



northern
beaches
council

MEMORANDUM

DATE: 20 September 2023
TO: Development Determination Panel (DDP)
CC: Adam Richardson, Manager Development Assessment
FROM: Brittany Harrison
SUBJECT: Item 3.8, DA2023/0123 - 9 Lincoln Avenue, Collaroy

Dear Panel Members,

Item 3.8 of the DDP Agenda held on the 13 September 2023 was deferred by the Panel, in order to provide the applicant an opportunity to amend the development in a way that responded to the reasons for refusal. The purpose of this memo is to provide an assessment of the plans prepared by the applicant as a response to the issues identified with the development within the recommended reasons for refusal. These plans were received on 14 September 2023.

The amendments to the development include the following:

- Amendment to the roof form and pitch, resulting in a reduction of the overall building height from 10.235 metres (variation: 20.4%) to 9.19 metres (variation: 8.1%). An amended written Clause 4.6 Variation Request has been submitted.
- A Reduction in overall size of upper floor terrace, increasing the side setbacks to neighbouring properties.
- A Reduction of impervious areas to increase landscaping to near compliance, providing 218m² of landscaped open space which equates to 39.0% of the site area.

Assessment - Warringah Local Environmental Plan 2011

Clause 4.3 Height of buildings

The amended plans demonstrate a maximum building height of 9.19 metres, with a variation of 8.1%. As the amended height exhibits non-compliance with the Building Height Standard of 8.5 metres, an assessment against Clause 4.6 Exceptions to development standards has been undertaken and is addressed below.

Clause 4.6 Exceptions to development standards

The applicants written request maintains the original planning grounds noted in the original Clause 4.6. However, has been slightly modified to relate to the amended building height of 9.19 metres. The planning grounds include the following (in summary):

- 1. Historical excavation: The height breach occurs where the proposed upper roof form is situated over the excavated footprint of the existing dwelling.*



northern
beaches
council

2. Topography: The topography of the site is unusual, falling both north-south and east-west...the extent of non-compliance is responsive to the unusual topography of the site.

3. Characterisation of development: The proposed development is appropriately characterised as alterations and additions to the existing dwelling and is bound by the levels of the existing development. The development has been designed to marry the architectural style of the existing dwelling.

4. Contextual response: There is a strong precedence of three storey development and exceedance of the 8.5m height limit in the vicinity of the site, including the recent developments approved by Council...there are a number of dwellings that have the appearance of a height that exceeds the height limit, having had the benefit of being developed without the inclusion of areas of existing excavation.

The applicant has argued that the height breach is a direct result from the unusual topography of the site and the previous excavated footprint of the existing dwelling house. In terms of compatibility and recent approvals from Council, the listed properties noted within the amended Clause 4.6 all proposed (in exception of 20 Lancaster Crescent) height variations of between 0.5 - 7.25% and were limited to minor section of the dwelling.

Whilst the maximum building height has been reduced and now exhibits a variation of 8.1%, and this in isolation is considered an improvement and it is more consistent with other height variations within the area. However, the difference in situation in this instance is that the subject site is an undersized allotment, particularly when compared to majority of properties in the area, and therefore, such a degree of breach not only breaches the building height standard, but significantly the built form controls of the WDCP 2011. It is considered that the overall cumulative effect of the breach cannot be supported and will not achieve the objectives of Clause 4.3 Height of Buildings of the *WLEP 2011*.

The underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone are addressed below.

Objectives of development standard

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment

It is acknowledged that the building height has been reduced, and that a three (3) storey dwelling house characteristic exists within the area. However, as no amendments have been made to significantly reduce the built form non-compliances in regard to building bulk, the proposal will still result in a visually dominant design. As the site is an undersized allotment, the built form that would be considered acceptable for this site would be of lesser bulk and scale of a dwelling situated on a larger allotment (majority of surrounding properties). It must also be acknowledged that the breach of building envelope that is prescribed by the DCP is symptomatic of the excessive building mass proposed.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment

The amended height breach in conjunction with the excessive bulk and scale of the build (discussed



northern
beaches
council

under Clause B1 Wall Height, B3 Side Boundary Envelope and Clause D9 Building Bulk) will still result in a disruption of views to surrounding properties. No amended view loss study was provided. Privacy, however, has been acceptably addressed in the amended plans.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment

As mentioned above, the excessive bulk and scale of the build in conjunction with the proposed height breach will still result in an adverse visual impact, which is still likely to affect the scenic quality of Warringah's coastal and bush environments.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment

As the site is located within a dominant location (corner allotment situated atop a hill), the combination of the breach of height and the bulk and scale of the dwelling will not acceptably manage the visual impact when viewed from public places.

Although a minor height breach may be supported given that sufficient planning grounds are received. A height breach combined with the excessive building mass presented (demonstrated through the extent of non-compliance to the relevant WDCP 2011 controls), will not be supported. In light of the above, the proposal is still considered to be inconsistent with the objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the *WLEP 2011*.

The zone objectives will remain the same as in the original assessment report.

Assessment - Warringah Development Control Plan 2011

Clause B1 Wall Heights

The amended plans have failed to adequately address the wall height non-compliance of 8.5 metres to the western elevation and 8.3 metres – 8.5 metres to the southern elevation. The DCP permits a maximum wall height of 7.2 metres. A wall height breach may be supported on merit; however, the amended proposal maintains WDCP 2011 non-compliances, which is discussed throughout the entirety of the original report, in relation to unacceptable building mass.

This resultant dominance of the built form has been identified as generating unreasonable amenity and visual impacts to surrounding properties. It is concluded that whilst some objectives of the control have now been addressed via the modified roof design, the proposed wall height is still inconsistent with the DCP and does not achieve all the aims and objectives of the control.

Clause B3 Side Boundary Envelope

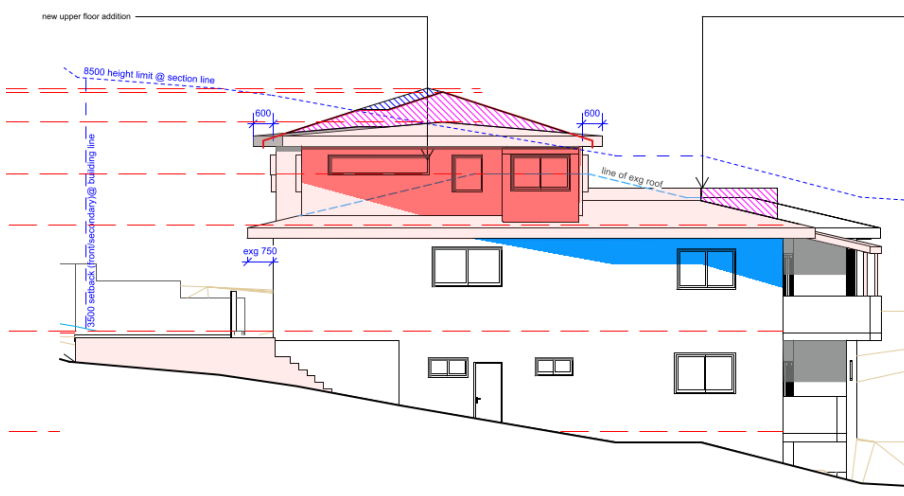
The amended plans have failed to address the side building envelope non-compliance of 82.5% on the western envelope, as the upper floor addition has not been amended to increase side setbacks and reduce the overall floor space area. This issue with the proposed development has been apparent since the issue of the Request for Further Information Letter dated 28 April 2023. The encroachment extends the entire length of the upper floor along the western elevation which will amalgamate with the



northern
beaches
council

non-compliant building envelope of the existing dwelling, further exacerbating the extent of non-compliance. It is again acknowledged that the building height has been reduced, however, the extent of building bulk and spatial separation between properties has not been amended. As such, the amended plans still show that the upper floor addition in its current form is an over development of the site, resulting in a dwelling house that is visually dominant by virtue of its height and bulk and provides for minimal articulation.

It is concluded that the proposed building envelope is still inconsistent with the aims and objectives of the control.



(Figure 1: Western envelope encroachment - red shading proposed, blue shading existing).

Clause D1 Landscaped Open Space and Bushland Setting

The applicant has provided amendments resulting in a landscaped open space area of 39.0% (218.m²) of the site area. As noted in the assessment report a condition would be recommended to increase landscaped area within the front setback areas. The amendments have achieved an increase, and therefore the amended proposal is considered to meet the objectives of this control.

Clause D7 Views

A view loss analysis has been conducted below, in relation to the amended plans, which is considered against the underlying objectives of the control. The comments under Principle 1 and 2 of *Tenacity Consulting Pty Ltd Vs Warringah Council*, will remain the same as the original assessment report. Only changes to Principle 3 and 4 will occur.

Principle 3 - The extent of impact

No. 4 Lincoln Avenue: View of Dee Why Lagoon, district views and views of Dee Why Beach (land/water interface) will be reduced when viewed from the upper ground floor living rooms and balcony and master bedroom. However, the view of Dee Why Beach (land/water interface) including some ocean views, will be obliterated from the master-bedroom. Ocean views towards the south-east and the distant partial view of North Head and St. Patrick's Estate, are likely to be obtained.



northern
beaches
council

The first floor will lose a portion of Dee Why Lagoon from all affected rooms and possibly a further reduction of views towards Dee Why Beach (land/water interface). Ocean views towards the south-east will be obtained through obstructing vegetation. Majority of district views should be retained from this level.

Overall view loss is considered to be **moderate to severe**.

No. 6 Lincoln Avenue: The view of Dee Why Beach (ocean view) and North Curl Curl Headland will be reduced from the upper ground floor living room, bedroom, and balcony. From the kitchen/dining areas these views will be obliterated. The distant partial view of North Head may be retained.

The first floor may lose a portion of Dee Why Beach (land/water interface) and sections of water views. It is considered that North Curl Curl Headland, Dee Why Lagoon and the distant partial view of North Head and St. Patrick's Estate will be retained, including other ocean and district views.

Overall view loss is considered to be **moderate to severe**.

No. 8 Lincoln Avenue: Ocean views obtained from the upper ground floor and first floor will be slightly reduced. However, the views of Dee Why Lagoon and Beach (land/water interface), North Curl Curl Headland, district views and distant partial view of North Head and St. Patrick's Estate will be retained.

Overall view loss is considered to be **minor**.

Principle 4 - Reasonableness of the proposal that is causing the impact.

The amended proposal still results in a height breach and have not addressed the non-compliances with the side boundary envelope, wall height and building bulk controls of the WDCP 2011. Therefore, the amended building height breach (although reduced from a 20.4% variation to an 8.1% variation), combined with the non-conforming elements to the built form controls, will still result in an excessive building mass that is considered an overdevelopment of the site. The resultant effect of the proposed building mass is still considered to impact on existing view corridors to No. 4, 6 and 8 Lincoln Avenue, Collaroy.

As discussed in the original assessment report, amendments which needed to be explored to provide a more "skilful design" would include reducing the maximum building height, reduction in floor space to the proposed upper level and side building envelope encroachment, including an alternate roof form. It is noted that the amendments have provided a lower pitched roof, reducing the building height, however, the amended design has neglected concerns regarding the excessive building mass the current upper floor design contributes to. No amended view loss study accompanied the amended plans; therefore, the above view loss study cannot be deemed fully accurate. As such it is unknown whether the amended proposal is of acceptable impact in the context of view loss.

As a result, the amended proposal is considered to partially address the view loss impacts, however there is insufficient information to ascertain the extent and scope of remaining impact in this regard. As such, it is considered that the proposed development is inconsistent with the relevant objectives of the



northern
beaches
council

WDCP 2011. Accordingly, this amended view loss study finds that the proposal 'as amended' should not be supported.

Clause D8 Privacy

A re-design of the upper floor terrace was undertaken, resulting in a smaller terrace with increased side setbacks, particularly to No. 11 Lincoln Avenue. The amended terrace is more centralised to the dwelling and is in a position that is unlikely to cause unacceptable privacy impacts (i.e., direct overlooking) into No. 11 Lincoln Avenue, Collaroy. The amended proposal can meet the objectives of this control.

Clause D9 Building Bulk

The amended proposal, despite its improvements is not considered to achieve all the requirements of this control. Despite the reduction in building height (lowered roof pitch), the amended proposal has failed to satisfactorily address the actual bulk and scale of the building. The original non-compliance to the wall height and building envelope still remain and have not been modified, hence, still result in an outcome of unacceptable building mass and amenity impacts to surrounding properties and the public domain. Therefore, the amendments made do not promote good design and innovative architecture to improve the urban environment. The proposal presents an over development of the site, with the dwelling house breaching it's built form limitations. It is concluded that the proposal is inconsistent with the aims and objectives of this control.

Conclusion

The amended proposal, whilst an improvement have not addressed all the recommended reasons for refusal.

In particular the concerns relating to building mass and overall bulk and scale of the proposal remain. It is noted that the reduction in building height (although still non-compliant) is an improvement, which in isolation of the other issues may be supported. However, the 'amended' height breach in conjunction with the built form non-compliances will still result in unacceptable building mass, which will lead to visual, and amenity impacts to surrounding properties and the public domain.

On balance, and considering the preceding detailed assessment of the application 'as amended', including an analysis of the variation to Clause 4.3 of the *WLEP 2011*, combined with the non-compliance of built form controls such as wall height and side building envelope, which overall contribute to the excessive building bulk of the proposal, finds that the application is unacceptable in design, and would detrimentally impact the character and amenity of the area.

It is considered that the proposed development does not satisfy the appropriate controls and has not satisfactorily addressed Council's concerns. Accordingly, the application is referred to the DDP with a recommendation for **refusal**, per the amended reasons below.

Reasons for Refusal (amended)

1. **Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 4.3 Height of Buildings and Clause 4.6 Exception to development standards of the Warringah Local Environmental Plan 2011.**



northern
beaches
council

Particulars:

- i) The proposal seeks consent to contravene the maximum building height by 8.1%. This variation in conjunction with the built form non-compliances of the WDCP 2011 which gives arise to amenity and visual impacts, fails to justify the acceptability of such a variation.
2. **Pursuant to Section 4.15(1)(a)(i) Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause 1.2 Aims of the Plan of the Warringah Local Environmental Plan 2011**

Particulars:

- i) The proposed development seeks consent for multiple non-compliances to the built form which, collectively, results in adverse amenity impacts upon surrounding properties. These non-conforming elements and the extent of variations sought, in conjunction with an allotment considered to be undersized, does not promote a design that is compatible with neighbouring development or the existing streetscape.
3. **Pursuant to Section 4.15(1)(a)(iii) and 4.15(1)(b) & (c) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following controls within the Warringah Development Control Plan: A.5 Objectives, B1 Wall Heights, B3 Side Boundary Envelope, D7 Views and D9 Building Bulk.**

Particulars:

- i) The proposed development fails to meet the numerical requirements and underlying objectives of the controls as listed above, presenting a design of unacceptable building mass, resulting in an overdevelopment of the site, with the dwelling house breaching it's built form limitations that are set by the DCP. The consequence of the development contributes to amenity impacts to surrounding properties.
- ii) The proposed development by way of its building mass, and height breach gives arise to an unacceptable impact on views obtained by adjacent properties. It is considered that the impact to these views is not representative of view sharing and the outcome is contrary to the planning principle established in *Tenacity v Warringah Council*.
4. **Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.**

Particulars:

- i) The extent of non-compliances of relevant controls within the Warringah Development Control Plan and clauses within the Warringah Local Environmental Plan 2011, and the resultant unreasonable amenity impacts upon adjoining and nearby properties, is such that approval of the proposed development would not be within the public's interest.