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MEMORANDUM

DATE: 17 September 2019
TO: Development Determination Panel
CC: Matthew Edmonds, Manager Development Assessments
FROM: Penny Wood, Planner
SUBJECT: MOD20180542 – 7 Kalinya Street, Newport

Dear Panel,

The Panel requested a View Loss Assessment in relation to the proposed modification be undertaken.

View Loss Assessment

General View Loss Assessment

During the notification period one (1) submission was received from 8/6 Queens Parade, Newport. The assessment of this modification was undertaken using the site photos taken from a site inspection on 7 August 2019. The development provides sufficient information for Council to be able to accurately ascertain the level of public view loss from Queens Parade and from the properties located to the east (4 Queens Parade and 6 Queens Parade) which are located on a higher elevation to that of the subject site. The filtered water views towards Pittwater will be maintained from adjoining properties with a reasonable level of view sharing being maintained.

C1.3 View Sharing

A submission has been received from the neighbouring property at No. 8/6 Queens Parade with concerns relating to the potential view loss associated with the proposed works. In regards to C1.3 of DCP P21 any concerns relating to view loss will consider the planning principle for view sharing *Tenacity Consulting v Warringah Council* [2004J 140]. It is a requirement of the planning principle that a four-part test is to be undertaken to consider the extent of views potentially impacted by development. An assessment of view loss has also been undertaken with reference to the Views Principle established by the NSW Land and Environment Court as follows:

Step One

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

8/6 Queens Parade

This site was inspected on 7 August 2019 with the owner present. The occupants of this property currently enjoys filtered water views of Pittwater and filtered land views towards Mona Vale.



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Step Two

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

8/6 Queens Parade

The occupants obtain their views from multiple locations within the property, predominantly from the living room, kitchen and the balcony accessed from these room across the front of the property. The unit is located at level 1 within the existing residential flat building.

Step Three

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

8/6 Queens Parade

The proposed demolition of the existing single storey dwelling and construction of a three (3) storey Residential Flat Building with basement level will result in minimal views being impacted when viewed from this neighbouring property.

The filtered water views towards Pittwater and the land views towards Mona Vale will be retained. Considering the nature of the view impacted, the extent of the view loss best described in this instance is considered minor.

Step Four

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The development is recognised as resulting in some built form non-compliances. The compliant height and side setbacks have resulted in a development which is designed consistently with the character of adjoining properties. The development does maintain a predominant three (3) storey character throughout the site by implementing a stepped building design and non-obtrusive roof forms. Whilst



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the development proposes a non - compliant rear setback, the plans, in particular Plan No DA201 submitted with the modification indicate the overall building height is located considerably lower than the eave of No. 4 Queens Parade. No. 8/6 Queens Parade (objector's property) is located further to the east of the subject site and sits above No. 4 Queens Parade. The view from the objector's property sits higher than the eave line of No. 4 Queens Parade and is indicated in the photos below.



Image 1: Photo taken from the balcony of objector's property at 8/6 Queens Parade. The proposed development will be located below the eaves of 4 Queens Parade and will not exceed past the northern building line of 4 Queens Parade, therefore retaining the existing view corridor and the filtered water views towards Pittwater.



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Image 2: Photo taken from within the property at 8/6 Queens Parade Newport.

The location of the proposed plant area, associated planting and lift overrun are located centrally within the roof of the subject building. The plans submitted with subject modification application indicate that the proposal will not exceed past the northern building line of No. 4 Queens Parade and will sit below the eave of No. 4 Queens Parade. It is therefore established that the development inclusive of the lift overrun will not be visible from unit 8/6 Queens Parade and therefore will not impact on any views currently enjoyed from the balcony and living areas of 8/6 Queens Parade. A condition is imposed to delete the plant area and associated planting which will result in the lift overrun being the only remaining structure within the roof. A visit to the objector's property indicated that the existing views enjoyed towards Pittwater will not be obscured by the building as this view is retained through the existing view corridor between No. 2A Queens Parade and No. 4 Queens Parade.

Given the location of the building will not exceed the northern building line of 4 Queens Parade, it can be established that the existing views towards Pittwater will not be impacted and it is considered that a reasonable level of view sharing is maintained.

The design of the proposed building, given the moderate slope of the site and the location of the development will act to adequately preserve views.

The development has been considered against the underlying Outcomes and controls within C1.3 View Sharing of Pittwater 21 DCP as outlined below:

Outcomes

1. A reasonable sharing of views amongst dwellings



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The proposed development will maintain a reasonable sharing of views amongst dwellings. The development application has provided adequate information to undertake a full and proper assessment of any view loss. The proposed development will result in no loss of view from 8/6 Queens Parade and surrounding properties towards Pittwater. The loss of views is not unreasonable and will maintain adequate view sharing between properties. Council received one (1) submission from surrounding residents in relation to view loss from the original plans submitted. The Pittwater DCP refers to the planning principal within *Tenacity Consulting v Warringah* [2004] NSWLEC 140 when considering the impacts on the views of the adjoining properties. The development has been assessed above with regard to the planning principles established by the Land and Environment Court and is considered acceptable.

2. Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced

The proposed development will not impact on views and vistas from roads and public places. The subject site is located above Kalinya Street and therefore all views and vistas impacted on are from within private space.

3. Canopy trees take priority over views

The proposed development will not result in the loss of canopy trees on site and will take priority over any views obtained by the subject site and neighbouring properties.

The development application has provided sufficient information to be able to accurately ascertain the level of view loss from the adjoining property at 8/6 Queens Parade and is therefore satisfied that the development achieves consistency with the Outcomes of C1.3 View Sharing and with the Land and Environment Court's planning principle for view sharing *Tenacity Consulting v Warringah Council* [2004] 140. The application is therefore recommended for approval.

Proposed Conditions

The panel requested that the conditions imposed by Council's Development Engineer be reviewed as to identify whether they fall within the scope of the proposed modification works. Only conditions directly related to changes proposed within the modification application area are able to be reviewed, amended, deleted or added. As a result of the review, conditions are recommended to be applied as follows:

- A. Add Condition 23 under C. Matters to be satisfied Prior to the Issue of a Construction Certificate as follows in *italics*:

Addendum to Traffic and Parking and Assessment Report

The applicant must provide an addendum to the Traffic and Parking Assessment Report dated 4 July 2018 and prepared by Terraffic Pty Ltd to support the resultant changes to the modification application indicated on approved Plan No. DA101, dated June 2019 and Plan No. 100, dated June 2019, both prepared by PBD Architects as part of his modified consent.

Reason: To ensure compliance with the relevant Australian Standards and consistency with the Traffic and parking Assessment Report submitted with the subject modification application.



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Comment: The subject modification has amended the design of the development in regard to traffic and parking and therefore the requirement for an addendum to the Traffic and Parking Assessment Report approved as part of the original determination is justified.

- B. Add Condition 24 under C. Matters to be satisfied Prior to the Issue of a Construction Certificate as follows in italics:

Submission Roads Act Application for Civil Works in the Public Road

An Application for Works to be approved within Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the design of the driveway crossing, kerb and gutter restoration of the old crossings and footpath along the Queens Parade frontage of the site which are to be generally in accordance with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and / or Council's Minor Works Policy.

The plans shall be prepared by a qualified consulting engineer. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval by Council is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide ensure compliance with Council's requirements for Civil Works in the Road Reserve.

Comment: This condition is applied as the proposed modification works include alterations to the location of the driveway and kerb & guttering. Design details of these changes are required for certification.

- C. Add Condition 25 under C. Matters to be satisfied Prior to the Issue of a Construction Certificate as follows in italics:

Shoring of Adjoining Property

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings.

Council approval is required if temporary ground anchors are to be used within Council land. A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

Comment: This condition is imposed to ensure Council's road reserve is protected should road anchoring be required. The excavation proposed as part of the modification is increasing



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towards adjoining properties and Council land and therefore is required to be added as part of the modified consent.

- D. Delete Condition 15 under C. Matters to be satisfied Prior to the Issue of a Construction Certificate.

Comment: This condition is deleted as updated conditions in accordance with Council policies are recommended below – See Condition D.26.

- E. Delete Condition 16 under C. Matters to be satisfied Prior to the Issue of a Construction Certificate

Comment: This condition is deleted as updated conditions in accordance with Council policies are recommended above – See Condition C.24

- F. Add Condition 26 under D. Matters to be satisfied prior to the Commencement of Works and maintained during the works as follows in italics:

Vehicle Crossings

The provision of one vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

Comment: The vehicle crossing is to be constructed in accordance with the above condition due to the re-location of the crossover and the associated works to the kerb and gutter. This condition is recommended to be imposed as part of the amended consent.

The following conditions are to be included in the modified consent:

- G. Amend Condition No 3. under B. Matters to be incorporated into the development and maintained over the life of the development as follows in italics:

No plant equipment associated with the elevator other than the lift overrun are to be placed on the roof. The roof top landscape planter boxes are to be deleted from plans

Comment: This condition is applied to ensure no additional view loss and consistency with approved height of building.

- H. Add Condition 26 under C. Matters to be satisfied Prior to the Issue of a Construction Certificate as follows in italics:



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Amendments to the Approved Plans

Prior to the issue of a Construction Certificate, amended plans are to be submitted to the Certifying Authority indicating the deletion of the terrace along the northern elevation at ground level accessible from Unit G01. The terrace indicate along the northern elevation at first floor level accessible from Unit 101 is not approved.

Reason: To provide reasonable acoustic and visual privacy to the adjoining property at 10 Kalinya Street.

Comment: The proposed terrace at ground floor along the northern elevation is to be deleted to minimise any impacts on the amenity of the neighbouring property at 10 Kalinya Street. The terrace at first floor level along the northern elevation is a drafting error and was not intended in that location.

The following conditions recommended by Council's Development Engineer were not applied, for the reasons detailed below:

Construction, Excavation and Associated Works Bond (Drainage)

A Bond of \$2,000 as security against any damage to Council Stormwater drainage infrastructure adjoining the site as part of this consent.

Reason: Protection of Council's Infrastructure

Comment: The original consent did not require a condition for payment of a bond for civil works. The requirement for this condition is unreasonable as it is not within the scope of works proposed as part of the subject modification application

Construction, Excavation and Associated Works Bond (Crossing / Kerb)

A Bond of \$20,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.

Reason: Protection of Council's Infrastructure

Comment: The original consent did not require a bond for civil works. The requirement for this condition is unreasonable as it is not within the scope of works proposed as part of the subject modification application.

Civil Works Supervision

All civil works approved in the Construction Certificate are to be supervised by an appropriately qualified and practising Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority

Reason: To ensure compliance of civil works with Council's specification for engineering works.

Comment: This condition is not required as it is not within the scope of the modification works.



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Footpath Construction

The applicant shall construct a 1.5 metre wide footpath along the Queens Parade frontage of the site. The works shall be in accordance with the following: (a) All footpath works are to be constructed in accordance with Council's Specification

(a) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Council's specification for footpath. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of footpath works with Council's specification for engineering works.

Comment: Given the location of the main entrance to the subject site off Queens Parade, Council's Development Engineer believe a clear nexus is established to provide an access which is useable and safe for pedestrians entering and existing the building. Whilst a condition of consent was not included in the original consent in regard to a footpath along Queens Parade, the changes proposed as part of the subject modification application do not justify the addition of such changes.

Notification of Inspections

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

(a) Installation of Silt and Sediment control devices

(b) Prior to backfilling of pipelines

(c) Prior to pouring of stormwater gully pits

(d) Prior to pouring of kerb and gutter, footpaths and the driveway crossing

(e) Subgrade level/ basecourse level/ subbase

(f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification

Reason: To ensure new Council infrastructure is constructed to Council's requirements.

Comment: This condition is not required as it is not within the scope of the modification works.

Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

Comment: This condition is not required as it is not within the scope of the modification works.



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Condition 7 under E. Matters to be satisfied prior to the issue of Occupation Certificate was recommended to be amended. However, this recommendation was not applied as the amended wording is outside the scope of the works proposed within the subject modification.

Penny Wood
Planner
Planning and Place