
Sent: 20/03/2019 5:04:50 PM
Subject: Objection
Attachments: Extension approved objection - GB Feb 19.docx;

The General Manager
Northern Beaches Council
PO Box 82, Manly, NSW, 2095
council@northernbeaches.nsw.gov.au

16 March 2019

Attention: Development Assessment
Planner: Renee Ezzy

**MODIFICATION APPLICATION: MOD 2019/0029 DA367/2010
46 VICTORIA PARADE, MANLY**

Dear Ms Ezzy,

We have reviewed the above noted Modification and would request Council to:

- A. Refuse the Mod2019/0029 because the developer is stealing our sunlight with the increased floor heights, increased roof heights at the western edge, change and shape of “cutout” on Level 4 and introducing a planter box. Retain Conditions 96, 101 and 119 approved by LEC and MIAP in 2014 to reduce impacts on the amenity of adjoining residential properties.
- B. The **Roof Plan** has a smaller ‘cutout’ than the MIAP approved. The approved measured approximately 8.25 metres and the 2019 proposed is approximately 3.10 metres. The 2019 shadow drawings show we will **lose more solar access** especially at 12pm compared to the MIAP approved drawings 28.05.14 Issue C and on the southern side of our living room. (We suggest some simple modifications that may resolve the problem),
- C. Refuse the **enclosure of rear Balconies and delete the louvres on the south elevation** to PROTECT AND MAINTAIN our amenity. As the setback is a driveway these enclosures are in our face all day. The enclosures will create an extra two-storey wall of concrete 1.5m wide directly opposite our living room doorway with added windows. The closeness will impose a sense of enclosure and bulkiness upon our balcony.
Retain conditions 1 and 100 imposed by LEC in 2011 and further approved by the LEC in 2012 and MIAP in 2014 to maintain the current approved conditions.

IN SUPPORT OF OUR REQUESTS WE OFFER THE FOLLOWING TOGETHER WITH SUGGESTIONS IN REGARD SUNLIGHT:

Sunlight

To date

Sunlight has been of particular concern. We have shown, and are supported by shadow diagrams, that sunlight is received by the ground and levels one and two at the southern end of our building between 11am to after 12pm on 21 and 22 June. The current approval required a roof design with a 'cutout' of the roof to maintain this outcome. The roof design as shown in Design Cubicle drawing 130526 S96: 200 Issue C dated 28.05 is reflected in the shadow diagram drawing 130526 S96: 402 Issue C dated 28.05.14 (which was requested by MIAP and agreed by the Developer). In this shadow diagram the sunlight is shown by the red and white squares on drawing. These red and white squares became the approved shadow of 2014, thus superseding all previous shadow drawings.

Clearly the outcome sought by MIAP Condition 101 was that there be no further shadowing of adjoining property. MIAP requested new shadow drawings, which resulted in Issue C, so as to drawings and shadow analysis insure that adjoining neighbours on the south west received sunlight. In particular, so that Unit 5 on Level 1 was to have sunlight at 11 am and 12 pm and the Unit 1 on Ground level has sunlight at 12 pm.

Errors

The current town planner BBF Town Planners prepared a letter dated 22 January 2019 and called the STATEMENT OF MODIFICATION - STATEMENT OF ENVIRONMENTAL EFFECTS in which they challenge the integrity of these drawings and claims the previous architects used Magnetic North. To clarify this, we have been in contact with the principal of Design Cubicle, the previous architects and they also maintain that the drawings are 100% correct using True North. We have also spoken to our Architect and am advised it makes the difference between true north and Magnetic north is of approximately 5 minutes.

We do not know who is correct but note that the Developer has taken over the project and wants all the benefits of the previous approvals. Accordingly, the developer owns the resulting liabilities, or the approval process should start again.

If by the Developers admission the last approval in 2014 was based on errors then the developer owns those errors and needs to correct them. The developer no doubt has the notes in regards to the last approval and knows the whole negotiation towards the end of the process, that resulted in the 2014 approval and Condition 101, was to design a roof and a Level 4 'cutout' that resulted in the sunlight getting to the ground, first and second levels as noted above.

When looking at the shadow diagrams we can not determine what has happened. The diagrams are equally as confusing as those used for the December 2018 application. There is no starting point nor changes we just have dark drawings. Further the drawings are misleading. At 11am by the yellow they claim this is an improvement yet the improvement is on level 2. On the approved 28.05.2014 drawing we have sunlight from the top of our balustrade on level 1 resulting in sun across our balcony and into our living space there is no improvement in fact there is a deterioration. We have also provided pictures to confirm this sunlight.

What we do know from the shadow diagrams however, is that the current application with the proposed changes results in restricted sunlight and the Developer does not want the ground level to have sunlight at 12pm, only wants Level 1 to have a sliver of sunlight and does not propose to correct whatever errors there were in the drawings. This is totally unfair.

Changes

The Developer proposes a number of changes to the 2014 approved plans which reduce our sunlight. At the end of the section I set out some relatively small changes that may resolve the problem.

However let's look at the changes that the Developer proposes:

1 Raise the floor levels

2 Set the front apartments levels 3 and 4 600mm east. This movement stops at the lobby on the western side. Therefore there is no setback for the remainder of the western side from the 'cutout' to the rear.

3 Introduce a flat roof with a 14 degree slope 1.65m to the western edge on the set back section to the 'cutout' and 2.25m on the non-setback section from the 'cutout'.

4 Halve the 'cutout' length by locating the stairs to the western edge beside the 'cutout'.

5 Introduce a concrete planter onto the Level 4 'cutout'.

6 New and changed windows on western elevation.

By looking at the shadow diagrams we can see the loss of sunlight is a consequence of the height of the western edge of the building. So it is the western edge of the roof and the western edge of the 'cutout' that is critical. Let's look at the changes;

1 Raising the floor levels results in level 4 floor level rising from RL17.265 to RL 17.73 and the ceiling height from RL19.965 to RL 20.43. The increased height on the western edge must add to the shadow.

2 There is a new setback of 600mm to the East on Level 3 and 4 for the top front units. It does not setback the 'cutout', the stairs and unit on the south western end which causes shadow to adjoining neighbours. So at best we have no change to the shadows.

3 The developer proposes to move from a pitched roof to a flat roof with a small pitched area along the western edge of the roof. There is a 14 degree roof pitch for 1.96m to the western edge for the area set back 600mm to the 'cutout' and 2.56m on the southern side of the 'cutout'.

There is a proposed reduction of roof height by 220mm from RL21.20 to RL20.98 before the sloped section. However, on the eastern edge the 14 degree slope results in the edge at RL20.5 to the 'cutout' and then RL20.3 for the southern end and where there is no 600mm setback. So all the levels are above the approved RL19.965 and reduce solar access.

4 In the 'cutout' the floor of level 4 was RL17.265 and is now RL17.73

The length of the 'cutout' at level 4 roof line was 8.25m. Now the Developer wants to reduce this to 3.10m primarily as a consequence of moving the stairwell to the southern end.

The moving of the stairs to the western boundary on Level 4 has stolen the southern portion of the balcony 'cutout' on level 4 and reduced solar access to the neighbours.

5 In addition, the developer has added a 'planter with a concrete balustrade' clearly ignoring Conditions 10, 119 and 96. In 2014 MIAP added Conditions 96 and 119 because it was deemed that the planter

and any planting on Level 4 in the 'cutout' would further reduce our sunlight. What the developer proposed now lifts the 'cutout' floor by 1 metre tall so for shadow the RL is 18.73 plus the shadow from plants.

The developer claims deletion of these conditions is for Privacy. The issue is not Privacy it is Solar Access as approved by every court ruling from 2011 through to 2014. Further note the space behind the 'cutout' is a 'laundry' in the common lift lobby area so this is not a privacy issue.

Let's look at the heights in the following summary Table affecting solar access:

Levels as per drawings	Approved 2014	Proposed 2019	Difference 2014 to 2019	Comments
Level 4 Floor Level	17.265	17.73	+0.465	Reduced sun access units Level 1 and Ground adjoining in 42-44 Victoria Parade
Level 4 Floor Level 'Cutout'	Glass	Concrete +1 M + Plant Height	+1m + plant	Concrete balustrade blocking further solar access
Ceiling Level 4	19.965	20.43	+0.46	No sun access to ground floor at 12pm
Ceiling Level 4 Stairwell	17.265	20.3	+3.725	Block solar access Level 1 and Ground adjoining 42-44 Victoria Parade

We believe the Developer should retain the 'cutout' at the heights, shape and size as agreed in 2014 per the approved drawings and retain the Conditions 101, 119 and 96 set at that time.

So can the sunlight be retained by making the 2 changes summarised below?

1 Remove the planter and have a clear glass balustrade on level 4 in the 'cutout' maintaining Condition 119 and 96. (Or have a sloping roof from the laundry wall to the western edge)

2 Move the stairs to re-establish the 'cutout' on the southern end or put a 35 degree pitched roof on the stairwell on level 4 consistent with the slope of the stairs down to floor level.

This will re-establish the length of the 'cutout' to the south and enable sunlight to flow into level 1 at 11am and to ground level at 12pm

3 If these 2 changes are insufficient to provide sunlight then put a slope into level 4 floor in the 'cutout' and stair well so the west elevation is at the current approved level or to a level that gives the necessary sunlight.

4 Reinstate the angular cut out on the northern side by a small modification to the storage area in the apartment on level 4.

Southern end balcony Levels 1 and 2

As you know the boundary for this Development at the southern end is the Heritage Sub Station in Dungowan Lane. The original footprint for this site was a 3 storey 6 flat small building. At the 2011 hearing the LEC granted a concession of balconies in Condition 1. This Condition 1 has been retained in all three court hearings.

Condition 1 came about because way back in 2011 the developer claimed he wanted to purchase the Heritage Sub-station, and the drawings showed replacement of such within the proposed drawings. However, this sub-station has never been purchased and it is wrong to suggest that the boundary is the Sebel Tower neighbours in Ashburner Street. The actual boundary for this site is the north facing wall of the Heritage Sub-station. The setback from the north brick wall of the sub-station will be less than 2.9 metres. Therefore, the proposal does not meet the Manly DCP/LEP requirements for an 8 metres rear setback.

A reduced set back was allowed by LEC in 2011 in condition 1 with a concessional 1.5metre balcony. See CONDITION 1. Further in CONDITION 100 the western end of the balcony had to be obscure glass 1.6metres high. These conditions have carried forward to the current 2014 approval which set the distance between the edge of the building on the first level and the boundary at 4.93metres and from the concessional balcony on the first level to the boundary of 3.43metres.

The reason why that there was only to be a balcony was to allow us to maintain the reflected light and some spaciousness directly from our living room.

The Developers current submission reduces the open space by closing in the balcony on the first and second level at the western end by making the balcony into bedroom and increased living room. The Developer further proposes to increase the size of the building and reduce the set back from the first level to the boundary from 3.43metres. Th floor space ratio is already non compliant and far exceeds Council guidelines. (Council to check the impact on floor space ratios).

The Levels 1 and 2 enclosure of the balconies with fixed louvres will create a 'prison' like outlook for adjoining neighbours as well as greatly reduce afternoon reflected light from Dungowan Lane. There will now be a 1.5metre solid wall in the middle of our living space outlook. –
Thanks.

We have noted that in each subsequent S96 application for modifications, there is a continued 'creep' for more bulk creating overshadowing, further reduced setbacks and greater non-compliance of building codes which all severely impact on the amenity of adjoining neighbours.

We believe council should retain the current approvals for an open rear balcony.

If the developer wishes to enclose balconies, it should be deemed not to be "substantially the same" and a new DA be started. If a new DA was required, this building would not meet any of the setback requirements of the DCP/LEP, as well as height, bulk and floor space ratios.

Landscape

The project is devoid of landscape. In the approved plan, small trees are to be grown in the south west corner. The developer now proposes a plug of concrete. The developer, in order to place their foundations at ground level in 2015, removed all of our landscaping in the adjoining boundary. These foundations on the western boundary spilled over into our adjoining land and we are left with sand and rubble. We have lost all our orange blossom trees and camelias along our fence line at street level. It is imperative that Council maintain the Landscape Drawing supported by Condition 92 as approved by MIAP in 2014.

Yours Sincerely

Graham Butson