
Sent: 18/11/2019 1:39:50 PM
Subject: DA2019/1179, No 157 Victor Rd, Dee Why
Attachments: SUBMISSION DA2019_1179 157 Victor Rd, Dee Why.pdf;

Please find submission attached.

Regards

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1/9 Narabang Way, Belrose NSW 2085

18 November 2019

The General Manager
Northern Beaches Council
725 Pittwater Road
Dee Why NSW 2099

Attention: Catriona Shirley

Dear Catriona

**LETTER OF OBJECTION TO DA 2019/1179 for alterations and additions to a dwelling house
AT 157 Victor Rd, DEE WHY.**

I refer to the above Development Application (DA) for 157 Victor Rd, Dee Why (the subject site). I act on behalf of the owners of 159 Victor Rd, the adjoining property to the north.

I have inspected the subject site from the street and from 159 Victor Rd. I have also examined the relevant documents, plans and reports including the Statement of Environmental Effects prepared in support of the DA.

In summary, we object to the proposed development for the following reasons:

- Excessive height, bulk and scale
- Non-compliant building height, wall height, building envelope and front setback
- Unacceptable amenity impacts to 159 Victor Rd as follows:
 - visually dominating
 - view impacts
 - privacy loss
- Unacceptable Clause 4.6 variation requests
- Streetscape impacts
- Cumulative impacts from development approved as complying development

EXECUTIVE SUMMARY

The proposed development at 157 Victor Rd will have severe amenity impacts on 159 Victor Rd. The proposed development fails to comply with the building height development standard and numerous planning controls. The Clause 4.6 request submitted to vary the building height is not well founded and therefore fails at law. The application before Council should be refused.

My clients' property

Key aspects of my clients' property as they relate to their concerns are noted as follows and depicted in the figures below.

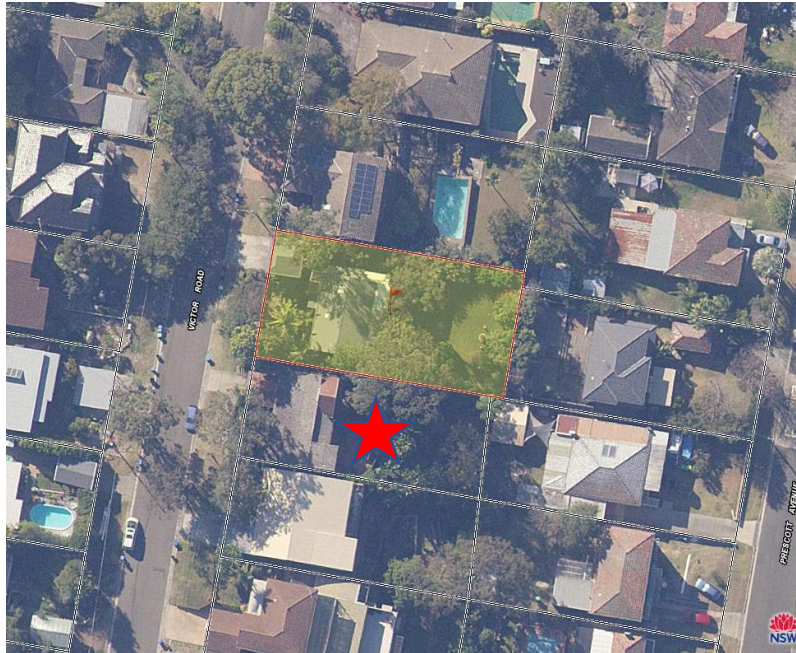


Figure 1: Subject site shown with red star with 159 Victor Rd shaded yellow (source: SIX maps)

No 159 Victor Rd is a three-storey steel and weatherboard dwelling house with a pitched Colourbond roof, located to the north of the subject site. It has street frontage to Victor Road and shares a common boundary (approximately 37.41m), with the subject site, as shown in the Figure 1 above.

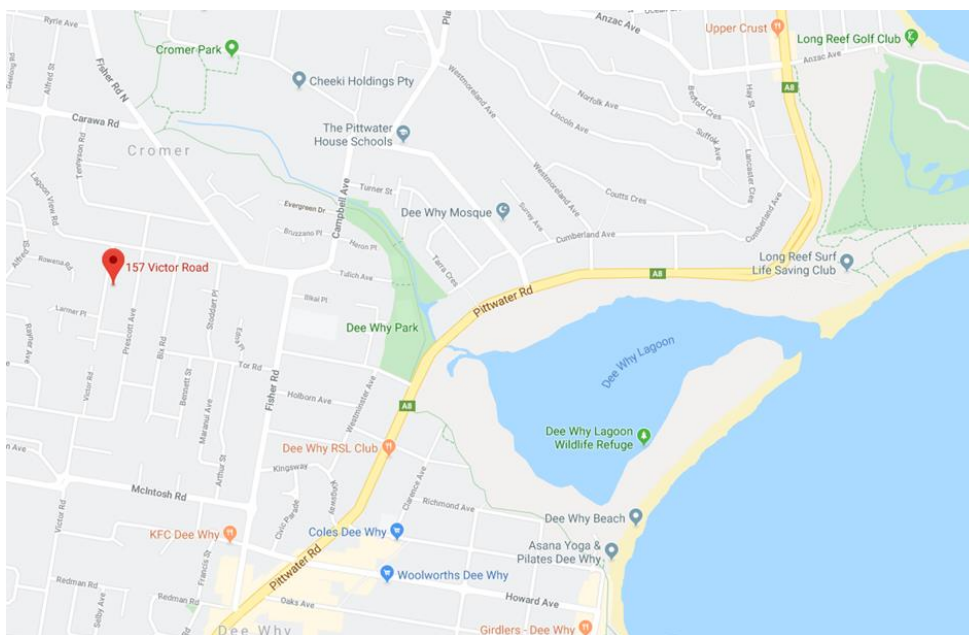


Figure 2. Regional context

The site and the adjoining properties are elevated and enjoy ocean views to the east as indicated in Figure 2 above.

The front boundaries of both 157 and 159 Victor Road are at street level, with both sites having a significant fall (approximately 14m) to the rear boundary. The carport at 159 Victor Rd is at street level while the dwelling is set down lower on the site as seen in Figure 3 below.



Figure 3. Landscaped street view of 159 Victor Rd with subject site shown to the right

Construction works are currently underway at No 159 Victor Rd for recently approved minor building works (at the lower floor level) and a swimming pool approved under DA 2019/0205. The floor levels of 159 Victor Rd have been set down the slope, respecting the site topography, and are much lower than those proposed on the subject site.

The proposed development at 157 Victor Rd will have unacceptable impacts on my client's property. The objections to the proposal are addressed in detail below.

EXCESSIVE HEIGHT, BULK AND SCALE

The proposed development exhibits excessive height, bulk and scale. This is a culmination of excessive building height, non-compliance with the side building envelope control and the eastward projection of the building footprint.

- **Building height**

Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP) controls height of buildings. A maximum building height of 8.5m applies to this site. The proposed development has a maximum building height of 14m and therefore exceeds the control by 5.5m or 65%.

The proposal also fails to comply with the 7.2m wall height control. The variation to wall height is most severe along its northern elevation where it reaches 10.5m. The rear elevation also fails to comply with the 7.2m wall height control.

The proposal fails to satisfy the following objectives for the building height development standard as outlined in clause 4.3(1):

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development*

Comment: The proposal is not compatible with the height of adjoining properties. It has a ridge height of RL51.25 compared to RL 46.03 at 159 Victor Rd (my client's property) and RL50.25 (155 Victor Road). The portion of the building that exceeds the building height standard includes the majority of the first floor as well as the ground floor extension.

The development proposed does not respect the topography of the site and includes a first-floor addition as well as a ground level extension. This will result in a building that is generally higher with a larger building footprint than nearby development.

The height and scale of the proposed development is inconsistent and incompatible with surrounding and nearby development. The proposal does not satisfy this objective.

- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment: The proposal will have a dominating visual impact, will disrupt views and will have result in a loss of privacy to 159 Victor Rd (these issues will be discussed further below). The proposal is inconsistent with this objective.

- **Non-complying side boundary envelope**

Built Form Control B3 of Warringah Development Control Plan (WDCP) requires that buildings on the subject site be sited within a building envelope determined by projecting a plane of 45 degrees from a height of 4m above ground level at the side boundaries.

As seen in Figure 4 below, almost all of the upper level addition and a large part of the ground floor extension do not comply with the side boundary envelope control. This results in a development that is visually dominant by virtue of its height and bulk with inadequate spatial separation to adjoining buildings. The height of the lower floor level approximately 6m above

ground level represents a complete disregard for the topography of the site. Consequently, the proposal fails to comply with the objectives for the side boundary envelope control as follows:

- the development is visually dominant by virtue of its height and bulk,
- the development does not incorporate adequate spatial separation between buildings, and
- the development does not respond to the topography of the site.

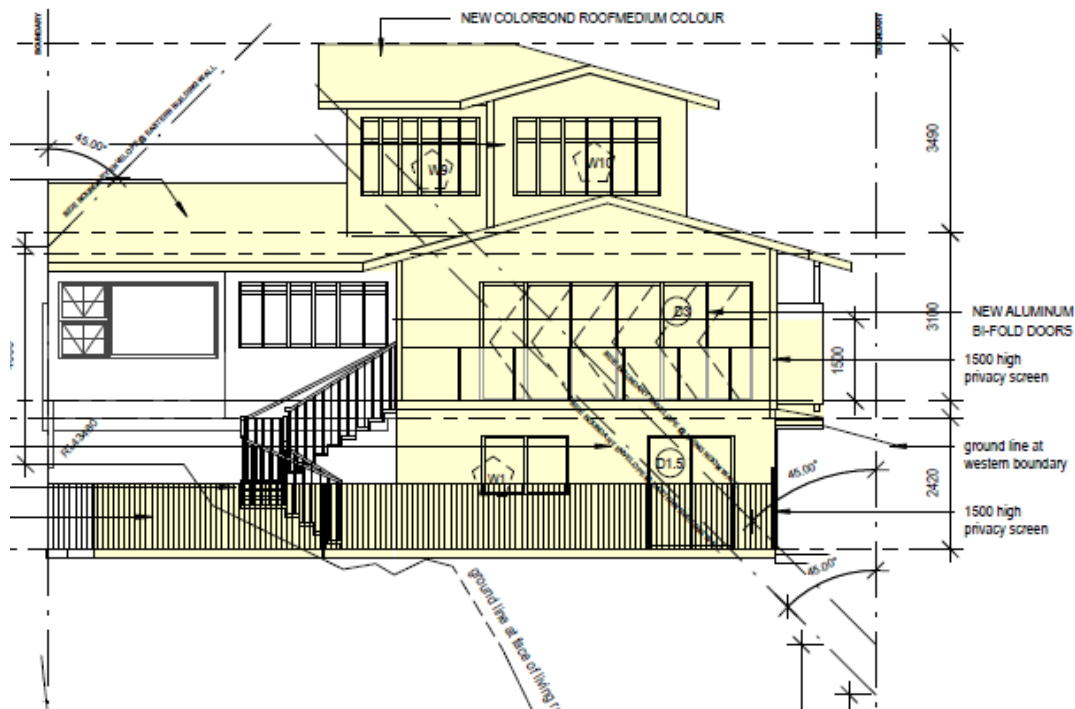


Figure 4 – Breach of building envelope, rear elevation (Source: Woodhouse and Danks Architects)

VIEW LOSS

Built Form Control D7 of WDCP requires that “development shall provide for the reasonable sharing of views”.

The proposal not only results in view impacts to the properties to the west, the eastern projection of the ground floor level will result in the loss of views from my client’s rear open space as well as from internal areas at ground level (the kitchen and dining areas).

The front yard of 159 Victor Rd is used as a secondary private open space area and contains a pizza oven, fire pit and seating. This area enjoys a view corridor of the Pacific Ocean between the two dwellings as shown in Figure 5.



Figure 3. Zoomed in water view from front yard of 159 Victor Road between the two properties

The eastern projection of the proposed development will result in the loss of this water view from the front outdoor entertaining area.

The eastward projection of the proposed development will also result in the loss of views currently available from the open plan kitchen and dining area located at the ground level of my client's property. While expansive views are available from the east facing windows, doors and balconies, the water view which is available in a south-easterly direction will be affected by the proposed development.

The Planning Principle on views stated in the *Tenacity v Warringah (2004 NSW LEC 14)* decision is relevant. Of note is the fourth step which states:

29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.

As the proposed development breaches several planning controls any impact on views resulting from a non-complying element is unreasonable. As the view loss is a direct result of the proposed building height and building envelope non-compliances, the view loss is unacceptable.

In respect to the following question raised in the *Tenacity v Warringah (2004 NSW LEC 14)* decision:

".....whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours?"

The answer to this question is yes, a more skilful design that complied with building height, building envelope controls, respected site topography and did not extend past the established rear building alignment of adjoining properties, would provide the applicant with a similar level of amenity while reducing the view impacts on surrounding properties.

UNACCEPTABLE CLAUSE 4.6 REQUESTS

As outlined above, the departure from the building height development standard will give rise to material environmental impacts, an undesirable planning outcome not only for the subject site but for surrounding properties. The setting of the development standards within the WLEP followed significant consultation with the community. Compliance with them is therefore a realistic expectation among the community. The site is not so constrained that compliance with the building height development standard cannot be achieved.

Despite the submission of Clause 4.6 written request to vary the building height development standard, the proposal fails to satisfy the requirements of Clause 4.6 of WLEP or the planning tests established pursuant to or the most relevant NSW Land and Environment Court judgement (*Initial Action Pty Ltd v Woollahra Municipal Council NSW LEC 118*). Compliance with the standard is required and it has not been adequately demonstrated that compliance is unreasonable and unnecessary, nor has it been demonstrated that there are sufficient environmental planning grounds to justify contravening the standard.

The proposal also fails to satisfy the planning tests outlined in the Planning Principle for height, bulk and scale, established in *Veloshin v Randwick Council [2007] NSWLEC* as follows:

1. The impacts from the proposal are inconsistent with impacts that may be reasonably expected under the controls.
2. The proposal does not maintain the predominant existing character of the area.
3. The proposal is inconsistent with the bulk and character intended by the planning controls.
4. The proposal does not look appropriate in its context.

Based on the departures from the building height standard in WLEP, and the resultant material environmental planning impacts (i.e. visual domination and view loss), the Clause 4.6 request, and therefore the proposed development itself, is unable to be supported for the following reasons:

- there are insufficient environmental planning grounds to justify the contravention of the standard;
- there is obvious public benefit in maintaining the standard;
- the departure from the standard hinders attainment of the objects of the Act (specifically (g) to promote good design and maintenance of the built environment);
- the proposed development is not in the public interest as it is inconsistent with the relevant objectives of the standard;
- it has not been adequately demonstrated that compliance with the standard is unreasonable and unnecessary; and
- The objection is not well founded.

Under such circumstances the Clause 4.6 variation request is not well founded and therefore fails at law.

PRIVACY IMPACTS

My clients have concerns regarding the inadequate spatial separation of the proposed development with their dwelling, as well as the numerous windows in the northern elevation, the large balcony on the northern elevation and the inadequate height of privacy screens.

The proposed balcony is elevated, large (with a floor area of 31.5m²) and is therefore capable of entertaining large numbers of people resulting in unacceptable acoustic privacy impacts.

This balcony will also allow overlooking of the recently approved swimming pool at 159 Victor Rd.

STREETSCAPE

The proposed double carport is on a nil front setback and has a full height garage door and side panels. It will have the appearance of a double garage and, combined with the 1.8m wall on the front boundary, will create a solid wall like affect along the front boundary. In addition, the proposed front courtyard will reduce opportunities for landscaping in the front setback area.

The proposal **does not**;

- create a sense of openness,
- maintain the visual continuity of buildings and landscape elements, or
- enhance the visual quality of the streetscape.

The proposal is therefore inconsistent with Built Form Control B7 Front Boundary Setbacks.

IMPACT ON TREES

The elevated rear addition is within the canopy of a large Eucalypt tree, located on the common boundary with 157 Victor Rd. Concerns are raised regarding this tree's health and stability. Given the proposed addition is within 5m of this tree, the WDCP requires that the DA be accompanied by an Arboricultural Impact Assessment Report, however, none has been provided.

COMPLYING DEVELOPMENT

Council should be aware there are currently two applications for complying development relating to the site. The cumulative impacts of these applications should be considered.

On 5 April 2017, a Complying Development Certificate (CDC 2017/0021) was issued for alterations and additions by Comcert Building Certifiers. While works have not physically commenced, Council should consider the possibility that these works may be undertaken concurrently with any works approved under the current development application.

On 2 April 2019, my clients received a notification letter from BuildCert Consultants for a secondary dwelling on the site. No further information has been forthcoming.

My clients have concerns that proposed development, if approved, along with the issued CDC and possibly a secondary dwelling, would result in an overdevelopment of the site.



CONCLUSION

The proposed development at 157 Victor Rd will be visually dominating and will have privacy and view impacts on 159 Victor Rd. The proposed development fails to comply with the building height development standard and numerous other planning controls. The Clause 4.6 variation request to vary the building height development standard does not satisfactorily demonstrate that compliance is unreasonable and unnecessary, nor does it establish that there are sufficient environmental planning grounds to do so. The Clause 4.6 request is therefore not well founded and the proposal before Council should be refused.

Please contact the owner Mr Tim Powell on 0413 725 801 to arrange site access in order to assess privacy and view impacts.

Yours faithfully,

Director
DM Planning Pty Ltd