

## **SUBMISSION TO NORTHERN BEACHES COUNCIL**

**DA2025/0173**

### **DEVELOPMENT APPLICATION FOR 140-142 OCEAN ST NARRABEEN**

[REDACTED]  
[REDACTED]  
[REDACTED]

The current design of the development directly impacts my apartment as well as surrounding properties in Ocean St and Lagoon St.

It is submitted that the current plan represents an overdevelopment of the property which is evidenced by aspects where the plan does not meet with Council's planning regulations, specifically Warringah Council DCP and Warringah Council LEP 2011

The current proposed 3 storey construction with large open air rooftop terraces is of a size, scale and design which would unnecessarily negatively impact neighbouring properties in terms of amenity, privacy, views and outlook.

### **ASPECTS WHERE THE PROPOSAL DOES NOT MEET WITH COUNCIL PLANNING REGULATIONS**

#### **1. Number of Storeys**

The Warringah Development Control Plan (DCP) indicates that the properties at 140 and 142 Ocean St Narrabeen are zoned R3 residential. This zoning allows for the development of a two-story construction only on the site. In that regard I refer to the Warringah DCP Part 2 B2 number of storeys. The R3 residential zoning intends that development in the designated zones should not unnecessarily impact neighbouring properties and local environments.

The fact that the two-storey limit for properties in this location is not only mandated but entirely appropriate, was further confirmed by a recent decision by the State Government when they elected not to include Narrabeen as a town centre suitable for 3 to 6 storey developments according to the low and mid-range policy map.<sup>1</sup>

However, in the Statement of Environmental Effects<sup>2</sup> it is noted that the proposed construction is for a three-story building. The third storey of the building comprises a large 3 bedroom apartment of 160.7sq metres<sup>3</sup>, and large rooftop open terraces for units 6, 7<sup>4</sup> and 11 totaling over 110 sqm (or more but estimation based on the size of the terrace for apartment 7).

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<sup>1</sup> NSW Government Low and Mid-Rise Housing Policy

<sup>2</sup> Statement of Environmental Effects pp 26

<sup>3</sup> Master Plan pp 9

<sup>4</sup> ADG Compliance Statement Part 2 Controls 4E Apartment 7 private terrace area of 34sqm

This provides for a third storey combined living area of approximately (at least) 270 sq metres. The applicant contends that the non-compliance ...

“is limited to a small section of building located towards the rear of the site”<sup>5</sup>.

Firstly, it is noted that the terraces for units 6 and 7 are towards the ‘front’ of the building. Also, the total rooftop living area proposed exceeds an estimated 270 sq metres. In no way could this be considered to be “small”. The Master Plan diagrams show that apartment 11 and the rooftop terraces occupy a large proportion of the rooftop space<sup>6</sup>

The open-air terraces together of themselves form a very large open rooftop living area that impacts the adjoining properties. Its environmental effect is significant in terms of its negative impact on visual privacy, acoustic privacy, outlook and views.

## 2. Building Height

The applicant states that the proposed development complies with the height limit for a two storey building of 8.5 metres as stipulated by the Warringah LEP 2011<sup>7</sup>. Then they go on to say that the floor-to-floor allowances of 3.15 m have been allowed for.<sup>8</sup>

The SEPP 65 report<sup>9</sup> says the two-storey façade will be 1.6 metres below the maximum height of 8.5 metres by 1.6 metres, but it doesn’t say exactly what the height of the third storey is from the level from which compliance is meant to be measured from.

I also refer to the BCA Compliance Assessment Report<sup>10</sup> which states that the effective height of the building is 9.17 metres. My research indicates that the effective height reference means the distance from the ground floor to only the floor of the top storey.

I also refer to the Master Plan page 13 and 14 diagrams which indicate the height of the construction to be above the bottom of the balcony level of the top floor of the units at 144 Ocean St.

All of these references seem to indicate to me that the actual height of the proposed development maybe more than the maximum height control of 8.5 metres.

The question remains as to what is the “actual” height of the building having regard to the proposal for a third storey living area consisting of apartment 11, three rooftop terraces with rooftop screens and planter boxes.

Unless specified particularly, it is not possible to challenge this control properly, that is as to whether this control has been met.

Regardless, the height impact experienced by adjoining properties will be felt by the use of the open-air terraces, with people gathering and walking around on those terraces, overlooking adjoining properties, with the addition of furniture, screens and other items that will inevitably be placed on that rooftop.

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<sup>5</sup> Statement of Environmental Effects pp 26 B2

<sup>6</sup> Master Plan diagram pp 14 and 16

<sup>7</sup> ADG-Part 2 developing the controls 2C

<sup>8</sup> ADG -Part 2 developing the controls 2C and 4C

<sup>9</sup> SEPP 65 report statement of compliance

<sup>10</sup> BCA Compliance Assessment Report pp 9 of 117 3.4

### 3. Visual and Acoustic Privacy

It is noted that in the case of the previous DA 2021/1166 for 142 Ocean St Narrabeen, the planning panel assessment at the time of the review of that application acknowledged the potential impact on neighbours' of the proposed rooftop terrace. The panel ultimately determined in that case, that the single roof terrace should be limited in size. In that case, a large rooftop garden/green space was proposed. That is not the case here.

Instead, this time, the proposal is for a three-storey building in a location designated for two-storey buildings. This time the proposal is for a three-storey building with a large 3-bedroom apartment on the third-storey plus three large open-air terraces.

Further, the Master Plan at pp 9 shows that the air conditioning units for all 11 apartments will be located on the roof of the building. That means that air conditioning units will potentially be running day and night of a combined noise that will negatively impact the quality of life for the neighbours, especially the neighbours at 144 Ocean St as the units are positioned proportionately more to the north on the rooftop. I know what the noise emitted from one air conditioning unit sounds like and its quite loud, so magnified by 11 it is obviously significantly more.

The visual and acoustic impact would be significant with this proposal. I submit that the visual and acoustic impact on neighbouring properties would be more negative and this time, there is no proposed rooftop garden to lessen that impact.

### 4. Side setbacks

Reference is also made to Apartment Design Guide Document (ADG) Objective 3F Visual Privacy where it is stated that the proposed design cannot achieve a 6 metres setback stipulated in the 3F Objective, the justification given to be site constraints and to give reasonable amenity to residents (of the new development).

However, it is the size of the proposal that would be the reason for the non-compliance. In addition, it is considered that compliance with the setback would not of itself affect the amenity of the residents given the large size and scale of the apartments already proposed.

It is an indication of overdevelopment of the site and that an alternative/modified design would be more appropriate

Reference is also made to the POS setback of only 3.5 metres with diagrams indicating balconies to levels one and 2 extending out past the 4.5 setback, affecting the amenity of the property to the north.

### 5. Landscape to Land Area Ratio

The development does not meet the requirement of the ratio of landscaping to land size ratio of a minimum of 50% of the site area<sup>ii</sup>. To justify the proposed 34.8% ratio, the plan proposes planter boxes in compensation for this<sup>11</sup>.

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<sup>11</sup> Statement of Environmental Effects pp 27

Planter boxes are hardly a substitute for landscaped green areas which it is observed are sorely lacking in this location in Narrabeen.

Also, planter boxes provide a solid barrier to neighbouring properties, whereas green spaces are considered to be more amenable. It is not clear exactly what is the height of the planter boxes are on the rooftop terraces but the diagrammatic representation indicates about a metre.

It is noted that the previous submission DA 2021/1166 for 142 Ocean St submitted that the failure to meet the landscape to land area was offset by a rooftop garden planting/green space and much was made of that as a compensatory measure. Here, reliance has been made on planter boxes and the like. A rooftop garden/green space is more appealing on the rooftop than what is proposed here.

It is not clear from the Master plan, but from my observation, there is no pool. However, at document SEPP 65<sup>12</sup> it says that apartment 2 has access to a pool. I don't know if that's right but a 'pool' could be replaced by landscaping.

## **ASPECTS WHERE THE PLANNED DEVELOPMENT ADVERSELY IMPACTS MINE AND NEIGHBOURING PROPERTIES**

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The development proposed would have a negative impact on my property at [REDACTED] and other properties adjacent to the location. The main impact would be caused by the proposed third storey and rooftop terraces, the rooftop planter boxes, air conditioning units and potentially the lift overrun. I believe that in its present form, it does not align with council controls for new developments to preserve the amenity for neighbours.

Much is made in the applicant's submission about the amenity for the future residents of 140-142, but in fairness, it must adequately address the impact on the amenity of neighbouring residents as well, some of whom have much more modest homes without the benefit of large internal living area plus large terraces and balconies.

## **BUILDING HEIGHT THIRD STOREY APARTMENT AND ROOFTOP TERRACES**

The proposal is for a three-storey construction. This is not in accordance with zoning controls for this location.

It is not clear to me whether the building height control of 8.5 metres for this site would be breached or not, given what I have observed as apparent conflicting indicators in this regard.

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<sup>12</sup> SEPP report statement of compliance pp 8

All I can say is that the Master plan <sup>13</sup>shows that the height of the construction appears to come up to the top floor balconies on the south side of 144 Ocean St or above.

[REDACTED]

- The proposed third storey and the terrace barriers and the placement of planters may obscure/block district and possibly ocean views. The open rooftop terrace for apartment 6 is directly opposite my living area.
- People standing or sitting on the rooftop terraces could look directly into living and sleeping areas of top floor units in number 144 Ocean St so loss of visual and acoustic privacy is of great concern.
- The combined size of the three open air terraces alone (approximately 110 sq metres or more) means that there would be potentially large gatherings of people in open areas on the roof– there is not an effective barrier to noise as there would be on ground floors where you would have fences and trees/plantings to absorb the noise.
- The proposal for Unit 11 includes a rooftop spa. I contend that a rooftop spa is totally inappropriate given the noise it may create, especially given that the size of apartment 11 size may attract multiple occupants...and there is also potentially the pool pump noise. I would question what value add is it? The ocean is across the road. The apartment has two bathrooms one of which could accommodate an internal spa bath to the same effect.

## VISUAL AND ACOUSTIC PRIVACY

### Visual Privacy

- The majority of the units are three bedrooms with balconies and therefore will be more likely to attract multiple occupants, possibly larger families. Apartment 6,7 and 11 are three-bedroom apartments. Consequently, the use of the open rooftop terraces by numbers of people is a big issue when it comes to visual and acoustic privacy for adjacent properties.
- The planter boxes proposed for the rooftop terrace would be positioned opposite the apartments at 144 Ocean St apartment. Relying on the artist's impressions, it is clear to see that people walking around on the terraces could look in onto the properties at 144 Ocean St.
- It is not clear exactly what the height of the third storey and the terrace planter boxes and screens are (from ground level) and whether they are all under the 8.5 metre limit for a 2 storey building

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<sup>13</sup> Master plan pp 14

- What is of utmost importance to the occupants of the top floor unit of 144 Ocean St is to maintain the sense of space that is afforded by being able to look out over the area. This proposal impacts that sense of space and impacts acoustics given bedrooms from 144 Ocean St face the rooftop terraces.
- The proposed rooftop spa could present a real issue for the people at 138 Ocean St and for the properties in Lagoon and Albermarle streets. Whatever increase in 'livability' for the future occupants of apartment 11 it may afford, if there is in fact any, would be overshadowed by the negative impact for the neighbours.

#### Acoustic privacy

- The Master Plan at pp 9 shows that there are 11 air conditioning units positioned on the roof. This is going to impact all adjacent neighbours, especially those at 144 Ocean St as the units are placed proportionately closer to the north of the property and closer to 144 Ocean St..
- I am very concerned about the plan to locate 11 air conditioning units on the roof. That means that at any one time, they could all be running, with the noise generated reverberating across the rooftop and impacting neighbours.
- If there are to be air conditioning units positioned on the roof, it is submitted that they should be located such that they be positioned as far away as possible from both 144 Ocean St and also 138 Ocean St
- I cannot find a reference in the applicant's documents for a specific assessment of the acoustic impact of the air conditioning and possible measures to minimize that impact like acoustic barriers etc. I refer here to the Environmental Protection Agency guidance<sup>14</sup> requirements in relation to air conditioning units which restricts noise during the day, and prevents noise from 10 pm to 7/8 in the am for neighbours  
I cannot see from the applicant's documents where they have addressed the detrimental impact this may have to the peace and the peace of mind of the neighbouring properties that will have to endure it. I refer to WCP requirements for development to preserve visual and acoustic privacy for neighbouring properties

#### LANDSCAPE RATIO

The development does not meet the council requirement control of land size ratio of a minimum of 50% of the site area.

Planter boxes in no way compensate for this and indicates an overdevelopment of the land area of the site.

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<sup>14</sup> NSW Environment Protection Authority (EPA) Noise Guide – Noise Guide for Local Government 1/1/23

## CONCLUSION

I conclude that the proposal in its current form will unnecessarily impact the amenity of the adjoining properties, especially 144 Ocean St Narrabeen.

I believe that the current design provides for a result which I do not believe is intended under the objectives of the Warringah DCP for a property in this location. I contend that it is both fair and reasonable that the development is limited to two storeys and that more regard be made to the landscaping ratio control and to the location of the 11 air-conditioning units.

I again refer to the state governments decision not to permit 3-6 storey developments in this part of Narrabeen. The state government decision reinforces that the existing control for a 2 storey limit is appropriate for this location.

I contend that a development which accords with Council planning controls for this location be considered in the alternative, especially as there are recent or relatively recent builds that comply nearby. That would be fair to everyone.

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