
Sent: 25/06/2021 11:28:00 AM
Subject: FW: Objection to Mod2021/0317 - DA2020/0211
Attachments: Tess Lavender Submission to Northern Beaches Council (1).docx;

From: Tess Lavender <tess@cxlavender.com.au>
Sent: Thursday, 24 June 2021 3:21 PM
To: Anna Williams <Anna.Williams@northernbeaches.nsw.gov.au>
Cc: Adam Croft <adam.croft@northernbeaches.nsw.gov.au>; Louise Kerr <Louise.Kerr@northernbeaches.nsw.gov.au>; Will Lavender <will@cxlavender.com.au>
Subject: Objection to Mod2021/0317 - DA2020/0211

Dear Anna,

Please find our objection to the above Modification application.

Regards

Tess
Tess Lavender
0411 628 262

24 June 2021

Ms Anna Williams
Manager, Development Assessments
Northern Beaches Council

Dear Anna,

Re: Mod2021/0317 – DA2020/0211

We have received the notice of modification application No. Mod2021/0317 (the Modification) and believe it is important that any decision maker in this matter is aware of the history of our involvement in the assessment and approval of the original development application, which we have consistently submitted should not have been approved. We are the direct neighbours of the development which is the subject of the Modification and the persons who will be most adversely affected by this development.

Previous Submissions

We have made a number of submissions in relation to the development works which have been carried out at 82-84 Bower Street, Manly. We provide a summary of the key matters raised in these submissions below.

Objection to DA 168/2017, (August 2017)

- Objected to the serious non compliances in the proposal such as FSR excess, height excess, insufficient setbacks, increased openings and excessive bulk and scale.
- Believed that by seeking to have this application characterised as alterations and additions to the existing development (despite significant evidence to the contrary), the applicant was trying to get away with multiple non-compliances with Council's local environmental planning development standards and development control plan controls, despite ultimately always intending to build a new structure.
- Argued that the age and condition of the existing building made it impossible for the development to be completed under the guise of 'alterations and additions' and that most floors and walls could not be retained as per the application and conditions of the consent.
- Listed serious privacy impacts and loss of amenity and requested that these be addressed.

DA 168/2017 was approved. None of our privacy objections were considered and zero concessions were made. We notified Council that if the applicant breached the conditions, as we suspected they would have to, we would bring this to Council's attention.

Objection to DA 2020/0211 – following the issuing of a Stop Work Order by Council in 2019 for significant breaches to the General Conditions of DA 168/07, (August 2020)

- Argued that the applicants had in fact carried through with what we predicted all along. The previous structure had all but been demolished.
- Agreed with Council's assessment report recommending refusal for this DA on the basis that the degree of demolition meant that it could only be considered a new development.

Presentation to the LPP, (August 2020) after 20 local objections

- Raised the very real impacts that the proximity, scale and additional openings meant for us in terms of the impingements the development had on our visual privacy and amenity.
- Explained the importance of screening the ground floor internal areas and balcony to stop the serious overlooking issues.
- After the LPP deferred their decision, we met with the LPP members at our home so that they could observe first-hand the privacy impacts that would result if approval of DA 2020/0211 was granted without the incorporation of adequate measures which would prevent this occurring.

In the Minutes from the LPP decision, the Panel made it clear that they agreed with our concerns regarding the impact that was posed to our privacy and stated that it was “**most important**” that the impacts to our property were addressed. The LPP ultimately approved the DA but importantly they did so subject to the imposition of two conditions, which were specifically imposed to prevent overlooking from the Applicant’s internal living areas and balcony into our property, including into our internal living rooms and onto our outdoor pool area.

Objection to the current modification application, Mod 2021/0317

Views versus privacy

This is a matter of planning principle and the right of one neighbour to have privacy over the desire of another neighbour to have excessive views despite the loss of privacy and amenity this would result in for the other. The Applicant enjoys beautiful views, as do all the homes along this stretch of Bower Street. The proposed screening as required by Conditions 7 and 8 does not negate these views. See Photo 5.

With the screening as imposed by the LPP, the Applicant will still retain and be able to enjoy the expansive views that all these properties have to the north. And when they walk to the edge of their deck, occupants of 84 Bower Street will also enjoy views to the West, towards the more southern end of Manly Beach. This is how it is for all the residents on this side of the Street. If we want to view this part of the beach, we need to walk to the edge of our deck. We cannot see it from our living room and we cannot see it from most of our deck. In exactly the same position on our own deck, we have a solid brick wall to protect the privacy of our neighbours on that side. We simply do not understand why our neighbours believe they have the right to this view from their lounge room and all parts of their balcony in circumstances where it will come at the expense of our privacy.

Furthermore, one of the reasons that the LPP stated for imposing these two conditions was to “**maintain design consistency with the similar edge type screening along the adjoining dwelling**”. The other side of this dual occupancy (82 Bower Street) has a balcony, which is screened for its entire length. This requirement is consistent with Council’s development controls and therefore should be in place on both sides of the Applicant’s development.

Without the screening as imposed by the LPP our property will be vulnerable to overlooking from both the Applicant’s kitchen/dining and living area as well as their balcony, into all the areas of our home that are important to us and to our general amenity. These are our; pool deck and main outdoor living area, main indoor sitting area, dining room, kitchen, main bedroom, ensuite and upstairs loungeroom. See photos 1-4 attached.

Attempts by us to protect our privacy

The argument in the Statement of Environmental Effects (**SEE**) for the modification application that privacy doesn't matter to us is a nonsense. Firstly, the sailcloth referred to in the SEE was removed because it was a noise hazard given the coastal position and prevailing winds. But most importantly, it was nothing more than a sun screen. It covered less than 5% of the deck area and provided us with very little (if any) privacy – and certainly none in the areas where it is most needed as a result of the Applicant's development. We have however installed a retractable awning which we can use, when conditions allow, to provide privacy in one small section of the deck and we have included additional plantings in the garden bed to this end. But neither of these elements is capable of providing any adequate level of privacy screening against the extent of overlooking which results from this development.

Effectiveness of the proposed, modified screening

The detail of the new proposed screening on the Ground floor window areas and balcony does not fulfil the purpose of achieving visual privacy and amenity for us. Nor does it adequately address the reasons that the LPP stated for it being necessary.

The LPP made it clear in the conditions imposed that the purpose of the screening was to ensure that there **"can be no vision and overlooking"** (exact words) from the ground level **"kitchen, dining and living areas"** or from **"the external balcony"** into our property. The conditions imposed by the LPP required detailed screening be installed for both the windows and the balcony which would protect us from this potential overlooking and also clarified, when challenged, that it was to run the **"full length of the balcony"**.

The timber slats as proposed can be looked through. They will result in overlooking; forward onto our outdoor area and pool deck and back into the house in all areas as detailed above. They may look like they are a screen, but they have not been designed to stop the overlooking. On the balcony, the planter box is simply inadequate and would provide no visual privacy for us whatsoever.

Summary

We believe it is wrong that the Applicant seeks to expand upon what is the normal view of the residents up and down the Street – at the expense of our privacy. Approving this application allows one party excessive views (North, West and South directly into our home) at the expense of the other party's privacy and right not to be exposed to overlooking in their home. Ensuring that effective privacy screening is in place, as conditioned by the LPP, is a matter of both policy, principle and justice. If the Applicant is permitted to modify Mod 2021/0317 in the manner proposed, which will completely undermine the important reasons for which the relevant conditions were imposed, it will make a mockery of the entire planning and approval process. Most importantly, approval of the Modification will serve only to meet the excessive, unreasonable, unnecessary and extraordinary demands of one party to the serious detriment of the other.

Kindest regards

Tess and Will Lavender

Photo 1 (showing views from internal areas and balcony into kitchen, dining, main lounge, upstairs lounge, bedroom and bathroom)



Photo 2 (showing views from internal areas forward onto our main outdoor area and pool)



Photo 3 (showing views from internal areas and balcony onto main outdoor space)



Photo 4 (showing views from internal areas and balcony into bedroom, bathroom and upstairs lounge)



Photo 5 (showing part of the expansive view north that the applicant enjoys)

