
Sent: 18/05/2021 8:52:53 PM

Subject: Attention : Ms Rebecca Englund - DA 2021/0008 - 12 & 14 Ponsonby Pde, Seaforth

18 May 2021

Northern Beaches Council

via email

Attention : Ms Rebecca Englund

Dear Rebecca,

Re: DA 2021/0008 - 12 & 14 Ponsonby Parade, Seaforth NSW 2092

Amended Plans

Thankyou for the extra time you have granted us to lodge our submission regarding the amended plans submitted by the applicant under DA 2021/0008 ("DA").

We are the owners and occupiers of 8 Ponsonby Parade, Seaforth, and wish to object again to the proposed DA including the amended plans recently submitted to Council.

We refer you to our previous submissions in relation to the proposed development and request that same be taken into account when making a decision based on the current amended plans. We make the following further comments to support our view that Council should reject the proposed DA bearing in the mind the following:-

(a) The impact of the proposed development lodged under the State Environmental Planning Policy for Seniors or People with Disability ("SEPPHSPD"), we believe, will not be in keeping with the intention of this housing policy which is to provide suitable housing for Seniors and People with a Disability in existing neighbourhoods. The intention was to provide such housing without causing intrusion on existing residents and to allow discreet developments that fit with the existing character, streetscape and amenity of a neighbourhood. The proposed development does not meet this criteria but will significantly change and create an inappropriate and unacceptable precedent in the neighborhood by introducing two (2) large bulky, double storied with underground parking, apartment buildings covering two (2) lots running in an east west direction fronting onto Ponsonby Parade and Ross Street in a low density housing area zoned by the local Council's DCP as R2. The development will impact on the natural environment due to loss of vegetation and deep excavation over almost all of the site, loss of privacy of existing residents, loss of existing residents' solar access and views and create further parking congestion and safety concerns for many pedestrians and cyclists who use the road and footpath day and night.

(b) We also note that the proposed DA has created stress and anxiety for the surrounding neighbours who wish to protect the existing character of the area currently controlled under the R2 local Council zoning requirements and which must be adhered to by any individual resident. In fact the previous owner of No 12 Ponsonby Parade sadly passed away within months of the previous development proposal at No 14 Ponsonby being granted after suffering significant stress and anxiety in a bid to protect his own property from the effects of this inappropriate development. The current proposed development retains a bulk, scale and form that fails to recognise but rather seeks to impose a change of character, scale and density upon the community with resultant negative and unacceptable impacts particularly on adjacent residents.

(c) Our neighbour who lives in the immediate adjoining property at No 10 Ponsonby Parade and who is very unfamiliar with the process of development approval is very distressed knowing she will suffer loss of privacy in her backyard, loss of privacy both visual and acoustic and loss of solar amenity to an unacceptable level (as shown in the applicant's shadow diagrams) all due to the breach of SEPPHSPD guidelines and which prevent a two storied building in the rear 25% of the lot. The development plans two (2) double storied buildings all along the eastern boundary which it shares with No 10 Ponsonby Parade with little relief and with deep excavation, windows and outside entertaining terraces within 2m of the boundary in breach of the SEPPHSPD regulations in relation to loss of privacy, solar access and acoustic privacy for neighbours. This is unacceptable.

(d) The afternoon solar access in the afternoon at the frontage of No 10 Ponsonby Parade will also be removed as the development breaches the front building alignment to Ponsonby Parade. The excessive excavation of the whole development site within 2m of our neighbours' boundary and either removing or undermining existing trees is also an unacceptable consequence of this proposed development and may cause structural damage to her house.

(e) There are three (3) large trees over 4m high along the boundary of the development site with No 10 Ponsonby Parade which should be protected to ensure that some existing mature vegetation is preserved for the native birds and environment. One of these trees is a Jacaranda situated on the eastern boundary of No 12 Ponsonby. The other two (2) trees are on the western boundary line of No 10 Ponsonby Parade. Whilst the landscaping plans show these trees will remain, we suggest that the Council impose a severe

penalty, say \$1m, should these trees be removed or suffer life threatening damage. This condition would be in keeping with other local Council areas in an effort to protect some of our natural vegetation and limit environmental impacts from development.

(f) Our property will also be impacted by loss of afternoon sun and privacy in our backyard as the development breaches the guidelines with two (2) double storied buildings along its eastern boundary in breach of the SEPPHSPD regulations which provide for a single storey building only in the rear 25% of a lot, and many other criteria to ensure privacy, solar access and minimal impact on surrounding neighbours. The plans show windows and large terraced entertaining spaces facing east on the SE and NE corners of the buildings on both levels which will look directly into our backyard to an even greater extent than No 10, due to the increased rise of the ground level at the rear of the property. We are concerned that the extensive excavation along the boundary may result in the roots of trees in No 10 being cut thus killing the trees. Landscaping and "drop down privacy screens" will not solve this privacy issue.

(g) The proposed development also breaches the 8m height limit imposed by SEPPHSPD guidelines exacerbating the impact on privacy, solar access and visual amenity. This guideline must be enforced. The plans submitted are vague and hard to read as to accurate dimensions for ceiling heights, window sizes etc but the breach of the 8m height limit is shown. We note also that the ground floor of the development is significantly raised well above the natural existing ground level, further increasing the bulk, height and scale of the buildings to the detriment of neighbouring properties and the streetscape. We trust that the Council, acting in the best interests of resident rate payers, will enforce compliance with planning guidelines and ensure that accurate plans, reports etc. are provided and scrutinized in detail.

Further, the DA fails to comply with the controls of SEPP (HSPD) as follows:-

SEPP (HSPD): Cl. 50(b): Breach of Floor Space Ratio Regulations ("FSR")

1. The control requirement under the SEPP (HSPD) was identified as 0.5:1. The local Council regulation requires 0.45:1. The DA seeks to significantly increase the size and bulk of the buildings with a FSR of 0.6:1. The SEPP (HSPD) must be enforced. Additionally, the ceiling heights in the proposed DA are unnecessarily high also adding to the size and bulk of the buildings. How does this increased height benefit the residents of SEPP (HSPD)?

2. We point out that the proposed development is under the SEPP (HSPD). This SEPP permits an increased floor space ratio and the setting aside of local planning controls that would prevent the development of housing for seniors or people with a disability as long as development criteria and standards specified in the SEPP are met. These standards have not been met and again, should be enforced by the Council, acting in the best interests of the residents. There does not appear to be any Clause 4.6 Variation document lodged in pursuit of the increased FSR. Council is well within its rights to refuse this development application in this regard for non compliant density

Character of the Proposed Development

3. Clause 33 of this SEPP states:

Neighbourhood amenity and streetscape

The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping. Setbacks from side boundaries determine the privacy, rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way whilst protecting privacy.

The proposed development with its excessive bulk, minimal side setbacks, overlooking of adjacent properties and denial of solar access to adjoining properties, does not meet the character of the streetscape or neighbourhood.

"The proposed development should:

(a) Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.

(b) maintain reasonable neighbourhood amenity and appropriate residential character by:

(ii) using building form and siting that relates to the site's land form."

We note that Ponsonby Parade is a busy street of low density single dwellings, mostly tile-roofed households with enough significance that the local Council even sought to impose a heritage order on some few years ago. We note that there seems to be a Heritage Impact Statement in relation to No 14 Ponsonby Parade but not a Heritage Impact Statement in relation to No 12 Ponsonby Parade which in

our view, would be the more appropriate example of housing design in the early 20th century and which house has not been changed significantly and kept in good condition and repair. The proposed development will demolish this significant home and introduce multi-storied, Colourbond roofed, bulky apartment blocks into the single dwelling low density area. The proposed development is out of character with the area.

Overshadowing

4. The overshadowing impact to immediate neighbours is unacceptable. The proposed development will present as large bulk to the adjoining properties. If the building were redesigned to decrease the overshadowing impact, it would also lead to a lessening of the visual bulk. This bulk and scale will have an unacceptable impact on the streetscape and the character of the locality

Relation to site's land form

5. Clause 33(c)(ii) of the SEPP states that proposed development should use "building form and siting that relates to the site's land form". The proposed development site is gently sloping, rectangular shaped blocks with two street frontages. We understand it has a slope of approximately 4 metres over its length i.e. its slope is 1:12.5 or approximately 8 per cent.

6. As stated in previous submissions **Tenacity Consulting v Warringah** [2004] NSWLEC 14013 is authority for the view that a slope under 10 per cent could not be called significant. It was found that most people would call such a slope "moderate". It was found that it appears that no other council calls land steep unless it has a slope of at least 10 per cent and in most cases 15 per cent or 20 per cent. According to Tenacity the 8 per cent slope on the site is not significant and hence is not sufficient to justify allowing the two storey height limit to be exceeded on the basis that the land is significantly sloping.

7. The excavation required to accommodate the proposed buildings will be over the entire width of the site, to a significant depth of approx. 4.5 metres [as described in the Geotechnical Report] and appears to be only 4m from the eastern boundary with No 10 Ponsonby Parade. The plans are not clear to us as to the actual dimensions of the excavated area and this should be clarified in detail by the Council officers. The previous development application that only consisted of the site at No 14 Ponsonby Parade envisaged that some 1,440 cubic metres will be excavated [32 m x 18 m x 2.5 m]. The current DA will no doubt involve the removal of double this amount of the existing ground and create a significant impact from vibration from excavators and rocksawing equipment to adjoining neighbours. Accordingly we request the Council to impose a condition on the applicant that all adjoining neighbours including No 8 Ponsonby Parade, to supply independent dilapidation reports at the applicant's expense.

The proposed development does not use building form that relates to the landform.

8. No valid environmental planning grounds are cited to justify the proposed breaches of environmental standards. Rather it is suggested, without referring to relevant planning controls or precedents, that sites with two street frontages are somehow exempt from relevant planning controls. This is unacceptable. The DA proposes a building which is effectively three storeys high once the underground parking is constructed which elevates the ground floor of the apartments above the existing ground level, has two storeys located in the rear 25 per cent of the site, which significantly exceeds the floor space ratio [FSR] and exceeds the height limit of 8m, all in breach of the SEPP (HSPD) regulations.

9. We do not believe that the proposed development uses building form and siting that relates to the site's land form. We argue that this is a breach of cl 33(c)(ii) of the SEPP (HSPD), which is one of the prescribed principles set out in Division 2 of Part 3.

Visual and acoustic privacy

10. Clause 34 of this SEPP states:

Visual and acoustic privacy

The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:

- (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping.

11. We believe that the plans of the proposed development with windows and balconies looking straight into and over 10 and 8 Ponsonby Parade appears to be designed to overlook those properties. The location and height of windows and balconies in the proposed development appear to look straight into the indoor and outdoor living areas of 10 and 8 Ponsonby Parade. The residents of 10 Ponsonby parade will be precluded from looking out

their living room and bedroom windows unless they look straight into the eastern side balconies and apartments of the proposed development.

12. The east side balconies of the proposed two storey development overlook the rear yards of 10 and 8 Ponsonby Parade to an unacceptable level that cannot be managed by privacy screens and vegetation and will acoustically impact directly on those adjoining neighbours.

13. The mature trees on the eastern boundary of the development which enhance the visual amenity of the streetscape, neighbourhood and in particular, backyards of 10 & 8 Ponsonby Parade are shown to be preserved. We suggest the Council impose conditions to ensure that these mature trees suffer no life threatening damage and significant penalties imposed should these trees be damaged or not survive.

Solar access

14. Clause 35 of this SEPP states:

Solar access and design for climate

The proposed development should:

(a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space.

15. Cl. 3.4.1.2 of the Manly DCP 2013 states:

In relation to sunlight to the windows or glazed doors to **living rooms** of adjacent properties:

b) for adjacent buildings with a **north-south orientation**, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9 am to 3 pm on the winter solstice (21 June);

c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.

16. 10 Ponsonby Parade is a building with a north-south orientation. With a minimal setback for a building on its western boundary with a height in excess of 8 metres, in our view, there will be no solar access to the windows on the western side of 10 Ponsonby Parade after midday. The applicant's shadow diagrams show that the windows on the western side of 10 Ponsonby Parade have no solar access from 3 pm.

17. We argue that this is a breach of cl 35(a) of the SEPP. This is one of the principles set out in Division 2 of Part 3.

Streetscape

18. We note the number of objections to the proposed development from residents in the immediate vicinity. This suggests that most observers, particularly those who live nearby, find the proposed development offensive, jarring or unsympathetic to the built form and presents effectively as a large, bulky residential overdevelopment not in keeping with the character and streetscape of the existing neighbourhood. There is normally (pre Covid), limited parking available for commuters and users of the two (2) Childcare centres adjacent to the proposed development and a lot of pedestrian traffic and cyclists using Ponsonby Parade and in our view an entrance/exit driveway to the proposed development for seniors and people with a disability will create an unacceptable safety hazard requiring some significant road works at the intersection to alleviate. We also note that the speed limit of 50kmh is rarely adhered to and the 144 Manly bus (the only service) regularly transits east along Ponsonby Parade. We note there is no return service.

Setbacks

19. The setbacks of what appears to be 2m (plans are difficult to interpret as to dimensions of building) for entertaining terraces and windows on the eastern boundary is inadequate and the result is loss of privacy as mentioned previously and is not acceptable. This privacy issue cannot be solved with a "drop down privacy screen".

20. The unacceptable setbacks contribute to the loss of privacy and solar amenity to neighbouring properties and must be addressed to ensure compliance with guidelines.

Further, we note as follows:-

SEPP (HSPD): Cl. 40(4)(b)

21. SEPP cl. 40(4)(b) states that a building that is adjacent to a boundary of the site must be not more than 2 storeys in height. Similarly, the Manly DCP 2013 at cl. 4.1.2.2(a) states that "Buildings

must not exceed 2 storeys”.

A storey is defined in the Manly LEP as “a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:

- a space that contains only a lift shaft, stairway or meter room, or
- a mezzanine, or
- an attic.”

None of these exclusions appear to apply to the lowest storey of the proposed development.

The rear building significantly breaches the 8m height limit imposed by SEPPHSPD and presents as an even larger, bulky building overlooking the front building when viewed from Ponsonby Parade. The plans are difficult to interpret and seek to hide the impact of two large buildings with inappropriate mass and density in contravention of the existing neighbourhood and streetscape and objectives of providing housing for seniors and people with a disability in an existing neighbourhood despite superimposed large trees to soften the streetscape image in the plans. This non compliance is unacceptable and will change the neighbourhood completely.

The Manly DCP 2013 effectively permits a third storey in specific cases. It allows an additional understorey where that storey satisfies the meaning of basements in the LEP. The definition of basement in the LEP is:

basement means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).

22. The site elevation plans seem to show that the entrance foyer and lift lobby on the lowest level of the proposed development is more than 1 metre above existing ground level at the Ponsonby Parade entrance. Can the Council officers please confirm that the floor level is less than 1m above ground level (existing). It does not appear so.

Additionally, we would like to see height poles erected in the SE corner of the building fronting Ponsonby Parade to show the impact of the non compliance with front building alignment and height and bulk of development. These poles should not be painted green.

Conclusion

As stated in our previous objections to this DA, the proposed development:

- imposes both bulk, excessive height and overshadowing on the adjacent properties and is non-compliant with two storeys in the rear 25% of the property;
- is effectively three storeys in height when viewed from Ponsonby Parade, in breach of both the SEPP and the Manly DCP 2013;
- significantly exceeds the permitted floor space ratio;
- does not use a building form that relates to the site's land form, given the amount of excavation proposed;
- will introduce multi-storey, dual apartment blocks into street of single dwelling households changing the character and amenity of the neighbourhood in a R2 Council zoned area;
- is of a bulk and scale that is out of character with the area;
- will change the quality and identity of the area rather than contribute to it.
- the eastern side balconies of the proposed development look directly into the bedroom and livingroom of 10 Ponsonby Parade and the backyards of 10 & 8 Ponsonby Parade;
- there will be less than the prescribed 4 hours solar access on the western windows of 10 Ponsonby Parade from 9 am to 3 pm on the winter solstice;
- the proposed development will block this solar access on these windows in breach of the Manly DCP 2013 control requirements; and
- the side setbacks on the eastern side of the proposed development are well below the Manly DCP 2013 control requirements, exacerbating overshadowing and overlooking both 10 & 8 Ponsonby Parade by the proposed development.
- will contribute to already dangerous and congested parking in the vicinity with its entrance creating a further safety hazard to cyclists and pedestrians.

Again, we recommend to Council that the proposed development be rejected as we believe, the revised plans

submitted do not address any of the non-compliance issues raised in the original development application.

Yours faithfully

P & D Hamblett