
From: Harrison Grace
Sent: 3/07/2024 11:23:21 PM
To: Council Northernbeaches Mailbox; Reeve Cocks
Cc: Kathleen Heath
Subject: TRIMMED: Re: Objection to Development Application DA2024/0179 for alterations and additions to a semi-detached dwelling at 30 George St Manly NSW 2095
Attachments: SecondObjection_DA2024_0179_HGrace_KHeath_v01.pdf;

To Whom It May Concern

Re: Objection to Development Application DA2024/0179 for alterations and additions to a semi-detached dwelling at 30 George St Manly NSW 2095

Please find **attached** a further objection to Development Application DA2024/0179 (as amended) for alterations and additions to a semi-detached dwelling at 30 George St Manly NSW 2095 submitted on behalf of my wife, Kathleen Heath (**copied**), and myself.

Could you please confirm receipt of this objection?

If you have any questions regarding the objection, please be in contact.



Harrison Grace
Barrister
7 Wentworth Selborne
P 8224 3021
M [REDACTED]
E [REDACTED]
W 7thfloor.com.au

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Harrison Grace and Kathleen Heath
32 George Street
Manly NSW 2095

3 July 2024

Reeve Cocks
Northern Beaches Council
1 Belgrave Street
Manly NSW 2095

Dear Mr Cocks

Re: Objection to Development Application DA2024/0179 for alterations and additions to a semi-detached dwelling at 30 George St Manly NSW 2095

We, Harrison Grace and Kathleen Heath, the registered proprietors of the land comprising Lot 1 in DP 556938 situated at 32 George St Manly, maintain our objection to DA2024/0179 (**Development Application**) for alterations and additions to a semi-detached dwelling at 30 George St Manly (**Site**) as amended on 7 June 2024 for the reasons that follow.

1. Non-compliant setbacks

- 1.1. The proposed development still contravenes cl 4.1.4.2 of the Manly Development Control Plan 2013 (**MDCP**) (“Setbacks (front, side and rear) and Building Separation”).
- 1.2. The dimensions of the proposed setbacks are not shown on the amended architectural plans. The amended architectural plans also do not include an RL for the existing ground level where the proposed northern wall would be at its highest. These omissions are material because they conceal the true extent of the non-compliance. In any event, the northern setback is still less than 45% of what is required. This remains a significant contravention.

- 1.3. For the reasons set out in our first objection dated 17 March 2024 (**Initial Objection**) at [1.5], the proposed development is inconsistent with the objectives of cl 4.1.4.2. In particular:
 - 1.3.1. The proposed development would not “ensure and enhance local amenity” by “providing equitable access to light, sunshine and air movement” because it would entirely block our view to the sky and associated light from all south-facing ground floor windows on our property that are our primary source of light on the ground floor. Objective 2 of cl 4.1.4.2 requires the consent authority to consider the impact on “light” and “sunshine” and is not limited in its consideration to impacts on direct solar access: see, Figures 5, 6 and 7 in our Initial Objection at [3.8]. The proposed development would shroud the ground floor of our home in darkness for most of the day. It would replace the views of the sky we currently enjoy from our kitchen with a view of a blank wall. This would be the antithesis “ensur[ing] and enhanc[ing] amenity” and “equitable access to light”, in breach of Objective 2 of cl 4.1.4.2.
 - 1.3.2. The proposed development would not “facilitat[e] view sharing” because it would entirely block our views of St Patrick’s Seminary and the view currently enjoyed from our rear first-floor balcony: see, Figures 3 and 4 in our Initial Objection. The proposed development would enable the occupiers of 30 George Street to have the full benefit of this view from proposed window W05 whilst entirely depriving us of this benefit. This would be the antithesis of “facilitating view sharing” and “limit[ing] impacts on views and vistas”, in breach of Objective 2 of cl 4.1.4.2.
- 1.4. The applicant has also failed to address the proposed air conditioning unit, range hood exhaust and gas heater that would further protrude into the northern setback on the ground level in breach of cl 4.1.4.2: see, DA 20 “Proposed | Ground Floor Plan” Rev D dated 30/05/2024. These protrusions will adversely impact the amenity of our courtyard.
- 1.5. The applicant has not addressed the objectives of cl 4.1.4 in its Response to Request for Additional Information dated (**Response to RFI**) which are the relevant objectives for the purpose of s 4.15(3A) of the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**). In any event, the proposed development would not maximise views between and over buildings in breach of the MDCP, cl 3.4.3 c) because it would entirely block our view of the heritage-listed St Patrick’s Seminary.
- 1.6. The applicant’s Response to RFI proceeds on an erroneous understanding of the term “living area”. The term is not defined under the MDCP or the Manly Local Environmental Plan 2013. As the High Court has held, the term must be

construed by reference to its ordinary and natural meaning in context having regard to the object and purpose of the section in which it appears: *R v A2* [2019] HCA 35; 269 CLR 507. The Macquarie Dictionary defines the term “living area” to mean “an area for family activities in a house”.

- 1.7. In this case, the view is enjoyed from a room in which there is a couch that we use for reading, lounging, and watching movies and television programs. The room also has a desk and a chair that we use as a home office. The room plainly falls within the ordinary meaning definition of “living area”. The fact that it is used as an office/study does not detract from its characterisation as a “living area”: indeed, it supports it. The applicant has wrongly assumed that the two are somehow mutually exclusive.
- 1.8. Moreover, the purpose cl 3.4.3 is to prevent the approval of development that does not comply with the Council’s development controls relating to setbacks that would have unacceptable impacts on views enjoyed from neighbouring properties. Like many people in the post-COVID era, we often work from home. Accordingly, it is one of the rooms we use most when we are at home and awake and, by extension, it is a room on which view loss would have a severe impact. It would promote the object of the section to construe the term “living area” as including a room in which activities are undertaken that enable the view to be appreciated, such as the room in question.
- 1.9. The applicant has also assumed that the way the room was marketed by the previous owner is somehow relevant to how the room is actually being used now, which is obviously an error. This has contributed to its erroneous assessment of view impacts.
- 1.10. In any event, the Council would give the applicant’s self-serving assessment no weight because it and its consultants have neither visited our property nor conducted a view impact assessment.

Non-compliance with cl 4.1.7 of the MDCP

- 1.11. The proposed development does not comply with cl 4.1.7 of the MDCP because the proposed first-floor addition would not complement the architectural style of the ground floor. The dwelling is a part of a pair of Federation dwellings constructed in 1910. The applicant has proposed that the exterior of the first-floor addition be clad in modern “painted vertical weathertex cladding” which is starkly incompatible with the Federation architectural style of the existing ground floor that has a rendered brick exterior. The fact that the two styles are “incompatible” has been supported by the Independent Heritage Advice prepared by Lisa Truman dated 15 March 2024, which was submitted as part of another objection to the DA.

1.12. Further, the applicant can only take advantage of cl 4.1.7 of the MDCP “providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues” but this is a case in which our property is adversely affected by view loss, in particular, as discussed below.

2. View impact

2.1. The proposed development still contravenes cl 3.4.3 of the MDCP (“Maintenance of the Views”), as shown in the Table below:

Control	Response
<p>3.4.3a) The design of any development, including the footprint and form of the roof is to minimise the loss of views from neighbouring and nearby dwellings and from public spaces.</p>	<p>The design of the proposed development does not minimise the loss of views from our property. It would entirely block our view of the heritage listed St Patrick’s Seminary and all views that are presently enjoyed from all of our south facing windows and first floor rear balcony. No consideration has been given to re-siting a narrower first floor addition closer to George Street so that the view corridor (and appearance of the façade) may be maintained. DA 30 “Proposed North Elevation” Rev D dated 30/05/2024 suggests that the proposed first-floor addition could be located 2 to 3 metres further forward without impacting the view from the public domain, however, no considerations has been given to this option.</p>
<p>3.4.3b) Views between and over buildings are to be maximised and exceptions to side boundary setbacks, including zero setback will not be considered if they contribute to loss of primary views from living areas</p>	<p>The proposed development does not maximise views over and between buildings for the reasons set out in our Initial Objection and above.</p> <p>For the reasons above, the view is enjoyed from a living area and the non-compliant setback would contribute to the loss of this view.</p>
<p>3.4.3c) Templates may be required to indicate the height, bulk and positioning of the proposed development and to assist Council in determining that view sharing is maximised and loss of views is minimised. The templates are to remain in place until the application is</p>	<p>Although a height pole has been installed, it does not accurately indicate the height, bulk and positioning of the proposed development and, in particular, the height, bulk and positioning of the proposed gable roof.</p>

Control	Response
<p>determined. A registered surveyor will certify the height and positioning of the templates</p>	<p>As far as we are aware, the height and positioning of the height pole has not been certified by a registered surveyor. It appears to be inaccurate because it is lower than the existing chimney when the plans suggest the northern wall will be at the same height.</p> <p>In any event, the height pole confirms that view sharing would not be maximised and loss of views would not be minimised because it demonstrates that the entirety of our view of St Patrick's Seminary would be blocked by the proposed development.</p>

2.2. The proposed development is inconsistent with the objectives of cl 3.4.3 of the MDCP, as shown in the Table below:

Objective	Response
<p>Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.</p>	<p>The proposed development would allow the occupiers of 30 George Street to enjoy the view of St Patrick's Seminary but entirely block our view, which is inconsistent with the notion "view sharing". The proposed development would also block all the views that we presently enjoy from all of our south facing windows and first floor rear balcony with a blank wall.</p>
<p>Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).</p>	<p>The proposed development would block our district view and the view of the recognised landmark, St Patrick's Seminary. It would also block our view of the Norfolk pines along West Esplanade which are recognised landmarks of Manly.</p>
<p>Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.</p>	<p>For the reasons above and in our Initial Objection, the proposed development would not "minimise loss of views". On the contrary, it would block our views entirely. There is nothing in the materials lodged with Council that suggests that the applicant has the assessed the impact of</p>

Objective	Response
	different designs on views enjoyed from our property.

Tenacity Consulting v Warringah [2004] NSWLEC 140

2.3. The applicant’s assessment of view impacts is affected by at least the following errors:

2.3.1. The St Patrick’s Seminary is fully visible from our property, which is readily apparent when the view is observed from our property.

2.3.2. The view of St Patrick’s Seminary is available from a sitting position.

2.3.3. The applicant has ignored the facts that the statement of significance for the St Patrick’s Estate describes it as “a site of national heritage significance” and as “significant at state level, as an important landmark in the Manly area, experienced by both local residents and the many visitors to Manly”.

2.3.4. The topography and heritage curtilage around the St Patrick’s Seminary make it unlikely that the view will be built out. As the Statement of Significance notes, the “[St Patrick’s Seminary’s] **prominent location on the hill** above Manly Beach has meant that it makes a striking impact on the view of the locality from many vantage points throughout Manly and the surrounding areas” (Emphasis added). Our property is also elevated on a hill.

2.3.5. The applicant’s assessment of the extent of the impact of the view impact is based on an incorrect understanding of the principles in *Tenacity Consulting v Warringah* [2004] NSWLEC 140 (*Tenacity*). In *Tenacity* at [37], Roseth SC described the third step in the following terms:

“The third step is to assess the extent of the impact. ... The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). ... It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.”

It is not simply a question of whether or not the view is enjoyed from a “living area”. What is relevant is the extent to which the view is appreciated from the room in question, which depends in part on how much time is spent in the room. In our case, the view is especially valuable because it is received from a room that is used as home office (amongst other things). As we often work from home, it is probably the

room in which we spend most of our time when we are at home and awake (like the kitchen in Roseth SC's example). In other words, the fact the room is frequently used as a home office increases the severity of the view loss impacts on a proper application of the principles in *Tenacity*. Figure 7 in the applicant's Response to RFI shows the devastating impact the proposed development would have on the view.

- 2.3.6. The proposed development would entirely block our views from our south-facing windows (and associated light) and views from our rear balcony to the south.
- 2.3.7. The Norfolk pines along West Esplanade that are visible in the middle ground of the view are also iconic features of Manly that contribute to, rather than detract from, the value of the view from our property.
- 2.3.8. In this case, the view impact arises because of non-compliance with the Council's setback controls. In *Tenacity* at [29], Roseth SC noted that "[w]here 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 applicant has failed to consider obvious design changes that would attenuate the impact on the views enjoyed from our property. For example, the applicant could have sited the bulk of the first-floor addition closer to George Street without affecting the presentation of the proposed development to the public domain, as illustrated by DA 30 "Proposed | North Elevation" Rev D dated 30/05/2024 (extracted below). In this example, the view of the proposed first floor addition from the street would be blocked by the existing roof and chimney. If such a design had been considered in conjunction with compliant setbacks the impact on views would be greatly attenuated.
- 2.3.9. Moreover, the applicant has not considered whether any of the proposed first-floor addition could be located in the existing roof space contrary to cl 4.1.7 b) of the MDCP. A design change that made use of the existing roof space would alleviate the impacts on the views enjoyed from our property without detracting from the aesthetic and heritage values of the façade.
- 2.3.10. The only design change the applicant has considered is an increased setback. In the absence of any assessment of any meaningful design changes or alternatives, the Council could not be satisfied that a more skilful design would not reduce the impact on views whilst providing the applicant with the same development potential and amenity.

2.3.11. In any event, we also question the accuracy of Figure 8 in the applicant's Response to RFI because it is inconsistent with the location of the height pole that has been installed.

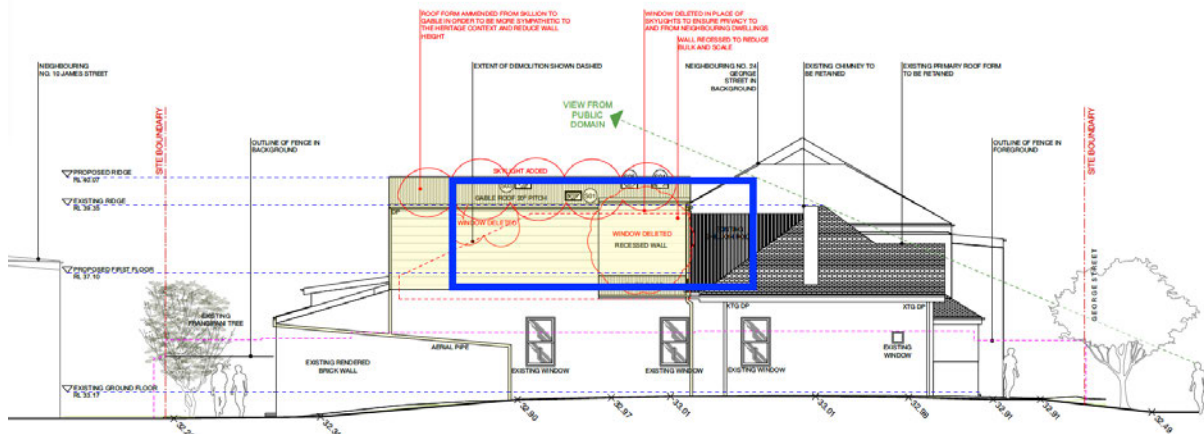


Figure 1: Illustration of how the bulk of the development could have been more sensitively sited to avoid view impacts without adversely impacting the presentation to the proposed development street

3. Bulk and scale

- 3.1. The proposed development still represents overdevelopment of the Site.
- 3.2. The proposed development barely complies with the maximum FSR for the Site and contravenes the MDCP's controls relating to setbacks (in cl 4.1.4 of the MDCP) and view loss (in cl 3.4.3 of the MDCP).
- 3.3. The only reason why the proposed development arguably complies with the FSR control is because the landing craftily includes a step that appears to serve no purpose other than to exclude the landing from the "gross floor area". If the landing was included, the proposed development would not comply with the development standard in cl 4.4 of the MLEP.
- 3.4. The proposed first-floor addition would overbear the Courtyard at the side of our property which we often use for entertaining and will present as a stark, blank, monolithic wall, which will adversely impact the amenity of that area. This is exacerbated by the non-compliant setback.
- 3.5. As demonstrated above, the massing of the proposed first floor has not been distributed to reduce impacts to neighbouring property but instead increases them: see, *Veloshin v Randwick Council* [2007] NSWLEC 428 at [32].
- 3.6. The applicant has not proposed that any of the proposed first-floor addition be located in the existing roof space contrary to cl 4.1.7 b) of the MDCP, which would have reduced the bulk and scale of the proposed development.

- 3.7. The proposed first-floor addition will also still enable the occupiers of 30 George Street to look over their rear fence directly into 10 James Street. The Council could not place any weight on the photograph in Figure 3 because it is taken from Ground Level.

4. Streetscape

- 4.1. The amended design still presents unsympathetically to the street and is incompatible with the existing symmetrical semi-detached built roof form that it presently enjoys with the adjoining property at 28 George Street. This will detract from the distinct heritage character of this part of George Street.
- 4.2. The proposed development does not “complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality” contrary to cll 3.1.1.1 and 4.1.7.1 of the MDCP. Indeed, the proposed first-floor addition would not even complement the “building form, distinct building character, building material and finishes and architectural style” of the existing dwelling (i.e., the ground floor) that is to be retained on Site.
- 4.3. The proposed first-floor addition does not “complement the architectural style of the ground floor” contrary to cl 4.1.7 of the MDCP because the proposed finishes will clash with the 1910 Federation architectural style of the ground floor.
- 4.4. The non-compliant setback is inconsistent with the desired future character of the locality (which is informed by the applicable planning controls: *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 (*SJD*) at [54]) and, if approved, would set an unacceptable precedent in area.

5. Inadequate information

- 5.1. The following information still has not been provided and is required for a proper assessment of the development application:
 - 5.1.1. The dimensions of the setbacks are not shown on the amended architectural plans.
 - 5.1.2. The plans do not contain any dimensions for the proposed first-floor addition other than internal room dimensions.
 - 5.1.3. The plans do not show the height of the proposed first floor wall on the northern boundary.
 - 5.1.4. The plans do not consistently show the air conditioning unit, range hood exhaust and gas heater that would further protrude into the northern setback.

5.1.5. The floor-to-ceiling heights are not shown on the amended architectural plans. Accordingly, it is impossible to determine whether any of the impacts identified in this objection (including view impacts) could be attenuated by reducing the floor-to-ceiling heights.

5.1.6. The applicant has not undertaken a view impact assessment.

5.1.7. The DA does not contain a report from a suitably qualified consultant, such as an urban designer or town planner, to support the applicant's assertion that "first-floor addition ... complements the architectural style of the ground floor".

5.1.8. The plans remain inconsistent, inaccurate, and incomplete.

5.2. In *Skermanic Pty Limited v Blue Mountains City Council* [2024] NSWLEC 1031 the Land and Environment Court held (at [118]) that a development application may be refused if the plans are inconsistent or lack sufficient details because "the likely impacts of the development that would arise from the grant of development consent are unclear": see, also, Environmental Planning and Assessment Regulation 2021 (NSW), s 39. This remains an appropriate case for the application of this principle.

6. Public interest

6.1. There is a public in the consistent application of the Council's development controls and the Council would not be justified in departing from them in this case.

7. Conclusion

7.1. For the foregoing reasons, the Council would refuse the Development Application

7.2. We otherwise maintain and rely on the points raised in our Initial Objection and the matters raised in the Independent Heritage Advice prepared by Lisa Truman dated 15 March 2024.

7.3. If you have any questions regarding the above, please be in contact.



Harrison Grace
32 George Street
Manly NSW 2095



Kathleen Heath
32 George Street
Manly NSW 2095