

23 Fisher Rd, Dee Why - Assessment against the Tenacity Planning Principle

1. Introduction and Approach

This Visual Impact Assessment has been prepared in accordance with the Land and Environment Court's directions and methodology. This assessment is accompanied by visual impact imagery prepared by *Giles Tribe*.

The subject report outlines the key views impacted by the proposal from the public domain and surrounding developments and is assessed in accordance with the LEC Planning Principle outlined in *Tenacity Consulting v. Warringah Council [2004] NSWLEC 140* (Tenacity) (Private Views).

2. Assessment against Tenacity Planning Principle

In *Tenacity*, the Court provided a four-step assessment process to guide whether or not view sharing is reasonable. In doing so, the Court also gave some guidance as to what should be considered as part of each step of an assessment. While no one has the absolute right to a view from a private property in NSW, the layout and design of development should as far as be practicable and reasonable factor in existing views from other properties.

The four steps and the guidance provided by the Court in *Tenacity Consulting* is outlined below with accompanying development response.

2.1 Step One – Assessment of the views to be affected

“Water views are valued more highly than land views. Iconic views (eg 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, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.”

Response: The proposed application is accompanied by a View Analysis, which assesses the extent of view loss beyond that of the approved DA (DA2018/1574) from a number vantage points west and south-west of the site including those from 3 Hogarth Avenue and on the landscape verge of 2 Hogarth Avenue and 1 Vale Street, Dee Why (the objector sites). Details of the degree of impact are discussed below.

- **View from 3 Hogarth Avenue**

The residence at 3 Hogarth Avenue, will experience an almost negligible reduction in views towards the ocean compared to the previous approved DA – in particular the canopy of one tree in the distance, and minimal ocean outlook will be lost. The loss of additional views attributed to the additional height is demonstrated in **Figure 1**. The additional height has been carefully positioned with appropriate setbacks to align with the tree canopy and maintain the expansive of views to both the sky, ocean and vegetation. Critically, the dwelling will still benefit from almost panoramic views to the distant ocean and landscaping.



Figure 1. Approved DA view from 3 Hogarth Avenue
 Source: Giles Tribe



Figure 2. Proposed view from 3 Hogarth Avenue
 Source: Giles Tribe

- **View from corner of McIntosh Road and Vale Avenue**

This site will have very minor view loss over the approved DA, primarily resulting from the infill of a building break between Buildings B and C. The proposed additional height aligns with the existing tree line and the subject property will retain the significant majority of views to the ocean, vegetation and sky when compared to the approved DA. Refer to the Figure below which illustrates the view impacts.



Figure 3. Approved DA view from 1 Vale Avenue (Corner of McIntosh Road and Vale Avenue)
 Source: Giles Tribe



Figure 4. Proposed view from 1 Vale Avenue (Corner of McIntosh Road and Vale Avenue)
 Source: Giles Tribe

- **View from corner of Hogarth Road and Lewis Street**

The view impacts to the site result from additional height to Building C. The loss is to the canopy of two trees and distant water outlook to the eastern horizon view. Significant vegetation and sky views are retained across the site, with distant water views retained to the other site outlooks.



Figure 5. Approved DA view from 2 Hogarth Avenue (corner of Hogarth Road and Lewis Street)
Source: Giles Tribe



Figure 6. Proposed view from 2 Hogarth Avenue (corner of Hogarth Road and Lewis Street)
Source: Giles Tribe

2.2 Step Two – Consideration 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.”

Response: The view analysis from the objector sites were taken from the following angles:

- View facing east on the footpath intersection of Vale Avenue and McIntosh Road, 3m above street level. This is reflective of the far eastern portion of views observed from the balcony and living room of 1 Vale Avenue;
- View analysis taken facing east at the rear of the dwelling at 3 Hogarth Avenue; and
- View analysis taken facing east on side public setback intersection of Hogarth Avenue and Lewis Street.

The assessment found that some views at the above locations to the water will be interrupted or reduced slightly. These views were either taken from the side Council landscaped verges or from rear windows of the dwelling at 3 Hogarth Avenue. However, given the importance of the overall precinct and in proportion to the extent of the retention of existing views, the view impacts of the proposed development are generally consistent with those of the currently approved development, albeit with changes to impacts arising from the minor differences in the maximum building heights which are in line with the existing tree canopy.

2.3 Step Three – Assessment of 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.”

Response: The view analysis above clearly demonstrates the extent of view impacts from the afflicted developments as a result of the building amendments. The impact will interrupt some views along the horizon, including limited water view and tree canopy loss, as a result of the additional height and the undulating topography on site.

However, the proposed additional height sits largely within the existing tree line and results in a minor reduction in ocean views when considered on in the context of the overall views, which retain expansive views over the Dee Why locality as well as continued views to water, green outlook and sky. It is considered that in this context of the retention of the expansive views for all affected properties, the impact is not significant.

2.4 Step Four – Assessment of 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”

Response: The additional height over the approved DA will interrupt some views towards the water in some locations. Due to the elevation and natural topography of the area, these affected properties will still retain expansive views over the Dee Why locality east as well as to green outlook, and sky. All of the view analyses' prepared demonstrate that a portion of water elements will be retained from all three sites, along with significant landscape, outlook and tree canopy.

The additional height has been carefully designed to manage and mitigate the extent of impact. In particular, it has had regard to a number of design considerations, apart from view impacts, including the need to maximise development potential to provide additional residential dwellings in an area of high accessibility and amenity, minimise overshadowing, provide adequate setbacks and visual privacy to adjoining sites and provision of adequate landscaping and deep soil planting, providing a positive contribution to both the heritage item (Pacific Lodge) as well as

Fisher Road, Howard Avenue and Civic Parade. The design outcome by Giles Tribe is considered to be the most appropriate balance of the sum of these considerations.

The additional height has been reduced where possible, with the majority of height located in alignment with the existing tree canopy line. The development also comprises materials and finishes which aids in blending the development with the natural environment when viewed from the public domain.

Despite the interruption to views and exceedance in heights, the proposed development (as amended) continues to sit slightly below with the floor space ratio control under the WLEP 2011. The area contributing to the additional height over the height control has also been setback from the building edge to mitigate the extent of impact.

It is considered unreasonable to restrict the development of a building within the Dee Why Town Centre, that:

- Provides additional residential dwellings consistent with the vision of the locality; and
- Complies with the FSR control; and
- Retains and enhances the important heritage and landscape contributory elements and interface at ground levels by largely retaining the existing approved building footprints.

The decision to increase the overall development is considered more skilful design in contrast to the alternative, which would increase the development's bulk at ground level; reduce setbacks to the street, and heritage items; and reduce the quantity of landscaped areas and deep soil planting. The additional height enables the inclusion of additional apartments, compliant FSR whilst retaining and enhancing the optimal ground level interface. As such, the view impact of this development is considered acceptable and the view sharing reasonable.