required to service the two towers, proposed.

Given the short distance of both Darley Street and Darley Place, it will not require many vehicles to create a backup of traffic onto Liverpool Street and as a result create a traffic jam, impacting on traffic flow in both directions on Liverpool Street. Liverpool Street is a key thoroughfare between the CBD and Paddington.

The increase in vehicular traffic in such a small area will detrimentally impact the safety of pedestrians.

## 2. Object to Noise

### a) Demolition and Construction Phase

Given the proximity of this proposed two tower development to the Ballina residential complex, the noise generated during the demolition and construction phase will have severe detrimental impact on its residents, some of whom are shift workers and some of whom work from home.

### b) Occupation Phase

This proposed two tower development will result in higher i.e. louder noise levels due to more:

- Residents
- Plant e.g. lifts and AC Units
- Vehicular noise from the small streets that are situated on the eastern and south sides of Ballina i.e. Darley Street and Darley Place
- Airbnb and other short stays - will increase due to the fresh new apartments.

This increase in noise level will have a significant and detrimental impact on the residents of Ballina due to the Studio layout of each residential holding, there is nowhere else to go in your own home to escape the noise generated in the neighbouring two tower development.

## 3. Object to Dust and Contamination

a) Impact of dust generated during the demolition and construction phase penetrating the neighbouring Ballina residential complex in both residential studios and communal areas.

b) Impact of contaminated material generated during the demolition of the existing building is highly likely to penetrate the residential studios and communal areas in the Ballina residential complex.

Note:

1. given Ballina's hilltop location we are frequently exposed to high winds all year round.
2. the age of the existing building at 355 Liverpool Street indicates that there will be significant asbestos and lead paint in and on the building.

4. Object to the risk of structural damage to Ballina.

Due to the age of the Ballina residential complex, there is a real risk of permanent damage to the structural integrity of Ballina, because of the vibration generated during the demolition and construction phases of the proposed 355 Liverpool Street development.

5. Object to Height

a) Detrimental Impact on Sunlight

The height of this development will significantly reduce the amount of sunlight received by those Ballina residential units on the Western side of the complex.

b) Detrimental Impact on Natural Light

The height of this development will significantly reduce the amount of natural light received by those Ballina residential units on the Western side of the complex. This development will also cast shadows on the Ballina residential complex.

c) Detrimental Impact on views of the City Skyline

The height of this development will detrimentally impact on the visual sightlines from many Studios who have views of the City Skyline including the Sydney Harbour Bridge.

6. Object to Design

The floor plan proposes East facing balconies attached to the two-bedroom units which will result in:

- Increase in noise generated because of the increase in the number of residents at 355 Liverpool Street.
- Smoking areas i.e. from the new Balconies, within proximity to Ballina residents.
- Increase in manufactured light from communal areas, balconies and residential lighting that will penetrate the west facing residential studios in the Ballina residential complex.
- Communal roof top area/s will attract not only residents but visitors and will result in increase in noise.

7. Object to Sustainability initiatives.

The Sustainability initiatives proposed by the Developer of 355 Liverpool Street are uninspiring. For a truly sustainable development, the Developer should seriously consider refurbishing the existing building which will ensure that there is:

- Minimal level of noise and dust generated during the demolition and construction phase, compared to the proposed development.
- No risk of additional noise generated due to no increase in apartments or vehicular traffic noise (during occupation).
- No change to access to natural light and sunlight.
- The original structure is maintained and/or modified.

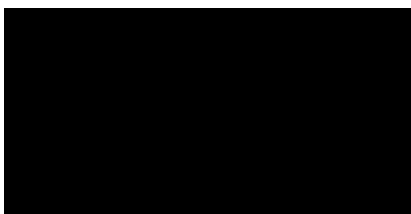
**Conclusion**

Mr Cooper, when evaluating the impact of this new development proposed for 355 Liverpool Street, serious consideration must be given to the layout and design of the Ballina residential complex. Ballina comprises solely of Studio apartments ranging from 26sqm to 32sqm each featuring large sash windows that ensure lots of natural light and sun light. As you may know Studio apartments, in this case, are a small space where you live sleep, relax, work, cook and bathe. Interestingly, Ballina residential complex allows for affordable accommodation for students, the aged and local workers such as St Vincents Hospital health workers.

The close proximity and scale of the proposed development at 355 Liverpool Street to the Ballina residential complex will result in Ballina becoming an unhealthy place to live due to the higher levels of noise (both people and vehicular generated), vibration, manmade light, dust, risk of contamination, reduced outlook, reduced access to sunlight and reduced access to natural light.

In closing, the combination of the proposed development at 355 Liverpool Street and the proposed development at 349 Liverpool Street will render Ballina the most undesirable address in Darlinghurst.

Yours sincerely



**From:** Matt Hodges <[REDACTED]> on behalf of Matt Hodges  
<[REDACTED]> <Matt Hodges <[REDACTED]>>

**Sent on:** Monday, May 6, 2024 9:15:21 AM

**To:** council@cityofsydney.nsw.gov.au

**Subject:** DA - D/2024/230

**Caution:** This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

Dear Council,

I object to the above DA due to:

1. Excavation for the car park causing damage to heritage buildings nearby.
2. The height of the building is not inline with the conservation area of Darlinghurst.

Kind regards

Matt Hodges  
Owner 64/347 Liverpool St Darlinghurst

**From:** Neville Wyatt <n[REDACTED]> on behalf of Neville Wyatt  
<[REDACTED]> <Neville Wyatt <[REDACTED]>>  
**Sent on:** Tuesday, April 23, 2024 11:14:59 AM  
**To:** dasubmissions@cityofsydney.nsw.gov.au  
**Subject:** Submission - D/2022/831 - 349 Liverpool Street Darlinghurst NSW 2010 - attention David Reynolds  
**Attachments:** scanner 20240423 121838.pdf (84.06 KB)

Caution: This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

Dear Mr Reynolds,

Please find my submissions attached.

Kind regards,  
Neville Wyatt

**SUBMISSION – D/2022/831 – 349 Liverpool Street Darlinghurst NSW 2010**

Thank you for the opportunity to make submissions as part of your reassessment.

I again urge Council to oppose this proposed development in its entirety. Minor changes do not address the fact that the proposal is qualitatively too high, too wide and too deep for the site. By the Developer's own admissions the proposal offends Council regulations but seeks to minimise these infractions on the basis of self interest.

The height of the proposed development continues to offend council regulations. While on one hand Toohey Miller ('the Developer) proposes the exceeding this height is a minor breach it is a breach, nonetheless. If it is minor, the I submit the development should be reduced by one storey to bring it into line.

The height alone breach should not be considered in isolation. The width of the property is also significantly larger than the current building. Additional height and width adds a geometric, and not just an arithmetic, multiplier to the overall size and bulk of the proposed development.

The offending height is just one element to be considered, not an isolated issue as proposed in Clause 4.6 Variation Request Height of Buildings.

The height needs to be taken from street level and not as proposed.

The developer submits at 4.2.2 that if strict compliance was met then a 'suboptimal outcome would result.' Of course, the only sub-optimal outcome is possibly a compromise on profit for the developer.

The integrity for the area should not be sacrificed for developer interest alone and developer interest alone is the only guiding principal put forward by the developer for breaching council guidelines. The submissions go on to say the extra height affords a high amenity space for all residents however, the corollary of this is that it offends the amenity of existing residents in the surrounding areas.

The developer's proposal contains bland and unsupported assertions as to benefits; it is a document based on the unilateral interests of the developer, for instance, the flouting of council height regulations somehow becomes a 'long-term asset to the neighbourhood.' If this is the best the Developer can do, then I submit both Council and any court should rejected the proposal in its entirety.

Although the court is considering this development alone, the Developer has introduced so-called broader community benefits and these, as submitted above are spurious. The importance in holding the Developer to comply with the regulations has become even more important with the recent development for 355-357 Liverpool Street, which proposes an even larger flouting of council regulations in terms of height and block coverage.

Council is urged to dismiss the amended development application for 349 Liverpool Str as being too high, too wide and too deep; it is the beginning of a black hole for the residents of Darley Place which, if allowed, would be even worse if the adjacent boarding house demolition and building of an overside development were allowed.

The Developer asserts there is no adverse visual impact from the height breach at 4.2.3, but as stated above, the height breach together with the fullwidth of the development must be combined.

The proposal cannot and should not be looked at in one dimension. However, this uni-dimensional approach is repeated at 4.2.5 asserting the height alone has limited environmental impact. At least the Developer concedes that the height has an increased shadow impact on residences in Darley Street, Place and Burton Street.

Notwithstanding this concession, the Developer then asserts there is limited impact on privacy and view sharing, the latter particularly in reference to 3-5 Darley Street. My home at 7 Darley Street will be laid bare to the oversight of the proposal and cast into shadow. This is also the same for residences in Darley Place. In relation to the view, the Developer's own photomontage at figure 11 shows the loss of city skyline views and this is a significant loss.

At 4.3.2 the Developer asserts there is consistency with the objectives in the zone. Just how the replacement of 20 plus units on the current site with 14 luxury apartments somehow provides for the housing needs of the community is a *non sequitur*. This document is merely an essay of propaganda for the developer.

Finally, the conclusion at 5.0 ignores the increased footprint of the proposed development in comparison to the existing property. The proposal must be rejected as it is an over development by stealth.

I would urge Council to apply the regulations consistently, particularly in view of the development D/2024/230.

At the onsite conciliation, a spokesman for the owner at D/2024/230 made self-serving submissions on a light-well between the two properties (359 Elizabeth Street and 355-357 Liverpool Street Darlinghurst) as an indicator it did not take issue with the increased height of the development. Clearly this is because the developer of 355 Liverpool Street intends to leapfrog to larger breaches of the regulations on the back of the proposal at 349 Liverpool Street.

The increased height beyond the regulations for 349 Liverpool Street should be completely rejected.

If there is any doubt about the excessive size of the development, then the sun view diagrams in the proposal are self-evident. There ought to be consideration for existing residents who will be cast into virtual perpetual shadows.

Overall, the contempt for the planning process is nowhere more self-evidence than in the Woods Bagot schedule of amendments dated 5 April 2024. It is difficult to imagine a more de minimis approach than this. Clearly the developer, and its architects, have the confidence to assert the infringements of Council's regulations are in the interests of the neighbourhood. This simply cannot be the case when there was such vociferous opposition to the proposal at the on-site meeting. The schedule of amendments reflects no substantive changes to the proposal but rather more of the same.

Unless the proposed development is reduced in height and width, then I submit the whole application should be rejected.

**From:** Gary A <g[REDACTED]> on behalf of Gary A [REDACTED] <Gary A [REDACTED]>  
<g[REDACTED]>>  
**Sent on:** Tuesday, April 23, 2024 4:09:33 PM  
**To:** DAsubmissions <DAsubmissions@cityofsydney.nsw.gov.au>  
**Subject:** Submission - D/2022/831 - 349 Liverpool Street DARLINGHURST NSW 2010 - Attention David Reynolds  
**Attachments:** Amendment to DA D2022831.pdf (18.39 MB)

**Caution:** This email came from outside the organization. Don't click links or open attachments unless you know the sender, and were expecting this email.

Attention: David Reynolds

Dear Sir,

Please find attached my submission for the amended plans for the above mentioned DA application.

Kind Regards

Gary Anse



23 April 2024

Attention: The General Manager  
City of Sydney  
GPO Box 1591  
Sydney NSW 2001

Email: [council@cityofsydney.nsw.gov.au](mailto:council@cityofsydney.nsw.gov.au)

Attention: David Reynolds

Dear Sir,

**RE: SUBMISSION REGARDING D/2022/831 – 349 LIVERPOOL STREET, DARLINGHURST  
RENOTIFICATION OF AMENDED PLANS - DEMOLITION OF THE EXISTING RESIDENTIAL  
FLAT BUILDING, TREE REMOVAL, EXCAVATION AND CONSTRUCTION OF A NEW 7  
STOREY RESIDENTIAL FLAT BUILDING, CONTAINING 3 BASEMENT LEVELS WITH 15  
PARKING SPACES, 14 APARTMENTS, ROOFTOP COMMUNAL OPEN SPACE AND VEHICLE  
ACCESS FROM DARLEY PLACE.**

I write to you as the owner of unit 17 in the “Mont Clair” building at 347 Liverpool Street, Darlinghurst 2010, I wish to again object to the amended plans for the Development application at 349 Liverpool Street.

I have reviewed the amended plans and feel this new amendment has not done much to rectify the concerns outlined in my previous objection. The new plan is simply something that has been proposed to rush through a design to appease council and planning laws so the developer can move on with the next project..

I acknowledge the height reduction however I feel the design is quite bland in regards to the surrounding heritage buildings. I am pleased to see that the balconies have moved to the front and rear of the building as this will allow the buildings width to be reduced and not compromise this amenity from the residences.

The Design of Mont Clair at 347 Liverpool Street is such that only a small percentage of the units gain light or views from the front of the building at the street frontage. The rest of the units rely on the side access for light, views and ventilation with purpose built light wells to help facilitate this.

The building at 349 Liverpool Street simply CAN NOT be allowed to be built right to the boundary with a solid wall that goes right to the roof line, cutting any and all natural light or ventilation reaching any of the apartments on this eastern side. The joining of these 2 buildings completely eliminates the existing views, reduction of natural ventilation, acoustic privacy, and overall enjoyment of my home. The existing building respects this space having being built a fair way off the boundary line.

The new development could reduce this boundary incursion to alleviate these issues completely and not creating a dark and depressing environment for the occupants. This development will also severely reduce the value of each apartment and the liveability and rentability. Many people will be effected by this development for the sake of 14 new residents which in itself is a major reduction on the amount of units this building is replacing reducing fewer homes in the market, another grave concern in the current climate of housing shortages.

I object to the amended proposal for D/2022/831 for 349 Liverpool Street, Darlinghurst on the following grounds:

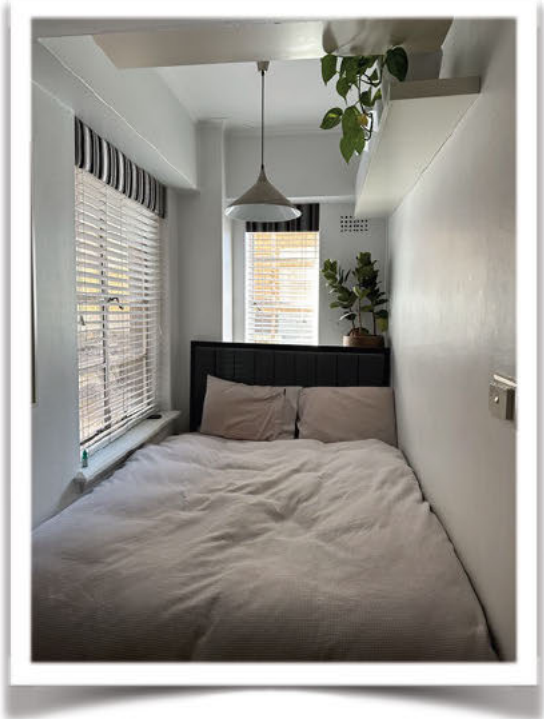
My unit is on the eastern boundary of 347 Liverpool Street, also known as 'Mont Clair' on level 1 at the rear most building. It is a studio apartment which gains most of its views from the eastern side.

### 1. Solar Access and overshadowing

This image illustrates the location of my unit no 17 in relation to the development and the red arrows showing where the views lie



From left, Kitchen Window facing east, Bedroom/Living windows facing north and east where boundary wall will block views and light.



Bathroom window below from left (facing north to the street)  
Picture 2 showing how the light reflects into the apartment.



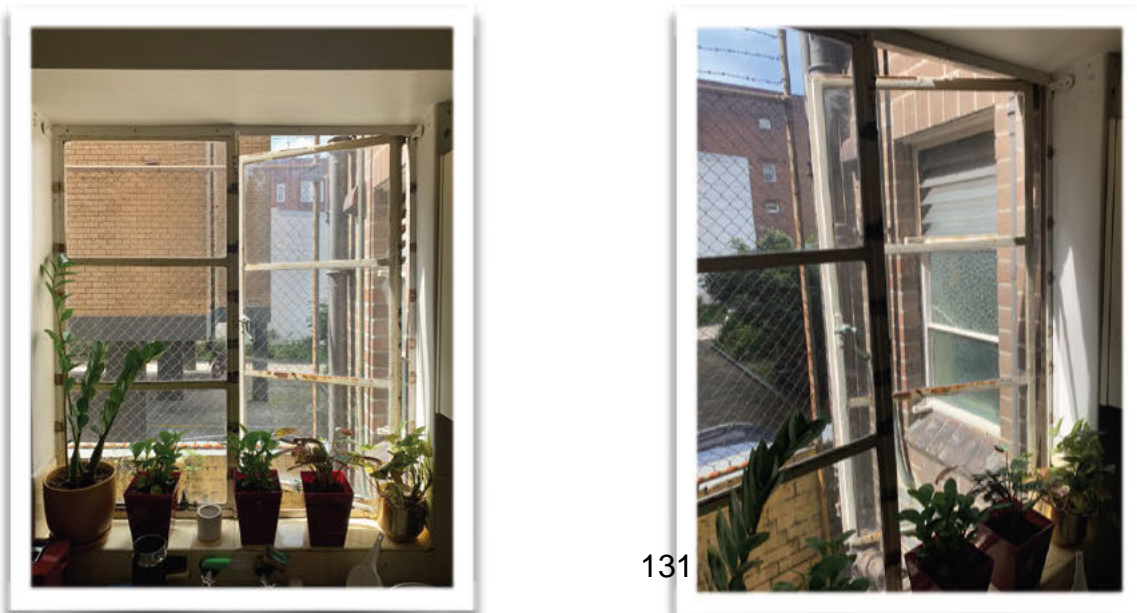
With the construction going to the wall of Mont Clair this view to the street will be completely cut off right up the height of the building. Rendering this room completely dark.

**Of new concern is the DA  
D/2024/230**

**Address 355-357 Liverpool Street DARLINGHURST NSW  
ApplicantX.PACE DESIGN GROUPPTY LTD**

This development for which I will write an additional objection is to be built neighbouring the development at 349 Liverpool St and in the pictures below where the white wall is located. It reaches a height matching that of the new DA for 349 Liverpool Street blocking even more light than the modified plans allow now.

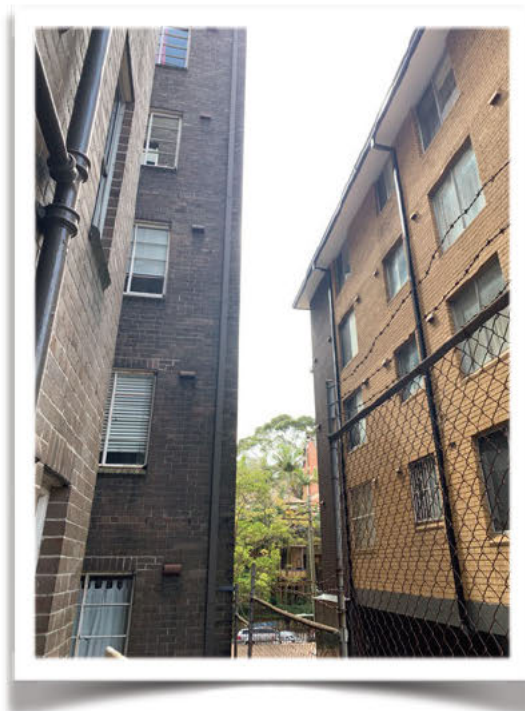
Referencing the red arrow on the first diagram above we can see that this light source across the back of 349 Liverpool Street will also be lost as the development stretches right to the rear lane past that of the setback of the building for 349 Liverpool St.



## 2. Outlook and ventilation

The amended application will eliminate the existing views to Liverpool St from my bathroom window. As seen in the image below with the current separation between the 2 buildings.

The amended proposal does not satisfy the objectives of clause 4.2.3 of Sydney DCP 2012 which states that development should “*Ensure that residential amenity is enhanced with landscaping, private and common open space, sun access, ventilation and acoustic privacy*”. The amended proposal will exacerbate my amenity, removing all views from my north facing windows and compromise cross ventilation. The proposal maintains noncompliance with Clause 4.2.3.10(2) of Sydney DCP 2012 as there has been no consideration of the views and outlooks from any of the existing windows on the eastern elevation in the massing of the building



## 3. Construction of a 3 story basement carpark.

The neighbouring unit blocks do not have underground car parking, The only modern apartments which have basement parking are those modern buildings which are stand alone where the whole block was developed not effecting neighbouring apartments like that of recent Dominion apartments at 299 Forbes st, Darlinghurst and the Republic 2 building at 46-50 Burton Street Darlinghurst.

Deep excavation next to the old foundations of Mont Clair dating back to 1938 could shift and crack the building. It is unknown the damage this could cause to our building and the enormous cost of repairs once the new builders of this project have long moved on and their insurance is no longer valid. Cracks and issues could continue long into the future and cause major cost and financial burden to the residents/shareholders. With the building butting right against that of Mont Clair how could inspections or repairs be conducted anyway with a now concrete wall sandwiched against us. What assurances can the builders give in regards to this?

I acknowledge that new documentation has been submitted to access the ground but does not give me peace of mind in the construction methods and problems still occur during construction which will cause major issues to our delicate building

I thank you for allowing me to raise these objections. I hope you can see the serious nature of the concerns raised and not allow such a construction to go ahead in its current form. Some alterations will need to be made to address the concerns shown in this objection. I am contactable for feedback via email or mobile below.

Mobile: [REDACTED]

Email: [REDACTED]

Kind Regards

Gary Ansell  
Mont Clair Board of Directors

**From:** Jeff Priday <[REDACTED]> on behalf of Jeff Priday <[REDACTED]> <Jeff Priday <[REDACTED]>>

**Sent on:** Monday, April 22, 2024 6:24:51 PM

**To:** dasubmissions@cityofsydney.nsw.gov.au

**Subject:** Submission - D/2022/831 - 349 Liverpool Street DARLINGHURST NSW 2010 - Attention David Reynolds

**Caution:** This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

## To whom it may concern

I am writing to question the wisdom of the proposed development at 349 Liverpool Street, especially in light of recent advice for a similar proposal to redevelop the neighbouring site at 355-357 Darley Street.

The advice to redevelop the site at 355 Liverpool Street along the same lines has come as something of a shock to the owners of an adjacent building at 5 Darley Street where I am an owner. 355 Liverpool Street abuts 5 Darley Street with no space between their respective walls.

Both development applications propose excavations to enable development of underground car parks for the residents of both buildings, the entry and exit for which will be via the narrow street known as Darley Place at the back of the two buildings. This proposal creates two major headaches for local residents, as follows.

1. The excavation at 355 Liverpool Street runs the very real risk of damaging both the masonry and structural integrity of 5 Darley Street which dates to the inter war period and is subject to heritage controls. The strata committee of this building has been concerned for sometime about the condition of the masonry which has been badly affected by water ingress over many years. Masonry has already fallen from the building creating a danger to residents and pedestrians alike. A facade engineer was engaged last year and a suite of works are expected to begin in the next 2 months or less.

Our question is, if the redevelopment proceeds as proposed and excavation damages our building, will the council indemnify us against that damage or will we be forced to take legal action against the developer with all the costs and protracted legal proceedings that such an event would entail? I would point out that our building consists entirely of studio apartments and the owners would struggle to finance such legal action.

2. Darley Place is a short cul de sac, running past the southern wall of 5 Darley Street, which services a unique enclave of cottages nestled at the back of the two buildings proposed for redevelopment. The introduction of 30 or so cars into this precinct with the proposal to have the entry and exit to the garages at the back is an absurdity. You need only inspect the site to come to that conclusion.

Is there any reason that the redevelopments cannot be redesigned to make entry and exit to and from the garages at the front on Liverpool Street? The traffic on Liverpool Street is not so heavy that residents would be hugely inconvenienced trying to enter and exit their buildings from that side.

I sincerely hope the relevant planning committee will give the matters I have raised their close attention. I look forward to the results of their deliberations.

Thanking for the opportunity to respond

—  
Jeff Priday

M: [REDACTED]



**From:** Kerrie Hammer <k[REDACTED]> on behalf of Kerrie Hammer  
<[REDACTED]> <Kerrie Hammer <[REDACTED]>>

**Sent on:** Wednesday, May 8, 2024 10:23:30 AM

**To:** dasubmissions@cityofsydney.nsw.gov.au

**Subject:** Submission - D/2024/230 - 355-357 Liverpool Street DARLINGHURST NSW 2010 - Attention James Cooper

Caution: This email came from outside the organisation. Don't click links or open attachments unless you know the sender, and were expecting this email.

Dear James

Please let it be known that I strongly object to the redevelopment proposal for 355 357 Liverpool Street Darlinghurst. 2010 D2024 230. This parcel of land (currently comprising of a 2 level building operating as a boarding house) is located directly beside our building , heritage listed 'Ballina' 3 5 Darley Street, Darlinghurst, on the corner of Darley street and Darley Place.

I am concerned that I will suffer immensely if this application goes through.

The plan shows that the builder intends to build this new building right back to the property line on Darley Place. With the intention to have a grassy area in the middle and buildings either side. If this plan progresses in its current form I will lose all air, light and partial views of the city skyline as my unit faces west overlooking their current pool area.

I would request that the new proposed building stop well before Darley Place as is now the case and a grassy area for residents be moved to the back of the building where the current swimming pool is located. This will enable me, as my unit faces the west, to continue to maintain my current amenities of fresh air, sunshine and views.

This redevelopment plan also states that the building will be 8 stories high, I don't think that height is allowable in the area.? This would cast a constant shadow on our building including our rooftop area where our laundries and our clothes drying areas are situated.

The traffic in the small dead end laneway Darley Place would be constant at all hours night and day, due to proposed underground car park. Also they propose building a car lift which will create massive queues of cars up Darley Place and around into Darley Street while the cars are waiting for the lift to get in. This would also cause extreme noise levels. More importantly it would also be a danger to pedestrians who cross Darley Place while walking along Darley Street.

The noise by the use of Darley Place for builders trucks would disrupt neighbours quiet way of life including mine which would probably continue for more than 2 years. Entrance to 355 357 Liverpool Street for builders and any car parks should be in Liverpool Street.

This proposed building is definitely not in keeping with the area.

Yours sincerely

Kerrie Hammer (Ms)

19/3 5 Darley Street

Darlinghurst 2010

Telephone: [REDACTED]

Sent from my iPad



**From:** <[REDACTED]>  
**Sent on:** Wednesday, May 8, 2024 7:27:10 AM  
**To:** City of Sydney <council@cityofsydney.nsw.gov.au>  
**CC:** Neville Wyatt <[REDACTED]>  
**Subject:** DA/2024/230 355-357 LIVERPOOL STREET, DARLINGHURST 2020 WRITTEN SUBMISSION: LETTER OF OBJECTION SUBMISSION: TULLOCH  
**Attachments:** 355-357 LIVERPOOL WS.pdf (324.1 KB)

**Caution:** This email came from outside the organization. Don't click links or open attachments unless you know the sender, and were expecting this email.

*The proposed development is certainly 'offensive, jarring and unsympathetic'.*

*The amenity outcomes caused by the non-compliances will cause devastating outcomes to my client.*

*I do hope Council will look at this submission very closely, and take appropriate action.*

*Kind regards,*

*Bill Tulloch BSc[Arch]BArch[Hons1]UNSW RIBA Assoc RAIA*  
[REDACTED]

# SUBMISSION

a written submission by way of objection

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

prepared for

NEVILLE WYATT, 7 DARLEY STREET, DARLINGHURST 2010

7 MAY 2024

CITY OF SYDNEY  
TOWN HALL HOUSE  
LEVEL 2, 456 KENT STREET  
SYDNEY 2000

[council@cityofsydney.nsw.gov.au](mailto:council@cityofsydney.nsw.gov.au)

RE: DA/2024/230  
355-357 LIVERPOOL STREET, DARLINGHURST 2020  
WRITTEN SUBMISSION: LETTER OF OBJECTION  
SUBMISSION: TULLOCH

Dear Sir,

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

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

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

Having considered the subject property and its surrounds and the details of the development application currently before Council, I am of the opinion that the proposal, in its present form, should be refused. In addition, I am of the view that amendments would need to be made to the development proposal before Council is in a position to determine the development application by way of approval.

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

## CONTENTS

### A. EXECUTIVE SUMMARY

### B. CONTENTIONS THAT THE APPLICATION BE REFUSED

1. INCONSISTENT WITH THE PROVISIONS OF CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS
2. NON-COMPLIANCE WITH SEPP [HOUSING] 2021
3. CONTRARY TO AIMS OF LEP
4. CONTRARY TO ZONE OBJECTIVES
5. BUILDING BULK & SCALE
6. CHARACTER & STREETScape
7. EXCESSIVE HEIGHT OF BUILDING
8. EXCESSIVE WALL HEIGHT & NUMBER OF STOREY
9. INSUFFICIENT SETBACKS
10. INADEQUATE LANDSCAPE AMENITY
11. HERITAGE CONSERVATION CONCERN
12. TRAFFIC, ACCESS & PARKING
13. IMPACTS UPON ADJOINING PROPERTIES: ADVERSE SOLAR ACCESS IMPACTS
14. IMPACTS UPON ADJOINING PROPERTIES: ADVERSE PRIVACY IMPACTS
15. PRECEDENT
16. PUBLIC INTEREST

### C. CONTENTIONS THAT RELATE TO INSUFFICIENT INFORMATION

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

### E. REASONS FOR REFUSAL

### F. CONCLUSION

## A. EXECUTIVE SUMMARY

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

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

The proposal is considered to be inappropriate within the streetscape.

The bulk, scale, density 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 LEP and DCP controls cannot be designed on the site.

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

- The proposal fails to achieve an acceptable solar access outcome,
- The proposal fails to achieve an acceptable privacy outcome,
- The proposal fails to achieve an acceptable visual bulk and scale outcome,
- The proposal fails to achieve an acceptable landscape outcome,
- The proposal fails to achieve an acceptable traffic outcome,
- Unacceptable Car Lift location to serve 16 car spaces to the narrow Darley Place
- The proposal fails to achieve an acceptable construction management plan outcome that fails to ensure permanent access to Darley Place at all times, with most of the retained façade contractors, demolition, piling rig access, excavation equipment and construction traffic planned for the narrow Darley Place and Darley Street. Failure to confirm that at no time will ongoing local traffic on Darley Place and Darley Street be restricted for an extended period of time as a result of construction operations.
- The proposal provides for an unacceptable increase in the number of cars access Darley Place from less than 10 to close to 40 (when consideration is taken of the pending redevelopment at 349 Liverpool St

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

- **Excessive Building Height:** Proposed 23.76m v Standard 22.0m
- **Excessive Building Height in Storeys to Darley Place:** Proposed 8 Storeys v Control: 6 Storeys
- **Excessive Building Street Frontage Height in Storeys to Darley Place:** Proposed 8 Storeys v Control Max 3 Storey
- **Insufficient Building Setbacks to Darley Place;** Proposed Zero Setback v Control: Setback above 3 Storey 3m
- **Insufficient Deep Soil to rear setback to Darley Place;** Proposed Zero v Control 10% of site area.

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

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

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

#### Clause 4.6 Written Request

The Applicant's Clause 4.6 written request does not adequately demonstrate that the proposal achieves the relevant objectives of the development standards, or that there are insufficient environmental planning grounds to justify the extent of the proposed variations sought. The variations would result in undue visual bulk that would be inconsistent with the desired future character of the locality.

The proposed development does not satisfy the objectives of the zone or contribute to a scale that is consistent with the desired character of the locality and the scale of surrounding development.

#### Comply with the Planning Regime

A compliant building design would reduce the amenity impacts identified.

My client agrees with *Roseth SC in NSWLEC Pafbum v North Sydney Council*:

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

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

My client wishes to emphasise the fact that my client takes no pleasure in objecting to their neighbour's DA.

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

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

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

Council's development controls relating to managing building bulk and scale are designed to ensure that buildings are consistent with the height and scale of the desired character of the locality, are compatible with the height and scale of surrounding and nearby development, respond sensitively to the natural topography and allow for reasonable sharing of views and visual amenity.

Council's DCP with respect to the locality, requires that development respond to the natural environment and minimise the bulk and scale of buildings. The proposed development in its current form does not achieve this and provides inadequate pervious landscaped area at ground level.

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, does not succeed on merit and is not worthy of the granting of development consent.

#### Fundamental Principles of Design Excellence

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

- Context and local character
- Built form, scale and public domain, urban design response
- Density
- Landscape integration
- Architectural expression, in terms of excessive built form
- Amenity impacts on neighbours

#### Incomplete Information

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

#### Re-Notification

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

#### Modifications Sought

My client asks Council to seek modifications to this DA as the proposed development does not comply with the planning regime, by non-compliance to development standards, and this non-compliance leads directly to my clients' amenity loss.

Section D of this submission titled '*Request for amended plans to be submitted to better address impacts upon adjoining properties*', addresses the amendments that my client seeks to better resolve their amenity issues.

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

## B. CONTENTIONS THAT THE APPLICATION BE REFUSED

### 1. INCONSISTENT WITH THE PROVISIONS OF CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

Council cannot be satisfied that under clause 4.6 of the LEP seeking to justify a contravention of the development standard that the development will be in the public interest because 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 applicant's written request 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 contravening the development standard to the extent proposed.
- The proposed development will not be in the public interest because it is inconsistent with the objectives of the height of buildings development standard or the objectives in the zone to provide for residential development of a low density and scale integrated with the landform and landscape.

There is nothing in the written request's consideration of the relationship between the proposal and the zone objectives which might provide sufficient environmental planning grounds for the breach.

The test is concerned with establishing sufficient environmental planning grounds to justify a contravention, something more than compliance or consistency with zone and development standard objectives must be sought.

The Applicant seeks to vary the height of buildings development standard.

The request relies upon the first way identified by Preston CJ in Wehbe. The first way in Wehbe is to establish that the objectives of the standard are achieved.

My client contends that the variation has not responded to the objective of the maximum building height standard and given adequate reasoning why compliance is unreasonable or unnecessary.

My client contends that:

- The written request does not establish that the development is consistent with the objectives of the standard
- The written request does not establish that the development is consistent with the character compatibility objectives of the height standard in terms of maximum building height, number of storeys and setbacks

Furthermore, and in simple terms, 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 are the planning controls 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 objectives of the standard have not been met.

The bulk and scale of the proposed development is inappropriate for the site and locality.

Strict compliance with the maximum building height is reasonable and necessary in the circumstances of this case.

In summary, the proposal does not satisfy the requirements of clause 4.6 of LEP 2014.

The variation of the standard would not be in the public interest because it would set a precedent for development in the neighbourhood, such that successive exceedances would erode the views enjoyed from other similar properties.

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.

## 2. NON-COMPLIANCE WITH THE HOUSING SEPP – DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

On 15 March 2024 the NSW Government published the *State Environmental Planning Policy Amendment (Housing) 2024*. This document revised the transitional provision set out in section 8(1) of Schedule 7A of the Housing SEPP.

A new provision applies the new Chapter 4 ('Design of residential apartment development') of the Housing SEPP to any development application or modification application, including those lodged before 14 December 2023. This provision is section 8(2A) of Schedule 7A of the Housing SEPP.

Chapter 4 of the Housing SEPP.

- The relevant design quality principles in schedule 9 of the Housing SEPP.
- The provision (formerly clause 6A of SEPP 65) overriding some aspects of development control plans is now section 149 of the Housing SEPP.

## SCHEDULE 9 DESIGN PRINCIPLES FOR RESIDENTIAL APARTMENT DEVELOPMENT

The proposal is inconsistent with the design quality principles of the HOUSING SEPP; Schedule 9 Design Principles for Residential Apartment Development. I contend that the proposed development fails to accord with:

### Context and Neighbourhood Character

The resultant bulk, form and scale of the amended proposal will be inconsistent with and unsympathetic to the adjacent sites and neighbourhood. The proposal fails to respond to the surrounding context and neighbourhood character.

### Built Form and Scale

The bulk and scale of the proposed new building are excessive. The proposal will not achieve an appropriate built form that fits into its context.

### Density

The density is inappropriate to the site and its context.

### Landscape

The proposed development does not present a positive image and contextual fit of well-designed development by contributing to the landscape character of the streetscape and neighbourhood. The proposed development does not enhance the development's environmental performance by retaining positive natural features

### Amenity

The proposed development does not present good amenity outcomes for neighbours, including loss of solar, view, and privacy

### Aesthetics

The proposal does not respond to or reinforce the existing local context and results in a built form which is excessive in bulk and scale.

## APARTMENT DESIGN GUIDE

The proposed development does not accord with the *Apartment Design Guide*. Concern is expressed relating to the non-compliance to the controls, the objectives, and the failure to reduce the amenity impacts to neighbours on privacy, solar, view, and visual bulk.

The proposed development is inconsistent with the design criteria detailed in the Apartment Design Guide in particular:

- 2A Primary Controls
- 2B Building Envelopes
- 2C Building Height

- 2D FSR
- 2E Building Depth
- 2F Building Separation
- 2G Street Setbacks
- 2H Side & Rear Setbacks
- 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
- 4A Solar & Daylight Access
- 4B Natural Ventilation
- 4C Ceiling Heights
- 4D Apartment Size & Layout
- 4E Private Open Space & Balconies
- 4F Common Circulation & Spaces
- 4G Storage
- 4H Acoustic Privacy
- 4J Noise & Pollution
- 4K Apartment Mix
- 4L Ground Floor Apartments
- 4M Facades
- 4N Roof Design
- 4O Landscape Design
- 4P Planting on Structures
- 4Q Universal design
- 4R Adaptive Reuse
- 4S Mixed Use
- 4T Awnings & Signage
- 4U Energy Efficiency
- 4V Water Management & Conservation
- 4W Waste Management
- 4X Building Maintenance

### 3. CONTRARY TO AIMS OF LEP

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the aims under the LEP.

- The proposal fails to protect residential amenity, has excessive building bulk and fails to manage environmental constraints.
- The development compromises amenity impacts on neighbours
- The development is not compatible with the desired future character of the locality in terms of building height and roof form.

- o The development does not minimise the adverse effects of the bulk and scale of buildings

#### 4. CONTRARY TO ZONE OBJECTIVES

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy the objectives of the zone of the LEP.

- o The proposal is of a bulk and scale which is inconsistent with development in this location and therefore fails to achieve the desired future character of the neighbourhood.
- o The development has not been designed to be in harmony with the natural environment and does not have a high visual quality presentation to the streetscape
- o The development compromises amenity impacts on neighbours
- o To provide for the housing needs of the community
- o To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment
- o The proposed development will not be of an acceptably density and scale that is integrated with the landform and landscape and will have an unacceptable visual impact on the aesthetic values of the area.

#### 5. BUILDING BULK & SCALE

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

The application will result in an unacceptable loss of visual amenity from adjoining private properties. and from the public domain including the foreshore.

The loss of visual amenity is due to the excessive bulk and scale of the proposed development.

The breaches of the building envelope will result in both an adverse visual impact when viewed from private and public domains.

The numerical non-compliances result in a cumulative impact, that increases the built form, resulting in an overdevelopment of the site.

The proposal will present excessive bulk and scale that is not representative of the type of development anticipated by the zone or the applicable controls.

The proposal will result in unreasonable bulk and scale for the type of development anticipated in the zone.

The proposal does not step down with the topography of the site.

The proposal does not allow for enough landscaping to suitably reduce the bulk and scale of the development.

The proposal does not provide adequate articulation of the built form to reduce its massing.

The proposal fails to encourage good design and innovative architecture to improve the urban environment.

The proposal fails to minimise the visual impact of development when viewed from adjoining properties and streets.

## 6. CHARACTER & STREETScape

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate streetscape outcome, presenting non-compliant envelope controls that are visible from the street.

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

The proposed development should be refused due to its excessive bulk, scale and resulting impacts upon the amenity of adjoining properties and the character of the surrounding locality.

The proposal does not meet the streetscape character and key elements of the precinct and desired future character.

The proposal is excessive in scale, has adverse impacts on the visual amenity of the environment, does not positively contribute to the streetscape in terms of an adequately landscaped setting. The proposal is visually dominant, and is incompatible with the desired future townscape area character.

The development has excessive bulk and scale and fails to comply with development standards set out LEP, resulting in a building which has unacceptable adverse impacts on neighbouring properties and the locality.

The non-compliant building envelope will lead to unacceptable visual bulk impact to neighbours.

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

The development presents an inappropriate response to the site and an unsatisfactory response to the desired future character of the area.

The proposed development should be refused because it is incompatible with the desirable elements of the current character of the locality and is inconsistent with the standards and controls:

- o The design of the proposal does not recognise or complement the desirable elements of the subject site's current character.

- The proposal does not employ a building form that relates to the landform as it does not step down with the slope of the site.
- The proposal offers little visual relief of the resultant building bulk. Such building bulk is not compatible in scale with adjacent and surrounding development.
- The proposal will present as a large building with insufficient building articulation and landscaping to break up and visually reduce the building bulk.
- The proposal will not appear as low density and, therefore, does not achieve consistency or compatibility with the general built form within the locality or the R2 zone. The development does not present as detached in style with distinct building separation and areas of landscaping.

## 7. EXCESSIVE BUILDING HEIGHT

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to comply with the building height development standard under the LEP.

The proposed development should be refused due to its excessive height and failure to comply with the *Height of Buildings* set out in the LEP, and in particular:

- The proposed development, by virtue of its height and scale, will not be consistent with the desired character of the locality
- The development will not be compatible with the height and scale of surrounding and nearby development.

The development application should be refused because the proposed building height is excessive and does not comply with the objectives or controls in the LEP in circumstances where the written request made pursuant to clause 4.6 of the LEP in relation to the contravention of the development standard is inadequate and should not be upheld. The submitted written variation request under cl.4.6 of the LEP seeking to justify the contravention of the height of buildings development standard is not well-founded having regard to the requirements of cl.4.6(3) and 4.6(4)(a)(i) of LEP.

The proposal is inconsistent with the objectives of the Height of Buildings development standard pursuant to LEP.

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact
- The development is not compatible with the desired future character of the locality in terms of building height and roof form.
- The development does not minimise the adverse effects of the bulk and scale of buildings

The adverse impacts of the proposed development, including on the amenity of neighbouring property and public property, are directly attributable to the exceedance of the height of buildings development standard.

The proposal is inconsistent with the LEP as there is a public benefit in maintaining the Height of Buildings development standard in this particular case.

The proposed portion of the building above the maximum height is not 'minor'. The building does not adequately step down the slope.

In respect of the overall height control, I have considered the applicant's Clause 4.6 and I consider that, in this instance, they have not been able to establish an argument to support their assertion that it is unreasonable and unnecessary to comply with the control.

My client submits that the submission fails on the basis of the assessment against the objectives of clause 4.3, as well as the environmental planning grounds set out. Additionally, I consider that the development does not comply with the land use objectives.

In respect of the proposed development, I submit that the built form, which also incorporates other substantial non-compliant breaches will have negative impacts on the amenity of neighbours as well as have significant impacts in respect of visual intrusion. Additionally, there is nothing provided for in this development that seeks to minimise the adverse effects of bulk and scale of the building.

My client has reviewed the responses to these objectives in the applicant's Clause 4.6 and do not consider they satisfy the objectives. My client strongly refutes their arguments.

In respect of the compatibility test, unsurprisingly the applicant completely ignores multiple considerations dealing with the understanding of the site in respect of its topography, how it is viewed from neighbouring properties as well as the lack of compatibility with its form and articulation.

My client contends that the proposal fails to adequately demonstrate that compliance with each standard is unreasonable or unnecessary nor that there are sufficient environmental planning grounds to justify contravening each of the standards. Variation of the development standards is not in the public interest because the proposed development is not consistent with the objectives of each development standard nor the objectives of the zone. The proposed development has not sought adequate variations to development standards. The proposal is excessive in bulk and scale, and is inconsistent with the desired future character of the area resulting in adverse impacts on the streetscape. The proposal results in an unacceptable dominance of built form over landscape. The proposal fails to minimise the adverse effects of bulk and scale resulting in adverse amenity impacts.

The proposed development should be refused due to its excessive visual impact and impacts on the character of the locality, adjoining properties and the surrounding environment.

The form and massing of the proposal does not appropriately respond to the low-density character of the surrounding locality

The form and massing of development is also inconsistent with the provisions of the DCP which prescribe that new development should complement the predominant building form in the locality.

The proposal would not recognise or protect the natural or visual environment of the area, or maintain a dominance of landscape over built form. The proposal has not been designed to minimise the visual impact on the surrounding environment.

In *Veloshin*, [*Veloshin v Randwick Council* 2007], NSW LEC considered

Height, Bulk & Scale. Veloshin suggest that Council should consider:

*“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”*

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

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

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

The non-compliant elements of the proposed development, particularly caused from non-compliant excessive heights would have most observers finding *‘the proposed development offensive, jarring or unsympathetic’*.

The planning controls are not limited to preventing offence and the like; and are concerned with establishing a certain physical and landscape character. In this instance I am not convinced that there are strong environmental planning grounds to justify a contravention of the scale proposed.

The proposed development should be refused due to its excessive bulk and scale and its failure to comply with the LEP development standard

The main LEP standards that control bulk have been exceeded;

- The written request is not well-founded as it does not satisfactorily demonstrate: *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case* because it does not achieve consistency with the objectives of the R2 zone or the objectives of the equivalent development standard contained within clause 4.4 of the LEP; and *that there are sufficient environmental planning grounds to justify contravening the development standard* because the provided justification is insufficient and disagreed with.
- The proposal will present excessive bulk and scale that is not representative of the type of development anticipated by the zone or the applicable controls.
- The proposal does not comply with requirement set out within the DCP, as it does not step down with the topography of the site
- The proposal does not comply with requirement set out within the DCP as it does not allow for enough landscaping to suitably reduce the bulk and scale of the development.
- The proposal does not comply with requirement set out within the DCP as it does not provide adequate articulation of the built form to reduce its massing.
- The proposal is inconsistent with the following objectives of the DCP: *To encourage good design and innovative architecture to improve the urban environment; and To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*



## 8. EXCESSIVE WALL HEIGHT & NUMBER OF STOREY

The proposal is contrary to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it fails to comply with the control.

The proposed development should be refused due to its excessive height and failure to comply with the Wall Height set out in the controls.

- Excessive Building Height in Storeys to Darley Place
- Excessive Building Street Frontage Height in Storeys to Darley Place
- Insufficient Building Setbacks to Darley Place considering the non-compliant storey heights

The proposed development is inconsistent with the objectives of the zone and the objectives that underpin the wall height.

This non-compliance, as well as the other non-compliances, arising from the proposed upper level indicates that the proposal cannot satisfactorily achieve the underlying objectives of this control, ultimately resulting in an unacceptable building bulk that creates a severe amenity impact.

- The development compromises amenity impacts on neighbours
- The development does not minimise visual impact
- The development is not compatible with the desired future character of the locality in terms of building height and roof form.
- The development does not minimise the adverse effects of the bulk and scale of buildings

The impacts are very similar to the HOB impacts raised in the section above.

The proposed development fails to accord with the DCP:

*The maximum may only be achieved where it can be demonstrated that the proposed development:*

- (a) reinforces the neighbourhood character;*
- (b) is consistent with the scale and form of surrounding buildings in heritage conservation areas; and*
- (c) does not detract from the character and significance of the existing building*

## 9. INSUFFICIENT SETBACKS

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

- Insufficient Building Setbacks to Darley Place
- Insufficient Deep Soil to rear setback to Darley Place

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

The proposal is inconsistent with the objectives of the DCP.

The non-compliance fails:

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

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

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

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

The proposal will result in an unsatisfactory scale of built form that will be disproportionate and unsuitable to the dimensions of the site and neighbouring residential development.

The height and bulk of the development will result in unreasonable impacts upon the amenity of neighbouring properties with regard to visual dominance.

The excessive built form of the proposal results in a development where the building mass becomes visually dominant and imposing, particularly when viewed from the visual catchment of neighbouring properties

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

## 10. INADEQUATE LANDSCAPE AMENITY

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate landscape amenity.

The proposal does not provide for adequate landscape area according to the controls.

Variations to the controls cannot be allowed as the proposal does not meet the objectives of the clause.

- Insufficient Building Setbacks to Darley Place
- Insufficient Deep Soil to rear setback to Darley Place

The proposal fails:

- To enable planting to maintain and enhance the streetscape.
- To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.
- To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low-lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.
- To enhance privacy between buildings.
- To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.
- To provide space for service functions, including clothes drying.
- To facilitate water management, including on-site detention and infiltration of stormwater.

Council's DCP with respect to the locality, requires that development respond to the natural environment and minimise the bulk and scale of buildings. The proposed development in its current form does not achieve this and provides inadequate pervious landscaped area at ground level.

I have significant concerns:

- Limited deep soil space provided for large replacement tree species. The tiered/terraced deep soil areas located around the perimeter of the development provide an insufficient area and volume of soil for root growth for the large replacement tree species that are specified on the submitted Landscape plan. This decreases the probability that the species will grow to their full dimensions and therefore decreases their potential to provide maximum amenity. A smaller and restricted root spread also increases the potential chances of whole tree failure at maturity.
- Lack of small to medium sized trees included in the planting scheme. The existing planting plan consists of low groundcovers, shrubs and large tree species. Small to medium sized trees included in the proposal is likely to greatly increase green amenity and screening to residents within the property and on neighbouring properties.

## 11. HERITAGE CONSERVATION CONCERNS

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to provide adequate heritage conservation outcomes, presenting non-compliant envelope controls that are visible from the heritage item.

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

- The development application should be refused because approval of the proposal will have an adverse and unacceptable impact on the heritage significance of the building the subject of the application, and on the character and significance of the Conservation Area pursuant to the LEP.
- The application results in adverse impacts on the heritage significance of the building and the Conservation Area due to its failure to satisfy the heritage requirements of the LEP as well as the heritage requirements of the DCP.
- The proposed excavation is considered excessive resulting in a detrimental impact on the subject heritage item and the surrounding areas, pursuant to the LEP as well as the requirements of the DCP.
- The application results in a built form which is not subservient to the heritage item. The proposed development has multiple non-compliances to numerical standards and controls.
- The proposed development would have a detrimental impact upon the characteristics features of the heritage item resulting in a massing that is likely to overwhelm the heritage item contrary to the following provisions within the LEP and DCP.
- The overall bulk of the proposal is not sympathetic to the proportions and architectural character of the neighbouring heritage item.
- The current application will have significant impacts upon the heritage values of the existing building.

The proposed development does not conserve the environmental heritage of the local area and does not conserve the heritage significance of the adjacent heritage items including settings and views.

## 12. TRAFFIC, ACCESS & PARKING

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

My client wishes to Council to consider the following matters:

- In relation to proposed car lift location, my client considers that a car lift in the corner as proposed will create chaos in Darley Place and Darley Street.
- Darley Place is predominantly a pedestrian access currently used by relatively few cars.
- The proposal to establish a crane/construction zone at the corner of Darley Place and Darley Street is of great concern
- All occupants of 7 Darley Street have driver's licences and car share and with the different types of employment, they require access day and night
- Darley Street is a heavy pedestrian area between the Kings Cross precinct and Oxford Street – construction and truck traffic will be dangerous and generate huge congestion as Darley Street itself is quite narrow – one illegally parked or waiting truck will bring all traffic to a standstill
- Any building access should be from Liverpool Street and if this cannot be done (on an acceptable reduced scale proposal) then the development application should be rejected in its entirety

The proposed traffic and parking arrangement, including the proposed car lift, car stacker and the associated turntable, driveway and sight splay are unsatisfactory.

- Swept path diagrams indicate restricted movements for vehicles accessing and egressing from the car lift and identify several encroachments into adjacent structures.
- Car lift must be capable of accommodating a B99 vehicle, as per Council's DCP.
- Swept path analysis should be revised accordingly to demonstrate satisfactory movements of B99 vehicles.
- The width of access driveway must be confirmed. This should be clearly depicted on the architectural drawings.
- All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping.

### Vehicle Access & Parking

All internal driveways and vehicle parking space must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

With respect to this, the following revision(s) must be undertaken;

Dimensioned plans for the parking area including the driveway width and parking spaces width are to be submitted to Council's traffic engineer for review to confirm that parking bays and the driveway widths are appropriately sized.

### Vehicular Swept Paths

Vehicular manoeuvring swept path plots should be provided for review by Council's traffic engineer.

The plots to be prepared using traffic engineering software such as Autotrack/Autoturn, for a B85 car entering and egressing the most constraint spaces in a forward direction and for a B99 passing a B85 vehicle inside the carpark. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

### Demolition Traffic Management Plan

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

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

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.

- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

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

#### Implementation of Demolition Traffic Management Plan

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

#### Construction Traffic Management Plan

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

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

agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

No offsite unloading or loading is to take place in Darley Place or Darley Street at any time.

The CTMP must address following:

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

- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

#### Implementation of Construction Traffic Management Plan

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

#### SEPP HOUSING: CAR PARKING AND TRAFFIC SAFETY

The proposed development should be refused because it does not provide satisfactory car parking and will result in unacceptable traffic safety impacts.

The proposed development provides an inadequate amount of parking for:

- Residential Spaces
- Visitor Parking
- Bicycle Parking
- Disability

The proposed development provides an inadequate space for delivery vehicles for:

- Garbage Collection
- Removalists Vans
- Emergency Vehicles

I contend that there are multiple other concerns:

- It has not been demonstrated by swept path analysis that satisfactory two-way passing of vehicles can be achieved at the proposed vehicle access onto the street having regard for the narrow carriageway width of the street, which includes parallel parking along both kerbsides, as per Appendix B of AS 2890.4-2004.
- Sight Lines at the Entry unacceptable
- Single Service Bay that is sized only for Courier Vans and Utilities is unacceptable. There is no capacity to accommodate deliveries or servicing on-



street. An off-street loading bay giving access to a Small Rigid Vehicle is the minimum requirement.

- Head Clearance above Accessible Parking, Loading/Service Bays have not been dimensioned, to accord with AS 2890.
- Proposed Vehicle Crossing has not been shown.
- Inadequate details of the proposed basement traffic signals control system have not been provided. Waiting Bays not marked. Access for B99 vehicles past B85 vehicles occupying the waiting bays not demonstrated.
- Queuing Analysis not provided to prevent vehicle encounters on the access ramp.
- The location for the proposed intercom and security card detector is not provided.
- Critical Parking Spaces has not been demonstrated by swept path plots for a B85 vehicle as required by AS 2890.1.

### 13. IMPACTS UPON ADJOINING PROPERTIES: SOLAR ACCESS

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to solar access and excessive overshadowing by the non-compliant built form.

The proposal is inconsistent with the objectives of the DCP.

- *New development must not create any additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than 2 hours direct sunlight to habitable rooms and 50% of the private open space between 9am and 3pm on 21 June*

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

The proposed development should be refused as it will have unacceptable impacts upon the amenity of adjoining properties, specifically with regard to overshadowing.

The proposed development will result in unreasonable overshadowing of the windows of my clients' property and the private open space of my clients' property, resulting in non-compliance with the provisions of DCP.

A variation to the DCP is not supported as the objectives of the clause are not achieved.

In *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 the LEC consolidated and revised planning principle on solar access is now in the following terms:

*“Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.”*

My client contends that the overshadowing arises out of poor design. The design does not respect envelope controls, and must be considered 'poor design'.

The Applicant has not submitted hourly solar diagrams to fully assess the solar loss. My client asks Council to obtain these diagrams.

The loss of sunlight is directly attributable to the non-compliant envelope.

The planning principle *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 is used to assess overshadowing for development application. An assessment against the planning principle is provided as follows:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

The density of the area is highly controlled. Building envelope controls have been exceeded.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

The solar diagrams are not complete, but what has been provided shows that the proposed development will overshadow the adjoining dwellings. The amount of sunlight that will be lost will only be able to be fully considered once solar elevational drawings are submitted. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

The proposed development has been designed without considering the amenity of the neighbouring properties. It is considered that a more skilful design, with a compliant envelope control, could have been adopted that would have reduced the impact on the neighbouring properties. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *To be assessed as being in sunlight, the sun should strike a vertical surface at a horizontal angle of 22.5o or more. (This is because sunlight at extremely oblique angles has little effect.) For a window, door or glass wall to be assessed as being in sunlight, half of its area should be in sunlight. For private open space to be assessed as being in sunlight, either half its area or a useable strip adjoining the living area should be in sunlight, depending on the size of the space. The amount of sunlight on private open space should be measured at ground level.*

This can only be fully assessed once elevational solar drawings at hourly intervals are submitted. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

There is no major overshadowing as a result of vegetation

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as Well as the existing development.*

The area is not currently undergoing change, the LEP and DCP controls have not altered for many years.

The assessment of the development against the planning principal results in the development not complying with the solar access controls and therefore amended plans should be requested to reduce the overshadowing impact on the adjoining neighbour. It is suggested that a more skilful design of the development, with a compliant envelope control, would result in less impact in regard to solar access. It is requested that Council seek amended plans for the development to reduce the impact of the development, and these matters are addressed elsewhere in this Written Submission.

My client objects to solar loss to my clients' private open space, and to my clients' windows that fails to allow mid-winter solar access into highly used room by non-compliant development controls. The proposal renders nugatory the utility of proposed solar heating at my client's property.

#### 14. IMPACTS UPON ADJOINING PROPERTIES: PRIVACY

The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to visual privacy.

The proposal is inconsistent with the objectives of the DCP.

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

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

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

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

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

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

An assessment of the privacy impact against the planning principle *Meriton v Sydney City Council [2004] NSWLEC 313* follows:

*Principle 1: The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.*

Response: The development is located in a low-density area.

*Principle 2: Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)*

Response: The proposed development results in a privacy impact with the proposed windows facing neighbours without sufficient screening devices being provided, considering the proposed windows are directly opposite my clients' windows and balconies.

*Principle 3: The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.*

Response: The windows in question are windows of the main circulation zones and living areas, it is considered that the living areas will result in an unacceptable privacy breach. The proposed windows and decks face the rear private open spaces for the neighbouring dwelling and will result in an unacceptable level of privacy impact.

*Principle 4: Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.*

Response: The proposed development is a new development and the proposed windows have been designed without any consideration to the privacy of the neighbouring property.

*Principle 5: Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.*

Response: It is considered that the private open space of the neighbouring dwellings could be better protected. My client asks Council to consider the most appropriate privacy screening measures to be imposed on windows and decks facing my clients' property, including landscaping

*Principle 6: Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.*

Response: As mentioned above, the use of privacy devices would reduce the impact of the dwelling.

*Principle 7: Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.*

Response: Additional landscaping may assist in addition to privacy devices.

*Principle 8: In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.*

Response: The area is not undergoing change that would warrant privacy impact such as the one presented.

Comment: As the development is considered to result in an unacceptable privacy impact due to the design, it is requested that the proposed development be redesigned to reduce amenity impact on the neighbouring properties.

In the context of the above principles, the application can be considered to violate the reasonable expectation that the habitable rooms and private open space at my clients' property will remain private. It is therefore reasonably anticipated that the application does not comply with the DCP.

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

#### 15. PRECEDENT

The Development Application should be refused because approval of the proposal will create an undesirable precedent for similar inappropriate development in the area.

#### 16. PUBLIC INTEREST

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

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

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

## C. CONTENTIONS THAT RELATE TO INSUFFICIENT & INADEQUATE INFORMATION

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

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

### Privacy Impact Analysis

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

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

### Visual Bulk Analysis

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

### External Plant

Details of all external plant and equipment including air conditioning units/condensers. Air conditioning units to the façade, roof or balconies of the building will not be acceptable.

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

A compliant building design would reduce the amenity impacts identified.

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

Reduce the proposed development as follow:

### 1. REDUCTION OF BUILT FORM

- Comply with Building Height
- Comply with Building Height in Storeys to Darley Place
- Comply with Building Street Frontage Height in Storeys to Darley Place
- Comply with Building Setbacks to Darley Place
- Comply with Deep Soil to rear setback to Darley Place
- Reduce bulk facing Darley Place to provide solar access in compliance with DCP controls
- Relocate Car-lift away from Darley Place
- Relocate all Construction Traffic away from Darley Place

### 2. PRIVACY DEVICES

- All windows facing my clients' property to have windows sills increased to a minimum height of 1.5m measured from the FFL level, or windows facing the side boundary are to be fitted with translucent/obscure/frosted glazing to a height of not less than 1.5m above the FFL. All opening windows facing my clients' property to be positioned above 1.5m above the FFL.
- Louvred privacy screens added to the edge of all balconies facing my clients' property. Louvred privacy screens shall be fixed and angled at a 20-degree acute angle to the angle of the proposed development.
- All privacy screens are to have fixed louvre blades with a maximum spacing of 25mm, and shall be constructed of materials and colours that complement the finishes and character of the building.
- Screens installed on balconies are to extend the full height from finished floor level to the ceiling of the balcony.

### 3. LANDSCAPING

- Provide 10% of site area as deep soil to Darley Place
- Additional 8m high planting for screening along Darley Place adjacent to the proposed built form in the Darley Place setback, to reduce the built form and establish an appropriate setting where landscape is prominent
- New trees and screening trees be increased to 400 L bag size, so that a more mature landscape outcome is achieved.
- Planter box is to be installed for the full width of the decks facing Darley Place. The planter box is to have a minimum internal dimension of 1.0m and shall be constructed or installed to a minimum height of 1.0m above finished floor level. The planter box is to be planted with native species capable of reaching a height of 1.5m at maturity.



#### 4. CONDITIONS OF ANY CONSENT

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

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

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

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

- Adjoining Buildings Founded on Loose Foundation Materials
- Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)
- Compliance with Building Code of Australia and insurance requirements
- Dilapidation Reports for Existing Buildings: A photographic survey and dilapidation report of my clients' adjoining property detailing the physical condition of the property, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, MUST BE submitted to the Principal Certifier for approval prior to the issue

of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person and a copy to be given to the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Principal Certifier, prior to the issue of any Construction Certificate.

- o Geotechnical Report: Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following: a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum; b) the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended; c) the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site); d) the existing groundwater levels in relation to the basement structure, where influenced; e) the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a "dam" for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and f) recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages. The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/hydrogeological engineer with previous experience in such investigations and reporting. It is the responsibility of the consulting geotechnical/hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate. The design principles for the geotechnical report are as follows: a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure; b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure; c) no changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure; d) vibration is to be minimised or eliminated to ensure no adverse impact on the surrounding

property and infrastructure occurs, as a result of the construction of the development; e) appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and f) an adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage. The report, satisfying the requirements of this condition, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

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

Conditions which must be satisfied during any development work

- Asbestos Removal Signage
- Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum
- Classification of Hazardous Waste
- Compliance with Australian Standard for Demolition
- Compliance with BCA and Insurance Requirements under the Home Building Act 1989
- Compliance with Council's Specification for Roadworks, Drainage and
- Compliance with Geotechnical / Hydrogeological Monitoring Program
- Miscellaneous Works, Road Works and, Work within the Road and Footway
- Critical Stage Inspections
- Disposal of Site Water During Construction
- Disposal of Asbestos and Hazardous Waste
- Dust Mitigation
- Erosion and Sediment Controls – Maintenance
- Footings in the vicinity of trees
- Hand excavation within tree root zones
- Hours of Work –Amenity of the Neighbourhood
- Installation of stormwater pipes and pits in the vicinity of trees
- Level changes in the vicinity of trees
- Notification of Asbestos Removal
- Maintenance of Environmental Controls
- Placement and Use of Skip Bins
- Prohibition of Burning
- Public Footpaths – Safety, Access and Maintenance
- Replacement/Supplementary trees which must be planted
- Requirement to Notify about New Evidence

- Site Cranes
- Site Waste Minimisation and Management – Construction
- Site Waste Minimisation and Management – Demolition
- Support of Adjoining Land and Buildings
- Tree Preservation
- Vibration: Monitoring Construction Vibration. Vibrations associated with demolition, excavation and construction works are limited to a tolerance of 3mm/s PPV (peak particle velocity) at the property boundaries. Vibration monitoring equipment is to be installed by a registered Geotechnical Engineer throughout the site and along the boundaries to verify that vibration is within the limits of the maximum tolerance. The vibration monitoring equipment must include a light/alarm, so the site foreman and equipment operator are alerted to the fact that vibration limits have been exceeded. Where the vibration tolerances have been exceeded, works shall cease until a change in construction / excavation methodology are implemented to ensure compliance. It also must log and record vibrations throughout the excavation and construction works so that compliance may be verified. Any monitoring devices are to be installed at the footing level of any adjacent structures.  
Reason: To restrict vibration impacts.

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

- Amenity Landscaping
- Certification of Electric Vehicle Charging System
- Commissioning and Certification of Public Infrastructure Works
- Commissioning and Certification of Systems and Works
- Occupation Certificate (section 6.9 of the Act)
- Letter Box

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

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

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

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

## Advising

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

## E. REASONS FOR REFUSAL

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

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

1. Council is not satisfied that under clause 4.6 of the LEP seeking to justify a contravention of the development standard that the development will be in the public interest because it is inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
2. The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy objectives and planning controls of LEP:
  - o Aims of Plan
  - o Zone Objectives
  - o Height of Buildings
  - o Exceptions to Development Standards
  - o Heritage
3. The proposal is contrary to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as it fails to satisfy objectives and planning controls of DCP:
  - o Excessive Wall Height & Number of Storey
  - o Unacceptable Setbacks
  - o Insufficient Landscape Areas
  - o Poor Car Lift location & Garage Design
  - o Poor Streetscape Outcomes
  - o Heritage Conservation Concerns
  - o Impacts Upon Adjoining Properties: Overshadowing
  - o Impacts Upon Adjoining Properties: Privacy
  - o Impacts Upon Adjoining Properties: Visual Bulk
4. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the plans and documentation are misleading as they do not clearly portray the true extent of works proposed. The plans include inaccuracies and inconsistencies and insufficient information has been provided in order to enable a detailed assessment. Dimensions to boundaries have not been shown in all locations of all proposed built elements. Levels on all proposed works have not been shown.
5. The proposal is contrary to Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* in that the proposal would not satisfy the matters for consideration under Biodiversity & Conservation SEPP 2021 and Resilience & Hazards SEPP 2021

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

## F. CONCLUSION

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

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

The development will not sit well within the streetscape with non-compliance to LEP standards and DCP controls causing considerable concern. In this regard, the proposal is considered excessive in bulk and scale and would be considered jarring when viewed from the public domain.

Commissioner Moore revised the NSWLEC planning principle for assessing impacts on neighbouring properties within *Davies v Penrith City Council* [2013] NSWLEC 1141

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

*How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?*

*How reasonable is the proposal causing the impact?*

*How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?*

*Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?*

*Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?"*

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

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

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

It is considered that the public interest is not served.

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



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

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

- o The development compromises amenity impacts on neighbours
- o 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:

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

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

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

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

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

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

Yours faithfully,



Bill Tulloch BSc [Arch] BArch [Hons1] UNSW RIBA Assoc RAIA  
PO Box 440 Mona Vale  
NSW 1660