
Sent: 31/01/2020 1:59:15 PM
Subject: RE: DA2019/1386 Attn: Penny Wood
Attachments: 20106MonserraSubmission.pdf;

Hi Penny

Thank you very much for your email.

As I mentioned, attached is our response for the Development Application for 22 Monserra Road. If you have any questions please don't hesitate to contact me.

If you are planning to visit the property next week please let me know as it would be good to meet up on site.

Regards,

Dr Graham Sinden

From: Penny Wood <Penny.Wood@northernbeaches.nsw.gov.au>
Sent: Thursday, 30 January 2020 12:53 PM
To: gsinden@gmail.com
Subject: RE: DA2019/1386 Attn: Penny Wood

Hi Graham,

Thanks a lot for your email and apologies for my late reply, I have been on leave and today is my first day back in the office.

I am yet to visit the site and am hoping to get out there next week. I am happy to accept your submission on the 31st January and if you would like me to visit your property to view any of the issues you have raised please let me know.

Kind regards,

Penny Wood
Planner
Development Assessment
t 02 9970 1353
penny.wood@northernbeaches.nsw.gov.au
northernbeaches.nsw.gov.au



From: gsinden@gmail.com <gsinden@gmail.com>
Sent: Friday, 24 January 2020 4:52 PM
To: Council Mailbox <council@northernbeaches.nsw.gov.au>

Subject: DA2019/1386 Attn: Penny Wood

Dear Penny,

I'm writing in relation to DA2019/1386, and to confirm my phone call with Northern Beaches Council this morning (24 January 2020) regarding an extension of time to submit a response. During this phone call, Council informed me that it will still accept responses to the DA next week.

Given Council will accept a response next week, I will prepare and submit a fuller response by 31 January 2020. In summary, my response will raise objections to the current proposal in relation to:

1. Breach of the building envelope control, which is materially exceeded along portions of the side boundaries, in particular the boundary to 20 Monserra Road where the building envelope control is not complied with for the full length of the main building. The building control envelope is also non-compliant adjacent to 24 Monserra Road
2. The proposal exceeds the site coverage requirement (despite the Statement of Environmental Effects claiming it complies)
3. Extensive shade impacts on 24 Monserra Road
4. Breach of the landscaped area control
5. The visual impact of the proposal (the proposal acknowledges that non-conformance with building controls adds to the visual impact of the building)
6. The Statement of Environmental Effects includes incorrect information, and in some places is incomplete
7. A deficient Clause 4.6 application, which in its current form does not meet the legislated requirements of a Clause 4.6 application

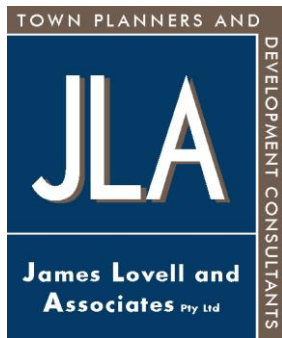
I will submit a fuller response to the DA by 31 January.

Regards,

Dr Graham Sinden
0419659932

Northern Beaches Council

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31 January 2020

The General Manager
Northern Beaches Council
PO Box 82
MANLY NSW 1655

Dear Sir/Madam,

DEVELOPMENT APPLICATION No. 2019/1386
22 MONSERRA ROAD, ALLAMBIE HEIGHTS

Introduction

I act on behalf of Dr Graham Sinden in relation to the abovementioned matter which comprises a Development Application (DA) for the demolition of the existing dwelling-house and the construction of a new dwelling-house and secondary dwelling at No. 22 Monserra Road, Allambie Heights ("the subject site").

My client is the registered owners of the adjoining property to the north-east, identified as No. 20 Monserra Road, Allambie Heights.

I confirm that I have inspected the subject site and surrounding land, and reviewed the documentation submitted in support of the DA including the Architectural Plans, Shadow Diagrams and Statement of Environmental Effects (SEE).

My client objects to the proposed development on the basis that the documentation submitted with the DA is inadequate and incomplete, and the proposed development will generate adverse (and unreasonable) impacts on the amenity of my client's property.

Further, the proposed development includes a significant non-compliance with the building side boundary envelope control, and the non-compliant portions of the building directly contribute to the impacts on my client's property.

Proposed Development

The proposed development comprises the demolition of the existing dwelling-house and the construction of a new dwelling-house and secondary dwelling.

The proposed dwelling-house adopts a 2-storey building form, with the ground and first floor levels occupying the same building footprint.

Off-street car parking is proposed for two (2) vehicles within a double garage occupying a portion of the ground floor level.

The secondary dwelling is a single storey building located to the rear of the dwelling-house, with pedestrian access provided via a pathway extending along the north-eastern boundary (adjacent to my client's property).

A swimming pool is proposed to the south-west of the dwelling-house incorporating perimeter coping and a partial concrete awning.

Documentation

I have reviewed the documentation submitted with the DA, and in my opinion, the documentation is inadequate and incomplete, and does not satisfy the requirements of Part 1 – Schedule 1 of the *Environmental Planning and Assessment Regulation 2000*.

I have identified the following specific concerns in relation to the DA documentation:

- the DA is not accompanied by a Landscape Plan prepared by a “suitably qualified professional”, a Demolition Plan, or a Waste Management Plan, despite those documents being requirements of the “*Development Application Lodgement Requirements*”;
- the Architectural Plans do not identify the sill heights of the windows extending along the side and rear facades;
- the Architectural Plans are misleading in relation to the depiction of the side boundary envelope control, in particular, on the “*West Elevation*” where the ground level used to construct the envelope (RL95.33) is located adjacent to the rear boundary, and not adjacent to the north-western portion of the 2-storey element of the building where the existing ground level is RL94.66;
- the Architectural Plans are misleading in relation to the depiction of an envelope control measured from the front and rear boundaries that does not apply;
- the SEE does not include an assessment of the proposed development against the relevant provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*
- the SEE does not include an assessment of the proposed development against the relevant provisions of the Warringah Local Environmental Plan (LEP) 2011, including Clauses 2.3, 5.4, 6.2 and 6.4;

- the SEE has mis-interpreted the provisions of the Clauses 4.3 and 4.6 of the Warringah LEP 2011;
- the SEE refers to *"Demolition of the existing low brushwood fence and the installation of wheel stops"*, the meaning of which is unclear;
- the DA is not accompanied by an arborist's report in relation to the trees being removed and/or retained on the site;
- the shadow diagrams depict shadows cast by existing trees which is inconsistent with the *"planning principles"* established in *The Benevolent Society v Waverley Council [2010] NSWLEC 1082*;
- the shadow diagrams are incomplete, and have been *"cut off"* along the boundary of No's 24 and 26 Monserra Road, when infact the shadows will extend further to the south-west during the morning period;
- the shadow diagrams appear to have been prepared on the basis of the adjoining property to the south-west having a level topography, when infact the property falls towards the street frontage; and
- the SEE has mis-interpreted the side boundary envelope control contained in the Warringah Development Control Plan (DCP) 2011, and applied the wrong assessment criteria in relation to the non-compliance with that control.

Side Boundary Envelope Control

Part B3 of the Warringah DCP 2011 provides a side boundary envelope control, and specifies that buildings must be sited within an envelope determined by projecting planes at 45 degrees from a height of 4 metres above ground level (existing) at the side boundaries.

The objectives of the side boundary envelope control are expressed as follows:

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*
- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*
- *To ensure the development responds to the topography of the site.*

The north-eastern wall of the proposed dwelling-house is setback 900mm from the side boundary (adjacent to my client's property) at the first floor level. Accordingly, any portion of the building that extends above a wall height of 4.9 metres (at the setback of 900mm) breaches the side boundary envelope control.

In that regard, the plan extract below identifies the approximate portion of the north-eastern wall of the building that breaches the control.

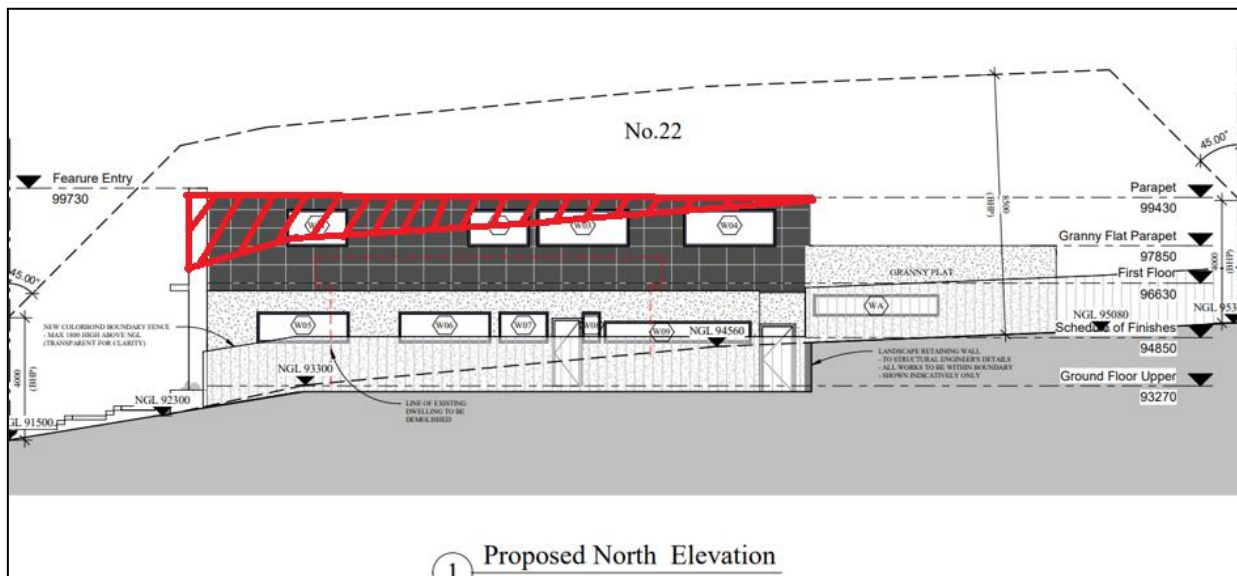


Figure 1: Breach of the Side Boundary Envelope Control Adjacent to My Clients Property

As can be observed, the whole of the north-eastern wall (for its length of approximately 17.8 metres) includes a breach of the side boundary envelope control.

In that regard, it is important to appreciate that the envelope control depicted on the Architectural Plans (with a dashed black line) is projected from the front and rear boundaries. That is not a control incorporated in the Warringah DCP 2011.

Further, the Architectural Plans are misleading in relation to the depiction of the side boundary envelope control, in particular, on the "*West Elevation*" where the ground level used to construct the envelope (RL95.33) is located adjacent to the rear boundary, and not adjacent to the north-western portion of the 2-storey element of the building where the existing ground level is RL94.66.

In relation to the specific objectives of the side boundary envelope control, the non-compliance materially increases the height and bulk of the building along the boundary adjacent to my client's property (relative to a compliant building).

Further, it is likely that the existing housing stock in the locality will be progressively replaced in the foreseeable future, circumstances in which new buildings should achieve strict compliance with the side boundary envelope control so as to contribute to achieving the desired future character of the locality (as expressed by the controls).

The non-compliance does not ensure adequate spatial separation between buildings (either existing or future), and there are multiple window openings (on non-compliant portions of the wall) that provide opportunities for direct and proximate overlooking of my client's property.

The proposed development does not respond to the sloping topography of the site, and a combination of excavation and fill are proposed to achieve a level building platform on a site that exhibits a sloping topography.

In the circumstances, the proposed development is inconsistent with the specific objectives of the side boundary envelope control.

Landscaped Open Space and Site Coverage Controls

The SEE and Architectural Plans suggest the proposed development includes non-compliances with the landscaped open space and site coverage controls incorporated in the Warringah DCP 2011.

The suggested non-compliances (assuming they are correct) are numerically small, however in my opinion, there is no town planning reason why the proposed development cannot (and should not) achieve strict compliance with those controls.

The non-compliances do not arise from any specific site or design constraints, and simply arise as a consequence of proposing a building form that extends beyond that contemplated by the controls.

Conclusion

In my opinion, there is no town planning reason why the proposed development cannot (and should not) achieve strict compliance with the side boundary envelope, landscaped open space and site coverage controls.

The non-compliances do not relate to any specific site or design constraints, and arise directly from the rectilinear building form, demonstrating a distinct absence of any horizontal or vertical articulation along the north-eastern boundary, and extending the building footprint beyond that contemplated by the controls.

Finally, (then) CJ McClellan commented in *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 that:

*Consistency of decision-making must be a fundamental objective of those who make administrative decisions. **That objective is assisted by the adoption of development control plans and the making of decisions in individual cases which are consistent with them.** If this is done, those with an interest in the site under consideration or who may be affected by any development of it have an opportunity to make decisions in relation to their own property which is informed by an appreciation of the likely future development of nearby property [emphasis added].*

I trust this submission is of assistance, and ask that I be kept informed prior to any determination being made, and/or in relation to any further information submitted by the Applicant.

In the meantime, should you require any further information or clarification please do not hesitate to contact the writer.

Yours Sincerely,



James Lovell
Director
James Lovell and Associates Pty Ltd