
Sent: 2/03/2020 6:58:59 PM
Subject: 2019/1475 - 22 Victoria Pde, Manly
Attachments: submission.pdf;

Dear Renee

Please find attached submission from the SP of No. 28 Victoria Parade in relation to the above DA. Please do not hesitate contact me should you wish to discuss.

Regards

Natalie Nolan
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NOLAN PLANNING CONSULTANTS

17 February 2020

General Manager
Northern Beaches Council
PO Box 82
MANLY NSW 1655
Att: Renee Ezzy

Dear Renee,

DA NO: 2019/1475

**PROPOSED: PROPOSED DEMOLITION OF EXISTING STRUCTURES
AND CONSTRUCTION OF A NEW FIVE (5) STOREY HOTEL COMPRISING
49 HOTEL ROOMS, ROOFTOP OPEN TERRACE AND SPA RECREATION
AREA, GROUND FLOOR CAFÉ/RESTAURANT, BASEMENT CARPARK
FOR 22 VEHICLES AND LANDSCAPING
PREMISES: 22 VICTORIA PARADE, MANLY**

I refer to the above Development Application lodged on 18 December 2019. We have been engaged by the owners of No. 28 Victoria Parade, Manly, being the Strata Owners Corporation SP2217 immediately to the east of the development site, to review the proposal having regard to potential impacts on their property.



**Aerial Photograph – Development site sbounded in red,
No. 28 Victoria Parade identified by ★**

ABN: 12 903 992 182

Address: 75 Oliver Street, Freshwater Ph: 0403 524 583

Email: natalie@nolanplanning.com.au

We have inspected the available DA documentation, have visited No. 28 Victoria Parade and viewed the Development Site from No. 28 and the street. We have also reviewed the previous Consent DA167/2015. After review of the above and the relevant legislation, the following issue is raised on behalf of Strata Owners Corporation SP2217:

- Non-compliance with the LEP maximum height / FSR control
- Loss of Views
- Visual and Acoustic Privacy
- Amenity
- Traffic

In this regard, we provide the following specific comments:

Non-compliance with the LEP maximum height / FSR controls

The following table provides a summary of the development standards of the LEP as applicable to the proposed development:

Clause	Development Standard	Proposal	Compliance
4.3 Height	11	15.92	NO (44.5% Variation)
4.4 Floor Space Ratio	0.75:1	1.73:1	NO (131% Variation)

The current application proposes significant departures from Council's Development Standards contained within the LEP and demonstrates a total disregard for the Council controls.

It is noted that Clause 4.6 Request for Variations has been lodged with the application. However, it is not considered that these requests are well founded and the variation should not be supported by Council for the following reasons:

- The significant numerical non-compliances with the current plans suggest that the proposal is an overdevelopment of the site.
- The proposal provides for a significantly larger development than currently approved (DA167/2015). The current application provides for a further 408m² of floor space resulting in total non-compliance of 949.9m². The current approval (DA167/2015) complies with the maximum 11m building. The current proposal provides for an addition two levels and a non-compliance of 4.92m.
- The proposal has not had adequate regard to view loss, particularly given that the proposal is non-compliant with the only two development standards of the Manly LEP.
- The proposed non-compliance results in a loss of views from No. 28 Victoria Parade (as discussed in more detail below). In the view

sharing planning principle established in *Tenacity Consulting v Warringah* (2004), Commissioner Roseth stated:

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.

This is discussed in further detail later in this submission.

- It is not considered that there are sufficient environmental planning grounds to justify contravening the development standard.
- The non-compliances result in unreasonable impacts on the amenity of the adjoining property including sunlight access, visual and acoustic privacy.

In summary it is considered that such large non-compliances with the only two development standards in the LEP indicates that the proposal is an overdevelopment particularly when considered in conjunction with the adverse amenity impacts and view loss.

Loss of Views

The dwellings within No. 28 Victoria Parade having varying degree of views to the west of Manly Cove and East Esplanade. The views are improved to the upper level dwellings. Views are also obtained from the upper level common open space.

In ‘*Tenacity Consulting v Warringah Council* [2004] NSWLEC 140’ a view sharing principle was established by Commissioner Roseth. The following provides an assessment of the proposal against planning principle:

i. Assessment of views:

A number of dwellings within No. 28 Victoria Parade currently enjoy views towards the west of Manly Cove and West Esplanade. The existing views from the kitchen/dining areas and bedrooms.

The water views are filtered by a stand of Norfolk Island Pines located along the foreshore with Dobroyd Head in the distance. These views are considered significant.



View looking West from Apartment No. 17 – kitchen/dining area



Existing View from Roof Top Outdoor Area

ii. *Where are views obtained:*

The views are obtained from the following:

- Kitchen/dining areas
- Bedrooms
- Roof top common outdoor area.

iii. *Extent of Impact:*

It is requested that height poles be erected to ensure that both my client and the Council can carry out an accurate assessment of view impact. However, it is our opinion that the extent of impact is likely to range to some obstruction to the front portion of the units to total obstruction to those windows on the western (side) elevations. Views from approximately the rear two-thirds of the roof top terrace will be obstructed.

iv. *Reasonableness of Loss*

It is considered that a more considered design that sought compliance or at least a reduction in the non-compliance with the height and FSR controls would assist in reducing the obstruction of views.

It is considered that the current proposal is a gross non-compliance with the controls which results in a significant loss of views.

This fourth step of the assessment also provides:

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.

The proposal does not comply with the only two development standards of the LEP which shows total disregard for Council controls and it is considered that the subsequent view loss is unreasonable.

Visual and Acoustic Privacy

Currently the dwellings within No. 28 Victoria Parade enjoy good visual and acoustic privacy. This is currently achieved by the appropriate and landscaped setback to No. 34-38 Victoria Parade and the lower height and masonry wall along the side elevation of the existing building at No. 22 Victoria Parade.



Existing North-East Elevation of No. 22 Victoria Parade

The proposed development at No. 22 Victoria Parade will introduce multiple openable windows within 1.8m of the common boundary with No. 28 Victoria Parade. These windows will extend along 3 levels above ground. The topmost level provides a roof top terrace and spa with minimal landscaping.

The privacy impacts are exacerbated with the location of the new driveway and the lack of landscaping along the common boundary with No. 28 Victoria Parade. It is generally expected that new development would provide landscaping around the boundaries of the site to minimise privacy impacts and improve the landscaped character of the locality. In this regard it is noted that the proposal does not comply with the numerical requirements of Clause

4.1.5.1 of the Manly DCP which requires 50% of the site to be open space and 30% deep soil.

It is also noted that mechanical plant and bicycle storage is also located adjacent to the northwest boundary immediately adjoining No. 28 Victoria Parade. The increase in room numbers, additional openable windows, mechanical plant, introduction of new roof top terrace with spa for use by guests and driveway will result in unreasonable acoustic impacts to the residents of No. 28 Victoria Parade. There is some discussion of speakers to the upper roof top terrace and it is considered that any speakers in this location will have an unreasonable impact on the acoustic privacy of the surrounding residents. It is not considered that any restriction in time of operation or direction of speakers will be sufficient. The proposal is for a hotel with short term guests and therefore the use of the roof top terrace would have significant impacts on the acoustic privacy and amenity of surrounding residents.

The acoustic report does not discuss the potential impacts from the ground floor retail/restaurant tenancy or the use of the driveway. This has the potential to have significant impacts on the surrounding properties.

The acoustic report is relying upon data obtained in 2015 (Noise Survey dated 29/6/2015) and concern is raised if this is still relevant and should be updated with a new Noise Survey particularly the significant increase scope in the proposed development works including an additional 14 rooms and roof top terrace. It is understood that noise levels were only taken from the street and not within the adjoining properties/buildings. The owners/residents of No. 28 Victoria Parade currently enjoy a good level of acoustic privacy. Those units on the western side of No. 28 Victoria Parade will have their level of acoustic privacy considerably reduced and it is therefore requested that further detail which is also more recent is provided in this regard.

Amenity

The proposed development will result in a loss of sunlight and a feeling of 'enclosure' for residents at No. 28 Victoria Parade with a outlook to the west and south west. Currently the windows along the southwest elevation of No. 28 Victoria Parade receive good solar access and outlook. The proposed 'over height' building will block any existing direct sunlight and alter the outlook from a current open district view to view of an unarticulated elevation without any landscaping.

Traffic

The proposal provides for 49 hotel rooms with ground floor retail/restaurant area. This is a significant increase from the approved 36 hotel rooms yet the proposal still provides for only 22 parking spaces on site. This is a significant and unjustifiable shortfall in comparison to Council's requirements. It is understood that the Council DCP requires 52 spaces thereby a shortfall of 30 parking space. This demonstrates that the proposal provides for a significant

overdevelopment of the site. There is currently a shortage of parking within Manly and in particular Victoria Parade. There is no reasonable justification for the non-compliance and the proposal should be refused on this basis.

Conclusion

The proposed development results in a substantial non-compliance with the two development standards of the Manly LEP, namely height and FSR. These non-compliances are significant (44% and 131% variation respectively) and result in significant impacts to the surrounding properties. Further the proposal provides for a significant non-compliance with the required on-site parking. It is not considered that the proposal has had regard to the Council numerical controls or their objectives and is considered to result in a gross over development.

We would be happy to discuss this matter in further detail.

Regards



Natalie Nolan
DIRECTOR