
Sent: 27/01/2020 9:30:25 PM

Subject: DA2019/1475-attention Renee Ezzy

Attachments: Strata Owners SP4911-Objection to DA2019-1475-22 Victoria Parade Manly-27.1.20.pdf;

Dear Renee,

I refer to the objection prepared by Colco consulting on behalf of the owners of 18-20 Victoria Parade in relation to the proposed development at 22 Victoria Parade

As the owner of Unit 4 18-20 Victoria Parade, I adopt the objections set out at in the Colco report (attached), as well as the Middleton submissions filed on line on 22 January 2020.

Kind regards

Nevine te West

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27 January 2020

By email to Northern Beaches Council Mailbox

General Manager
Northern Beaches Council
Civic Centre
725 Pittwater Road
DEE WHY NSW 2099

Dear Sir,

Re: Development Application DA2019/1475 – 22 Victoria Parade Manly – Proposed demolition of existing structures and construction of a new five (5) storey hotel comprising 49 hotel rooms, rooftop open terrace and spa recreation area, ground floor café/restaurant, basement carpark for 22 vehicles and landscaping. Strong objection.

1.0. Introduction, Background and Objections

1.1. We represent the owners of No. 18-20 Victoria Parade Manly, being the Strata Owners Corporation SP4911 the strata residential flat building immediately to the west of the subject site. Our client and residents in the building have **serious concerns with:**

- **The latest Development Application DA No. 2019/1475** which on our assessment, and as acknowledged in the application documents is seriously non-compliant with Statutory planning controls (Manly Local Environmental Plan 2013 and the Manly Development Control Plan that apply to the site – particularly maximum permitted Building Height and maximum permitted Floor Space Ratio and others resulting in negative amenity issues.
- **The current development consent (DA No. 167/2015)** where Manly Council granted consent to a significantly non-complying development on 17 March 2016 following the applicant lodging an Appeal to the NSW Land and Environment Court which was withdrawn following the council granting consent.

1.2. In advising our Client and preparing this submission we have:

- Inspected our Client's property; viewed the subject property from our client's property, along the street and from the beachfront.
- Examined DA documents available on the Council DA tracking web site.
- Reviewed applicable planning controls including the Manly Local Environmental Plan 2013 and Manly Development Control Plan 2013.
- Reviewed the existing current consent No. 167/2015 and the planner's assessment report forming the basis of that approval.
- Unsuccessfully sought a meeting with the applicant to discuss and compare the current consent and the new DA.

1.3. We have concluded that the current consent is most troublesome, and that this new development application proposes additional substantial and critical non-compliances with planning controls and planning objectives. **We and our client hold serious concerns about the DA proposal and conclude that it will result in severe negative impacts on the amenity, privacy and enjoyment of our Client's property and occupants of the strata apartments.**

1.4. Our Client is not opposed to sensible redevelopment of the neighbouring property, provided the redevelopment complies with applicable planning controls and objectives; has no negative impact on the amenity and enjoyment of their homes and respects the locality, neighbours, car parking, hotel and restaurant servicing and streetscape. However, after viewing the submitted DA documents our advice to our Client is that they should have (and they do have) significant concerns and objections as outlined in this submission.

1.5. Background to current consent DA No. 167/2015 – expires 17 March 2021

1.5.1. This application was lodged with the former Manly Council on 20 July 2015. The applicant lodged an Appeal to the NSW Land and Environment Court – Case No. 10161 of 2016. Consent was granted by Manly Council on 17 March 2016 and the applicant withdrew the Appeal on 6 April 2016. Details of that application and current consent are:

Application No. DA 167/2015 - Application Lodged: 20 July 2015

Appeal lodged to the NSW L&E Court - **Manly Council granted consent** on 17 March 2016 and then the Appeal was withdrawn.

1.5.2. Summary of current consent DA No. 167/2015:

1. The development consent is for demolition of the existing structures and construction of a three (3) storey hotel comprising thirty six (36) rooms, basement car parking for twenty two (22) spaces and landscaping. The development complies with the 11 metre Maximum height control that applies to the site under clause 4.3(2) of the MLEP 2013; however, **it is significantly non-compliant with the FSR maximum floor area allowed and site coverage.**

2. Manly council approved a clause 4.6 application under MLEP 2013 to allow a significant modification to the FSR control - **a variation of +74.98% (an additional 542.65m² of floor area) to the floor space ratio development standard. The allowed maximum FSR is 0.75:1 and the FSR approved is 1.31:1** (source- Councils DA planning assessment report 2016). These are key components of the Manly Environmental Plan 2013 which is a Statutory document and variations of this magnitude, especially for a new development, is unusual.

3. Manly LEP 2013 Part 4 “Principal Development Standards” include:

- Clause 4.3 Height of buildings
- Clause 4.4 Floor Space Ratio (*)
- Clause 4.6 Exceptions to development standards (**)

(*) The LEP is the primary Statutory planning document. The primary purpose of FSR control is to control the bulk and scale of development. The FSR clause 4.4 provides (MLEP extract below):

“4.4 Floor space ratio

(1) The objectives of this clause are

(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.
- (2A)

() Clause 4.6.** The purpose of clause 4.6 allows for minor exceptions to the development standards and it is limited in its nature and by L&E Court judgements and interpretations. MLEP extract below:

“4.6 Exceptions to development standards

- (1) The objectives of this clause are
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2)
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
 - (a) the consent authority is satisfied that—
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Planning Secretary has been obtained. (Our bold)**
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider — “

1.5.3. Consent was granted to DA 167/2015 for a significantly non-complying development, particularly - significantly excessive floor area and building bulk. A critical component of the Statutory MLEP are contained in Part 4 of the document and include Floor Space Ratio (FSR) numerical control and objectives. All new development is required to comply including proposals for demolition of existing structures and the construction of a new building are required to comply with the Statutory planning controls with minor exceptions (cl. 4.6). Yet, the FSR was overridden by the consent authority which clearly is NOT minor. **The consent granted provides considerable development benefit and considerable financial benefit to the applicant and owner. The new DA proposes additional breaches of the statutory controls for height and FSR and further benefits.**

1.6. Why the new Development Application then?

1.6.1. This new development application and our review of the current consent raises questions:

1. Why was this current consent issued when it failed to comply with these statutory Principal Development Standards and Objectives? It could appear that Manly Council made a generous

judgement on the basis of comparing the existing non-compliant building with what was proposed **rather than relating the completely new building to the applicable planning controls and objectives for a new building?** Or, perhaps it was afraid that the Appeal in the L&E Court might be successful? Whatever, the consent remains valid until 17 March 2021.

2. Consent DA No. 167/2015 remains current until 17 March 2021. If the consent is not activated by that date with commencement achieved, then the consent lapses.
3. Why then has this DA (DA2019/1475) with significant additional and unacceptable areas of non-compliance now been lodged with Northern Beaches Council?
4. On the basis of site history and our examination of the latest even more non-compliant development application DA No. 2019/1475, we conclude the new application (DA No. 2019/1475) is significantly even more non-compliant and further breaches the Maximum Height control and the Maximum allowable Floor Space Ratio (FSR) amongst others. Refer to Table in clause 2.0 of this submission.

1.6.2. We and our clients have concluded that it may mean:

1. DA No. 2019/1475 is an attempt to squeeze even more development on the land with significantly increased non-compliances with the Statutory Manly Local Environmental Plan 2013 controls and objectives and for no other purpose than:
 - Increased financial benefit to the applicant and owner. Additional height and additional floor area and recreation facilities means increased financial benefit and capital value.
 - Allowing sufficient time for the application to determined prior to the current consent lapsing and/or lodging an Appeal to the NSW L&E Court.
2. To this end the applicant may determine to proceed, as in the past on this site, to lodge an Appeal to the NSW Land and Environment Court at an early opportunity with the purpose of either forcing the council's hand or taking the chance that the Court may favourably determine the application and if unsuccessful, fall back to the current consent.

1.7. Our clients remain most concerned that DA 167/2015 was granted consent when the application clearly breached the Statutory planning controls and objectives, which as stated in the council assessment report considered by council on 17 March 2016, failed to comply with the statutory controls and objectives of the Manly Local Environmental Plan 2013 and MDCP controls and objectives; in particular the Statutory Maximum allowable Floor Space Ratio (FSR) which exceeded the allowed FSR by 74.98% and representing a floor area of 542.65m² above the maximum allowable!

Our clients are further concerned with the new development proposal DA2019/1475, which is significantly larger, higher and even more non-compliant with the proposed height of 15.94m exceeding the maximum permissible height of 11 metres; and the proposed FSR of at least 1.73:1 and excess of 949m² exceeding the maximum permissible 0.75:1. Refer to Table in clause 2.2 of this submission.

The non-compliances result in negative impacts on amenity and enjoyment and streetscape. Our clients consider the new DA represents a blatant attempt to obtain further planning concessions for the purpose of obtaining a larger hotel development and for no other purpose other than maximising profits with no regard to the planning controls, or the streetscape or adjoining properties or residents.

1.8. Our client's Objections include:

1. Non-compliance with Statutory MLEP 2013 Principal development standards – Maximum building height and Floor Space Ratio (FSR). The proposal greatly exceeds the maximum allowable height and floor space ratio and seeks enormous variations to the numerical controls.
2. The clause 4.6 applications to vary the Statutory controls for Maximum height and Floor Space Ratio (FSR) are inadequate and inappropriate should be rejected by the consent authority.
3. Significant overdevelopment of the site.

4. Excessive height and resultant negative impacts on amenity –including oppressiveness, overlooking, privacy, noise.
5. Excessive building bulk overall, and especially when viewed from the side elevations and from our clients adjoining property.
6. Inadequate on-site parking for the proposed hotel and café/restaurant and non-compliance with the MDCP parking requirements. There is a significant shortfall for car parking and service vehicles. (***)
7. Non-compliance with the Manly Development Control Plan 2013 (MDCP).
8. Loss of sunlight access to eastern located apartments in our clients building.
9. Invasion of privacy – particularly to eastern located apartments in our clients building.
10. Excessive noise generation – particularly at night and from the proposed open terrace recreation area and Spa on the top floor.
11. Night-time lighting impact on our client's apartments.
12. Concern with inadequacy of supporting reports seeking to justify the application and what appear to be inadequate data, inadequate and incomplete considerations, errors in some reports and subjective statements and conclusions. Particularly Traffic and Parking and Acoustics

(***) The proposed 22 off-street parking spaces will result in a shortfall of at least 30 off-street parking spaces required under the provisions of the Manly Development Control Plan 2013 and proposes inadequate provision for service vehicles serving the hotel and restaurant.

2.0. The new Development Application DA No.2019/1475

2.1. This latest development application:

1. Seeks consent to **demolish existing structures and construction of a new five (5) storey hotel comprising 49 hotel rooms, rooftop open terrace and Spa recreation area, ground floor café/restaurant, basement carpark for 22 vehicles including hotel servicing and landscaping. In doing so the proposal asks to be granted further planning concessions especially in regard to Height of Building and Increased Floor Space Ratio and building area and bulk.**
2. Fails to comply with the statutory controls and objectives and is a significant overdevelopment of the site with resultant negative impacts on amenity and streetscape.

2.2. Cost restraints prohibits us undertaking a comprehensive assessment of the application; however, we submit the following details including comment and impact in the following **Table** as representative of the problems associated with this application.

Planning Control/ Issue - MLEP	MLEP Permitted Maximum	Proposed	Extent of % breach	Comment and Impact (*) Additional comment below.
Cl. 4.3 Maximum Built Height	11 metres	15.35m roof level. 15.95m top of lift.	+39.54%	1. This is a blatant attempt to override the MLEP Statutory control which in our opinion, should not be allowed under the limitations of clause 4.6 and may exceed the extent of authority available to the consent authority. 2. One must assume that the MLEP provision was made for good planning purpose. The MLEP has determined the maximum height applicable to the property and in our opinion, if the current height control is to be disregarded, it will require the MLEP to be reviewed and amended.

				3. Resultant impacts – Excessive building bulk and building footprint, overshadowing, negative environmental and amenity impacts on neighbours, privacy, noise.
Cl. 4.4 Maximum FSR	0.75:1 (724m2)	1.73:1 (1674m2)	+131.21%	<p>1. Again this is a blatant attempt to override the MLEP Statutory control. This proposal exceeds the maximum allowed FSR <u>by at least 949m2</u>.</p> <p>2. An independent recalculation of the proposal may well determine that the proposed gross floor area is even greater than that stated by the application documents.</p> <p>3. One must assume that the MLEP provision was made for good planning purpose. The MLEP has determined the maximum height applicable to the property and in our opinion, if the current height control is to be disregarded, it will require the MLEP to be reviewed and amended.</p> <p>4. Resultant impacts – Excessive building bulk and building footprint, overshadowing, negative environmental and amenity impacts on neighbours, privacy, noise.</p>

Conclusion:

1. The proposed breaches of the maximum building height control and the maximum permissible Floor Space Ratio **are extraordinary** and well outside the provision in clause 4.6 of the MLEP to vary a planning control – usually around a maximum of 10% if the variation is appropriately justified wholly on planning grounds.

2. The MLEP 2013 is a NSW Government Statutory planning document and one must assume that the MLEP planning controls and objectives were made for good planning purpose – often to stop some of the excesses of past decisions reoccurring. **The MLEP 2013 Statutory planning document has determined the maximum height applicable to the property and in our opinion, if the current height control is to be disregarded, it will require the MLEP to be reviewed and amended through the statutory procedures – including openness, public notification and exhibition, State government consent and gazettal of legislation.**

3. These non-compliances will – each individually and as a whole – result in significant negative impacts on our Client's property and the strata unit owners and materially affect amenity and enjoyment of their homes.

4. This application and extent of non-compliances with statutory critical controls is difficult to understand on normal planning grounds. The statutory controls are supposed to apply to all applications where existing development is to be demolished and replaced with a new building - i.e. alterations and additions due to existing constraints may be allowed in some circumstances a clause 4.6 variation (normally up to approx. 10%). Planning controls and objectives, especially statutory controls contained in Gazetted Local Environmental Plans with minor variations only being considered. In our considered opinion, the application and the clause 4.6 applications should be rejected.

5. We harbour doubts that a consent authority is authorised to consent to such massive variations to statutory Principal Development Standards.

Additional Comments

1. Height of Buildings

The Manly LEP 2013 Height of Buildings Map and clause 4.3.2 determines the Maximum allowable building height of 11m. This means that the height of the proposed building is not permitted to exceed 11 metres above ground level existing.

The application documents, Statement of Environmental Effects, states that the proposal exceeds the maximum allowable building height as follows:

- Proposed RL Breach of Height - lift overrun RL20.65 4.92m **(44% above the allowed maximum)**.
- Proposed roof of the fifth-floor level RL20.05 4.32m **(39% above the allowed maximum)**.
- Proposed fire stairs RL19.90 4.17m **(37% above the allowed maximum)**.
- Proposed roof pergola structure RL19.55 3.82m **(34% above the allowed maximum)**.
- Proposed roof parapet of fourth floor level RL18.05 3.32m **(30% above the allowed maximum)**.

The applicant through their planning consultant has submitted a Clause 4.6 Application to Vary the statutory development control to allow these breaches of the Manly LEP maximum heights.

A similar situation exists with the proposed significant breach of the floor space ratio (FSR). Refer to our further comments in this submission. **Neither of these two Applications are appropriate or justify the non-compliances, and may exceed the authority available to a consent authority and should be rejected.**

2. Floor Space Ratio (FSR) and Calculations

1. The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map which as applied to this land is 0.75:1
2. FSR Calculations and Non-Compliance – the actual FSR may be greater than stated?
 - The FSR calculations in the application, including in the Statement of Environmental Effects and Clause 4.6 Application clearly acknowledge a most considerable non-compliance; however, we also are concerned that the FSR may be incorrectly calculated as some floor areas may have been incorrectly omitted from calculations. **We ask that Council planning staff undertake a complete independent review of the calculations submitted to determine the true FSR. In any event it is greatly excessive.**
 - The grossly excessive FSR proposed does not meet the planning FSR numerical control for maximum permissible FSR nor the FSR Objectives contained in the Statutory MLEP 2013 document, including in relation to containing the bulk of the building and amenity of neighbours.
 - The non-compliance with the FSR numerical control in this proposal results in excessive building bulk and scale, excessive site coverage, inadequate ground level landscaping and open space.
 - The excessive FSR and resultant impacts cannot be justified; and are not justified in the clause 4.6 application.

3.0. Clause 4.6 Applications - Building Height and Floor Space Ratio

- 3.1. We have reviewed the DA Drawings, Statement of Environmental Effects and Clause 4.6 Applications to Vary Development Standards for:
 - Breach of maximum building height.
 - Breach of the maximum allowed Floor Space Ratio (FSR).
- 3.2. We have formed the opinion that these Clause 4.6 Applications are unacceptable, and therefore they should NOT be accepted by the consent authority on planning grounds as they do not justify the non-compliances against the planning objectives or adequately address the guidance of the NSW Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council [2018]*

NSDWLEC 118 (*Initial Action*) and other L&E Court judgements – as we non-lawyers understand them.

We are clear in our understanding that the consent authority must be satisfied that the applicants written request has adequately addressed each matter of non-compliance matter and justifies the claim on planning grounds against all of the planning objectives including the Zone objectives. We contend that the consent authority cannot be so satisfied with the clause 4.6 applications.

- 3.3 **The applicant has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard and that the development is in the public interest. On the basis of the clause 4.6 applications submitted we consider the consent authority cannot come to such conclusions; and therefore, the applications should be rejected:**

4.0. Application Supporting Documents

Our clients hold significant reservations in relation to supporting documents including subjective statements - the Statement of Environmental Effects, clause 4.6 applications and other reports including – inadequate data, inadequate consideration of critical elements, subjective statements and conclusions; including Traffic and Parking and Acoustic reports.

For example, and we quote (our italics):

- *"The proposal represents an infill development that comfortably fits within the site and will remain compatible with the appearance of the existing buildings within the street."* **REJECTED**
- *"The development will not contribute to any adverse amenity impacts to the adjoining neighbours."* **REJECTED**
- *"The proposal does not give rise to any appreciable environmental amenity impacts to the immediate adjoining neighbours."* **REJECTED**
- *"In terms of environmental amenity, the proposal will not contribute to any adverse impacts to the neighbouring dwellings within the street."* **REJECTED**
- *"A spa structure has been included on the rooftop of the building, however, will not contribute to any adverse visual bulk and scale when viewed from the neighbouring properties."* **REJECTED**
- *"The proposal will continue to provide a reasonable level of amenity to the immediately adjoining neighbours and will continue to provide a compliant amount of direct solar access, visual privacy and the building envelope has been designed to maintain significant views from the adjoining neighbours."* **REJECTED**
- *"The subject site is not for the purposes of residential accommodation. The proposal will be used for the purposes of hotel accommodation. The site provides for private open space areas located at the ground floor level and the rooftop levels of the building."* **REJECTED**
- *"The proposed development has been carefully designed to minimise any appreciable environmental impacts to the neighbouring properties."* **REJECTED**
- *"This report demonstrates that the proposed development is feasible and reasonable, whilst keeping an appropriate acoustic amenity and controlled noise impact to the local community."* **REJECTED.**
- *"The assessment and recommendations contained in this report demonstrate the development is feasible and reasonable, whilst keeping an appropriate acoustic amenity and controlled noise impact to the local community."* **REJECTED**
- *"The rooftop communal area is to be suitable for recreational use by the guests, with the implementation a noise management plan." "The noise management plan is recommended to be reviewed on a regular basis."* **REJECTED**

5.0. Conclusion

The application should be refused on planning grounds as outlined in this submission including:

1. **Statutory controls** - Inappropriate and unacceptable blatant breaches of statutory MLEP 2013 Part 4 Principal Development Standards.
2. **Clause 4.6 applications** - Inadequate and unacceptable clause 4.6 applications to vary the Principal Development Standards for maximum Building Height (Seeks +39.54% increase above the statutory maximum) and maximum Floor Space Ratio (Seeks +131.21% increase above the statutory maximum) well beyond any reasonable application of clause 4.6 provisions. Both applications should be rejected by the consent authority.
3. **Overdevelopment of the site** – excessive building bulk overall, and especially when viewed from the side elevations and from our clients adjoining property and excessive site coverage.
4. **Excessive height and resultant negative impacts on amenity** – including oppressiveness, overlooking, privacy, noise and loss of morning sun.
5. **Inadequate on-site parking** for the proposed hotel and café/restaurant and non-compliance with the MDCP parking requirements. There is a significant shortfall for car parking and service vehicles.
6. **Inadequate provision for service vehicles** to attend and service the hotel and café, restaurant. No servicing should be permitted from the street and should be all within the building structure in appropriate loading docks appropriately located in the basement.
7. **Manly Development Control Plan 2013** - Non-compliance with the Manly Development Control Plan 2013 (MDCP).
8. **Loss of significant morning sunlight** to eastern located apartments in our clients building.
9. **Invasion of privacy** – particularly to eastern located apartments in our clients building.
10. **Excessive noise generation** – particularly at night and from the proposed open terrace recreation area and Spa on the top floor which will cause interruption to sleep patterns of residents adjoining including children.
11. **Night-time lighting impact** on our client's apartments.
12. **Concern with supporting reports** seeking to justify the application and what appear to be errors in some reports, inadequate data, inadequate consideration of critical issues, subjective statements and subjective conclusions.

We request the opportunity to address the Northern Beaches Local Planning Panel when the application is presented for determination. We welcome the opportunity to discuss any of the matters raised in this submission.

Yours faithfully,

Wayne Collins
Director