
From: Anna Williams
Sent: 11/02/2024 4:30:24 PM
To: Maxwell Duncan; Council Northernbeaches Mailbox
Cc: Jeff Annesley
Subject: TRIMMED: Submission objecting to DA 2023/1780 at 89 Marine Parade AVALON obo Jeff and Leonie Annesley
Attachments: Submission Annesley 89 Marine Parade Avalon.pdf;

Good afternoon Max,

Please accept my apologies for the delay in sending you this submission.


Attached is a letter of objection to DA 2023/1780 at 89 Marine Parade AVALON. The submission is written on behalf of the owners of 87 Marine Parade, Jeff and Leonie Annesley.

Please feel free to contact me should you need any further information.

I believe it would be beneficial for you to visit Jeff and Leonie's property, and I have let them know you may be in the neighbourhood on Wednesday this week. Please feel free to contact me or Jeff and Leonie directly to arrange a time for a site visit.

Regards,

Anna Williams,
Director

Blackwattle Planning


The CEO
Northern Beaches Council
council@northernbeaches.nsw.gov.au

Attention: Max Duncan
maxwell.duncan@northernbeaches.nsw.gov.au

8 February 2024

Dear Sir,

RE: DA2023/1780 New Dwelling and swimming pool at 89 Marine Parade Avalon

We are assisting Jeffrey and Leonie Annesley, owners of 87 Marine Parade. Thankyou for the opportunity to respond to this matter.

Context

No. 87 Marine Parade adjoins the subject site to the south west. It supports one half of an attached dual occupancy, and consists of a two storey dwelling with an east west alignment. No. 87 Marine Parade forms the western half of the Dual Occupancy, and enjoys an outlook oriented to the north.

In particular a large north facing deck area adjoins the living/dining room and kitchen and is the principal private open space for the dwelling, receiving the most sunlight through the midwinter day. Additionally, the rear yard area between the deck and the northern boundary provides highly valued garden areas, and a space for drying clothes.

The existing development of No. 89 Marine Parade ensures that 87 Marine Parade enjoys high levels of sunlight access to internal and external spaces, particularly during midwinter, despite it being to the south of the development site.

The northern orientation of living and principal open space areas at No. 87 Marine Parade will have maximum exposure to the new dwelling proposed at 89 Marine Parade, and there are genuine concerns regarding the overbearing visual impacts of the new dwelling, and the significant likely overlooking impacts that will arise.

Our objections to the proposal

We have reviewed the Development Application documentation online and have undertaken a site visit at 87 Marine Parade to understand the impacts upon our clients immediate dwelling and rear yard. Whilst there are a number of areas where the proposed new dwelling will not meet the Council's policy, our submissions relate to the key considerations as follows:

1. Visual bulk and scale

Objectives of Control D1.11 of Pittwater 21 DCP include the following:

To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment

And,

The bulk and scale of the built form is minimised.

It is apparent that unlike other development in Marine Parade including No. 87 and 87A Marine Parade, the proposed new dwelling at 89 Marine Parade does not step down the site in the manner anticipated by the DCP. The resulting design is therefore unable to meet the numeric building envelope. The lack of stepping of the floor plates, together with excessive floor to ceiling heights leads to an imposing structure located too close to the southern side boundary to mitigate its impact.

With particular reference to No. 87 Marine Parade which in section can be seen to be at a much lower scale, the proposed design does not respond to the spatial characteristics of development on adjoining land as well as the fall of land on the development site itself.

The breach of the building envelope is more than minor, and is evidence that the objective to minimise bulk and scale is not met by the proposed design. Given the extent of massing that is presented to No. 87 Marine Parade, and the magnitude of the non-compliance with the envelope provision the visual impact of the proposal should be substantially reduced.

As a minimum, the design should be amended to comply with the required building envelope. There is no justifiable reason why this cannot be achieved on a site with an area in excess of 1000sqm and a width of 18m+. Any design challenge relating to sloping land has been overcome entirely with the extensive excavation proposed and topographical conditions present no barrier to a complying development.

2. Overshadowing

We believe that the new dwelling proposed will unreasonably impact the amount of sunlight enjoyed by 87 Marine Parade in various locations on the property in particular to the private open spaces both open and covered on the northern side of the property, as shown in the below photo:



Figure 1: Northern side principal private open space, garden, and drying area 87 Marine Parade. **Source:** Blackwattle Planning

We hold concerns regarding the accuracy of the submitted shadow diagrams which appear to overestimate existing shadows and take into account overshadowing from landscaping elements which should be given less weight because of their transitory nature.

The NSW Land and Environment Court provides guidance with respect to assessing overshadowing impacts through its Planning Principle outlined within *The Benevolent Society v Waverly Council*. This decision by Senior Commissioner Moore confirmed the already established position of the Court that overshadowing from vegetation should not be considered in the measurement of existing sunlight. The relevant Principle is as follows:

Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.

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Vegetation on 89 Marine Parade in the form of mature melaleucas are not considered a hedge and consist of a species with a relatively open habit and low density of foliage.

The analysis provided by the applicant should adopt *The Benevolent Society v Waverly Council* Planning Principle, and specific reference is made to this requirement within Control C1.4 of the DCP.

The current circumstances allow generous amounts of sunlight to penetrate and be enjoyed by 87 Marine Parade through 9am to 3pm in midwinter. Due to the low angle of the sun in midwinter, sunlight is currently enjoyed whilst sitting on the covered deck and in the garden, and to drying areas for a large portion of the day.

9am shadow diagrams in plan view show almost the entire northern setback and deck areas in existing shadow from 'neighbouring properties/natural site context'. This is not an accurate representation of the existing circumstances and the elevations shadows indicate a substantial impact from proposed shadows between 9am until beyond 12 noon. The new dwelling will take an existing compliant circumstance and reduce sunlight considerably from existing, and to an extent that results in less than 3 hours sunlight to this private open space at midwinter.

Notwithstanding the inaccurate diagrams, the elevating diagrams indicate a substantial increase in shadow from the proposed new dwelling. Overshadowing impacts will arise upon the private open space areas as a result of non-compliance with the building envelope control. The extent of the building that breaches this requirement is shown outlined in red below:

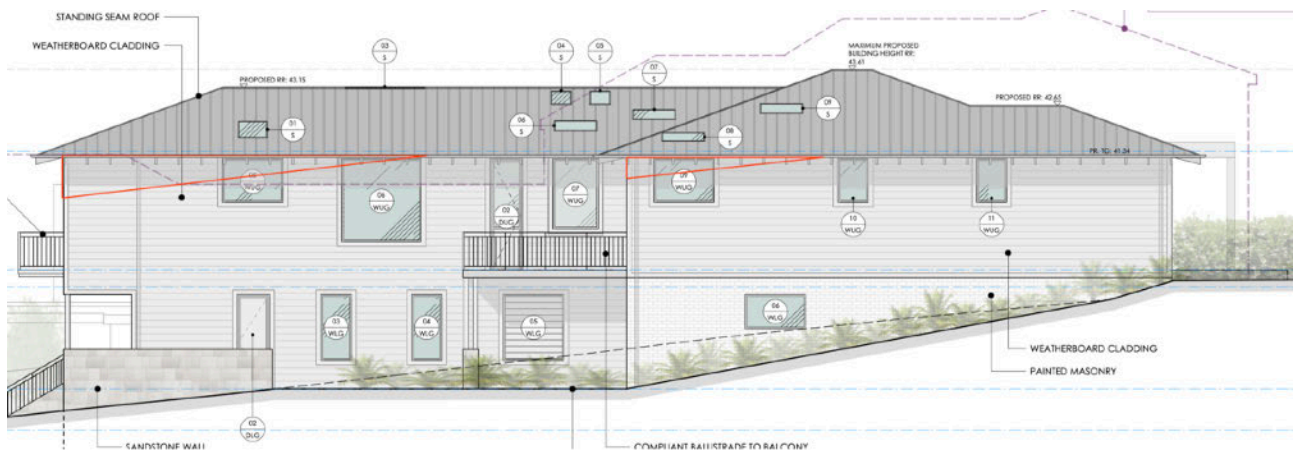


Figure 2: Extent of Building Envelope breach outlined in red.

Source: Annabelle Chapman Architect **Annotation:** Blackwattle Planning

Impacts that arise from a non-compliance are less reasonable than in a development that complies. In this case, the variation to the building envelope control is not justified by either exceptions clause in the DCP, ie, the building footprint is not situated on a slope of over 30%, and the proposal is a new dwelling, not a first floor addition to an existing dwelling.

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In addition, we note that the extensive excavation of the site proposed negates any construction difficulty posed by the fall of land along or across the site. Being a site of over 1000sqm and over 18m in width, there is no constraint that justifies the breach of the building envelope control, and therefore the impacts that arise.

We see that the floor to ceiling heights proposed for the new dwelling are excessive, in particular the basement level at 3.1m, and the upper ground level at 3.15m. These spaces have capacity for lower and yet very reasonable floor to ceiling heights of 2.7m, which would lower the overall height of the dwelling by up to 800mm. In doing so, the basement level would not change, and the upper ground level amenity would still be retained with the ability to maintain raked ceilings in the living areas.

The overshadowing impact upon 87 Marine Parade is unreasonable given both the non-compliant design and in light of the options to amend the design to significantly reduce the impact without material effect upon the development potential of the site.

3. Visual Privacy

Control C1.5 of Pittwater 21 DCP states:

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building

The balcony proposed on the southern elevation at the upper ground floor level will provide commanding views into the living areas and private open space areas of No. 87 Marine Parade. The balcony is proposed to the laundry of the new dwelling, and it is anticipated that it is provided as a drying area convenient to the laundry facilities. It is unsightly and inappropriate that balconies be provided and utilised for this purpose, and located on a side elevation that maximises its exposure to neighbouring dwellings.

We ask that the balcony be removed and an alternative space for drying be provided at ground level. Alternatively, a screening device should be provided constructed of a material providing a maximum 25% openings.

Additionally, we see that Bedroom 3 on the upper ground level is proposed to have a plate glass window of substantial size to its south facing wall. The BASIX window schedule lists this window (WUG-6) as being an area 4.7sqm and constructed using clear glass. The window, being elevated and of such a large size and low sill height will have a commanding view into the northern yard, north facing deck and into the living areas of No. 87 Marine Parade.

We note that the application relies upon 8 *Eleocarpus Eumundii* to intervene the obvious sightlines. Whilst this species is capable of growing to a mature height of 7m, it is a well established planning principle (*Super Studio v Waverly Land and Environment Court Planning Principle*) that landscaping should not be relied upon as the only mitigation of overlooking. In particular, Senior Commissioner Roseth states the following:

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‘..where proposed landscaping is the main safeguard against overlooking, it should be given minor weight. The effectiveness of landscaping as a privacy screen depends on continued maintenance, good climatic conditions and good luck. While it is theoretically possible for a council to compel an applicant to maintain landscaping to achieve the height and density proposed in an application, in practice this rarely happens.

The likely overlooking impact is unacceptable and inconsistent with the policy requirements of Council. As a minimum we suggest that the sill height of the window be raised to at least 1.65m above floor level.

4. Acoustic Privacy

The proposed lower ground floor provides for spaces described as *plant room, services, and equipment storage*. This appears to be excessive floor space for services, particular noting the space available in the excavated basement.

Primarily though, our clients are concerned that acoustic impacts will arise given the proximity to noise sensitive areas of their home as a result of the openings in the *plant room/services* space. We request that council clarify and advise us of the nature of the plant/services/equipment that will be housed in these various spaces so that the acoustic impacts can be appropriately taken into account in the assessment as a likely impact.

Conclusion

The impacts upon No. 87 Marine Parade are substantial and arise as a result of non-compliant building design. The proposed development has the ready capacity to be amended to reduce these impacts and we ask that Council require the applicant to address these concerns through an amended design, with an emphasis on reducing the overall height of the building.

The site itself is large and wide, and there is significant scope for development of a generous dwelling which responds appropriately to minimise impact upon neighbours. We request that Council visit our client's property to fully understand the likely impacts of the proposal and the benefits of amendments as suggested above.

Please feel free to contact us on [REDACTED]

Regards,

Anna Williams,
Director

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