

5th July 2024

Northern Beaches Council
PO Box 82
Manly NSW 1655

Att: Lachlan Rose

Development Application No.: 2024/0633

Property No.: 25 Valley Road, Balgowlah Heights

Dear Lachlan,

I am writing in response to the submissions received by Council in response to the proposed development at No. 25 Valley Road, Balgowlah Heights. Each submission has been responded to below.

1. Submission dated 26th June 2024 – No. 18 Condamine Street

Firstly, it should be noted that the proposed development does not intend to demolish the entire existing dwelling house and construct a new dwelling house on vacant land as implied by the objector. As the proposal will retain some existing building structure, the development is defined as "alterations and additions".

The remainder of the objection has been divided into relevant sub-sections below for ease of reading.

a. Clause 3.4.1 Sunlight access and overshadowing

Archispectrum have prepared amended shadow diagrams which have been submitted alongside this objection response, clearly detailing the property and private open space at No. 18 Condamine Street.

As can be seen, the proposal will result in additional shadows to the private open space of No. 18 Condamine Street between 9:00am to 12:00pm on 21st June. However, it is noted that the additional shadows at 12:00pm are negligible and would not unreasonably impede on the private open space.

The objector claims that the proposal will result in the elimination of half of the existing sunlight received by the private open space of No. 18 Condamine Street, however it is evident that the objector has misconstrued the requirement.

The proposal will result in an additional 16.3% of loss to the sunlight currently received by the private open space of No. 18 Condamine Street between 9:00am to 3:00pm on 21st June. From 1:00pm onwards, the private open space of No. 18 Condamine Street will receive solar access which is entirely uninterrupted by the proposal. Therefore, the objector's claim that the proposal does not comply with the requirements is baseless as the proposal does indeed comply with Clause 3.4.1 of the Manly DCP 2013.

b. Clause 3.4.2 Privacy and security

The objector has claimed that the proposed development will result in no privacy for the residents of No. 18 Condamine Street due to a lack of privacy screening, however it is noted that the development approved by DA2023/0017 did not provide any such privacy screening to preserve the privacy of the subject site, being No. 25 Valley Road and its residents.

It is unreasonable to expect an applicant to provide privacy screening to the satisfaction of an objector when it is clear that the same objector held no regard for the privacy of the subject site when designing their private open space.

Despite the above, it is evident that the subject site contains significant vegetation which functions as a natural privacy screen between the site and No. 18 Condamine Street. This application proposes additional planting to reinforce the natural privacy screening. Therefore, the addition of a privacy screen to the west of the alfresco is redundant and will result in an unnecessary loss of solar access to the alfresco area within the subject site.

It is evident that the objector was either unaware of the natural privacy screen, or has deliberately overlooked the natural screening on the basis of substantiating their objection.

Additionally, it is noted that a privacy screen has been proposed towards the boundary shared with No. 23 Valley Road as no such natural privacy screen exists there.

c. Sub-clause 3.4.2.3 Acoustical privacy

It is noted that the objector has raised the issue of acoustic privacy at the beginning of their objection, however did not proceed to provide any further explanation of how the acoustic privacy of the residents of No. 18 Condamine Street would be diminished by the proposal.

Despite this lack of explanation, it is imperative to address such an objection. As can be seen within the architectural plans prepared by Archispectrum, the proposal provides for an enclosed rumpus at basement level and semi-enclosed alfresco at ground level, which are closest in proximity to the private open space of No. 18 Condamine Street. These types of spaces are not known for generating unreasonable levels of noise, and therefore will not result in any loss of acoustic privacy for No. No. 18 Condamine Street.

On the contrary, it is noted that the objector's property contains an unenclosed swimming pool in closest proximity to the private open space of the subject site, which results in a high likelihood of generating excessive noise which would actually disturb the residents of the subject site. Therefore, it is clear that the objector has raised baseless concerns surrounding the proposal, seemingly in order to amplify their objection.

d. Sub-clause 4.1.4.4 Rear setbacks

It is noted that the proposal does not entirely provide for an 8-metre rear

setback, however due to the irregular shape of the lot, strict compliance with this control would result in a significant loss of habitable space, and as a result, overall amenity.

If the allotment were rectangular, it should be noted that the proposed dwelling house would achieve a rear setback of 13 metres. However, as mentioned above, the shape of the lot is irregular, and therefore only a portion of the dwelling house achieves a 13-metre rear setback, which vastly exceeds the minimum requirement.

Where the lot tapers inward, the proposal achieves a minimum rear setback measuring 1.494 metres, which is an 81.3% variation to the control. However, it is clearly evident that the rear setback area allows adequate space for abundant planting of vegetation, hard landscaping, and private open space in accordance with Clause 4.1.4.4(b), contrary to the objector's claims.

It is also clearly evident by the objector's own submitted plans that No. 18 Condamine Street is situated with a smaller rear setback than the proposal, where a rear setback of 1.3 metres is indicated, resulting in an 83.75% variation. This is an evidently larger variation than the proposal, yet the objector has failed to mention this in their objection. Therefore, this objection is unjust, and rather sets a precedent for the proposal.

e. Clause 4.15 Open space and landscaping

The objector raises issue with the proposed total open space measuring 50.15%, which equates to an 8.8% variation which is negligible. However, it is noted that No. 18 Condamine Street has only achieved a total open space of 44.64% in accordance with DA2023/0017, which equates to a much larger 18.8% variation.

Again, it is evident that the objector is willing to note the non-compliances of the proposed design against the Manly DCP 2013, however is simultaneously willing to overlook their own non-compliances which are indeed more substantial than the proposal. As mentioned above, this objection is unjust and sets a precedent for the proposal.

f. Sydney Water

Sydney Water referral and assessment is required at construction certificate stage and is therefore not relevant to the proposed development application. If there are any issues with the location of the sewer and the proposed development, a qualified Coordinator from Sydney Water will raise the matter and it will be addressed appropriately at that stage.

Accordingly, the objector is not qualified to determine whether or not Sydney Water would grant approval to the proposed development. Therefore, this objection does not hold any merit.

In conclusion, it is evident that the landowners of No. 18 Condamine Street are willing to heavily scrutinise the proposed development, whilst their own development departs substantially more than the proposal from the same DCP controls with which they have raised issues. The question of why should be raised and investigated by Council in their assessment of the proposed development.

2. Submission dated 28th June 2024 – No. 20 Condamine Street

It is noted that the landowners of No. 20 Condamine Street are concerned about issues surrounding natural waterflow, however it is also noted that the property is located up-hill from the subject site. Therefore, the objector would not experience any issues with waterflow as a result of the development.

Furthermore, this issue should be referred to Council's Development Engineering team for assessment and conditioning. It should be noted that all excavation will be conducted in accordance with the appropriate geotechnical advice and structural engineering details.

The objectors also claim to have had a verbal agreement with the previous landowner of the subject site, however it should be noted that verbal agreements with a now-unrelated party are not legally binding and therefore unenforceable on the current landowners. All issues raised regarding boundaries should be verified by a survey plan prepared by a registered surveyor. It should also be noted that if the retaining wall is identified not to be the boundary fence, there will not be any structures attached.

The assessment of the existing angophora costata tree by Vertical Tree Management & Consultancy has confirmed that the growth of the tree "shows good vigour and extension growth". At no point in the assessment does the arborist state that the tree is unhealthy, but rather the health and condition of the tree is confirmed to be good several times in the arborist report, and their advice is to retain the tree.

It appears that the objector has misconstrued the assessment of the health of the tree. However, the retention of the tree should ultimately be referred to Council's Tree Management team for assessment and conditioning. The landowners of the subject site are willing to remove the tree should it be determined by Council's Tree Management team that it is to be removed.

The proposed development will measure a maximum height of 5 metres towards the west boundary shared with No. 20 Condamine Street, which is 3.5 metres below the maximum requirement within the Manly LEP 2013. Additionally, it can be clearly seen within the shadow diagrams prepared by Archispectrum that the proposal will only cast additional shadows on No. 20 Condamine Street at 9:00am on 21st June.

The sunlight received by the objector's property will remain unaffected by the proposal from 10:00am onwards, which will result in a minimum of six hours of unimpeded solar access, contrary to the objector's claims. It is assumed that the objector did not access the shadow diagrams which has resulted in an unfounded objection.

3. Submission dated 28th June 2024 – No. 23 Valley Road

The area calculations plan prepared by Archispectrum has been amended to include the storage rooms at basement level in the floor space ratio calculation.

It appears that the objector has partially misconstrued the definition of gross floor area within the Manly LEP 2013, as any car parking to meet the requirements of the consent authority, including any associated access, is excluded from gross floor

area despite its location. Therefore, the proposed garage will remain excluded from the floor space ratio calculation.

Additionally, the subfloor is an inaccessible space beneath the dwelling house and therefore cannot contribute to floor space ratio. The objector's calculation of an additional 75m² of the basement level meeting the definition of gross floor area is inaccurate, where instead only an additional 23.5m² should be added. As a result, the amended area calculations plan demonstrates a proposed floor space ratio of 0.44:1, which is compliant with the floor space ratio of 0.45:1 prescribed for the site.

The objector has also incorrectly calculated the proposed rear setback. As mentioned in the response to the objection by No. 18 Condamine Street, the applicant is aware of the partial non-compliance with the rear setback requirement, however is constrained by the shape of the lot.

As also mentioned in the response to the objection by No. 18 Condamine Street, the applicant is aware of the non-compliance with the total open space requirement, however ultimately achieves the controls within Clause 4.1.4.4(b) despite the proposal's negligible variation from the numerical control.

The objector's support for the use of timber in the materials and finishes schedule is noted, and the use of timber within the front façade presenting to the streetscape can correspondingly be seen in the external finishes schedule prepared by Archispectrum.

The character of the streetscapes along Valley Road and Condamine Street can be seen to adopt predominantly rendered finishes in a more modern architectural style. The objector's claims of the streetscape comprising of brick finishes is inaccurate, as there are only three properties; inclusive of the subject site, within the direct vicinity which contain dwelling houses constructed with brick finishes.

Additionally, the proposed materials and finishes will only comprise of a portion of the dwelling house containing a darker colour in order to provide contrast to the other light neutrals proposed. Darker colour schemes can be seen at No. 8 Valley Road and No. 19 Valley Road, disproving the objector's claims that darker colour schemes are not characteristic of the streetscape.

The proposed development has not been amended in response to the three objections received, as they primarily contained unfounded or inaccurate objections to the proposal which ultimately hold no merit.

Where required, the shadow diagrams and area calculations plan have been amended, and the landowners of the subject site are willing to remove the angophora costata tree should it be determined by Council's tree management team that it is to be removed.

I believe this response sufficiently addresses any substantiative matters raised by the submissions and look forward to discussing the application further upon completion of Council's preliminary assessment.

Regards,

Martin Bednarczyk
Archispectrum Pty Ltd