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Subject: DA2019/0544 - 6 Ross Street, Seaforth SUBMISSION
Attachments: SUBMISSION DA2019_0544 6 Ross Street Seaforth 20190620.pdf;

To the General Manager

Please find submission (attached) to DA2019/0544 - 6 Ross Street, Seaforth.

Regards

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20 June 2019

The General Manager
Northern Beaches Council
725 Pittwater Rd
DEE WHY NSW 2099

Dear Sir/Madam

LETTER OF OBJECTION TO DA2019/0544 FOR ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING HOUSE AT 6 ROSS ST, SEAFORTH.

I refer to the above Development Application (DA) for 6 Ross St, Seaforth (the subject site). We act on behalf of the owners of 11 Ellery Parade, the adjoining site to the north-west.

I have inspected the subject site from the street and from my client's property at 11 Ellery Pde. I have also examined the relevant documents, plans and reports including the Statement of Environmental Effects (SEE) prepared in support of the DA.

In summary, we object to the proposed development for the following reasons:

- Non-complying building height and number of storeys
- Severe view loss to my client's primary living and entertaining areas
- Excessive bulk and scale
- Unacceptable Clause 4.6 variation request

These issues will be discussed in further detail below.

EXECUTIVE SUMMARY

The proposed development at 6 Ross St will have a severe view impact on 11 Ellery Pde. The proposed development fails to comply with several of Council's planning controls. The Clause 4.6 request submitted to vary the building height development standard is not well founded and therefore fails at law. The application before Council should not be supported.

OUR CLIENTS' PROPERTY

Key aspects of our clients' property as they relate to their concerns are noted as follows and depicted in the figures below.

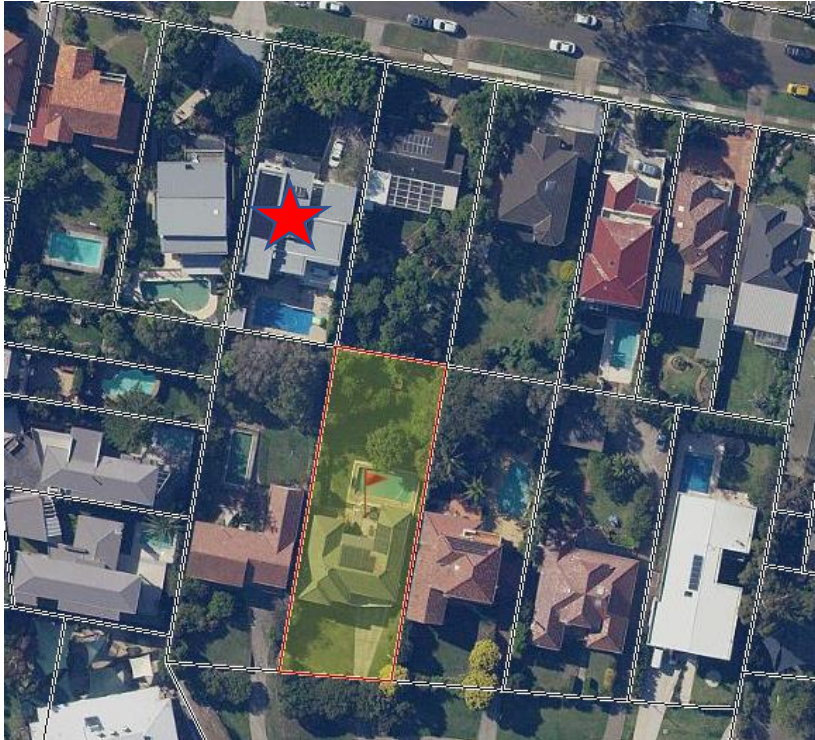


Figure 1: Subject site shown shaded yellow and 11 Ellery Pde shown with red star (source: SIX maps)

No 11 Ellery Pde is a two-storey dwelling house with a flat roof, located to the north- west of the subject site. It has street frontage to Ellery Pde and adjoins the subject site at its south-east corner, as shown in Figure 1 above.

No 11 Ellery Pde is elevated and currently enjoys harbour and foreshore views over the subject site from its south-facing kitchen and loungeroom windows, terrace and outdoor entertaining areas.

Figure 2 below shows the context of the site relative to Middle Harbour and its foreshores. Views from 11 Ellery Pde include water views, land /water interface views and views of The Spit, Middle Harbour, Clontarf Beach, Chinaman's Beach, Georges Heights and Balmoral Beach.

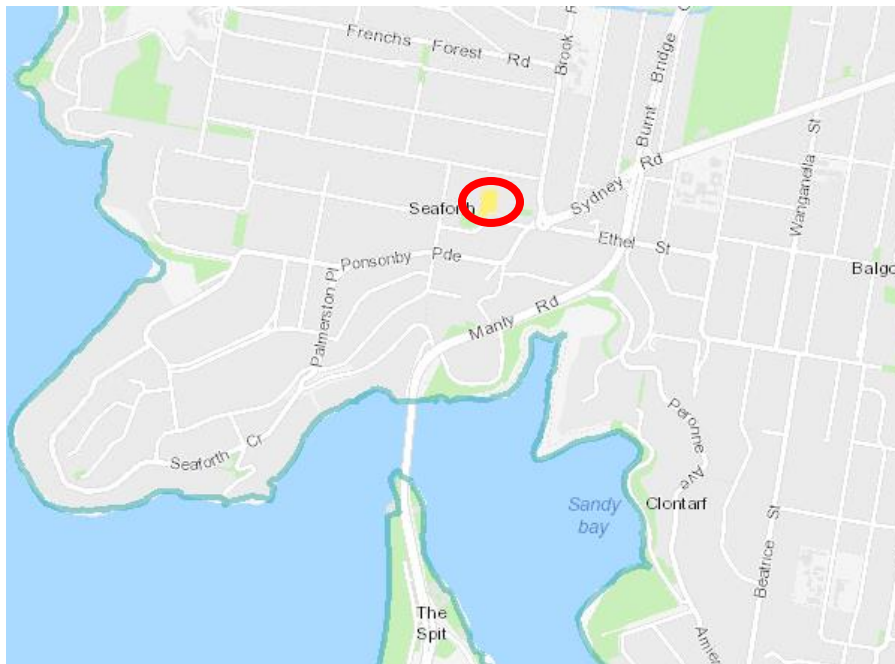


Figure 2. Site location showing context with Middle Harbour and The Spit opposite (source: NSW Planning Portal)

EXCESSIVE BUILDING HEIGHT

Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP) controls height of buildings. A maximum building height of 8.5m applies to the site. The objectives for the height control are:

- (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,
- (b) to control the bulk and scale of buildings,
- (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),
- (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,
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The proposed development has a maximum building height of 9.29m and therefore exceeds the control by 0.79m or 9.2%.

The proposal also fails to satisfy the objectives for the building height controls as follows:

- the proposal results in unacceptable view impacts to 11 Ellery Pde

- the proposal has a large bulky appearance, exacerbated by the pitched, gable end roof, which does not minimise the visual impact of the building
- Due to non-compliance with the building height control as well as number of storeys control, the proposal fails to minimise the effects of bulk and scale.

The non-compliance with the height control is exacerbated by the fact that the proposal:

- Is three storeys where a two storey maximum applies
- Provides excessive slab thickness (500mm) between ground and first floor

The proposal fails to satisfy the numerical requirements and objectives for Council's building height controls.

EXCESSIVE BULK AND SCALE, CHARACTER

As a result of building height non-compliances, the proposal demonstrates excessive bulk and scale and is therefore out of character with the streetscape where two storey developments prevail.

Figure 3 below demonstrates the three-storey appearance of the proposal which is clearly not in keeping with either the existing or desired future character of the streetscape of Ross Street.



Figure 3 Image provided by applicant demonstrating the three-storey appearance of the proposal which will appear as uncharacteristic in the streetscape

A redesign of the dwelling to comply with the 8.5m building height and to step the upper level back to avoid a three-storey overlap should be required. This would then create a compliant building which would not impact the amenity of the streetscape or adjoining properties.

VIEW LOSS

The relevant MDCP objective for maintenance of views is:

- Objective 2) To minimise disruption to views from adjacent and nearby development** and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).
- a) The design of any development, including the footprint and form of the roof is to minimise the loss of views from neighbouring and nearby dwellings and from public spaces.
 - b) Views between and over buildings are to be maximised and exceptions to side boundary setbacks, including zero setback will not be considered if they contribute to loss of primary views from living areas.
 - c) Templates may be required to indicate the height, bulk and positioning of the proposed development and to assist Council in determining that view sharing is maximised and loss of views is minimised. The templates are to remain in place until the application is determined. A registered surveyor will certify the height and positioning of the templates.

It is important to note that the proposal has the following non-compliances:

- Building Heights
- Number of Storeys

Section 3.4.3 of the MDCP requires that the ultimate assessment of views and view loss must be in accordance with the following planning principle established by the NSW Land and Environment Court in *Tenacity v Warringah* (2004 NSW LEC 14) as follows.

1. What views are to be affected?

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

Presently there are expansive views of varying degrees to the south and south-east available from 11 Ellery Pde. These views are highly valued and are available over the houses directly to the south, including the existing roof of 6 Ross Street. The views are of Middle Harbour to Georges Heights, and include the significant landmarks of The Spit, Clontarf Beach, Chinaman's Beach and Balmoral Beach. Land and water Interface views are available.

2. Where are the views obtained?

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment:

The water views from 11 Ellery Pde are obtained from south-facing windows and balconies on all levels of the dwelling. The quality of view varies according to the different vantage points within the dwelling. The views are across the rear boundary and therefore there is a reasonable expectation that they be retained.

The views from the first floor (bedroom) windows will be largely unaffected.

Part of the views currently enjoyed from the main living level, outdoor terrace, entertaining room glass sliding doors and the windows will be lost, from both standing and sitting positions, as a result of the proposed development.

3. What is the extent of the impact?

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

The views from the upper level windows will be largely unaffected. Views from the kitchen windows, lounge room windows and outdoor terrace will be affected as a result of the proposed development. As noted above, views from kitchens and living areas are highly valued.

The most important area in my client's home is the ground level entertaining area. The areas are both internal and external. This is where they spend time as a family and is also the primary entertaining area. The views from this level are highly prized.

The impact on views are indicated in the photographs below.



Figure 4. View from a standing position, from the kitchen at 11 Ellery Pde

Figure 4 shows the existing view from the kitchen window. The top of the telegraph pole in front of the subject site has been used to indicate the position of the proposed roof ridge. The redline gives an indication of building envelope and shows that there would be a severe loss (approximately 30%) of the total water view. A reduction in building height and three storey overlap would preserve more of the water view.



Figure 5. View from a seated position, from the outdoor terrace of 11 Ellery Pde

Figure 5 shows the existing view from a seated position on the external entertaining deck. The non-complying roof results in nearly a complete loss of water views from this position.



Figure 6. View from a standing position, rear terrace of 11 Ellery Pde

Figure 6 shows the existing view from a standing position on the entertaining deck. Once again, the top of the telegraph pole represents the approximate height of the roof ridge. The proposed new roof would result in the loss of the significant foreshore views of the Spit incorporating landmark views of the Marina. A reduction in building height would preserve the majority of the existing water view.

4. Is the proposal reasonable?

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

As the proposed development breaches several planning controls any impact on views resulting from a non-compliance is unreasonable. As the view loss is a direct result of the proposed roof height which is in breach of the building height, the resulting view loss is unacceptable.

In respect to the following question raised in the *Tenacity v Warringah* (2004 NSW LEC 14) decision:

“.....whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours?”

The answer to this question is **yes**, a more skilful design could provide the applicant with a similar level of amenity while reducing the impact on views from 11 Ellery Pde.

There are opportunities to eliminate view impacts from the proposed development, without greatly compromising the overall internal floor space. These include:

- Reducing the 3-storey overlap
- reducing the slab thickness between the ground floor and first floor
- redesigning the roof (by using a flat roof)

UNACCEPTABLE CLAUSE 4.6

The proposal does not comply with the key MLEP 2013 development standards relating to building height. The extent of the proposed departures is:

- 0.79m or 9.2% relative to building height

The above departure gives rise to material environmental impacts, an undesirable planning outcome not only for the subject site but for its adjacent properties. The setting of the development standard within the MLEP followed significant consultation with the community. Compliance with the standard is therefore a realistic expectation among the community. The site is not so constrained that compliance with the building height development standard cannot be achieved.

Despite the submission of a Clause 4.6 written request to vary the building height development standard, the proposal fails to satisfy the requirements of Clause 4.6 of MLEP or the planning tests established pursuant to the most relevant NSW Land and Environment Court judgement (*Initial Action Pty Ltd v Woollahra Municipal Council NSW LEC 118*). Compliance with the standard is required and it has not been adequately demonstrated that compliance is unreasonable and unnecessary, nor has it been demonstrated that there are sufficient environmental planning grounds to justify contravening each standard.

Based on the departures from the building height standard in MLEP, and the resultant material environmental planning impacts (i.e. view loss), the Clause 4.6 Exception to Development Standards submission, and therefore the proposed development itself, is unable to be supported for the following reasons:

- there are insufficient environmental planning grounds to justify the contraventions of each standard;
- there is obvious public benefit in maintaining each standard
- the departure from the standard hinders attainment of the objects of the Act (specifically (g) to promote good design and maintenance of the built environment)
- the proposed development is not in the public interest as it is inconsistent with the relevant objectives of the standard;
- it has not been adequately demonstrated that compliance with the standard is unreasonable and unnecessary; and
- The objection is not well founded.

Under such circumstances the Clause 4.6 variation request is not well founded and therefore fails at law.

CONCLUSION

The proposed development at 6 Ross St will have severe view impacts on 11 Ellery Pde. The proposed development fails to comply with several of Council's planning controls. The Clause 4.6 request to vary the building height development standard does not satisfactorily demonstrate that compliance is unreasonable and unnecessary, nor does it establish that there are sufficient environmental planning grounds to do so. The Clause 4.6 variation request therefore fails and the proposal before Council cannot be supported.

Before determining the application, it is requested that the assessing officer require the erection of height templates on the site to enable an accurate assessment of view impacts from my client's property.

Yours faithfully,



Director
DM Planning Pty Ltd