

NORTHERN BEACHES COUNCIL ASSESSMENT REPORT

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| Panel Reference | 2017SNH079 |
| DA Number | Mod2017/0270 |
| LGA | Northern Beaches Council |
| Proposed Development | Modification of Development Consent DA2014/1093 granted for the construction of a six storey Residential Flat Building (Stage 2 of Concept approval DA2013/1519) |
| Street Address | SP 95882, 23 – 29 Pacific Parade DEE WHY NSW 2099 |
| Applicant/Owner | BBF Town Planners (Applicant) The Owners Of Strata Plan 95882 (Owner) |
| Date of DA lodgement | 23 October 2017 |
| Number of Submissions | 13 |
| Recommendation | REFUSAL |
| Regional Development Criteria (Schedule 4A of the EP&A Act) | Development with a Capital Investment Value (CIV) of more than \$20 million Total Cost of the original Development is \$27,249,626 |
| List of all relevant s4.15(1)(a) matters | <ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 (as amended) • Environmental Planning and Assessment Regulation 2000 • State Environmental Planning Policy (State and Regional Planning) • State Environmental Planning Policy (Infrastructure 2007) • State Environmental Planning Policy No. 65 - Design Quality for Residential Flat Development • State Environmental Planning Policy No. 55 – Remediation of Land • Warringah Local Environmental Plan 2011 • Warringah Development Control Plan 2011 |
| List all documents submitted with this report for the Panel's consideration | <ol style="list-style-type: none"> 1. Architectural Plans 2. Roof Top Plant Screen Plans 3. Statement of Environmental Effect 4. Acoustic Report 5. Mechanical Service Design Report |
| Report by | David Kerr– General Manager Planning, Place & Community |
| Report Prepared by | Sarah McNeilly – Watermark Planning |
| Report date | 21 March 2018 |

Summary of S4.15 matters

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| Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report | Yes |
| Legislative clauses requiring consent authority satisfaction | Yes |
| Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied with a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report? E.g. <i>Clause 7 of SEPP 55 – Remediation of Land, Clause 4.6(4) of the relevant LEP</i> | |
| Clause 4.6 Exceptions to development standards | Not Applicable |
| If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? | for S4.55 Modification |

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

Not Applicable

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Not Applicable

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Executive Summary

The proposal seeks to Modify Development Consent No. DA2014/1093 granted for a 6 storey, 103 units residential flat building with basement parking at 23-29 Pacific Parade, Dee Why. The modification specifically relates to the retrospective approval of the already constructed heights of the lift overruns, constructed roof parapet level and location of approximately sixty (60) air conditioning units as located on the roof of the building and seeks to resolve matters pertaining to Councils Order dated 2nd August 2017 (EPA 2017/0125).

This Section 96 Application also seeks the Installation of perforated metal screening around air conditioning units to match existing materials. Therefore, this modification only seeks to modify Condition 1 of the Development Consent DA2014/1093 to reference the modified plans accompanying this application.

The proposed development constitutes 'Regional Development' requiring referral to the Sydney North Planning Panel (SNPP) as it has a Capital Investment Value greater than \$20 Million and occupies land previously owned by Northern Beaches Council. SNPP is the consent authority and was responsible for the previous Development consents related to the property.

The proposed modification will result in breaches of the 21metre height standard. The non-compliance is considered to be to the detriment of neighbours' views to the ocean, provides an unacceptable visual impact and results in reflectivity issues.

The public notification of the application resulted in 13 objections which raised the above matters as the key concerns. The matters raised have been considered and, where appropriate a number of the objectors units inspected.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is an inappropriate modification to the approved development and that it is not worthy of support.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the Associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

- Warringah Local Environmental Plan – C14.4 Height
- Warringah Development Control Plan – D7 Views
- Warringah Development Control Plan – D12 Reflectivity and Glare

SITE DESCRIPTION

| | |
|----------------------------------|---|
| Property Description | SP 95882, 23 – 29 Pacific Parade DEE WHY NSW 2099 |
| Detailed Site Description | <p>The original site comprised six (6) allotments located between Sturdee Parade and Pacific Parade, approximately 170 metres to the east of Pittwater Road, on the fringe of the Dee Why Town Centre.</p> <p>The Concept Approval granted DA 2013/1519 included the proposed subdivision of the site to enable the construction of 2 residential flat buildings; the site of Stage 1 fronting Sturdee Parade; and the site of Stage 2 fronting Pacific Parade</p> <p>The site of Stage 2 has a 61m frontage to Pacific Parade and is 45m deep. The total site area is approximately 2,745m².</p> <p>Construction of the 6 storey residential flat building comprising 103 units and basement parking is complete with the building fronting Pacific Parade with a central landscaped courtyard being a key feature of the residential premises.</p> |



Site Map

SITE HISTORY

Development Application No. DA2013/1519 (Original Staged Development Consent)

Development application No. DA2013/1519 was granted for a Staged Development Application (DA) involving a Concept Approval for the development of the site, and Stage 1 development comprising demolition of existing structures, tree removal, subdivision and construction of a residential flat building front Sturdee Parade comprising 98 apartments. The application was determined by the JRPP as the Capital Investment Value of the development exceeded \$20 million.

Development Application No. DA2014/1093 (Stage 2 Development Consent)

Development Application No DA2014/1093 was granted on 12 March 2015 for the construction of a Residential Flat Building, being Stage 2 of the Concept Approval of DA 2013/1519. The residential flat building approved comprises 103 residential apartments, including 2 x studio apartments, 80 x 1 bedroom apartments and 21 x 2 bedroom apartments and two levels of basement car parking comprising 134 car spaces and 57 bicycle spaces.

Section 4.55 Application/s

Section 4.55(2) Modification Application (Mod2015/0293) was granted consent by JRPP on the 6th April 2016, for modifications to the approved floor plans, apartment mix, revised basement car parking and servicing layout and modified window locations and detailing.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify Development Consent No. DA2014/1093 in the following manner:

- Relocation of air conditioning units from basement to roof top to height of RL 43.320 (as constructed)
- Roof parapet level to be increased from RL42.90 to RL43.140 (as constructed)
- Lift overrun (01) to be increased from RL 42.90 to RL 43.140 (as constructed)
- Lift overrun (02) to be increased from RL 42.90 to RL 43.110 (as constructed)
- Installation of perforated metal screening around air conditioning units to match existing materials (no heights/ RLs etc. provided)

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2014/1093, in full, with amendments detailed and assessed as follows: The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.55 – Other Modifications | Comments |
|---|--|
| A consent authority may, on the application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if: | |
| (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and | <p>The development as proposed to be modified would still be substantially the same development as the development for which consent was originally granted.</p> <p>Whilst the proposed amendments would still result in a building substantially the same as that granted consent, each of the various amendments proposed requires assessment to ensure appropriate built form and amenity outcomes.</p> |
| (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval | The proposed modification does not require amendment of a condition requiring concurrence. |

| | |
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| proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and | |
| (c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and | The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan. |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. | Thirteen submissions were received in relation to this application. |

Section 4.15 Assessment

In accordance with Section 4.55(3) of the Environmental Planning and Assessment Act 1979, in determining a modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.15 'Matters for Consideration' | Comments |
|--|---|
| Section 4.15C (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on “Environmental Planning Instruments” in this report. |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | Not Applicable |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Warringah Development Control Plan applies to this proposal. |
| Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement | None Applicable. |
| Section 4.15 (1) (a)(iv) – Provisions of the regulations | All relevant provisions of the EP&A Regulation 2000 have been taken into consideration during the assessment of the development application and this modification application. |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | (i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report (ii) The proposed development will not have a detrimental social impact on the locality. (iii) The proposed development will not have a detrimental economic impact on the locality. |
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the residential flat building development. |

| Section 4.15 'Matters for Consideration' | Comments |
|--|--|
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See the discussion on “Public Exhibition” in this report. |
| Section 4.15 (1) (e) – the public interest | Matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition of the application Council has received a total of thirteen (13) submissions, all objecting to the proposed modification.

The individual matters raised within the submissions are addressed below, as follows:

1. View loss

Concerns have been raised that the additional structures on the roof will impact on district and water views from adjoining properties at No.10 Sturdee Parade.

Comment

This issue is discussed in detail under Clause D7 of WDCP section of this report. In summary, the assessment has concluded that district and water views are detrimentally impacted as a result of the unauthorised works.

2. Building Height

Concerns have been raised that the development breaches the 21 metre height limit as a result of additional roof top structures.

Comment

This issue is discussed under WLEP 2011 section of this report. In summary, the unauthorised structures breach the 21 metre height development standard and the impact is found to be unsatisfactory.

3. Acoustic Impact

Concerns have been raised in relation to the excessive noise from air conditioners on roof top. In addition, concern has been raised that the acoustic report is inaccurate and flawed.

Comment

It is acknowledged that the acoustic testing has not been undertaken from all relevant locations, however, it is considered a reasonable extrapolation that acoustic levels could be met and conditioned if the development was worthy of approval.

4. Reflectivity

Concern has been raised that the metal structures (air conditioners) are light in colour and result in reflectivity issues for neighbouring sites

Comment

It is agreed that the roof top structures have a high level of reflectivity and are inappropriate as currently proposed. The materials and colours are in contravention of conditions of the original development consent.

5. Visual impact

Concerns have been raised that the roof structures are an unattractive an inappropriate vista from surrounding units.

Comment

It is agreed that the view to the roof top of the subject site is unattractive and messy. The additional unauthorised structures are unappealing and result in inappropriate views for neighbouring sites.

6. View from street level

Concerns have been raised that the structures can viewed from the street level, and the applicant incorrectly states within the Statement of Environmental Effect (SEE) that these structures not visible from street and this is untrue.

Comment

The air conditioning units are not visible from the street level, as they are located within the centre of the roof.

7. Loss of Property Value

Concerns have been raised that development will result in lesser value for neighbouring properties detrimentally impact by view loss, noise etc.

Comment

Property value is not a factor which is required to be considered under the provisions of the Environmental Planning and Assessment Act 1979.

MEDIATION

No requested for mediation have been made in relation to this application.

REFERRALS

Internal Referrals

| Referral Body Internal | Comments | Consent Recommended |
|---------------------------------------|--|----------------------------|
| Natural Environment - Flood | The application was referred to Council's Flood officer. The application was recommended for approval with no comments provided. | Yes |
| Environmental Investigations Referral | The modification is recommended for approval subject to amended conditions of consent. | Yes |
| Building Assessment | The modification is recommended for approval subject to amended conditions of consent. | Yes |
| Compliance Management | Council's Compliance Management Officer provided advice stating no conditions recommended. | N/A |

External Referrals

| Referral Body External | Comments | Consent Recommended |
|-----------------------------------|---|----------------------------|
| Ausgrid | The proposal was referred to Ausgrid. No response has been received within the 21 day period and it is therefore assumed that no objections are raised and no conditions recommended. | Yes |

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 65 - Design Quality of Residential Apartment Development

The SEPP requires an assessment and consideration of any application for residential flat development against the 9 Design Quality Principles and the matters contained within the associated "Apartment Design Guide".

Whilst the SEPP has been amended since the determination of the original application, fundamentally the principles and design guidelines remain the same with minor amendments. This application, as modified, does not materially alter the design of the development such that it deviates from the original assessment and conclusions made under the original assessment.

SEPP (Building Sustainability Index: BASIX) 2004

The proposed development (Stages 1 and 2) was previously assessed against the requirements of State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004. The modification application retains the existing BASIX assessments, which satisfies the requirement of this SEPP.

Warringah Local Environmental Plan 2011

| | |
|--|-----|
| Is the development permissible | Yes |
| After consideration of the merits of the proposal, is the development consistent with: | |
| Aims of the LEP? | No |
| Zone objectives of the LEP? | No |

Principal Development Standards

| Standard | Requirement | Approved | Proposed | % Variation | Complies |
|---------------------|-------------|-----------|----------|-------------|----------|
| Height of Buildings | 21 metres | 21 metres | 21.25m | 1.19% | No |

Compliance Assessment

| Clause | Compliance with Requirements |
|---|------------------------------|
| 4.3 Height of buildings | No |
| 4.6 Exceptions to development standards | No |
| 5.3 Development near zone boundaries | Yes |
| 5.8 Conversion of Fire Alarms | Yes |
| 6.2 Earth works | Yes |
| 6.3 Flood Planning | Yes |
| 6.4 Development on sloping land | Yes |

Detailed Assessment

Height of Building

A maximum height of 21 metres is permissible on the subject site. The approved development is designed to meet this height at its highest point. We note that the original Concept development consent included the following conditions:

1. **Building Envelopes**

The above and below ground building envelopes shown on the approved drawings in Condition 1 are only approved on the basis that the final building design including lift overruns, plant equipment, services, vents, communication features and the like will be entirely within the approved envelopes

The unauthorised and proposed additional works the subject of this modification result in numerous breaches to the height limit including:

- **Parapet**

This has been constructed at RL43.140 which is 0.25m over the approved height of RL42.9. The applicant provides no reason for the breach of the approved height for the parapet. While the increase in height is fairly limited, there is no justification as to why such a variation has been constructed. With no structural or architectural grounds, there is no justifiable reason to permit the breach, particularly when the original assessment reduced

the height of the proposal to ensure the retention of views. The extended parapet height is not supported.

- **Lift overruns**

These have been constructed at RL43.140 and RL43.11 which is 0.25m and 0.22 m over the approved heights of RL42.9.

The applicant provides no reason for the breach of the approved height for the parapet. While the increase in height is fairly limited, there is no justification as to why such a variation has been constructed. With no structural or architectural grounds, there is no justifiable reason to permit the breach, particularly when the original assessment reduced the height of the proposal to ensure the retention of views. The extended parapet height is not supported.

- **Air- conditioning units x approximately 60 (actual number not provided)**

These have been located on the roof top without consent. The exact height of the air conditioning units is not provided. However, it can be seen that they are significantly higher than the roof-top level and over the maximum 21 metres permitted on the site. They are unsightly and no reasonable justification for their location is provided. The applicant states that the air-conditioning cannot be located in the basement due to the heat generated. It is considered that alternate solutions, such as an alternative style of air conditioning would resolve this issue. This variation is not supported.

- **Screen around A/c units**

Inadequate details are provided with regard to height and exact location and height of the screen. It is assumed it is marginally higher than the air-conditioning units, in order to screen them, which is further extending the height non-compliance. Accordingly, this is not supported.

Clause 4.6 Variation of Development Standard

The 21 metres height development standard is breached by the additional works the subject of the Section 4.55 modification. Recent Land Environment Court case law (*Gann v Sutherland Shire Council* [2008] NSWLEC 157) specifies that a formal Clause 4.6 request to vary the building height development standard is not required. While this is the case, an assessment is provided below to allow for a complete review.

Consideration to a breach to a development standard may be considered when it is demonstrated that:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment: This has not been demonstrated and it is not a reasonable variation to allow for the large air conditioning units, screen structures, the parapet and lift over run to be at a level higher than was originally approved and higher than the development standard.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment: No planning grounds are provided which would result in the conclusion that the development should be permitted to breach the development standard.

When considered in its entirety, the breach has been reviewed against the objectives of the height control which are provided below:

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

Comment: It is not considered that the additional height is in line with surrounding developments, particularly when viewed from neighbour's dwellings where the impact is to the detriment of their outlook.

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

Comment: The additional height is to the detriment of view. Solar access and privacy are not impacted.

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

Comment: The breach of the height is not easily visible from the ground and will not be to the detriment of the scenic quality of the coast and bush area. The key detriment is when viewed from elevated areas including the neighbouring properties.

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

Comment: The additional height will have a minimal impact when viewed from the street. The cumulative impact of such breaches would certainly be to the detriment of the Dee Why locality should such a pattern commence and continue.

Warringah Development Control Plan

Built Form Controls

| Part A Introduction | |
|----------------------------|--|
| Control | Comment/ Compliance |
| A.6 Parts of the DCP | <p>NO – This section of the DCP requires the proposed development to:</p> <ul style="list-style-type: none"> • Generally satisfy all applicable requirements of the WLEP. • Meet the general and individual section objectives of the WDCP. • Comply with the built form controls (objectives and requirements) contained in Part B of the WDCP. • Comply with the relevant objectives and requirements in Part C Siting Factors, Part D Design and Part E – The Natural Environment of the WDCP. • Comply with the relevant objectives and requirements for the specified area in Part G of the WDCP. |
| A.7 Notification | <p>Yes – The subject Application was notified in accordance with the requirements of Part A.7 of the</p> |

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| A.5 Objectives | No | No |
| C2 Traffic, Access and Safety | Yes | Yes |
| C3 Parking Facilities | Yes | Yes |
| C4 Stormwater | Yes | Yes |
| C5 Erosion and sedimentation | Yes | Yes |
| C7 Excavation and landfill | Yes | Yes |
| C8 Demolition and Construction | Yes | Yes |
| C9 Waste Management | Yes | Yes |
| D7 Views | No | No |
| D6 Access to sunlight | Yes | Yes |
| D9 Building Bulk | Yes | Yes |
| D10 Building Colours and Materials | Yes | Yes |
| D11 Roofs | No | No |
| D12 Glare and Reflection | No | No |
| D14 Site Facilities | Yes | Yes |
| D20 Safety and Security | Yes | Yes |
| D22 Conservation of Energy and Water | Yes | Yes |
| E1 Private Property Tree management | Yes | Yes |
| E6 Retaining unique environmental features | Yes | Yes |
| E10 Landslip Risk | Yes | Yes |
| G2 R3 Medium Density Residential bound by Sturdee Parade, Pacific Parade and land zoned B4 Mixed Use | Yes | Yes |

Detailed Assessment**Clause D7 - Views**Description of Non-compliance

In determining the extent of potential view loss to adjoining properties, the 4 planning principles outlined within land and Environment Court case of tenacity Consulting Pty Ltd V Warringah Council (2004) NSWLEC 140, are applied to the proposal.

A site inspection from a number of units at 10 Sturdee parade, Dee Why were undertaken.

Comment

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. 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, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured

The views over 23-29 Pacific Parade Dee Why from 10 Sturdee Parade Dee why are towards Dee Why Beach, headland and the Ocean. Views are considered to be of high value. The views from level 6 are retained to a large extent, while the views from level 5 are lost to a great extent. See the photographs below of the view from the balcony of Unit No.3504/10 Sturdee Parade, where the water is available to the left of the AC units, and the second photo demonstrates the view from the living room of the same premises, which is dominated by the air-conditioning units.



Comment

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.

The views are from key living areas and balconies and an expectation for them to be retained is reasonable.

Comment

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% 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.

The key view loss of concern is from level 5 where the impact is vast and to the great detriment of the units. In addition to the loss of water views, the residents are instead faced with an undesirable and unattractive plant structure which is unsightly and inappropriate.

View loss from level 6 is not significant. However, the visual intrusion of the unsightly plant equipment is inappropriate and not supported

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.”

Comment

The overall view loss is of undesirable and has unreasonable impact, particularly when considered from the units of level 5 who lose their primary views. The additional structures are non-compliant with the height development standard and breach the conditions of the development consent. It is a reasonable assumption for the owners of these units that their view would be retained, with level 7 of the approved building having been refused in order to ensure this view retention.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

Clause D11 – Roofs

The original development consent specifically stated in Condition 1 (b) that the height of the lift overrun is compliant with the 21m prescribed height control and is not considered to detract from the architectural appearance of the building, or the overall appearance of the roof.

The inclusion of excess plant and increased height for the lift overruns and parapets is directly at odds with this condition, which intended to ensure that the roof form provided an attractive and clean view from neighbouring sites. This does not result from the proposed modification which results in a detrimental visual impact for neighbouring units.

Clause D12 – Glare and Reflection

Condition 20 of the original Development consent specifies that external finishes to the roof top will exclude light colours to ensure glare and reflectivity are kept to a minimum. The addition of the white reflective structures and similar screen are at odds with this condition and the intention of this condition. The structures on the roof top are inappropriate for this reason and the detrimental impacts this will have on neighbours.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention through Environmental Design.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan. No change to the building cost has been identified and therefore the condition does not require amendment.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- State Environmental Planning Policy (Affordable Rental Housing) (2008)
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application, and does result in an unreasonable impact on surrounding, adjoining, adjacent and nearby properties as a result of the proposed modifications.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2011, Warringah Development Control Plan and the relevant codes and policies of Council. In consideration of the proposal and the merit consideration the development the proposal is considered to be inconsistent with the applicable planning controls for the site and cannot be supported in its current form.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Sydney North Planning Panel (SNPP) as the consent authority refuse Modification Application No. Mod2017/0270 for Modification of Development Consent DA2014/1093 granted for the construction of a Residential Flat Building (Stage 2) on land at SP 95882, 23 - 29 Pacific Parade, DEE WHY, for the reasons printed below:

1. Pursuant to Section 4.15 (1) (e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.
2. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environment Plan 2011.
3. Pursuant to Section 4.15 (1) (a) (i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 4.3 Height of Buildings of the Warringah Local Environment Plan 2011.
4. Pursuant to Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D7 Views of the Warringah Development Control Plan.

5. Pursuant to Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12 Glare and reflectivity of the Warringah Development Control Plan.
6. Pursuant to Section 74.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D11 Roofs of the Warringah Development Control Plan.