
Sent: 3/03/2019 12:00:38 AM
Subject: Mod2019/0029 DA367/2010 Development Assessment
Attachments: Peta Objections 2 screenshots 2019.doc;

Attached is our submission for objection for Mod 2019/0029.

Thank you

Graham and Peta Butson
5/42 Victoria Parade Manly

The General Manager
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1 March 2019

Attention: Development Assessment
Planner: Renee Ezzy

MODIFICATION APPLICATION: MOD 2019/0029
DA367/2010
46 VICTORIA PARADE, MANLY

Dear Council Assessment Panel and Ms Ezzy,

We have reviewed the above Modification and would request Council to:

A. Refuse the Mod2019/0029 because the **Roof Plan** has a smaller 'cutout' than the MIAP approved. The approved measured approximately 8.25 metres and the 2019 proposed is approximately 3.10 metres. The 2019 shadow drawings show we will **lose more solar access** especially at 12pm compared to the MIAP approved drawings 28.05.14 Issue C. In essence the developer is stealing our sunlight with the change increased floor heights, change and shape of 'cutout' on Level 4 and the change to the shape of the roof.

Reason: The application should be rejected or modified to reduce overshadowing so we maintain our solar access as approved in 2014. ('suggestions' below)

B. Refuse the **enclosure of rear Balconies and delete the louvres on the south elevation.**

Reason: To PROTECT AND MAINTAIN our amenity. As the setback is a driveway these enclosures are in our face all day. The enclosures will create an extra two-storey wall of concrete 1.5m wide directly opposite our living room doorway with added windows. The closeness

will impose a sense of enclosure and bulkiness upon our balcony.

Conditions 1 and 100 imposed by LEC in 2011 and further approved by the LEC in 2012 and MIAP in 2014 should be retained.

We note in SEPP65: There are 8 owners and 11 units therefore not all units can be owner occupied. These 2 one-bedroom units are more likely to be investment properties, not owner occupied.

C. Reject the Mod 2019/0029 on the basis that the **information provided in the drawings is misleading to residents**. Only the Roof and 600mm setback to the East along Dungowan Lane for the top 2 units has been highlighted as a change in this application.

There are many other changes added by the Developer in 2018 application that was refused by NBLPP. For example: Increased floor heights on Level 2, 3 and 4; new and changed windows especially western elevation; changes in basement; enclosed rear balconies and new louvres on Level 1 and 2 creating more bulk.

These should equally be highlighted to allow a fair assessment to be made by surrounding residents.

D. Reject the NEW ADDITIONAL WINDOWS and others that have been altered. These have not been highlighted in red.

Reason: They are not obscure glass and they do impact on the amenity of our bedrooms and living space.

E. Review the veracity of SEPP65 Statements: (as detailed below for Principles 2, 3, 5 and 6.) We have heard that there are only 8 owners and the two rear apartments proposed

to have balconies enclosed are investment units, not owner occupied.

**IN SUPPORT OF OUR REQUESTS WE OFFER THE FOLLOWING
TOGETHER WITH SUGGESTIONS:**

BACKGROUND:

We are the retired owners of Unit 5, 42-44 Victoria Parade, Manly. We bought our property in 1996 knowing that Manly Council had a ruling that any rebuild on 46 Victoria Parade could only be built to the current footprint which consisted of a 3 storey block of 6 flats with a huge concrete rear yard.

Our only two bedrooms and living space (with 4 glass doors) look across this original open rear yard space to the Dungowan Lane and the rear of Sebel Hotel.

Since the DA approvals in 2011, 2012 and 2014 we will have a grossly oversized building with increased height, bulk and scale to be built across all our bedroom windows and living room doors except for the last 'fixed door' panel in the south east corner of our living space. This seems totally unfair. Our view will be a solid concrete wall.

Yes, a view across open space does not compare to a sea view, however to have all of one's open space outlook stolen/demolished as a consequence of Developers 'creep' and greed does not seem appropriate or fair.

Not only have we completely lost all accessible outlook from our living room, we have also lost all solar access to our apartment as compared to what we had before the building was demolished in 2015. We have illustrated this loss of solar access in a separate submission together with photos showing sunlight into our carpet in the living rooms at 10.30 and 11.30 on 21 June 2011.

A) IMPLICATIONS OF CHANGE TO ROOF PROFILE

including the decrease in Level 4 Balcony "cutout" and increase in Level 4 Floor height create FURTHER LOSS OF SOLAR ACCESS

The roof and the floor level heights have all been changed.

There is no justification for the change in the design of the roof and floor heights as approved by the LEC and MIAP on 21st August 2014. Our owners had to spend considerable time, effort and money in order to receive a fair outcome to prevent overshadowing of our building.

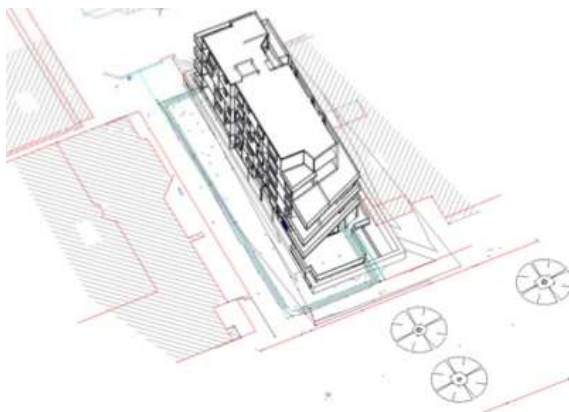
The roof plan, S96:200 of the 2014 DA was redesigned again on 28 May, Issue C, in order to provide sunlight to Units 5, Level 1, and Unit 1, on the Ground. The 2019 Plans for Roof and West Elevation Level 4 still reduce sunlight to the Ground Level, and Level 1 of our building, especially at 12pm as seen in the table below:

Approved -(the red and white squares in Design Cubicle drawing)	New 2019 Variation
11AM	11AM
Unit 5 There is sunlight is on to the floor of the balcony and into the living area. There is a slither of sunlight on the second bedroom window.	Unit 5 There is no sunlight on the floor of the balcony and only a slither on the top right-hand quarter into the living area. There is sunlight onto a quarter of the window of the second bedroom.
Unit 1 No sunlight	Unit 1 No sunlight.
12 PM	12 PM
Unit 5 The sun is on 1/3 of the hub on the living room with sun on the balustrade and balcony floor and into the apartment. The shadow is up to the balcony	Unit 5 The shadow is higher up on the glass balustrade in the living area. The shadow is to the top left of the main

concrete hob only on the second balcony with the sun streaming through the balustrade and into the bedroom.	bedroom balcony with lesser into the bedroom.
Sun is into 1/3 of the window of the second bedroom window.	There is less sunlight onto the second bedroom window
Unit 1 There is sunlight into the living room and the top of the window in bedroom 2.	Unit 1 NO SUNLIGHT

Remember as shown by the shadow diagrams we had full sunlight at 11am and 12 pm (noon) prior to the commencement of this development.

We will supplement the issues in regards to solar access and overshadowing in a separate submission, which includes photos of sunlight into our living room (Unit 5) between 10 and 12 on 21 June, 2011.



View plane - aligned balconies

The ARC Roof Plan 2424-A111 E submitted for this Modification does not match this screenshot taken from their SEPP65 Statement. There seems to be inconsistency with the screenshot showing the 'cutout' towards the rear of the building and with angles whereas the 'cutout' shown in the ARC Roof Plan Issue E shows only straight lines.

There is considerably less "cutout" in the Arc Drawing than that shown in the MIAP approved 2014 roof "angled roof cutout" and the open balcony

on Level 4 in Drawings 201 and 200 Issue C dated 28 May 2014 submitted by Design Cubicle.

The Developer also proposes to enclose the smaller 'Lobby cutout' whereas in 2014 MIAP added Condition 119 to remove any enclosure and maintain an open area with glass balustrade only to be used for service purposes.

Condition 119:

The solid balustrade on western elevation of level four at RL17.265 that is related to the lobby area of Units 12 and 13 is to be replaced with a clear glass balustrade so as to remove the proposed planter.

Reason: To protect the amenity of neighbours.

The proposed increased floor levels EXCEED the ADG guidelines, and DO NOT MATCH approximately those of our neighbouring apartment building (42-44 Victoria Parade) as claimed by the developer. The increased heights create further overshadowing.

SUGGESTION:

We know the approved 2014 MIAP Roof Plan and Level 4 elongated 'cutout' at RL17.265 gave us more solar access.

In order to match the solar access currently approved, we suggest that:

- **the 600mmm setback continue to the southern boundary,**
- **the length of the open space be reinstated to that approved by MIAP,**
- **the wings be reinstated for the roof cutout as per MIAP,**
- **the floor height RL17.265 for Level 4 be reinstated, or add a slope on the leading edge in the cutout on Level 4 at RL17.265.**

Prior to any approval new shadow drawings should then be supplied to see if the suggested changes listed above maintain our solar access as approved by MIAP.

B) BALCONIES AND LOUVRES

**NO JUSTIFICATION FOR ENCLOSURE OF REAR BALCONIES
ON LEVEL 1 AND 2 with ADDITION OF LOUVRES as they
do not comply with LEC Condition 1 and 100**

Firstly, the rear setback is a concrete driveway access to the basement with protruding balconies.

Secondly, the developer proposes to enclose the rear balconies on Level 1 and 2 to provide extra floor space for the bedroom and living room investment units on these levels.

As it is, the current balconies were a 'concession'. The developer proposes to fully enclose these balconies with a 2 storey high concrete wall 1.5 metres wide directly in front of our living room doorway and fixed louvres across the south.

There is absolutely no justification for the enclosure of the rear balconies on Level 1 and 2. The Developer wants to give us an outlook similar to a 'prison'. We would prefer to look at obscure glass rather than be totally shut in.

**THE PROXIMITY AND ADDED BULKINESS OF THIS
increase WILL IMPOSE A HUGE SENSE OF ENCLOSURE
UPON OUR LIVING ROOM AND BALCONY.**

It was never the intention of the LEC that the balconies be enclosed.

**The balconies were to create open space for the
building and reduce the affect on amenity of
neighbours.**

We were at the LEC Meeting December 2011 when the Condition 1 was suggested. We were called into the meeting room with Council's Solicitor as well as Planner, David Stray, and it was explained

that a concession had been reached with regard the rear setback. -

Namely CONDITION 1:

The rear wall (southern elevation) of the proposed building is to be setback a minimum 11.0 metres from the rear (northern) boundary of the property known as 27 Ashburner Street Manly being SP76027. The rear balconies are to be setback a minimum 9.5 metres from the rear (northern) boundary the property known as 47 Ashburner Street, Manly SP76027. Plans are to be suitably amended prior to issue of the Construction Certificate.

Reason: To achieve closer compliance with Council's Development Control Plan for the Residential Zone Amendment 1 and reduce impacts on the amenity of adjoining properties.

It should be noted that there have been three developers over the period of this DA. **Not one of these developers has ever purchased or owned the land or property of the Heritage Listed Sub Station.**

However, this Substation land was used in the calculation of the 11 metre minimum setback.

Therefore in reality, the setback of the proposed building balconies from the north wall of the substation is only 2.75 metres.

This 2.75 metres setback in no way meets the Manly DCP requirement of an 8 metre rear boundary setback.

- The addition of fixed Louvres to the enclosed balconies of Level 1 and 2 facing the southern boundary is non compliant with Condition 100 and is unacceptable.

CONDITION 100:

The obscure glass screen to west end of the rear balconies shall each be 1.6 metres high above each finished balcony floor level.

Reason: To reduce impacts on the amenity of adjoining residential properties.

Fixed louvres across the enclosed balconies on Level 1 and 2 will impact greatly on adjoining

neighbours by giving the impression of 'prison' bars.

The rear setback has already been greatly reduced. Further extension towards the boundary with the inclusion of fixed louvres will create increased bulk visible from the adjoining residents living space. The louvres will not be able to be cleaned and maintained easily. With the proximity to the ocean and the salt air they will quickly become very unsightly to all surrounding neighbours.

The enclosure and additional louvres also impacts and reduces the afternoon reflective light for the three lower rear apartments (1, 5 and 9) of the adjoining residents in 42-44 Victoria Parade. It creates a "PRISON" like view from their living spaces. These apartments are already being greatly affected by reduced solar access from the morning sun because of the height of the building.

It was stated by the Commissioner of LEC that the intention of these balconies was to create open space and all balustrades should be glass only.

C) MISLEADING DRAWINGS WHICH ACCOMPANY MOD 2019/0029:

The drawings supplied for Mod 2019/0029 highlight in red only 2 changes, ie:

- the proposed change to the roof profile,
- relocating the top 2 floors of the proposed development approximately 600mm to the east to with no setback to Dungowan Lane.

MOD2019/0029 also INCORPORATES MODIFICATIONS FROM PROPOSED MOD2018/00294 but does not highlight these in red: ie

1. ENCLOSURE OF REAR BALCONIES on Levels 1 and 2 for 'extra' bedroom and living space.
2. ADDITION OF LOUVRES across these 'extra' enclosed spaces on Levels 1 and 2 creating 'prison' like effect across the view line for neighbours in 42 Victoria, Sebel Hotel and Dungowan Building.
3. ADDITION OF WINDOWS, changed style and window heights and addition of louvres along west and east elevation. Some new windows are being placed opposite habitable bedrooms and living spaces along the western elevation thus creating issue of privacy for our bedrooms and living space as well as reducing the amenity of neighbours.
4. INCREASE IN CHANGE OF FLOOR HEIGHTS which no longer 'match' the adjoining neighbours. The increase of floor level on Level 4 from RL 17.265 to RL 17.73 impacts the view, solar access with further overshadows neighbours. **This increased floor height together with the smaller 'cutout' for open balcony on Level 4 creates further shadowing and loss of solar access to the Ground and Units 5 of adjoining neighbours in 42-44 Victoria Parade.**
5. BASEMENT has several changes (internally, not a big problem for our building except for the issue of **fire stairs to Victoria Parade** which are not illustrated as to how the exit will be built at Ground Level).

Because these additions have not been highlighted in red, it makes it extremely difficult for surrounding residents to accurately assess this application. On these grounds we ask that Council reject this 2019 modification.

Our further research of the drawings shows:

Fire Safety

In 2018 the Fire Safety Report suggested that plans did not meet Controls and it was suggested that TWO new FIRE EGRESS WALLS needed to be built. These are not shown in the 2019 drawings.

Finishes:

At the end of the drawings - "Plans-External" 2019 is a list of finishes. - These do not match the approved of 2012 and 2014. We note there is a concrete planter box along the west elevation at Level 3 to be finished in polished concrete. This was not approved.

CONDITION 95:

The external surfaces of the building I to be finished in accordance with the external materials and finishes board No 1109 50B dated 3 September 2012.

Reason: To maintain the visual amenity and maintain the character of the immediate locality.

We note the exterior walls have been changed to WHITE.

This change to white suits the rear apartments of 42 Victoria Parade because we may receive some reflected light. Our sunlight is already being greatly diminished so we need all the reflected light we can get.

Addition of Visitor Bike Rack outside Lobby:

The location of the "visitors bike rack" situated near the lobby - as mentioned in the SEPP65 Statement. This is NEW and presumably it will be placed opposite our building lobby further reducing the amenity of our residents. The two building lobbies will be adjacent to each other.

D) SEPP65 Design Verification Statement 2019.

We have taken issue with the following:

Principle 2: Build Form and Scale - (Scale and bulk of building is non-compliant. Reduced setbacks. Excessive height of building);

(a) The scale and bulk grossly exceeds the appropriate build form for the site.

(b) The bulk and scale completely dominates the Heritage Listed Cafes on the corner of Victoria Parade and South Steyne.

(c) There will now be no setback on Dungowan Lane (East Elevation).

(d) The top two floors have been moved 600mm east to align with the Lane.

(e) The proposal exceeds the height limit of the LEP.

SCREENSHOTS:

Note the screen shot from the proposed External Drawings illustrating the white colour finishes is taken on an angle to appear the same height as our building. The proposed roof is greatly higher than the ceiling of our Level 4 and the top of our open roof parapet railing above the Level 4 ceiling for 42-44 Victoria Parade. The floor levels have been increased from 2.95m to 3.05m. This increases the height of the floor on Level 4 for the open balcony 'cutout' that was to allow sunlight into Units 1 and 5 of adjoining neighbours. Our Floor to ceiling heights is approximately 2.4m.



The above screenshot also shows the different finishes for colour schedule.



The screen shot from the SEPP65 Statement illustrates the RL levels again showing the RL height at the top of the Balcony Railing for each Level in 42 Victoria Parade. It should be noted that the RL Level for the Floor of the proposed Level 4 in 46 Victoria Parade is now RL17.73.

This is 1 metre higher than the Level 4 balcony railing in 42 Victoria Parade as illustrated in the screenshot.

Principle 3: Density - (the proposal is non-compliant)

(a) The floor space ratios exceed the LEP - approximately 2.5 times previously.

(b) The Building far exceeds the original footprint of the 3 storey building of 6 flats.

(c) The West, East and South elevations are non-compliant with the separation distances outlined in the ADG and DCP setback provisions.

(d) The building floor heights of 3.05 metres greatly exceed the ADG recommendations of 2.7 metres.

(e) The report states "the new floor levels have been adjusted to comply with the ADG and match approximately those of the neighbouring apartment building". This is incorrect. In no way do they match the neighbouring apartment building, i.e.

42-44 Victoria Parade. Each proposed Level is higher. (see screenshot above)

(f) The report states the units are "all owner occupied." We understand from talk about Manly that there are 8 owners, one of whom owns 4 units. We question the 'owner occupied' status of the two rear apartments on Level 1 and 2 where the modifications propose to extend into the rear setback by enclosing the LEC "Condition 1" concession Balconies.

Principle 5: Landscape

(a) The approved landscaping has been greatly reduced to front and side only to the Lobby area.

(b) There is no provision for deep soil landscape as the building support foundations have been built AT GROUND LEVEL to the perimeter of all boundary lines.

(c) The approved DA had landscaping in the rear South/West corner and along the driveway between the sub-station.

(d) We would also point out that in order for the previous developers to build their foundation walls, they have removed our garden all along our adjoining boundary. This garden included many camellia trees outside Unit 4 and our lobby, as well as orange blossom trees outside Unit 1 along our boundary at Ground level. This was a flourishing garden and is now reduced to sand and rubble with no surviving vegetation. The previous developers used the excuse that removal was necessary for their foundations and did not have written permission from adjoining neighbours.

Many of the Louvres, giving ventilation into our garages, along this boundary have been severely damaged and further damaged by the current developer. I can supply photographs.

It was verbally promised by the previous developer that this garden would be reinstated before completion of the building.

We would request Council to enquire as to how the current developer proposed to reinstate this garden and fix the damaged louvres.

Because of the limited space, this remediation work on louvres and garden may best be done before the completion of any additional walls along the adjoining boundary.

Principle 6: Amenity

(a) There is reduced setback on the west elevation.

(b) The increased height of the building reduces the separation distances between the proposed building and adjoining neighbours in 42-44 Victoria Parade.

(c) It is difficult to calculate because no dimensions are given. We believe the proposal does not meet the distances between buildings as suggested in the ADG.

(d) Some Rear apartments in 42-44 Victoria Parade facing east will have their solar access reduced less than two hours. This is below the Land and Environment Guidelines.

In Conclusion:

The modifications are all unjustified and reduce the amenity of adjoining neighbours.

We request Council to refuse all the increases in the 2018 and 2019 drawings and uphold the rulings and Conditions agreed by MIAP in 2014 so that there is no further increase in the bulk, scale, overshadowing and loss of solar access to adjoining neighbours.

Yours sincerely

Graham and Peta Butson
Unit 5, 42-44 Victoria Parade Manly