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MEMORANDUM

DATE: 3 May 2022
TO: Northern Beaches Local Planning Panel
CC: Lashta Haidari, Manager Development Assessment
FROM: Adam Croft, Development Assessment Officer
SUBJECT: Item 4.1 - DA2021/1991 – 12 Birkley Road MANLY

Record Number: 2022/264281

Dear Panel,

Council is in receipt of an additional submission to DA2021/1991 from the owners of 10 Birkley Road and 3/14 Birkley Road.

Additional Submission – Green

The assessment report lists the incorrect address in relation to the submissions received from Susan Green and James Lovell and Associates (on behalf of Green). The relevant address for these submissions is 10 Birkley Road, which immediately adjoins the subject site to the south.

1. DCP Non-Compliance: Sunlight Access and Overshadowing of Private Outdoor Living Area

The discussion under Overshadowing impacts in the Notification and Submissions Received section of the assessment report states *“An assessment of the overshadowing impacts of the development is completed in this report. Given the compliant height of the building and the recommended conditions requiring the provision of compliant level 3 setbacks at the southern elevation, the resulting overshadowing impacts are not unreasonable in the context of the site.”*

The detailed consideration of overshadowing of 10 Birkley Road is completed in the report under MDCP 3.4.1 Sunlight Access and Overshadowing.

The calculation of the reduction in solar access to private open spaces of No. 10 in accordance with the control determined that the proposal complies with MDCP 3.4.1.1 (a):

3.4.1.1 Overshadowing Adjoining Open Space

In relation to sunlight to private open space of adjacent properties:

- a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June).*



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Further, the Dwelling 02 level 2 outer parapet wall that breaches the eastern front setback is conditioned to be amended by the recommended condition 13, and would subsequently reduce the extent of overshadowing of the eastern balcony of No. 10. Condition 13 requires that the height of the outer parapet wall be reduced in height from 1.45m to 0.75m. The resulting bulk of this structure within the front setback is considered to be a minor breach that will not result in substantial additional overshadowing beyond that caused by the built form of the building that complies with the front setback control.

2. DCP Non-Compliance: Sunlight Access and Overshadowing of Primary Living Area

The adjoining property owner has requested that the proposed southern side setback be increased to enable compliance (with MDCP 3.4.1.2) and direct sunlight to the living areas of No. 10.

The recommended condition 13 requires that the entirety of the upper level of the proposed building complies with the southern side setback control. The central Dwelling 01 terrace proposes an additional 1.67m setback beyond the required 2.33m. It is considered that requiring the southern elevation to be setback greater than a compliant distance in order to allow additional sunlight access to vulnerable ground floor windows would unreasonably hinder the development potential of the subject site.

3. DCP Non-Compliance: Sunlight Access and Overshadowing of Solar Panels

As stated in the assessment report, the overshadowing of the solar collectors and northern elevation windows occurs largely as a result of compliant elements of the building, subject to the recommended condition 13. In this circumstance where compliant built form elements would still result in non-compliant overshadowing impacts, the vulnerability of the adjoining property to overshadowing is considered to contribute significantly to those impacts.

As assessed within the report, the proposal is found to be consistent with the objectives of MDCP 3.4.1 despite the numerical non-compliance.

Additional Submission – Good

The submission reiterates the concerns raised in the previous submission in relation to loss of natural light and outlook from the south-facing windows, which include a bathroom, kitchen, bedroom, living room and dining/sunroom.

MDCP 3.4.1 refers to direct sunlight access and is not relevant to these south-facing windows, which receive no direct sunlight on June 21. Regardless, the impact to the outlook from and natural light access to these windows is completed in the Notification and Submissions Received section of the assessment report.

It is noted that the living room window will retain natural light and outlook to the south-east beyond the proposed lift, and that the dining/sunroom includes a south-facing window and east-facing bay windows located further east than the northern elevation of the proposal. The existing outlook and natural light to the kitchen and bedroom will be reduced by the proposal, however it is not anticipated that this impact would be significantly greater than that which would result from a compliant 2.5m-2.53m northern side setback.



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The expectation to retain late afternoon summer sunlight and sunsets from south-facing windows is considered unreasonable, particularly given the minimal separation provided by the 1m side setback of No. 14. Further, the existing outlook from these south-facing windows, which includes surrounding buildings and limited vegetation views, is not deemed constitute 'views'. As such, no view loss assessment was undertaken in relation to No. 14.

The matters raised in the additional submissions do not alter the assessment completed within the assessment report.

The application is referred to the Northern Beaches Local Planning Panel for determination.