
Sent: 8/10/2018 4:36:25 PM
Subject: FW: DA2018/1448 (92 Abbott Road, North Curl Curl)
Attachments: 94 Abbott Road Nth Curl Curl (Objection) 88.pdf; 94 Abbott Road Nth Curl Curl (Objection) 92.pdf;

From: Sarah McNeilly
Sent: Monday, 1 October 2018 9:27 AM
To: 'Renee Ezzy'
Cc: Council Mailbox ; Juliet Wolak ; Sally Kierath
Subject: RE: DA2018/1448 (92 Abbott Road, North Curl Curl)

Thank you Renee,
Please find attached submissions from the owners at 94 Abbott road and 88 Abbott road, North Curl Curl. I note that I have also attached a couple of links to real estate pages listing each of the units for lease.

1. <https://www.homely.com.au/homes/92a-abbott-road-north-curl-curl-nsw-2099/2265329>
<https://www.clarkeandhumel.com.au/rent/recently-leased/92a-abbott-road/> Bottom Unit
2. <https://www.clarkeandhumel.com.au/rent/recently-leased/92-abbott-road/>
<https://www.clarkeandhumel.com.au/rent/recently-leased/92b-abbott-road/> Top Unit

Kind Regards

Sarah McNeilly
Director

M. 0413341584 P. 89010741
E. sarah@watermarkplanning.com.au
W. watermarkplanning.com.au

Please note that I am not available on Fridays.



image001.jpg@01D3D0CC.5E975C4
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From: Renee Ezzy <Renee.Ezzy@northernbeaches.nsw.gov.au>
Sent: Tuesday, 25 September 2018 9:55 AM
To: Sarah McNeilly <sarah@watermarkplanning.com.au>
Cc: Council Mailbox <council@northernbeaches.nsw.gov.au>; Juliet Wolak <juliet.wolak@yahoo.co.uk>; Sally Kierath <sallyk85@gmail.com>
Subject: RE: DA2018/1448 (92 Abbott Road, North Curl Curl)

Dear Sarah

There is no problem with providing additional time to allow for submissions.

Kind regards

Renee Ezzy

Principal Planner

Development Assessment Mona Vale/Dee Why

t 02 9942 2584

renee.ezzy@northernbeaches.nsw.gov.au

northernbeaches.nsw.gov.au



From: Sarah McNeilly [<mailto:sarah@watermarkplanning.com.au>]

Sent: Sunday, 23 September 2018 4:12 PM

To: Renee Ezzy

Cc: Council Mailbox; Juliet Wolak; Sally Kierath

Subject: DA2018/1448 (92 Abbott Road, North Curl Curl)

Hi Renee,

I have been engaged by the owners of 94 Abbott Road, North Curl Curl and the owners of 88 Abbott Road North Curl Curl to prepare a submission to the application you are assessing at **92 Abbott Road, North Curl Curl**. I understand that the notification period finishes this Wednesday.

There appear to be numerous issues with the proposal, including the validity of the existing use rights, and we would request an extension to the beginning of the following week, being Monday 1 October 2018 to allow a little extra time as I have only recently been engaged.

We appreciate your help in providing this time if possible to ensure that a thorough review is possible by both myself and these neighbouring owners.

Kind Regards

Sarah McNeilly

Director

M. 0413341584 P. 89010741

E. sarah@watermarkplanning.com.au

W. watermarkplanning.com.au

Please note that I am not available on Fridays.



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Northern Beaches Council

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

24 September 2018

Dear General Manager,

**92 Abbott Road, North Curl Curl
Development Application No DA2018/1448
Demolition of an existing dual occupancy and construction of a new dual occupancy
development including strata subdivision**

Background

We have been engaged by the owners of 88 Abbott Road, North Curl Curl, who have recently been notified of a Development Application at 92 Abbott Road, North Curl Curl. No. 88 Abbott Road is located on the eastern side of the subject site, across Lillie Street.

DA2018/1448 involves the demolition of the previously approved dual occupancy and construction of a new two storey attached dual occupancy fronting Lillie Street and strata subdivision of the development.

View of Locality

The general locality can be described as low density residential to the west, east and north. To the south of the site is a large area comprising sporting facilities and recreational land including Greendale Creek.

The opportunity has been taken to view the subject property in the context of surrounding development and to consider plans and supporting documents relating to the development application which was available on the Northern Beaches Council website.

It is evident from the site view that the lot is currently developed with a duplex style dual occupancy development, which appears more characteristic of a single dwelling. The building is currently oriented to Abbott Road and has a large rear yard, on its northern side, with a single garage on the northern rear boundary.

Zoning and Land use Generally

We note that the property is zoned R2 Low Density Residential under the provisions of the Warringah Local Environmental Plan 2011 (WLEP2011). Properties on the northern side of Abbott Road located around the site have the same zoning with the land to the south being zoned for public recreation.

Nature of Submission

Having considered the site, its surrounds, neighbours and the details of the application currently before Council, it is our view that the proposal, in its current form, is excessive in scale and not worthy of approval.

While our clients are supportive of improvement to the subject site, the development as proposed is bulky, non-compliant, not in character with the local area and has not been designed to adequately consider impacts on neighbouring sites.

Existing Use Rights

Dual occupancy is a prohibited use in the R2 Low Density Residential zone under the provisions of the Warringah LEP 2011. The subject site benefits from a consent granted by Warringah Shire Council on 31 May 1982 for *“conversion of and addition to the existing dwelling to create a two-storey dual occupancy”*.

This consent was granted subject to the following condition:

*4. This consent is valid only for as long as one of the dwellings created pursuant to this consent is **occupied by the owner of the allotment**, or where the allotment is owned by a corporation, a director or employee of that corporation occupies one of the dwellings”.*

No evidence has been provided to demonstrate that the previous and current occupants of either of the dwellings are owners of the site or employees/ directors of the company. Pursuant to Section 4.66(3) of the Environmental Planning and Assessment Act 1979, an existing use is presumed to be abandoned if it ceases to be continuously used for a period of 12 months. Accordingly, it is essential that it be demonstrated that the occupation of the tenancies has not for a period of more than 12 months, been vacated by an owner, as this would have resulted in lapsing of the consent and abandonment of the existing use rights.

The owner of the property is listed as Hoy Corp Pty Limited. We suggest that Council would require a list of the directors and employees of this company and proof of occupation of one of the tenancies by one of these since the date of consent. We note that a search of the internet revealed listings for the properties for rent on the Clarke and Humel real-estate site in recent history. Accordingly, we assume both apartments are leased to persons not fitting the conditions of consent.

This evidence is crucial to allow the application to proceed for a dual occupancy. If it cannot be delivered, then the assumption must be that the development does not retain existing use rights and that it currently is an unlawful use, as is specifically detailed in condition 4 of the original consent. Should this evidence not be provided, the development could not proceed.

Orientation of site

The site is known as 92 Abbott Road and is currently oriented so that the frontage of the site faces Abbott Road. The rear of the site, facing Lillie Street consists of the rear open space available to the dwellings. The proposed development reorients the site so the two new dwellings face Lillie Street.

The impact of this is to the detriment of the owner's of 88 Abbott Road, with the upper level windows of the new development now facing directly into their private open space. 88 Abbott Road is also a corner lot and has recently redeveloped, retaining the northern side of the site and Lillie Street aspect as private open space. This would be a more desirable means to develop 92 Abbott Road, with lesser impacts on privacy to neighbours and streetscape, with the frontage being retained as the address specifies.

The streetscape impact with the overall bulk of the building being far greater than existing and that surrounding is a development not compatible with neighbours or the locality.

Building Envelope

The plans demonstrate a breach to the building envelope control on the shared boundary with 94 Abbott Road. This breach adds to the detrimental amenity impact on the private open space of the neighbouring site. Any alterations, particularly in the rear half of the lot need to have the development setback to reduce the impacts on neighbours and ensure no breaches.

Parking

Council's DCP requires 2 spaces per dwelling for a dual occupancy development. The DCP also requires that the front setback area be landscaped and free of parking structures. The proposed development includes a single garage for each dwelling, with a driveway space in front. Although the internal plans have not been seen, it appears that the garage sits back to allow ample space in the setback for a second vehicle. This space is not compliant with the DCP as the driveway space is to remain clear and available for a visitor to park. In order for the development to comply, four car spaces are required behind the building line. Accordingly, the development fails to comply in this regard.

Street Tree

The application proposes the removal of an existing street tree. This is undesirable as the tree appears to be in good health. Additionally, this tree aids in screening the site and providing a landscaped setting. Removal of this tree will be to the detriment of 88 Abbott Road, with this existing vegetation allowing for some screening of the site. Replacement with a new tree will not have the scale of the older mature species which is existing.

Bulk

The building is excessive in scale as is demonstrated by the lack of compliance with numerous controls. The scale from all elevations is too great and is to the detriment of neighbours and the locality.

While floor space ratio and gross floor area are not development standards adopted by the Warringah LEP, it is a good numeric demonstration of the increased size of the development and the excessive scale. The applicant states that the existing FSR of 0.52:1 and that the proposed FSR is 0.73:1. Traditionally the R2 zone would anticipate an FSR of around 0.5:1. The existing building provides close to this and accordingly looks in character with the scale of development. The new development provides for a significant increase with the result being an inadequate private open space, parking, setbacks and an excessively large structure.

Landscaped Area

A 40% landscaped area is required for the subject site. The SEE states that this is compliant, however there appear to be errors in the calculations. We note that the western side setback is included, where the width is 900mm and non-complaint with the 2 metre minimum width. Similarly, the pedestrian entrances to the side have large block paving stones and the bin areas will require hard surfaces and would not meet the minimum widths. A recalculation is required.

I would also suggest that it is unlikely that Council approved the large area of paving in the rear yard of the site currently. This is at odds with Council's requirements for green space and is far more likely to have been unlawfully installed at some stage. The development is presented as increasing the landscaped area, and this is not a true representation of the proposal.

Private open space on street frontage

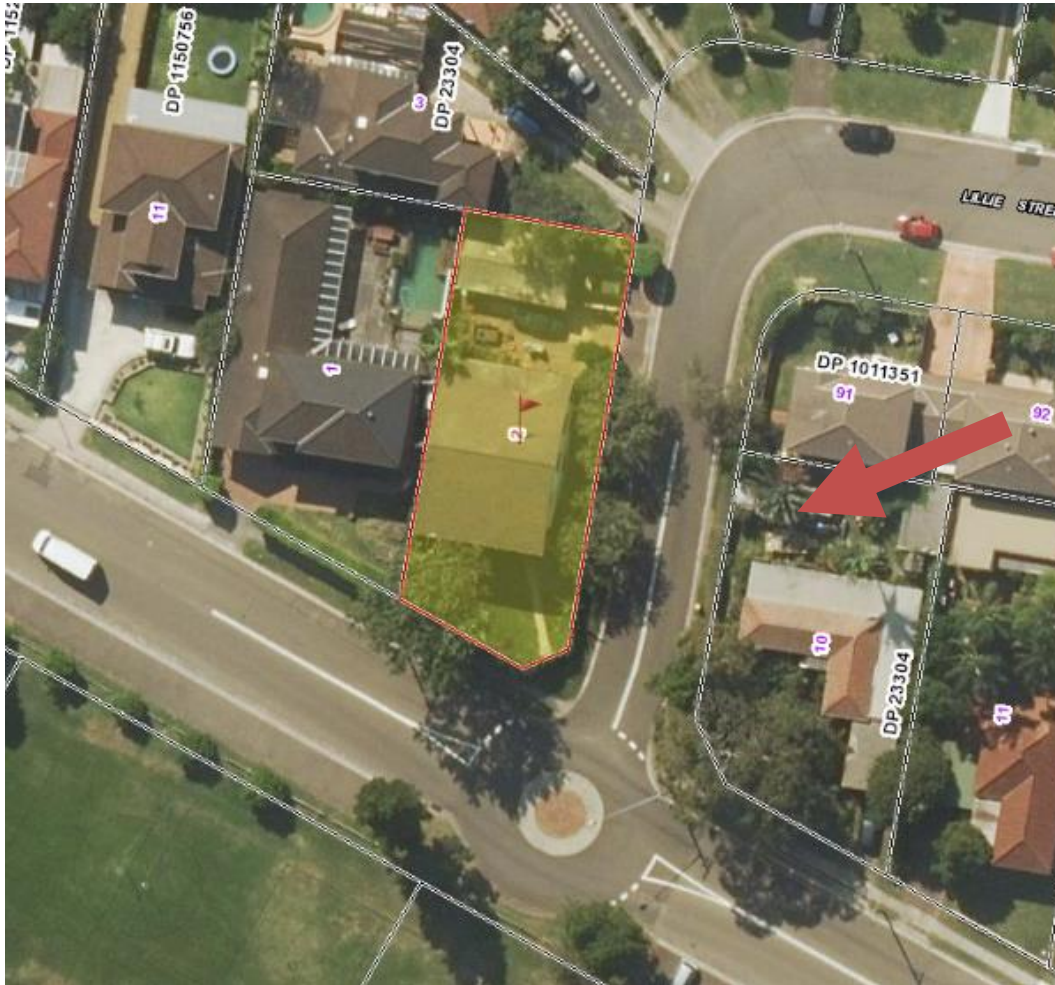
The private open space available to the dwelling on the corner of Abbott Road is within the street frontage and faces Abbott Road. This is in breach of the requirements of the DCP which states that private open space should not be located in the primary front setback, which is Abbott Road in this instance. This space is not private and is the southern side of the site, resulting in limited solar access and is not a complaint or appropriate location for this space.

The clothes line for the front dwelling is provided immediately adjacent the Abbott Road frontage. This is undesirable and a further representation of the inadequacy of the open space in this location. Open space for the dwellings needs to be provided on the northern rear side of the site where solar access and privacy are available.

Privacy & Amenity

The eastern elevation of the proposal includes 7 large full size windows and 2 balconies which will have an immediate view into 88 Abbott Road. As our client has their primary open space immediately adjacent, this is a large concern. These windows need to incorporate of privacy screens opaque glass and/ or raised sills to ensure that the rear yard of 88 Abbott Road maintains a reasonable level of privacy.

We have included an aerial photograph below which clearly shows the rear yard of 88 Abbott Street, so that Council are aware of the concerns.



Solar Access

The impacts on the proposed dwellings, in particular the one fronting Abbott Road is unacceptable. The open space area for this dwelling, and we assume the living area opening onto this space, is almost entirely in shadow due to the southern orientation. This private open space area is unlikely to be usable having inadequate privacy and no sunlight.

Streetscape

The recessing of the garages to extend the driveway length results in an unattractive frontage for the site. This design has not been the result of a desire to provide the most attractive and complementary frontage to the streets, rather it appears to be an effort to find a solution to the shortfall in parking on the site.

The site is immediately opposite playing fields and the character desired for the locality is a low scale to complement to open space and bushland coastal character. Increasing the scale of the development of the site is at odds with this and is an inappropriate result for the lot and the locality.

Setbacks

The 6.5 metre setback to Abbott Road is breached in part. Additionally the secondary street front setback to Lillie Street is breeched with a nil setback provided for the car spaces. These breaches clearly demonstrate an overdevelopment of the site.

Corner Lot

Being a corner lot the ability to develop the site is restricted. There is a need to address both street frontages and also ensure neighbours' amenity is retained without the benefit of a traditional rear yard. The proposal before Council is excessive and has not adequately considered the constraints of the lot and impacts on neighbours. A smaller development is desirable to achieve all of the LEP and DCP objectives.

Engineers Response

Council's engineers have recommended refusal for the appeal based on the lack of details regarding stormwater, non-complaint parking and the loss of a street tree. All of these matters are concurred with and we also urge Council to refuse the appeal.

Conclusion

Considering all these factors we urge the Council to request the applicant withdraw the application. A resubmission would require a smaller scale proposal and evidence of the retention of existing use rights.

If you have any further enquiries on any matters in this regard, please do not hesitate to contact me on 0413 341 584.

Yours faithfully,



Sarah McNeilly
Director
Watermark Planning



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

28 September 2018

Dear General Manager,

**92 Abbott Road, North Curl Curl
Development Application No DA2018/1448
Demolition of an existing dual occupancy and construction of a new dual occupancy
development including strata subdivision**

Background

We have been engaged by the owners of 94 Abbott Road, North Curl Curl, who have recently been notified of a Development Application at 92 Abbott Road, North Curl Curl. No. 94 Abbott Road is located on the western side of the subject site.

DA2018/1448 involves the demolition of the previously approved dual occupancy and construction of a new two storey attached dual occupancy fronting Lillie Street and strata subdivision of the development.

View of Locality

The general locality can be described as low density residential to the west, east and north. To the south of the site is a large area comprising sporting facilities and recreational land including Greendale Creek.

The opportunity has been taken to view the subject property in the context of surrounding development and to consider plans and supporting documents relating to the development application which was available on the Northern Beaches Council website.

It is evident from the site view that the lot is currently developed with a duplex style dual occupancy development, which appears more characteristic of a single dwelling. The building is currently oriented to Abbott Road and has a large rear yard, on its northern side, with a single garage on the northern rear boundary.

Zoning and Land use Generally

We note that the property is zoned R2 Low Density Residential under the provisions of the Warringah Local Environmental Plan 2011 (WLEP2011). Properties on the northern side of Abbott Road located around the site have the same zoning with the land to the south being zoned for public recreation.

Nature of Submission

Having considered the site, its surrounds, neighbours and the details of the application currently before Council, it is our view that the proposal, in its current form, is excessive in scale and not worthy of approval.

While our clients are supportive of improvement to the subject site, the development as proposed is bulky, non-compliant, not in character with the local area and has not been designed to adequately consider impacts on neighbouring sites.

Existing Use Rights

Dual occupancy is a prohibited use in the R2 Low Density Residential zone under the provisions of the Warringah LEP 2011. The subject site benefits from a consent granted by Warringah Shire Council on 31 May 1982 for *“conversion of and addition to the existing dwelling to create a two-storey dual occupancy”*.

This consent was granted subject to the following condition:

*4. This consent is valid only for as long as one of the dwellings created pursuant to this consent is **occupied by the owner of the allotment**, or where the allotment is owned by a corporation, a director or employee of that corporation occupies one of the dwellings”.*

No evidence has been provided to demonstrate that the previous and current occupants of either of the dwellings are owners of the site or employees/ directors of the company. Pursuant to Section 4.66(3) of the Environmental Planning and Assessment Act 1979, an existing use is presumed to be abandoned if it ceases to be continuously used for a period of 12 months. Accordingly, it is essential that it be demonstrated that the occupation of the tenancies has not for a period of more than 12 months, been vacated by an owner, as this would have resulted in lapsing of the consent and abandonment of the existing use rights.

The owner of the property is listed as Hoy Corp Pty Limited. We suggest that Council would require a list of the directors and employees of this company and proof of occupation of one of the tenancies by one of these since the date of consent. We note that a search of the internet revealed listings for the properties for rent on the Clarke and Humel real-estate site in recent history. Accordingly, we assume both apartments are leased to persons not fitting the conditions of consent.

This evidence is crucial to allow the application to proceed for a dual occupancy. If it cannot be delivered, then the assumption must be that the development does not retain existing use rights and that it currently is an unlawful use, as is specifically detailed in condition 4 of the original consent. Should this evidence not be provided, the development could not proceed.

Orientation of site

The site is known as 92 Abbott Road and is currently oriented so that the frontage of the site faces Abbott Road. The rear of the site, facing Lillie Street consists of the rear open space available to the dwellings. The proposed development reorients the site so the two new dwellings face Lillie Street. The impact of this is to the detriment of the neighbouring sites, with the rear yard of 94 Abbott Road, which currently abuts a rear yard and single storey garage, now having a 2 storey dwelling within 900mm of the shared boundary for most of its length. This has a large impact on the amenity of this site with regard to bulk and privacy.

Additionally, the streetscape impact with the overall bulk of the building being far greater than existing and that surrounding is a development not compatible with neighbours or the locality.

Building Envelope

The plans demonstrate a breach to the building envelope control on the shared boundary with 94 Abbott Road. This breach adds to the detrimental amenity impact on the private open space of the neighbouring site. Any alterations, particularly in the rear half of the lot need to have the development setback to reduce the impacts on neighbours and ensure no breaches.

Parking

Council's DCP requires 2 spaces per dwelling for a dual occupancy development. The DCP also requires that the front setback area be landscaped and free of parking structures. The proposed development includes a single garage for each dwelling, with a driveway space in front. Although the internal plans have not been seen, it appears that the garage sits back to allow ample space in the setback for a second vehicle. This space is not compliant with the DCP as the driveway space is to remain clear and available for a visitor to park. In order for the development to comply, four car spaces are required behind the building line. Accordingly, the development fails to comply in this regard.

Street Tree

The application proposes the removal of an existing street tree. This is undesirable as the tree appears to be in good health. Additionally, this tree aids in screening the site and providing a landscaped setting. We note that this is particularly important when considered from the Lillie Street streetscape.

Bulk

The building is excessive in scale as is demonstrated by the lack of compliance with numerous controls. The scale from all elevations is too great and is to the detriment of neighbours and the locality.

While floor space ratio and gross floor area are not development standards adopted by the Warringah LEP, it is a good numeric demonstration of the increased size of the development and the excessive scale. The applicant states that the existing FSR of 0.52:1 and that the proposed FSR is 0.73:1. Traditionally the R2 zone would anticipate an FSR of around 0.5:1. The existing building provides close to this and accordingly looks in character with the scale of development. The new development provides for a significant increase with the result being an inadequate private open space, parking, setbacks and an excessively large structure.

Landscaped Area

A 40% landscaped area is required for the subject site. The SEE states that this is compliant, however there appear to be errors in the calculations. We note that the western side setback is included, where the width is 900mm and non-compliant with the 2 metre minimum width. Similarly, the pedestrian entrances to the side have large block paving stones and the bin areas will require hard surfaces and would not meet the minimum widths. A recalculation is required.

I would also suggest that it is unlikely that Council approved the large area of paving in the rear yard of the site currently. This is at odds with Council's requirements for green space and is far more likely to have been unlawfully installed at some stage. The development is presented as increasing the landscaped area, and this is not a true representation of the proposal.

Private open space on street frontage

The private open space available to the dwelling on the corner of Abbott Road is within the street frontage and faces Abbott Road. This is in breach of the requirements of the DCP which states that private open space should not be located in the primary front setback, which is Abbott Road in this instance. This space is not private and is the southern side of the site, resulting in limited solar access and is not a compliant or appropriate location for this space.

The clothes line for the front dwelling is provided immediately adjacent the Abbott Road frontage. This is undesirable and a further representation of the inadequacy of the open space in this location. Open space for the dwellings needs to be provided on the northern rear side of the site where solar access and privacy are available.

Privacy

The western elevation of the proposal includes 5 large full size windows which will have an immediate view into 94 Abbott Road. While these are shown as tinted glass, it appears that they are openable. If there are to be any windows on this elevations which are in immediate proximity to the rear yard and swimming pool for the neighbour, it is essential that they have raised sills and privacy screens to ensure that amenity is retained. A second storey adjacent the rear yard of 94 Abbott Road is considered to be an overdevelopment of the site and the northern rear area should remain open to enable retention of solar access and privacy to the rear yard of the neighbour. The breach in privacy due to the proximity and scale would be resolved by a smaller development keeping with the scale of development existing in the area.

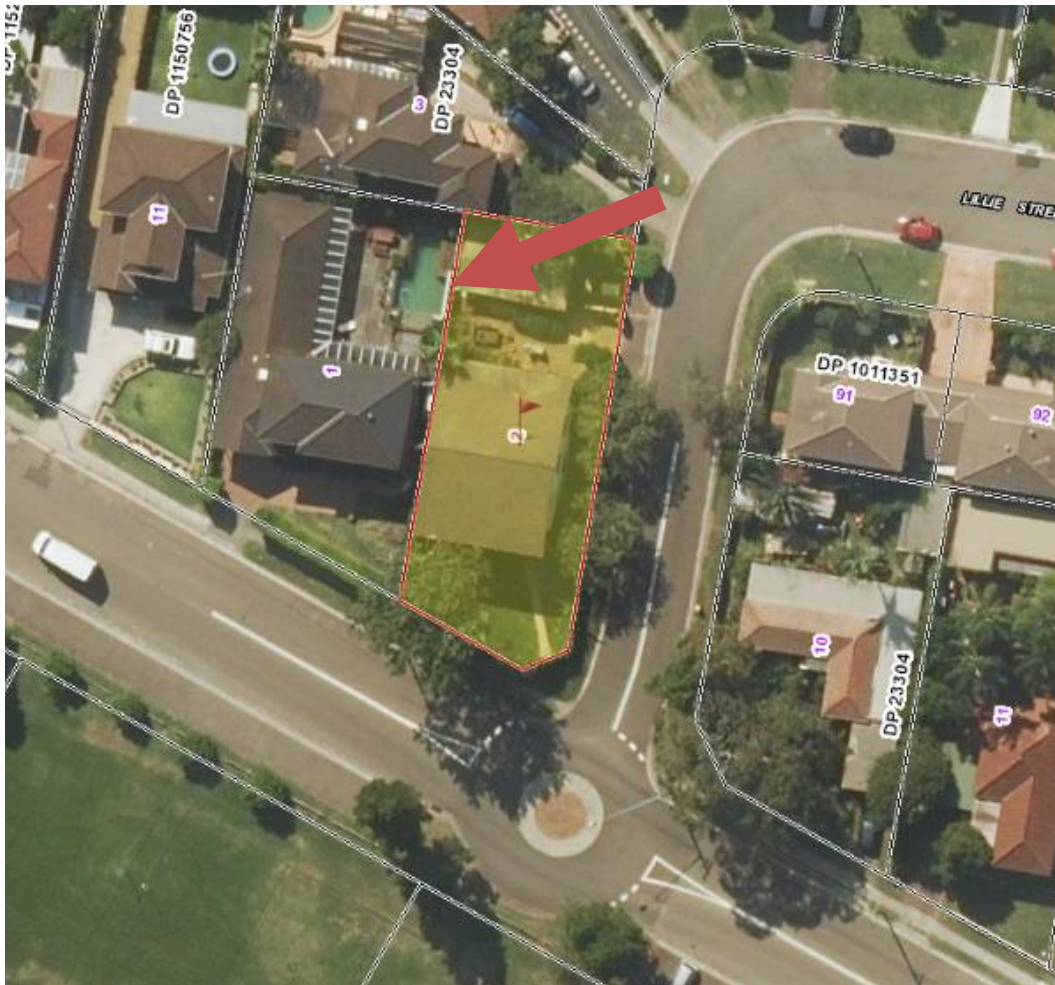
Solar Access

The length along the western boundary of the development with a 900 mm setback on the ground floor a minimally increased setback for the upper floor results in a shadow along the entire length of 94 Abbott Road. Whilst sunlight is available later in the day, this excessive length is unreasonable and should not be considered.

The impacts on the proposed dwellings, in particular the one fronting Abbott Road is also unacceptable. The open space area for this dwelling, and we assume the living area opening onto this space, is almost entirely in shadow due to the southern orientation. This private open space area is unlikely to be usable having inadequate privacy and no sunlight.

Amenity

The amenity afforded to the rear yard of 94 Abbott Road would be detrimentally impacted as a result of the large two storey dwelling with a 900mm setback for the majority of the length of the site. The rear of the site would be boxed in on all sides by walls, which is not desirable to ensure an open and liveable low density residential environment. We have included an aerial photograph below which clearly shows the existing building and the only open area being to the east. It would be to the detriment of 94 Abbott Road to allow for this small open area on the boundary of their opens space to be enclosed by a two storey wall.



Streetscape

The recessing of the garages to extend the driveway length results in an unattractive frontage for the site. This design has not been the result of a desire to provide the most attractive and complementary frontage to the streets, rather it appears to be an effort to find a solution to the shortfall in parking on the site.

The site is immediately opposite playing fields and the character desired for the locality is a low scale to complement to open space and bushland coastal character. Increasing the scale of the development of the site is at odds with this and is an inappropriate result for the lot and the locality.

Setbacks

The 6.5 metre setback to Abbott Road is breached in part. Additionally the secondary street front setback to Lillie Street is breached with a nil setback provided for the car spaces. These breaches clearly demonstrate an overdevelopment of the site.

Corner Lot

Being a corner lot the ability to develop the site is restricted. There is a need to address both street frontages and also ensure neighbours' amenity is retained without the benefit of a traditional rear yard. The proposal before Council is excessive and has not adequately considered the constraints of the lot and impacts on neighbours. A smaller development is desirable to achieve all of the LEP and DCP objectives.

Engineers Response

Council's engineers have recommended refusal for the appeal based on the lack of details regarding stormwater, non-complaint parking and the loss of a street tree. All of these matters are concurred with and we also urge Council to refuse the appeal.

Conclusion

Considering all these factors we urge the Council to request the applicant withdraw the application. A resubmission would require a smaller scale proposal and evidence of the retention of existing use rights.

If you have any further enquiries on any matters in this regard, please do not hesitate to contact me on 0413 341 584.

Yours faithfully,



Sarah McNeilly
Director
Watermark Planning