
From: Kerry Nash - KN Planning
Sent: 17/08/2022 6:21:29 PM
To: [REDACTED] Council Northernbeaches
Mailbox
Cc: James Lloyd
Subject: Objection to DA2022-1164 re 34-35 South Steyne Manly on behalf of J
and S Lloyd
Attachments: KN59002 Objection to DA2022-1164 34-35 South Steyne Manly Lloyd
17.08.22..pdf;

Council – please acknowledge receipt of attached objection. Kerry Nash

KN PLANNING PTY LIMITED

Ref: KN590/02

17 August 2022

General Manager
Northern Beaches Council
PO Box 82
MANLY NSW 1655

Attention: Alex Keller

Dear Alex Keller

**Re: Development Application No DA2022/1164
34-35 South Steyne Manly
Objection to proposed development**

KN Planning Pty Limited has been engaged by the owners of Apartment 733 in the Peninsula - Beachside building at 17-23 Wentworth Street Manly, James and Susan Lloyd, to prepare a submission of objection in respect to the proposed development embodied in Development Application DA2022/1164 on land at 34-35 South Steyne Manly.

The location of the Apartment 733 relative to the proposed development site is indicated on the aerial photograph at *Figure 1*.

The primary concerns arising from the proposed development are:-

1. Unacceptable view impacts;
 2. Building height non-compliance under clause 4.3 of Manly LEP 2013;
 3. Other matters of concern.
- 1. Unacceptable view impacts**

The author has undertaken an inspection of Apartment 733 to assess likely view impacts based on the information available in the development application and in accordance with the view sharing principles set out in Part 3.4.3 of the Manly DCP 2013. The photographs provided hereunder were taken at an eye height of 1630mm.

The New South Wales Land and Environment Court has established a planning principle involving a four step process to assist in the assessment of view loss impacts through *Tenacity Consulting v. Warringah Council [2004] NSWLEC 140*, namely:-

"The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured."

Response:

The proposal impacts on views east over the subject site of the eastern footpath/promenade on South Steyne, Norfolk Pines, the beach, land and water interface and Tasman Sea – this view is a whole view and an iconic view. Broader views of the Tasman Sea and north-east towards Queenscliff Beach/Freshwater are not impacted by the proposed development.

Mr Kerry Nash
Dr Adrienne Keane

PO Box 3372
WAREEMBA NSW 2046

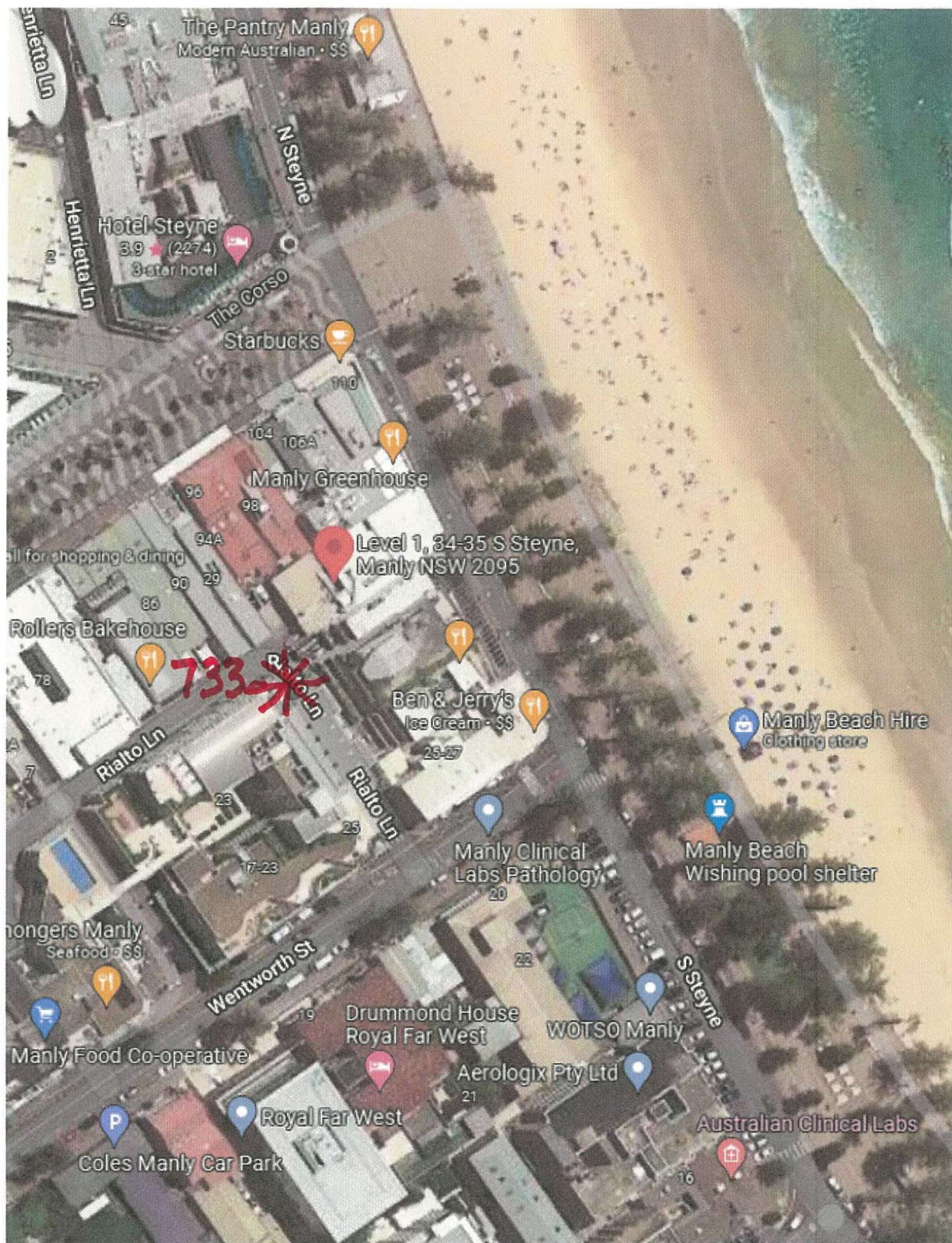


Figure 1.

"The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic."

Response:

The views are enjoyed over the subject site (from Rialto Lane to South Steyne frontage) from a sitting and standing position in the living room and on the adjoining balcony as indicated on the *Photographs 1, 2 and 3*. The photographs were taken from a standing position.

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. 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). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating."

Response:

The impact of the proposed development on the views currently enjoyed by the owners of Apartment 733 are assessed in the following terms:

Balcony – loss of 100% of views of eastern footpath/promenade, lower portions of Norfolk Pines, Manly Beach and land and water interface at low and high tides (*Photograph 4*). The assessment of view loss is accurate as the height of the proposed South Steyne façade is RL16.30 which is the same height as the adjoining parapet on the building at 36-38 South Steyne, as evidenced by the extract from the Plan of Survey at *Figure 2*.

The elevated swimming pool on the roof at RL16.950 should not impact of the views from Apartment 733.

The view loss impacts are compounded by the proposed Landscape Plan for the roof level including trees and vegetation to heights of 2.5 metres (*Pandanus utilis*) and 0.8 metres (*Westringia fruticosa*), as evidenced on Drawing No. DA04 and Plant Schedule prepared by Wyer & Co. The effect of the proposed planting will be to increase the extent of view loss from Apartment 733.

The view loss impact in qualitative terms is devastating, as whilst the distant Tasman Sea and Queenscliff Beach /Freshwater views are retained the activity and visual pleasure of a whole view of Manly Beach and its interaction with beachgoers, boardriders and the ocean will be lost.

Living Room – 100% loss of Manly Beach as detailed above (*Photograph 5*). Distant views of Tasman Sea retained - impact devastating for the reasons detailed above.

"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. With a complying proposal, the question should be asked whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

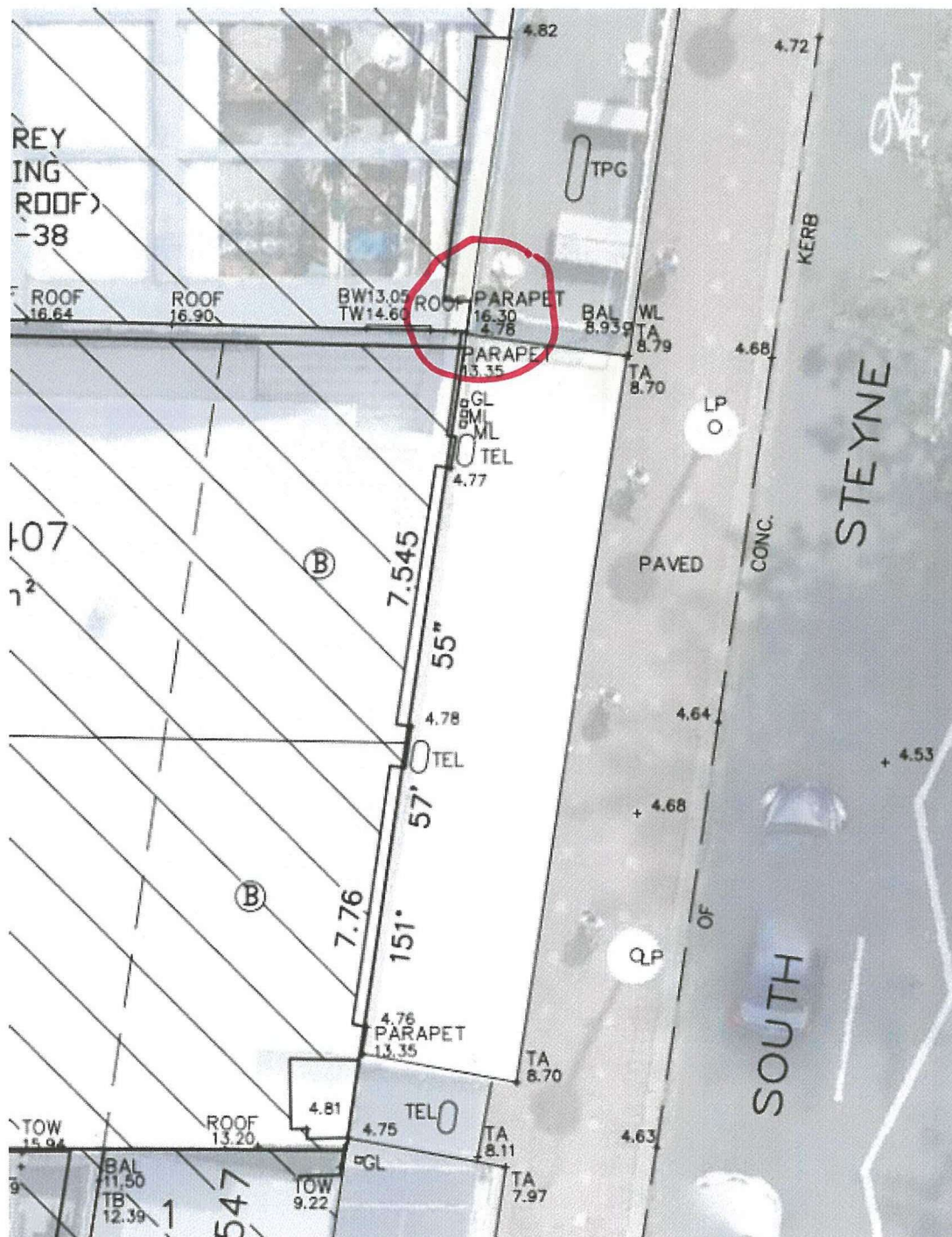


Figure 2

Response:

The view loss impacts detailed above are directly related to the proposal's non-compliance with the 10-metre building height development standard under Clause 4.3 of the Manly LEP 2013.

The extent of non-compliance is substantial – the 10-metre height standard at the South Steyne frontage is at RL15.00; the proposed building height for the South Steyne façade is RL16.30. The elevated swimming pool structure on the roof at RL16.950 is setback from the front façade and should not impact on view loss, however no details are provided in respect to any pool fence required under the Regulations.

The non-compliance with the 12-metre building height standard applying to the rear portion of the site does not play a role in the view loss from Apartment 733.

Furthermore, for the reasons detailed in (2) below it is considered that the justification for the non-compliance with the building height development standard is not well founded and should be refused by Council.

The view loss impacts arising from the proposed landscaping on the roof level can be addressed by an appropriate condition limiting the height of nominated planting.

Given the view loss impacts detailed above, it is considered that the non-compliance with the building height development standard would be considered unreasonable in the context of the *Tenacity principles*, as a development, compliant with the building height standard, would significantly reduce the adverse view impacts on Apartment 733.

Also relevant to any view loss/maintenance of views considerations are the objectives and controls under Part 3.4.3 of the Manly DCP 2013, namely:

Objective 1: To provide for view sharing for both existing and proposed development and existing and future Manly residents.

*Objective 2: To minimize 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 recognized landmarks or buildings from both private property and public places (including roads and footpaths).*

Objective 3: To minimize loss of views, including accumulated view loss 'view creep' whilst recognizing development may take place in accordance with the other provisions of this Plan".

The proposal fails to satisfy Objectives 1, 2 and 3 above for the reasons detailed above.

2. Building height standard non-compliance

The proposed development does not comply with the 10 and 12 metre height standards applying to the site under Clause 4.3 of the Manly LEP 2013. The extent of non-compliance is as follows:

Control 10.00 metres - RL15.00; proposal - RL16.30 (front façade) and RL16.950 (elevated swimming pool);

Control 12.00 metres -RL17.00; proposal - RL19.00 and lift overrun unknown.

The non-compliance with the 12-metre height control does not impact on the views currently enjoyed from Apartment 733.

The Clause 4.6 submission lodged with the development application is flawed and not well founded as the proposal clearly fails to satisfy the objectives of the building height standard, in particular objective 4.3(1)(c)(ii) which states:

(c) to minimize disruption to the following:

(ii) views from nearby residential development to public spaces (including the harbour and foreshores)

For the reasons detailed in (1) above, view loss impacts on Apartment 733 do not achieve the outcomes sought under objective 4.3(1)(c)(ii) of the Manly LEP 2013 and accordingly the clause 4.6 submission fails to satisfy clause 4.6(3)(a) in the context of *Wehbe's "first way"*.

Accordingly, the clause 4.6 submission justifying the non-compliance with the building height standard fails and should not be supported by Council.

The Applicants clause 4.6(4) submission is also considered deficient in the context of the Court of Appeal decision in *RebelMH Neutral Pty Limited v North Sydney Council [2019] NSWCA 130*.

3. Other matters of concern

There are a number of matters of concern relating to the proposal that are likely to impact on the residents of the Peninsula -Beachside building in general and Apartment 733 in particular, namely:

- i) Potential noise and disturbance impacts from the uncontrolled use of the proposed rooftop swimming pool. A condition requiring use of the pool to be prohibited between 10.00pm and 7.00am, 7 days a week would address this concern.
- ii) The extent of excavation proposed to provide two basements for parking and commercial use will have the potential to impact on the structural integrity of adjoining and adjacent buildings. Specific conditions are needed to ensure excavation methodology is appropriate to the site circumstances.
- iii) The management of demolition, excavation and construction on the site will need to specifically address the need for Rialto Lane to be able to function unimpeded throughout the day as it is fundamental for the servicing of retail and commercial entities adjoining and for egress from the Peninsula car parking area.
- iv) Given the height and proximity of the Peninsula building to the site, the location and operation of the proposed crane is of particular concern as to the potential for adverse impacts on the building and the safety of residents.

Summary

The proposed development will have a devastating impact on the views currently enjoyed from Apartment 733 of Manly Beach.

The substantial non-compliance of the building height standard directly contributes to the view loss and is clearly contrary to the building height objectives under clause 4.3(1)(c)(ii) of the Manly LEP 2013 thereby failing the requirements under clause 4.6(3)(a). Accordingly, the Clause 4.6 submission is flawed and not well founded and should not be supported by Council.

Such amenity impacts arising from the proposed development are unacceptable and would justify the refusal of the development application by Northern Beaches Council.

General Manager
Northern Beaches Council

17 August 2022

Yours faithfully

A handwritten signature in black ink, appearing to read 'Kerry Nash', followed by a long horizontal line extending to the right.

Kerry Nash
Director

cc James and Susan Lloyd



Photograph 1: Apartment 733 – view from balcony standing



Photograph 2: Apartment 733 – balcony



Photograph 3: Apartment 733 – view standing from living room



Photograph 4: Apartment 733 – balcony view loss impact standing



Photograph 5: Apartment 733 – living room view loss impact standing