



The General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Our Ref: GMC:SC:30335

17 April 2023

Attention: Maxwell Duncan/Rodney Piggott

Dear Sirs,

**Advice re Class 1 Application
Property: 69 Melwood Ave, Forestville**

We refer to Councils issued identified letter dated 16 March 2023 and the video conference with Maxwell Duncan and Rodney Piggott of NBC.

We also acknowledge receipt (delayed as it was) of the Design and Sustainability Advisory Panel comments and recommendations dated 2 February 2023.

We refer to each of the 6 items as follows:

1. SEPP (Housing) 2021

The plans have been amended to ensure that no breach of clause 84(2) of SEPP (Housing) 2021 (“SEPP Housing”) occurs. Principally amendments to DA 1103 on the ground level have been made to ensure that no part of the building breaches the building envelope development standard. This has been achieved by reducing the building width/height, deleting the void between units 201 and 202 and the redesigning of unit 202 to replace a bedroom with a study. We refer Council to drawings DA7061, 7062 and 7063 which show the development now complies with the SEPP building envelope.

In relation to the suggested breach of clause 108(2)(c) - Floor Space Ratio (FSR) of the SEPP Housing, we acknowledge that the deemed to comply 0.5:1 FSR threshold is exceeded. The amended plans have responded to Council’s request and reduced the FSR to 0.598:1. However, it is settled law that no clause 4.6 is required to be submitted for the breach of this provision of the SEPP Housing. As a ‘must not refuse’ control it is not a development standard, any development which is excess of the 0.5:1 control needs to be addressed on the basis of its merits. We have reviewed section 4.15(3) of the *Environmental Planning and Assessment Act 1979*, which in our opinion, merely notes that “flexibility” should be applied. A clause 4.6 is not directly referred to and as a matter of planning hierarchy, subsection (3)(a) grants a broad discretion to the consent authority. There is nothing in the specific non-discretion development standard that requires a clause 4.6 and section 4.15 (3)(b) states that any discretion “may” be applied.

Limited Liability by a scheme approved under Professional Standards Legislation

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The proposed development has minimised the footprint, and maximised the landscaped area to ensure the building is centrally located and benefits from excellent side setbacks which will provide a landscape setting. The additional FSR has been achieved through a stepping of the building in accordance with the topography. The bulk and scale is minimised through setbacks, articulation and change in materials and finishes. The amended plans have significantly changed level 3 to create a cut out between the kitchen and the circular entry to 301.

2. Bulk and Scale

The Applicant acknowledges that the proposal is different with the surrounding built form. As a separately defined permissible form of development (by the SEPP Housing), the built form will be different.

Drawing DA 2002 street elevation and Drawings DA 6025 – DA 6027 shows the ‘cut out’ and the proposed materials. This can be contrasted with the 3D perspective views of the original design shown at DA 7031 to Melwood Avenue as a 2 storey development of contemporary form and character. The front setback is complied with (see DA 1103) and the LEP 9.5m height limit is complied with (see DA 7051).

We strongly disagree with Council's conclusion that “*the minimal landscaping proposed will not screen or soften the resultant built form to a level that is commensurate with the surrounding locality.*”

The landscape plan prepared by Paul Scrivener was complimented by the Panel member with landscaping expertise and the development will have deep soil planting around the perimeter of a minimum depth of 3m to the north and between 3.7-6m towards the rear where the development adjoins 71 Melwood Avenue. The attached amended landscape plans address species selection and additional planting in the front and southern setbacks. The proposed planting will step down with the topography and create a building that is compatible with development in the locality.

We enclose copy of updated landscape plans Issue C dated 6 April 2023. The north and south elevations (see sheets 6 and 7) demonstrate the mature height of landscaping on the boundaries, proposed fencing and how the setbacks of the building work to minimise views from adjoining neighbours to a 2 storey form from any particular viewing point.

3. Visual Privacy

The plans have been amended to ensure that windows at level 1 are either highlight windows or opaque windows. Level 2 unit 203 has maintained windows due to the setback which exceeds 8m. The nature of those windows are generally narrow and the use of these areas are for transition spaces. Overlooking is minimised by the design and location of the windows. All windows in unit 202 face primarily to the east. The kitchen and living room windows are setback 8.3m from the northern boundary. In relation to level 3, the balcony area has been reduced in size and additional planting is proposed on the roof to address any privacy impacts. It's simply not possible to view from the balcony to either of the neighbours at 67 or 71 Melwood Avenue due to the intervening parapet and planter. This is shown on DA 7032.

4. External Referral – Design and Sustainability Advisory Panel

We note the conclusion of the Panel extracted in Council’s letter. The development has been redesigned to eliminate previous voids – that is the area between units 201 and 202. The Applicant considered adding a third bedroom to unit 203 and eliminating the void between the unit 301 lobby and unit 203, but determined that in all the circumstances, this would lengthen the southern façade and create an inferior entry ‘experience’ when entering the building. To reduce FSR there is now an increased gap between units 301 and 203. In response the front door has been brought closer to the street. Although considered, the location of the living and kitchen facing east and incorporating the clerestory to access northern light created a better design outcome allowing a distinct overlooking over bushland to the east.

In relation to other Panel comments, we offer the following responses:

- (a) The Applicant’s team investigated the relocation of the stair and lift core which was said to create inefficiency. The Applicant’s response is that in order to achieve carparking on the site, the basement and therefore the lift needs to be located as proposed.
 - (b) Unit 202 has been redesigned to be effectively a 2 bedroom + study apartment. This has significantly reduced the excessive corridors and led to a much better design and functioning outcome for the proposed unit. The access to unit 202 has been retained because it is not possible to have it accessing the living area due to the location of the stair and lift core. Any movement of the proposed entry to the east would achieve an inferior entry experience to the unit.
 - (c) In relation to unit 203, the Panel criticised the dining room being separate from the kitchen and living room. We do not agree that there is any reduction in amenity of having a separate dining room from the kitchen. We note that the separation is small being in the order of 3-4m.
 - (d) The Panel’s comments in relation to unit 301 have been adopted and the plans amended. That unit now has direct access from the main bedroom to the balcony. The unit has been further redesigned following the video conference with Council officers.
 - (e) The Applicant has not proposed a comprehensive redesign given its compliance with the SEPP Housing provisions, the objectives of the zone and high design architectural and landscaping outcome. The Panel did not identify “*the unnecessary impacts on neighbouring properties of floor space*”. However as requested by Council, the FSR has been reduced to be under 0.6:1.
 - (f) The voids on ground level entry have been eliminated to the north. The southern gap between the units 203 and 301 has been increased following the video conference with Council officers.
 - (g) The comments in relation to amenity are largely a repeat of those matters in relation to the void between unit 201 and 202. Unit 2 has been redesigned in response to the panel comments.
 - (h) A number of skylights have been included to maximise solar access to the dwellings that are faced towards the south, east and west. A skylight provides daylight into the main entry and lift area, creating high levels of amenity. The clerestory windows provide light and additional ceiling height into the living rooms of units 202 and 203. Skylights have been included for
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unit 203 bedroom 1 and 2, unit 202 bedroom 1, the south facing ground level unit G01 for bedroom 1 and 3 and G02 bedroom 1.

- (i) The recommendations relating to sustainability have been generally adopted and included on the attached amended plans.

5. *Internal Referral – Waste*

The amended plans now provide for a roof on the bin storage area and all other matters referred to in Council's letter have been addressed in the amended plans or can be the subject of conditions.

6. *Internal Referral – Water Management*

We understand that that Council has relatively recently required general stormwater quality requirements to be implemented into the developments.

We are taking instructions in relation to this matter and will provide amendments in due course.

7. *Engineering and Traffic Referrals have yet to be finalised*

We are somewhat concerned that engineering and traffic referrals have not been finalised, when the DA was lodged 3 months ago. We can only assume that they are acceptable. Please provide them on receipt.

We enclose a concise schedule of amendments prepared by the architects, the amended architectural and landscape plans.

We look forward to progressing the DA to an approval.

Should you have any questions, please contact Graham McKee to discuss.

Yours faithfully
MCKEES LEGAL SOLUTIONS

Graham McKee
Principal

Encl.
