

Second modification additional to approved conditions in MOD 2019 003
58 Lagoon St Narrabeen 2101

As per discussion , must be assessed by Julie Edwards. A review was already being done and supported by Council but time elapsed while with Council and a new DA was the advised solution.

Modifications

- A) Increase in pitch of roof for approved addition on northside of lot
- B) Proposed additional open seating
- C) Proposed rear ground level deck – less than 1 metre high and fully open underneath.

A) - Increase in pitch of roof for approved addition on northside of lot

The reasons for the increase in pitch are for

- 1) Allow for water / rain protection / prevent deluge and structural water damage. A 2 degree pitch in roof joining into and existing higher pitched roof would have excess water and any wind would blow it back in under and cause water leakage and damage.
- 2) Allow for cross ventilation
- 3) Allow heat escape at night in summer
- 4) Allow for amenity and potential development to be attained – amenity IS aesthetics and higher than minimum ceilings and vaults are common place and EXEPECTED in higher end properties.
- 5) The proposed pitch of 15 degrees is already a compromise as it is one meter under the height it could be and a flat shape rather than a curved shape that would create more bulk. Minimum normal pitch is 15 to 23 degree with pitches as high as 60-80 degrees. It would be cynical to ask

for any further compromise from this minimum and greatly under allowed height roof to be further reduced in the “name of saving face and looking like compromise , as the compromise was done at the start. It would also be contravening “tenacity as it does NOT allow SAME amenity or potential. If the game is to be played where one has to be seen to play a game of compromise then my next submission will be 1 metre OVER maximum height to “compromise back down to the MAXIMUM height “ rather than the proposed 1 metre below maximum height. If this game is to be played then it is simply broadcasting to everyone to never be considerate in the start and go well above what is allowed and ensure there is always objection and argument to then be ‘SEEN” to compromise back to the MAXIMUM. To do that would be actively discouraging reasonable applications in favour of going over board and then giving a little as the “visisble game”.

As such the reason for increase in pitch is that the absolutely minimal pitch of 2% has been identified as a major risk for water inundation , water damage , mold and structural damage. Once builder and engineer were spoken to. Previously it had been designed by a drafts person of limited experience, Robert Gardiner , not Sally. It was also done to such limited potential and amenity due to the strange goings on with the illegal involvement in the previous complying development I lodged where on Mr Gavin Williamson and Pat Leightons complaint with the use of Rob Stokes name had the complying development influenced by Council.

Not only is it a flat pitch with minimal fall to disperse water off its OWN area, it also has higher pitched existing tile roof that it attaches to emptying straight onto the flat roof causing an even greater deluge and collection of water. With even the most minimal wind , or no wind at all , water will flow back under the connection point of the higher pitched roof.

Secondly the roof has all day sun from, east, north and most critically west. The heat in summer reaches very high temperature. The proposed increase in pitch allows windows for airflow and cross ventilation.

This is done with energy conservation and green considerations as well as minimal comfort standard for the house owner. Windows to west need to be covered in the hottest part of the day. Windows high up on the southern wall allow cross breeze from the prevailing north / north east and also at night in summer as the days cool a little hot air rises and is able to escape through the

higher windows. High south windows also allows for cooling by southerly change or cooler night temperature after a very hot day.

These are not merely aesthetic reasons but water inundation , structural and energy and cooling considerations that are essential.

Bench mark for reasonable

- 6) At a pre lodgment meeting when discussed with Catriona Shirley it was told “ no problem people change the pitch all the time. I’ve already done a view assessment so we wont even need to do that”
- 7) The use of Tenacity Case Step 1 was applied incorrectly – the views in question are nowhere near the threshold as per this case and therefore a failure to meet the required standard to deny for this reason.
- 8) The use of Tenacity Case Step 2 was applied incorrectly – the main street front and orientation and extensive glass doors and windows are all orientated to the north. The window in question is not the front and is a small window on a wall that is predominantly brick. As such this fails to satisfy the threshold to deny for this step. The address is Loftus street. The orientation is clearly towards the north as 95% of the glass doors and windows face that way and they also lead out from inside to the outdoor living area of the balcony in that direction.
- 9) The use of Tenacity Case Step 3 was applied incorrectly – this step assesses the extent of the views. The judge specifically stipulates that the entire view not just the effected view must be considered. The residence in question has the vast majority of its glass and orientation to the north sweeping north west to north east. The complainants property sits in a commanding 270 degree outlook is such that its floor level is higher than the highest point of the proposed roof. The effected area composes less than 1% of the ENTIRE view. It is NOT about effected view it is about ENTIRE view assessment. As such Step 3 fails in miserably in this regard to justifying denial. Catriona even admitted she did the assessment “on the worst effected window”, and failed to provide photos when I asked three times for the photos. I also consider this failure of duty to allow me to do a application for review.
- 10) The use of Tenacity Case Step 4 was incorrectly applied. Firstly the Modification is fully compliant , secondly the definition of words were incorrect and thus a failure to understand. In the case the judge says “question should be asked whether a more skillful design could provide the applicant with the SAME development potential and amenity”
 - a) Firstly it says ask the “question” NOT this is a standard or requirement
 - b) It says SAME development potential NOT reduce it to minimal standards and minimal potential
 - c) Catriona said to me “you cannot just have it for aesthetics”. The VERY wording AMENITY means pleasantness and attractiveness as such by definition that IS aesthetics. Many properties have higher than minimum height ceilings. In fact it is quiet standard to do so especially on higher end properties . The complainant himself has a higher pitched roof with high ceilings. The reasoning that “you

cannot do it for aesthetics is completely wrong as that is the definition of the word "amenity".

- d) It says "skillful design" not bare minimum applied with the skill of a wielding a blunt machete. If this was a skillful design then EVERY house ever built should have this skillful and easily applied constraint of 2 degree roof imposed for shadowing and minimal effect. The design of 2degree roof was totally lacking in skill as advised by engineer and builder which was the reason for MOD. The design was done by a draftsman with limited experience (Robert Gardiner , Not Sally Gardiner) The modification amends this to allow the 'development potential and amenity " the judge refers to.

In the tenacity case Step 4 of the assessment of "reasonable" goes only to whether it is compliant to legislation. The judge specifically states that the predominant reasons for refusal relate to not complying with 2 storey setback and rear boundary setback and also mentions that 8.5m height is maximum , not total envelope.

Views are mentioned in the 4 step assessment with FOUR very high benchmarks. BUT views are NOT mentioned in the conclusion or decision, as the denial related to the non compliance.

As such even IF views are being taken into account the Step 4 benchmark for "Is it reasonable?" , is answered by the judge "it is not reasonable because it does not comply with built form legislation"

Then in my modification I also believe I am still being very reasonable given I am still well below maximum height and only 2 storey as opposed to 3 storey approved development in a higher position up my driveway.

The pitch I initially put was as minimal as possible. If it was any less it would be dead flat. It was minimal to the point of non functional and also not in keeping with the judges directions of "keeping the development POTENTIAL and amenity"

A normal roof in Australia is 15 degrees to 22.5 degrees . The steepest being 70 degrees or more.

Even at 15 degrees for the modification I am already at the lowest end of a STANDARD roof (15 – 22.5)

Being at the lowest end of standard is absolutely in itself a compromise

There are roof pitches to over 70 degrees .

I could fit in a 30 degree pitch and increase height by an additional metre to over the current highest point of my proposed roof and also higher than my existing roof for the entire house.

I could have the roof curved, that would have increased the bulk . Instead it was all done with consideration and compromise from the start.

The increase to 15 degrees / a one metre increase is justified by the below figures

- 1) A box gutter that turns up the horizontal so that water running down the existing tile roof doesn't overflow the box gutter ----250mm upturn would prefer 350mm as it also needs to have a flow towards drain.
- 2) Window with louver 300mm – this is a tiny window really . A much larger window would be preferred – would have preferred 600mm windows
- 3) Supporting beam / lintel 250mm
- 4) Roof thickness 200mm

The 1 metre raise is absolutely minimalistic conservative and totally reasonable given it is a metre below control and also tilted rather than curved and bulky profile.

VIEW ASSESSMENT

The Tenacity case is really ONLY about consideration of views in a NON compliant case. The views are a consideration but the reasons given for denial were absolutely specifically identified as non compliance on number of storeys , rear set back and envelope
It was absolutely NOT a fully compliant case being denied due to views.

Additionally the bar is actually set extremely high. The judge chose the worst affected house for the reasoning. He didn't chose the AVERAGE affected house to demonstrate his point. When I said this to Catriona , she replied “ I chose the worst case too”. I said what do you mean. She said she chose the most effected window to take photos and assess.
This shows misunderstanding and failing to follow steps.

Case law works on meeting a burden or criteria. It does not mean if something at a massive stretch is somewhere in the ball park then it satisfies. The Tenacity case uses terms like “Obliterates the views on all three levels and from a sitting position in the fourth level’ also words like “I would classify the view to the Ocean and Manly as highly valuable and WHAT MOST PEOPLE WOULD DESCRIBE as magnificent.”. This doesn't mean that if there is a spec of partial water view that comprises less than 1% of the TOTAL outlook from the entire property that it ticks the box. It is not anywhere near the same ball park PLUS the tenacity case was NON compliant. As such a compliant application would need a far higher burden to satisfy.

The judge says “COULD a more skillful design be used ?”. The judge did not say “Absolute bare minimum amenity and development potential MUST be done to preserve views even if compliance allows far more ?”

The judge stated 4 steps with a threshold for each SET by his case. He also did not say “Minimum amenity and minimum potential development MUST be done to preserve ANY spec of water view even if it is of minimal extent of the entire view. “

Please see my Letter for review of Modification denial if further information is required.

B) Proposed additional open seating

Highlighted in yellow on the Ground Floor Plan is proposed continuation of seating under 1 meter in height in the South West corner of the existing house. Open slat wooden frame . It will allow full flow of any overland water as per approved seating and stairs

C) Proposed rear ground level deck – less than 1 metre high and fully open underneath.

A deck in the rear of the lot is proposed.

The lot is a flood effected lot , in regard to this the following reasons of mitigation are given

- 1) The deck would be fully open to the south and west (towards the lake) . Open slats would be proposed for the east and north. Free flow of water can occur
- 2) The deck would be off the ground and supported by minimal piers / posts. This would allow free flow of water. To the south the neighbours have artificially built up their ground level as such water flow would not be effected in this direction due to the existing effect of the neighboring townhouses.
- 3) The front boundary already has a hedge of trees that would naturally impede water flow as much as any posts would. Ie negligible. Posts would have about the same effect as if more trees were planted in the garden.
- 4) A raised deck would have no effect on flood storage.
- 5) The council has already adopted a plan to build a sea wall in front of this property. Just as the case is as soon as the Council had a study on new flood levels they were considered as "latest information / ;attest adopted policy " (while complying development didn't adopt till they were legislated) , the council MUST consider policies it has adopted even if not yet implemented. A sea wall proposed and adopted for construction in this area would have a far greater effect on water flow. Additionally it said that it would effect flood storage and have a negative effect of containing water within the lots if the wall was breached. As such a deck would alleviate the flooding due to the breach of the adopted sea wall policy and a deck would have significantly have less effect that the policy the Council HAS adopted.

The deck is within falls within the required percentage of landscaping. Retaining wall at the west boundary and landscaping the entire area after infill would be the preferred option and totally reasonable given the proposed sea wall.. If this is an allowed option , please advised. A deck is an alternate option for the old situation of flood.

Viewing neighbouring lots it is clear that percentage landscaping is far more for my lot than for lots such as 159 Ocean Street and 58a Lagoon which have had recently approved development and the new unit development 22 lagoon street on the corner of Lagoon and Wellington.

The deck would have a simple wooden handrail as per BCC standards. The handrail would be below the level of the current hedge.

Currently there is a 2.4 metre hedge at the west boundary. This is for privacy given there is a public walking path between my property and the lake. The deck would not be visible from outside the boundary due to the hedge. To the south there is a fence and garden on the other side. A continuation of the hedge would be proposed. (there is already a 1.8m fence and hedge on the neighbours side) The southern neighbours rear area is TOTALLY open to the public from the walking path as they have no front fence and low vegetation. As such the proposed deck would not create a privacy concern as the public and passers by already have full view into the area. To the north there is a hedge of trees and palms that provide privacy in that direction. The deck is not a living area and is also lower set than the southern lot next door neighbor which it is closer to.

The original DA provides a site plan and survey.

Dr Justin Sinfield
0407 997 050

58 Lagoon St Narrabeen