

From: webserver@warringah.nsw.gov.au
Sent: Monday, 15 September 2008 1:19 PM
To: DASUB
Subject: Online DA Submission form

Importance: High

Online Submission

DateTime:	15/09/2008 01:18:51 PM
Address:	1196 Pittwater Road, NARRABEEN, NSW 2101
Description:	Lot B DP 312655
Application Number:	DA2008/1230
Type of Work:	New dwelling following demolition of existing buildings
Responsible Officer:	Michael Edwards
Applicant Address:	
Comments:	<p>15 September 2008</p> <p>Mr Michael Edwards Assessing Officer Development & Planning Warringah Council Civic Centre 725 Pittwater Road Dee Why NSW 2099</p> <p>By Online Submission</p> <p>Development Application No. DA2008/1230 For Proposed New Dwelling Following Demolition Of Existing Buildings at Lot B, DP 312655, 1196 Pittwater Road Narrabeen NSW 2101</p> <p>Dear Mr Edwards</p> <p>I refer to the above Development Application (DA) currently open for public submissions.</p> <p>The DA concerns proposed works at 1196 Pittwater Road Narrabeen (Property). The application is for the demolition of existing buildings to enable the construction of a modern residential dwelling. The Property has been enjoyed by the same family for some seventy years and it is the applicant's wish that this remains the case.</p> <p>I respect the feelings of the applicant in this regard and note that Council has already worked co-operatively with the applicant in producing plans which best comply with local planning rules. This co-operation is to be commended. The intent of this submission is not to object to the proposal but to draw Council's attention to its obligations to consider the principles of ecologically sustainable development, specifically to consider the possible effects of climate change impacts, in determining whether to approve the DA. Council should also continue to work co-operatively with the applicant to ensure that any development decision does not result in litigation regarding damage from climate change impacts.</p> <p>Location of the Property</p> <p>The Property is located adjacent to Narrabeen Beach and adjoins the South Narrabeen Surf Lifesaving Club. This area has been the subject of a number of storms in recent years. These storms have caused high tides and significant beach erosion. Two important planning criteria in this regard are the requirements relating to setbacks and the Zone of Wave Impact. I note that based on the present guidelines, the Property is within a reasonable tolerance of the setback requirements and the limits of the Zone of Wave Impact. It is also noted that Council has approved similar developments in the past which may not strictly comply with the planning regime in the Collaroy/Narrabeen area.</p> <p>Consideration of Ecologically Sustainable Development (ESD)</p> <p>The applicant clearly is very committed to protecting the environment in general and specifically the Narrabeen Beach area. The Statement of Environmental Effects (SEE) refers to a number of sustainable design features included in the proposed plans including eaves designed to increase natural air flow and use of sunlight. On the issue of ESD, the SEE states that the proposed plan includes water tanks and solar heating 'in line with the principles of ecologically sustainable development'. From a design perspective, the proposed design promotes the use of both natural resources and renewable energy in a way that accords with the principle of intergenerational equity.</p> <p>The SEE makes no specific mention of climate change impacts but states that the proposed dwelling 'will not affect or be affected by foreseeable storm movement of beach sand and we will be sitting on piles giving us extra safety'.</p>

It is not clear from this passage whether the applicant considers increased storm movement of beach sand foreseeable as a result of climate change. The intention to not merely renovate the dwelling but demolish it and construct a replacement suggests the intention to occupy the Property for several decades into the future.

The vulnerability of the Collaroy/Narrabeen area to climate change impacts is well known. Climate change is predicted to cause sea level rise, increase in storm surges and changes in ocean currents. The beach is consistently rated as the third most exposed area of coastline in the country and is regarded as one of the sites on the front line of climate change impact. A GIS-impact modelling study of the beachfront conducted in 2004 calculated that a sea level rise of 20 cm combined with a fifty year storm event could cause coastal recession exceeding 110 m and causing losses of US\$184 million (Hennecke et al).

The law in this area is rapidly evolving. In the recent Land and Environment Court decision of *Walker v Minister of Planning* [2007] NSWLEC 741, Justice Biscoe remarked that climate change was a deadly serious issue. In a case involving a development application to build a residential complex in a coastal plain area, His Honour held that there was an implied obligation for the Minister to consider the effects of climate change on flooding as relevant to the principles of ESD. This obligation derived in turn from an implication that the decision is to be made on the basis of the most current material available to the decision-maker which has a direct bearing on the justice of the decision: *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40. His Honour concluded that having regard to the subject matter, scope and purpose of the EPA Act and the gravity of the well-known potential consequences of climate change, the Minister was bound to consider the impacts of climate change on the risk of flooding.

The decision in *Walker* appears to suggest that decision-makers must consider climate change impacts as part of their consideration of ESD where those impacts are relevant to its determination. It is particularly significant to this development as Council is well aware of the current assessments which continually regard the Collaroy/Narrabeen beach as at high risk. Possible implications of considering climate change might mean that the present limits of the Zone of Wave Impact may have to be revised to consider foreseeable impacts during the life of the dwelling.

A crucial element of Justice Biscoe's reasoning was that climate change impacts had a direct bearing on the justice of the decision. In the case of the DA, the justice question is complex and balances the interests of the applicant against the interests of the community. The applicant's interests are their continued use and enjoyment of the Property and the intergenerational equity interests of their children and possibly grandchildren. The community's interests revolve around the future integrity of its planning regime and potential liability for future impacts. There is also the small but significant issue of the dwelling's superior design reducing energy usage compared to the current structure.

Possible Risks to Council

It is arguable to what extent Council may be liable for any loss resulting from subsequent damage from climate change impacts should the dwelling be built. The applicant's family has owned and enjoyed the site for seventy years and has no doubt witnessed many of the storms to affect the area over that time. The decision to apply for the DA to demolish and build a new dwelling demonstrates a certain confidence in light of the somewhat dire predictions for the beach's future. It would be very hard for the present owners to argue reliance on any advice provided by Council. The applicant has no doubt been aware of, and quite possibly participated in, the process regarding protection of the beachfront area.

It is clear from the Collaroy/Narrabeen Coastline Management Plan that Council is concerned about the beachfront's vulnerability to climate change impacts. The Plan envisages that the beachfront be protected either by a programme of beach nourishment or the construction of seawalls. The seawall proposal was highly unpopular and abandoned. It is also now prohibited under the State Environment Planning Policy 71 - Coastal Protection. The beach nourishment program has reached an impasse as the state and Commonwealth governments have not provided funding to assist Council and any alternative action such as offshore sand mining has been prohibited by state planning policies. Unfortunately this means there is intent to mitigate impacts but a policy vacuum regarding actual action.

No doubt Council's legal advisors will be focused on the possible risk of negligence actions against Council arising from climate change impacts.

The main risk to Council in the present case is if the decision to approve the DA ends up being the subject of a merits review by the Land and Environment Court. Unless the issues surrounding ESD are thoroughly considered, the Court may invalidate the consent and even establish planning principles governing development in climate change exposed areas. It is imperative that Council ensure it has a consistent planning regime in place that adequately considers the risks of climate change impacts to development to maximise both amenity of the beachfront area and certainty in planning determinations.

I hope this submission is of some assistance to Council in achieving the best outcome in relation to the DA.

Yours sincerely

	Andrew Newman
Name:	Andrew Newman
MailAddress:	80 ARTHUR STREET FORESTVILLE NSW 2087
type:	email

This email message and any attachments may be confidential information.
If you are not the intended recipient, any use, interference with, copying
or disclosure of this material is unauthorised and prohibited.
If you have received this email in error, please immediately advise the
sender by return email and delete the message from your system.
Any views expressed in this email are those of the sender unless they
are specifically stated to be the views of Warringah Council.