
Sent: 20/09/2021 1:40:53 PM
Subject: Objection REV2021/0033 DA2020/0951 37-38 East Esplanade Manly
Attachments: Objection Northern Beaches Council DA 2020-0951.pdf;

Development Assessment
Northern Beaches Council

Attention Gareth David.

REV 2021/0033 DA 2020/0951.

Dear Mr David,

Attached objection to the abovementioned DA on behalf of the Owners Corporation SP3035 37-38 East Esplanade Manly NSW.

Regards,

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20 September 2021

Our Ref LJR 21186

Northern Beaches Council
Attention Development Assessment

Mr Gareth David, Planner

RE: Submission to DA-2020/0951– No. 37-38 East Esplanade, MANLY NSW Rev 2021-0033

Dear Mr David,

We act for the Owners Corporation CP SP 3035 – No 37-38 East Esplanade Manly NSW – DA 2020/0951. The property that is the subject of this application.

The Owners Corporation objects to positive determination of the application for the following reasons.

At the Annual General Meeting of SP 3035, held on 14 December 2019, a resolution was passed authorising Mr Colin Hagelburg to lodge a Development application on behalf of the Owner of Lot 58 SP 3035 'to add to, alter and erect new structures on the common property' of SP 3035. This matter is now known as DA-2020/0951.

The subsequent approving By-law known as By-law 9, as set out in registered dealing AQ131923 registered on the title of CP/SP3035, authorises 'the Owner of Lot 58 to add to alter and erect new structures on the common property'.

The application was determined by Council on 15 December 2020 and refused. We note the applicant listed on the determination is 'The Proprietors of CP SP 3035'. The applicant is not 'The Proprietors of CP SP 3035'.

The matter has now been resubmitted to Council for Section 8.3 Review of Determination. This resubmission is not on behalf of the Owners Corporation SP 3035.

We note that at point 1, Introduction and Summary in the Statement of Environmental Effects from Chapman Planning submitted with the review application states the report 'has been prepared for Colin Hagelburg on behalf of Owners Corporation SP3035'. Again, we stress the applicant is not the Owners Corporation SP 3035 nor is the application on their behalf.

There are significant changes in the resubmission that the Owners Corporation have not approved and the changes are now markedly different to the original approving By-law.

Since the granting of approval for the By-law, the Owners Corporation have found the proposed development is unworkable and interferes with the operation and statutory access requirements of the lift machinery. It grants rights to the applicant that are harsh and oppressive to the other lot owners in SP3035 and reduces security and privacy of the other residents. Council's initial determination was refused as contrary to planning requirements. This raises serious doubt that the Owners Corporation had the authority to make the By-law when it was approved and registered.

The Owners Corporation have an application before the NSW Civil and Administrative Tribunal to rescind the By-law.

The Owners Corporation oppose positive determination of the Section 8.3 Review of DA-2020/0951. For the following reasons;

1. The applicant is not The Proprietors of CP SP 3035 nor is the application on behalf of The Proprietors of CP SP 3035 as stated in the application documents.
2. The Owners Corporation oppose the development as it interferes with the operation and maintenance of essential services in the building and is harsh and oppressive to the other lot owners. The application gives a disproportionate benefit to the applicants at the expense of the other residents.
3. The development is in contravention of planning regulations and the resubmission does not address the Reasons for Refusal namely height of buildings, exceptions to Development Standards, sunlight access and overshadowing and privacy and security.
4. The authorising By-law has been listed for rescission in the New South Wales Civil and Administrative Tribunal.

We quote the Council Planner's comments in the refusal submission;

Whilst the development may already contravene the development standard, this does not justify a further non-compliance. If this position was to be supported in this instance, it could be equally applied in relation to every development which currently varies a development standard, such that the standard would become irrelevant and obsolete.

The bulk and scale of the proposal is unacceptable and this is reflected in the significant noncompliance and amenity impacts that result from the proposal.

The resubmission does not appear to address any of the issues listed in the original refusal and is simply a request for the Council to reconsider the proposal. This proposal is opposed by the Owners Corporation SP3035.

Yours faithfully,



Peter O'Brien
Rickard Lawyers