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17 December 2024

The Development Assessment Team
Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

BY EXPRESS POST

Dear Sir,

RE: DA2024/1623 – 84 Hilma Street, Collaroy Plateau

1. INTRODUCTION

We are the owners of the following properties affected by the proposed development:

- 43 Idaline Street, Collaroy Plateau
- 45 Idaline Street, Collaroy Plateau.

We object to the proposal, primarily on the grounds of the significant impact on views.

We have previously made a submission in respect of the earlier application by the Applicants which was subsequently not proceeded with. The new application confirms our previous submission that the earlier proposal which sought retention of minimal fabric, is in fact for the purpose of assessment, of a new building.

As a consequence, there are no constraints to compliance with Council's controls and designing a building that respects and maintains the amenity of its neighbours. It was apparent in our earlier submission that it would have been beneficial for the Applicants to discuss the proposal with their neighbours to address concerns.

Unfortunately, there has been no attempt to contact us or to arrange to inspect the and assess the potential impacts from our properties, notwithstanding our previous submission and invitation to do so.

The assessment below enables the Council to comfortably conclude that the impacts are so significant as to warrant refusal of this Application.

In order to establish the significance of the impact, the planning principles enunciated by the Land & Environment Court in *Tenacity Consulting v Warringah Council* (Tenacity) have been adopted as the basis for assessment. The assessment below enables the Council to comfortably conclude that the impacts are so significant as to warrant refusal of the application.

2. ASSESSMENT OF VIEW IMPACT: *Tenacity principles*

2.1 Step 1: Views 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 Harbor 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."

- The view affected is of water (Pacific Ocean) and Long Reef Point and Headland being important and highly valued natural landscape elements and iconic on the Northern Beaches peninsula;
- The view loss also includes the shoreline and water interface.

Although we are confident based on the limit of baseline information of the reasonable accuracy for the purpose, for an accurate assessment to be undertaken by Council, height profiles should be erected and a professional independent montage prepared. This should be for the Applicants to attend to, as they are the ones seeking to develop their Property in a manner that does not (by their own admission) comply with the Council controls and thereby is not in keeping with the surrounding area.

2.2 Step 2: Location of views

"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."

2.2.1 Comments

- Views affected are obtained from across the rear boundary as opposed to views across side boundaries which are conceded as difficult and often unrealistic to preserve.
- Views from a standing position are affected.

2.3 Step 3: 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 kitchen 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 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.

2.3.1 Comments

- Views lost are from primarily living areas which are located on level 1.
- Views from level 1 are the only predominant views from the site.
- Views lost from level 1 are severe.
- The nature of the views can be readily gauged from the photos above.

2.4 Step 4: Reasonableness of proposal

“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 skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbors. 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.

2.4.1. Comments

- A significant portion of the water view loss is caused by the non-compliance with the 8.5m LEP height limit of the proposal;
- The water view loss is also affected by the breaches of the building envelope control as well as the height breach
- In addition the proposal also breaches the landscaped open space control.

- Even if the proposal did fit within the required height limits, the design would still cause a severe view loss, particularly of the iconic headland and the land/water interface.
- In our opinion a more skillful and sensitive design solution could provide reasonable accommodation whilst still allowing for reasonable retention of views.
- For example, crude changes with significant reductions would include all of or a combination of the following:
 - Reduced ceiling heights;
 - Redesign the roof so that the significant detrimental effect of the present “pitched design” is addressed. The present proposed upper level pitched roof form, is contributing to the view loss and height encroachment. An alternate flatter, skillion style roof (similar to what was approved and constructed on the adjoining property at No 86), would aid in attenuating this issue;
 - Lowering of the ground floor level;
 - Pulling the upper level of the building back to the west from the east and reducing the generous proportions of rooms; and
 - Increasing the northern setback of the upper floor.

3. OTHER COMMENTS

3.1 Clause 4.6 Objection

The justification for the variation to the height standard prepared by Vaughan Milligan Development Consulting Pty Ltd is fundamentally flawed, deficient and does not address the fundamental tests and provisions of Clause 4.6 of the Warringah LEP. In particular it does not demonstrate that compliance is unnecessary and unreasonable (*Wehbe v Pittwater Council* [2007] NSWLEC827); it does not demonstrate that non-compliance would be in the public interest and that a better environmental outcome is produced.

Further the environmental planning grounds included in the written request, which are based on reliance on the “steep topography”, is simply not the case. **Moreover, the manner in which the Applicant has measured the height is incorrect. The “existing ground line” should be measured from the underside of the existing garage floor level. The 8.5m height plane appears to have been generated from a point that is not the existing ground plane and seeks approval to a breach of over 10%. The breach occurs over a significant part of the top storey envelope.**

We object to the submission on the basis of the height breach which, when correctly defined as noted above, is incongruent with the development standard objectives and not justifiable under a clause 4.6 variation given the severity of the breach.

Council is therefore legally precluded from approving the Application.

3.3 Statement of Environmental effects

The design has been clearly driven by the Applicants' sole desires without any consideration to a proper site analysis and consideration to the potential impact on neighbours. This is clearly evidenced in the Statement of Environmental Effects which makes the following incorrect, unfounded and misleading comments:

"The proposal is subject to the provisions of the Warringah Local Environmental Plan 2011. It is considered that the provisions of these environmental planning instruments have been satisfactorily addressed within this report and that the proposal achieves compliance with its provisions.

The development has been designed to comply with the requirements of the WLEP 2011 & the controls of the Warringah Development Control Plan.

It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing residential character of the area and is compatible with the existing uses in the vicinity.

It is considered that the proposal, which seeks consent for the demolition of an existing dwelling and construction of a new dwelling, driveway and swimming pool, which have been located and designed to appropriately minimise impacts on the amenity of adjoining properties and are compatible with and will complement the character of the area.

The proposal is considered to be well designed having regard for the relevant provisions of the SEPP, Council's LEP and DCP.

It is suggested that the proposal will not have a detrimental impact on the amenity of the adjoining properties or any impact on the streetscape.

The proposal will not impact upon the environment or the character of the locality and the modest extent of changes will ensure that there are no unreasonable visual impacts on the amenity of adjoining properties. The works are therefore considered to be within the public interest.

The principal objective of this development is to provide for the demolition of the existing dwelling and the construction of a new dwelling with basement garage and swimming pool, together with associated landscaping, which respect and complement the site's location.

The proposal is a site-specific design response which takes advantage of the properties superior locational attributes whilst respecting the environmental characteristics of the site and the amenity of adjoining development.

The outcome is a modernised new rear recreational area of exceptional design quality which displays a highly articulated building form which appropriately responds to the site's geometry and the constraints imposed by the siting and design of adjoining development in relation to privacy, solar access and views.

The proposal displays a complementary and compatible building form when compared to other development located along this section of Hilma Street and within the site's visual catchment generally.

The articulated side boundary setbacks maintain the rhythm of development and the setbacks provide appropriately for spatial separation, deep soil landscape opportunity, privacy, solar access and view sharing.

By maintaining our neighbour's amenity and by complementing the scale and form of other development in the immediate locality, the stated objectives have been satisfied.

As the proposed development will not have any significant impact on the environment, scenic quality of the area or the amenity of the adjoining allotments, the issue of Development Consent under the delegation of Council is requested."

A careful consideration of the Application and the documents lodged therewith will reveal instead the following:

- The proposal will have an overbearing scale relationship to the well restrained and sensitively designed buildings to the north of it.
- The site does not exhibit an excessive gradient. It is in any rational description, a gentle slope. Similarly the width is not uncharacteristic, but rather it is a constraint that requires a sensitive design solution. The upper level could be readily redesigned to achieve compliance and reduce impacts.
- The Applicants own shadow diagrams clearly confirm that the adjoining building will be overshadowed. No reasonable person could conclude that the proposal produces negligible additional overshadowing and be deemed as having minimal impact. See also the submission made by the neighbour in respect of the earlier Application.
- There has been no attempt to minimise impact on views. On the contrary insertion of unnecessary design elements such as the pitched roof, breaching of the building envelope and seeking a variation to the height standard all contribute to creating view impacts rather than the converse.
- In our opinion this statement underpins the Applicants' insensitivity and failure to have regard to producing a building which performs well as a good neighbour within an urban environment that requires skilful and sensitive design solutions to maintain a balance of view sharing, privacy and solar access. It is for intents and purposes a new building and hence there are no justifiable grounds for non-compliances and such significant impacts on views.

How such assertions/comments can be made in the Report, when the Author of the Report has not even been into any of our Properties to make any assessment is astounding.

4. CONCLUSION

We would also flag that the proposal presents further items for objection, such as dissonant street character, excessive bulk, privacy and overshadowing impacts.

Having regard to the above, it is clear that the Applicants have undertaken the design without any due regard to the potential impacts on adjoining properties. The assessment under the *Tenacity Principles*, confirms that the proposal will have a significant impact on highly valued views. Therefore, as reasonable opportunities exist to mitigate or at least substantially reduce the impacts to an acceptable degree, the proposal fails and should be refused.

This is reinforced by the fact that the impacts arise from non compliances with the height and building envelope control, and approval would necessitate upholding a Clause 4.6 objection which is as highlighted above, which is clearly invalid and would be unlawful.

Such controls are in place so that development of people's properties are regulated and so that certainty is created for those who live in/purchase neighboring properties can make informed decisions about living in and enjoying their property. Such controls are intended that each and every person who live in an area get to enjoy their property and the area in which they are located.

This is particularly important, when the development relates to a relatively small land size of just over 400m². The height and envelope controls need to be applied with great care, because any variation that increases the control limits, must as a matter of logic, have a detrimental affect on adjoining properties and their owners.

The surrounding developments have been developed with regard to the controls and to allow this one to deviate as requested, is to allow the development at the expense of all others.

We would appreciate being given the opportunity to address the relevant determining body and invite the Applicant to contact us to discuss an alternate new application which addresses the concerns expressed in this submission.

We look forward to hearing from you.

Yours faithfully,

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L. P. MARASCO



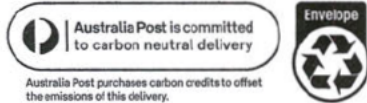
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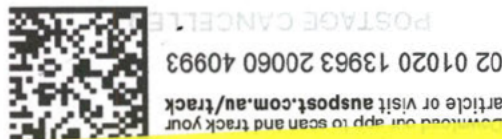
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