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30/04/2023

MR Anthony Cruickshank
- 61 Cumberland AVE
Collaroy NSW 2097
[REDACTED]

RE: DA2023/0225 - 891 Pittwater Road COLLAROY NSW 2097

Attn: Jordan Howard

I wish to make a submission in respect to the following application.

DA 2023/0225 at 891 Pittwater Road, Collaroy, NSW 2097

The Development Application seeks a variation to "Clause 4.6 Exception to Development Standard Request" related to "Clause 4.3 Height of Buildings - Warringah Local Environmental Plan 2011".

I have a number of concerns with the information presented in the documentation regarding the maximum building height and the grounds on which the variation seeks to be justified.

The "Statement of Environmental Effects" report identifies a number of further non-compliances to "WLEP 2011 4.5 Part B - Built Form Controls" that are not addressed by this or any other variation request.

- B1 Maximum wall height
- B3 Side Boundary

This report also refers to "WLEP 2011 4.5 Part D - Design, D7 - Views" where the proposal claims to be supported by the View Analysis assessment attached to the report as "Appendix 1 View Loss Analysis"

Clause 4.6 Exemption to Development Standard Request
- Clause 4.3 Height of Buildings

The control limit for Height of Buildings is 8.5m. The variation seeks to be approved by referring to "Matters required to be demonstrated under Clause 4.6(3) of the LEP".

Firstly, what is the height of building?

The proposal refers to a maximum building height at RL 17.401 which is "8800 high from natural ground level" so it is indeed in breach of the 8500 control by 300mm. The RL17.401 is

not questioned but the reference point for determining the height of building is not clear.

Should the "Height of Building" be measured from the existing ground level within the building or the existing excavated level on the site"? In this case it would be the floor of the lower level and garage of the existing house, noted as RL 8.21 on the Survey Plan resulting in a building height of 9191 which is 691mm higher than the control, double the stated 300mm for which the variation seeks to be approved.

Secondly, regardless of the true extent of the breach (300mm - 691mm), the application seeks to prove that compliance with the development standard is unreasonable or unnecessary or whether the compliance with the specified control itself is unreasonable or unnecessary.

(a) Compatibility and scale. - The departure claims to be minor at 3.5% and localised along the front southern section and claims to be compatible with the height of neighbouring buildings.

It exceeds the neighbouring buildings by approx. 2m (2091mm and 1971mm)

(b) Visual Impact, disruption of views - the proposal claims to have been assessed in relation to view loss.

The View Loss Analysis in the application repeatedly refers to the fact that "we require a visual inspection of No. 61 Cumberland Avenue to complete an accurate view loss assessment.

The departure is minor at best but more likely significant, incompatible and unreasonable and has not been thoroughly assessed with regard to disruption of views.

Statement of Environmental Effects Report

Identified non-compliances.

- 4.3 Height of Buildings - discussed above.
- B1 Maximum Wall Height - 7.2m
- B3 Side Boundary Building Envelope - 45 degrees from 4m

- B1 Maximum Wall Height - Control 7.2m, Provided 8.3m.

The control is exceeded by 1.1m or 15.28%. The exceedance is due to the inclusion of the third storey. There is little demonstration that the exceedance is unreasonable. The 3-storey design that results in this exceedance contributes to the Height of Building, Compatibility, Scale and View Loss factors.

This non-compliance is not referred to in the Clause 4.6 Exemption request documentation.

- B3 Side Boundary Building Envelope.

The proposal accepts that there is exceedance but very there is no demonstration or analysis of the extent of the exceedance yet it claims not to effect adjoining properties.

Section BB in the Master Set (Sheet A10 Rev F) attempts to show that the building lies within the Side Boundary Building Envelope. Additional Section drawings or 3-D analysis through BED 2 and BED 4 on the upper floor towards the Balcony would demonstrate the extent of the Side Boundary Building Envelope and the Height of Building exceedance.

This again is the result of the 3-storey design which results in the negative impacts regarding compatibility, scale and view loss.

This non-compliance is not referred to in the Clause 4.6 Exemption request documentation.

Appendix 1 - View Loss Analysis
WLEP 2001 4.5 Part D - Design D7- Views

- Reasonable sharing of views
- Innovative design

Principles from Tenacity Consulting v Warringah [2004] NSWLEC 140

First Step - Iconic Views

Assessment of views to be affected (Water / Iconic / Whole / Interface)

"Iconic views" are not limited to the Opera House, Harbour Bridge or North Head. Dee Why Headland and the associated Dee Why Point surf break are considered to be iconic in Australian and global surf communities

Second Step - Side / Front / Rear / Sitting / Standing

"Side boundary views are more difficult to protect."

"Sitting views are more difficult to protect"

The view loss for 61 Cumberland Avenue is directly across the rear boundary and impacts standing views.

Third Step - Extent

"Views from living areas are more significant than bedrooms."

"Views from Kitchens are highly valued."

The standing view loss from kitchen/living/patio areas of 61 Cumberland Avenue is significant.

Fourth Step - Reasonableness

"A development that complies with all planning controls would be considered reasonable. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours."

Planning controls are not met, as evidenced by the request for variations discussed above.

No analysis has been undertaken for the existing views and views to be gained at 891 Pittwater Rd.

The View Loss Analysis Appendix makes comments in every step that view loss from 61 Cumberland Avenue has not been undertaken and should be undertaken for the analysis to be complete.

It states that "we require a visual inspection of No. 61 Cumberland Avenue to complete an accurate view loss assessment."

The report states that "our client attempted to contact the owners of No. 61 Cumberland Avenue in order to undertake a view analysis from the dwelling however no contact was made."

I have previously written to Council regarding "third party requests access to a property without a proposal or stated intention", "Contact should be in writing for traceability" and "contacting all owners" of the property. I consider myself the principle contact for 61 Cumberland Avenue for such matters and no attempt has been made to contact me by phone, email, post or in-person by the applicant, representatives of the applicant or the author of the documents.

Summary

The documentation for this application is misleading, inaccurate and incomplete.

The 3-storey design and its associated height and scale are not compliant with WLEP 2011. It results in negative impacts to adjoining neighbours, not limited to those outlined in this submission, which is primarily focused on the impacts to the rear boundary neighbour at 61 Cumberland Avenue.

Living space on the property can be increased from current by utilising clever design and the rear setback at ground level.

Anthony Cruickshank
Owner of 61 Cumberland Ave, Collaroy, NSW 2097