

7 March 2022

Adam Croft
Planner
Northern Beaches Council

Dear Adam,

Re: Objection to Mod2021/1009 – DA2020/0211

This latest Modification Application, to remove privacy screening for the sole purpose of enlarging an already extraordinary view, is completely without merit. If approved, it would be fundamentally inconsistent with the application of the planning controls. Specifically, it would allow overlooking into all key areas of our property including our; outdoor deck area, pool, two main living areas, kitchen, dining room, main bedroom and bathroom.

Following is our argument why this Modification Application should be refused:

1. The necessity for the screening was determined by the NBLPP, first in September 2020 and then again in August 2021, after a Modification Application

This development has a long and complicated history. In our objection to the initial DA No.168/2017 we maintained that the extent of work proposed was far greater than alterations and additions and that the developer was seeking to avoid the conditions that would be attached to a new building, whilst being allowed to build what would constitute a brand, new home. The developer was well aware that for a new home, they would not be given approval for their virtually non-existent setbacks, a non-compliant balcony, large & intrusive openings and the overall bulk and scale of the property.

Our key argument has always been about the effects of the development on our privacy. It was approved without any conditions being applied to protect us.

Despite this approved DA stating that 'most floors and walls remain', the previous structure was entirely demolished, apart from part of one wall (Attachment No.1). A Stop Work Order halted the construction for nearly a year and during this time another DA was lodged (DA2020/0211) to seek permission to continue building as per the original DA.

This attracted 20 local objections. It was the subject of an LPP meeting and the decision was deferred because the panel members felt it needed more consideration and a site visit before they could reach a determination. The Panel members visited our property and agreed with us about the potential impacts of the development.

The LPP then made their determination. They approved the DA but used very specific words and strong language in applying two conditions specifically to protect our privacy. The conditions were:

7. *The 'Ground & Level 1 Revision B' plan and 'Elevations Revision B' plan are conditionally amended so that any subsequent construction certificate application is to indicate that the West Elevation Ground Floor windows accessible from the kitchen, dining and living areas of No. 84 Bower Street, Manly are fitted with external screens which shall have vertical angled fins that cover the windows. The individual vertical fins shall have a width of 200mm and be positioned top to bottom at an angle of 20 degrees orientated to the north with 50mm overlaps **so as there can be no vision and overlooking** onto the adjoining property to the west No. 86 Bower Street, Manly.*

Reason: To preserve and maintain visual privacy and amenity to the immediate adjoining property to the west at No. 86 Bower Street, Manly.

8. *The external screens with vertical fins referred to in (7) above shall be replicated in size and continued in a northerly direction from the external wall of the dwelling along the western edge of the external balcony accessible from the living area of No. 84 Bower Street, Manly.*

*Reason: To preserve and maintain visual privacy and amenity to the immediate adjoining property to the west at No. 86 Bower Street, Manly and to also **maintain design consistency with the similar edge type screening along the adjoining dwelling.***

After this, the developer delayed the issuing of the CC and challenged the conditions of the approval with the argument that the LPP had not intended for the screening to run the full length of the balcony. Council consulted the Chair of the LPP and it was confirmed that the screening was to run for the entire length of the balcony.

In June 2021 the applicant then applied for another Modification (Mod2021/0316 – DA2020/0211) to amend the screening and to delete it completely on the deck. This was also considered by the LPP and changes to the design of the screening were approved, but again it was decided that due to the privacy impacts the screening was necessary for the entire length of the balcony.

2. Nothing at all has changed which would justify reversing this decision

The latest decision by the LPP, stating that the screening was necessary along the entire length of the balcony, was made only 7 months ago. Nothing at all has changed which would justify any further modification.

It is important to remember the reasons for the conditions being imposed. The reasons are clear. They are to protect our privacy and the deletion of the screening would be completely at odds with this.

3. The screening does not deny the applicant the views he desires

The applicant, should he wish to take in the views of the southern end of Manly beach, simply needs to walk to the northern part of his balcony. This is the same way that all the residents along this stretch of Bower Street are able to look to the southern end of Manly Beach. It is not reasonable to expect to obtain these views from inside a property, or from a seated position on a balcony.

Our own property faces the same minor view limitations as the applicant's does. We can only view this section of Manly beach when we walk to the northern edge of our deck. We cannot see it from a seated position, or from inside our home because we have a solid brick wall in place to protect the privacy of our neighbours on our western boundary (Attachment No. 2).

However, we and all other residents can – from any position – take in the expansive and gobsmacking views north and north west along the stunning coastline that we are fortunate enough to be living near (Attachment No. 3).

Additionally, the design of the applicant's development has ensured that he has full views of the southern end of Manly beach from his other balconies. This means that from two out of his three balconies on the northern side of his property, he has full views to the southern end of Manly Beach.

4. The screening on our boundary should be as effective as the similar edge type screening on the adjoining property

It is not necessary to look beyond this development itself for examples of appropriate screening. It is a nonsense to show photos of other properties where screening is not in place. One planning error does not justify committing another.

First, the privacy screening which has been erected on the eastern boundary of this dual occupancy to protect the neighbours at No 80 Bower Street (Attachment No. 4) and the privacy screening between the two dwellings of the dual occupancy itself (Attachment No. 5) are illustrative of what the applicant demands to protect his own privacy. These screens do not allow overlooking. They are not constructed of timber slats which can be looked through and they do not contain panels which are angled to allow looking through either.

Second, the size and height of the walls in both the front and rear gardens which separate the two dwellings will certainly not allow any overlooking (Attachment No. 6 & 7).

It is very evident that the applicant will not tolerate any overlooking into his own property from his neighbour at No 82. Why is it then that he seeks to deny us the same right to privacy?

5. The fact that the balcony was originally unscreened does not justify it being unscreened now

The MDCP is very clear about mitigating direct viewing between properties and states very clearly that architectural or landscape screens must be provided to balconies and terraces.

The balcony in question would never have been approved in its current form for a new development. It has never been compliant. That is why the development needed to be classified as alterations and additions in the first place – to guarantee that the applicant could retain a non-compliant balcony structure.

Clearly the decisions at the two separate LPP meetings in support of full screening are additional evidence of this.

6. The Statement of Environmental Effects (SEE) is poor and one-eyed

The SEE does not even partially fulfil the purpose of considering the environmental effects of this proposed Modification.

Figure No. 2 included in the SEE distorts the effect of the proposed screening to make it look like it covers half of the length of the balcony, when this is not the case. Most importantly though, there is no photo taken from that area which shows the exposure to our outdoor and indoor spaces when standing there (Attachment No. 8).

We have three young adults and they will be fully exposed as they swim and sunbake on our pool deck. When we have guests sitting at the outdoor table or when we eat there as a family, we will have no privacy. And from the portion of the balcony that the applicant wishes to leave unscreened we will be overlooked in our main bedroom, bathroom and our upstairs television area (Attachments No.9, 10 & 11).

Nor does the SEE acknowledge that this balcony is high, looms over us and protrudes a long way out in front of our property. It is very intrusive. The environmental effects are very serious indeed.

When you consider the arguments made in the SEE (especially in light of the privacy measures the applicant has taken for himself) it becomes very one-eyed indeed.

7. The most recent Modification Application has already caused a reduction in the protection afforded by the first LPP and this latest application is an attempt to see this repeated

The revised screening from the most recent Modification (Mod2021/0317 – DA2020/0211) has not delivered to the objective of protecting our privacy and does in fact allow overlooking.

The screens were to include a solid section up to 1.6mtrs but this does not protect us on our upper level as the occupants of that space can clearly look over the 1.6mtr solid section into our most private spaces on our first floor level. This includes a

living room, our main bedroom and bathroom (Attachments No.12&13). The design of the screening also allows overlooking down into our pool area because the gaps between the screening panels are so open that they allow vision through. We were assured by Council that this would not be possible (Attachment No. 14).

It is difficult to understand how the process has allowed this outcome, despite us arguing that the proposed modification was not going to be effective. It is also particularly galling when you see the screening on the other side of the very same development, which leaves no chance whatsoever of any overlooking into the applicant's property.

In light of this we would like to request that Council's assessment report recommends that the solid section height of the balcony screens be increased to 1.9mtrs to stop overlooking up into our first floor level. Given the fact that the ship has sailed on creating effective screening on the large, expansive and new living room windows, we think this is the least Council can do.

8. Each successive Modification Application is made in the hope that more concessions will be gained

Each successive Modification Application is an attempt to see that the history of the development is slowly eroded – along with the memory of the breaches to the consent which marked the first half of this development and ultimately led to the conditions being imposed.

The applicant, after securing the benefit of the consent to be able to build what is fundamentally a new home – without any of the conditions which would apply to a new build – should not then seek to remove the minor burdens which have resulted from his actions. It should not be as simple as applying for a Modification to get rid of the aspects of the approval that the applicant doesn't find favourable.

The planning process will have failed if this modification is not considered in light of the history of the development and how the developer has been able to obtain so many non-compliances.

9. It is clear to all that this development has gone way too far

The overall impact of this development on us is often not considered. This goes much further than just the current issue around the screening on this balcony.

What exists is fundamentally a new dwelling which has been completely maxed out for the developer's purposes. It is totally out of proportion on the block of land it occupies. It grossly exceeds the FSR, is higher than is allowed, has many new, large and intrusive openings, has insufficient setbacks, has overbearing garages affecting the Streetscape – and overlooks **all** our outdoor spaces, not just the one which is being assessed currently. Our roadside garden is similarly affected.

During a meeting at our home, in January 2020, with the Director of Planning & Place and the Head of Compliance from NBC, it was stated that Council should have done more to protect us. Note: The original development was approved by the previous Manly Council, not the NBC.

The LPP members who came here on 18 August, 2020 were similarly of the view that the development would have serious consequences to our privacy and that tight controls were needed to guard against this along the western side of the development and for the full length of the balcony.

We also regularly hear from visitors and other people who know our property, that they cannot believe what has been constructed next door. They are incredulous about the bulk and scale of it, the way it looms over us and the overlooking issues.

We understand that nothing can be done about this now. We do think though that it should be highlighted to avoid allowing a further failure of process by approving an application that contravenes clear planning guidelines.

Summary

We have been objecting to this development since August 2017 and we have consistently put forward the same arguments around our privacy. The right to privacy in high principle use areas of our home should be protected over the applicant wanting to improve upon already extraordinary views.

This latest Modification Application feels like an abuse of the process. Having to lodge submission after submission in defence of a decision which has been tested already is time consuming, costly and emotionally draining. It is also extremely frustrating and seems inordinately unfair to be fighting for the right to privacy when the applicant so clearly will not compromise on his own privacy.

If this is approved, it will be yet another example of a consent being given in contradiction of the planning controls. It will be an unfair and egregious outcome which grants one party additional and excessive views to the detriment of the other party's ability to live privately in their own home. Given the expansive views and the privilege we all enjoy in our current location, it simply doesn't make sense.

Kindest regards

Tess and Will Lavender

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Attachment No. 1 – extent of demolition



Attachment No. 2 – solid wall to protect our neighbour's privacy



Attachment No. 3 – expansive views enjoyed by all residents



Attachment No. 4 – the screening between No. 82 (the other dual occupancy developer) and their neighbour at No. 80. These are angled screens which cannot be seen through



Attachment No. 5 – the screening installed to ensure the applicant's privacy



Attachment No. 6 – A privacy wall/fence!



Attachment No. 7 – northern, lower garden wall between the dual occupancies



Figure No. 2 from the SEE – distorted proportions



Figure 2 – Extent of louvered privacy screen as required with proposed modified extent of privacy screen in yellow western end of the principal living area and western end private open space terrace within the subject property

Attachment No. 8 – showing some of the areas able to be overlooked from the balcony



Attachment No. 9 - showing proximity and overbearing position of deck



Attachment No. 10 – showing overlooking onto private open spaces



Attachment No. 11 – showing invasion of privacy into lounge, main bedroom and bathroom



Attachment No. 12 – showing closeness and vision possible from applicant's main living area



Attachment No. 13 – showing lack of privacy from applicant's main living area



Attachment No. 14 – showing visibility down onto pool deck

