
Sent: 30/09/2022 6:21:35 PM
Subject: Submission objecting to amended plans DA2022/0857 28 Goondari Road Allambie Heights
Attachments: Objection to amended plans 28 Goondari Road Allambie Heights.pdf;

CEO Northern Beaches Council
Attention: Alex Keller

Dear Sir,

Please find attached a submission on behalf of the owners at No. 26 Goondari Road Allambie Heights in relation to amended plans lodged for DA 2022/0857.

Could you please acknowledge receipt of this submission.

Thankyou.

Regards,

Anna Williams, Director
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The CEO
Northern Beaches Council
council@northernbeaches.nsw.gov.au
Attn: Alexander.Keller@northernbeaches.nsw.gov.au

30 September 2022

Dear Sir,

RE: DA2022/0857 Demolition of an existing dwelling and construct new dwelling and swimming pool at 28 Goondari Road Allambie Heights

We are advising Daniel Gobeil and Caroline Slongo, the owners of No. 26 Goondari Road Allambie Heights. We have reviewed the amended plans and information provided on the Council's website and provide the following response for Council's consideration.

Warringah DCP 2011

Control D6 Access to sunlight

The shadow diagrams provided in plan view confirm the substantial shadow impact that will result from the proposed dwelling at 28 Goondari Road. We note that the amended statement of environmental effects offers no analysis of the shadow impact except to say that it complies with the control. We disagree with this statement and maintain that the impact upon No. 26 Goondari Road is both excessive and non-compliant with Council policy both numerically and in relation to performance standards. The relevant requirements of Warringah DCP 2011 contained in Control D6 Access to sunlight are as follows:

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

The private open space available to No. 26 Goondari is located in the front yard of the property. Two main areas in the front yard form the private open space, one adjoining the pool and the other towards the south western corner of the front yard. The requirement for 50% of private open space to receive 3 hours of sunlight is not achieved for either area or for the areas combined.

The applicant makes a direct comparison with shadows of the existing dwelling. It is noted that these existing shadows are also non-compliant with the numeric requirements of the control. In the circumstances of the complete demolition of the existing dwelling and a new build, we do not see how the existing shadows can be relied upon as a justification for both a non-compliant and very poor outcome for No. 26 Goondari Road.

With a new build comes an opportunity for compliance with these requirements, or at least a greater level of compliance. In the case of the proposed design however a worse outcome than existing is achieved.

We acknowledge that the site has topographical challenges, however we note that significant excavation of the site is proposed and that this negates the challenges of the topographical constraint. The applicant has readily removed the constraint of the steep land through the proposed excavation and this would no longer be a valid argument for creating excessive shadow impact.

We also think that the proposed design having a long east west axis maximises the impact on the southern neighbour, and that alternative designs will have significantly better outcomes for both compliance and performance.

Even in the less than optimal circumstances of an east west aligned site, a worsening of both compliance and performance from the existing is not acceptable for a new dwelling and we ask that Council reject the development on these grounds and noting that the proposal does not meet the numeric requirements of the Control nor does it meet the stated objective of providing *reasonable access to sunlight*.

Control B5 Side boundary setbacks

Whilst the addition of planting within a 900mm setback is acknowledged, the design results in limited ability for maintenance.

The west elevation shows the plants within a planter box approximately 1m high. This appears inconsistent with the south elevation where the top of the planter box is approximately 1.6m above the lower ground floor finished floor level. Accessing a planter box at 1.6m above ground level is difficult and unlikely to be successfully carried out. The planting within the planter box will be out of sight of the occupants of No. 28 Goondari Road and therefore are not likely to receive appropriate maintenance.

Additionally, we cannot see what species are proposed to be planted in the planter box. The elevations provided indicate a species that appears at a height of less than 1m which is wholly inadequate to screen the 3m wall beyond.

Notwithstanding the planter box provided we do not see that the the design performs positively in relation to the objectives of the control and specifically the following:

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

From the drawings it appears that the only barrier to direct overlooking into No. 26 Goondari Road from the main private open space of the new dwelling is a 1m high balustrade. The diagram provided indicating the sight line from the lounge room does not demonstrate the direct overlooking available from the patio area. This circumstance arises because the private open space is not oriented to the front or rear and because sufficient barriers to overlooking have not been included in the design.

We request that Council do not accept this design approach which results in significantly adverse privacy and amenity impacts upon the primary private open space areas at No. 26 Goondari Road.

Control D9 Building Bulk

We have raised previously the inability of the proposed design to comply with this requirement of the DCP. Our concerns remain in this regard as follows:

Building height and scale needs to relate to topography and site conditions

We have raised that the design proposed does not step with the fall of the land in an east to west direction, that significant excavation is proposed, and that the scale of the dwelling will appear as three storeys from the street and is uncharacteristic of other nearby dwellings and jarring in the streetscape.

No response to this concern has been provided and no design changes have been employed to change the how the design responds to this issue. The concern remains, and we do not see how the current design can be said to relate positively to the topography or site conditions. The design seeks to remove the topography rather than work with it.

Orientate development to address the street

The ground floor level floor plan demonstrates that the primary focus of the living areas remain to the south. Whilst some glazing is provided to the west elevation, all ground floor living areas, and almost all upper ground floor bedrooms remain oriented to the side boundary. The design approach has provided a long elevation that faces the southern neighbour, and in doing so presents the significant bulk of the building where it has greatest impact from both a visual bulk and privacy perspective.

We think that this approach is contrary to the expectations of the DCP which seeks to ensure that primary orientation and therefore the bulk of a design is not directed substantially onto neighbours. The effect of orienting the dwelling with an east west long axis is that the full length of the building, its extensive glazing, and the adjoining private open space all face directly onto No. 26 Goondari.

The concern remains and has not been resolved in the amended design.

Landscape plantings are to be provided to reduce the visual bulk of new building and works.

The resulting visual bulk of the building when presented substantially to No. 26 Goondari Road is not mitigated by mature canopy. Whilst we do not accept that the performance of the previous dwelling which had a similar orientation is valid justification (as that dwelling is to be wholly demolished), we note that the previous circumstance was significantly ameliorated by the presence of large canopy trees. These trees are to be removed and no replacement canopy plantings are provided to appropriately soften the sight line to the elongated and higher south elevation presenting to No. 26 Goondari Road.

We note that insufficient information is provided in relation to the protection of trees within the front setback. The three storey presentation to the street is unsatisfactory, and becomes even more so with the compromising of trees in the front setback.

Both to the neighbours and to the streetscape, the bulk proposed by the design has not been successfully reduced. A reduction in the bulk of the design is appropriate where there is no capacity to mitigate impacts upon the visual impact of the building on the southern neighbour.

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.

As previously raised, we do not see how the proposed design meets these requirements. The bulk of the dwelling that presents to No. 26 Goondari (the downhill neighbour) appears to have been maximised rather than reduced.

Overall, we think that there have been no amendments to the design that appropriately resolve the extent to which the bulk of the dwelling is oriented to the neighbour, and that this is a key DCP outcome that should be achieved in the design.

Control E1 Preservation of Trees

Warringah DCP 2011 includes provisions relating to the preservation of trees. These provisions include the following objectives:

To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long-term; and,

To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.

Again, we reiterate that replacement planting of existing mature canopy trees must be achieved on this site for the benefit of the ecology of the locality and to maintain the scenic qualities that are a feature of the Allambie Heights neighbourhood. Additionally, mature canopy would assist greatly in providing softening and a sense of appropriate scale to a larger dwelling such as this, if it were to be approved.

The absence of canopy in the immediate context of the dwelling located to intervene neighbouring sight lines leaves the new design with an inferior outcome both compared to existing circumstance and on its own terms.

Control D8 Privacy

Warringah DCP 2011 provides specific provisions to ensure high levels of acoustic and visual privacy. We have raised previously our substantial concerns about the lack of privacy that will result, primarily as a result of the decision to orient the dwelling predominantly towards No. 26 Goondari Road.

The amended plans have not attempted to change this aspect of the design in any effective manner. We acknowledge that solid balustrades are provided, however where almost all balconies and open space areas face the side boundary, we do not believe this to be enough. It appears that the issue relates to the fundamental design approach taken of an elongated elevation facing the side boundary where views are likely to be obtained by the new dwelling. To this extent, the design does not accord with the following requirements of Control D8:

Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties; and,

Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking; and,

The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.

Our concerns remain and have not been resolved by an exploration by the applicant of different design options on the site.

Encroachments of No. 26 Goondari Road onto the subject site

Our previous submission and that of our clients Daniel and Caroline have raised significant concerns about the extent to which the proposed development will impact the existing pool and drainage infrastructure that encroaches onto No. 28 Goondari Road.

We raise again that these encroachments predate either party's ownership of their respective properties and that it is appropriate that a resolution of the issue is arrived at before Council grant consent to any works. Council's obligations under Section 4.15(1) (b) and (c) of the EP & A Act extend to consideration of these matters and failure to do so would constitute a breach of that Act. We note that the extensive caselaw in this area establishes that the circumstances of the encroachment are relevant to the remedy that may be imposed by a Court.

We think that the provision of an additional setback of the development to the southern boundary would be one way of resolving the problem. This solution is reinforced by the DCP guidance that a 900mm setback is appropriate.

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Whilst some flexibility is afforded in the DCP for driveways to be closer to the boundary, such flexibility should only be applied with a consideration of the impacts that would arise. In this case the impacts arising are likely to render the pool at No. 26 Goondari unusable. We think this would be an unreasonable outcome and that a minimum setback of 900mm should be provided. We think there is capacity for adjustment of the garage and workshop to allow for this.

By providing an additional setback, a development consent could be issued and construction could proceed without being dependant on an agreement between the parties. A resolution of the boundary issue (which also exists in the reverse at the eastern end of the site as the fence encroaches No. 26 Goondari Road) would then have time to be realised, hopefully on an agreed basis.

The circumstances of both parties having purchased their properties with the knowledge of the encroachment lend themselves significantly to a formal mediation of the situation. As the development as currently proposed by the applicant could not be effected without trespass upon the infrastructure on which the pool relies, we think that Council has an obligation to address this situation prior to the grant of consent.

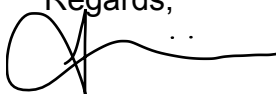
As expressed by Daniel and Caroline, there is a willingness to undertake a boundary adjustment by agreement with the applicant which would also allow a resolution of the issue.

We note that contrary to comments made in the amended statement of environmental effects, there is no intention of the owner of No. 26 Goondari Road to compel a relinquishment of land. Rather, our clients seek a cooperative approach to the issue which has persisted unrestrained over an extended period of time, rather than ignoring the problem which appears to be the current approach by the applicant.

Whilst we feel that the significant issues raised above are sufficient for Council to refuse the application, should there be a contemplation of the issue of consent, we ask that before doing so Council outline how this issue is to be resolved.

Please contact us on 0418 622 598 or at anna@blackwattleplanning.com.au should you require any further information.

Regards,



Anna Williams,
Director

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