

26 April 2022



Rod J Pindar
33 Brown Street
ST PETERS NSW 2044

Dear Rod,

Development Application No: DA2022/0005 for Alterations and additions to a dwelling house including a swimming pool at 21 Moore Street CLONTARF.

I refer to your Application which is under assessment by Council and our previous correspondence, dated 2 March 2022.

Upon full assessment of your application and consideration of the submissions received during the notification period, Council unfortunately does not support the application in its current form.

The reasons for this assessment are outlined in the correspondence below.

View Loss

As stated in our previous correspondence, Council has received submissions from adjoining properties, in regards to potential view loss as a result of the proposed development. Council must undertake an assessment of the proposal against the view sharing planning principle outlined within the NSW Land and Environment Court Case of *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*.

The effected properties on the north side of Moore Street have been inspected, with the aid of the height poles that were erected on the subject site, upon our request. Your assistance on providing these structures are appreciated.

In summary, a number of adjoining properties on the northern side of Moore Street, will be adversely effected by your proposal. These properties access significant landmark views to the south and south-west, which will be adversely impacted upon to a degree that ranges between minor to severe, based on the methodology established in *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*.

These impacts are exacerbated by the identified non-compliances with the development standards and controls contained within both the Manly Local Environmental Plan 2013 (MLEP 2013) and the Manly Development Control Plan 2013 (MDCP 2013). These are discussed in further detail below. It is highly likely that the proposal will need to be amended to address these non-compliances and the impacts identified to adjoining properties.

Height of Buildings



Based on the information provided, the proposed development is likely to represent a significant variation with the Height of Buildings development standard of 8.5m that is specified in Clause 4.3 of MLEP 2013.

Whilst it is considered that the plans provided are not sufficient to provide a definitive estimate of the height, it is certain that the ground levels specified on the plans are not consistent with the definitions of “building height” that is contained within MLEP 2013. This definition gives Council the discretion to estimate the building height from either: “ground level (existing)”; or the Australian Height Datum.

In effect, either of these levels must be true in principle to the natural levels of the site, not consequent development. Established case law in regard to how existing ground levels are to be estimated state that it should be nearer to the levels of the site that are in an “undisturbed” state, prior to development.

The estimation of the height of the proposed works made on the submitted plans and the Statement of Environment Effects incorrectly takes this level from an existing terrace that is clearly above the natural ground levels of the site.

The application should therefore provide additional details to establish the ground level of the site in accordance with the Australian Height Datum and / or the site in an undisturbed state. Also, a written request to vary this Development Standard will be required.

However, in the context of the view loss issues previously mentioned, it is unlikely that any variation to the Height of Buildings development standard would be supported.

Floor Space Ratio

The application seeks to vary the floor space ratio (FSR) development standard contained within Clause 4.4 of MLEP 2013, which is set at 0.4:1.

In order to successfully seek a variation to this standard, it must be established by the applicant that it is both unnecessary and unreasonable to apply the standard.

In the context of the likely view loss that has been identified to adjoining properties on Moore Street, the variation sought to the FSR standard is not supported.

Hence the proposal fails both Clause 4.4 and 4.6 of MLEP 2013.

Wall Height

Part 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the MDCP 2013 requires that the wall height of new development not exceed a height (on the subject site) of 7.4m (based on a slope of 1.68:1).

As discussed previously for the Height of Buildings development standard, this control should be measured from the Australian Height Datum or from levels estimated on the site being in an undisturbed state.

The wall heights on the west, east and south elevations of the proposal are likely to exceed this control.



In the context of the established view loss issues to adjoining properties, this non-compliance will fail the objectives of the control and is not supported.

Setbacks

Part 4.1.4 Setbacks (front, side and rear) and Building Separation of MDCP 2013 requires that the side setbacks of new works be set at 1/3 of the wall height of the proposed development.

As the proposed wall height is likely to exceed 9m, the side setbacks would need be approximately 3m to comply. The proposed setbacks of 1.1m (west) and 1.35 (east) are insufficient to meet these controls.

In the context of the identified view loss effects to adjoining properties, these non-compliances will fail the objectives of the control and is not supported.

Based on the assessment above Council is providing you with three options to progress the handling of your application:

1. Prepare and submit the requested information to the assessing officer directly addressing the issues by 10 May 2022 (14 days). If the amended information is deemed acceptable and satisfactorily addresses all the issues raised, you must then upload all documentation via the NSW planning portal; or
2. Request that the current proposal proceed to determination in its current form, which may result in refusal of the application; or
3. Withdraw the application from Council, which may include the refund of a portion of the application fees. Please note, that should this be your preferred option, Council will require additional information and will request this under separate cover.

Please advise of your selected option by responding to this letter by 10 May 2022 at council@northernbeaches.nsw.gov.au and marked to the attention of the assessment officer. Should Council not receive your response and selected option by this date, Council will assume that you are not withdrawing this application and it will be determined in its current form.

Should you wish to discuss any issues raised in this letter, please contact Nic England on 1300 434 434 during business hours Monday to Friday.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Phil Lane'.

Phil Lane
Acting Manager, Development Assessment