

To Development Determination Panel meeting 8/12/21. Re DA2021/1140 by Nea & Berge Der Sarkissian

This has been an emotionally & financially depleting process which began early 2019 with DA2019/0380.

DA/Plan Reviews The DA now before the DDP has been developed through the microscope of Court proceedings, an in depth view analysis by the project architect and town planner and a rigorous assessment by Council's officers. With a very conservative approach taken to Commissioner Walsh's comments and recommendations.

Louise Kerr kindly allowed us the opportunity to meet (on 10/3/21) with herself & both the council officers whom were involved with DA2019/0380 and subsequent Land and Environment Court proceedings.

We were advised - 'Thank you once again for providing Council with the opportunity to provide comments on your draft plans. A review of the plans has been completed and the following comments are provided for your consideration. The landscaped area provided along Gardere Avenue is consistent and reflects the advice of staff provided at our recent meeting. The setback of the upper level also seems to go towards the suggestions of Council, and the redesign of the upper level courtyard will also help to open up the view corridor. However, it is our opinion that a setback of 1metre at the upper level (rather than 750mm) would resolve the view loss issue that has been in contention. The increased setback would open a view corridor for the balcony and living area of the dwelling at 2 Gardere Avenue, and would provide a stronger response to the conclusions made by the Commissioner in the Land and Environment Court Judgement'.

We genuinely appreciated the guidance that the Council officers were able to provide so our DA may be in its best form. The changes that the Council recommended were such that they could and were all included in the DA.

Key changes to previous DA are detailed in pages 5&6 of BBF Town Planners Statement of Environmental Effects. These include, a ground floor increased setback from 0 to 500mm, Level 1 increased setback from 0 to 1m, reduced level 1 floor plate by 23% and Landscape area increased by 21%. Commissioner Walsh indicated a view line between 'line 7 & 8' from the centre of the front balcony of 2 Gardere Ave. By increasing the level 1 setback to 1m allowed a much more generous view line than a line taken at the mid point of line 7 & 8.

The Land and Environment Court Judgement was (with the exception of the view loss of 2 Gardere Ave & streetscape) generally supportive of the previous DA.

Parra 59. 'a combination of factors draw me to the conclusion, that with the exception of required rearrangements consequential to required changes to the setback to Gardere avenue..... the building's streetscape presentation and building bulk would otherwise be able to be satisfactory' Parra 60 'I generally agree with the evidence of Mr Haynes and the submissions of the applicant that strict compliance is not necessary in the circumstances'

As to the view loss of 2 Gardere, *parra 31 'I can agree with Mr Haynes that these internal views are more at risk'. Parra 44 'The view sharing question, in the circumstances, is the extent that the internal and external amenity might need be traded to allow a reasonable development on the site, including to what extent the quite constrained site width might affect the calculation' and concluded at Parra 64 'reasonable view sharing would retain a sightline from the centre of deck at 2 Gardere Avenue to a point between arrowed view lines marked "7" and "8" '.*

Webb's submission (4/8/21) was made in part to cast doubt on the Land and Environment Court Judgement

We are concerned that Webb's submission attempted to undermine the Land and Environment Court Judgement through inaccurately conflating parts of the judgement in a way that was misleading. Barrister Jacinta Reid (who specialises in Land and Environment court matters) was requested to prepare written advice and assessment of the Webb submission with the understanding her advice was to be included in a formal submission (10/9/21), included in DA documents.

Barristers' advice regarding Webb's submission and the completeness of the Land and Environment Court Judgement (10/9/21) excerpts particularly worthy of note:

Parra 2 'I am requested to advise on the contents of the submission ... made by David Webb...to assist Council in coming to a legally correct determination'

Parra 11 'The Webb Submission maintains objection to the development on the basis of view loss, including view loss from landscaping. Of some concern, the Webb Submission cherry picks parts of the Judgement and conflates, in parts, summaries of the evidence with findings of the Court'.

Parra 12 'The Webb submission sets out a belief that the Commissioner's 'views' in the Judgement are 'contradictory' and 'would not be supported by another Commissioner'

Parra 13 'The Webb Submission does not identify the precise 'contradiction' in the Judgement, but appears to attribute the evidence of Mr Haynes ...that the northern deck to 2 Gardere Avenue is an extension of the living space'.

Parra 14 'A fair reading of the Judgement reveals that Commissioner Walsh undertook a detailed analysis of the view impacts to 2 Gardere Avenue and concluded that the reasonable development of the subject property would have an impact on views from within the dwelling as they are achieved over a side boundary to 72 and 70 Carrington parade. It is on that basis that the Commissioner agreed (at [31]) that those views were 'more at risk'

Parra 15 'The Webb submission urges the Council not to adopt the findings of the court in the Judgement and asserts that another Commissioner of the Court would similarly not adopt the findings of Commissioner Walsh at [64]. There is no rational basis for such a submission'.

Parra 16 'In Segal & Anor v Waverley Council....the Court of Appeal confirmed that Commissioners are not bound to follow earlier decisions in merit appeals if they consider such decisions as irrelevant(at [58]-[60],[96])) but that it is 'desirable, in the context of environmental planning, that there be consistency in administrative decision making' '

Parra 17 'Commissioner Walsh applied the planning principle in Tenacity and provided clear reasons for coming to a concluded view on what the appropriate view sharing with 2 Gardere Avenue would be'

Parra 20 'There is no reason why the Council would not give significant weight to the findings in the Judgement in its assessment of the DA.'