



northern
beaches
council

MEMORANDUM

DATE: 13 October 2023

TO: Development Determination Panel (DDP)

CC: Adam Richardson, Manager Development Assessment

FROM: Bittany 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 amended plans received on the 14 September 2023, did not satisfactorily address the reasons for refusal. The Panel allowed an additional opportunity for the applicant to amend before 28 September 2023.

The purpose of this memorandum 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 27 September 2023.

Further amendments include:

- Increased setback from western boundary on upper floor to exhibit a side setback of 2.5 metres (minimum). The internal staircase location has been revised as a result. Eaves increased from 0.3 metres to 0.5 metres.
- Amendment to the roof form and pitch, resulting in a further reduction in overall building height from 9.19 metres (variation: 8.1%) to 9.05 metres, (variation: 6.5%).
- An increase in the upper floor terrace from 3.5m x 5.8m to 3.5m x 6.6m. The western side setback to the upper floor terrace has been reduced from 3.9 metres to 3.3 metres, when compared to the amended plans received on 14 September 2023.
- Increased floor space area to upper floor addition by approximately 5.0m².

It is important to note that throughout the entire process of this development application, an issue has been identified with amount of floor area associated with the upper floor addition and that it be reduced in size in conjunction with a reduction to building height and side boundary envelope breach that results in a development that is suitable for the size of the subject site.

Submissions

Four (4) submissions were received in relation to the amended plans (received 27 September 2023). The following issues raised in these submissions are addressed below:

1. Solar access/light impacts to internal areas of No. 11 Lincoln Avenue. Request for extension to be further setback from the western adjoining boundary.

The solar access concern was addressed in the original assessment report, it is considered that the development complies with the requirements under Clause D6 Sunlight Access of the WDCP 2011. It is acknowledged that the bulk of the first-floor addition (as amended), in particular the extent of side boundary envelope breach may contribute to a loss of light into the internal living space of No. 11 Lincoln Avenue. Therefore, the extent of envelope breach does not achieve the objectives of Clause B3 Side Boundary Envelope of the WDCP 2011.

2. The proposal (as amended) still does not constitute a skilful design and will continue to result in view loss to several properties (as mentioned in original assessment report). One view loss study has been undertaken by the applicant, which is considered inaccurate.

Refer to Clause D7 Views for a discussion on view loss, elsewhere within this Supplementary Memorandum.

3. Upper floor addition and subsequent side boundary envelope breach results in substantial bulk and scale. The proposed development is not suitable (too large) for the subject site and breaches numerous controls being side boundary envelope, building height and landscaped open space.

Refer to the amended discussion under Clause 4.6, elsewhere within this Supplementary Memorandum in regard to building height. The below assessment discusses how the proposal 'as amended' is still unacceptable for the subject site, in terms of bulk and scale. Landscaping was addressed in the Supplementary Memorandum dated 20 September 2023, and has found to exhibit a landscaped area of approximately 39.0%.

4. Proposed development encroaches boundary of No. 41 Lancaster Crescent.

This concern was addressed in the original assessment report. If the development is to be approved a condition of consent will be included to ensure that no works encroach any site boundary line.

Assessment - Warringah Local Environmental Plan 2011

Clause 4.3 Height of buildings

The amended plans demonstrate a maximum building height of 9.05 metres, with a variation of 6.5%. As the further 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 planning grounds noted in the original Clause 4.6 dated January 2023 and amended Clause 4.6 dated September 2023. Refer to Supplementary Memorandum dated 20 September 2023 for planning grounds (summary).

The underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone have been modified below, to reflect the amendments made in the most recent set of amended plans received 27 September 2023.

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 further reduced including a roof pitch reduction, and that a three (3) storey built form is characteristic of the surrounding area. Further amendments have been made to reduce the extent of breach to the building envelope (western side setback of 2.5m) to address the building bulk concern. However, the side boundary envelope is still considered to be unacceptable as it is non-compliant with the numerical control and does not achieve the objectives of Clause B3 Side Boundary Envelope of the WDCP 2011.

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 than that of a dwelling situated on a larger allotment (majority of surrounding properties). The proposal 'as amended' has not reduced the size of the upper floor addition. 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 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 received on 14 September 2023 and was discussed in the previous Supplementary Memorandum dated 20 September 2023.

- 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 proposal in conjunction with the proposed height breach will still result in an adverse visual impact, which is still considered 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, provided that are supported by sufficient planning grounds. A height breach combined with the excessive building mass presented (demonstrated through the extent of non-compliance to the relevant WDCP 2011 controls), will is not considered to be of a form of development that can be supported. In light of the above, the proposal is still considered to be inconsistent with the objectives of the 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

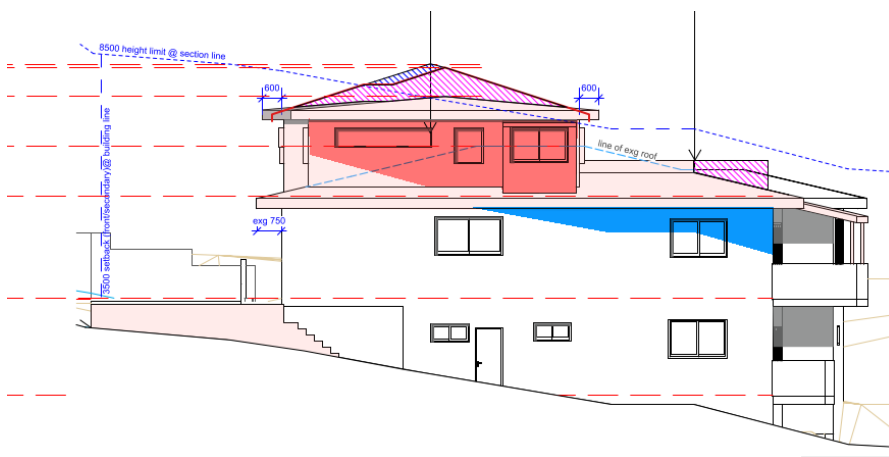
The discussion regarding the wall height non-compliance will remain the same as the Supplementary Memorandum dated 20 September 2023.

Clause B3 Side Boundary Envelope

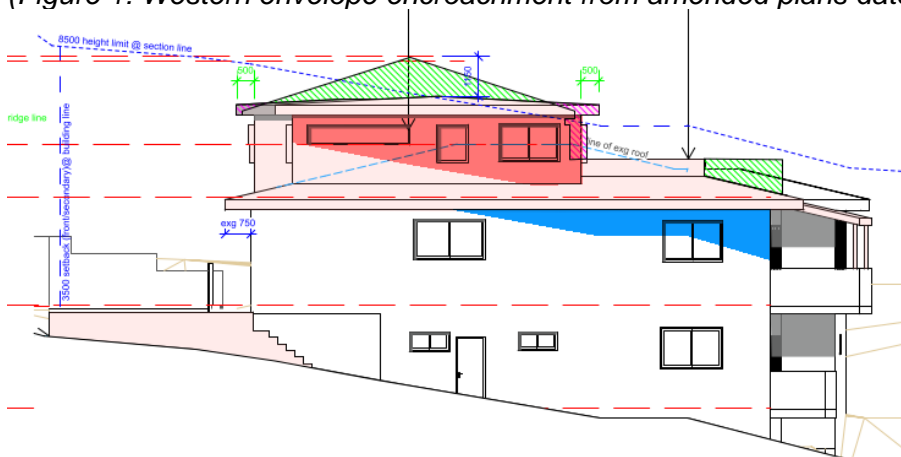
Whilst it is acknowledged that the western side setback when measured from the upper floor addition has been increased, the extent of side boundary envelope encroachment is still considered to be significant. In addition, the floor space area to the upper floor has been increased, rather than reduced. This concern with the proposed development has been apparent since the issue of the Request for Further Information Letter dated 28 April 2023. The encroachment still extends the entire length of the upper floor along the western elevation which will amalgamate with the 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 has not been sufficiently amended. As such, these 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. The figures below depict a comparison between the amended plans received on 14 September 2023 and the amended plans received on 27 September 2023, demonstrating the minimal reduction to the side boundary envelope encroachment to the western elevation.



(Figure 1: Western envelope encroachment from amended plans dated 14 September 2023).



(Figure 2: Western envelope encroachment from amended plans dated 28 September 2023).

Clause D1 Landscaped Open Space and Bushland Setting

The discussion in relation to Landscaped Open Space and Bushland Setting will remain the same as the Supplementary Memorandum dated 20 September 2023.

Clause D7 Views

An amended view loss analysis was conducted under the Supplementary Memorandum dated 20 September 2023. Whilst it is acknowledged that the building height and roof pitch has been reduced, the proposal still results in unacceptable bulk for the subject site. The comments under Principle 1 and 2 of *Tenacity Consulting Pty Ltd Vs Warringah Council*, will remain the same as the original assessment report, and Principle 3 will remain the same as the Supplementary Memorandum dated 20 September 2023. Principle 4 has been amended below:

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

The amended proposal still results in a height breach, although acknowledged to be reduced from a variation of 20.4% to 8.1% to now 6.5%. However, the proposal has not satisfactorily addressed the non-compliances with the side boundary envelope, wall height and building bulk controls of the WDCP 2011. The proposal has shifted the upper floor from the western boundary to exhibit a 2.5m setback but has not reduced the floor space of this upper floor addition. This does not aid in the overall mitigation of bulk and scale. Concern is raised that the shifting of the upper floor towards the east is still considered to contribute to unacceptable view loss to No. 4 and No. 6 Lincoln Avenue, Collaroy.

As discussed in the Request for Further Information Letter, the original assessment report, and the previous Supplementary Memorandum, 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. Whilst it is acknowledged that the amendments have provided a further lowered pitched roof, and reduction in building height, however, the amended design has not adequately overcome issues regarding the excessive building mass the current upper floor design. 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 WDCP 2011.

Clause D8 Privacy

The previous amended plans dated 14 September 2023 significantly reduced the size of the upper floor terrace, which also included increased setbacks from the western boundary. The most recent amended plans received on 27 September 2023 have reduced the western side setback and slightly increased the size of the terrace. If the proposal is to be approved, a condition will be included to revert the terrace size back to 3.5m x 5.8m, with a minimum western side setback of 3.9m.

Clause D9 Building Bulk

The amended proposal, despite the improvement to building height and roof pitch, has again failed to satisfactorily address the actual bulk and scale of the building. Whilst it is acknowledged that the western side setback has been increased to 2.5m, this has not significantly reduced the extent of side boundary envelope non-compliance. In addition, rather than reducing the overall floor space to the upper floor addition as requested, the amendments included an increase to floor space and has shifted the upper floor (bulk) towards the east. Any increase to the floor space would further contribute to the building bulk of the dwelling house. Therefore, the further amendments made do not promote good design and innovative architecture to improve the urban environment. The proposal still presents an

over development of the site, with the dwelling house breaching its built form limitations. It is concluded that the proposal is inconsistent with the aims and objectives of this control.

Conclusion

The amended proposal, whilst including an improvement to the building height and roof pitch, has not adequately 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) 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. The side setback increase to the western boundary still does not satisfactorily reduce the side boundary envelope encroachment and is not found to be acceptable. Rather than reducing the overall size of the upper floor addition contributing to the bulk of the dwelling, the proposal 'as amended' has increased the floor space and shifted the bulk towards the east.

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 still unacceptable in design, and would detrimentally impact the character and amenity of the area.

It is considered that the proposed development still 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.**

Particulars:

- i) The proposal seeks consent to contravene the maximum building height by 6.5%. This variation in conjunction with the built form non-compliances of the WDCP 2011 which gives rise to amenity and visual impacts, fails to justify the acceptability of such a variation.
- ii) The environmental planning grounds advanced with the written Clause 4.6 exceptions to development standards are not considered to be sufficient.

- 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 the size of the allotment, does not promote a design that is proportionally 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 its 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 rise 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.