
Sent: 19/02/2021 1:01:26 PM

Subject: SUBMISSION IN RESPONSE TO DA 2020/1489

Attachments: Submissions re DA2020 1489 - Proposed development at 8 Forest Road Warriewood.docx;

See attached submission. Aware it's after due date but thought I'd try!

Thanks,

Emily



SUBMISSION IN RESPONSE TO DA 2020/1489

WARRIEWOOD VALE PROPOSED DEVELOPMENT

To: Northern Beaches Council

Email: council@northernbeaches.nsw.gov.au

from NELSON AND EMILY ZAMBRANO

13a Bert Close, Warriewood, NSW 2101

Adjacent to the proposed development.

WARRIEWOOD VALE PROPOSED DEVELOPMENT

DA 2020/1489

We are Emily and Nelson Zambrano. Along with our three children we live at 13a Bert Close Warriewood, backing on to the grasslands upon which the proposed development will be built. We object to the proposed development in its current form and request that the developer be asked to revise the development to reduce its gross imposition on the community of Bert Close.

QUESTIONS

1. **Pre-DA Meeting Minutes.** Would Council please make available to the public the minutes of their pre-DA meeting (PLM2020/0120) with the developer?
2. **DA Supporting documents.** The current statement of environmental effects (SEE) lists the supporting documentation and planning instruments. I'm not sure if documents from the earlier DA (N0440/15) are considered as in support of the current DA. Can Council please clarify?
3. **Relevance of requirements of the 2016 LEC judgement re DA N0440/15.** Can Council please advise if the developer can make proposals in this current DA which conflict with the LEC judgment on DA N0440/15? The proposal to remove the existing house is case in point. If this court "order" can be successfully challenged, is any of the court's previous findings sacrosanct?
4. **Perspective views from Bert Close.** We think it reasonable for the developer to provide a "picture" of a fully built-out development with the minimum applied constraints e.g. 1.5m fill, future houses up to 10.5m in height on the eastern boundary, to show a realistic situation.
5. **Proximity of construction of finished assets on the eastern boundary.** Will dwellings at the approved 10.5m height plus 2.5m, within a meter of the eastern boundary allow the statutory quantum of sunlight to the properties in Bert Close before 3pm on the winter solstice. Shadow diagrams are normally the reasonable way to show the sunlight / shadow patterns, but these seem to be overlooked.
6. **Critical dimensions are omitted from the proposal.**
 - i. What is the rear boundary building setback, eastern boundary?
 - ii. What is the distance from the eastern boundary of the proposed 3m high (probably masonry) retaining wall, bearing in mind the need to preserve existing fencing?

COMMENTS ON THE DA DOCUMENTS

7. **Clever staging strategy obscures the "threat" of excessively bulky dwellings.** The failure of the proposal to disclose the possibility of future huge edifices (10.5m in height plus another 2.5m elevation difference between existing and proposed rear yards creates) obscures by illusion the imposing, bulky and invasive development that it is. This less than upfront strategy not only obscures the future development but shifts the apparent responsibility to future purchasers of land parcels.

The developer has changed his strategy from the DA 3 years ago. No longer will he offer finished townhouses on the eastern boundary that a clear and upfront in the DA for all to see. This time it is small blocks of land for individual sale. The former 3 storey townhouses were offensively tall and obtrusively close to the shared boundary – a major point of community objection earlier. This time the result will be the same "towering overlook" with houses allowed to be 13m above neighbouring backyards, but the current DA obscures this.

Approval should not be given to buildings adjacent to a low-density residential area, that are 13m higher than the adjacent low density residential just a meter away. A reasonable buffer zone, requiring a layout change, would allow the development to proceed without causing huge neighbourhood animosity. (13m is nearly the high of two street-light poles).

Figure 1 shows the dramatic juxtaposition of the 13 Bert Close house (my house), being overlooked by a new house on the left, as proposed, up to 13m above my yard.



Figure 1 – Section (approximately to scale) showing 13 Bert Close being totally overwhelmed by permitted new construction. A change of layout would avoid this ‘physical’ threat.

- Poor site layout with small lots against the eastern boundary, no minimum setback from the boundary, flagrant ignoring objectives of the maximum building height standards.** The new

site layout effectively denies public review and comment of the main cause of the proposed 'towering overlook' – *the offending site layout*.

Alternative site layouts could and should be adopted that offer a suitable a buffer zone between the proposed giant edifices and the existing low-density neighbourhood.

If the proposed site layout and the anticipated building of 10.5m high edifices to 13m above existing back yards on the eastern boundary are approved, the stated objectives of the height of buildings standards will have been comprehensively abrogated. We request that the developer be instructed to create an alternative site layout which is neighbour-friendly and recognises and respects the intent of the objectives of the height of buildings standards.

9. **Pushing beyond the limit regarding building height.** Two further points of relevance regarding land and building levels should be noted:
 - a. The developer's land adjacent to the eastern boundary is already about 1m+ above existing backyards.
 - b. Developer plans show that land on eastern boundary is to be raised by fill, a further 1.5m (see Figure 2 below). The 1.5m fill will raise the building platform to be about 2.5m above the level of existing rear yard level. Nearly a 3m high retaining wall is planned to retain the fill, >2.5m above the level of existing backyards. This fill is a discretionary design decision for the developer but with major adverse impact on existing residents.
10. **Suggestion to improve the negative effects of the proposed site layout.**

I suggest that the most eastern line of lots be moved to free up buffer space and be relocated to be built on the elevated land along the southern boundary of the building area. The area vacated would provide a necessary ideal aesthetic buffer zone between dwellings each side of the eastern boundary. Part of the buffer could be used as a children's playground and part could incorporate a detention basin for most of the site. Purchasers may also appreciate an elevated outlook toward the north.
11. **The statement of Environmental Effects indicates no minimum rear boundary setback.**

Setbacks were, and are, created to regulate overcrowding dominated by bulky buildings and create liveable spaces. The need for rear setbacks is no different to front setbacks.
12. **Excessive Overlook from 10.5m (13m) high houses (SEE S2.2).** The SEE discussion regarding key environmental issues completely ignores the significant overlook from 10.5m high houses virtually on the eastern site boundary, as well as the overshadow and privacy impacts on existing residents of Bert Close. I note that living areas of Lots 11, 12, and 13 will also be significantly overlooked from the upper rear deck of 13 Bert Close.

With reference to C6.5 Utilities Services and infrastructure Provision, the following principles are to be considered: ensure that opportunities for direct overlooking into the private open space, recreation areas and living rooms of existing adjoining dwellings are mitigated by:

- Building layout, landscaping, screening devices or increased spatial separation, appropriate siting of windows including dimensions and glazed material.

With reference to 4.5.5, the public interest, the proposed residential subdivision is permissible and consistent with the land use and environmental planning outcomes anticipated for Sector 5 of the WURA, if the proposal will not give rise to any adverse residential amenity. But it does give rise to adverse residential amenity.

Excessive overlook is the choice of the development designer and could be significantly ameliorated by adopting other layout options, and with far less adverse impact on neighbouring houses to the east.

13. **Excessive overshadowing.** I cannot find shadow diagrams in the DA submission which demonstrate that 3 storey houses can be built on the eastern boundary and still provide a meagre 3hrs of sunlight into the rear yards of existing dwellings.
14. **Misleading statements re determination and assessment of height compliance (SEE p22).** The SEE states: *“It has been determined that all works associated with the proposed subdivision will sit comfortably below the 10.5 metre height development standard. As the proposed works comply with the numerical standard they are also deemed to comply with the associated objectives”.*

This ‘stretch’ comment seems to purposefully misconstrue the height objectives.

If the height limit ‘objectives of the standard’ cannot be met in the future, and they cannot, then claiming that the standard has been satisfied now, as declared in the SEE, is thoroughly disingenuous. The objectives should have been used to guide the setting of the chosen site layout and so avoid excessively high and neighbour threatening buildings. The currently proposed site layout will potentially result in dwellings that have virtually no chance of meeting the height objectives. Alternative layouts with smaller buildings possible and buildings located further away from the eastern boundary will likely be able to satisfy the intent/objectives of the height restrictions.



Figure 2 – Site plan showing cut and fill. The light green shows 1.5m fill.

Making better layout decisions now will avoid burdening future land buyers with difficult obligations that the developer could have addressed at this early stage. Perversely the MOST OFFENDING POSSIBLE LAYOUT to the objectives of the height standard have been proposed. Refer to Appendix A.

I make several relevant comments below:

- a. Determination of height compliance has not been included in the SEE. It would be useful to restate that this DA is only pertinent for earthworks, civil works, and land subdivision. The absence of such a statement will mislead some and constitute misrepresentation to others, by implying that dwelling heights are being assessed in this development. They are not. But they should be.
- b. The attempt to “deem” compliance is improper and illogical. The developer has simply assumed his conclusion without proper assessment. In the context of dwelling heights, “deemed compliance” based on the proposed works under this DA is misrepresentation of the truth.
- c. The proposed development only meets the height objectives because the development proposes no buildings. It’s a subdivision proposal only. The proponent has sidestepped his responsibility of ultimate height compliance by deferring its consideration to a time frame beyond the consideration of this DA.
- d. The building heights need to be assessed at this stage, when assessing impact of the development. The allowable maximum heights are well known now. It is only proper that site layout be assessed including allowed dwelling heights. With alternative site layouts, the proposed development may not visually assault the existing neighbourhood as violently as the present site layout (see Figure 1).

THIS DA SHOULD ONLY BE APPROVED FOLLOWING ASSESSMENT OF THE OVER-POWERING VISUAL IMPACT OF PROPOSED HOUSES TO BE BUILT CLOSE TO THE EASTERN BOUNDARY.

15. TRAFFIC

Traffic studies:

- a. did not examine traffic on narrow private road.
- b. did not examine traffic at the Jubilee - Daydream intersection, terrible.
- c. did not examine greater a single day traffic sampling.
- d. did not consider Class E and F levels of service predictions to be unacceptable.
- e. did not consider the effect of queuing delays in counting the cars that pass through the intersection, so that the calculation was not calibrated.
- f. did not consider the impact of the new traffic on the Forest - Ponderosa intersection
- e. did not consider emergency fire peak traffic loads.
- f. did not consider the Mona Vale Road widening, and the construction of new traffic signals at the next intersection Ponderosa and Mona Vale Road.
- g. did not consider the seriousness of exceeding level of service requirements re delays by up to 20 times.
- h. did not calibrate their spurious traffic findings with people who experience the long delays, especially in the afternoon, that the study denies occurs.
- i. Are inadequate in scope and interpretation and should be done again and properly.

APPENDIX A

DEMONSTRATING THE DAs MISALIGNMENT WITH BUILDING HEIGHT OBJECTIVES

Reference: SEE S4.2.3 Building Height Standards

Objectives normally inform and guide the development of standards. And standards should not be blindly applied when the objectives that informed those standards cannot be clearly demonstrated to have been met.

Other site layout options may enable meeting of the objectives and the standards themselves. But the developer has scant interest in complying with the objectives which lead to building height standards.

The stated objectives of the height of buildings standard are as follows (*in italics*). An assessment against each objective is made below as it pertains to the proposed development. I would have expected such an assessment to be part of the statement of environmental effects (SEE) which would have revealed that these building height objectives have been universally violated by the proposed development along its eastern boundary. But the SEE fails to identify the gross violations of the objectives.

The objectives of the height standards are set out below. The objectives are:

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality.* **The proposed site layout fails to meet this objective re height, scale, and consistency with the desired character of the locality.** An alternative layout will improve alignment with the objectives of the standard.
- (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development.* **The proposed site layout fails to meet this objective re compatibility with height and scale. The proposal is incompatible with respect to height and scale of surrounding nearby development.** An alternative layout will improve alignment with the objectives of the standard.
- (c) *to minimise any overshadowing of neighbouring properties.* **Failing to meet this objective the proposal will result in significant over shadowing. In the absence of shadow diagrams, the proposal is assumed not to comply with the sunshine requirement for affected rear yards.** The requirement is for at least 3 hours of sunshine between the hours of 9 a.m. and 3 pm on 21st June. Since the developer has cleverly shifted responsibility for not overshadowing to land purchasers, at which time such assessment may be too late for adequate changes or may impose unwanted constraints on homeowner development, the overshadowing MUST be resolved at the current DA stage. An alternative layout will improve alignment with the objectives of the standard.
- (d) *to allow for the reasonable sharing of views.* **By what measure has the developer demonstrated reasonable sharing of views from the existing dwellings a few meters outside his eastern boundary and up to the national park? The proposed continuous curtain of brick and concrete will eliminate shared views. The proposal fails this objective.** An alternative layout will improve alignment with the objectives of the standard.
- (e) *to encourage buildings that are designed to respond sensitively to the natural topography.* **The developer ignores this requirement with the proposed placement of 1.5m of fill at the eastern boundary. The developer has not responded to this objective of the standards to respond sensitively to the natural topography. Other site layouts may allow this objective to be meet. The proposal fails this objective.**

(f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.* Little attempt has been made to minimise adverse visual impact of the development on the natural environment. **On the contrary the proposed layout will cause almost MAXIMUM possible adverse visual impact on the natural environment. The proposal fails this objective**

The current proposal to develop 8 Forest Road land in the form of **DA 2020/1489** has **FAILED TO ACHIEVE EVERY SINGLE OBJECTIVE** related to the building height standards. The development should not be approved.

CONCLUSION

We conclude that the proposed development fails multiple planning rules, is offensive and is unnecessarily disruptive to the existing Bert Close community. The proposal should be reworked as described herein. We would be pleased to work with the developer to obtain favourable outcomes that can be achieved through reasonable negotiation.