

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1713
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Responsible Officer:	Michael French
Land to be developed (Address):	Lot 80 DP 14843, 92 Alfred Road NARRAWEENA NSW 2099
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Glen Rego Olma Edlyn Fernandes
Applicant:	Olma Edlyn Fernandes

Application Lodged:	22/11/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/11/2023 to 13/12/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 383,200.00
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PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the following:

- Addition of a Lower Ground Floor to form an entry/landing, double car garage, living area, two (2) bedrooms, bathroom, storage areas and a staircase leading the Upper Ground Floor extension.
- Eastward extension to the Upper Ground Floor to form a master bedroom with an adjoining ensuite and WIR, a living area and balcony.
- Demolition of an existing garage within the front yard.
- Demolition of existing driveway and pathway.
- Addition of a new driveway.

Application History

A Request for Further Information letter was issued on 12 February 2024, requiring an amended application that complies with the requirements and objectives of *Clause B3 Side Boundary Envelope*, *Clause D1 Landscaped Open Space and Bushland Setting*, *Clause D6 Access to Sunlight*, *Clause D7 Views*, and *Clause D8 Privacy*, along with a response to the submission. Subsequent to this, a meeting was convened between Council and the applicant/homeowners, accompanied by their planner and architect. During this meeting, Council reiterated the contents of the Request for Further Information letter and responded to questions posed by the applicant, their planner and architect. Following this meeting, the applicant furnished a response to the submission, accompanied by a view loss assessment report and an amended master set of architectural plans. Following the submission of these additional documents, the application has undergone final assessment. It is considered that the amended application does not adequately address all the issues identified within the request for information letter of 12 February 2024. In this regard, the application is recommended for refusal detailed reasons for this are outlined below.

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 the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 80 DP 14843 , 92 Alfred Road NARRAWEENA NSW 2099
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Alfred Road.

The site is regular in shape with a frontage of 12.19m along Alfred Road and a depth of 51.61m. The site has a surveyed area of 629m².

The site is located within the R2 Low Density Residential zone pursuant to the Warringah Development Control Plan and accommodates a single-storey dwelling.

The site has a downward slope towards the front of the site.

The site has a mix of vegetation in the front and rear yards. There are no details of any threatened species on site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a mix of dwellings within an R2 Low Density Residential zone.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (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	There are no current draft environmental planning instruments.
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 Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being addressed via a condition of consent, were the development to be approved. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended Architectural Plans that propose compliance with the DCP requirements, which are cited as the grounds for refusal, as detailed below. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is capable of being addressed via a condition of consent, were the development to be approved. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is capable of being addressed via a condition of consent, were the development to be approved. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is capable of being addressed via a condition of consent, were the development to be approved.
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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact

Section 4.15 Matters for Consideration	Comments
	The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Warringah Development Control Plan and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 29/11/2023 to 13/12/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mrs Arianna Germanos	94 Alfred Road NARRAWEENA NSW 2099

The following issues were raised in the submissions:

- Access to sunlight/ overshadowing
- View loss
- Property value
- Building height/setback review
- Noise impact

The above issues are addressed as follows:

- **Access to sunlight/ overshadowing**

The submission raises concerns that the proposal will result in an unreasonable overshadowing impact.

Comment:

Assessment against *Clause D6 Access to Sunlight* is undertaken elsewhere within this report. It is considered that the shadows generated by the proposed development to 90 and 94 Alfred Road do not result in a non-compliance with the solar access controls of the DCP.

- **View loss**

The submission raises concerns that the proposal will result in an unreasonable view loss impact.

Comment:

Assessment against *Clause D7 Views* is undertaken elsewhere within this report. It is considered that the proposed development presents an unacceptable impact. This is a reason for refusal.

- **Property value**

The submission raises concerns that the loss of views could lead to a decrease in the value of their property.

Comment:

Property value impacts are not a relevant planning consideration for Council under the Section 4.15 of the EP&A Act 1979. However, impacts raised as potential causes of property devaluation, such as solar access, privacy and views, have been assessed within this report pursuant to relevant planning controls.

- **Building height/ setback review**

The submission requests the review of both the setbacks and height of the proposed development.

Comment:

The concerns regarding the proposed setbacks and building height have been thoroughly evaluated within this application and addressed elsewhere in this report.

- **Noise impact**

The submission raises concerns regarding the potential for the proposal to cause an unreasonable noise impact originating from the front-facing balcony.

Comment:

Considering that the proposed balcony is located 2.4m from the northern side boundary and is not in close proximity to the road or any public land, and given that balconies situated this close to a side boundary are common additions in residential settings, the proposal is deemed acceptable in terms of noise impacts. This is not a reason for refusal.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	The proposed development is in Region 2. On-site detention is not required for alterations and additions. A geotechnical report has been provided. Vehicle crossing construction is proposed. I have no objections to the proposed development.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A1375014 dated 6 November 2023).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).

- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

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?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.2m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.5m	N/A	Yes

B3 Side Boundary Envelope	4m (north)	outside envelope (at a maximum height of 0.7m for a length of 1.3m) (at a maximum height of 0.4m for a length of 0.2m)	17.5%	No
	4m (south)	outside envelope (at a maximum height of 1.1m for a length of 5.1m)	27.5%	No
B5 Side Boundary Setbacks	0.9m (north)	0.9m	N/A	Yes
	0.9m (south)	0.9m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	6.5m (front steps)	N/A	Yes
B9 Rear Boundary Setbacks	6m	16m (existing dwelling)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	36.04% (226.7m ²)	9.9%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	No
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	No
D8 Privacy	No	No
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Clause B3 Side Boundary Envelope requires that built structures are sited within an envelope, measured at the side elevations of the dwelling by projecting planes at 45 degrees from a 4 metre height.

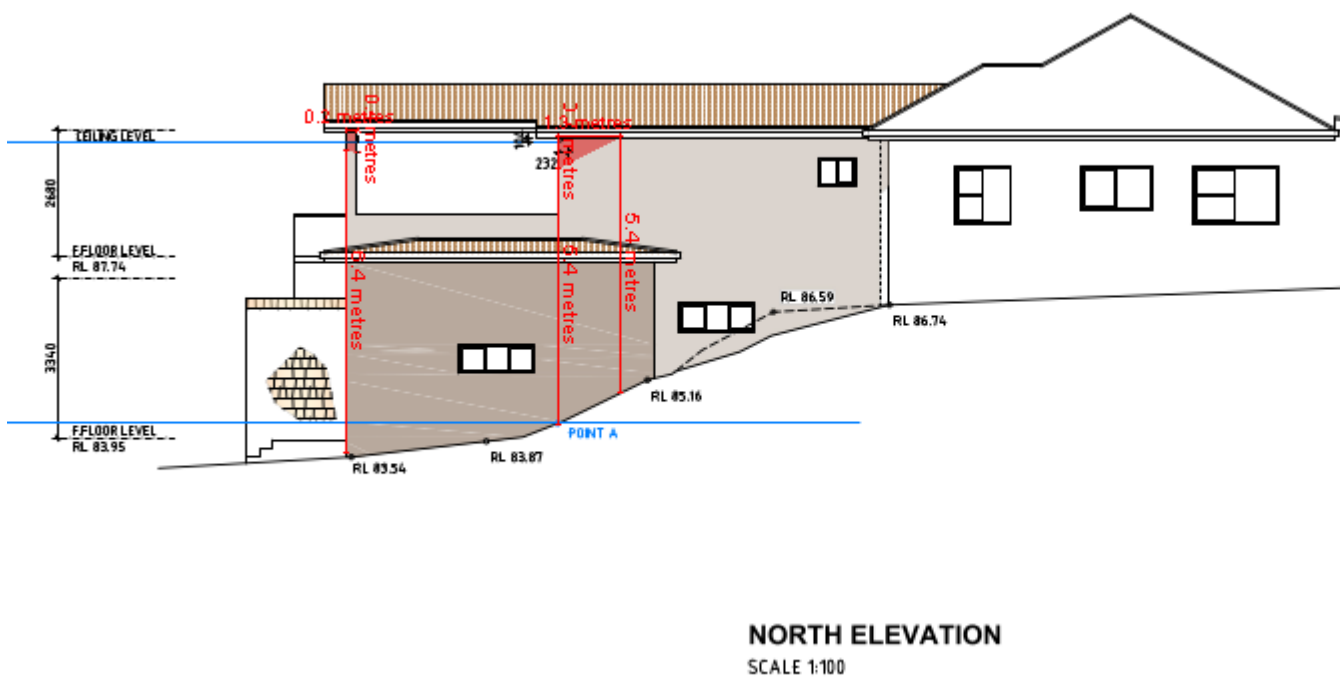


Figure 1: Envelope non-compliance- North Elevation

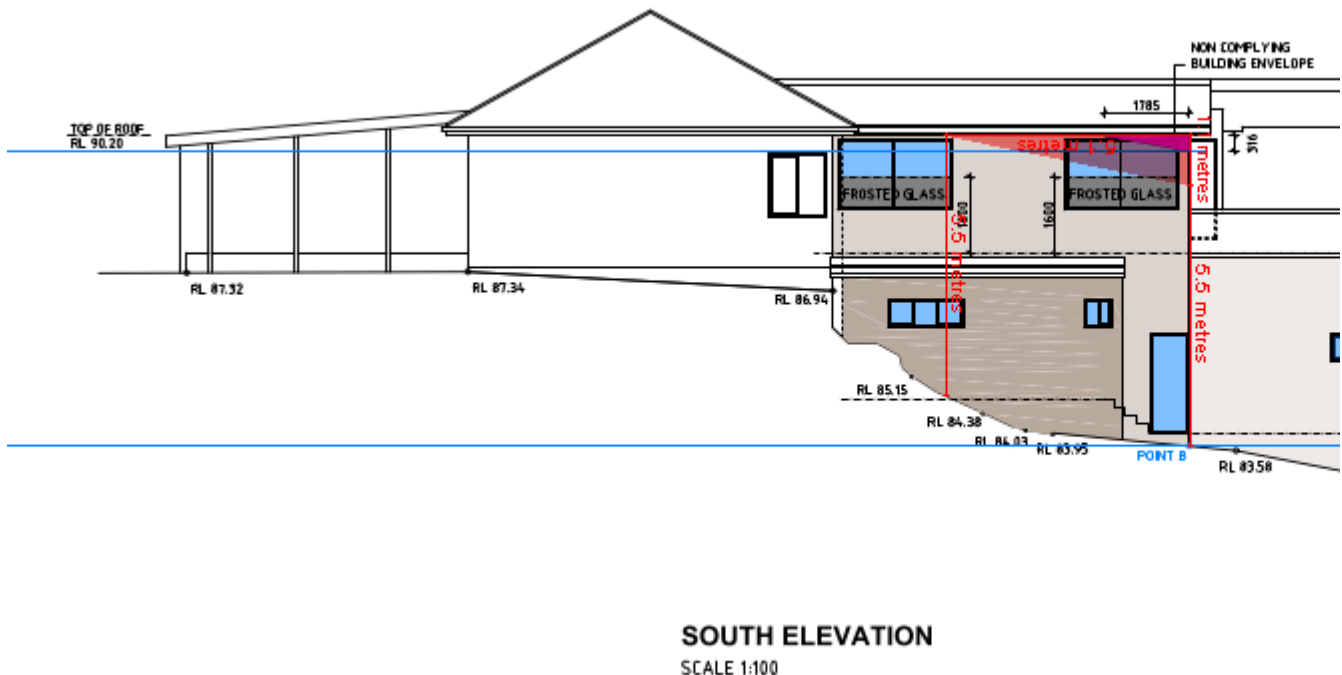


Figure 2: Envelope non-compliance- South Elevation

In this case, the development proposes a protrusion of the building envelope along the northern side elevation in two areas, at a maximum height of 0.7m for a length of 1.3m and at a maximum height of 0.4m for a length of 0.2m, as well as along the southern elevation at a maximum height of 1.1m for a length of 5.1m.

Where the requirements of this clause have not been met and a variation is sought, the objectives of the clause must be met.

The following objective has not been adequately met:

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

The view loss directly resulting from the non-compliance, particularly resulting from the height of the works outside of the prescribed building envelope, translates into an unreasonable impact on views from the adjoining site at 94 Alfred Road, Narrabeena. It is considered that the non-compliant element of the dwelling becomes visually dominant, despite the proposal complying with the maximum building height of the LEP.

In this regard, the proposal is not supported in its current form. This is a reason for refusal.

D1 Landscaped Open Space and Bushland Setting

Clause D1 Landscape Open Space and Bushland Setting requires that the total soft landscaped area shall total 40% of the site area.

The proposed works provide for a Landscaped Open Space calculation of 36.04% (226.7m²), a variation of 9.9%.

The applicant has failed to present compelling justification for why a variance to this clause should be endorsed. The existing site currently meets the requirement of the clause, and the size and shape of the allotment allow the proposal to adhere to the clause while still offering ample room for additional development on site. Thus, the extent of variation to this clause is considered unjustified in this instance, and therefore cannot be supported.

In this regard, the proposal is not supported in its current form. This is a reason for refusal.

D7 Views

In response to concerns related to view loss resulting from the proposed addition, a site inspection to the adjoining site at 94 Alfred Road, Narrabeena, was conducted on 8 February 2024. Height poles were not considered necessary as a satisfactory amount of information was available to determine the extent of impact.



Figure 3: South-facing view over southern side boundary (living area)(seated position)



Figure 4: South-facing view over southern side boundary (living area)(standing position)



Figure 5: South-facing view over southern side boundary (kitchen)(standing position)

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To allow for the reasonable sharing of views.*

Comment:

The proposal fails to achieve a reasonable sharing of views, as detailed below.

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the 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".

Comment to Principle 1:

The affected view corridors obtained from 94 Alfred Road, Narrabeena are toward a southerly direction over the southern side boundary, and includes expansive views of the suburbs to the south and a distant view of the City CBD.

2. What part of the affected property are the views obtained

"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".

Comment to Principle 2:

The affected view corridors obtained from 94 Alfred Road, Narrabeena, are observed from seated and standing positions from the living/dining area through the south-facing box windows, as well as from standing positions in the kitchen through the south-facing box window. All affected significant view corridors are obtained over the southern side boundary. It should be noted that the view corridors toward the south will to a large extent be obscured by the addition.

3. Extent of impact

"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".

Comment to Principle 3:

In this case, considering the extent of views impacted, and that the obstructed view corridors cannot be obtained from elsewhere within the site, the extent of view loss is assessed as severe.

4. Reasonableness of the proposal that is causing the impact

"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 to Principle 4:

As detailed within the 'Request for Further Information Letter' dated 12 February 2024, concerns were raised regarding the need for a more skillfully designed addition to the dwelling that reduces the proposed impact of view loss on neighboring properties while offering comparable development potential and amenity for the residents of the subject site. The amended set of architectural plans did not propose any alterations or amendments to that originally lodged, and therefore the view loss impacts do not materially change with the amended application. It should be noted however that the development proposes non-compliances that directly result in view loss impacts. Notably, this includes a variation to *Clause B3 Side Boundary Envelope* as detailed above.

In being presented with the view loss the applicant conducted its own view loss assessment and analysis to substantiate their proposal, complemented by photographs taken by Council to inform its assessment which were obtained through a GIPA request. This assessment has been reviewed and taken into account during the assessment of the application. The applicants view loss analysis finds that the extent of impact is limited and acceptable.

Having considered the applicants submitted view loss assessment, it should be noted that is preparation and findings in relation to view loss encompasses sightlines from all vantage points of the neighboring property at 94 Alfred Road, Narrabeena. While it is acknowledged that the proposal would maintain views over the eastern aspect of the site across the front boundary, and that views over a side boundary under the tenacity principle are of lesser significance than those over a front boundary, it is important to note that despite these considerations, the non-compliant aspects of this development directly result in unacceptable view loss impacts. This conclusion is drawn on the basis that the view over the side boundary is of the Sydney CBD and that the view to the east over the front does not contain or allow for any view of this recognisable view. Consequently, the proposal is deemed to fail in meeting the requirements and objectives stipulated by this clause. It is evident that the current proposal does not facilitate equitable view sharing, and that an amended design that would offer similar development potential while ensuring a more balanced sharing of views among all parties involved is achievable in this instance.

The above assessment considered, the proposal is not supported in this instance. It is considered that the proposal fails to achieve a 'skillful' or 'sensitive' design that achieves compliance with the planning principle established in *Tenacity v Warringah Council*. Therefore, this is a reason for refusal.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal is not considered to adequately encourage an innovative design solution that improves the urban environment.

- *To ensure existing canopy trees have priority over views.*

Comment:

The proposal does not include the addition or removal of any canopy trees.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D8 Privacy

Clause D8 Privacy requires the following:

- 1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.*
- 3. The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.*

The proposed Upper Ground Floor Balcony is considered to create an unacceptable privacy impact to and from the neighboring property at 94 Alfred Road, Narrabeena. There is a notable absence of sufficient screening between the balcony and the south-facing windows of 94 Alfred Road, Narrabeena, overlooking the proposed balcony. Consequently, it is considered that the proposal fails to adhere to the above-mentioned requirements.

In this regard, the proposal is not supported in its current form. This is a reason for refusal.

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

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$3,832 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$383,200.

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 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

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 Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/1713 for the Alterations and additions to a dwelling house on land at Lot 80 DP 14843,92 Alfred Road, NARRAWEENA, for the reasons outlined as follows:

1. **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 B3 Side Boundary Envelope of the Warringah Development Control Plan.**
 - **Clause D1 Landscaped Open Space and Bushland Setting of the Warringah Development Control Plan.**
 - **Clause D7 Views of the Warringah Development Control Plan.**
 - **Clause D8 Privacy of the Warringah Development Control Plan.**

Particulars:

- i) The proposed development fails to meet the numerical requirements and underlying objectives stipulated within Clause B3 Side Boundary Envelope, and Clause D1 Landscaped Open Space and Bushland Setting.
- ii) The proposed development gives rise to an unacceptable impact on views obtained by 94 Alfred Road, Narrabeena. It is considered that the impact upon these views, particularly when considering the variations to the above-mentioned DCP provisions, is not representative of view sharing and the outcome is contrary to the planning principle established in *Tenacity v Warringah Council*.
- iii) The proposed development fails to meet the requirements and underlying objectives stipulated within Clause D8 Privacy.

2. **Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.**

Particulars:

- i) The cumulative impact of non-compliances of relevant controls within the Warringah Development Control Plan, and the resultant unreasonable amenity impacts upon adjoining properties, is such that approval of the proposed development would not be within the public's interest.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Michael French, Planner

The application is determined on 03/05/2024, under the delegated authority of:



Adam Richardson, Manager Development Assessments