
Sent: 13/12/2022 6:56:57 PM
Subject: DA2022/0653 1 Bellevue Parade, North Curl Curl

Objection submission

DA2022/0653 1 Bellevue Parade, North Curl Curl

Further evidence where proposed developments have failed to satisfy the established view loss principles set out in *Tenacity Consulting v Warringah* [2004] NSWLEC 140 and the DAs have been refused by Council and the Land and Environment Court of New South Wales.

We bring to Council's attention a number of recent decisions on view loss grounds:

FURLONG V NORTHERN BEACHES COUNCIL [2022] NSWLEC 1208 [NSWLEC Dismissal of Appeal]
WENLI WANG V NORTH SYDNEY COUNCIL [2018] NSWLEC 122
REBEL MH NEUTRAL BAY PTY LTD V NORTH SYDNEY COUNCIL [2018] NSWLEC 191

FURLONG V NORTHERN BEACHES COUNCIL [2022] NSWLEC 1208 [NSWLEC Dismissal of Appeal]

Council refused the DA due to the potential view loss impacts for a neighbouring property. The applicant appealed the decision to the Land and Environment Court. Commissioner Walsh upheld the Council's decision on the basis that the proposal would bring about "severe view loss impacts".

The Commissioner assessed the view loss impacts in line with the principles from *Tenacity*.

1. What are the views to be affected?

The primary view to be affected had "panoramic" and "iconic" views of North Head, Curl Curl Beach, the ocean and horizon, as well as foreground suburbs.

2. What part of the property are the views obtained from?

*The view is obtained across a side boundary. The general rule drawn from *Tenacity* is that views across side boundaries are more difficult to protect than views from the front and rear boundaries of a home.*

3. What is the extent of the impact on the whole property?

There were other views which would be affected, however they were of lesser value than the primary view. Despite this, the Commissioner assessed the impact on the property as a whole as "severe".

4. What is the reasonableness of the proposal that is bringing about the impact?

The assessment of reasonableness considers compliance with the local planning controls and whether there are any reasonable design alternatives which would reduce the impact on view loss.

The Commissioner found that compliance with development controls does not, of itself, overcome policy settings aimed at reasonable view sharing. The Commissioner held that the proposal “does not pay sufficient regard” to the local development control plan which required view sharing.

It should be noted that the decision in Furlong refines the steps in Tenacity and gives stronger protection to neighbouring properties who might suffer from view loss.

DER SARKISSIAN V NORTHERN BEACHES COUNCIL [2021] NSWLEC 1041 – 74
Carrington Parade, Curl Curl

REFUSED BY COUNCIL AND DISMISSED BY THE COURT OF APPEAL (DA2019/0380)
AND NOTICE OF DETERMINATION REFUSED (DA2021/1140)

As mentioned in our sixth objection submission, we add detail of the case and the dismissal of a Class 1 Appeal by NSWLEC Commissioner Dr Peter Walsh, on view loss grounds. We raise the dismissal by NSWLEC of the Applicant's appeal.

The key matters within the Commissioner's Conclusion:

1. *the determinative issue in this case is view loss.* In regards to 4 Bellevue Parade, North Curl Curl's case - ocean and North Head view loss.
2. *the proposal would significantly change the amenity enjoyed for the worse.*
3. *The policy controls of building height, wall height, side boundary envelope non compliances and view sharing principles suggest the proposal goes too far.*
4. *A reasonable development at the upper level in regard to view sharing building height, wall height, side boundary envelope policy, would share the view.*

We contend that there is no reasonable sharing of views amongst properties, the new development is not designed to achieve a reasonable sharing of views. The proposal has not demonstrated that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.

The view loss principles of Tenacity are being utilised in other Council areas, outside of the Northern Beaches, where DAs are being refused based on the Tenacity rulings (Wenli Wang v North Sydney Council [2018] NSWLEC122 and Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191).

REBEL MH NEUTRAL BAY PTY LTD V NORTH SYDNEY COUNCIL [2018] NSWLEC 191

As noted by his Honour, Justice Moore of the Court in Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 (Rebel), “the concept of sharing of views does not mean, for the reasons earlier explained, the creation of expansive and attractive views for a new development at the expense of removal of portion of a pleasant outlook from an existing development. This cannot be regarded as “sharing” for the purposes of justifying the permitting of a non-compliant development when the impact of a compliant development would significantly moderate the impact on a potentially affected view”. This is a key consideration, and one that parallels the forementioned NSWLEC decisions.

The above case studies highlights that many DAs are refused by Council in the Northern

Beaches and Councils outside of the Northern Beaches and then refused by the land and Environment Court of Appeal when there are issues of “view sharing”.

DA2022/0653 is non-compliant on the grounds of height, setback and view sharing. The applicant has not amended plans to facilitate view sharing or address the non-compliant issues. As His Honour, Justice Moore stated “the concept of sharing of views does not mean the creation of expansive and attractive views for a new development at the expense of removal of portion of a pleasant outlook from an existing development. This cannot be regarded as “sharing” for the purposes of justifying the permitting of a non-compliant development”.

Please refer to all of our objection submissions when determining the outcome of DA2022/0653. As previously stated, we request Council to refuse the development as the DA does not comply with the Northern Beaches Development Control Plan, the Local Environmental Plan and the established view loss principles set out in Tenacity. The applicant has not achieved an appropriate view sharing outcome to neighbours.

Brian and Tricia Machon