
From: BT
Sent: 13/12/2021 7:26:56 AM
To: Council Northernbeaches Mailbox
Cc: Meredith Symons
Subject: Mod 2021/0947 DA 95 Gurney Cr., Seaforth Section 4.55 (1a) Minor Environmental Impact
Attachments: SYMONS WS mod 21 131221.pdf;

SUBMISSION: SYMONS
a written submission by way of objection

Ms Meredith Symons
97 Gurney Cr.,
Seaforth

13 December 2021

Northern Beaches Council
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RE:
Mod 2021/0947 DA 95 Gurney Cr., Seaforth
Section 4.55 (1a) Minor Environmental Impact - Modification of Development Consent DA2019/1463
granted for Alterations and Additions to a dwelling house.

WRITTEN SUBMISSION: LETTER OF OBJECTION
SUBMISSION: Symons

Dear Sir,

This document is a written submission by way of objection lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

I ask Council to REFUSE this DA.

I am being assisted by a very senior experienced consultant assisting me in the preparation of this Written Submission.

This matter is a case of an Applicant wishing to 'view chase' across a side boundary, to the detriment of the quiet enjoyment and privacy of their neighbour.

The custom and practice of the DDP is to ensure that a neighbours' privacy is not at the expense of an Applicant's view, particularly when the view is across a side boundary.

In this case, the Applicant has a significant harbour view over the rear boundary, from west facing windows at all levels.

The Applicant is trying to suggest that they should also be able to obtain a view over the northern side boundary, from windows and decks facing the side boundary without any privacy screens, that would considerable privacy impact to my property. This is both unreasonable and unacceptable.

The Applicant obviously does not appreciate that no one has a right to a view to be maintained for their property indefinitely. Indeed, the NSWLEC Planning Principle, *Tenacity Consulting v Warringah [2004] NSWLEC 140, CI 27*, states:

the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries.

The Applicant is also trying to suggest that solar access will be lost because of the 1.65m high privacy screens. There is ample northern sunlight into all windows, and full sun to the western windows from noon to sunset. Obscured glass could have been used across the entire northern side elevation to gain better solar access if that was a real concern to the Applicant, however the Applicant has not chosen that design path.

The amount of solar access that would exist from the current approvals on the subject site, is considerably more than if a similar sized development was to occur on my property. The subject site would be vulnerable to a considerable solar loss. The approved development has considerable solar access considering an east-west orientation.

This issue is purely about 'view chasing' by the Applicant at the expense of my privacy.

The Applicant is simply unwilling to accept that the most senior members of the DDP have viewed both the subject site and my property, and the Applicant cannot accept that the DDP determined that privacy screens are required in the location identified within the conditions of consent. The Applicant appears to be in constant denial.

- DA 2020/1463 was approved in August 2020 by the DDP, with Condition 9 included within the conditions of consent, to ensure development minimises unreasonable impacts upon surrounding land. The DDP Panel members: Robinson, Williams, and Jemison – three of the most senior NBC Managers
- DA Mod 2021/0086 was approved in May 2021 by the DDP: amending Condition 9, to ensure development minimises unreasonable impacts upon surrounding land. The DDP Panel members: Robinson, Piggott, and Jemison – three of the most senior NBC Managers

The DDP clearly located privacy screens in locations where the occupants of the subject dwelling could look immediately and directly into my windows, decks and private open spaces. It is clearly obvious that without privacy screens in those locations, direct overlooking to my property would occur.

I am very concerned that the Applicant once again has made no effort to discuss these matters with me.

In the past two years the Applicant has made six development applications, that have been subject to multiple amended plan submissions, due to the Applicant's desire to propose considerable overdevelopment on the subject site.

I have had to make multiple submissions in an effort to try to protect my amenity.

For a Registered Architect to use such words within the Statement of Modification to Council aimed at me as *'haranguing, vindictive, unjustified'* is both libellous and slanderous. I ask for the DA to be immediately refused on this basis, and the Statement of Modification immediately removed from Council website.

I find this emotionally extremely stressful and a completely unfair attack on my person. It causes me great anxiety to read something like this, as well as having to object a third time to something that was already determined.

I am also greatly concerned as to the tone of the Statement of Modification that is aimed at the integrity of not only senior planning officers, but also at the senior managers of the DDP.

The Applicant seems to be demanding a *'senior level overview'*, when the decisions on the privacy screens has already been made by the most senior planning officers within Council, the DDP. NBC Managers Robinson, Piggott, Williams, and Jemison is as *'senior'* as it gets.

The Applicant seems to believe that conditions of consent would need to be first discussed and agreed with the Applicant prior to determination, however that simply is not how the DDP or Council function. On privacy matters, DA consents are regularly conditioned with 1.65m high privacy screens, obscured glass, or raised sills. Conditions of consent on privacy matters is completed at officer level consents, within DDP consents, and by NBLPP consents.

The Applicant further suggests that *'Council would benefit from giving this application the attention it deserves'*, which suggests that the DDP have not done so in the past, despite DDP visiting the subject site and my own property, before making their informed decisions. NBC have used the most senior Managers in assessing and determining prior consents: Robinson, Piggott, Williams, and Jemison. The Applicant is being considerably disrespectful that these very senior managers have not given the matter attention to this matter.

The Applicant suggests the purpose of the s4.55 *'is intended to be a chance to look "afresh" at these conditions imposed'*. However, this is not the purpose of a s4.55 Mod DA. The DDP [Robinson, Piggott, Williams, and Jemison] has repeatedly stated that the privacy screens are required to safeguard a major environmental impact to my property due to unacceptable privacy outcomes, and to ensure development minimises unreasonable impacts upon my property.

The DDP has already made two decisions on this matter, after viewing both the subject site and indeed my own property.

The Applicant had every ability to have DA 2020/1463 consent reviewed by Council, but the Applicant did not submit a review DA.

I am now concerned to the validity of this Section 4.55 (1a) Minor Environmental Impact DA as the modifications do not involve minimal environmental impact. It is clear from the two previous DDP decisions that there is a major environmental impact to my property due to unacceptable privacy outcomes.

I contend that the proposed amendment changes the modification application so significantly as to render the modification application a new modification application. If it does, it is outside the scope of the power to grant leave to amend the application.

I ask Council to refuse the Section 4.55 (1a) Minor Environmental Impact DA on these grounds.

The essence of the amenity problem lies directly at the non-compliant outcome in respect to MDCP 3.4.2 Privacy, and to the NSWLEC Planning Principle *Meriton v Sydney City Council [2004] NSWLEC 313*.

NSWLEC Senior Commissioner Roseth summarised the position extremely clearly within *Meriton*:

When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.

Unfortunately, in this Mod DA the Applicant wishes to remove my protection of visual privacy, contrary to both the MDCP and the NSWLEC Planning Principle.

CONTENTIONS THAT WARRANT THE REFUSAL OF THE APPLICATION

1. Lack of statutory power

The development application should be refused as the proposal is contrary to Section 4.55 (1a) Minor Environmental Impact DA as the modifications do not involve minimal environmental impact, as the modification fails to ensure development minimises unreasonable impacts upon surrounding land.

The development application should be refused as the proposal is contrary to Section 4.55 as the proposed amendment changes the modification application so significantly as to render the modification application a new application. It is outside the scope of the power to grant leave to amend the application.

2. Impacts Upon Adjoining Properties: Privacy

The proposed development should be refused as it will have unacceptable impacts upon the amenity of our property, specifically with regard to visual privacy.

As stated by DDP on two separate previous occasions in 2020 and 2021, by the most senior DDP managers, the privacy screens are required *“to ensure development minimises unreasonable impacts upon surrounding land.”*

The proposed development will result in unacceptable overlooking of the adjoining dwelling and associated private open space, resulting in inconsistency with the provisions of the DCP and the objectives of the DCP.

MDCP makes the matter extremely clear:

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Objective 1)

To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy

Designing for Amenity

Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property.

3.4.2 Privacy and Security

Relevant DCP objectives to satisfy in relation to this part include the following:

Objective 1)

*To minimise loss of privacy to adjacent and nearby development by:
appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;
mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

The DDP previous decisions have been extremely consistent.

Privacy screens are required to protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy.

Careful design consideration had not been considered by the Applicant in respect to designing for amenity.

Privacy screens are required to minimise loss of privacy to adjacent and nearby development by appropriate design for privacy including screening between closely spaced buildings; and mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.

An assessment of the privacy impact against the planning principle *Meriton v Sydney City Council* [2004] NSWLEC 313 follows:

Principle 1: The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.

Response: The development is located in a low-density area.

Principle 2: Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in

developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)

Response: The proposed development result in a privacy impact with the proposed windows facing neighbours without sufficient screening devices being provided, considering the proposed windows are directly opposite our private open space, all of our private open space decks, and windows.

Principle 3: The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.

Response: The windows in question are windows of the main circulation zones and living areas, it is considered that the living areas will result in an unacceptable privacy breach. The proposed windows and decks facing the private open spaces for the neighbouring dwelling and will result in an unacceptable level of privacy impact.

Principle 4: Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.

Response: The proposed development is a relatively new development and the proposed windows and decks have been designed without any consideration to the privacy of the neighbouring property.

Principle 5: Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.

Response: It is considered that the private open space of the neighbouring dwellings could be better protected. We ask Council refuse the DA, as the most appropriate privacy screening measures to be imposed on windows and decks facing our property, has already been determined twice by the DDP.

Principle 6: Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.

Response: As mentioned above, the use of privacy devices as determined twice by the DDP, would reduce the impact of the dwelling.

Principle 7: Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.

Response: Additional landscaping may assist in addition to privacy devices.

Principle 8: In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.

Response: The area is not undergoing change that would warrant privacy impact such as the one presented.

Comment: As the development is considered to result in an unacceptable privacy impact due to the design, it is requested that the proposed DA be refused to reduce amenity impact on the neighbouring properties.

The above non-compliance will give rise to unreasonable amenity impacts upon my property. In this instance, the proposal is not considered to achieve compliance with this control.

Despite the Applicant's misguided statements on privacy, NBC's DDP have ruled consistently on these privacy matters on numerous refusals within the last 12 months, including, but limited to, the following DDP refusals on these DA: 2020/1571, 2021/0046, and 2020/0884 to name a few.

I raise with Council a number of recent DDP refusals on privacy, to show consistency in these matters. No two DA are the same, however the pattern is clear. There are hundreds of DA determined by Council each year with additional privacy devices added as conditions of consent:

DA 2021/0046

12 May 2021

Reason: Privacy WDCP D8

Officer: Keller

"the proposal does not preserve the amenity of adjoining land.... the new open plan living and extensive glazed floor to ceiling walls and outside rear deck substantially increases overlooking to adjacent land."

DA 2020/1571

28 April 2021

Reason: Privacy MDCP 3.4.2

Officer: Englund

"the proposed development does not adequately mitigate overlooking from the rear upper level balcony and this element of the proposal is not supported"

DA 2020/0884

15 December 2020

Reason: Privacy MDCP 3.4.2

Officer: Duncan

"The proposal was not appropriate in the context of the location on site or the impacts on the adjoining property."

CONCLUSION

The proposed dwelling is not consistent with the aims of the LEP and the DCP controls as they are reasonably applied to the proposal.

The variations to the aims of the LEP and the DCP controls are considered unreasonable in this instance.

The cumulative effect on these non-compliances causes considerable amenity loss to my property, particularly privacy loss.

It is considered that the proposal is inappropriate on merit and this DA must be refused for the following reasons:

- The application has not adequately considered and does not satisfy the various relevant planning controls applicable to the site and the proposed development.
- The proposed dwelling will have an unsatisfactory impact on the amenity of surrounding properties, particularly privacy.

It is considered that the public interest is not served.

The proposed development does not follow the outcomes and controls contained within the adopted legislative framework.

Having given due consideration to the matters pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended, it is considered that there are multiple matters which would prevent Council from granting consent to this proposal in this instance.

The proposed development has an unbalanced range of amenity impacts of which would result in adverse impacts on my property.

My significant concern is visual privacy where the freedom of my dwelling and its private open space from being overlooked by another dwelling and its private open space would be severely harmed should this Mod DA be approved.

I ask Council to immediately REFUSE this DA, on the following grounds:

- The development application should be refused as the proposal is contrary to Section 4.55 (1a) Minor Environmental Impact, as the modifications do not involve minimal environmental impact.
- The development application should be refused as the proposal is contrary to Section 4.55 as the proposed amendment changes the modification application so significantly as to render the modification application a new application. As it does, it is outside the scope of the power to grant leave to amend the application.
- The proposal is contrary to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it fails to satisfy the Aims under the MLEP 2013, Part 1.2 (2) (a) (iv), as the development adversely affects the amenity of neighbours
- The proposal is contrary to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it fails to satisfy the objectives of the E4 zone of the MLEP 2013 as it fails to provide low impact residential development
- The proposal is contrary to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as it fails to satisfy objectives and planning controls of MDCP: 3.4.2 Privacy and Security. The proposal fails to protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy. The proposal fails to minimise loss of privacy to adjacent and nearby

development by appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; The proposal fails to mitigate direct viewing between windows and/or outdoor living areas of adjacent buildings.

- The proposal is contrary to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that it will have an adverse impact on the built environments in the locality.
- The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
- The proposal is contrary to the public interest pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

I ask for the DA to be immediately REFUSED.

Yours faithfully,

Ms Meredith Symons
97 Gurney Cr.,
Seaforth