



DM Planning

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24 September 2019

The General Manger
Northern Beaches Council
725 Pittwater Rd
DEE WHY NSW 2099

Dear Sir

**REQUEST FOR A REVIEW OF DETERMINATION
REFUSAL - DEVELOPMENT APPLICATION NO: DA2019/0292
FOR DEMOLITION WORKS AND CONSTRUCTION OF A GARAGE AND SECONDARY DWELLING AT
166 PITT RD, NORTH CURL CURL**

In response to Council's refusal of DA2019/0292 dated 9 August 2019 a review of the determination is requested.

The proposal has been amended to address Council's concerns. Amended plans and amended BASIX Certificate have been prepared and form part of the review request.

The amendments to the proposal include:

- A 1m increase in the setback to Delaigh Ave
- A 1m increase in setback to northern neighbour
- Privacy screen reduced in length by 1m
- Planter box added to front balcony

The amended proposal overcomes the reasons for refusal provided in Council's Notice of Determination. These refusal reasons are addressed below:

- 1. The proposed development is inconsistent with clause 1.2 (Aims of Plan) of Warringah Local Environmental Plan 2011 and clause A.5 (Objectives) of Warringah Development Control Plan 2011.***

Comment: The amended proposal is consistent with the Aims of WLEP 2011 and the Objectives of WDCP 2011.

The original proposal was considered to be inconsistent with the following underlying objectives of the Warringah Development Control Plan:

- *To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood*
- *To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian access and creates an attractive design outcome.*

Comment:

The bulk and scale of the proposed development is appropriate for the size of the site and consistent with development within the surrounding neighbourhood.

In particular, the amended proposal is of a similar bulk and scale to development on the two adjoining sites. The property immediately to the east, 164 and 164A Pitt Road contains a two-storey dwelling at the street frontage and a single storey dwelling to the rear (refer to Figure 1 below).



Figure 1. Adjoining site to the east, 164 Pitt Rd contains two dwellings (source: Google Maps)

The property to the immediate north (1 Delaigh Ave) is also a two-storey dwelling house. It was originally part of a dual occupancy development with a second storey addition approved in 2015 (refer to Figure 2 below).



Figure 2. Adjoining property to the north, 1 Delaigh Ave

The proposed development provides 53% of the site as landscaped area which exceeds the 40% minimum required. Two trees are proposed in the setback area to Delaigh Ave which will assist in minimising bulk. Further screen plantings may be required by conditions of consent if deemed necessary.

Council's assessment raised particular concern that the proposed building bulk is inconsistent with the Delaigh Avenue streetscape. A study of this street shows that there is no cohesive character or building form. There are a variety of dwelling types with varying sizes. We note that there are numerous two storey developments as well some three storey developments in this street. There is large 3 storey residential flat building located diagonally opposite the site in Pitt Road.

The proposed development will not be jarring or unsympathetic in the context of the Delaigh Ave streetscape. Rather, the proposal has a bulk and scale consistent with the character of this street.

The amended proposal will positively contribute to the existing streetscape along Delaigh Avenue.

The amended proposal satisfies all of the underlying objectives of the Warringah Development Control Plan.

2. *The proposed development is inconsistent with the character and pattern of development along Delaigh Avenue, inconsistent with the requirements and objectives of clause B7 (Front Boundary Setbacks) of Warringah Development Control Plan 2011.*

Comment:

The amended proposal has increased the front setback to Delaigh Ave by 1m so that the garage has a setback of 4.5m and the upper level has a setback 5.66m. The amended proposal is consistent with the character and pattern of development along Delaigh Avenue.

Built Form Control B7 allows a reduced front building setback to 3.5m for a secondary frontage subject to the character of the secondary street and predominant setbacks existing to that street.

The decision of Council staff not to apply a 3.5m setback to Delaigh Avenue is considered unreasonable. An analysis of the intersections of other corner sites along Pitt Road shows that a reduced setback to 3.5m or less is routinely allowed for corner sites. A few examples of these corner sites are shown below:



Figure 3. Examples of corner sites along Pitt Rd with <3.5m secondary street front setbacks

It is noted that the existing dwelling establishes a 3m setback to Delaigh Avenue. If the proposed addition were attached to this structure it is highly likely that Council would allow the continuation of this setback. The fact the proposed addition is detached does not justify a more onerous setback.

A review of Council's recent decisions also reveals an inconsistency in the application of this secondary front boundary setback control. For example, a near identical development recently

approved by Council under DA2018/1532 at 89 Oliver St, Freshwater (a corner site), was approved with a 3.5m setback to the secondary street.

It should also be noted that under the Codes SEPP a 3m setback applies to Delaigh Ave.

3. *The scale and visual impact of the proposed development has not been appropriately minimised, resulting in a development that overwhelms the primary dwelling, inconsistent with the character of Delaigh Avenue and the provisions of clause D9 (Building Bulk) of Warringah Development Control Plan 2011.*

This reason for refusal is incorrect in that the lower level of the proposed development (i.e. the double garage, storage area, laundry and bathroom) is for the use of the occupants of the primary dwelling only. The lower level forms part of the primary dwelling and therefore the proposed structure can't be said to overwhelm the primary dwelling as it is part of it. The proposed secondary dwelling occupies the upper level of the proposed structure only, and in this regard, complies with the maximum allowable GFA of 60m² for secondary dwelling.

It is important to acknowledge that the proposed secondary dwelling complies with the requirements of the SEPP (Affordable Rental Housing) 2009 relating to secondary dwellings.

The proposed development also complies with all of Council's planning controls relating to building height, building envelope, side setbacks and landscaped area. It therefore represents a reasonable development.

The existing dwelling on the site is a modest single storey cottage with minimal gross floor area. The fact that the proposed site additions are detached from the existing dwelling, should not be reason to apply more restrictive controls.

The proposed design is complementary to the existing streetscape, with the balcony and windows providing adequate articulation. Additional tree planting is proposed to provide screening.

The amended proposal satisfies the objectives of Part D9 of the WDCP as outlined in the table below:

D9 Building Bulk		
Objectives	Proposal	Compliance
To encourage good design and innovative architecture to improve the urban environment.	The proposal is well designed incorporating a low-pitched hipped roof, front balcony, upper level front setback and appropriate articulation.	Satisfied
Requirements		
1. Side and rear setbacks are to be progressively increased as wall height increases.	The upper level is setback further at the street level.	Satisfied

D9 Building Bulk		
Objectives	Proposal	Compliance
2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.	Proposed windows, doors and balconies provide relief the side elevations.	Satisfied
3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular: <ul style="list-style-type: none"> • The amount of fill is not to exceed one metre in depth. • Fill is not to spread beyond the footprint of the building. • Excavation of the landform is to be minimised. 	The site is relatively flat with a slight cross fall from Delaigh Ave. The ground floor level is determined by vehicular access gradients. There is no excavation or fill proposed.	Satisfied
4. Building height and scale needs to relate to topography and site conditions.	The proposal complies with all relevant built form controls including building height, wall height, building envelope and setback requirements. The proposed building height and scale relates to topography and site conditions.	Satisfied
5. Orientate development to address the street.	The proposal has been orientated to address Delaigh Ave.	Satisfied
6. Use colour, materials and surface treatment to reduce building bulk.	The proposed materials, finishes are colours are complementary to the existing dwelling and surrounding development.	Satisfied.
7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.	Two trees are proposed in the setback area to Delaigh Ave. Additional planting may be required as a condition of consent.	Satisfied.

Table 1. D9 Building Bulk Control assessment

We also make the following observations:

- *Complying Development*

Much greater development potential is permissible under the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. The gross floor area resulting from the development proposed in DA-2019/0292 is approximately 250sqm (including the garage) whereas the maximum permissible under the Codes SEPP is 350sqm. Also, the Codes SEPP allows a 3m setback to Delaigh Ave.

- *Building height*

The proposal has a maximum building height of 6.95m, well below the 8.5m maximum height allowable. The roof ridge of the amended proposal is RL22.17. This is 1.27m lower than the roof ridge of the property immediately adjoining to the north (1 Delaigh Ave) which has a maximum roof ridge of RL23.44. The property adjoining the site to the east (164 Pitt Rd) has a maximum roof ridge of RL22.49 which is slightly higher than that proposed. The proposed height is lower than both adjoining developments.

Conclusion

Key points:

- The proposal has been amended to address the Reasons for Refusal
- The proposal complies with all applicable built form controls
- The proposal has a smaller bulk and scale than that permissible under the Codes SEPP
- The proposal has a building height lower than the two adjoining properties
- The proposal has a bulk and scale that is consistent with surrounding development

We find the amended proposal worthy of Council's support and request a review of the determination. The amended proposal is appropriate in its context and complies with the relevant legislation.

Please do not hesitate to contact Danielle Deegan on 0403 788 365 or danielle@dplanning.com.au if you wish to discuss any aspect of this proposal.

Yours faithfully



Director
DM Planning Pty Ltd