
Sent: 1/09/2019 8:14:29 PM
Subject: Submission MOD2019/0378 - 49 Lauderdale Avenue
Attachments: Submission Letter MOD2019-0378 - 49 Lauderdale Fairlight.pdf;

To whom it may concern,

Please find attached submission letter in regards to MOD2019/378.

Regards

1 September 2019

Dear Thomas,

Re: MOD2019/0378 to DA2018/0880 49 Lauderdale Avenue, Fairlight

I write on behalf of the owners of 45 Lauderdale Avenue, Mr and Mrs Wright located immediately to the east, adjoining the proposed development on land at 49 Lauderdale Avenue, Fairlight. As previously raised in our submissions dated 14th June 2018 and 28 August 2018 with respect of the development application concern was held regarding privacy impacts from the number, size and location of proposed openings within the eastern elevation. The proposal was contrary to the controls and objectives of Manly Local Environmental Plan 2013 and Manly Development Control Plan 2013. These original concerns remain as conditional design changes which formed part of the determination are sought to be unacceptably modified.

A deferred commencement consent was issued for DA2018/880 sought to be modified was issued by the Northern Beaches Planning Panel on 16 November 2018. The application was considered by the Panel on 3 October 2018 and determined was deferred subject to amendments to the design and further information. The amendments and further information included:

- The proposal did not comply with the height control and no clause 4.6 written request was provided
- Inadequate information had been provided regarding the geotechnical hazard affecting the site, specifically the stability of the existing sandstone block retaining wall, removal of the Port Jackson fig tree and sub surface material
- The upper level extended beyond the retaining wall and exceeded the height development standard and resulted in unacceptable amenity impacts upon adjoining properties.

The minutes from the meeting specifically states:

Amended plans which provide for the rear setback of level 1 (including the suspended deck) to be to the north of the existing retaining wall so as to comply with the height control must be submitted. A geotechnical report from a suitably qualified and practising geotechnical

engineer must also be submitted. The amended plans and geotechnical report are to be submitted to the Council by 31 October 2018...

The modification application seeks to reinstate those design changes necessary to receive development consent (Condition 19, 20, 25 and 36). In this regard, it is unclear how the modification application is granted consent results in a development which is quantitatively and qualitatively the same development as approved and would not meet the statutory obligations of Section 4.55. Further, it is unclear how the proposed development which results in a breach of the development standard would meet the provisions of Section 4.55(1A)(a). The proposed height results in more than a minor environmental impact upon 45 Lauderdale Avenue. The height results in a loss of water views and loss of privacy to their private open space.

Clause 4.3 Height

The development consent issued for DA2018/880 was dependent upon amended plans being submitted which achieved compliance with the development standard. The Northern Beaches Planning Panel was not satisfied with the proposed height associated with the first floor decking because of the resultant amenity impacts upon neighbouring properties. The proposed decking adversely affects the privacy of 45 Lauderdale Avenue. The proposal was amended to demonstrate compliance with the development standard.

The proposed modification to extend the first floor balcony by an additional 2 metres and associated privacy screens results in a height of 11.4 metres and significantly exceeds the development standard for height. Whilst a Clause 4.6 variation is not necessary as per the finding in *Windy dropdown v Warringah Council*, consideration must be given to the reasons development consent was issued in the first instance. In this circumstance, deferred commencement consent was granted on the basis of amended plans demonstrated compliance with the height standard. The first floor was required to be set back north behind the existing stone retaining wall to ensure a compliant height was achieved. The modification seeks to extend the development south of the retaining wall.

3.4.2 Privacy and Security

- Modification to landscaping along eastern side boundary and addition of 3m high boundary fencing
- Modification to windows W14, 15, 16
- Change W21 to a glazed door
- Extend first floor balcony to 2m in depth

The windows within the side boundaries are non compliant with Clause 4.1.4.2 which requires new windows to be setback at least 3 metres from side boundaries. The windows do not use narrow, translucent or obscure glass windows to maximise privacy as required by Clause 3.4.2.1(a).

The non compliances resulted in an amenity impact. The assessment of the application required conditions of development consent to ensure the amenity of 45 Lauderdale Avenue was maintained. The relevant conditions are as follows:

Condition 19 Privacy Screen

Privacy screens are to be provided to the extent of the eastern and western elevations of the 'suspended deck at Level 1'. These screens are to be 1.8 metres in height and have no individual opening greater than 30 millimetres and a total area of all openings that is not more than 30 per cent of the surface area of the screen. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: *To minimise privacy loss between properties.*

Condition 20 Window design for privacy

The proposed windows W4, W5, W6, W14, W15, W16 are each to be redesigned to be one of the following:

- *Highlight windows with a solid sill height to a level of 1.6m from finished floor level*
- *Wholly obscured and fixed (not able to be opened) glazing up to a height of 1.6m*
- *Provided with fixed louvre screens to a level of 1.6m above finished floor level with no individual opening greater than 30 millimetres*

Reason: *To reasonably minimise privacy impact between the subject site and adjoining properties.*

The modification application seeks the condition to be amended for ground floor windows 14, 15, and 16 considering the 3m high screen planting to the western boundary and proposed 3m high fence to the eastern boundary. In doing so, the application additionally seeks to amend Condition 36 to permit a new 3m high fence to the eastern boundary instead of boundary planting. The proposed amendment would also necessitate amendment of Condition 25. Although not specifically stated, the modification relates to Condition 36(a)(i) which states:

Condition 36. Landscaping

- a) *Landscaping is to be implemented in accordance with the Landscape Plan prepared by Bradley Architecture, drawing number 17-2049, 40-06, Issue A, and amended as follows:*
 - i) *Screen planting along the eastern boundary to achieve a minimum height of 3m above the ground shall be planted for the full extent of the building (excluding the carport structure), and along the western boundary, within the landscape area, to reduce the built form and provide privacy for adjoining dwellings. The planting shall be installed at a minimum 200mm pot size and shall be no less than 900mm apart,*

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

In the assessment report considered by the Panel on 3 October 2018, reference was specifically made to the principle established by the Court, that minimal weight should be given to landscaping for privacy. The acceptability of the development in terms of privacy was dependent upon by the design changes of Conditions 19 and 20 in addition to Condition 36. The modification seeks to maintain the already determined unnecessary scale of windows and rely upon landscaping contrary to Super Studio V Waverley Council [2004] NSWLEC 251 at 17-19 and relies upon a proposed 3 metre high boundary fence. A standard boundary fence is 1.8 metres, the provision of a 3.0 metre high boundary fence to facilitate excessively large windows which directly overlook the neighbouring properties is unacceptable and poor planning outcome.

The proposed response in providing a 3.0 metre high boundary fence is not consistent with an acceptable planning outcome for the site. Proposed window 15 is excessively large and can readily be reduced or screened in accordance with the condition of consent. The approved dwelling contains openings within the southern elevation in addition to decking to permit cross ventilation, light and views. The proposal to maintain W15 and 16 without the provided design options allowed for within the kitchen is not an acceptable outcome and is not consistent with the reason the condition was placed on the consent.

The provision of a 3 metre high boundary fence was proposed as part of the original development application. Condition 25 included the conditional amendments decided by the Northern Beaches Planning Panel. Condition 25(b), (c), (d) and (i) specifically deleted all reference to such boundary fencing. The modification sought, although not specifically stated, seeks to amend this condition by deleting the conditional requirements and determination made by the Panel. The fencing at a height of 3 metres was considered unacceptable then and nothing has changed to justify the reinstatement of this fencing.

The proposed extension of the first floor decking by 2 metres, results in a depth of 4.54 metres which is excessive. The depth of the decking combined with the privacy screens results in the breach of the development standard for height and results in an amenity impact to the neighbouring properties.

Insufficient information

Shadow diagrams

The proposed decking extension by 2.0 metres southward and provision of 1.8 metre high privacy screens will result in additional overshadowing of 45 Lauderdale Avenue. The modification application has not been supported by updated shadows to reflect the proposed change in impact. The proposal has not demonstrated it will be consistent with Part 3.4 Amenity (Views, Overshadowing, Overlooking/Privacy, Noise).

Boundary Fence

The modification seeks to provide a 3 metre boundary fence along the side boundaries. There are not details of the materials of this fencing, the RL of the fence height, is the height of the fence measured from within the site or the adjoining properties. Is the existing ground level going to be modified as a result works. Insufficient information is provided on the plans.

Site stability

A deferred commencement consent was issued and the consent at the time of the lodgement of this modification is not operational. Council cannot be in a position to approve further built form south of the retaining wall in which the deferred commencement conditions in part relate, due to the approved tree removal specifically the Port Jackson fig which abutted the retaining wall.

BASIX Certificate

The modification seeks to change openings (eastern and southern elevations) and provision of new openings (western elevation). An updated BASIX Certificate as required has not been submitted.

Section 4.15(1) and 4.55(3) of the Environmental Planning and Assessment Act 1979

The consent authority is required to take into consideration, matters referred to in Section 4.15(1) of the Act and must take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (Section 4.55(3)).

The development consent was issued on the basis of design change condition relating to privacy. The conditions were necessary to achieve an acceptable privacy outcome for the neighbouring property and the development without these conditions is contrary to Section 4.15(1)(a)(i), (iii), (b), (c) and (e).

The proposed modification results in a built form which contravenes the development standard of Clause 4.3 Height of Manly Local Environmental Plan contrary to 4.15(1)(a)(i). The proposal is non compliant with the provisions of Manly Development Control Plan, specifically 4.1.4.2, Clause 3.3.1, Clause 3.4 Amenity specifically 3.4.2 Privacy and Security. The proposal is contrary to Section 4.15(1)(a) (iii).

The proposal results in unacceptable privacy impacts upon 45 Lauderdale Avenue has not been supported by sufficient information relating to the geotechnical hazard and proposed extension of the decking south of the existing sandstone retaining wall contrary to Section 4.15(1)(b). The development is not suitable for the subject site as a result of the amenity impacts and approval is not in the public interest. The development is contrary to Section 4.15(1)(c) and (e).

Approval of the proposed modification application would be inconsistent with the reason development consent was issued and the conditional requirements to deem the proposal

capable of being granted consent in the first instance. The modification seeks to take the benefit of the development consent but not the conditionally burden. The amenity of 45 Lauderdale Avenue should not be compromised by poor planning outcomes and the proper statutory consideration of tests to be met by Section 4.55 and Section 4.15 of the Environmental Planning and Assessment Act 1979.

Regards

Kimberley Kavwenje **BPLAN**
Particular Planning