
From: Pat Margoc
Sent: 31/08/2023 5:12:57 PM
To: Council Northernbeaches Mailbox
Cc: John Coady
Subject: TRIMMED: PRELIMINARY SUBMISSION TO THE EXHIBITION OF DA 2022/1164
Attachments: Submission to Manly Council.pdf;

Dear Sir/Madam

Please see attached submission to the exhibition of DA 2022/1164.

Yours faithfully

John Coady

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31 August 2023

Ref: 23003

DA 2022/1164

34-35 SOUTH STEYNE, MANLY 2095

PRELIMINARY SUBMISSION TO THE EXHIBITION OF DA 2022/1164

BY JOHN COADY

1. INTRODUCTION

This preliminary submission to the Exhibition of DA 2022/1164 is made by John Coady, the owner/resident of the apartment identified as 634/25 Wentworth Street, Manly. The submission is preliminary because the exhibition of the development application has only recently come to John Coady's attention. John Coady might make additional submissions which will necessarily be after the deadline of 31.08.2023 and might therefore not be able to be taken into account by Council.

John Coady's apartment is located on the *beachside* part of the Peninsula Apartments development, that is at the eastern or beach end of the development. It is therefore located in close proximity to the proposed development site at 34-35 South Steyne. Relevantly, John Coady's apartment fronts the eastern end of the east-west section of Rialto Lane such that the only external exposure of the apartment is from windows and the balcony situated on the Rialto Lane frontage. Most relevantly, the apartment is located on the 6th floor level of the Peninsula Apartments development and enjoys easterly and north-easterly views of Manly Beach and the coastline across the top of properties fronting South Steyne (including the proposed development site at 34-35 South Steyne) and the Corso.

This preliminary submission is therefore focused on the *view loss* that will be suffered by John Coady's apartment as a consequence of the non-compliance with the building height controls imposed on the proposed development by *Clause 4.1.2 – Height of Buildings* by Manly and Local Environmental Plan 2013 ("MLEP 2013"). As such, the submission refers to the Statement of Environmental Effects report prepared by BBF Town Planners¹ (the "SOEE report") which formed part of the DA 2022/1164 submission.

2. NON-COMPLIANCE WITH THE "HEIGHT OF BUILDINGS" DEVELOPMENT CONTROL SPECIFIED BY MLEP 2013

The Height of Buildings map incorporated in MLEP 2013 specifies a maximum building height limit of 10m for that part of the site towards the South Steyne frontage, increasing to a maximum building height limit of 12m towards the rear of the site (fronting Rialto Lane).

The SOEE report provides the following description of non-compliance of the proposed development:

¹ BBF Town Planners "Statement of Environmental Effects. Proposed Commercial Building, 34-35 South Steyne, Manly" July 2022.

- within the portion of the site that is subject to the 10m height limit, the proposed development has a height of approximately 11.3m presenting to South Steyne, being the dominant parapet height and the heights of all proposed rooftop planters. The balustrade of the central staircase and the lap pool reach a maximum height of approximately 12m, with a small awning adjacent to the lift core reaching a maximum height of 13.6m
- within the portion of the site that is subject to the 12m height limit, the proposed development has a height of approximately 14m presenting to Rialto Lane, reaching a maximum height of 14.5m at the lift core.

A visual appreciation of that building height non-compliance is provided by *Figure 2 – Extract of Section D with Breaching Elements Highlighted in Red* contained in the SOEE report which is reproduced below for convenience.



Figure 2: Extract of Section D with breaching elements highlighted in red

3. CLAUSE 4.6 VARIATION REQUEST – HEIGHT OF BUILDINGS

Clause 4.6 of MLEP 2013 makes provision to vary development controls imposed by the LEP in circumstances where strict compliance has been found to be unreasonable and unnecessary having regard to the particular circumstances of the case, including the ability to satisfy the objectives of the zone and the objectives of the Development Standard. Annexure 1 of the SOEE report presents an application pursuant to the provisions of Clause 4.6 of MLEP 2013 to accommodate the building height non-compliances of DA 2022/1164 described in the foregoing. That application reviews the building height non-compliances against:

- the objectives of the B2 Local Centre Zone pursuant to MLEP 2013
- the objectives of *Clause 4.3 – Height of Buildings* in MLEP 2013.

3.1 Consistency of DA 2022/1164 with the Objectives of the B2 Local Centre Zone in MLEP 2013

The objectives of the B2 Local Centre Zone specified in MLEP 2013 are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

- ii). *To encourage employment opportunities in accessible locations.*
- iii). *To maximise public transport patronage and encourage walking and cycling.*
- iv). *To minimise conflict between landuses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

It is conceded that DA 2022/1164 is not inconsistent with Objectives (i) – (iii) of the B2 Local Centre Zone.

However, it is submitted that DA 2022/1164 is inconsistent with Objective (iv) in that:

- the rear of the proposed development site at 34-35 South Steyne fronts the northern and eastern alignment of Rialto Lane, while predominantly residential development in Peninsula Apartments fronts the opposite southern and western sides of the same section of Rialto Lane. Accordingly, notwithstanding that both sites are zoned B2 Local Centre, the rear of 34-35 South Steyne is located at the *interface* of predominantly commercial development fronting this section of South Steyne and the predominantly residential development in this part of the Peninsula Apartments development. Council will be aware that increased caution is required in considering the potential for conflict between developments located at the *interface* of different types of landuse
- the non-compliance of DA 2022/1164 with the Height of Buildings development controls specified in Clause 4.3 of MLEP 2013 represents a significant *conflict* between the proposed commercial development and the existing residential development of Peninsula Apartments in terms of *view loss*. Indeed, because the proposed development site at 34-35 South Steyne accommodates the prolongation of the east-west section of Rialto Lane, it represents a *view corridor* for residential properties both in the Peninsula Apartments development and residential components on the upper levels of commercial properties fronting the Corso which have their frontage (and exposure) to the northern alignment of the east-west section of Rialto Lane
- the incongruity of the building height non-compliance of the proposed development is illustrated by the *Figure 2: Extract of Section D with Breaching Elements Highlighted in Red* diagram reproduced in the foregoing which creates the impression that the 4th level of commercial development at the rear of the site represents a *try-on*.

In the circumstances, it is submitted that DA 2022/1164 is inconsistent with Objective (iv) of the B2 Local Centre Zone, particularly in respect of the 4th level of commercial development on the rear of the site.

3.2 Consistency of DA 2022/1164 with Clause 4.1.2 Height of Buildings in MLEP 2013

The objectives of *Clause 4.1.2 – Height of Buildings* are:

- a) *To provide for building heights and roof forms that are consistent with the topography 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 and 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 landuses.*

While it is accepted that DA 2022/1164 is not inconsistent with Objectives (d) and (e), it is submitted that the DA could be considered to be inconsistent with Objectives (a), (b) and (c) as a consequence of the *view loss* suffered by residents of apartments on the upper levels of buildings fronting:

- the western alignment of the north-south section of Rialto Lane; and
- the northern and southern sides of the east-west section of Rialto Lane.

In this respect, it is noted that:

- as noted in the foregoing, residents of those apartments currently enjoy easterly and north-easterly views of Manly Beach in the foreground and the coastline in the background, looking across the top of properties fronting South Steyne (including the proposed development site at 34-35 South Steyne) and the Corso
- guidance for the assessment of *view loss* as a consequence of development proposals is provided on the website of the Land and Environment Court in the section identified as “Planning Principles” which lists specific “Planning Principles” that should be taken into account when addressing a variety of issues typically encountered in the development control process. Those principles are typically derived from judgements handed down in respect of Court hearings which address those particular issues. The range of planning principles includes principles in respect of “*Views – General Principles*” which are based on the judgement handed down by Senior Commissioner Roseth in the matter *Tenacity Consulting v Warringah Council* (2004) NSW LEC 140. Included as **ATTACHMENT ‘A’** to this submission is a summary interpretation of the *Planning Principles – View Loss* identified by that hearing
- it is instructive to assess the *view loss* caused by non-compliance of DA 2022/1164 with the Height of Buildings development controls specified by Clause 4.3 in the MLEP 2013 against those summary planning principles, and that assessment is set out in the following:

Assess views to be affected

The affected views are water views, with the views of Manly Beach representing iconic views. Accordingly, the view loss caused by DA 2022/1164 can be considered to be serious because of the nature of the views that would be affected.

Assess the Area from which the Views are Obtained

The affected views would all be views from the frontage of the residential premises, regardless of whether that frontage is located adjacent to the rear or the front property boundary. In many cases the views can be enjoyed from both a standing or sitting position. The expectation to retain the views cannot be considered *unrealistic* in circumstances where they are a consequence of non-compliance with Height of Building development controls imposed by MLEP 2013.

Assess the Extent of the Impact

In most cases, the affected views are the only views available to residents of particular premises. Many of the views are currently available from both external (balcony) and internal living areas and the *view loss* can be considered to be severe, particularly when it affects iconic views of Manly Beach as opposed to the more distant views of the coastline.

Assess the Reasonableness of the Proposal that is Causing the Impact

In this case, the impact on views arises as a result of non-compliance with the Height of Building planning controls such that even a moderate impact could be considered unreasonable.

Conclusion

The foregoing review of the *view loss* caused by DA 2022/1164 against the planning principles in respect of *view loss* listed on the Land and Environment Court website leads to a conclusion that the *view loss* is severe, primarily because it affects water views, including iconic views of Manly Beach. In circumstances where that *view loss* is a consequence of non-compliance of the proposed development with the objectives and development controls of *Clause 4.3 – Height of Buildings* in MLEP 2013, it cannot be claimed that strict compliance with those development controls is unreasonable and unnecessary having regard to the particular circumstances of the case including the ability to satisfy the objectives of the zone and the objectives of the development standard.

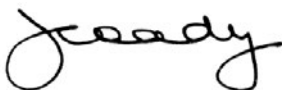
4. EFFECT OF CONSTRUCTION ACTIVITY ON TRAFFIC, PARKING AND PEDESTRIAN ACTIVITY IN RIALTO LANE

Although sufficient time is not available for me to address this issue in detail, in my opinion the building activity required by DA 2022/1164 will have a catastrophic effect on traffic, parking and pedestrian activity in Rialto Lane, particularly in the vicinity of the rear of the proposed development site. Indeed, it will surprise me if the popular “*Rollers*” Cafe located on the northern side of Rialto Lane only approximately 20-30m west of the rear of 34-35 South Steyne will survive the experience. In my opinion, the only way that this consequence will be averted will be by:

- imposing a comprehensive suite of conditions of consent aimed at reducing conflict between that building activity and other traffic, parking and pedestrian activity in Rialto Lane
- assigning appropriate Council officers to enforce that suite of controls on traffic, parking and building activity generated by the construction work on a concerted and continuing basis.

I anticipate that construction of the proposed development will be a 12 month disaster for Rialto Lane that will particularly affect those who rely on it for vehicular (and perhaps pedestrian) access, deliveries, and even recreation.

Yours faithfully



John Coady
John Coady Consulting

Planning Principles – View Loss *Tenacity Consulting v Waringah*

Assess views to be affected.

- Water views are valued more highly than land views.
- Iconic views (eg 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.

Assess the area from which the views are obtained.

- The protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries.
- Whether the view is enjoyed from a standing or sitting position.
- Sitting views are more difficult to protect than standing views.
- The expectation to retain side views and sitting views is often unrealistic.

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% if it includes one of the sails of the Opera House.
- More useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

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.

A summary assessment of the effect of the application on views enjoyed from surrounding properties in accordance with the planning principles espoused by the Land and Environment Court of NSW in *Tenacity Consulting v Waringah* is as follows.

Principle	Assessment
Assess views to be affected	
Assess the area from which the views are obtained	
Assess the extent of the impact	
Assess the reasonableness of the proposal that is causing the impact	