

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0432
Responsible Officer:	Daniel Milliken
Land to be developed (Address):	Lot 2 DP 1226906, 12 K McDonald Street FRESHWATER NSW 2096 Lot 3 DP 1226906, 12 J McDonald Street FRESHWATER NSW 2096 Lot 4 DP 1226906, 12 I McDonald Street FRESHWATER NSW 2096 Lot 5 DP 1226906, 12 H McDonald Street FRESHWATER NSW 2096 Lot 6 DP 1226906, 12 G McDonald Street FRESHWATER NSW 2096 Lot 7 DP 1226906, 12 F McDonald Street FRESHWATER NSW 2096 Lot 8 DP 1226906, 12 E McDonald Street FRESHWATER NSW 2096 Lot 9 DP 1226906, 12 D McDonald Street FRESHWATER NSW 2096 Lot 10 DP 1226906, 12 C McDonald Street FRESHWATER NSW 2096 Lot 11 DP 1226906, 12 B McDonald Street FRESHWATER NSW 2096 Lot 12 DP 1226906, 12 A McDonald Street FRESHWATER NSW 2096 Lot 13 DP 1226906, 27 Coles Road FRESHWATER NSW 2096 Lot 14 DP 1226906, 25 Coles Road FRESHWATER NSW 2096 Lot 1 DP 1226906, 12 L McDonald Street FRESHWATER NSW 2096
Proposed Development:	Modification of Development Consent DA2016/0550 granted for attached dwellings to install air conditioning units to each dwelling
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential

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Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Peninsular 1 Pty Ltd
Applicant:	I P M Holdings Pty Ltd

Application lodged:	15/08/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	20/08/2018 to 05/09/2018
Advertised:	Not Advertised
Submissions Received:	10
Recommendation:	Refusal

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 Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 2 DP 1226906 , 12 K McDonald Street FRESHWATER NSW 2096 Lot 3 DP 1226906 , 12 J McDonald Street FRESHWATER NSW 2096 Lot 4 DP 1226906 , 12 I McDonald Street FRESHWATER NSW 2096 Lot 5 DP 1226906 , 12 H McDonald Street FRESHWATER NSW 2096
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	Lot 6 DP 1226906 , 12 G McDonald Street FRESHWATER NSW 2096 Lot 7 DP 1226906 , 12 F McDonald Street FRESHWATER NSW 2096 Lot 8 DP 1226906 , 12 E McDonald Street FRESHWATER NSW 2096 Lot 9 DP 1226906 , 12 D McDonald Street FRESHWATER NSW 2096 Lot 10 DP 1226906 , 12 C McDonald Street FRESHWATER NSW 2096 Lot 11 DP 1226906 , 12 B McDonald Street FRESHWATER NSW 2096 Lot 12 DP 1226906 , 12 A McDonald Street FRESHWATER NSW 2096 Lot 13 DP 1226906 , 27 Coles Road FRESHWATER NSW 2096 Lot 14 DP 1226906 , 25 Coles Road FRESHWATER NSW 2096 Lot 1 DP 1226906 , 12 L McDonald Street FRESHWATER NSW 2096
Detailed Site Description:	The site currently consists of 14 separate lots. Lots 1 - 14 in DP 1226906. The development is stratum subdivided. The site has three street frontages and is located on the southern side of Wyndora Avenue, the eastern side of McDonald Street and the northern side of Coles Road. The land is generally rectangular in shape and has a frontage of: • 24.38m to Wyndora Avenue; • 90.53m to McDonald Street; • 36.57m to Coles Road and; • an area of 2,759sqm. Existing on the site are 14 two storey attached dwellings. The site previously contained the Peninsula Private Hospital. Lots 1 - 12 front McDonald Street and Lots 13 and 14 front Coles Road. The surrounding development consists of detached residential dwellings in a low density residential environment.

Map:



SITE HISTORY

PEX2014/0005

This application was a Planning Proposal submitted to Council to add an additional permitted use on the land to allow the development of 14 townhouses with a common basement car park. The Planning Proposal was reported to the Warringah Development Assessment Panel who recommended the proposal proceed to a gateway determination. The Planning Proposal was also reported to an Ordinary Council Meeting.

The Planning Proposal was made on 13 May 2016 to amend Schedule 1 to permit subdivision of the site into no more than 14 lots but only in conjunction with the erection of no more than 14 attached dwellings and basement car parking. The Planning Proposal was accompanied by a Voluntary Planning Agreement that set out a series of planning controls and "Site Development Plans" to guide the future detailed development of the site.

DA2016/0550

This application was for demolition works, construction of attached dwellings and subdivision of land (i.e. the construction of the 14 dwellings and basement carpark). The application was approved on 12 October 2016. The development has been constructed, including air conditioning units on the roof of each dwelling and a ventilation stack. These items did not form part of the original proposal and are the subject of this modification.

PROPOSED DEVELOPMENT IN DETAIL

The modification seeks retrospective approval for 14 air conditioning units and a single ventilation shaft from the basement projecting above the roof line.

The air conditioning units have been installed on the roof of each of the 14 attached dwellings.

The ventilation shaft has been installed between dwellings six and seven and extends above the roof level of dwelling six.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2016/0550, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact. This is not to say that these impacts are reasonable. This will be discussed in detail below in this report.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2016/0550.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan 2011.

Section 4.55(1A) - Other Modifications	Comments
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of 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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been

Section 4.15 'Matters for Consideration'	Comments
	addressed via a condition in the original consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
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 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 that the modifications will result in unreasonable view loss to multiple nearby properties. In this regard, approval of this modification is not in the public interest and the application is recommended for refusal.

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 development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 10 submission/s from:

Name:	Address:
Mr Guy Brandon Richards Mrs Jessica Ryan Richards	2 / 17 McDonald Street FRESHWATER NSW 2096

Name:	Address:
Mrs Caryn Jane Harrington	21 Coles Road FRESHWATER NSW 2096
Mr David Guy Flay	178 Wyndora Avenue FRESHWATER NSW 2096
Jill Phillis Hall Susan Jill Hall	82 Federal Parade BROOKVALE NSW 2100
Ms Kerrie Louise Hall	59 / 8 Koorala Street MANLY VALE NSW 2093
Mr Geoffrey William Andrews	2 / 15 McDonald Street FRESHWATER NSW 2096
David James Robert Snodgrass	1 / 15 McDonald Street FRESHWATER NSW 2096
Mr Frederick George Brain Mrs Pamela Hanna Brain	177 Wyndora Avenue FRESHWATER NSW 2096
Mrs Nancy Elizabeth-Jean Davis	3 / 15 McDonald Street FRESHWATER NSW 2096
Jonathan Alexander Martin Julia Lynda Martin	29 McDonald Street FRESHWATER NSW 2096

The following issues were raised in the submissions and each have been addressed below:

- **View loss, height and visual impact**
- **Retrospective application**
- **Noise**
- **Damage in high winds**

The matters raised within the submissions are addressed as follows:

- **View loss, height and visual impact**

The submissions raised concerns that the AC units and ventilation stack exceed the height limit, result in an unreasonable visual impact and cause unreasonable view loss.

Comment:

This matter is discussed in detail in Part D7 Views, below in this report.

In summary, seven of the AC units and the ventilation stack exceed the height limit. All the AC units (except for the unit above dwelling 12) and the ventilation stack result in unreasonable visual impacts and view loss.

As such, AC units 1 to 11, 13 and 14 need to be removed from the roof and the ventilation stack needs to be removed from the view corridor.

The application is therefore recommended for refusal on the grounds of views, height and visual impact.

- **Retrospective application**

The submissions raised concerns that the applicant constructed the AC units and the ventilation stack without approval and are applying for permission retrospectively.

Comment:

Section 4.55 of the Environmental Planning and Assessment Act 1979 does allow for modifications to be applied for and approved retrospectively. This allows for minor changes during any build to not require construction to halt while an assessment is undertaken.

In this particular case, the AC units and ventilation stack could have been foreseen and added to the original application, or applied for prior to them being installed.

This assessment has found that, apart from the AC unit on dwelling 12, the structures are unacceptable and should be removed. Therefore, the concern is concurred with due to the impact of the unauthorised AC units and so the application is recommended for refusal.

- **Noise**

The submissions raised concerns that the AC units result in unreasonable noise levels.

Comment:

The AC units do include acoustic screens, are fairly well set back from the boundaries and as such, it is unlikely that they result in unreasonable noise levels into surrounding properties.

Notwithstanding, the removal of 13 of the 14 units to below the level of the roof would reduce any noise heard in surrounding properties.

The application is not recommended for refusal on the grounds of noise impact.

- **Damage in high winds**

The submissions raised concerns that the AC units could be dislodged in high winds and cause damage to nearby properties.

Comment:

If the AC units and their respective panels have been constructed to current building standards, there should be no danger to surrounding properties.

However, the removal of 13 of the 14 units would reduce the small risk of these units and panels being damaged and blown off in high winds.

The application is not recommended for refusal on the grounds of potential damage in high winds

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Environmental Compliance	No objections raised.

Internal Referral Body	Comments
(Building Control)	
Environmental Health (Industrial)	General Comments Approval is sought to formalise existing air conditioning condenser units located on the roof of the residential development. No acoustic assessment has been carried out however these assessments are not required for all applications. Accordingly, conditions will be added in regard to potential issues. Recommendation APPROVAL - subject to conditions

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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)

Nil

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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Buildings - maximum of 8.5m	Air conditioning units: Unit 1 - maximum of 9.2m Unit 2 - maximum of 9.0m	8.2% 5.9% 7.1% N/A N/A	No No No Yes Yes

			Unit 3 - maximum of 9.1m	N/A	Yes
			Unit 4 - maximum of 8.5m	N/A	Yes
			Unit 5 - maximum of 8.5m	N/A	Yes
			Unit 6 - maximum of 8.5m	2.4%	No
			Unit 7 - maximum of 7.54m	5.9%	No
			Unit 8 - maximum of 8.29m	10.6%	No
			Unit 9 - maximum of 8.5m	12.9%	No
			Unit 10 - maximum of 7.64m	0.8%	No
			Unit 11 - maximum of 8.7m		
			Unit 12 - maximum of 9.0m		
			Unit 13 - maximum of 9.4m		
			Unit 14 - maximum of 9.6m		
			Ventilation stack - 8.57m		

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	N/A

Detailed Assessment

4.6 Exceptions to development standards

This application has been made under Clause 4.55 of the Environmental Planning and Assessment Act 1979. As such, a Clause 4.6 request is not required for Council to be able to consider a variation to the height of buildings development standard. A full assessment of the impacts of the air conditioning units and the ventilation stack is in Part D7 Views, below in this report.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	Maximum of 7.8m	Maximum of 7.8m	No change
B3 Side Boundary	East (only side	Two encroachments of 1.43m	No new	No

Envelope	boundary) - 5m	and 0.84m in height for lengths of 12.1m and 3.785m respectively.	encroachments	change
B5 Side Boundary Setbacks	East - 0.9m	Retaining walls - nil Unit 14 - 1.19m Terraces of Units 1 to 6 - 3.0m	AC units for units 1 - 6: 9.07m AC units for unit 14: 2.84m	Yes Yes
B7 Front Boundary Setbacks	North - 6.5m West - 6.5m South - 6.5m	Unit 1 - 6.5m, Waste storage - 3.66m 4.5m 6.5m	AC units - 9.07m AC units - 14.17m AC units - 9.04m	Yes Yes Yes
D1 Landscaped Open Space and Bushland Setting	40%	28.96% (799sqm of LOS) 37.11% (1024sqm of deep soil plus planter boxes)	28.96% (799sqm of LOS) 37.11% (1024sqm of deep soil plus planter boxes)	No change

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D7 Views	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes

Detailed Assessment

D7 Views

History and background

As a result of the development of the site from a hospital to 14 attached dwellings, views from the following properties were affected:

- No. 15 McDonald Street
- No. 17 McDonald Street
- No. 19 McDonald Street
- No. 21 McDonald Street
- No. 23 McDonald Street
- No. 25 McDonald Street

All the above properties are located on the western side of McDonald Street and enjoyed views over the subject site.

The view loss assessment in DA2016/0550 found that while important and valued views would be lost, the development reasonably met the controls set for the site as part of the planning proposal that allowed this development. Importantly, the original development was designed with a flat roof specifically to preserve views from the above listed properties.

During construction, air conditioning units (AC units) were installed on the roof of each dwelling and a ventilation stack was built between dwellings 6 and 7.

The AC units and the ventilation stack all protrude above the original roof line, were not part of the original proposal and result in additional view loss from the following properties:

- No. 15 McDonald Street
- No. 17 McDonald Street
- No. 19 McDonald Street
- No. 21 McDonald Street
- No. 25 McDonald Street

No. 23 McDonald Street is single storey and cannot readily see the AC units or ventilation stack.

The below assessment will only cover the impact of the AC units and the ventilation stack that form part of this modification application.

Merit consideration

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

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

Comment:

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:

All the above properties enjoy district and ocean views in an arc from the north-east (towards and over Curl Curl Headland) to the south-east (towards North Head).

The views that will be affected are those obtained over the roof of the development, where the

AC units and ventilation hood protrude, and the view corridor between dwellings 6 and 7, where the ventilation stack has been built. These affected views consist of district views of the suburbs of Freshwater and Curl Curl, and views of the ocean and the horizon.

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 views are all obtained from the upper level front rooms and balconies and over the front boundaries of the properties listed above. The views to either side of the attached dwellings are obtained from sitting and standing positions. The views over the top of the development are only obtained from standing positions and mainly include the views of the ocean and the horizon.

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:

Views of the ocean and horizon between the AC units, from Nos. 15, 17, 19, 21 and 25 McDonald Street, will be retained. All other district and ocean views to each side of the subject site will be unaffected. The view corridor between dwellings 6 and 7 has been mostly blocked by the ventilation stack.

The views are all obtained over the front boundaries of the affected properties, from balconies and front facing rooms (including living areas).

The views that are being affected consist of some of the remaining ocean and horizon views obtained from Nos. 15, 17, 19, 21 and 25 McDonald Street, as well as some district views. The majority of the views that these properties previously enjoyed were lost as a result of the original development. As such, these remaining views are clearly important to the residents.

While the AC units are relatively small structures, they break up and interrupt what would otherwise be clear and intact views of the ocean and the horizon. These interruptions give the impression of view loss greater than a simple percentage calculation.

The ventilation stack is a relatively bulky structure that has been positioned within the view corridor between dwellings 6 and 7. This blocks most of this corridor when viewed from No. 15 and 17 McDonald Street.

Quantitatively, the view loss is assessed on each property as follows:

No. 15 McDonald Street - Moderate
No. 17 McDonald Street - Moderate
No. 19 McDonald Street - Minor/Moderate
No. 21 McDonald Street - Minor/Moderate
No. 23 McDonald Street - Negligible/Minor
No. 25 McDonald Street - Minor

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:

It is important to note, at this point, that the AC units and ventilation stack do not have to go on the roof or within the view corridor, this has been done for the convenience of the occupants of the development. As such, there is clearly a more skilful design that could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. This point alone would indicate that all the AC units and the ventilation stack should be removed from their current locations and placed below the level of the roof, in the case of the AC units (eg: on the balconies of the dwellings), and not within any view corridors, in the case of the ventilation stack.

However, some units may be considered acceptable to stay on the roof and as such, the following assessment of all units and the stack is provided.

The key development standard that impacts on view loss for the affected properties in this particular case is the height of the AC units and ventilation hood (on top of the stack). The height limit for this site is 8.5m. The heights of the AC units and ventilation stack are as follows:

Air conditioning units

Dwelling 1 - maximum of 9.2m
Dwelling 2 - maximum of 9.0m
Dwelling 3 - maximum of 9.1m
Dwelling 4 - maximum of 8.5m
Dwelling 5 - maximum of 8.5m
Dwelling 6 - maximum of 8.5m
Dwelling 7 - maximum of 7.54m
Dwelling 8 - maximum of 8.29m
Dwelling 9 - maximum of 8.5m
Dwelling 10 - maximum of 7.64m
Dwelling 11 - maximum of 8.7m
Dwelling 12 - maximum of 9.0m
Dwelling 13 - maximum of 9.4m
Dwelling 14 - maximum of 9.6m
Ventilation stack - 8.57m

Seven of the units are under the 8.5m height limit and seven exceed the limit. The ventilation stack exceeds the height limit.

The non-compliant AC units on dwellings 1, 2 and 3, as well as the compliant units on dwellings 4, 5 and 6, cause the greatest view loss as they sit on the highest parts of the development and cause the loss of the horizon and ocean views from all affected properties. None of these six AC units are considered to be reasonable in this context, especially as there is a more skilful design (i.e. moving the units off the roof to the terraces of each dwelling) that could still allow the dwellings to have air conditioning while preserving the remaining views.

The non-compliant ventilation stack has been constructed within the view corridor between dwellings 6 and 7 and also causes the loss of some horizon and ocean views. This structure is also considered to be unreasonable and should be removed.

The compliant AC units on dwellings 7, 8 and 9 cause the loss of district views from most of the affected properties as well as a section of ocean views from No. 17 McDonald Street. The district views are not as valuable as ocean views, however, again, there is a more skilful design possible. In this regard, these three AC units are considered to be unreasonable and should be removed.

The compliant AC unit on dwelling 10 and the non-compliant units on dwellings 11 and 12 cause the following view loss:

- From No. 17 McDonald Street - loss of views of some vegetation and some views of dwellings 13 and 14,
- From the upper level of No. 15 McDonald Street - loss of views of some vegetation and some views of dwellings 13 and 14, and
- From the ground floor of No. 15 McDonald Street - loss of some ocean and views of some vegetation.

This view loss from No. 17 McDonald Street and the upper level of No. 15 McDonald Street is considered to be minor/negligible, despite the breach of the height limit. However, the ground floor of No. 15 McDonald Street loses views of the ocean from the AC units on dwellings 10 and 11. Given that there is a more skilful design possible, it has to be recommended that these two AC units (on dwellings 10 and 11) also be removed. The units on dwelling 12 can remain.

The non-compliant AC units on dwellings 13 and 14 cause the following view loss:

- From No. 17 McDonald Street - no view loss,
- From the upper level of No. 15 McDonald Street - loss of views of some district views, and
- From the ground floor of No. 15 McDonald Street - loss of some ocean and views of some vegetation.

This view loss from the upper level of No. 15 McDonald Street is not considered to be unreasonable, despite the breach of the height limit. However, the ground floor of No. 15 McDonald Street loses views of the ocean from the AC units on dwellings 13 and 14. Given that there is a more skilful design possible, it has to be recommended that these two AC units (on dwellings 13 and 14) also be removed.

Overall, the AC units do not have to be placed on the roof and the ventilation stack does not have to block most of the view corridor between dwellings 6 and 7. Only the AC unit on dwelling 12 does not cause unreasonable view loss. There is clearly a more skilful design that could

provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. In this regard, it is recommended that the AC units above dwellings 1 to 11, 13 and 14 be removed, and the ventilation stack be removed from the view corridor.

This recommendation would result in a development that is substantially different to that which was applied for and therefore the modification should be refused.

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

Comment:

The proposal, as submitted, is not an innovative design solution and will not improve the urban environment. In this regard, a condition is recommended to remove the AC units above dwellings 1 to 11, 13 and 14, and remove the ventilation stack from the view corridor.

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

Comment:

No existing canopy trees are impacted by the modification.

Having regard to the above assessment, it is concluded that the modification, as submitted, 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 modification cannot be supported.

D9 Building Bulk

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*
- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The AC units and the ventilation stack have been assessed in detail above (Part D7 Views). The removal of AC units 1 to 11, 13 and 14, and the removal of the ventilation stack would result in a development that is acceptable from the perspective of building bulk. However, the development as proposed, does not result in an acceptable building bulk and is therefore recommended for refusal.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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.

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 2000;
- 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
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

This modification seeks retrospective approval for the installation of 14 air conditioning units and a ventilation stack on a development for 14 attached dwellings.

The modification received 10 submissions, all objecting to the proposal. Concerns raised included, noise, danger in high winds, view loss and the retrospective nature of the application.

View loss is the key issue with this modification, as it relates to the breach of the height limit and the bulk of the structures.

A thorough assessment has found that 13 of the 14 AC units result in unreasonable view loss and should be removed from the roof. This assessment also found that the ventilation stack, built blocking most of the view corridor between dwellings 6 and 7, should be removed.

If the AC units recommended for removal are agreed to by the panel, these changes would result in a modification approval substantially different to what was applied for. Therefore, it is recommended that the application be refused and the applicant remove all the AC units from the roof and move the ventilation stack out of the view corridor.

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 Modification Application No. Mod2018/0432 for Modification of Development Consent DA2016/0550 granted for attached dwellings to install air conditioning units to each dwelling on land at Lot 2 DP 1226906, 12 K McDonald Street, FRESHWATER, Lot 3 DP 1226906, 12 J McDonald Street, FRESHWATER, Lot 4 DP 1226906, 12 I McDonald Street, FRESHWATER, Lot 5 DP 1226906, 12 H McDonald Street, FRESHWATER, Lot 6 DP 1226906, 12 G McDonald Street, FRESHWATER, Lot 7 DP 1226906, 12 F McDonald Street, FRESHWATER, Lot 8 DP 1226906, 12 E McDonald Street, FRESHWATER, Lot 9 DP 1226906, 12 D McDonald Street, FRESHWATER, Lot 10 DP 1226906, 12 C McDonald Street, FRESHWATER, Lot 11 DP 1226906, 12 B McDonald Street, FRESHWATER, Lot 12 DP 1226906, 12 A McDonald Street, FRESHWATER, Lot 13 DP 1226906, 27 Coles Road, FRESHWATER, Lot 14 DP 1226906, 25 Coles Road, FRESHWATER, Lot 1 DP 1226906, 12 L McDonald Street, FRESHWATER, subject to 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 D7 Views of the Warringah Development Control Plan 2011, in that:
 - 13 of the 14 air conditioning units result in the unreasonable loss of views from multiple nearby properties,
 - The ventilation stack blocks a view corridor between dwellings 6 and 7 and results in unreasonable view loss,
 - There is a more skilful design that could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.
2. 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 D9 Building Bulk of the Warringah Development Control Plan 2011, in that:
 - The air conditioning units and the ventilation shaft add an additional unreasonable bulk to the 14 attached dwellings,
 - This additional bulk results in the unreasonable loss of views from multiple neighbouring properties.