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## MEMORANDUM

**DATE:** 30 June 2022  
**TO:** Northern Beaches Local Planning Panel  
**CC:** Phil Lane, Development Assessment Manager  
**FROM:** Adam Croft, Development Assessment Officer  
**SUBJECT:** DA2021/1991 – 12 Birkley Road MANLY  
**REFERENCE:** 2022/398337

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Dear Panel,

DA2021/1991 was deferred by the NBLPP on 4 May 2022 for the applicant to provide amended plans as requested by the Panel. The minutes of the meeting were as follows:

*“The Panel’s preliminary view is that the following two aspects of the proposal are unacceptable (noting that at the public meeting the applicant indicated that proposed condition 13 concerning amendments to the approved plans was acceptable to the applicant):*

- 1) The northern side setback of the uppermost level of dwelling 2 should be compliant with the Manly Development Control Plan (DCP) side setback requirements.*
- 2) On the southern side the loss of solar access to the east facing balcony of the adjoining property is unacceptable. Shadow diagrams prepared at hourly intervals should be submitted based on:*
  - a) the currently proposed design of the southern side as modified by condition 13; and*
  - b) a design of the southern side which is fully compliant with the DCP side setback requirements.*

*The Panel defers further consideration to give the applicant the opportunity to submit amended plans which take into account the matters outlined above, including compliance with proposed condition 13, and also shadow diagrams referred to in (2) above. They should be submitted on or before 1 June 2022 failing which the Panel may proceed to determine the application on the material before it, unless the Chair considers that there should be a further public meeting.”*

On 16 May 2022 the applicant requested an extension of the due date for the submission of the amended documentation. The Panel agreed to grant an extension with the information to be submitted on or before 29 June 2022.

On 29 June 2022 the applicant submitted the amended plans/documentation to Council. The amendments and applicant response are outlined as follows:

- 1. The northern side setback of the uppermost level of dwelling 2 should be compliant with the Manly Development Control Plan (DCP) side setback requirements.*



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Comment:

The proposed northern wall (as amended) varies in height from 7m to 7.6m. The required setback to the wall is 2.33m at the western end and 2.53m at the eastern end. The amended proposal increases the northern wall setback to 2m and the curved stair setback to 1.2m. As such, the proposal remains non-compliant with the northern side setback requirement despite the additional setback provided.

2. *On the southern side the loss of solar access to the east facing balcony of the adjoining property is unacceptable. Shadow diagrams prepared at hourly intervals should be submitted based on:*
  - a) *the currently proposed design of the southern side as modified by condition 13; and*
  - b) *a design of the southern side which is fully compliant with the DCP side setback requirements.*

Comment:

- a) The applicant has provided a summary of the amendments made to the proposal in relation to the recommended amendments in condition 13.

***Amendments to the approved plans***

*The following amendments are to be made to the approved plans:*

- *The proposed Dwelling 01 level 3 southern wall shall be set back a minimum of 3m from the southern side boundary;*
- *The proposed Dwelling 01 level 2 outer parapet wall shall be lowered from RL38.35 to RL37.65*
- *The proposed Dwelling 02 level 2 outer parapet wall shall be lowered from RL36.20 to RL35.5. Skylight P3 shall also be lowered accordingly;*
- *The proposed Dwelling 02 level 3 terrace and pergola shall be set back a minimum of 2.8m from the southern side boundary;*
- *The proposed pergola roof over the Dwelling 02 terrace shall be set back a further 1m from the eastern front boundary;*
- *The proposed front fence to Park Avenue shall be a maximum height of 1.5m above natural ground level at the street frontage.*

*Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.*

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

In summary:

- The amended proposal does not comply with the requirements contained in dot point 1 of condition 13 (highlighted in blue text above). The additional setback to part of the first floor wall does not achieve full compliance with the required southern side setback for dwelling 01. The applicant's written response requests that this component of condition 13 is not imposed.
- The amended proposal does not comply with dot point 5 (highlighted in blue text above) – it is noted that the increased pergola setback was also recommended by Council's Urban Designer to reduce the bulk of the building.
- The amendments bring the proposal into compliance with dot points 2, 3, 4 & 6.



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- The amended plan set includes shadow diagrams at hourly intervals based on the proposal as modified by condition 13, with the exception of dot points 1 and 5.

b) The amended plan set does not include shadow diagrams based on a design which is fully compliant with the DCP side setback requirements. In this regard, the amended proposal remains non-compliant in relation to the dwelling 01 upper level wall and the dwelling 02 middle level wall.

### Conclusion

The applicant has not provided all details as requested by the Local Planning Panel on 4 May 2022 for the panel to make an informed decision.

In this regard the panel may not be satisfied that the proposed non-compliances do not impact on the adjoining property.

The application is referred back to the Northern Beaches Local Planning Panel for determination based on the information submitted which partially addresses the Panel's concerns. In this regard it is recommended that Condition 1 be amended to reflect the revised plans and Condition 13 has been amended to only include the amendments which have not been satisfactorily addressed in the revised plans.

### Recommendation

That Condition 1(a) be amended as follows to reflect the amended plans:

#### 1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

##### a) Approved Plans

Drawing No.	Dated	Prepared By
DA01 Subdivision Plan	Rev. A, September 2021	Marston Architects
DA03 Demolition and Excavation Plan	Rev. B, 1 April 2022	Marston Architects
DA04 Roof Plan	Issue 01, June 2022	BH Designs
DA05 Park Avenue Level Plan	Issue 01, June 2022	BH Designs
DA06 Birkley Road Level Plan	Issue 01, June 2022	BH Designs
DA07 Upper Level Plan	Issue 01, June 2022	BH Designs
DA08 Section A-A	Rev. B, 1 April 2022	Marston Architects
DA10 Driveway Crossover Plans	Rev. B, 1 April 2022	Marston Architects
DA11 North Elevation	Issue 01, June 2022	BH Designs
DA12 South Elevation	Issue 01, June 2022	BH Designs



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DA13 East Elevation	Issue 01, June 2022	BH Designs
DA14 West Elevation	Issue 01, June 2022	BH Designs
DA15 West Elevation	Issue 01, June 2022	BH Designs
DA18 Schedule of External Materials and Finishes	Rev. A, September 2021	Marston Architects

That condition 13 be amended to read as follows:

***Amendments to the approved plans***

*The following amendments are to be made to the approved plans:*

- *The proposed Dwelling 01 level 3 southern wall shall be set back a minimum of 3m from the southern side boundary;*
- *The proposed pergola roof over the Dwelling 02 terrace shall be set back a further 1m from the eastern front boundary;*

*Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.*

Reason: To ensure development minimises unreasonable impacts upon surrounding land.