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**From:** Steven Layman  
**Sent:** 7/10/2022 12:05:05 PM  
**To:** Council Northernbeaches Mailbox  
**Cc:** skyexie  
**Subject:** TRIMMED: DA2022/0935 - Amended Plans --- 31 Jocelyn St, Curl Curl -  
-- Detailed Submission for Fang Xie  
**Attachments:** 2022-10-07\_DA2022-0935\_Xie submission.pdf;

Attention Dean Pattalis, Planner

On Friday 30 September, 2022, Steven Layman Consulting Pty Limited made the e-mail submission below on behalf of Fang Xie, owner and resident of 33 Jocelyn St, Curl Curl which is situated immediately to the west of the subject site:

*Our client received notice of the amended DA on 15 September 2022, and so has had limited time to prepare a thorough response.*

*In order to respond in some fashion by the formal submissions closure date we make this brief submission listing our preliminary concerns. We propose to make a more detailed submission within the next week. We trust that this is acceptable to Council. Please advise if this is not the case.*

*Our preliminary concerns are:*

- Building height – *It is not conclusive that the building height is accurately represented. Nevertheless we agree that a 4.6 variation request is required;*
- Inadequacy of the clause 4.6 variation request – *the request provides case law guidance for “environmental planning grounds” set out in Initial Action Pty Limited vs Woollahra Municipal Council [2018] NSWLEC 118 (Initial Action), but then does not follow that guidance. Contrary to Initial Action the clause 4.6 variation request refers to the benefits of the development as a whole and not the particular benefits of the variation of the development standard in question;*
- Solar access for living and dining area – *the proposal will greatly affect the east side windows of the entry level ground floor living and dining areas;*
- View impact – *the proposal is likely to affect water views from sitting and standing positions in living and dining areas*
- Erection of height poles – *to put the matter of view impact beyond any doubt we request the erection of height poles to demonstrate the extents of the proposed upper level addition. These poles should be certified by a registered surveyor. We think that this would be in the interests of all parties, so that and accurate and proper assessment of view impacts can be made.*

We now attached the foreshadowed detailed submission. Please acknowledge receipt of this message.

Regards,

Steven Layman

Registered Architect & Town Planner

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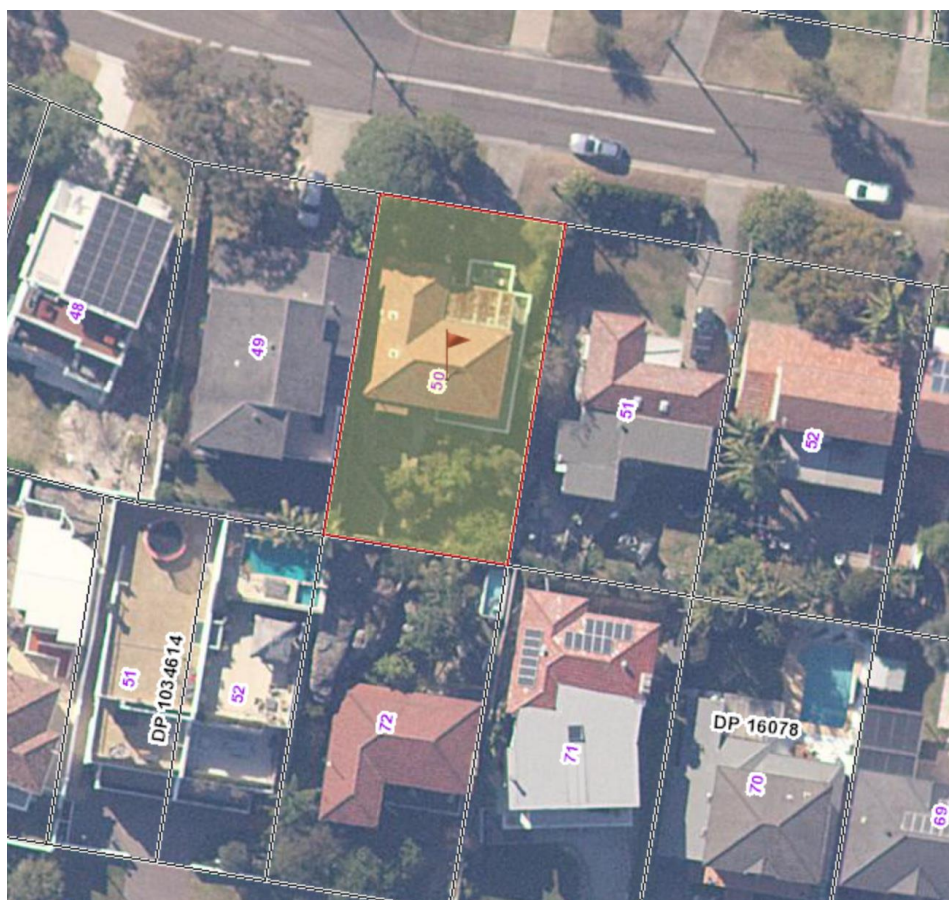
6 October 2022 – By e-mail to [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

The General Manager  
Northern Beaches Council  
Civic Centre  
725 Pittwater Road  
DEE WHY NSW 2099

Dear Sir,

**Matter: DEVELOPMENT APPLICATION DA2022/0935**  
**Land: 31 Jocelyn Street, North Curl Curl**  
**Proposal: Demolition works and construction of a dwelling house**

Steven Layman Consulting Pty Limited acts on behalf of Ms. Fang Skye Xie owner and resident of 33 Jocelyn Street, sited immediately to the west of 33 Jocelyn Street, Curl Curl ("the subject site").



AERIAL PICTURE OF THE SUBJECT SITE

(Source: Six maps. North is directly up the page. Subject site is highlighted with red border and yellow layer)

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We made a preliminary e-mail submission on Council's DA tracker web site on 30 October 2022, where we raised a number of concerns and indicated that we would make a more detailed written submission;

- Exceedance of maximum building height
- Inadequate clause 4.6 variation request
- Solar access
- View Impact
- Erection of height poles

We would add:

- Characterisation and character of the proposal
- Maximum Wall Height Exceedance

to those concerns. We have reviewed the plans and supporting documents in detail and we wish to express the following concerns:

### **Characterisation and character of the proposal**

The proposal is said to be "Alterations and Additions to the existing dwelling, including the construction of a new double carport and a plunge pool". The alterations and additions are extensive and change the character of the development. The new works do not fit harmoniously with the character of the existing dwelling. Rather their box-like aesthetic clashes with the traditional pitched roof character of the existing dwelling.

The new works are so extensive as to be properly characterised as a redevelopment of the subject site. The proposal should comply fully with the relevant LEP and DCP controls.

The character of the locality is low-density 1 and 2 storey development, consistent with the R2 Zone which applies to it. The South Elevation shows the proposal to be three storeys high and excessive in overall building height.

This enables a "sunken" Lounge Area floor level 2.42m above existing ground level which allows overlooking above a standard boundary fence height of 1.8m.

The presentation of the proposal to 33 Jocelyn Street is oppressive with a 3.75m high blank, unrelieved wall for the rear extension set approximately 1m from the boundary on the same alignment as the existing single storey wall. A 6.85m high wall also blank, is to be 1.65m setback.

A blank brick “privacy wall” approximately 2.83m to 3.03m high above existing ground level is proposed to be sited directly on the boundary with 33 Jocelyn Street. The height and siting of the wall on the boundary is excessive and unreasonable. It is 2.4m above the proposed deck.

The rear setback at Ground Level is non-compliant being 5.4m as viewed from 33 Jocelyn Street. There is no reason why the Ground level wall facing 33 Jocelyn Street cannot have a compliant 6m setback. Non-compliance exacerbates the visual impact of the proposal seen from 33 Jocelyn Street.

### **Maximum building height exceedance & view loss**

The proposal exceeds the 8.5m maximum building height development standard in Warringah LEP 2011. The South Elevation incorrectly represents the maximum height limit line, depicting the eastern edge of the proposed roof to be 8.69, 169mm above the 8.5m limit. However the stated height is measured from about 720mm (by scaling from the “South Elevations”) above the existing ground level a non-compliance of approximately 890 mm.

The exceedance has a significant impact on water and foreshore views from 33 Jocelyn Street including ocean and horizon views. Little of the valuable views would be retained from 33 Jocelyn Street, and there is a devastating impact on the water element of the view which arises from a non-compliance with a development standard, that is associated with a three storey appearance due the “sunken lounge” floor level being up to 3.1m above existing ground level (refer to “South Elevations”)

As stated in the view sharing Planning Principle set down by the Land & Environment Court in *Tenacity Consulting Pty Limited vs Warringah Council* [2004] NSWLEC 140 (Tenacity) at para. 29, when considering the reasonableness of a proposal that is causing a view 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 proposal is unreasonably high, inappropriately sited without regard to view impact and does not promote view sharing. The premises at 31 Jocelyn Street would already enjoy high quality water views over 2 levels. The proposal creates a series of non-compliances which lead to direct impacts on views from 33 Jocelyn Street. The views impacted are across a side boundary, but look across a rear setback area where there is a reasonable expectation that view impact will be minimised.

No view loss is acceptable as a result of non-compliances. More importantly, even in the case of a complying proposal, a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of 33 Jocelyn Street.

A more skilful design could increase the upper level rear setback significantly (in the order of 2 m) by a combination of moving the whole floor level closer to Jocelyn Street (and thereby increasing solar access to the rear deck and rear private open space of the proposed development) and providing a more efficient floor layout that did not involve oversized rooms such as the huge wal-in wardrobe and the master bedroom with oversized “upper retreat” and study. A more skilful design would provide the same level of amenity to the applicant in terms of rooms with functional and adequate size for their purpose and would improve the level of amenity to the applicant by improving solar access to the rear private open space.

#### **Inadequate clause 4.6 variation request**

The application seeks to vary the height of buildings development standard. The amount of variation is incorrectly stated as 169 m as discussed above. The reality is not conclusive. Reference to the “South Elevations” suggests that exceedance is considerably more at 890mm.

The applicant’s clause 4.6 variation request does not satisfy the legal tests for a well founded variation. In particular the clause 4.6 variation request does not demonstrate sufficient environmental planning grounds as required by clause 4.6. The clause 4.6 variation request relies on:

- the general benefits of the proposal,
- claims that the variation is minor or improves neighbours’ amenity, and
- the claim that “non-compliance arises as a direct result of the slope of the land”.

On the first point, the environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”.

The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

Secondly the variation may not be minor with an exceedance of up to 890mm (10.5% variation) by reference to the “South Elevations”

Thirdly there are demonstrable view impacts on 33 Jocelyn Street, which is directly adjoining the subject site. Irrespective of the precise quantum of numerical exceedance the proposal will have a critical impact on views from 33 Jocelyn Street. This could be addressed by a more skilful design that significantly increased the Upper Level Rear setback.

The variation of the height standard would not be in the public interest because it would set a precedent for development on the south side of Jocelyn Street, such that successive exceedances would erode the views enjoyed from the southern side of Jocelyn Street.

### **Maximum Wall Height Exceedance**

Reference to the dimensions on the South Elevations shows that the proposal exceeds the 7.2m maximum wall height in the Warringah DCP, at the point where the building exceeds the maximum building height and where view impact is greatest, i.e. 9.39m or approaching the equivalent of a storey height.

For the same or similar reasons as those that apply to the maximum building height breach, the wall height breach is unacceptable.

### **Solar Access**

Solar access for living and dining area will be greatly affected by the proposal, in particular the east side windows of the entry level ground floor living and dining areas;

### **View impact**

The proposal is likely to affect water views from sitting and standing positions in living and dining areas as discussed above.

Lounge and dining areas at 33 Jocelyn Street enjoy sitting and standing views of the ocean and horizon. The proposed middle level has the same height of existing roof. The standing ocean view from the lower and upper levels will be severely affected and the (see images below).





The final assessment of view impacts necessitates the erection of building height poles certified by a registered surveyor.

**Erection of height poles**

To make a proper and reliable assessment of view impact we request the erection of height poles to demonstrate the extents of the proposed upper level addition and high brick boundary wall.

These poles should be certified by a registered surveyor. This would be in the interests of all parties, so that an accurate and proper assessment of view impacts can be made.

**Conclusion**

The proposal exhibits significant non-compliances in the maximum building height development standard; and the maximum wall height controls. These non-compliances lead to impacts on Ocean and horizon views from 33 Jocelyn Street.

It is clear that these are significant non-compliances that could be avoided by a more skilful design that increased the rear setback of the Upper Level.

We consider that, unless certified height poles are erected to demonstrate view sharing is achieved, Council should refuse the proposal, because of its clear contravention of the controls, lack of adequate clause 4.6 variation request and impact on views from 33 Jocelyn Street.

Yours faithfully,



Steven Layman  
Director