
Sent: 18/05/2022 1:19:27 PM
Subject: Additional objection letter re: Amended Plans - DA2021/2146 - 35 Kangaroo Street, Manly
Attachments: Attachment 1- Land Use Management Committee meeting report re DA4000 at 35 Kangaroo Street Manly.pdf; Additional Objection letter re Amended Plan- 35 Kangaroo Street Manly- DA20212146.pdf;

Hi Megan,

Please find attached an additional objection letter regarding the amended plans for the above DA, prepared on behalf of Andre and Elizabeth Karemacher of 33 Kangaroo Street, Manly.

Please can you confirm receipt by return e-mail.

Kind regards,

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LUM 61:

KANGAROO STREET, NO. 35, MANLY. DEVELOPMENT APPLICATION NO. 40/00.
DEMOLISH EXISTING RESIDENCE AND ERECT A NEW TWO STOREY DWELLING.
(file DA40/00) LUM 61: 27/03/00

REPORT FROM SERVICE DELIVERY AND BUSINESS DIVISION:

<u>Application Lodged:</u>	31st January, 2000
<u>Applicant:</u>	Paul Berkemeier Architects
<u>Owner:</u>	M & A Westfield
<u>Estimated Cost:</u>	\$280,000
<u>Zoning:</u>	Manly Local Environmental Plan 1988 - Residential
<u>Surrounding Development:</u>	Units and single and two storey dwellings
<u>Heritage:</u>	In the vicinity of the Kangaroo which is listed.

SUMMARY:

1. DEVELOPMENT CONSENT IS SOUGHT FOR THE DEMOLITION OF AN EXISTING SINGLE STOREY COTTAGE AND THE ERECTION OF A TWO (2) STOREY DWELLING ON THE SUBJECT SITE.
2. TEN (10) ADJACENT AND NEARBY PROPERTY OWNERS WERE NOTIFIED OF THE PROPOSAL AND SIX (6) SUBMISSIONS WERE BEEN RECEIVED. ONE HAS SUBSEQUENTLY BEEN WITHDRAWN.
3. THE APPLICATION WAS CONSIDERED BY THE IVANHOE PARK PRECINCT COMMUNITY FORUM AND COMMENTS RECEIVED.
4. THIS ITEM WAS UNRESOLVED AT THE DEVELOPMENT CONTROL UNIT MEETING OF THE 21ST MARCH, 2000 FOR A SITE INSPECTION.
5. A SITE INSPECTION IS RECOMMENDED.
6. THE APPLICATION IS RECOMMENDED FOR REFUSAL.

LOCALITY PLAN

Shaded area is subject land.

× Objections

Introduction

The proposal is to demolish an existing single storey weatherboard cottage and to erect a two storey dwelling. The site is located on the western side of Kangaroo Street, a long narrow site, orientated east west along its axis, is elevated and has views.

The site currently comprises a single storey weatherboard cottage with an existing carport on the western side of the dwelling abutting the western side boundary and is accessed by a driveway from Augusta Road.

The ground floor level of the proposal consists of four bedrooms, ensuite, laundry, bathroom and stairs. The first floor level addition consists of study, dining and living room, W.C., kitchen and terrace. The principal living areas are proposed for the first floor area to take best advantage of beach and ocean views. The carport is to remain as existing. It was considered unviable to add a second level to the old timber framed structure. In addition, the cottage is supported on unfounded, rough sandstone piers that would need extensive stabilisation or replacement to carry any additional load.

Council by way of a meeting and telephone conversation on the 29th February, 2000, summarised concerns to the applicant relating to the proposal and this report is based on the discussions held.

Development Control Plan Numerical Assessment

The following is an assessment of the proposal's compliance with the numerical standards of the D.C.P. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Floor space ratio	0.6:1	0.79:1 0.54:1 (existing)	No
Wall height north side	3m (on boundary) 7.5m	6.4m 6.5m	No Yes
south side	3m (on boundary)	5.8m	No
Roof height	3m	0.8m	Yes
Front setback	6m	6m (terrace)	Yes
Rear setback	8m	11.3m	Yes
North side setback	2.11m	0.86 - 2m	No
Wall on boundary length	15.1m	21.7m (south) 11.0m (north)	No Yes
Landscaped open space	138.43m ² - 55%	111.05m ² - 44%	No

	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Parking	2 spaces	1 space	No
Energy Efficient Rating	3 1/2 stars	4 1/2 stars	Yes
Shadows	Max 1/3 loss	Less than 1/3 loss	Yes

Applicant's Supporting Statement

The applicant has submitted a Statement of Environmental Effects a copy of which is attached to this report.

Submissions

The application was notified in accordance with Council's policy resulting in six (6) submissions being received from:- P Black of Unit 1/4 August Road, Manly; D & J Murphy and T Booker of 37 Kangaroo Street, Manly; E Murphy of 39 Kangaroo Street, Manly; M Kale of 1/2 Augusta Road, Manly; N Shaw of 2/1 Augusta Road, Manly; and D Jacobson c/- Baxter & Jacobson Architects of 37 The Corso, Manly (owner of 33 Kangaroo Street).

Concerns raised include the following:-

- Loss of privacy.
- Type of privacy screen to be erected.
- Inadequate carparking.
- Construction on boundary.
- Non-compliance with Council's Residential Development Control Plan.
- Setting a precedence.
- Bulk of building.

After further negotiations with the applicant regarding the type of privacy screen to be erected it was resolved that the proposed "Brise-soleil" treatment is acceptable and David Jacobson c/- Baxter & Jacobson Architects withdrew his objection.

Precinct Community Forum Comments

The application was referred to the Ivanhoe Park Precinct Community Forum meeting of the 8th February, 2000. At this meeting the Ivanhoe Park Precinct Committee asked for the DA to be carried over to their Meeting of the 14th March, 2000. The following comments were received:

"The community asks Council to consider the DCP and BCA (fire separation) as closely as possible.

Voting: For: 6 Against: 1 Abstain: 8"

Building Comments

Aluminium framed window of bedroom 4, is to be setback at least 900mm from the northern boundary. Any plywood cladding on external walls must be setback at least 900mm from the boundary or covered with a non-combustible material. All windows between the top of the first floor and the roof must be setback 900mm from the northern boundary.

No further objections subject to conditions.

Planning Comments

The subject application was submitted on the 31st January, 2000, and was processed in accordance with Council's standard procedures including notification to adjoining owners. A preliminary assessment of the application revealed the proposal exhibited a number of departures from the numerical requirements of Council's Residential Development Control Plan (Amendment 3) 1986, particularly with respect to floor space ratio, wall heights on both boundaries, roof pitch, wall setbacks on both sides, wall on the boundary length on the southern side, landscaped open space and carparking requirements.

Discussions were held between Council Officers and the applicant regarding these areas of non-compliance and it was suggested that amended plans be submitted. The applicant in a letter dated 6th March, 2000, explained that there seemed to be no room for changes or improvement. The applicant further explained that considerable reductions and changes were made during the design and development phase to resolve impacts on adjoining owners. Accordingly, the applicant requested the matter proceed with only suggesting minor changes.

The subject site has an area of 251.7m² with the subject and adjoining houses being generally located in close proximity to the Kangaroo Street front alignment. The proposal maintains the general front setback line of the dwelling to the north and south thereby maintaining existing lateral views across the Kangaroo Street frontage to the south east and north east respectively. This close proximity allows the dwellings to obtain district and ocean views in an easterly direction.

It is noted from the numerical assessment that the existing dwelling on the site complies with the minimum Floor Space Ratio (FSR) requirements of the Residential Development Control Plan. The original proposed floor space ratio assessment was calculated at 0.80:1 which represents a variation of approximately 40.5m². Following discussions with Council Officers the applicant in an attempt to reduce the floor space ratio reduced the length of bedrooms 3 and 4, and the length of the study by 300mm. With these reductions the floor space ratio would be reduced by 2m² bringing the floor space ratio calculations down to 0.79:1.

With the permitted floor space ratio being 0.6:1 the proposed floor space ratio is considered excessive and results in an undue impact on the amenity of neighbouring properties and is considered unsatisfactory as it undermines the objectives of floor space ratio in controlling bulk. It is noted that the floor space ratio figure does not include the carport area. Having regard to the relatively close and intense nature of the development in this area the proposed variation to Council's floor space ratio standard can not be supported. The bulk of the proposal is unsatisfactory as compared to the site. The dwelling with four bedrooms and a study in addition to the living areas is considered excessive for the size of the site.

The proposed wall on the boundary height has been assessed as 6.4m and 4.6m. The Development Control Plan allows for a maximum wall height of 3m. Further, the DCP states that where the roof pitch exceeds 35° then the roof is assessed as an external wall. This has the effect of increasing the south wall height to 5.8m. The objectives of the Development Control Plan, in particular shadows and privacy to adjoining neighbours are not adequately assessed. The applicant states the design is a result of consideration of the amenity of the neighbouring properties each side and particularly in terms of sunlight and visual bulk.

The north side setback has been assessed at 0.86-2m. In this instance the Development Control Plan required setback to the northern boundary is 2.17m. The side boundary walls are not setback as the Development Control Plan requires, resulting in both spring and summer sun being lost to the southern neighbours side passage. A minor concession was requested in regard to these provisions, however, it is considered that the setbacks proposed are considered to undermine the objectives outlined within the Development Control Plan and accordingly considered unsatisfactory.

The applicant has sought to justify the exceedence in wall heights based on a comparison with the neighbouring two storey brick house. The neighbouring property is a large double sized block and is not comparable to the single sized subject site.

The wall on the boundary length relies on the provisions specified in Clause 5.6 of Council's Development Control Plan which permit walls without windows up to 3m in height for a maximum of 35% of the boundary length to be constructed where no disadvantage to adjacent allotments occur. The wall on the southern boundary does not comply with the Development Control Plan being 6m longer than the permitted length and higher. Neighbours (objectors) state that constructing on both boundaries conflicts with Council's regulations and creates an undesirable precedent for future developments. The applicant believes that the design is an appropriate response to a very small and difficult site and is so site specific that approval will not produce a precedent.

Concerns were raised regarding the provision of parking for the development and do not meet Council's numerical requirements. An objector suggested that Council accept a reduced landscaped ratio to maintain present levels of on-street parking.

As Council has a concern for the conservation of the environment and ecologically sustainable development to reduce the Landscape Open Space area to allow for additional carparking would be against the broader aims and objectives of Council's policies. As the site is not providing 55% - 138.42m² of landscape open space to reduce this with further impervious surfaces for carparking is not supported.

The landscaped open space requirement under Council's Development Control Plan is not maintained, being some 27m² less than the 138m² (55%) required. Whilst the proposal increases the amount of landscaped open space from 84.05m² (33%) to 111.05m² (44%) by way of a terrace section and plantings the open space requirement does not comply with the Development Control Plan requirements.

The proposed development will cause a minimal increase in overshadowing to the directly adjoining south neighbour, but has greater impact on No. 31.

The proposal includes floor to ceiling windows above the garden courtyard looking into the neighbouring properties, with the dining room angled toward No. 37. Concerns raised by the owners of No. 33 Kangaroo Street, relating to a loss of privacy and overlooking of their property are supported. The proposed glass screen is not regarded as a suitable privacy screen and the second level study window wall looking into their backyard will result in a privacy conflict.

Regarding the privacy concerns raised by the southern neighbour the applicant proposed to add a "brise-soleil" made of horizontal and vertical CFC sheets. The southern most infill glazing will also be changed to obscure glass with the removal of the free standing obscure glass screen as previously proposed. These changes will restrict access to the non-trafficable roof area for all but maintenance works. This is an acceptable compromise.

In the Manly Local Environmental Plan, 1988, Clause 19 development in the vicinity of an Item of Environmental Heritage is acceptable as the proposed development will not result in any undue impact upon the heritage listed Kangaroo located in Kangaroo Park.

As can be seen from the numerical assessment the proposal does not comply with most of the requirements of the Development Control Plan. This being a new development and not, alterations and additions, the development should comply with the Development Control Plan requirements as much as possible. The scale, elevation and location of the proposed residence is unacceptable in context of the surrounding neighbours to the south particularly relating to the privacy of adjoining residences. It is considered that the objectives of the Development Control Plan have not been met, with the size of the dwelling excessive for the size of the site, and therefore the application is not supported.

CONCLUSION:

The areas of non-compliance were discussed with the owner and applicant (architect), however, the applicant advised the design is the result of considerations in respect of neighbours concerns together with their own accommodation needs and the overall aims of Council's Development Control Plan.

Having regard to all the circumstances it is considered that the proposal fails to meet the necessary aims and objectives as well as numerical controls listed in Council's Development Control Plan for the Residential Zone, accordingly the application is recommended for refusal.

RECOMMENDATION:

That Development Application No. 40/00 to demolish existing residence and erect a new two storey dwelling at 35 Kangaroo Street, Manly, be refused for the following reasons:-

1. The proposal due to its height and design results in excessive scale and bulk to the neighbouring properties, and is an over development of the site having regard to Section 79C 1(b) and (c) of the Environmental Planning and Assessment Act, 1979.

2. The proposal will have an adverse impact on the environment and surrounding properties and does not comply with the numerical requirements and objectives of the Development Control Plan for the Residential Zone in respect to floor space ratio, wall heights on the boundary, roof pitch, wall setback, wall on boundary length, landscaped open space and carparking requirements having regard to Section 79C 1(a)(iii), (b) and (e) of the Environmental Planning and Assessment Act, 1979.
3. The proposed bulk and scale of the building is considered excessive and is not in compliance with the requirements of Council's Development Control Plan for the Residential Zone (Amendment 3), 1986.

* * * * *

18 May 2022

The Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
Dee Why NSW 2099

By e-mail: council@northernbeaches.nsw.gov.au

FAO: Megan Surtees

Dear Megan

**Additional submission with regard to Development Application DA2021/2146
Amended Plans for Alterations and Additions to a dwelling house –
35 Kangaroo Street, Manly, NSW**

I write regarding the above Development Application DA2021/2146 (subject DA) further to the submission dated 18 February 2022, prepared on behalf of Andre and Elizabeth Karemacher of 33 Kangaroo Street, Manly (my clients).

This submission is prepared in response to Amended Plans dated 12 May 2022 on Council's DA tracker.

This submission is limited to the amended plans and does not supersede the stated concerns in the objection letter dated 18 February 2022, except where superseded by the amended plans and commentary in this letter.

It is noted that the amended plans do not include the additional information required and this should be addressed prior to determination. Additional information required includes the following:

- **Floor Space Ratio calculations in accordance with the Clause 4.4 of the Manly LEP.**

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- **Certified shadow diagrams on the hour at 21 June clearing showing the existing and proposed overshadowing** (it is not evident if the shadow diagrams are certified and the annotation is not clear).
- **Council records regarding DA40/2000.**

The rationale for requesting Council records regarding DA40/2000 was to determine that the rear roofscape was non-trafficable to mitigate significant amenity impacts on the neighbouring occupiers to the south (my client's property) and understand the level of existing non-compliance.

The requested information has not been made publicly available on Council's website. However, my client has obtained access to, the *Land Use Management Committee Report* for DA40/2000. The report is at Attachment 1 and clarifies that the existing development is non-compliant with the required floor space ratio, wall height, side setback, wall length on the boundary, landscaped open space and parking.

Although it is acknowledged that the previous application has been subsequently approved at appeal, additional development on the subject site that continues to exceed the relevant controls and create further unreasonable and significant impacts on neighbouring occupiers should be refused.

Importantly, the attached report clarifies that the rear roofscape was amended under DA40/2000 to include a "*brise-soleil*" and obscure glazing to protect the privacy of neighbouring occupiers to the south. The reasons given for the amended plans was to ensure that the roof area was '*non-trafficable*' and '*restrict access to ...all but maintenance works*'. An extract from the report is below, as shown in Attachment 1, page 83, paragraph 2.

Figure 1 – Rationale for non-trafficable roof area to the rear and addition of "*brise-soleil*"

Regarding the privacy concerns raised by the southern neighbour the applicant proposed to add a "brise-soleil" made of horizontal and vertical CFC sheets. The southern most infill glazing will also be changed to obscure glass with the removal of the free standing obscure glass screen as previously proposed. These changes will restrict access to the non-trafficable roof area for all but maintenance works. This is an acceptable compromise.

Source: Extract from Land Use Management Committee Report – DA40/2000

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Attachment 1 supports the commentary in the objection letter dated 18 February 2022.

It is clear from planning history, that the privacy of neighbouring occupiers to the south has been addressed by the previous amended plans and the potential privacy impact was mitigated.

The proposed development, if approved, would totally undermine the objective of amending the original plans to ensure that the rear roof area remain a non-trafficable space in perpetuity, to protect privacy. It would be an extremely poor planning outcome to approve this subject DA.

Amended plans– additional information reviewed in this submission

On the information submitted and inability of the amended plans to overcome the stated objections, it is recommended that the subject DA be refused for the reasons summarised:

Summary of additional submission on Amended Plans

- Proposed development is a non-compliant development with Manly LEP Clause 4.4 – Floor Space Ratio (potentially – further information required) and Manly DCP Controls 3.4.1 Sunlight Access & Overshadowing; 3.4.2 – Visual and acoustic privacy; 4.1.3 Floor Space Ratio (potentially – further information required) and 4.1.4 Setbacks – Side.
- Significant loss of visual privacy by virtue of the proposed rear balcony, sited in close proximity, at first floor level directly overlooking private rear open space serving no. 33 Kangaroo Street, contrary to DCP Controls 3.4.2 and 4.1.4
- Loss of acoustic privacy by virtue of the proximity of the proposed balcony that would result in unacceptable noise levels brought about by everyday living, contrary to DCP Control 3.4.2
- Unreasonable impact on the sunlight access and overshadowing to adjoining open space and the principal living rooms of no. 33 Kangaroo Street contrary to DCP Control 3.4.1. It should be noted that the loss of access to sunlight is now further exacerbated by the privacy screens as shown in the Amended Plans.
- Overbearing impact of the balcony and associated privacy screen to the rear/western elevation due to non-compliance with DCP Control 4.1.4 and potentially LEP Cl. 4.4 and DCP Control 4.1.3.

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- Impact on amenity of neighbouring occupiers – cumulative impact of the above.
- Impact on precedent already set and previous amendments to protect privacy to be overridden by virtue of the proposed development.

Overshadowing and loss of access to sunlight contrary to DCP Control 3.4.1

Page 14, Paragraph 4 of the objection letter dated 18 February 2022 highlighted that, *should privacy screens be attached to either or both of the front or rear balconies proposed, the degree of overshadowing would be substantially greater still.*

It is acknowledged that privacy screens have been requested to address the unacceptable loss of privacy and non-compliance with DCP Control 3.4.2 (Privacy and Security). By virtue of the privacy screens proposed, my clients will no longer enjoy at least 2 hours of sunlight to the rear of their property. The shadow diagrams submitted are at 9am, 12 noon and 3pm. It is not clear if they are certified.

At 9 am the rear amenity space and rear elevation is in shadow, as existing and proposed.

At 12 noon my clients currently enjoy winter access to sunlight in their rear principle outdoor entertaining area and by virtue of this, solar access into the kitchen and living space.

By 3pm the shadow diagrams show that the overshadowing has moved away from the rear open space and glazed rear elevation.

From my assessment of the shadowing diagrams submitted, the overshadowing would continue until approx. 1:30pm or 2pm resulting in less than 2 hours of solar access into principle outdoor living area and kitchen/living room of the adjacent property, contrary to Control 3.4.1.2.

Loss of Privacy contrary to DCP Control 3.4.2

The recommendations of DA40/2000 and subsequent amendments to ensure that the rear roof area was non-trafficable, was to protect the privacy of the occupiers to the south (my clients).

As outlined above and in the previous objection letter, the erection of privacy screens cannot mitigate the impact on privacy, given the subsequent impact that the screen would have on overshadowing and overbearing visual appearance.

DCP Control 3.4.2.2 b) suggests that, *Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy*. However, a recessed design would have similar privacy impacts and override the benefits of the ‘*brise-soleil*’, incorporated into the original development to protect neighbouring occupier’s privacy.

Acoustic Privacy – DCP Control 3.4.2.3

It is requested, that should Council recommend approval, contrary to the clear reasons for refusal and impacts on amenity identified, that a condition be attached to require no new door openings on the western elevation at first floor over and above the single door proposed. A wider or extended door opening on the western elevation would increase substantially the noise emitted from the subject site.

Recommendation

As stated in the objection letter dated 18 February 2022, *it is not considered that amendments or conditions will assist in mitigating the harm to arise from the proposed development*. This is because it is the built form proposed that gives rise to the unreasonable impacts discussed.

The erection of privacy screens to mitigate against loss of privacy would give rise to the overbearing impact and unacceptable level of overshadowing, as discussed. However, the removal of the privacy screen would result in a significantly detrimental impact on neighbouring amenity in terms of a severe loss of privacy and undermine the previous amended plans and imposition of a condition to ensure that the rear roof area is non-trafficable.

In this case, there is little opportunity to overcome the concerns expressed and the subject DA should be refused.

Should Council consider recommending approval, contrary to the clear reasons for refusal and unreasonable harm to arise, it is reluctantly suggested that the privacy screen be reduced in height to 1.7 metres, extended in length to 1.95 metres, conditioned to be an appropriate colour,

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in keeping with the existing dwelling house and of a non-reflective material, with no night lighting permitted.

This submission is written in response to amended plans. The subject DA should not be granted consent given the reasons outlined and does not supersede the objection letter dated 18 February 2022.

I thank you in advance for your consideration of the concerns raised.

Kind regards

Karen Buckingham *on behalf of Andre and Elizabeth Karemacher*
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