
Sent: 9/07/2020 10:25:04 AM
Subject: 41-43 Beach Road Collaroy NSW 2097 DA 2019/1522 WRITTEN
SUBMISSION BUCKLE & DORSEN
Attachments: 41 Beach 090720.pdf;

Chief Executive Officer

Northern Beaches Council

725 Pittwater Road

Dee Why NSW 2099

Northern Beaches Council

council@northernbeaches.nsw.gov.au

Dear Chief Executive Officer,

Re: 41-43 Beach Road Collaroy NSW 2097

DA 2019/1522

9 July 2020

WRITTEN SUBMISSION: LETTER OF OBJECTION

Submission #4: Buckle & Dorsen

Please take note, that the attached Written Submission is from two adjoining Owners:

Mrs Jan Dorsen

35 Beach Road

Collaroy

Mr & Mrs Bill & Victoria Buckle

29 Beach Road

Collaroy

SUBMISSION: BUCKLE & DORSEN
a written submission by way of further objection to DA 2019/1522

29 & 35 Beach Road
Collaroy
NSW 2097

9 July 2020

Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
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Dear Chief Executive Officer,

Re: 41-43 Beach Road Collaroy NSW 2097
DA 2019/1522

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission #4: Buckle & Dorsen

This document is a submission by way of further objection to DA 2019/1522 lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

This Written Submission is in response to the submission of **Amended Plans** dated **7 July 2020** on Council website.

The subject site is over 1544sqm, and there is no reason, unique or otherwise why a fully compliant solution cannot be designed on the site.

As the Applicant's Amended Plans simply partially corrects the southern boundary detail, and other matters, without making any amendments to resolve our concerns, we ask Council simply to take our June 2020 Submission, and previous Submissions, as our ongoing objection to this DA.

We also identify the considerable non-compliance to the main envelope controls:

- DCP B3 Side Boundary Envelope 223% Non-compliance
- DCP B1 Wall Heights 32% Non-compliance
- WLEP 4.3 Height of Buildings: 20% Non-compliance [NSWLEC 1189 Stamford Property]

We are very concerned that the Applicant has once again relied upon further incorrect drawings in this Submission.

We are particularly concerned to the considerable non-compliance to the DCP B3 Side Boundary Envelope.

The Applicant has not used the RL levels at the boundary at Point M or Point J, and therefore the diagrams that represent B3 Side Boundary Envelope are again misleading.

The Applicant has not addressed the actual site boundary levels at these locations. If the Applicant had presented these levels correctly it would show that the Ground Floor requires to be setback 7.6m from the southern boundary [Point M], and the setback to the first floor would need to be 8.7m from the southern boundary [Point N]. The non-compliance is 223%.

The Objectives of this **DCP B3 Side Boundary Envelope** are very clear

Objectives

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*
- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*
- *To ensure that development responds to the topography of the site.*

The proposed development by not complying with **DCP B3 Side Boundary Envelope** controls, also fails every objective.

We remain very concerned that Wall Heights are non-complaint by over 32%. The proposed development fails to accord with the objectives of that DCP control as well.

We remain very concerned that the proposed Building Height at Point M remains 11.4m above the boundary level, that is only 3.4m away. Point N remains 12.7m above the boundary levels, and towers over neighbouring properties causing amenity loss. Using LEC principles of measurement, NSWLEC 1189 Stamford Property, the building height exceeds 10.2m.

These non-compliances lead directly to the amenity losses identified within our earlier Submissions.

Clause 4.6 Rebuttal

The Applicant within his Clause 4.6 makes no reference to the B3 Side Boundary Envelope non-compliance, nor to the difference between a compliant building envelope and a non-complying envelope.

In these matters the Clause 4.6 Application fails, as clearly the extent of the amenity losses caused by the non-compliant envelope has simply not been adequately addressed.

A properly presented Clause 4.6 Application must look at all the height and massing controls to assess the potential amenity harm caused. This has not been completed, and therefore Council cannot rely upon this Clause 4.6 Application.

The sectional drawing on page 3 of the Clause 4.6 Application is incomplete and misleading. The author of the Clause 4.6 Application should have assessed that this section on page 3 does not consider the correct levels at Point J or M, and if he had done so, the author of the Clause 4.6 would have clearly identified a massive 223% non-compliance to the very important **DCP B3 Side Boundary Envelope** control.

NSWLEC 1189 Stamford Property Services Pty Ltd v City of Sydney identifies that where previous ground levels are altered and under buildings or structures, then the outcome should be

“...to apply a ground plane across the site drawn from ground lines at the boundaries of the site. This ensures a practical application of the height standard.”

We raise this with Council as clearly the ground lines at the boundary adjacent Points J & M are at RL levels at RL 4.60 & 4.85.

The natural ground level prior to the excavation and construction of the 3m high retaining wall close to the boundary, and the construction of the above ground existing pool, on the subject site, commenced at these levels at RL 4.60 & 4.85 and ran to the general site levels at RL 11.83 at Point I. In this respect we contend that the ground plane for maximum building heights should apply the boundary levels at RL 4.60 & 4.85 *drawn from the ground lines at the boundary* and up to the RL 11.83 at Point I.

We contend that this would be a more reasonable consideration under NSWLEC 1189 Stamford Property Services Pty Ltd v City of Sydney. If this outcome was considered by Council the proposed development would present a building height considerably over the WLEP control, by over 20% non-compliance, at both proposed levels facing the southern boundary.

Using NSWLEC 1189 Stamford Property Services Pty Ltd v City of Sydney

“...to apply a ground plane across the site drawn from ground lines at the boundaries of the site. This ensures a practical application of the height standard.”

Using this standard, and using the boundary levels as identified above and Point I on the Applicant's DA drawings, the extrapolated ground levels substantially reduce, and the maximum building height is substantially increased, well above the 8.5m control, to a 20% non-compliance:

Point M: Ground Level RL 6.0 [extrapolated], giving a Building Height of 10.0m.

Point J: Ground Level RL 8.3 [extrapolated], giving a Building Height of 10.2m.

The Clause 4.6 Application has not properly considered these issues.

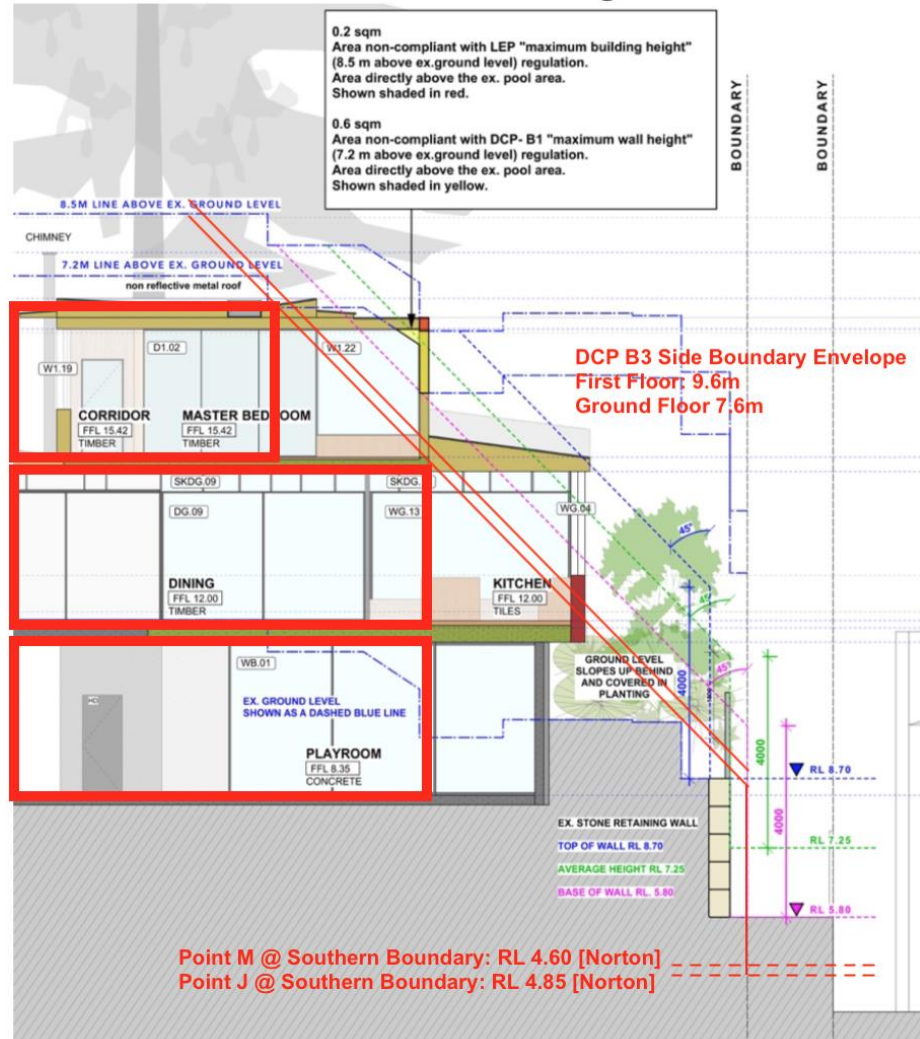
The significant amenity losses of loss of sunlight, loss of privacy, loss of view, and the unacceptable visual bulk caused by these non-compliances have not been properly identified by the author, let alone properly addressed or properly assessed.

The difference between a compliant building envelope and the proposed non-compliant envelope has not even been considered within the Clause 4.6 Application.

There is no reason, unique or otherwise, why a fully compliant development cannot be achieved on this very large site.

The Clause 4.6 Application does not make a case for the rampant non-compliance, and fails to identify the false and misleading drawing that was relied upon within the Clause 4.6 application.

Figure 2 – Cross section view of master bedroom height encroachment



DA Sectional Drawing from Clause 4.6: Levels at Point J @ RL 4.85 and & Point M @ RL 4.60 not shown. Required setback to accord with DCP B3 Side Boundary Envelope shown in red block massing. Ground Floor 7.6m setback, First Floor 9.6m setback.

We ask Council to ensure that this DA section drawing is corrected with the actual boundary levels at Point J & M properly shown at RL 4.60 and RL 4.85, with the DCP B3 Side Boundary Envelope properly shown, and this drawing resubmitted.

We ask Council to request that the Applicant shows the NSWLEC 1189 Stamford Property Services Pty Ltd v City of Sydney ground levels as presented within this Submission, particularly from Point M & J.

We are concerned that this drawing does not form part of the substituted drawings on Council website, and we have had to locate this misrepresentation within the Clause 4.6 Application. Why the Applicant has not presented this drawing within the substituted drawings for all neighbours to assess, is troubling?

This is the fourth Submission where these matters have been presented to Council, and unfortunately, we still do not have drawings that are correct. We refer to our previous comments regarding reliance on the Applicant's incorrect information, and the validity of any consent.

To assist Council, we make a schedule of these non-compliances:

DCP B3 Side Boundary Envelope

We have used the Applicant's Survey to identify the boundary levels at Points J, M, & N, and the precise levels at M & J as identified within the Norton Survey [see appendix]. Both surveys align with each other, however the Norton survey has identified the precise levels at the Points M & J, whilst an extrapolation is required on the Applicant's Survey, but arriving at the same levels:

Point M @ Southern Boundary: RL 4.60 [Norton & extrapolation from Applicant's Survey]

Point J @ Southern Boundary: RL 4.85 [Norton & extrapolation from Applicant's Survey]

Point N @ Southern Boundary: RL 5.64 [Applicant Survey]

Point M

Proposed Height RL 16.00

Level at Boundary RL 4.60

Required setback to fall within DCP B3: $16 - [4.6+4] = 7.60\text{m}$

Proposed Setback 3.4m

Non-compliance 223%

Condition required: Setback Point M minimum 7.6m

Point J

Proposed Height RL 18.52

Level at Boundary RL 4.85

Required setback to fall within DCP B3: $18.52 - [4.85+4] = 9.67\text{m}$

Proposed Setback 7.95m

Non-compliance 21%

Condition required: Setback Point J minimum 9.6m

Point N

Proposed Height RL 18.34

Level at Boundary RL 5.64

Required setback to fall within DCP B3: $18.34 - [5.64+4] = 8.70\text{m}$

Proposed Setback 6.70m

Non-compliance 30%

Condition required: Setback Point N minimum 8.7m

Wall Height

Point N

Proposed Ceiling Height RL 18.10

Level under Point N RL 8.56

Wall Height Proposed 9.54m

Maximum 7.2m

Non-Compliance 32%

Point M

Proposed Ceiling Height RL 15.70

Height above excavated pool zone @ RL 7.7

Wall Height proposed 8.0m

Maximum 7.2m

Non-Compliance 11%

WLEP 4.3 Height of Buildings

Point M

Proposed Height RL 16.0

Height at boundary 3.4m away RL 4.60

Height above Boundary 11.4m

Point N

Proposed Height RL 18.34

Height at boundary 3.4m away RL 5.64

Height above Boundary 12.7m

Using NSWLEC 1189 Stamford Property Services Pty Ltd v City of Sydney

“...to apply a ground plane across the site drawn from ground lines at the boundaries of the site. This ensures a practical application of the height standard.”

Using this standard, and using the boundary levels as identified above and Point I on the Applicant's DA drawings, the extrapolated ground levels substantially reduce, and the maximum building height is substantially increased, well above the 8.5m control, to a 20% non-compliance:

Point M: Ground Level RL 6.0, giving a Building Height of 10.0m.

Point J: Ground Level RL 8.3, giving a Building Height of 10.2m.

Amenity Losses

We ask Council to refer to our earlier June 2020 Submissions regarding the amenity losses. Those considerations remain unaltered.

- Overshadowing
- Privacy
- View Loss
- Visual Bulk

We are very concerned to see our neighbour at 39 Beach Road suffering view loss of the ocean and ocean/land interfaces from the proposed non-compliant development. DA drawing 825 shows that the non-compliant Southern Wing as mentioned within this Submission removes Tenacity views in an unreasonable way. A compliant envelope, as identified within this Submission, with greater southern side setbacks, would better resolve this view loss matter and would be more reasonable.

Amendments Outstanding

In respect to the amendments that are still required, we have slightly adjusted those conditions to take on board the new levels that have been provided by the Applicant in these new drawings in this Submission.

Again, we ask Council to refer to our earlier Submission to capture the full list of the Conditions that we wish to be considered. We attach only those that required amendment.

Conditions of Consent/Amended Plans

The following conditions will need to be met by submission of amended plans:

Southern Wing

1. All built elements of the Ground Floor & Basement: **7.6m** side setback from southern boundary to accord with WDCP B3 for Point M, and position Point M so that the maximum wall height is within control
2. All built elements of the First Floor: **8.7m** side setback from southern boundary to accord with WDCP B3 for Point N, and position Point N and Point J2 so that the maximum wall height is within control
3. Minimum 6.0m rear setback to eastern boundary to accord with WDCP B9
4. New Landscape Plan in southern 7.6m side setback zone, 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 and to enhance privacy between buildings, all in accordance with WDCP D1, and to avoid overshadowing and view loss to all neighbouring dwellings
5. No excavation in southern 7.6m side setback zone
6. No additional wall or fence added to existing sandstone wall that is setback 400mm from southern boundary

Reason: View Loss, Overshadowing, Privacy, Streetscape, General Impact, Landscape, Height/Bulk/Scale, Visual Bulk and Excessive Excavation

Once these amendments are made and new height poles erected, against the above six items, Council and neighbours can reassess the acceptability of this amended envelope.

Submit Axonometric model with correct boundary levels to show strict compliance with WDCP B3.

Dimensional set out of the proposed development needs to occur from the SE and SW corners of the subject site, with a clear dimensional set out of all floorplates and roof configurations.

The DA will need to provide photomontages from our properties and from the public domain to the east of our properties. Provide solar access diagrams at hourly intervals of all neighbours' windows. Any loss from non-compliant envelope will be unacceptable.

Privacy

- Raise window sills to 1.7m height above internal FFLs to all windows facing neighbour's boundary at all levels. W 1.22 to W 1.27 incl at First Floor; W G.04 to 08 incl, WG.14 at Ground Floor; WB 02, WB 03 and DB 02 at Lower Ground Floor
- Obscured glass or privacy screens to all windows facing the neighbour's boundary
- The Elevated 'Green Roof' to the south-west must be made totally non-accessible, with all windows W 1.22 to W 1.27 to have window sills to 1.7m height above internal FFLs to all windows facing neighbour's boundary.
- The proposed sliding doors at FL 12.0 that open from the pool deck zone, be deleted, this wall to be replaced with a solid, full height, acoustic wall.
- Main access to Playroom to be from the east, with 1.7m sill height windows facing neighbours to southern boundary. No excavation in 7.6m southern side setback zone.
- All south facing windows to have full height privacy screens at all levels facing south.

Reason: Privacy

Landscaping

New Landscape Plan in southern 7.6m side setback zone, 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 and to enhance privacy between buildings, in accordance with WDCP D1, and to avoid overshadowing and view loss to all neighbouring dwellings

Landscape Architect to provide 3D model to identify maximum envelope of landscaping to southern side setback zone, to protect views and solar access whilst mitigating the built form and providing better privacy. Landscape Architect to locate taller trees and shrubs to better fill the maximum envelope potential. Maximise the landscape content, with no neighbour amenity loss. Submit 3D Model in Amended Plans.

NBC Standard: One tree per 20 sqm, one shrub per 1 sqm, 4 groundcovers/grass species per 1 sqm to be added to Landscape Plan

NBC Tree Protection & NBC Trees Condition clauses to be added to Landscape Plan. Retain other trees as identified by Council. Provide protection to the Structural Root Zone and Tree Protection Zone to the trees on neighbours property adjacent to the common boundary to be added to Landscape Plan. Tree Protection conditions to be added to Landscape Plan

On slab planting and associated works conditions to be added to Landscape Plan

Protection of Rock to be added to Landscape Plan

Landscape Completion Certificate requirements to be added to Landscape Plan

Environmental and priority Weed Control requirements to be added to Landscape Plan

Reason: Landscape

Conclusion

We request these matters be closely considered in the assessment of the proposed development.

We ask Council that based on the misrepresentation of incorrect existing ground levels along the southern boundary resulting in incorrect building envelope, and other incorrect information, to reject the Development Application as being beyond power on grounds that Council, as consent authority, has not been provided with sufficient probative material to form a proper basis for lawful action.

If the DA relies upon incorrect information, then we reserve our position on the validity of any future approval, and we reserve our right to challenge the validity at any time.

We expect that on such a large and very sensitive site, the Applicant should be charged by Council to deliver a totally compliant scheme to LEP and DCP controls, and LEC principles.

There is no excuse that neighbour amenity must suffer due to non-compliance to the controls. All we seek is a fully compliant development to all Council's controls and for the envelope controls to be drawn accurately based upon the boundary survey levels and other survey marks across the site.

We do hope the DA submits Amended Plans, once again, to resolve these matters, erects Height Poles based upon a further reduced envelope, submits revised and complete overshadowing drawings, and other matters identified within this Submission.

If this does not occur, we ask Council to immediately **REFUSE** this DA.

Yours faithfully,

Mrs Jan Dorsen
35 Beach Road
Collaroy

Mr & Mrs Bill & Victoria Buckle
29 Beach Road
Collaroy

Attachment: Norton Survey June 2020

