
Sent: 7/08/2021 10:16:32 AM
Subject: Objection submission letter - DA2021/1114 - 5 Windermere Place, Wheeler Heights - on behalf of Mark Channell, 6 Coniston Road, Wheeler Heights
Attachments: Mark Channell - 6 Coniston Street Wheeler Heights - Submission objection letter 5 Windamere Place Wheeler Height- DA20211114.pdf;

Dear Stephanie,

Please find attached an objection submission letter prepared on behalf of Mark Channell of 6 Coniston Road, Wheeler Heights regarding the proposed secondary dwelling at 5 Windermere Place, Wheeler Heights DA2021/1114.

Please could you contact myself and Mark Channell should you need to conduct a site visit from client's property to consider the view impacts discussed. We would also be very grateful for any updates on DA2021/1114.

Please could you also confirm receipt of this e-mail via return e-mail.

Kind regards,

Karen Buckingham
BA(Hons) Planning; MSc Spatial Planning; MPIA
Planning Progress
0423 951 234
karen@planningprogress.com.au
PO Box 213, Avalon Beach, NSW 2107

7 August 2021

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

By e-mail: stephanie.gelder@northernbeaches.nsw.gov.au

Attention: Stephanie Gelder

Dear Stephanie,

**Submission raising objection to Development Application DA2021/1114
Construction of a Secondary Dwelling
5 Windermere Place, Wheeler Heights**

I write regarding the above Development Application to raise objection to DA2021/1114 on behalf my clients Mr Mark Channell owner of 6 Coniston Street, Wheeler Heights and his wife.

As part of your assessment, it is respectfully requested that a site visit is carried out at 6 Coniston Street, Wheeler Heights so that you can consider the detrimental impact of the proposal on the amenity and view loss to my clients.

The Development Application seeks consent for the construction of a Secondary Dwelling at 5 Windermere Place, Wheeler Heights. My client's property sits to the east of the subject site and is significantly impacted upon by the proposed development for the reasons set out below and discussed in greater detail in this submission.

Summary of objection

- Non-compliant development contrary to with the State Environmental Planning Policy (Affordable Rental Housing) 2009 (AHSEPP), Warringah LEP 2011, Clause 5.4 (9) and the Warringah DCP 2011, B3 – Side Boundary Envelope; B9 – Rear Boundary

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au
www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

setbacks; D6 -Access to Sunlight; D7 -Views; D9 -Building Bulk and E6 -Retaining unique environmental features.

- Devastating, highly valued view loss – A total loss of highly valued views as per the four part view loss assessment established by the Land & Environment Court – *Tenacity consulting v Warringah [2004] NSWLEC 140* contrary to D8 of the LEP.
- Overbearing height, scale and mass contrary to DCP Controls B3, B9 and D9.
- Overshadowing impact to the kitchen / living area and outdoor entertaining area contrary to D6 of the DCP.
- Detrimental impact on a unique environmental feature being the rock outcrop on top of which the secondary dwelling is proposed and altered to accommodate the proposed development
- Impact on amenity of neighbouring occupiers – cumulative impact of the above.

Site details

The subject site is located at 5 Windermere Place, Wheeler Heights. The submitted plans and Statement of Environmental Effects (SEE), state the site is 556.4sqm. The main dwelling house is sited towards the front of the site (west facing) and the rear boundary (east facing) abuts my client's property, at 6 Coniston Road. A large sandstone rock formation is located in the rear garden of 5 Windermere Place.

Character of the area and streetscene

Wheeler Heights is situated on a plateau with far reaching views to surrounding bushland and Narrabeen Lagoon. The surrounding residential environment is predominantly made up of detached single and two storey dwellings fronting the streetscene.

Proposed development

Development Application DA2021/1114 seeks consent for the construction of a secondary dwelling at 5 Windermere Place. The proposed secondary dwelling is sited in the rear garden of the site and on top of the large rock formation.

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
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PO Box 213, Avalon Beach, NSW 2107

In preparing this submission, I have considered the impacts of the proposed development as detailed in the submitted plans prepared by RK Designs dated 27.08.20, Statement of Environmental Effects (SEE) dated 25.6.21 and accompanying reports.

Should amended plans be submitted to try to overcome concerns raised in this submission letter, then I request the opportunity for my clients to submit an additional submission accordingly.

Relevant legislation and Planning Controls

In preparing this submission, I have carefully considered the following legislation and planning controls

Environmental Planning & Assessment Act 1979 (The Act)

Environmental Planning and Assessment Regulation 2000 (The Regulations)

Coastal Management Act 2016 (CM Act)

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX)

State Environmental Planning Policy (Coastal Management), 2018

State Environmental Planning Policy (Affordable Rental Housing) 2009

Warringah Local Environmental Plan 2011 (LEP)

Warringah Development Control Plan 2011 (DCP)

Coastal Management Act (CM Act), 2016 and associated SEPP (Coastal Management), 2018

The subject site is located in a Coastal Environment Area, as specified in Clause 8 of the CM Act 2016.

State Environmental Planning Policy (Affordable Rental Housing) 2009 (AHSEPP)

The proposed development is for the construction of a secondary dwelling. The AHSEPP sets out the NSW Government's planning policies with regard to secondary dwellings. A development application can be lodged where a proposed development is not able to meet the complying development provisions in the AHSEPP. This is the case with the subject DA given the non-compliance with the setback provisions in Schedule 1 'Development Standards' of the

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PO Box 213, Avalon Beach, NSW 2107

AHSEPP. Accordingly, the development proposed should be assessed in accordance with the AHSEPP and council's policies and controls.

The submit development application is not able to meet the development standards for secondary dwellings in Schedule 1 of the AHSEPP given setbacks proposed. With regard to the impact on my clients, the rear setback is proposed to be 2.7 metres, which fails to comply with Schedule 1, Clause 10 (1) (a). The height of the proposed secondary dwelling exceeds 3.8 metres and would therefore similarly not comply with Schedule 1, Clause 10 (2) (a) of the AHSEPP.

Non- compliance with the development standards for secondary dwellings under Schedule 1 of the AHSEPP confirms why the proposed development could not be realised via complying development and highlights that the proposed development fails to meet the rear boundary setback development standards of the AHSEPP.

Extract: AHSEPP, Schedule 1, Clause 10 (1) (a)

10 Setbacks from rear boundaries

- (1) Development for the purposes of a secondary dwelling or ancillary development must not result in a new building or a new part of an existing building or any new carport, garage, balcony, deck, patio, pergola, terrace or verandah having a setback from a rear boundary of less than the following—*
 - (a) 3 metres, if the lot has an area of at least 450 square metres but not more than 900 square metres,*
 - (b) 5 metres, if the lot has an area of more than 900 square metres but not more than 1500 square metres,*
 - (c) 10 metres, if the lot has an area of more than 1500 square metres.*
- (2) Development for the purposes of a secondary dwelling or ancillary development that involves the construction of a new building or additions to an existing building where the new or existing building will, at the end of the development, have a building height at any part of more than 3.8 metres must not result in the new building or any new part of the existing building or any new carport, garage, balcony, deck, patio, pergola, terrace or verandah, having a setback from a rear boundary of less than the sum of—*

- (a) 3 metres, plus an amount that is equal to three times the additional building height above 3.8 metres, up to a maximum setback of 8 metres, if the lot has an area of at least 450 square metres but less than 900 square metres, or...*

Local Environmental Plan (LEP)

Land use zone: The subject site is zoned R2 Low Density Residential under the LEP.

The zone objectives are as follows:

- *To provide for the housing needs of the community within a low density residential environment;*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents;*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment: The proposed development is permissible within the zone.

Clause 5.4 Miscellaneous Provisions

(9) Secondary dwellings on land other than land in a rural zone If development for the purposes of a secondary dwelling is permitted under this Plan on land other than land in a rural zone, the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—

- (a) 60 square metres,*
- (b) 11% of the total floor area of the principal dwelling.*

Comment: Calculations have not been provided to assess whether the total floor area of the secondary dwelling exceeds 11% of the total floor area of the principal dwelling.

This information should be submitted prior to the determination of this development application.

Should the proposed development seek to vary the development standards of Clause 5.4 (9) of the Warringah LEP 2011 then a Clause 4.6 variation request should be submitted.

Clause 6.4 Development on sloping land

The subject site is located within Area D on the Landslip Risk Map. A Geotechnical report has been submitted with the Development Application. It is noted that the report acknowledges an unacceptable risk to life and property by virtue of the undercut rock faces failing and toppling due to the proposed works. This should be assessed as part of this application.

Development Control Plan (DCP)

DCP Control B3 - Side Boundary Envelope

The proposed development is non-compliant with DCP control B3 Side boundary envelope.

Objectives

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*
- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*
- *To ensure that development responds to the topography of the site.*

Requirements

1. Buildings on land shown coloured on the DCP Map Side Boundary Envelopes must be sited within a building envelope determined by projecting planes at 45 degrees from a height above ground level (existing) at the side boundaries of:

- *4 metres, or*
- *5 metres*

as identified on the map.

2. On land within the R3 Medium Density Residential zone, above and below ground structures and private open space, carparking, vehicle access ramps, balconies, terraces, and the like shall not encroach the side boundary envelope.

Comment: The DCP Map Side Boundary Envelopes requires that the building envelope be determined at the side boundary of 4 metres at the subject site. The proposed development does not comply with the building envelope as shown in Section C-C of the submitted plans and clearly fails to achieve the objectives of DCP control B3.

DCP Control B9 Rear Boundary Setbacks

Objectives

- *To ensure opportunities for deep soil landscape areas are maintained.*
- *To create a sense of openness in rear yards.*
- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*
- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*
- *To provide opportunities to maintain privacy between dwellings.*

Requirements

1. *Development is to maintain a minimum setback to rear boundaries.*
2. *The rear setback area is to be landscaped and free of any above or below ground structures...*

Comment: DCP Map Rear Boundary Setbacks for the site are 6 metres. The proposed development is non-compliant given the 2.7 metre rear setback proposed. By virtue of this, the proposed development fails to achieve any of the objectives of this control.

DCP Control D6 -Access to sunlight

The proposed development is non-compliant with DCP Control D6 Access to Sunlight.

Objectives

- *To ensure that reasonable access to sunlight is maintained.*
- *To encourage innovative design solutions to improve the urban environment and public open space.*
- *To promote passive solar design and the use of solar energy.*

Requirements

- 1. Development should avoid unreasonable overshadowing any public open space.*
- 2. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.*

Comment: Shadow diagrams have not been submitted to fully assess the impact of the proposed development against DCP control D6. It is respectfully requested that shadow diagrams be required prior to determination to fully assess this impact.

From my site visit and the concerns expressed by my clients, the loss of access to sunlight would impact my clients in the afternoon. Currently my clients enjoy afternoon sun entering their principle living space / kitchen and pool / terrace area. The proposed development would completely remove this access to sunlight to the detriment of my client's amenity.

DCP Control D7 -Views

The proposed development is non-compliant with DCP Control D7 as it fails to allow for the reasonable sharing of views.

Objectives

- To allow for the reasonable sharing of views.*
- To encourage innovative design solutions to improve the urban environment.*
- To ensure existing canopy trees have priority over views.*

Requirements

- 1. Development shall provide for the reasonable sharing of views.*

Comment: My clients currently enjoy uninterrupted bushland views and water views of Narrabeen Lagoon from their primary living space, bedroom and outdoor area to the rear of their property which is west facing.

The secondary dwelling is proposed to be erected on top of the existing rock in the rear of the subject site and by virtue of this would completely obscure the bushland and water views. The views and open outlook currently enjoyed by my clients would be completely obscured by a two storey blank façade. View 1, in the photo below shows the existing rock and the proposed secondary dwelling is to be sited on top of this rock.

Tenacity consulting v Warringah [2004] NSWLEC 140 is the view loss assessment established by the Land & Environmental Court. In applying this test, the following assessment is relevant.

First step: Assessment of views to be affected.

‘Water views are valued more highly than land views... Whole views are valued more highly than partial views, e.g., a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.’

View 1: View from the outdoor entertaining area showing the rock outcrop on top of which the proposed secondary dwelling is to be erected.



View 2: Water views from the main bedroom



The views to be affected are land and water views.

The views to be affected are whole water views in which the interface between land and water is visible.

The views to be affected by the proposed development are assessed as highly valuable.

Second step: From what part of the property the view are obtained

[T]he protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views.

The views to be affected are from the rear boundary where views should be protected.

The view from the kitchen window at view 1 is enjoyed from a standing position and is therefore, highly valued.

Third step: Assess the extent of the impact.

The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them) ... It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

View 3: View from living area, kitchen and outdoor entertaining area



Views affected are from the kitchen and living areas which are highly valued

View loss is considered devastating as the proposed development would completely obscure the view from the living area / kitchen.

Fourth step: Assess the reasonableness of the proposal that is causing the impact

A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.

The proposed development fails to comply with the AHSEPP, Warringah LEP 2011, Clause 5.4 (9) and the Warringah DCP 2011, B3 – Side Boundary Envelope; B9 – Rear Boundary setbacks; D6 -Access to Sunlight; D7 -Views; D9 -Building Bulk and E6 -Retaining unique environmental features.

In light of the above, the proposed development would have a devastating impact on highly valued views caused by an unreasonable proposal arising due to non-compliance with the AHSEPP and stated LEP and DCP controls.

D9 – Building Bulk

Objectives

- *To encourage good design and innovative architecture to improve the urban environment.*
- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Requirements

1. *Side and rear setbacks are to be progressively increased as wall height increases.*
2. *Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*
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:*
 - 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.*
4. *Building height and scale needs to relate to topography and site conditions.*
5. *Orientate development to address the street.*
6. *Use colour, materials and surface treatment to reduce building bulk.*

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au
www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

7. *Landscape plantings are to be provided to reduce the visual bulk of new building and works.*
8. *Articulate walls to reduce building mass.*

Comment: As previously outlined in this submission, the proposed development constitutes an over-development of the site. The proposed development would present a significant visual impact when viewed from my client's property. The lack of fenestration on the eastern elevation of the proposed development is an attempt to address the impact on privacy to my clients given the non-compliance with the rear setback controls. However, the resulting effect is a largely blank wall, lacking fenestration or articulation which adds to the overbearing impact.

DCP Control E6 – Retaining unique environmental features

Objectives

- *To conserve those parts of land which distinguish it from its surroundings.*

Requirements

1. *Development is to be designed to address any distinctive environmental features of the site and on adjoining nearby land.*
2. *Development should respond to these features through location of structures, outlook, design and materials.*

Note

Environmental features include:

- a) *Elevated landforms, prominent coastal headlands, cliffs and **rock outcrops** (own emphasis)*

Comment:

The existing rock outcrop, as shown in the photos View 1-3, is a unique environmental feature on the site and also when viewed from adjoining nearby land (the neighbouring properties, including my client's property). The proposed development fails to conserve or respond to the rock outcrop and in addition to cutting away at part of the rock outcrop, the location and design of the proposed secondary dwelling on top of the rock outcrop would total detract from this unique feature.

DCP Control D1 – Landscaped Open Space and Bushland Setting

Comment: It is respectfully requested that the assessment of this subject DA check the landscaped open space calculations submitted. The areas included in the calculations should not include the rock outcrop and any other landscaped area that does not achieve a minimum soil depth of 1 metre.

Impact on amenity of neighbouring occupiers

The proposed development would clearly have a materially significant impact on neighbouring amenity. The Development Application fails to comply with either the LEP or DCP controls referred to in this submission. The impact on neighbouring amenity is a result of the over development of the site, which would be overbearing by virtue of its siting on top of the rock outcrop and rear setback, bulk and scale and would create an unacceptable view loss for my clients.

Conclusion

This submission sets out my client's concerns regarding the proposed development under Development Application DA2021/1114.

The proposed development constitutes a significant overdevelopment of the site which would have a materially detrimental impact on the amenity of neighbouring occupiers (my client) and the surrounding environment.

This Development Application is non-compliant with the AHSEPP, Warringah LEP 2011, Clause 5.4 (9) and the Warringah DCP 2011, B3 – Side Boundary Envelope; B9 – Rear Boundary setbacks; D6 -Access to Sunlight; D7 -Views; D9 -Building Bulk and E6 -Retaining unique environmental features.

My clients would like to express that whilst they don't support the proposed development in its current form, they would welcome informal consultation with the applicant to consider a more appropriate design solution.

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au
www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

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

Kind regards,

Karen Buckingham *on behalf of Mr and Mrs Channell*
BA(Hons) Planning; MSc Spatial Planning; MPIA
Planning Progress