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Subject: DA Mod 2021/0086 Address: 95 Gurney Cr., Seaforth WRITTEN
SUBMISSION: LETTER OF OBJECTION Submission - Symons

Attachments: Symons Submission 250321.docx;

SUBMISSION: SYMONS
a written submission by way of objection

Ms Meredith Symons
97 Gurney Cr.,
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25 March 2021

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RE:
DA Mod 2021/0086
Address: 95 Gurney Cr., Seaforth

WRITTEN SUBMISSION: LETTER OF OBJECTION
Submission - Symons

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

In this Submission I ask Council to **REFUSE** this DA.

I am being assisted by a senior consultant in the preparation of this Submission.

Council will recall that DA 2019/1463 was determined by the DDP on 12 August 2020.

The DDP on that day consisted of the most senior DDP members including:

- **Peter Robinson** (Chairperson) Executive Manager Development Assessment
- **Anna Williams** Manager, Development Assessment
- **Phil Jemison** Manager, Strategic & Place Planning

I ask Council, for this DA to be determined, by the same DDP members, if not refused earlier at Officer level.

The DDP in August 2020 carried out a very detailed viewing of the site and the surrounds.

Phil Lane, the NBC Planning Officer was also in attendance for a considerable period of time to assess this DA due to the impact on my privacy, resulting from the bulk and scale of this property

During the notification of this DA, I had forwarded multiple objections against the DA, and the prime concern was privacy.

The bulk and scale of the proposed development was also a concern particularly the non-compliant heights and setbacks facing my property, that increased the privacy concerns as windows and decks were significantly closer to me than LEP and DCP envelope controls would normally allow. The development projects well forward of my rear setback alignment and therefore the privacy impacts are intensified. Many of the floor plates are higher than my own, so this again heightens the poor privacy outcomes.

After a very careful assessment by all three very senior members of the DDP, the determination included Condition 9 that reads:

9. Amendments to the approved plans

The following amendments are to be made to the approved plans:

Level 4 - The northern privacy screen is to be extended by 2m to the west.

Level 3 - The northern privacy screen is to be extended by 2m to the west.

Level 2 - A privacy screen is to be installed along the northern elevation of the walkway connecting the balcony and external stairs (the screen is be same height and materials as proposed on levels 3 and 4).

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

This Mod DA seeks to delete this most important Condition of Consent to me: Condition 9.

The privacy screens are required for the proposed development to accord with the DCP Clause 3.4, and in particular 3.4.2, 3.4.2.1, 3.4.2.2, and 3.4.2.3.

The location of louvred wall surfaces from a narrow garbage room within the garage is also unacceptable, and does not accord with DCP Clause 3.4.4. This garage room is immediately adjacent to my bedroom window and main private open space and deck, and the odour of the garbage room would cause considerable amenity problem.

Council will note that the amended plans submitted in May 2020, Drawings A101 rev B, ensured that the 'garbage bin enclosure' was relocated totally to within the garage envelope proposal. I attach an extract of MHDP Statement of Amendments that confirms that matter:



STATEMENT OF AMENDMENTS

**DA FOR NEW RESIDENCE UTILISING EXISTING BUILDING FABRIC
SUBMISSION OF AMENDED DOCUMENTATION
DA2019/1463
95 GURNEY CRESCENT SEAFORTH**

The following list of amendments have been made to the DA for 95 Gurney Crescent following negotiations undertaken with Council's Assessment Officer. These are forwarded for inclusion in the DA assessment and supersede previous drawings.

It is submitted that these amendments answer the key issues raised by Council and should allow for a favourable assessment of the application.

ROOF PLAN – DRAWING A100B

- Hipped roof over Office reduced in length by 1.5m in order to reduce bulk-and scale and height non-compliance.

LEVEL 5/GARAGE PLAN – DRAWING A101B

- Balcony removed (deleted)
- Office projection from current position reduced in length by 750mm in order to reduce bulk-and scale and height non-compliance. With removal of balcony combined with reduction in office projection, possible privacy impacts to Northern neighbour (No.97) is reduced by a total of 2.3m
- Garage length reduced by 450mm (incorporating push-back of office)
- Garbage bin enclosure relocated to within the current garage envelope proposal.
- North facing windows retain translucent privacy film as originally submitted.

The applicant is simply trying within this DA, to overturn matters that we suggest were raised by the Planning Officer that needed amendment. The Applicant amended the DA drawings, and now is trying to reinstate a poor design outcome, within this Mod DA. This is unacceptable.

For ease of reference, I attach the relevant DCP clauses that I wish Council to consider:

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Relevant DCP objectives to be met in relation to these paragraphs include the following:

Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.

Designing for Amenity

- a) Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property.

3.4.2 Privacy and Security

Note: Consideration of privacy are typically balanced with other considerations such as views and solar access. The degree of privacy impact is influenced by factors including the use of the spaces where overlooking occurs, the times and frequency these spaces are being used, expectations of occupants for privacy and their ability to control overlooking with screening devices.

Relevant DCP objectives to satisfy in relation to this part include the following:

- Objective 1) To minimise loss of privacy to adjacent and nearby development by: appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.

3.4.2.1 Window Design and Orientation

- a) *Use narrow, translucent or obscured glass windows to maximise privacy where necessary.*
- b) *When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.*

3.4.2.2 Balconies and Terraces

- a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.
- b) *Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.*

3.4.4 Other Nuisance (Odour, Fumes etc.)

Consideration must be given to the protection and maintenance of public health and amenity in relation to any proposed development that involves the emission of odours to ensure compliance with legislation

Council will also note that the third portion of this Mod DA relating to Landscaping and occupation of the dwelling does not need any further consent to achieve the outcomes set out by the Applicant.

The modification application requests that conditions for landscape works to be completed prior to Occupation Certificate be removed, and Council Referral has simply referred the Applicant to Part 6 of the EPAA. I am concerned that the external landscape may never be completed, and I ask Council to address this matter separately with the Applicant.

On this basis I ask Council to REFUSE the entire DA, as:

- the removal of Condition 9 is totally unreasonable and unacceptable as it causes significant privacy loss,
- the imposition of a louvred wall from a garbage room immediately adjacent to my main private open space decks and my side window causes amenity loss, and is totally unreasonable and unacceptable, and attempts to overturn amendments made prior to the previous consent, directed by Council to overcome poor amenity outcomes, and
- the landscaping matter does not require consent, Part 6 of the EPAA is in force, and matters are to be addressed to the Certifier and be properly considered ensuring completion of all landscape.

I have, as Roseth SC pointed out in *Roseth SC in Pafbum v North Sydney Council* [2005] NSWLEC 444, a legitimate expectation that the development to take place on the subject property *'will comply with the planning regime'* in the present circumstances, and in this case DCP Clause 3.4.

I turn now to a more considered rebuttal of the Applicant's *'Statement of Modification'*, [SOM] from MHDP dated February 2021, entitled *'S4.55 Application Report'*.

The SOM fails to adequately address the privacy impact from occupants in the proposed development looking immediately and directly into my property particularly:

- All of my internal spaces in my main windows facing west to the harbour
- All of my private open space of all deck areas facing west to the harbour
- My private open space in the western rear garden, including my pool

The SOM fails to address that at all levels of the proposed development, the future occupants will be able to severely overlook all three zones of my property.

This DA is fundamentally an exercise in *'view chasing'* at the expense of my privacy. That is totally unreasonable and unacceptable. This DA shows no respect to the DDP in their own detailed consideration of the DA, nor respect the matters that the Council Officer directed in respect to the enclosure of the garbage room.

The privacy screens are vital to maintain any form of privacy, and to accord with the DCP clauses highlighted above.

Without the privacy screens within Condition 9, the dwelling's design does not adequately preserve the privacy of my property located to the side of the subject site.

The terraces and floor plates above the height controls do not assist with achieving the privacy objectives contained in the DCP

Windows and decks would have a direct sight line to windows, decks, private open space and my pool on my property.

I am concerned to the extent of the north facing, large glazed surfaces facing my property.

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 result in a privacy impact with the proposed decks and windows facing my property without sufficient screening devices being provided, considering the proposed windows and decks are directly opposite my windows, decks and private open space.

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 of my 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 predominantly new development and the proposed windows have not been designed with any consideration to the privacy of my 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 protected through the provision of privacy screens.

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 screens 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: No landscaping is proposed, and should not be relied upon for privacy outcomes.

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 this DA be **REFUSED**, and Condition 9 maintained, to reduce amenity impact on the neighbouring properties.

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

NSWLEC Commissioner Roseth SC confirmed within **Meriton v Sydney City Council [2004] NSWLEC 313**:

“Planning principle: protection of visual privacy

45 When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.”

My primary concern is the removal of privacy screens within Condition 9, that would result in outcomes, such that “*the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space*”. My privacy would be completely destroyed.

A secondary concern, and by no means less important to me than the one above, is the imposition of a louvred wall from a garbage room immediately adjacent to my main private open space decks and my side window causes amenity loss and is totally unreasonable and unacceptable. This is also reverting to the original plans submitted by the applicant, who was advised to amend their first draft of plans to include the garbage room within the enclosed garage.

These issues warrant REFUSAL of the application.

I ask Council to **REFUSE** the DA on the following grounds:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of **Clause 3.4 Amenity, 3.4.2 Privacy and Security, and 3.4.4 Other Nuisance [Odour]** of the Manly Development Control Plan.
2. No consent is required for landscape issues, raised in this DA

Yours faithfully,

Ms Meredith Symons
97 Gurney Cr.,
Seaforth.