
Sent: 16/05/2022 4:09:35 PM
Subject: DA2021/1808 Submission | Brendan and Tracey Doyle of 11 Cheryl Crescent, Newport
Attachments: Ltr - Northern Beaches Council - Objection to DA2021 1808 in relation to 9 Cheryl Crescent Newport - 16-05-22 - 11 Cheryl Crescent.pdf;

Hi Steven,

Please find submission **attached**.

Kind regards,

Apex Planning and Environment Law

Jill Marsland
Associate Solicitor

Suite 132 / 117 Old Pittwater Road
Brookvale NSW 2100
phone: 9939 8880
mobile: 0424 505 861
postal: PO Box 233 Freshwater NSW 2096
e-mail: jill.marsland@apexlaw.com.au
web: www.apexlaw.com.au



Liability limited by a scheme approved under Professional Standards Legislation

This e-mail and any files transmitted with it are confidential and may contain information that is subject to legal professional privilege.
This e-mail is intended solely for the use of the individual or entity to whom it is addressed. If you have received this e-mail in error:
- you may not copy or deliver this message to anyone;
- you should destroy this message; and
- you should notify the sender by reply e-mail.

Ref: 016/2022

16 May 2022

General Manager
Northern Beaches Council
PO Box 82
MANLY NSW 1655

Attention: Ms Brittany Harrison

Dear Sir / Madam

YOUR REFERENCE: DA2021/1808
PREMISES: 9 CHERYL CRESCENT, NEWPORT

1. We act for Mr Brendan Doyle and Mrs Tracey Doyle, the owners of 11 Cheryl Crescent, Newport ("our Clients"). Our Clients' property is immediately adjacent to, and to the north of, 9 Cheryl Crescent ("the Development Site").
2. Our Clients have instructed us to lodge the following submission objecting to development application DA2021/1808 ("the DA").
3. The DA seeks consent for alterations and additions to a dwelling house. The Development Site is zoned E4 Environmental Living pursuant to the Pittwater Local Environmental Plan 2014 ("the LEP").
4. Our Clients object to the DA for the following reasons.
5. **Boundary setbacks** – The DA seeks to demolish the existing single carport on the lower-level and extend the existing single garage into a double garage with internal laundry. The proposal provides for a 1.18m side setback to the northern boundary (however from the eaves, the setback is 850mm) and a 300mm side setback to the southern boundary, contrary to clause D10.8 of the DCP, which provides that one side setback must be of at least 2.5m, and the other side setback must be of at least 1.0m.

D10.8 Side and rear building line

Outcomes

To achieve the desired future character of the Locality
The bulk and scale of the built form is minimised
Equitable preservation of views and vistas to and/or from public/private spaces
To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties
 Substantial landscaping, a mature tree canopy and an attractive streetscape
 Flexibility in the siting of buildings and access
 Vegetation is retained and enhanced to visually reduce the built form

...

Controls

Side & Rear Building Line Setback (metres)

2.5 to at least one side; 1.0m for the other side.

6.5 rear

Neither the controls nor the outcomes of clause D10.8 of the DCP are met and the DA requires revision to provide a more satisfactory design outcome in compliance with Council's controls.

6. **Visual privacy** – The first-floor study and gym are adjacent to our Clients' front balcony, which our Clients regularly use for relaxation and entertaining. Although proposed window number 12 (to the gym) is a highlight window, and proposed window number 13 (to the study) is frosted glass, the close proximity of the first floor creates a sense of impingement and enclosure to our Clients' use and enjoyment of their balcony. To protect our Client's visual privacy, the frosted window needs to also be a highlight window. Otherwise, this is contrary to clause C1.5 of the DCP, which provides that "a sense of territory and safety is provided for residents".

C1.5 Visual Privacy

Outcomes

...

A sense of territory and safety is provided for residents.

Information to be included in the Statement of Environmental Effects

- An analysis outlining how the proposal achieves an acceptable level of privacy for residents and users and protects the privacy of any adjoining development.

The Statement of Environmental Effects prepared by Sketch Arc dated September 2021 and provided with the DA ("the SEE"), does not provide an adequate analysis of how our Clients' sense of territory and safety is provided. This element is not sufficiently addressed through the use of highlight/ frosted windows, given the proximity of the proposed first floor to their balcony.

7. **Acoustic privacy** – As discussed at paragraph 6 above, our Clients' main entertaining area is their front balcony. This area is in close proximity to the proposed first floor study and gym being a distance of 1.18m, and running for a length of 7m. Our Clients do not want any concerns of being overheard from their balcony by inhabitants of those proposed rooms. The SEE has not considered the acoustic privacy of our Clients' balcony in relation to the proposed development.

C1.6 Acoustic Privacy

...

Information to be included in the Statement of Environmental Effects

- An analysis outlining how the proposal achieves an acceptable level of acoustic privacy for residents and users and protects the acoustic privacy of any adjoining development.

8. **View loss** – The proposed first floor wall along the entire northern boundary, to a length of approximately 7.0m, will present as a dominating feature over our Clients' property. The proposed wall is white in colour and unarticulated, resulting in a design that is unresponsive to the surroundings and contrary to Council's controls. The proposed wall will completely obstruct our Clients' existing bushland views over Pittwater and their iconic city skyline views to the south and south-west from their front verandah. This is contrary to clauses C1.3 of the DCP which provides:

C1.3 View sharing

Controls

All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The proposal must demonstrate that view sharing is achieved through the Land and Environment Court's planning principles for view sharing.

Where a view may be obstructed, built structures within the setback areas are to maximise visual access through the structure e.g. by the provision of an open structure or transparent building materials.

Information to be shown on the Development Drawings

- Clearly show the view lines from the property, adjoining properties and public domain areas on floor plans and elevations

Information to be included in the Statement of Environmental Effects

- An assessment of the views available from the property, and views from other properties and public domain areas which may be affected by the proposal
- An analysis of any view loss and explanation of the design features and location of the proposed structure in terms of how the proposal seeks to achieve equitable view sharing and view retention.
- An explanation of the proposal's compliance with the Land and Environment Court's Planning Principles for view sharing.

Technical Reports and Supporting Information

- Where there is the potential for view loss to adjoining developments ... an assessment of the view loss, supported by a clearly documented photographic analysis shall be provided.
- It may also be appropriate that height poles be erected to demonstrate the impact of the finished development on view lines.

- Where height poles are erected, a statement by a Registered Surveyor should be provided certifying the height and location of the poles in relation to the proposed structures.
- ...
- Applicants are advised to consult with the possible affected parties where view sharing is an issue with a view to obtaining consensus in the earliest stages of the development process.

The DA documentation has not addressed the above requirements. The amended set of Architectural Plans prepared by Sketch Arc dated 14 March 2022 do not show view lines on the floor plans or elevations. The SEE has not provided an adequate assessment of views which may be impacted by the development; has not addressed or analysed the proposed design in terms of equitable view sharing and view retention; and has not provided an explanation of the proposal's compliance with the Land and Environment Court's Planning Principles for view sharing. Our Clients' views to the south and south-west, of the iconic Sydney city skyline, have not been considered or addressed at all. Prior to the determination of the DA, Council's requirements (as outlined above) must first be addressed.

Further to the above, clause D10.18 of the DCP provides the following:

D10.18 Scenic Protection Category One Areas

Outcomes:

To preserve and enhance district and local views which reinforce and protect Pittwater's bushland landscape and urban form to enhance legibility.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

Controls

The development must incorporate the use of unobtrusive and non-reflective materials and the colours of exterior surfaces shall help blend structures into the natural environment.

Applicants are to demonstrate that proposed colours and materials will be dark and earthy.

9. **Colours** – The Materials and Schedule of Colours provided with the DA propose white rendered walls, white timber framed windows, colorbond shale grey roofing and light grey tiling for the deck. This colour scheme is contrary to Council's controls. As noted at paragraph 8 above, clause D10.18 of the DCP requires a dark and earthy colour scheme. This is further and more specifically articulated in clause D10.4 of the DCP, as set out (in part) below:

D10.4 Building colours and materials

Outcomes

Achieve the desired future character of the Locality

The development enhances the visual quality and identity of the streetscape
 To provide attractive building facades which establish identity and contribute to the streetscape
 To ensure building colours and materials compliments the visual character of its location with the natural landscapes of Pittwater
 The colours and materials of the development harmonise with the natural environment.
 The visual prominence of the development is minimised
 The use of materials with low embodied energy is encouraged
 ...

Controls

External colours and materials shall be dark and earthy tones [including black, dark grey, dark green, dark brown, mid grey, green, brown, or dark blue]

White, light-coloured, red or orange roofs and walls are not permitted [including white, light blue, red, orange, light grey, or beige]

The proposed development is visible from Newport beach, Pittwater and the adjacent Cheryl Reserve. The white and light tones will create undesirable glare and reflection. The DA requires revision with the appropriate colour scheme pursuant to Council's controls.

10. **Building Envelope** – A portion of the proposed first floor roof form encroaches on the building envelope contrary to clause D10.11 of the DCP. The north and east elevations in the amended set of architectural plans (DA9 and DA10) clearly show that the first floor has not been appropriately set back in accordance with Council's controls.

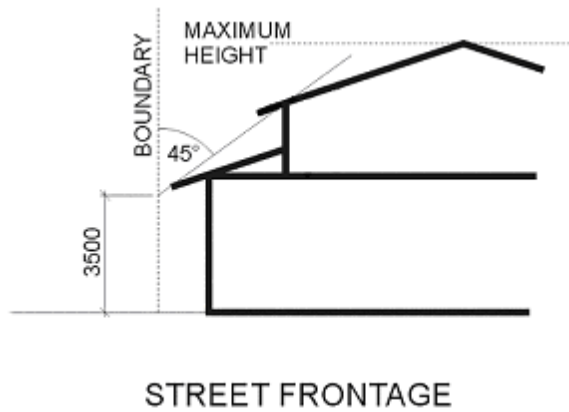
D10.11 Building Envelope

Outcomes

To achieve the desired future character of the locality.
 To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.
 To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.
 The bulk and scale of the built form is minimised.
 Equitable preservation of views and vistas to and/or from public/private places.
 To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.
 ...

Controls

Buildings are to be sited within the following envelope:



Planes are to be projected at 45 degrees from a height of 3.5 metres above ground level (existing) at side boundaries to the maximum building height.

Information to be included in the Statement of Environmental Effects

A statement indicating compliance with the building envelope control. Should a variation be sort, please provide a justification relating to the outcomes of the control and desired future character.

The SEE has not adequately addressed the detrimental impacts of this non-compliance to the amenity of our Clients' property, including bulk and scale (discussed at paragraph 6 above), acoustic privacy (paragraph 7) or view loss (paragraph 8). These amenity impacts need to be addressed through compliance with Council's building envelope controls.

11. **Landscaping** – The DA does not propose to remove any trees or reduce the existing landscaped area. However, the existing landscaped area on the Development Site is 45.5%, significantly less than the required 60% (pursuant to clause C1.1 of the DCP). As such, the existing landscaping does not appropriately reflect the scale and form of the current or proposed development. The Development Site's frontage does not contain the two required canopy trees, and the DA does not propose to plant them.

C1.1 Landscaping

Outcomes

A built form softened and complimented by landscaping.
Landscaping reflects the scale and form of a development.

...

Landscaping enhances habitat and amenity value.
Landscaping results in reduced risk of landslip.

...

Controls

At least two canopy trees in the front yard and one canopy tree in the rear yard is to be provided on site... Where there are no canopy trees the trees to be planted are to be of sufficient scale to immediately add to the tree canopy of Pittwater and soften the built form.

Prior to its determination, the DA needs to be revised to provide for the planting of two (2) canopy trees in the front yard (facing Cheryl Crescent) and increased landscaping on the site to a minimum of 60%, so as to soften the built form, reduce the risk of landslide and otherwise comply with Council's controls.

12. **Land stability** – We note that a Geotechnical Investigation Report prepared by White Geotechnical Group dated 16 September 2021 was provided with the DA. While that Report provides that the proposed works are suitable for the Development Site, our Clients echo the concerns raised by the owners of No. 7 Cheryl Crescent in their submission to Council dated 28 October 2021 in relation to the DA. At paragraph 3 of that submission, the issue of cracks to No. 7's dwelling and landslips to their land was raised, having occurred after the excavation works involved in the construction of the swimming pool at the Development Site. Likewise, our Clients experienced a landslide on their south-eastern boundary after those works were completed and are rightfully concerned about the integrity to their property of any further works at the Development Site. It is essential that Council addresses these concerns prior to the determination of the DA.
13. **Access requirements** – Detail of how materials will be delivered to the Development Site have not been provided. During previous works (in relation to the swimming pool etc) at the Development Site, our Clients experienced unauthorised use of their property as an unloading bay and unacceptable congestion on the rear lane. A traffic report has not been provided to the Council with the DA, and the lack of this information precludes it from being appropriately determined.
14. **Solar panels** – The solar panels are proposed to be installed in a flat position. This is an usual design, as solar panels are generally regarded as being more effective if angled towards the sun. If they are later repositioned into an angled position, they will cause an unattractive glare to the vista as viewed from higher land to the north.
15. Having regard to the above matters, it is clear that the DA is not worthy, or able to be, approved. We are instructed that should the Council grant consent despite the shortcomings identified above, our Clients will consider commencing judicial review proceedings in the Land and Environment Court on the basis of the Council's error in exercising its statutory duties by failing to consider relevant matters in a reasonable and objective manner.

16. Please contact us if you have any questions in relation to this letter.

Yours faithfully

Apex Planning and Environment Law



Grant Christmas

Solicitor / Principal

Law Society of NSW:

Accredited Specialist (Local Government & Planning)

e: grant.christmas@apexlaw.com.au
m: 0459 638 846



Jill Marsland

Associate Solicitor

e: jill.marsland@apexlaw.com.au
m: 0424 505 861