
Sent: 26/08/2022 9:15:42 AM
Subject: Development Application 2022/1000
Attachments: DA 2022-1000 Submission.pdf;

Attention: Lashta Haidari

Dear Madam,

Please find attached a submission in relation to Development Application No. 2022/1000.

The subject site is identified as No's 19 – 21 South Steyne and 22 Wentworth Street, Manly.

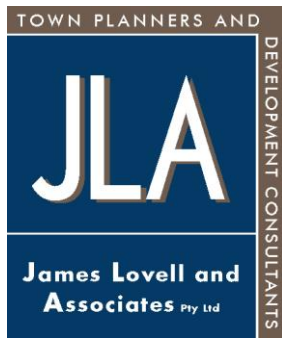
The submission has been prepared on behalf of the owner of Unit 533/25 Wentworth Street, Manly.

Please do not hesitate to let me know if I can provide any further information or clarification.

Kind Regards,

James Lovell

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24 August 2022

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

Dear Sir/Madam,

DEVELOPMENT APPLICATION No. 2022/1000
19 – 21 SOUTH STEYNE AND 22 WENTWORTH STREET, MANLY

Introduction

I refer to the abovementioned matter and confirm that I act on behalf of Mr John Cumming. My client is the owner and occupant of Unit 533/25 Wentworth Street, Manly.

My client's unit is located within a mixed-use building on the north-western side of Wentworth Street, directly opposite the subject site. The unit is located at the fourth floor level, and accommodates three (3) bedrooms, a study, an open plan kitchen and living room, and associated amenities.

The unit includes a contiguous roof terrace, accessed directly to/from the main living rooms, study and master bedroom. The unit enjoys iconic views of Manly Beach, and parts of the headland located at the southern end of the beach. The views are enjoyed from the main living rooms, the master bedroom, a study, and the roof terrace. The unit has been specifically designed to capture the existing views in terms of floor plan/layout and orientation.

My client is very concerned about the impacts of the proposed development, and in particular, the loss of iconic views to Manly Beach and the southern headland. In that regard, the proposed development will obstruct a significant proportion of my client's existing views, including parts of Manly Beach, and the whole of the southern headland.

I hold a Bachelor of Town Planning (Honours), and a Master of Environmental and Local Government Law. I have 25 years experience in the New South Wales (NSW) planning system,

and have particular expertise in preparing and assessing DA's, and providing expert town planning evidence on behalf of both Applicant's and Council's in the NSW Land and Environment Court. I have also been appointed by the Court on multiple occasions as a Court Appointed town planner.

Context

The documentation submitted with the DA goes to some lengths to highlight the contribution *Royal Far West (RFW)* makes to the health, education and disability services to children and their families from remote and rural areas.

My client does not dispute the contribution *RFW* makes to some members of the community, however with all due respect to *RFW*, that contribution is entirely irrelevant for the purposes of assessing and determining the current DA.

Further, any Development Consent granted by a consent authority relates to the land, and the Applicant, owner and occupant of the land at any particular time is an entirely irrelevant consideration.

In that regard, the DA must be assessed against the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, and in turn, the provisions of the applicable planning controls and the terms of the Concept Plan approval.

Background

On 18 April 2013, the Planning Assessment Commission approved a concept plan for the site (MP 10_1059). On 20 April 2022, approval was granted for a modification to the approved concept plan.

The approved concept plan includes mixed-use buildings (identified as Buildings C and D) extending along Wentworth Street and South Steyne. The building fronting Wentworth Street (Building C) extends to eight (8) storeys (plus rooftop structures), and the building at the junction of Wentworth Street and South Steyne (Building D) extends to five (5) storeys (plus rooftop structures).

The Assessment Report (April 2022) prepared in relation to the concept plan modification includes commentary on the potential view loss impacts associated with the concept plan, with the commentary largely based on the *Visual Impact Assessment (VIA)* prepared to accompany the application.

In that regard, the VIA includes an assessment of the modifications from two (2) units (Units 331 and 332) within the same building as my client's unit (No. 25 Wentworth Street). The Assessment Report notes that "*the Department agrees with the VIA which shows that the proposed changes to the Building D form, at the corner of South Steyne and Wentworth Street,*

result in a minor to moderate impact on the private views from 331/25 and 332/25 Wentworth Street”.

Unfortunately, the VIA did not include a view loss assessment from my client’s unit, and the Assessment Report (April 2022) does not discuss the impacts associated with the concept plan on my client’s unit, or any other unit within the building (other than units 331 and 332).

Assessment

Section 4.15 of the *Environmental Planning and Assessment Act 1979* requires the consent authority to take into consideration, *inter alia*, “the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”.

Accordingly, the consent authority is required to consider the impacts of the proposed development on my client’s unit, including in relation to view loss. In that regard, the existing view from my client’s roof terrace (which is similar to the view from the main living rooms, master bedroom and study) is identified in the photograph below.



Photograph 1: Existing View from Unit 533/25 Wentworth Street, Manly

As can be observed, my client’s property enjoys views of Manly Beach and the southern headland. The views are enjoyed from the main living rooms, master bedroom, study, and contiguous roof terrace. The existing view can properly be described as iconic, with views of Manly Beach widely regarded as amongst the most significant and important in Australia.

The Manly Local Environmental Plan (LEP) 2013 applies to the site and surrounds. Clause 4.3 of the LEP identifies the objectives of the building height control which applies to the site. The objectives include *"to minimise disruption to", inter alia, "views from nearby residential development to public spaces (including the harbour and foreshores"*.

Further, the Manly Development Control Plan (DCP) 2013 applies to the site and surrounds. Part 3.4.4 of the DCP relates to *Maintenance of Views*, and the objectives include *"To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths)", and "To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan"*.

The DCP adopts the *Planning Principles* established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140 (Tenacity)* as follows:

*26 **The first step** is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

*27 **The second step** is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

*28 **The third step** is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

*29 **The fourth step** is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to*

that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable [emphasis added].

In summary, the planning controls that apply to the site impose a clear and unambiguous requirement for the consent authority to consider the impacts of the proposed development on the existing views enjoyed from my client's unit.

The SEE prepared to accompany the DA includes the following comments in relation to view loss:

Having inspected the site and its immediate surrounds we have formed the considered opinion that the proposed development will not give rise to any unacceptable view impacts from surrounding properties and certainly not to the extent that such impact could be considered inconsistent with that anticipated through approval of the modified concept plan. A significant view corridor is maintained down the Wentworth Street alignment from the residential properties located on the northern side of Wentworth Street including, but not limited to, Apartments 331 and 332/25 Wentworth Street with the views retained as a consequence of the S75W modification approval not compromised as a consequence of this application. A view sharing outcome is maintained.

Further, we confirm that the views available from Apartment No. 6/ 29 Victoria Parade and the Level 2 Apartment No. 9/ 29 Victoria Parade down the southern boundary of the property towards Manly Beach as a consequence of the section S75W modification approval are maintained and to that extent a view sharing outcome is achieved.

We note that views to and from the site, and the developments visual openness, are significantly increased through the adoption of a ground floor plane which now allows views of the foreshore precinct from the public domain through the project. Visual blocking elements such as a street wall along South Steyne have been removed. There has been a reprioritisation of view sharing (from the Part 3A) from the private to the public domain. On balance this is seen as a superior outcome when compared to the visual amenity afforded by the original Concept Plan design.

Firstly, it is informative to observe that there has been no view loss assessment from my client's unit, and the existing views (and the impact on those views) from my client's unit are different to the existing views that exist from Unit 331 and 332, No. 25 Wentworth Street in terms of elevation, orientation and expanse.

Secondly, the reference to views being "*significantly increased through the adoption of a ground floor plane which now allows views of the foreshore precinct from the public domain through the project*" is irrelevant in terms of the impacts on surrounding residential properties, including my client's unit.

Further, to the considerable extent the Applicant relies upon the concept plan to justify the impacts (ie. the *fourth step* in *Tenacity*), the Court considered in *Furlong v Northern Beaches*

Council [2022] NSWLEC 1208 (Furlong) the relevance and meaning of the *fourth step* in Tenacity as follows:

49. *When I consider the view loss question and its evaluation, I first note the provisions at D7 of WDCP and its objective "(to) allow for the reasonable sharing of views". Then, I turn to the Tenacity principles. Clearly, these principles are not part of the law. They should be seen as a useful guide for evaluation purposes. The terminology in Tenacity is itself less about prescriptions (here I disagree with the applicant's closing submissions relating to the force of Tenacity), and more about guiding.*
50. *For example, in considering the second Tenacity step:*
 - (1) *To say "the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries", does not mean the protection of views across side boundaries is not appropriate in some circumstances, and*
 - (2) *For the retention of side views to be "often unrealistic", does not mean it is always unrealistic.*
51. *To turn to the fourth Tenacity step: to suggest a complying development (in instances where the same development potential and amenity outcomes are not available through a design alternative) "would probably be considered acceptable and the view sharing reasonable", does not mean it would always be considered acceptable.*

In the circumstances, the consent authority is required to consider the reasonableness of the view loss from my client's unit, and compliance with the provisions of the concept plan does not mean any consequential impact *"would always be considered acceptable"*.

In this instance, my client's unit has been specifically designed to capture the available view, and the view loss as a consequence of the proposed development will be significant. I would qualitatively describe the view loss as severe having regard to the nature of the view, the portion of the view that will be lost, and the number and nature of rooms and spaces that will be impacted within my client's unit.

In that regard, the view loss will occur from the main living rooms, master bedroom, study and contiguous roof terrace. The view loss will occur from both a standing and sitting position across the front boundary (ie. not the side boundary).

The view loss relates to a considerable portion of the existing views of Manly Beach and the whole of the southern headland, views which can properly be described as iconic, and widely regarded as amongst the most significant and important views in Australia.

Further, the beach reserve and public shelter located at the junction of Wentworth Street and South Steyne are identified as heritage items pursuant to Schedule 5 of the Manly LEP 2013.

In my opinion, the consent authority is obligated to give very careful consideration to the view loss as a consequence of the proposed development, and the provisions of the concept plan do not derogate from the legislative requirement to carefully consider the view loss.

Finally, I note the view loss to my client's property will be caused by the northern portion of Buildings C and D, as a function of their setback and alignment relative to Wentworth Street. In that regard, any increase in the setback to Wentworth Street will directly correlate to a reduction in the view loss from my client's unit.

In that regard, the northern elevation of Buildings C and D include multiple projections beyond the primary building line. The projections are entirely unnecessary, and in relation to Building D, accommodate an ensuite, and are otherwise limited to feature elements.

In the circumstances, my client's iconic views of Manly Beach and the southern headland are effectively being blocked (to a greater extent) by ensuites and unnecessary feature elements. In my opinion, the view loss impacts, as a consequence, are entirely unreasonable.

Further, the northern apartments within Buildings C and D are substantially larger than the sizes recommended in the Apartment Design Guide (ADG), and the indulgences of the Applicant should not be supported in circumstances where they directly impact upon iconic views.

In summary, the proposed development will have a significant (severe) impact on my client's existing views. The impact relates to one of the most iconic views in Australia, and the impacts are being made materially worse by ensuites and feature elements within apartments that are substantially larger than the requirements of the ADG.

Finally, I note there is an obvious irony in the proposed development to the extent that the Applicant is seeking to maximise its own views of Manly Beach, whilst impacting upon (taking away) my client's views.

In my opinion, the proposed development does not constitute reasonable view sharing, and the consent authority is obligated to give genuine and careful consideration to the impacts upon my client's unit, and the clear opportunities to modify the design to mitigate the severe and avoidable loss of iconic views from my client's unit.

Conclusion

I trust this submission is of assistance, and ask that I be kept informed prior to any determination being made, and/or in relation to any further information submitted by the Applicant.

In the meantime, should you require any further information or clarification please do not hesitate to contact the writer.

Yours Sincerely,

James Lovell

James Lovell
Director
James Lovell and Associates Pty Ltd