

Memo

Development Assessment

To: Northern Beaches Local Planning Panel

Cc: Peter Robinson, Executive Manager Development Assessment

From: Nick Keeler, Planner

Date: 20 April 2022

Subject: Item 4.1 – DA2021/1801 – 55 Woolgoolga Street, North Balgowlah

Record Number: 2022/235755

Dear Panel,

The purpose of this supplementary memo is to address matters raised in the submissions made to the panel by Blackwattle Planning (on behalf of owners of 6 Dorrigo Avenue, 8 Dorrigo Avenue and 10 Urunga Street), Paul Masluk (co-owner of 10 Urunga Street) & McKees Legal Solutions (on behalf of the applicant and the owners of 55 Woolgoolga Street).

Blackwattle Planning Submission

Objection to rock fall and boulder roll not addressed in report

Council is satisfied that matters relating to rock fall and boulder roll during construction can be appropriately managed with the implementation of the recommendations of the Geotechnical Investigation Report, prepared by Geo-environmental Engineering, dated 09/08/2021. The report concludes,

“Based on the results of the investigation, it is concluded that the development can be undertaken with appropriate engineering design and construction controls, such that the risks of slope instability associated with the works and the completed development will be acceptable...”

It is conditioned that the recommendations of the report are incorporated into the structural design and construction of the dwelling.

Objection to adequacy of Clause 4.6 Variation request not addressed in report

The proposed development has been assessed in accordance with the requirements of Clause 4.6 of WLEP 2011.

The variation request focused on the impacts of the proposed dwelling when viewed from Woolgoolga Street and Nos. 53 and 57 Woolgoolga Street.

While the applicant does not specifically mention properties referred to in this submission, the variation request is adequate in that the request relates to the non-compliant building height elements, which are sited away from the eastern and

southern adjacent properties and have a limited visual impact when viewed from these properties. The closest elements of the building to the adjacent properties comply with the building height and therefore do not need to be justified under Clause 4.6. Additional overshadowing of adjacent properties is expected, but the extent of the overshadowing is reasonable in the context of the site and surrounds, as discussed below.

It is acknowledged that the proposed development is of a larger bulk and scale compared to that of the existing dwelling on the site. However, it is not reasonable to expect new development not to be supported on the basis that it is larger than the existing development. The built form of the development is sited in a manner that mitigates the visual bulk and scale when viewed from adjacent properties.

Additional building bulk is expected to be observed from the eastern adjacent properties, however the built form of the closest elements of the proposed dwelling to these properties is compliant with the building height and setback controls, with only a minor non-compliance to the building envelope control.

To further assist in mitigating the visual and privacy impact of the proposed development on adjacent properties, conditions are recommended to alter the size and privacy treatment of several windows along the eastern elevation and require the depth of the second-floor deck to be reduced by 1m.

Council is satisfied that the proposed development adequately addresses the objectives of Clause 4.3 and the justification provided under Clause 4.6 is adequate.

Access to sunlight not adequately addressed in report

The proposed development is expected to result in additional overshadowing of some adjacent properties, including those referred to in this submission.

The assessment report states that the proposed development demonstrates compliance with the D6 Access to Sunlight control requirements. This is true in relation to the private open space of the dwellings at 8 Dorrigo Avenue and 10 Urunga Street.

However, upon review of the submitted shadow diagrams, full numerical compliance with the control requirement is unable to be achieved to the private open space of 6 Dorrigo Avenue due to the topography of the land and proximity to surrounding properties and buildings (namely 4 Dorrigo Avenue and 53 Woolgoolga Street. As such, the following assessment of the non-compliance in accordance with the control objectives is provided below,

- *To ensure that reasonable access to sunlight is maintained.*

Comment: The level of overshadowing resulting from the proposed development is a product of the steep topography of the site and the surrounding land and the perpendicular subdivision pattern of properties to the east of the site. In this way, overshadowing impacts on properties to the south are inherently exacerbated compared to flat land with a parallel subdivision pattern.

The property 6 Dorrigo Avenue is particularly vulnerable to overshadowing due to it being located at the base of the steepest portion of the slope and oriented perpendicular to the subject site. To require strict adherence to the solar access requirements in this case would unreasonably restrict development on the subject site.

An analysis of the shadow diagrams indicates that at least 30m² of the private open space at 6 Dorrigo Avenue will be unimpeded by existing and proposed shadows at

9am, 11am and 12pm. This extends for short period before and after each of these hours. The private open space of this property is effectively completely overshadowed from 1pm.

Notwithstanding the expected overshadowing, the proposal provides a reasonable level of solar access to the subject site and surrounding sites, considering the site's slope and subdivision pattern of the locality.

- *To encourage innovative design solutions to improve the urban environment and public open space.*

Comment: The highest elements of the proposed dwelling are located as close to the north as possible in consideration of the relevant front setback control. The dwelling is designed to step down with the site topography to ensure that the overall bulk and scale of the building responds appropriately to the spatial characteristics of the site. This assists in mitigating additional unnecessary overshadowing of adjacent properties. As such, the proposal is appropriately designed to improve the urban environment and public open space.

- *To promote passive solar design and the use of solar energy.*

Comment: The subject site achieves adequate solar access, and the proposed dwelling is designed to incorporate passive solar design and the use of solar energy. As above, the proposal provides a reasonable level of solar access to the subject site and surrounding sites, given the context of the area's topography and the vulnerability of the sites to the east and south.

Stormwater Control policy not upheld

The applicant has provided details that adjacent downstream property owners have been approached for the creation of an inter-allotment drainage easement, however no owners have provided formal consent for such an easement to be created.

Council's Water Management for Development Policy states that where an inter-allotment drainage easement is not able to be suitably created, other stormwater disposal systems, such as a level spreader may be considered. Council's Development Engineers have assessed the proposed stormwater management plan in accordance with the requirements of the policy and raise no objection, subject to conditions.

Conditions of consent

Condition 15 – The proposed development complies with the requirements of the Water Management for Development Policy. The removal of this condition as requested is not recommended.

Condition 36 – The proposed development has been reviewed by Council's Landscape Officer. The removal of some canopy trees is required due to deteriorated health and potential impacts to life and property. The condition includes the requirement to replace the proposed *Acmena Smithii* 'Hot Flush' along the eastern and southern boundaries to a different species of Lilly Pilly that can reach a height of at least 5m. This will assist in providing additional privacy and screening the bulk and scale of the dwelling. Alteration of this condition as requested is not recommended.

Masluk Submission

Stormwater Management

While this neighbour has indicated a willingness to offer an inter-allotment drainage easement, negotiations with the applicant have not resulted in an agreement where such an easement has been accepted.

As such, where a drainage easement agreement cannot be obtained, Council's Water Management for Development Policy allows for alternative stormwater disposal systems to be used, such as a level spreader. Council's Development Engineers have assessed the proposed stormwater management plan in accordance with the requirements of the policy and raise no objection, subject to conditions.

Scale & Bulk – Privacy

The assessment report includes a detailed assessment of matters regarding privacy impacts from the proposed development.

The concerns regarding overlooking towards the rear adjacent property are mitigated due to the spatial separation between buildings (greater than 9m) and the condition to require 5m high screening vegetation to be planted along the rear boundary.

No unreasonable privacy impact towards the rear adjacent dwelling is expected to be created by the proposed development, subject to conditions.

McKees Legal Solutions Submission

Stormwater Issues

It is noted that the amended stormwater system reduces the amount of discharge compared to the original proposal.

Overshadowing, visual bulk and compliance with building envelope

Consideration of issues relating to these matters are discussed in the assessment report and above in this supplementary memo.

Response to Condition 12

Council has imposed Condition 12 to ensure that the proposed dwelling does not cause an unreasonable impact to adjacent properties and to ensure the building is used for the purpose of a dwelling house.

It is noted that a transcription error has occurred when drafting Condition 12. Part (g) of the condition is a duplicate of part (b). As such, part (g) should be deleted. All other parts of the condition are recommended to be retained.

Recommendation

- A.** Note the revised solar access assessment for the dwelling at 6 Dorrigo Avenue.
- B.** Amend Condition 12 to delete part (g).
- C.** All other recommendations contained within the agenda assessment report be maintained.