
Sent: 18/03/2019 6:18:34 PM
Subject: Attn Nick England DA2019/0193 submission
Attachments: Submission Relating to DA at 21 Wattle Avenue 18 MARCH 2019 v1.0.pdf;

Nick,

I lodged a submission online, but as there is no attachment facility, I am sending this email. Please find attached a submission document discussing my concerns regarding this development.

Please note that I am happy to meet with you on-site to discuss this development in detail, as I did with Maxwell Duncan regarding the prior submission.

Regards

Arne Borg

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Submission Relating to the DA2018/1518

To Council Planner

The following is a submission from 19 Wattle Avenue, Fairlight, related to the DA at the neighbouring property 21 Wattle Avenue, Fairlight.

The exhibited plans demonstrate numerous non-compliances with provisions of both the Manly Residential Development Control Plan 2013 (DCP) and the Manly Local Environmental 2013 (LEP). Additionally, the design of the alterations are not in-keeping with the character of the street, and would result in a loss of amenity for neighbouring properties and the streetscape in general.

Summary

1. The extension of the proposed ground floor balcony is still out of keeping with the existing streetscape. This is unchanged from the earlier application. No other development in the street has gone forward from the original building footprint towards the street. This has an impact on privacy and sunlight into our home. It also means that this balcony can be enclosed later on which will have a larger impact on our afternoon sunlight. This is still around a 4m setback from the street and is still in breach of the DCP setback (4.1.4.1(a) 6 m or the consistent neighbouring properties, the later taking precedence). This extension to the ground floor should not be allowed.
2. Based on the zoning which is R1 general residential there is a restriction on the number of storeys to a maximum of 2, based on the DCP section 4.1.2.2. This development is excavating back from the garage to create rumpus and storage rooms under the ground floor, and installing side windows for light. This clearly is not a 2 storey development. There will be significant excavating of rock and I am concerned of movement and cracking of my walls as a result, particularly given the close proximity of the two buildings.
3. Even though the first floor has had the balcony removed, it is still out of character with every other development in the street. It is also still in breach of the DCP setback requirements, see earlier point. It is not set back from the existing ground floor like other developments in the street. This means that from my first floor balcony, I will be looking into a brick wall and window, which will reduce sunlight and privacy to this area of my house. Because of the orientation of my house I don't get a lot of natural sunlight in winter into the house, so this is significant for me. Furthermore the proposed roofing being flat colourbond is not in keeping with the existing house or streetscape. It can easily be replaced later on to create a balcony which would further detract from my privacy, and would effectively result in the same building as the original submission. Given the main change in the development has been to remove the first floor balcony, and given the applicants have previously made changes to the house without going through council, I suspect that this is highly probable. The proposed development should be changed to move this further back similar to other properties. This is to maintain the existing character of the street, and to ensure no loss of privacy for neighbouring properties private open space. The windows of the north-eastern room (only setback 1.3m from the side boundary) on the second level would look directly into the balcony of my property (ie 19 Wattle Avenue). This could be avoided by having an increased setback on the second storey, consistent with all other houses with second stories on this side of the street.

4. The wall height remains unchanged from the earlier development application. As noted in my earlier objection, this exceeds the Manly Local Environment Plan 2013 by more than 21%. Allowing this development would:

- create a dangerous precedent for the area
- is not in keeping with the surrounding houses and character of the area
- reduces amenity for neighbouring properties
 - with reductions in privacy for private open space; and
 - increased over shadowing of private open space.

5. Side walls are going straight up with no setback increasing the bulk of the overall house, and reducing natural light into the ground floor rooms.

6. Rear side windows are full height, given the proximity to the boundary they should be smaller high windows to improve privacy. This was a condition manly council imposed on our building extension back in 2001.

7. A further stipulation from Manly council on our development was to have opaque glass in the stairwell for privacy reasons.

Consequences of this development.

1. From our upstairs balcony we will now face a wall with a window and will lose our western views.

2. The upstairs balcony will receive shading in the afternoon, with significant loss of winter sun.

3. The upstairs balcony will lose all privacy and so will part of the lounge room behind it.

4. The ground floor sun room (western front room of the house) will lose most of its winter afternoon sun.

5. The ground floor sun room and lounge room (ie bay window in front eastern room) will lose privacy

6. The development is not consistent with the existing street scape. It will stick out past all other houses, will look disproportionately bulky at the front.

7. The closeness of the upper floor to the boundary will reduce natural light into our houses ground floor rooms.

8. The proposed wall height causes greater shading than is necessary

9. I have concerns over the amount of excavation to be done and potential movement and cracking on my house, due to the close proximity of the houses.

In summary the overall effect of this building on us will be the loss of all afternoon winter sun in the house, loss of privacy in all front rooms and balcony and an extremely bulky building that will be completely out of keeping with the streetscape. This will create a precedent for further developments to continue to unfairly encroach on neighbouring properties. I highlight that number 17 Wattle Avenue has yet to add a second floor addition, if this development is approved, I would expect that number 17's additions would be of similar scale and bulk and I would then also lose eastern views, privacy and winter morning sun.



The above photo taken from the balcony of 19 wattle avenue which shows how all existing second floor additions have been steeped back from the front and sides. It also shows the impact of the development on our balcony with a wall that will now be just a few meters away, a wall that will come out to the end of our roofline with a balcony protruding a further 1.2 meters in front.

As mentioned earlier when we submitted a development application for 19 Wattle Avenue back in 2001, council provided approval conditional on accepting the following points with regard to the second floor addition, being that the :-

1. Front A-frame roof be replaced with a hip roof to reduce bulk at the front
2. side windows be raised to allow light in, but to restrict views over neighbouring properties
3. rear of the extension to have a height reduction to reduce backyard shading
4. stairwell windows to be opaque for neighbouring privacy

Conclusion

The proposed development at 21 Wattle avenue is not in keeping with the existing streetscape (it is too bulky and too high), significantly reduces privacy and sun from the neighbouring property at 19 Wattle Avenue. The proposal should :-

- be pushed back from the front to align with other properties developments
- come in on the sides to reduce bulk from the streetscape
- have its height reduced to reduce backyard shading (ceiling heights at the back should be lower)
- have opaque glass in the stairwell to improve neighbouring privacy
- have rear side windows raised to allow light in, but restrict views into neighbouring properties
- wall height reductions to comply with council requirements

I request that the current development application be rejected and that any new application complies with the points above. Council has an obligation to be consistent in its ruling on building developments.

The subsequent pages of this submission highlight how the proposed development application does not comply with the LEP and DCP , as noted by Andrew Stacey a qualified town planner.

Front Setbacks

There will be a detrimental impact on the view of the site from the street and neighbouring properties as it protrudes from the building line established by neighbouring properties. With a setback of 5.7m it does not comply with the DCP setback (4.1.4.1 (a) (6m or the consistent with neighbouring properties, the later taking precedence). As identified in the images below,

- To the left of the subject site, buildings at 27, 25, 23 have setbacks ranging from 8-9m (measured using NSW Gov Six Maps).
- To the right of the subject site, buildings at 19, 17, 15, 13 have setbacks ranging from 6-6.5m (measured using NSW Gov Six Maps).



The subject sites design would disregard these established setbacks from neighbouring houses, with a minimum setback of 5.7m, and a balcony setback on ground of under 4.2m setback. Considering there are no balconies on any of these houses on ground floor, this is not consistent with the streetscape. Some surrounding houses have balconies on the second story, yet all of these are setback from the street even further, ranging from setbacks of 8m to 10m. This is completely inconsistent with neighbouring houses, and will detract from the amenity of the area when view from the street and when view from the balconies or private open space of neighbouring properties. In addition it does not consider DCP provision **3.4.2.2 Balconies and Terraces (b)** “Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.”





The Subject site second story is only 35cm setback further than the first. The second story is only setback 6m from the street, despite every second storey house in the street being over 8m setback from the street on the second story. Thus the subject site DA does not comply with DCP provision **4.1.7.1 First Floor Additions b)** “The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of the former Manly Council area. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure.”

The proposed development should be changed, with the second story addition being further setback from the front. This is to maintain the existing character of the street, and to ensure no loss of privacy for neighbouring properties private open space.





Shows examples of second stories (5) being further setback than the ground floor setback. This is the case for all second story houses in the street.

Conclusion

The subject site DA does not adhere the existing character of the street and does not comply with the DCP front setback requirement. The second level at the subject site does not further setback like all other neighbouring second story houses. The balconies at the subject site are not at all consistent with that of surrounding properties and extends into the setback.

Side Setbacks

To maintain privacy, balconies on neighbouring properties in the street have been setback from the side-boundaries of at least 2m. This is to ensure balconies are not right next to each other and have enough separation.

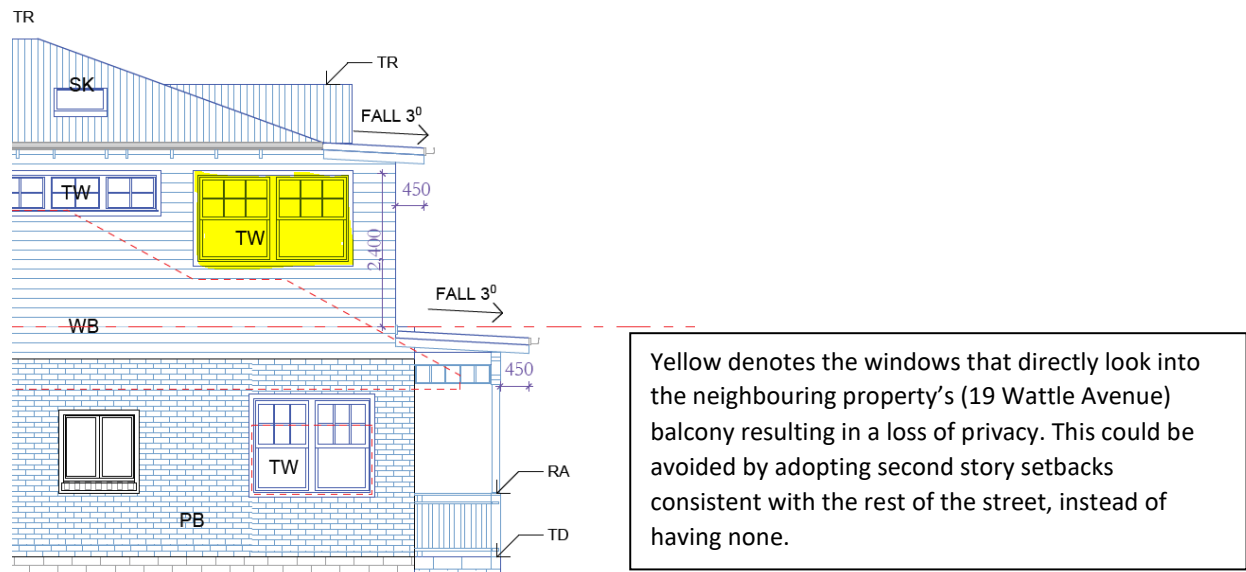
Additionally, it does not follow the **DCP provision 4.1.4.2 (a)** that states; “Side setbacks and secondary street frontages a) Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.”

Provision **(b)** does not apply due to the loss of privacy. The balcony at the subject site would have only a 1.3m side setback. This will result in direct viewing from the balcony into the private open space of neighbouring property at 19 Wattle Avenue.

DCP provision 4.1.4.2 (b) would have Projections into the side setback may be accepted for unenclosed balconies, roof eaves, sunhoods, and the like, if it can demonstrate there will be no adverse impact on adjoining properties including loss of privacy from a deck or balcony.

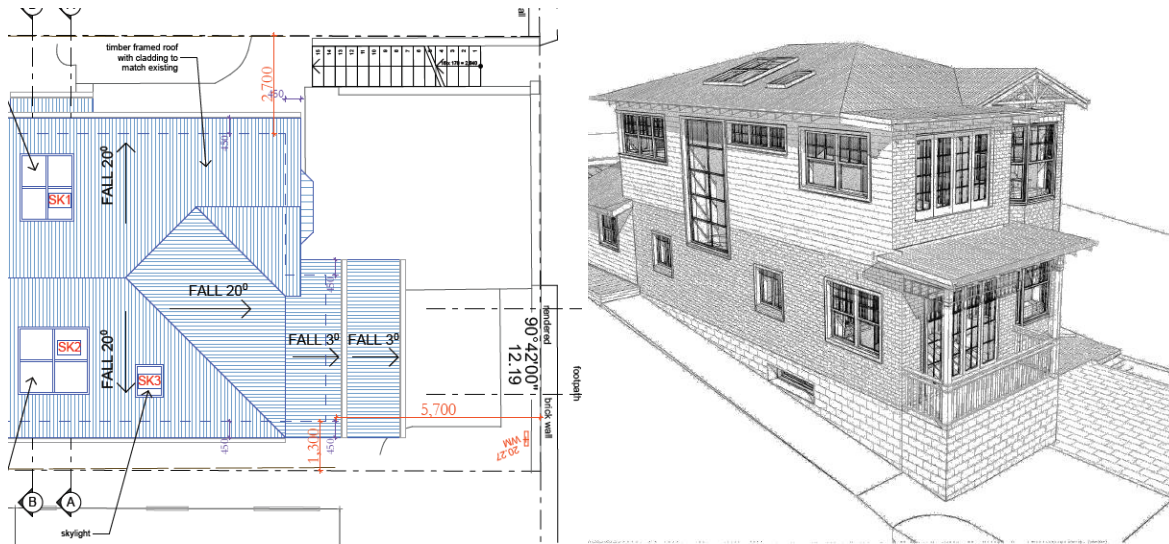
The windows of the 2nd storey north-eastern room (only setback 1.3m from the side boundary) on the second level would look directly into the balcony of neighbouring 19 Wattle Avenue. This could

be avoided by having an increased setback on the second storey, consistent with the other houses with second stories on this side of the street.



Shows second story setbacks of neighbouring properties (15, 17, 19).

With side setbacks of 1.3m, the subject site proposed balcony does not consider DCP provision **3.4.2.2 Balconies and Terraces (b)** "Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy."



Wall Height

The proposed development will exceed the wall height requirement by up to 20%. Considering there are no side setbacks this is a very significant variation. This variation is calculated based on a two storey dwelling. This development is clearly a three storey development, with a storage area (and window) behind the garage and a rumpus room extending back to the stair well to provide internal access. This exacerbates the actual height of the proposed development.

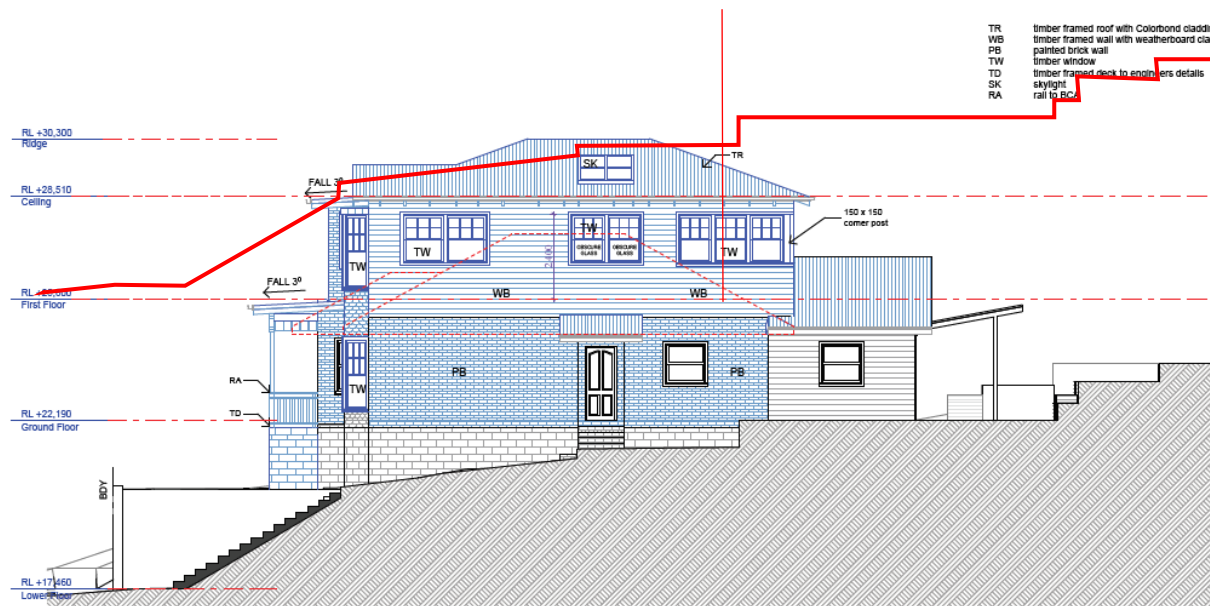
Height and 4.6 Variation

Executive Summary

The proposed development will exceed the Height Control set in the Manly Local Environmental Plan 2013. Changing the standard instrument would not be in the public benefit as it would:

- A. create a dangerous precedence for the area;
- B. is not in keeping with the surround houses and the character of the area;
- C. reduces amenity for neighbouring properties;
 - a. with reductions in privacy for private open space; and
 - b. increased overshadowing of private open space; and
- D. loss of views.

Concurrence is likely to be denied as the variation is based on no-merit, would have a negative effect on the amenity of the area, would set a dangerous precedent, and thus there is significant public benefit in maintaining the development standard.



Shows height exceedance



Objectives of Clause 4.6

The Objectives of Clause 4.6 are as follows:- (a) To provide an appropriate degree of flexibility in applying certain development standards to particular development, and (b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances

The variation does not meet the objectives of the clause, as the variation is not appropriate. The variation would have a negative effect on surrounding houses, and is not in keeping with the character of the area, thus cannot be considered appropriate.

Onus on Applicant

Clause 4.6(3) provides that:- Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.

As mentioned above, there are no planning grounds to justify the variation to the standard instrument, and that a variation would go against the principles of good planning as it would create a

negative outcome for the streetscape, reduce amenity of neighbouring properties and create a dangerous precedent.

Justification Of Proposed Variance

There is jurisdictional guidance available (Samadi v Council of the City of Sydney [2014] NSWLEC 1199 Samadi v Council of the City of Sydney [2014] NSWLEC 1199) on how variations under Clause 4.6 of the Standard Instrument should be assessed by the Land and Environment Court. The proposal fails to meet at a minimum 2 of the 4 Preconditions.

Precondition 2 - Consistency with the objectives of the standard

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality

Comment

The building height is not consistent with that of the prevailing building height, being an existing 2-storey buildings in the street. It does not meet the desired future streetscape in the locality as it is not compliant with the DCP. Thus it does not meet this objective.

(b) to control the bulk and scale of buildings,

Comment

The proposal does not adequately address this objective as the alterations exceed the bulk and scale of the adjoining development. The exceedance in bulk and scale would result in loss of privacy. Thus it does not meet this objective.

(c) to minimise disruption to the following: (i) views to nearby residential development from public spaces (including the harbour and foreshores), (ii) views from nearby residential development to public spaces (including the harbour and foreshores), (iii) views between public spaces (including the harbour and foreshores),

Comment

The proposal would result in a loss of views From the 2nd storey balcony at 19 Wattle Avenue, facing north west. See image below, blue denotes balcony, red arrow denotes view loss.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment

As seen in the image above, the proposals second story addition would result in overshadowing of the private open space (balcony) at 3pm winter June 21. Thus it does not meet the objective.

Precondition 3 - To a consider written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The Variation, written by Nolan Planning states the following *“It is unreasonable and unnecessary to require strict compliance with the development standard given the slope of the site. The non-compliance is a direct result of the slope of the site. If ground level was at floor level the proposal would comply with the height”*

The above statement is false. The non-compliance is not a direct result of the slope of the site. 19 Wattle Avenue , Fairlight, the neighbouring property did not exceed the height limit despite the slope of the sight. If the proposal adopted the roof structure and second storey setbacks of neighbouring properties (in keeping with the streetscape) the proposal would be under the height control. Additionally, the image below (sourced from the Department of Planning and Environment’s website shows how height can be achieved and maximised on a sloping site.

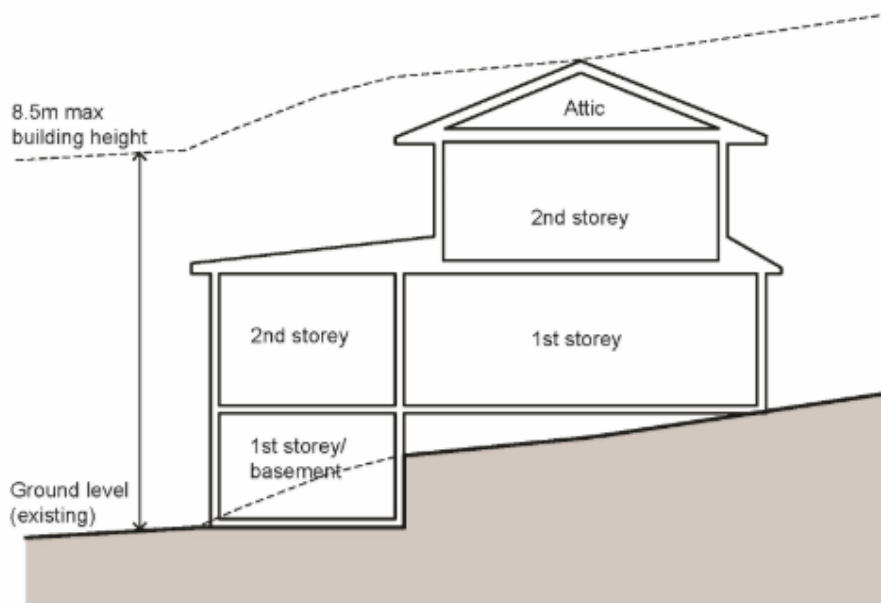


Figure 2: Measuring the height of a dwelling house.

Andrew Stacey

Bachelor of Planning (UNSW)