
Sent: 3/07/2023 12:00:17 PM
Subject: Submission objecting to DA2023/0617 22-24 Angle Street Balgowlah
Attachments: Submission 22-24 Angle Street Balgowlah.pdf;

Hi Max,

Please find attached a submission objecting to the proposed development at 22-24 Angle Street on behalf of Shelley and Adam, landowners at 72 West Street.

Could you please acknowledge receipt of this email and attachment?

Thanks for your patience with us in submitting, and please do not hesitate to contact me should you have any concerns you wish to discuss.

Regards,

Anna Williams, Director
Blackwattle Planning
E: anna@blackwattleplanning.com.au
T: 0418622598

The CEO
Northern Beaches Council
council@northernbeaches.nsw.gov.au

Attention: Maxwell Duncan
Maxwell.duncan@northernbeaches.nsw.gov.au

Dear Sir,

30 June 2023

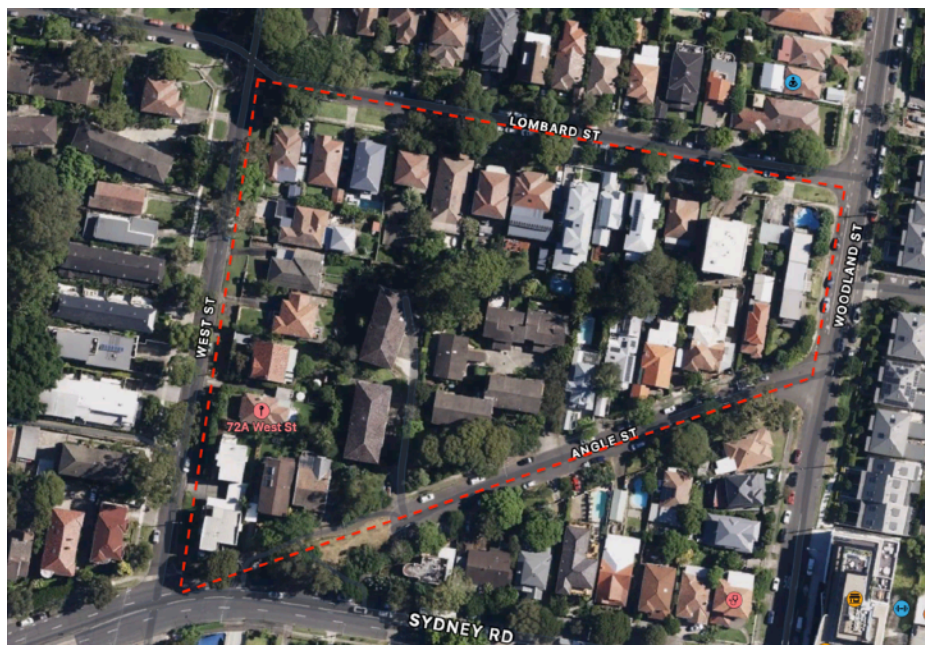
RE: Submission objecting to DA2023/0617 Demolition and construction of a Residential Flat Building

Thankyou for the opportunity to respond to this matter on behalf of the owners of 72 West Street Balgowlah.

Context

No. 72 West Street adjoins the two properties that form the development site on their northern side. Both 72 West Street and 22-24 Angle Street are part of a street block formed by Angle Street to the south, West Street to the west, Lombard Street to the north, and to a more minor extent Woodland Street to the east (marked in red on aerial photo below). Notwithstanding some smaller residential flat buildings, the predominant housing typology in this block is single storey dwellings.

No. 72 West Street supports a single storey dwelling aligned in an east west direction. The northern side boundary is shared with No. 74 West Street, which is also a single dwelling. The southern side boundary is shared with three properties, two of which are currently single dwellings (22 and 24 Angle Street - the development site). The third is a development of four units within two buildings, the northern most of which adjoins No. 72 West St and is known as No. 72B West Street. To the east, is a large allotment containing two three to four storey walk up flat buildings.



Our objections to the proposal

We have reviewed the Development Application documentation online and have undertaken a site visit at 72 West Street to understand the impacts upon our clients immediate dwelling and rear yard. We have also attended the frontage of the development site and reviewed the character of the immediate and wider locality.

Overall, if the proposed development were to be approved, we believe the loss of amenity at No. 72 West Street will be devastating. We also believe that an approval of the development in its current form would be contrary to the public interest as the scale of the development is clearly incompatible with the immediate surrounding development and does not represent the orderly development of land as demonstrated by the relevant planning framework legislated under Manly LEP 2013.

Additionally, impacts upon public land and access within the Angle Street road reserve are considered unacceptable.

In addition to these critical matters, we raise a fundamental concern over the lodgement of this application which we maintain is contrary to the *Environmental Planning and Assessment Act Regulation 2021*. In particular, the application is made without the consent of the owners of the land to which it relates. On this basis alone, the application should be withdrawn or otherwise refused by Council.

The particulars of these concerns are elaborated upon below.

No Owners Consent as required by the Regulation

Clause 23(1) of the *Environmental Planning and Assessment Act Regulation 2021* (the Regulation) states:

(1) A development application may be made by—

(a) the owner of the land to which the development application relates, or

(b) another person, with the written consent of the owner of the land.

(2) The consent of the owner of the land is not required for a development application made by a public authority or for public notification development if the applicant complies with subsections (3) and (4).

...

Subclause (2) above does not relate to the application as it is not made by a public authority and does not meet the definition of *public notification development* (which is essentially state significant development).

Subclause (1) however does apply and requires that at a minimum the written consent of the owner of the land be obtained for the development application to be made. The

stormwater disposal system proposed includes a stormwater pipe and associated inspection pit to be constructed on No. 72 West Street. The trench and pipe is proposed to run almost the entire east west length of No. 72 West Street within an easement of minimum width 900mm.

The land to which the development application relates includes the land over which the stormwater drainage system is proposed to be constructed. The owners of No. 72 West Street Balgowlah have not given owners consent, written or otherwise, to the lodgement of a Development Application for works upon their land.

Following an informal approach by the applicant regarding the easement, the owners of No. 72 West Street sought legal advice and requested of the applicant final plans, independent valuation, offer of compensation and draft deed to grant access. Rather than providing this information the applicant offered a one-time part payment in an attempt to expedite lodgement of the application.

An agreement both verbal and written was made by the applicant that they would seek legal advice regarding their position, which was not followed through with. The lodgement of the application was then made without further correspondence to the owners of No. 72 West Street. The approach taken by the applicant is not consistent with the requirements of Section 88K of the Conveyancing Act 1919.

We refer Council to a recent NSW Land and Environment Court decision by Commissioner Dickson known as *CKDI Pty Ltd as trustee for CKDI Unit Trust v Ku-ring-gai Council [2023] NSWLEC 1018*. In this matter, circumstances of notable similarity are considered by the Court.

Ultimately, Commissioner Dickson found at [40] that:

The requirement in the EPA Act and the EPA Regulation that a development application be made with the consent of the owners of the land is a jurisdictional precondition that needs to be satisfied in order for the consent authority (the Court) to be able to exercise the function of determining the development application: Al Maha at [79].

The decision confirms that inter allotment drainage works as detailed in the development application are considered to be works to be undertaken on land to which the application relates, notwithstanding that they are located on a neighbouring allotment.

Additionally, the judgement explores the prospects of utilising a deferred commencement condition to allow an approval to be granted which defers the final consideration of the stormwater design in circumstances where the proposed inter allotment drainage system is not relied upon (because owners consent is not granted). To the extent that this pathway might be contemplated by either the applicant or the consent authority, we note that the decision in *CKDI Pty Ltd as trustee for CKDI Unit Trust v Ku-ring-gai Council [2023] NSWLEC 1018* rejected this approach because it was found that consideration of stormwater requirements under Ku-ring-gai LEP 2015 must reach a state of satisfaction *before* the granting of development consent.

We maintain that the Clause 6.4(3) of Manly LEP contains similar stormwater considerations which state that development consent *must not be granted* until such a

state of satisfaction is achieved by the consent authority in relation to the stormwater system proposed.

Likely impacts of development not considered

Notwithstanding the above, we also note that the application provides no consideration of the impacts associated with the proposed inter allotment drainage system upon the land at No. 72 West Street. The likely impacts as required to be considered under S.4.15(1)(b) of the Act are not referred to by relevant expert reports, including significant impacts upon vegetation and canopy trees, rock boulders, retaining walls, and the structure of the existing dwelling itself at No.72 West Street that are certain to occur with the construction of a trench to contain the pipe.

In particular, we note that the Geotechnical Report (D & N Geotechnical) provided by the application, conducted via *desk study and site walkover only*, makes no reference to impacts of excavation upon No. 72 West Street. Furthermore, the pipe is proposed to break through a large stone wall at the frontage of No. 72 West Street. No consideration of the structural adequacy of that wall appears to have been carried out.

We can find no consideration of the likely impacts of these works upon No. 72 West Street, or measures to mitigate such impact, within the documents submitted with the application. Without such consideration, we submit that Council cannot properly carry out its obligations under S4.15(1) of the Act.

In summary, the owners of No. 72 West Street object to the proposed development of their land, do not accept the impacts that will result, and provide no consent as landowners to the lodgement of the application.

Manly LEP 2013

Floor Space Ratio (FSR)

The FSR proposed for the site at 0.95:1 is grossly outside the anticipated FSR for the site under the LEP of 0.5:1. This represents an additional 376sqm of floor space. Clause 4.4 of Manly LEP sets out the objectives to be achieved by this development standard, and we submit that the proposed development fails to meet at least three of these objectives, as follows:

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

The proposed development, which reaches a height of 9.18m will be a dominating structure within the streetscape of West Street. This excessive bulk and scale is inconsistent with development on the eastern side of West street because:

- The massing of the additional floor space spans the width and depth of two residential blocks with a continuous and unbroken building mass which is entirely out of character with the massing of other development on the east side of the street; and,

- The development breaches the LEP height of buildings requirement of 8.5m with a maximum height of 9.18m; and,
- The streetscape on the east side of West Street consists almost entirely of single dwellings of one and two storeys whereas the proposed development rises to a third level which is likely to be viewable from the street, above the rooflines of the existing dwellings at 72 and 74 West Street.

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

- As above, the additional floor space, and the excessive depth, width and height of the proposed development are an inappropriate response to the single dwellings which are the predominant building type setting the character of the street and immediate locality.

Whilst other Flat buildings exist in the immediate surrounds (at both 20 Angle Street and 72A and 72B West Street), it is notable that the massing of floor space in both these developments are broken up to ensure the resulting building forms are more compatible with the sensitive and finer grain development around them. This is despite their considerable age and that the current controls were not in place when these buildings were approved. Additionally, these buildings do not form the predominant building scale and form in the street and immediate locality and it is not appropriate to rely on these as a precedent or as a reflection of the desired character to justify the proposed excessive floor space.

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

The exceedance of the FSR requirement fails to minimise impacts upon the use and enjoyment of the land at 72 West because:

- The resulting floor space results in a flat building that has a setback of up to 3.4m to the shared northern boundary, which does not reflect either the spatial outcomes envisaged by either the Council's own DCP controls (which suggest 8m setback is appropriate), and the separation of building requirements of the Planning NSW Apartment Design Guide (ADG), which suggests that a minimum of 6m is required. The resulting impact is a building of excessive bulk and massing located too close to the adjoining sensitive development of a single storey dwelling, and creating unmitigated overlooking impacts.

As the objectives of the FSR development standard cannot be met, we believe Council has no power to vary the development standard and the request to do so should be denied.

In addition we have reviewed the Clause 4.6 request for variation submitted by the applicant and challenge the one environmental planning ground relied upon to justify the excessive additional floor space. We cannot agree that *the gross floor area of the proposed development through the centre of the proposed building does not add to the perceived bulk of the development or result in impacts greater than that associated with a complying development.*

It is apparent from the floor plans that at the northern elevation the floor space is concentrated through the middle of the design. Figure 1 below shows the floor plans which indicate at every level no break in the floor space is provided centrally around what would otherwise be the division of the land boundary.

As viewed from No. 72 West Street, the building will appear as one wide building and will impact negatively in its width and unbroken massing, all located within close proximity to the dwelling and its private open space.



Figure 1: Excerpt from Ground Floor, and Level 1 floor plans at northern end of the development offering no breaks through the centre of the building to relieve the massing of the development as viewed from No. 72 West Street. **Source:** Wolski Coppin Architecture

There is an abundance of opportunity (up to 376sqm worth) to reduce the floor space to be complying or close to complying with the development standard which would achieve a substantial reduction in apparent floor space as viewed from 72 West Street, and which would allow the building back to comply with the rear setbacks anticipated by both local and State Policies.

Additionally, we note that the Clause 4.6 arguments rely upon a character analysis involving development on the western side of West Street, which comprises a higher percentage of flat buildings. Importantly, Manly LEP 2013 anticipates that West Street is a transition between 0.5:1 on the eastern side to 0.75:1 on the western side as shown in the wider zoning map below:



Figure 2: West Street to the west of the subject site (blue outline) is the transition between FSR of 0.5:1 (blue) to 0.75:1 (green) **Source:** Northern Beaches Council Mapping

A comparison with these developments is not appropriate given the expectations of the LEP for a higher FSR on the western side of the street. In any case, the proposed FSR on the subject site far exceeds the higher FSR of 0.75:1 applicable to the western side of West Street (by over 200sqm). A genuine character test should take into account the lower floor space expectations of the LEP, which in turn sets the scale of development and local character in the precinct within which the proposed development is located.

The environmental planning grounds offered by the applicant to justify the significant departure from the standard are not of sufficient substance and the FSR proposed far outstrips that of the residential development in the immediate vicinity and also in the higher density area to the west. The variation should be rejected by Council on these grounds.

Privacy

The close proximity of the proposed development, its height above ground level, and the inadequacy and uncertainty of the landscape outcome on the site result in significant concerns of overlooking into the private open space of No. 72 West Street.

There is insufficient separation of the development from the private open space at No. 72 West Street. The applicant assures Council that screening at the ground level balconies (which are located only 3.4m from the boundary) will mitigate overlooking into 72 West Street. The statement of environmental effects states in relation to the non-compliant rear setback that:

The ground floor balconies incorporate sufficient screening to mitigate overlooking of the adjoining property to the north

The southern elevation does not detail any such screening measures. Plantings at the northern boundary (even at mature height of 2.8m) will not intervene the sightline of occupants standing on the ground level or level 1 balconies, whose floor levels are more than 3m above the level of the proposed hedging. The occupants will have a commanding and unmitigated view of the rear yard, private open space area, and into the rear living areas of No 72 West Street. Views obtainable to the north from the proposed levels will ensure that screening is not probable or sustainable for these balconies.

This overlooking impact arises because the design seeks to accommodate excessive amounts of floor space that do not observe the necessary spatial separation and design measures for adequate privacy levels. Furthermore, the proposed design denies No. 72 West Street the ability to mitigate the impact on their own land because it requires the removal of vegetation and canopy trees at the boundary for its stormwater design.

Impact upon the public domain

The proposed design results in significant changes to the public domain at the Angle Street frontage and will deliver a significant increase in intensity of traffic in a highly pedestrianised context. The increase in intensity of traffic movement generated from 2 dwellings to the proposed 8 dwellings is not appropriate, and pedestrian path of travel is not adequately separated from vehicle movements.

We find highly objectionable the proposed driveway arrangements dominating the wide road reserve area, which we are advised is highly trafficked by children walking to school and bus stops. We ask that Council question the appropriate nature of this arrangement, noting that the impact is a result of the floor space density which far exceeds that anticipated for this site.

Furthermore, the loss of significant trees in the road reserve has become apparent and is highly objectionable. Development of private land should not be at the expense of community assets. The wide road reserve is less constrained than many other circumstances and Council should require the development to demonstrate its viability without the loss of significant canopy in the public domain.

Conclusion

In summary, we conclude that the overdevelopment of the site is clear in the excessive amount of floor space proposed, the bulk and scale impacts upon neighbouring development that subsequently arise, and the impacts upon streetscape and the public domain at both Angle Street and West Street.

The established process for obtaining agreement to create an easement over neighbouring land for the disposal of stormwater has not been followed by the applicant and the application is made for development over 72 West Street without owners consent. On this basis alone the application ought to be determined for refusal.

For all of the reasons outlined above, we request that Council reject the proposal in its current form and encourage the applicant to pursue a design demonstrating greater consideration for the community in which it is located, and making considerable reduction in floor space with a view to reducing impacts upon No. 72 West Street.

Please feel free to contact us on 0418 622 598 or at anna@blackwattleplanning.com.au.

Regards,

A handwritten signature in black ink, appearing to be 'Anna Williams', with a stylized flourish at the end.

Anna Williams,
Director

BLACKWATTLEPLANNING

anna@blackwattleplanning.com.au