

RE DA No. 011.2020.00059347.001, PPTY: 2C Amethyst Avenue, Pearl Beach

To whom it may concern,

1. I write regarding the above development application.
2. We are the owners of a neighbouring property to 2C Amethyst Avenue, Pearl Beach (**"the proposed development"**). Our property is located at 19A Diamond Rd (**"our property"**), which is the property immediately to the west of the proposed development. Our family bought the property in 2001. We did so because Pearl Beach is a peaceful, quiet, and private place which we utilise to escape city life and to gather for family events. These are important longstanding amenity and lifestyle benefits which we are concerned will be adversely impacted by the proposed DA. I have a close knowledge of the site as I have been going to our property regularly since we bought it as a family in 2001, and to Pearl Beach my whole life. It is our second home. My mother, like the new owner of the proposed development, is also semi-retired and uses the property regularly. I have also on a few occasions previously stayed in the current dwelling located at 2C Amethyst Avenue (subject of the current DA) for a few days at a time, as we knew the former owner well. I therefore have a good appreciation of the site under consideration.
3. It is appreciated that the council must balance the interests of the community and the reasonable expectations and rights of the applicant. Our interests include the observance of the planning controls applying to Pearl Beach and the continuation of the quiet enjoyment, amenity and privacy we have experienced over our long standing 19-year use of the property, whilst the applicant it is accepted has a legitimate interest in pursuing, within the allowable rules to which the applicant was subject when the land was acquired, improvements to his property. For this reason, this objection seeks where possible to propose alternatives to the current development application which better balance these interests.
4. An original Statement of Environmental Effects (**SEE**) was lodged by the Applicant (**Original SEE**) but applied the wrong planning controls, and so was then amended (**Amended SEE**). The Amended SEE, before it was withdrawn, received more than a dozen objections. The latest SEE (**Current SEE**) was then lodged, proposing a "new dwelling" as opposed to "Dwelling Alternations and Additions". However, the Current SEE remains mostly unchanged from the Original and Amended SEE documents. In parts it still refers to "alterations and additions" (eg. p7). Elsewhere it includes spelling and grammar mistakes from the Original and Amended SEE documents (eg those contained in the conclusion on page 18).
5. We note that our family only became aware of the Original SEE a short time before the exhibition period was due to expire, before it was ultimately amended and withdrawn. The applicant had not made contact with us, or to our knowledge any of

the neighbours at any time before lodging any of the SEE documents to discuss the plans or to address any of the obvious problems the plans were likely to create. The first contact made with the applicant was initiated by us in what was a bona fide attempt to try and see to what extent we could reach some agreement on the issues. Whilst it is accepted that as a result of that preliminary meeting the applicant agreed to abandon a driveway across the roots of the Norfolk pine, to extend 1.8m high privacy screening for the deck to the west, and to put slats across the west facing windows, those changes create different issues (discussed below). Several core issues remain: the acoustic and privacy impacts of the large elevated deck, the 5.3m west facing windows, the bulk and scale of the project on the small site, the breach of planning controls and the asserted use of the property as a single dwelling despite there being no internal staircase and two separate entrances to what are two separate residences. These issues may be able to be resolved by mediation, which we would favour.

6. This submission is based on a reading of the current plans available on the Central Coast Council website together with documents previously lodged including the original and amended SEE's (PUBLIC Statement of Environmental Effects 2C Amethyst Avenue, PEARL BEACH DA58347 Part 1 12/5/2020 and PUBLIC Amended Plans Notification Plans 2C Amethyst Ave Pearl Beach - Part 1 24/06/2020 respectively).
7. These submissions will respond to the Current SEE but will note aspects of the Original and Amended SEE where relevant.
8. In summary it would appear the proposed development breaches at least the following Planning Controls and creates the following adverse impacts:
 - i. Breach of FSR Control under Council's DCP 2013.
 - ii. Breach of Side Setback Control under Council's DCP 2013.
 - iii. Breach of Front Setback Control under Council's DCP 2013.
 - iv. Breach of Rear Setback Control under Council's DCP 2013.
 - v. Breach of Open Space Area Control under Council's DCP 2013.
 - vi. Not consistent with a number of Planning Principles of the Court.
 - vii. Adverse acoustic impact.
 - viii. Adverse visual impacts from adjoining properties and Amethyst Avenue.
 - ix. Adverse overlooking impact.
 - x. Excessive area for proposed first floor deck.
9. Our objections in short are:
 - a) The proposed development exceeds the allowable floor space ratio (FSR) and is of excessive bulk and scale when compared against the planning controls applying to the Pearl Beach locality. The Current SEE is inconsistent with previous SEE's about what the proposed FSR actually is. The Original SEE stated that the DA had an FSR of **0.52** (p3). The Amended SEE claimed an FSR of **0.467** (p3), or **0.45** (p15). The Current SEE claims three different FSR's: **0.448** (pages 3, 6 and 19), **0.440** (p3) and **0.467** (p8). There is no explanation for these differences. It is

unclear if any of the current FSR calculations are even correct. On any calculation the Current SEE does not comply with FSR requirements. The proposed development also exceeds allowable GFA under the Pearl Beach DCP.

- b) The justification put forward for this non-compliance is inadequate and contrary to established planning principles. In the Original SEE, the justification offered was that it would be “impossible” to achieve “full compliance” because of the owners intended subjective use of the property (clause E4.6 p14 Original SEE). The Amended SEE went further, asserting compliance with the Pearl Beach DCP would be “unreasonable” and “unnecessary” (p16). That stance is maintained in the Current SEE (p21). This approach is not valid for the reasons set out in *Davies v Penrith City Council* [2013] NSWLEC 1141 especially at [120]. Personal needs are not a valid justification for breach of Council Planning Controls. This approach also does not represent a reasonable approach to the balancing exercise required to be undertaken by Council. The application seeks to turn what was to our understanding formerly a repurposed garage and outhouse subdivided from our property in about 1994 into two separate dwellings with no internal staircase and with a significantly expanded FSR to fit a use the block was not intended to accommodate. It is not within the reasonable expectations of the applicant with knowledge of the allowable FSR to acquire a block that is too small for their desired use and then seek to change the rules by arguing it is “impossible” to achieve that use without breaching the allowable FSR, or that it is “unnecessary” to comply with the rules which specifically pertain to Pearl Beach due to its unique character. The argument is circular, self-serving and sets a poor precedent. The Pearl Beach DCP is of long standing and high importance to the local community. It was adopted after intense community consultation. The prospective purchaser is taken to be aware of the allowable FSR and of those rules at the time of purchase and prima facie should comply with them.
- c) The acoustic and privacy impacts from the proposed elevated deck are unacceptable. The size and area of the deck is excessive for a single dwelling, has the propensity for adverse acoustic impact, and is on the upper level with consequential privacy impacts on adjoining properties. The immediate locality is not characterised by upper level decks of approximately 50sqm. The proposed 1.8m screen only adds significantly to visual bulk and scale and does not address acoustic impact. A 1m high balustrade proposed would still result in a line of sight into our property. The ‘green’ screening will not prevent lines of sight if any future occupant fails to maintain it, and without any detail about this we cannot be sure of its efficacy. The application does not demonstrate noise levels from the deck do not exceed 5dBA above background noise level, or that the development is designed so that noise levels from outside sources minimise transmission to adjacent buildings, as required by Pt 5.10.15 Pearl Beach DCP. The impacts arising from the proposed deck are contrary to the Court’s Planning Principle in *Super Studio v Waverley Council* [2004] NSWLEC 91 (*Super Studio*), in which Senior Commissioner Roseth held at [5] that “*the acceptability of an impact depends not only on the extent of the impact, but also on reasonableness of, and necessity for, the development that causes it*”. The proposed deck will overlook one of our bedrooms, the living room, kitchen and garden, particularly impacting our properties east facing configuration. The proposed deck will also

sit very close to the easterly neighbour's property, looking into upstairs bedroom windows, his yard and a spa. That neighbour raises significant concerns, which are similar to ours (see eForm Attachment - Redacted - DA Submission DA59347/2020 L2 DP838892 AMETHYST AVE PEARL BEACH Reference No. 5f7a61e79ca93 lodged 5/10/20). The proposal will significantly alter the longstanding legitimate use of the neighbouring properties. These concerns could be met by placing any deck on the ground floor, or possibly by placing a much smaller deck within the roof line of any proposed new floor.

- d) It appears the DA in reality seeks a dual occupancy but does not acknowledge this. This proposal seeks an external set of stairs, creating a separate entrance to the upper level, without any internal staircase linking the old and new structures. It would appear obvious that contrary to the application in reality it is intended the upper level will be used as a separate occupancy. If that is so, the applicant ought to be upfront about this. The applicant ought to be required to properly explain why what is claimed to be a bedroom with study and "wet bar" would be designed this way if he truly intends to use it as part of a single home rather than as short-term rental accommodation such as AirBnB. This only heightens our noise concerns about the proposed deck. These external stairs also create new and unappealing visual and privacy problems, as they now face west overlooking one of our bedrooms and backyard.
- e) The privacy impacts from the proposed 5.3m west facing windows are also unacceptable. These windows span most of the westerly facing wall and would be located in a high use area. Whilst the applicant following our discussions proposed horizontal slats across the windows, our submission is that this would be an inadequate solution. If the second story is permitted, potential solutions could include: a) there being no windows on this wall (in conformity with the west facing wall immediately to the east of the proposed development at **6 Pearl Parade** which currently overlooks our property), b) these windows could be reduced in scale and moved to heights (high or low) which allow for light and air but which prevent privacy problems, or c) more effective screens could be employed which are upwards or north facing. In the absence of such actions these windows would look directly into a bedroom as well as the living area, kitchen and backyard. The proposed development would already have extensive north, east and south facing doors and windows, as well as two proposed decks. The windows impose significant detrimental impacts on our property for only marginal extra benefit to the proposed development.
- f) The proposed development has a negative impact on visual corridors from any possible future developments of our property. The current outlook from our property will if the development is approved be negatively impacted because the visual corridor will be filled with a view into the neighbour's proposed windows along the western wall into what appears to be a master bedroom, kitchen and living room. Were the applicant's current west facing windows permitted, the future development potential of our property will be significantly negatively impacted, including our ability to ever seek a second story as the applicant is doing, noting our much larger block size. Proposed privacy screening involving horizontal slats would not adequately address this concern.

10. In addition to the above objections, there are several other matters we raise:
- a) The “summary compliance table” (pages 3 and 4) misstates several matters. It incorrectly claims that building setbacks are compliant, when even the Current SEE acknowledges in its body that it does not meet all setback requirements. The new dwelling does not observe the 6m front setback control. Only 1 adjoining property has a similar front setback; this is not an adequate justification. The required side setback control is 1.9m. The rear setback control is 6m. It appears none are complied with. The summary table also incorrectly claims that privacy and noise requirements are complied with. The application does not comply with Pt 5.10.15 of the Pearl Beach DCP nor relevant planning principles.
 - b) The applicant seeks to justify non-compliance with the Pearl Beach DCP on the basis that what are wrongly described as additions and alterations “don’t pose any adverse effect on any neighbours” (p19). This is an obviously incorrect assertion; the proposal poses numerous and very large adverse effects on multiple neighbours, evidenced by the objections received.
 - c) Open space required is 118.1sqm. The proposal does not demonstrate 118.1 sqm of the site “*which is predominantly landscaped by way of planting of gardens, lawns, shrubs or trees*” as required by The Pearl Beach Locality Section of DCP 2013. Most of the subject site is occupied by the proposed building and associated verandas and paving.
 - d) The current plans appear to indicate site coverage is only approximately 30%. It is difficult to understand on the current materials if that number is correct. The plans appear to take up a significant part of the current site above 30%. Some more detailed plans or further explanation of how this number has been arrived at might address this concern. It is asserted that “the site coverage is not increased” (p10). The new structure extends the use of the property over two levels to the very northern boundary of the site, on the applicant’s own documents increasing significantly (and breaching) the allowable FSR in the process. The plans appear to envisage the use of a significant amount of the small site.
 - e) It is claimed on p16 that the deck will reduce building bulk and contribute to the character of Pearl Beach. This is not true. The deck and its proposed screening will increase bulk. The character of Pearl Beach is not consistent with large decks of this kind overlooking neighbouring properties.
 - f) Page 16 of the Current SEE deals with “views” and “visual privacy”. The document claims there will be “not be any impact on views”. This is not correct for the reasons set at 9(g). It is further claimed that “the retention of all existing vegetation on site including the mature trees will ensure that privacy to neighbours is maintained”. This statement is wrong. The applicant has already cleared most of the vegetation on his site. The remaining vegetation on site does not provide full maintenance of privacy for our property. The existing hedges along the boundary line are much shorter than the proposed height of the new building and will be useless in preventing lines of sight into our property and in masking the visual bulk and scale of the new dwelling. The existing trees do not cover the length of the boundary between the proposed development and our property. If the current proposal is approved it is unfortunately inevitable that existing privacy will undoubtedly be badly undermined, not maintained.

- g) Page 17 of the Current SEE states “shadow diagrams demonstrate that there will be no adverse overshadowing to the neighbours.” We have concerns that a building of 8.1m height (p13) will present shadows across our property which may impact on the viability of our mature garden and lawn. Part 5.10.14 of the Pearl Beach DCP requires that development shall maintain a reasonable level of sunlight to neighbours’ recreational space between 9am and 3pm during the winter solstice, 22 June. The proposal appears to restrict sunlight quite significantly across a large part of the recreational area of our property at least at 9am on 21 June.
- h) There are a number of further plainly incorrect assertions in the Current SEE. These include “The proposed alterations will have no impact on the surrounding build (sic) or natural environment and will contribute positively to the neighbourhood” (p18); “the additions will not have any adverse impact on the surrounding built and natural environment” (p15); the proposal “has no adverse impact on views, privacy and solar access of any adjacent properties” (p14); “privacy and sunlight to neighbouring properties is respected and remains unaffected. Furthermore, view corridors and scale of existing buildings in the street is respected (sic)” (p16). These statements are all incorrect. The proposed new build clearly does have an impact on the privacy and views of multiple neighbours and does not contribute positively to the neighbourhood, evidenced by the objections received.
- i) It is further wrongly asserted on p21 that “the proposal does not affect the neighbours in any way and the increase in area only extends over the private garden by an additional 480mm over the length of the West elevation. This does not have any impact on overshadowing or privacy of the neighbouring properties”. On p16 it is asserted “privacy and sunlight to neighbouring properties is respected and remains unaffected”. The proposal clearly affects neighbours in multiple ways. The application concedes this when it proposes privacy screens to try to deal with the problems it creates. Each neighbour now faces the prospect of a significant loss of privacy. The shadow diagrams reveal overshadowing in fact does occur.
- j) At page 20 of the Current SEE reference is made to Cl 4.4 of the *Gosford Local Environmental Plan 2014* and the assertion is made that “the proposed additions are situated and have been carefully designed to achieve the objectives” in that clause. To the contrary, the proposal does not “minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain” as Cl 4.4(1)(c) requires. The proposal will negatively impact the use and enjoyment of adjoining properties because of both loss of privacy and transmission of noise from the elevated aspect, as well as shadowing and added and excessive bulk and scale.
- k) The Current SEE on page 8 refers to “maintaining prominence of foliage and vegetation” as part of the justification for breaching the Pearl Beach DCP requirements for maximum FSR. On p11 the statement asserts “all existing vegetation on the site will be maintained”. These statements are not true; the applicant has already removed significant foliage and vegetation from his backyard. Whilst the applicant is probably entitled to do this on his own property, we cannot agree that this incorrect claim should be relied upon to

justify a breach of the Pearl Beach DCP. A further claimed reason for the breach is the “small size of the subject allotment” (p 8). As stated above, the fact the allotment is of small size was known at the time of purchase, and the maximum FSR was also known. If, as appears to be the case due to the discrepancies between the Original and Amended SEE’s, the applicant incorrectly assumed the Gosford LEP applied rather than the more stringent Pearl Beach DCP, this is not a reason to allow development of an excessive scale and bulk according to the Pearl Beach DCP.

- l) Current SEE refers to “noise” on page 17. The Current SEE omits to refer to the obvious noise issues that an elevated rear deck will cause to all neighbours, which privacy screens will not address. That the doors opening to the deck face north is irrelevant to the noise that will be created on the deck. Sound will more easily transmit across the neighbourhood and the deck will exist in perpetuity regardless of any stated intended use by the applicant at this time, resulting in a permanent problem for all neighbours. This problem is exacerbated by the new proposal to operate the two levels separately with different entrances and no internal stairway.
- m) The application also does not appear to refer to asbestos. It is our understanding the existing structure may be made of asbestos containing material. Investigation ought to be made about this and if there is asbestos which might be interfered with a plan would need to be created to deal with this issue.

11. Finally, it is submitted the Pearl Beach DCP requires careful consideration in this case. Council’s Development Control Plan is entitled “*Gosford Development Control Plan 2013*” (DCP 2013). Due to the fact that Pearl Beach has a “*special character*”, Council also formulated unique “*specific controls*” for Pearl Beach under DCP 2013. Of particular importance are the following comments contained in Section 5.10 entitled “*Pearl Beach Residential Development*” under the abovementioned DCP 2013:

- i. “*Pearl Beach has a special character. It has widely recognised scenic beauty; the beach itself, the headlands, the view of Broken Bay, the surrounding hills of Brisbane Water National Park*”.
- ii. “*Pearl Beach is the only village wholly within the area classified by the National Trust of Australia as the Broken Bay Entrance Landscape Conservation Area and the unique character of Pearl Beach should therefore be protected*”.
- iii. “*Uncontrolled development will lead to buildings which dominate the landscape at the expense of the natural environment*”.

12. There are various Objectives under Section 5.10.3 relating to “*Pearl Beach Residential Development*” including, but not limited to, the following:

“**2** To ensure that land is used and developed in a way that is compatible with and respects the natural and built character of Pearl Beach”.

“**6** To prevent buildings from intruding into the natural environment due to their bulk, height, colour and materials”.

“**7** To minimise the adverse impact of development on the amenity of the area”.

“8 To encourage a high level of urban design which recognises the form and character of the important built and natural context”.

13. Thus, Pearl Beach has a high sensitivity requiring “a high level of urban design” (5.10.3) which recognises the natural environment and minimises the adverse impact on the amenity of the area, both in relation to private properties and the private domain. The DCP 2013 provisions relating to Pearl Beach stress the sensitivity of the general locality.
14. The Pearl Beach Locality provisions under DCP 2013 were prepared following community consultation including consultation with the Pearl Beach Progress Association. A development control plan such as The DCP 2013 provisions relating to Pearl Beach, adopted after consultation with interested persons, including the affected community, will be given significantly more weight than one adopted with little or no community consultation: *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 at [87] per McClellan CJ.
15. The fact that Council considered it necessary to prepare a unique set of Planning Controls for the Pearl Beach Locality places even more importance for the Planning Controls of Pearl Beach. Significant weight must be given to the provisions of the Pearl Beach Residential Development Area given the above circumstances.
16. The Pearl Beach DCP also notes “In June 1990, Council, by resolution adopted as policy several of the recommendations made in the Plan of Management, including that: “Council, when considering development applications, have regard to the building bulk of developments as it affects the visual amenity of the street, reserves, neighbours, the general balance between vegetation cover and built form”. This chapter of the DCP which provides specific controls for Pearl Beach enables Council to implement that policy. In the event of any inconsistency between this chapter and any other chapters in this DCP, policies and codes that may apply to this village of Pearl Beach, this chapter will prevail unless otherwise specified in this chapter or in the other chapters, policies and codes.”
17. On page 2 it is stated that one aim of the Pearl Beach DCP is to ensure that further development is consistent with the unique qualities and character of Pearl Beach as a significant feature of the Central Coast. Against this backdrop, the DA ought not assert that compliance with the Pearl Beach DCP is “unnecessary” (as it does on page 21).
18. Part 5.10.8 requires that the size and shape of development is to be compatible with the character and scale of surrounding residential development. It is submitted this development to the extent it seeks a large open elevated deck overlooking neighbouring properties, 5.3m windows overlooking our property and a significant development on a very small block by Pearl Beach standards does not comply with this part of the Pearl Beach DCP.

19. Part 5.10.9(d) requires a dwelling house with a building height of more than 3.8m and any deck that is attached to the dwelling house to have a setback from a side boundary of at least the sum of 1m and an amount equal to one quarter of the additional building height above 3.8m (here $8.1\text{m} - 3.8\text{m} / 4 = 1.075\text{m}$) = 2.075m. It is unclear from the currently exhibited plans whether the setback of the proposed deck from the northern or eastern boundary meets this specification. More detailed plans may address this concern.
20. Finally, part 5.10.15 requires development to be designed so that noise levels from outside sources minimise transmission to adjacent buildings. The application does not demonstrate in the application, as required by this part, that the noise level does “not exceed 5dBA above background noise level”.
21. Were this proposal permitted in this form our family would in all likelihood be required take our own measures to mitigate the unacceptable acoustic, visual and overlooking impacts set out above. This might require us to plant large bamboo plants or to erect other privacy screens at our own expense which would be extremely undesirable for both parties and would in any event be an incomplete solution. The DA in its current form would result in a permanent negative impact on our property and family. This could be substantially avoided by making some common-sense fair amendments to the current plans which comply with the rules, which reflect the small block size, and which are more considerate of the neighbours’ legitimate interests whilst still allowing for improvement of the applicant’s structure.