



John Brunton (9710 0474)
File Ref: DA10/0076

4 June 2010

Dr John Roseth
Chairman
Sydney East Region Joint Regional Planning Panel
GPO Box 3415
SYDNEY NSW 2001

Dear Sir

Council Submission: JRPP Reference Number 2010SYE011
12 Ozone Street, Cronulla (DA10/0076)

[In response, please quote File Ref: DA10/0076]

Following receipt of the final details of this application to erect a residential flat building Council has examined the proposal and determined to present a submission to the Panel. Council resolved that the Joint Regional Planning Panel be informed that the proposal represents an overdevelopment of the site which has unacceptable impacts on neighbours and the amenity of the locality as well as presenting an unreasonable breach into the cliff which will threaten the survival of portions of the cliff.

In reaching this conclusion Council took account of the decision of the Land & Environment Court in relation to a neighbouring site at 12 McDonald Street, Cronulla (10302 of 2009, Innovative Architects Pty Ltd –v- Sutherland Shire Council). That appeal was dismissed and the proponent has submitted a new application that seeks to overcome the deficiencies of the former proposal. The current proposal (DA10/0076) suffers from the same shortcomings as the proposal rejected by the Court.

Background

Council officers attended a briefing with the Panel on 11 March, 2010. This was 38 days after the application had been received by Council. The applicant had not attended pre-application discussions with council officers before the application was submitted for assessment and determination. It was explained by the council assessment officer at the briefing that if the application was to be considered in its current form it would be unlikely to receive a favourable recommendation.

As a result of discussions at the briefing Council's Director Environment Services wrote to the applicant on 12 March, 2010. In part, the applicant was informed that the *"preliminary assessment concluded that the proposal has fundamental flaws that*

could only be rectified by a significant redesign. Such a redesign would require a fresh development application A satisfactory solution cannot be achieved by amending the current proposal. A significant reduction in the basement car park and the eastern portion of the building is required".

While the applicant was afforded the opportunity to submit amended plans it was clearly stated by the council officers that a more substantial redesign should be pursued.

Submission

Landscaped area

An objection has been submitted under SEPP No. 1 arguing that compliance with the landscaped area development standard is unreasonable and unnecessary. By SSLEP2006 there is a requirement for 40% of the site to not be covered by building and be used for growing plants, grasses or trees. It is proposed by the applicant that only half of the required landscaped area need be provided.

Council submits that the SEPP No. 1 objection should not be supported. Landscaping should be provided as an essential element of any residential flat development. In this instance the landscaped area constitutes only the land upon which it is not possible to locate the building. As the site is unusually narrow the component of the building that comprises the basement extends from one side boundary to the other. Consequently, the unbuilt upon area consists of small spaces fronting the street and the ocean. In both of these instances the building extends within the building setback.

A development that satisfied this development standard would require a smaller building footprint. This would be a significant reduction in floor space. Non compliance with this development standard is therefore directly linked to the economic viability of the project. Without an acceptance that landscaped area is unnecessary on a site such as this, as argued by the applicant, the economic use of the site is not feasible.

Despite the arguments presented in the SEPP No. 1 objection, the proposal does not satisfy the objectives of the landscaped area development standard. Consequently, the objection cannot be supported.

Eastern Building Setback

Although the existing building is located close to the cliff adjacent to the eastern boundary, it is proposed that the new building will be located closer to that boundary. All components, being the garage, the residential units and the upper level balconies project further forward. While it would be desirable for any new proposal to be further setback, this proposal is designed to make the situation worse.

Arguments have been presented by the applicant as to how the statutory setback controls should be interpreted and applied. Council does not accept these convoluted

arguments and considers that the building setback above the edge of the cliff is breached.

At the very least the proposal breaches the requirements of clause 17(7) of SSLEP2006 because the proposed basement garage stands within 7.5m from the deemed high water mark. Many of the objectives of clause 17(2) are not satisfied. Council also submits that the intention of the foreshore building control included in SSDCP2006 is clear. Even though a concrete terrace has been constructed over the cliff edge there is sufficient evidence to establish the location of that cliff edge. Insufficient setback is provided from the cliff edge. More importantly, there are adverse consequences resulting from the reduced setback. These consequences are:

- construction of the basement car park will extend beyond the edge of the cliff and result in the destruction of sections of the cliff which is a heritage item.
- the top of the basement car park will project above the existing ground level. Where the basement projects beyond the cliff edge the additional height of the basement will produce an increase in the height of the building wall which replaces the cliff face. Proportionally, the extent of natural cliff will be reduced and the artificial face of the cliff will be increased.
- the increase in the height of the cliff top terrace causes a reduction in the extent of ocean views available between buildings from Ozone Street.
- the new building will be visually more prominent than the existing because it rises 50% higher than the existing façade on a reduced setback.
- despite the conclusions of the applicant's view analysis, council is of the opinion that existing residents will suffer view loss. In this location oblique views along the coastline should be respected. Even though the building elements that project forward may be small in area their impact on views is as great as larger building elements. This includes balconies which have been ignored in the view analysis. The view loss is greater than forecast by the applicant and considered unreasonable.
- view loss would be reduced and comparable to the existing situation if the building complied with the setback envisaged by the development control plan.
- the extent of morning overshadowing of dwellings in the building immediately to the south is increased. The application only makes its comparison with the existing building. There is a greater impact when the comparison relates to the shadows cast by a building that complies with the required building setbacks.
- shadows cast by this building will extend across the public open space located to the east of the site. The Esplanade is a popular promenade for pedestrians throughout the year. While this land is already deprived of late afternoon sun due to existing development, the proposed building will increase the extent of

overshadowing. Even at 2pm on a summer afternoon the proposed building will overshadow the public path where it is currently not shadowed. A building erected on a complying setback would have a reduced extent of shadowing.

Basement Car Park

Due to the small size of the site the provision of basement car parking is difficult. This problem is increased because the development incorporates parking at a rate beyond that permitted by council's policies. Some of the most significant shortcomings of the proposal arise due to the size and design of the basement car park.

While the car park is intended to be a basement its roof is elevated above the existing ground level. This increase in the apparent ground level has impacts at the northern and southern property boundaries as well as the impact on the sandstone cliff. An alternative car park design could avoid all of these consequences.

Under the provisions of the relevant development control plan, SSDCP2006, the subject site is permitted a maximum of 11 car spaces. This is greater than the current situation because there is no on-site car parking. As the development provides 2 car spaces per unit it is proposed that 13 car spaces be incorporated.

It has been argued by the applicant that potential purchasers will demand 2 car spaces per unit. Without this level of car parking there will be insufficient demand from purchasers to make the proposal feasible.

In most locations Council encourages the provision of on site car parking. However, this site is within close proximity of a railway station, shopping centre and an array of facilities and services. Accessibility is excellent. This is recognised by Council's policy adopting a maximum level of car parking rather than a minimum.

A highly inefficient car parking layout for this site produces a basement car park that is larger than is reasonable. Exceeding the maximum number of spaces permitted increases the problem. Altogether the proportion of the site taken by the basement is more than 70% of the site area. A redesign for a smaller car park could increase the extent of landscaped area and reduce the impact on the cliff face. Such a solution has not been accepted by the applicant.

Minimum Site Area - Amalgamation

A critical threshold test for this application arises due to the requirement in Sutherland Shire Local Environmental Plan 2006 for residential flat development sites to achieve a minimum lot size of 1800 sqm and a minimum width of 30 metres. Clause 41(6) provides that development can proceed on a smaller site if the consent authority is satisfied that amalgamation cannot be achieved or the separate development of individual sites is feasible.

Council concluded that there is insufficient evidence for it to be satisfied that the minimum site area should not apply. Adequate justification has not been presented to establish that site amalgamation is not reasonably feasible or the individual lots can be feasibly developed.

The suite of development standards in Sutherland Shire Local Environmental Plan 2006 relating to residential flat buildings in Zone 6 – Multiple Dwelling B, were formulated to operate in concert. To achieve the maximum floor space ratio within the height limit of a site, amalgamation to achieve a site area of 1800 sqm is necessary. On such a lot the minimum landscaped area can be achieved. Clause 41(6) was included to allow the development of smaller lots, recognising that compliance with the height and landscaped area requirement may result in the maximum floor space not being achieved.

While there was no limitation imposed on the extent to which sites less than 1800 sqm would be acceptable it would not have been envisaged that a single lot of this size would be feasible to develop. The provision recognises that in an area where amalgamation of sites has been occurring, instances may arise where remaining sites could be sterilised if remnant sites of less than 1800 sqm could not be developed. So Clause 41(6) exists for the exceptional circumstance, not to render amalgamation unnecessary.

Nevertheless, there are two tests that were introduced to judge whether a site area of less than 1800 sqm could be considered adequate.

1) Is amalgamation not reasonably feasible? This test does not require amalgamation to be immediately achievable but only feasible. As the application explains the units within the building on the site have been amalgamated for this one site. This illustrates that amalgamation is feasible. So the central issue is whether the potential to amalgamate is unreasonably constrained by factors such as time and cost. Evidence would be needed to establish that earnest attempts have been made to achieve an amalgamation with adjoining lots. Certainly evidence has not been provided in this instance.

The test to be applied here is for the consent authority to be convinced by pertinent facts that amalgamation is not reasonably feasible. Until it can be shown that amalgamation is not feasible the consent authority should accept that amalgamation is feasible, particularly when the lots on one site have been amalgamated. The consent authority would appreciate that amalgamation is a slow process and a premium price may be necessary to acquire each property. An extended time period and purchases at or above market value would be part of a normal amalgamation process. There would need to be abnormal circumstances for an amalgamation not to be reasonably feasible.

Council is not satisfied that amalgamation is not reasonably feasible.

2) Can orderly and economic use and development be achieved? This test must be applied to both the development site and each of the adjoining lots with which amalgamation could be pursued. Certainly in relation to the adjoining lots in Ozone

Street there is no evidence, or even a discussion, that each lot can be developed separately. It is not known whether it is feasible to amalgamate a site of say 1200 sqm but not 1800 sqm.

Given that 8 Ozone Street is an amalgamated site it is unlikely that 10 Ozone Street will be able to amalgamate with any site other than 12 Ozone Street. At the very least the consent authority needs convincing evidence that the orderly and economic use of 10 Ozone Street can be achieved as a standalone site.

Given that the applicant is seeking to breach several development standards to undertake the development of the subject site it is likely that development of the adjoining sites may also only be possible if development standards are varied. A more reasonable approach should be for the orderly and economic development of these sites to be calculated on the basis of each development satisfying the relevant development standards.

Clause 41(6)(b) must also be applied to the subject lot. On the basis of the submitted application it must be concluded that the orderly and economic development of the lot is only feasible if several development standards are not satisfied. Development is only feasible, it appears, if a building is higher and a greater proportion of the site is built upon. Additionally, based on the current design, for a lot to be economically developed an adequate landscaped area cannot be provided.

Perhaps the most telling illustration that the orderly and economic use and development of the lot is not feasible comes from the basement. To satisfy perceived market expectations it is proposed that an increased number of car spaces be provided. However, if the site was developed so that the landscaped area development standard is achieved a smaller building footprint would be required. The basement car park would need to be considerably smaller. Potentially, each unit would be provided with only one car park space (ie a total of 8 car spaces).

Based on the applicant's submissions such a development would not satisfy market expectations and would not represent orderly and economic use and development of the land.

Council submits that after considering the requirements of Clause 41(6) of SSLEP2006, the consent authority could not be satisfied that amalgamation is not feasible.

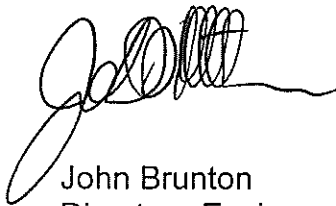
Conclusion

This submission does not seek to explore the many matters that are addressed in the various planning instruments. Such review of the details of the proposal is not warranted. Council is of the opinion that the proposed development fails to satisfy several threshold requirements and, therefore, cannot be supported. These issues are intertwined. Adequate landscaped area is not provided because the basement car park is too large and the development extends too close to the cliff.

A development which complies with relevant development standards would not be economically viable.

For the reasons outlined in this submission Sutherland Shire Council does not support this proposal and considers that development consent should be refused.

Yours faithfully

A handwritten signature in black ink, appearing to read 'John Brunton', with a long horizontal flourish extending to the right.

John Brunton
Director - Environmental Services
for J W Rayner
General Manager