

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2019/0028
Responsible Officer:	Nick England
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:	Review of Determination of Modification 2018/432 Demolition works construction of attached dwellings and subdivision of land
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:	07/06/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	05/07/2019 to 19/07/2019
Advertised:	Not Advertised
Submissions Received:	15
Clause 4.6 Variation:	4.3 Height of buildings: 12.9%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 0.00
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Executive Summary

The request for review of determination relates to the decision of the Northern Beaches Local Planning Panel (NBLPP) to remove the existing AC units from the rooftops of the approved townhouse development. The original consent, MOD2018/0432, was granted by NBLPP on 9 May 2019.

The primary issues that relate to the proposal are: view loss to adjoining properties in McDonald Street and the visual impact of the unauthorised works.

A total of 16 submissions were received during the notification period, 8 of which were submissions from the owners of the land subject to the application, supporting the proposal. 8 objections were received, 5 from adjoining properties and 3 from owners of the dwellings subject to the application.

A review of the original view loss assessment has been undertaken. The original assessment of the view loss impact, which was found to be adverse to adjoining properties, is considered to be correct and is affirmed. The submission issues in respect to view loss (in the original assessment and in those received for this application) are hence still valid.

The proposed amendments made under this review (in effect the retention of 7 of the air conditioning units) are not sufficient to address the issues identified in the previous assessment.

The application is referred to the NBLPP to comply with the statutory requirement that all applications for review not be determined by a subordinate authority. MOD2018/0432 was determined by the NBLPP.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be refused.

PROPOSED DEVELOPMENT IN DETAIL

The application is made pursuant to Section 8.2 (1) (b) of Environmental Planning and Assessment Act 1979. It seeks to review the decision by NBLPP to approve MOD2018/0432, which required in effect:

- the removal of 14 existing unauthorised air conditioner units from the roof of the proposed development; and
- lowering of the existing unauthorised ventilation stack by approximately 700mm.

The applicant proposes that 7 of the existing air conditioner units (for units 7 to 14) remain on the roof and that Council erred in the assessment of the impact of these units in the original determination. No plans were provided with the application, with the proposed amendment stated only in correspondence provided with the application.

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

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Development Control Plan - A.5 Objectives

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 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
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	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 2,759m². 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

History relevant to the subject application includes the following:

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 were the subject of a subsequent application to modify this consent.

MOD2018/0432: This application sought to modify the existing consent, retrospectively, for 14 air conditioning units and a single ventilation shaft from the basement projecting above the roof line, already constructed. This application was reported to the Northern Beaches Local Planning Panel at its meeting of 6 March 2019, with the officer recommendation of refusal based on the view loss caused to adjoining properties by the air conditioning units. The Panel resolved to permit the application to lodge amended plans that re-located these units to the basement parking area and amended the ventilation shaft.

The amended plans provided by the applicant showed the units on the individual terraces of each unit rather than the basement. Reasons cited for this location was: limited basement space, excessive heat

build up and adverse noise. Further justification for the terrace location was citing the provisions of the *State Environmental Planning Policy (Exempt & Complying Development) 2008*, which would permit the location of these units on this part of the site without consent.

The Panel subsequently resolved to approve these plans on 9 May 2019.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 9 May 2019 and the notice of determination was issued on 14 May 2019. The review was lodged on 7 June 2019 and is to be considered by the NBLPP on 6 November 2019, which is within 6 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Hence, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act and the proposed amendments can be considered as part of this review.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

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 15 submission/s from:

Name:	Address:
Mr Roger Ireland	27 Coles Road FRESHWATER NSW 2096
David John Baldwin	25 Coles Road FRESHWATER NSW 2096
Mr Geoffrey Inman Way Ms Doris Kerner	12 G McDonald Street FRESHWATER NSW 2096

Name:	Address:
Aleksander Strasek	12 H McDonald Street FRESHWATER NSW 2096
Nada Stewart Anthony Keith Stewart	12 D McDonald Street FRESHWATER NSW 2096
Mr Gerard Casey	12 I McDonald Street FRESHWATER NSW 2096
Harold James Redmond Exupher Ompoc Redmond	182 Wyndora Avenue FRESHWATER NSW 2096
Mr Graham John Fenwick Mrs Anne Lai Fong Fenwick	12 K McDonald Street FRESHWATER NSW 2096
Mrs Mary Elizabeth Pearson	12 L McDonald Street FRESHWATER NSW 2096
Mrs Jane Alison Mason	44 Alexander Street MANLY NSW 2095
Donna Ellen Macrae	7 / 30 Foam Street FRESHWATER NSW 2096
Mr Geoffrey William Andrews	2 / 15 McDonald Street FRESHWATER NSW 2096
Peter John Smart Ms Jane Margaret Easton	32 Coles Road FRESHWATER NSW 2096
Mr Timothy William Herlihy Mrs Virginia Carol Graham Herlihy	12 B McDonald Street FRESHWATER NSW 2096
Ms Gunilla Susan Rupp	11 / 11 Koorala Street MANLY VALE NSW 2093

A total of 16 submissions have been received.

Eight (8) of these submissions are in objection to the application, with the remaining 8 being from residents of No.12 K to L McDonald Street, in support of the application.

Of the 8 objections received, 3 were from residents within the land subject to the application. 5 were from adjoining properties, being:

- 182 Wyndora Avenue
- 2/15 McDonald Street
- 32 Coles Road
- 31 Coles Road
- Confidential, name and address withheld

The issues raised in the objections have been summarised and are addressed below:

The air conditioners result in an adverse loss of views to adjoining properties.

Comment: A discussion on the view loss impacts to adjoining properties is provided elsewhere in this report. In summary, the retention of the air conditioning units for Units 7 to 14, will still result in adverse view loss impacts and proposed amendments are not supported.

The air conditioners will result in adverse noise impacts to adjoining properties.

Comment: The original assessment of the application to modify the consent found that potential noise impacts would not be a valid reason to refuse the application. Review of the determination confirms that the assessment of this issue was correct and hence does not form part of the reasons of the

recommended refusal of the application.

REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	Air conditioning units:		
			Unit 1 - maximum of 9.2m	8.2%	No
			Unit 2 - maximum of 9.0m	5.9%	No
			Unit 3 - maximum of 9.1m	7.1%	No
			Unit 4 - maximum of 8.5m	N/A	Yes
			Unit 5 - maximum of 8.5m	N/A	Yes
			Unit 6 - maximum of 8.5m	N/A	Yes
			Unit 7 - maximum of 7.54m	N/A	Yes
			Unit 8 - maximum of 8.29m	N/A	Yes
			Unit 9 - maximum of 8.5m	N/A	Yes
			Unit 10 - maximum of 7.64m	N/A	Yes
			Unit 11 - maximum of 8.7m	2.4%	No
			Unit 12 - maximum of 9.0m	5.9%	No

		Unit 13 - maximum of 9.4m	10.6%	No
		Unit 14 - maximum of 9.6m	12.9%	No
		Ventilation stack - 8.57m	0.8%	No

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes

Detailed Assessment

4.6 Exceptions to development standards

As detailed in the assessment report on MOD2018/0432, the original application was made under Clause 4.55 of the Environmental Planning and Assessment Act 1979. As such, a Clause 4.6 request was not required for Council to consider the proposed variation to the height of buildings development standard. This remains true for the assessment of the proposal in the subject review.

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

Built Form Control	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	7.8m	No change	N/A
B3 Side Boundary Envelope	East (only side boundary) - 5m	Two encroachments of 1.43m and 0.84m in height for lengths of 12.1m and 3.785m respectively.	No new encroachments	N/A
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	6.5m	North: Unit 1 - 6.5m, Waste storage - 3.66m West: 4.5m South: 6.5m	AC units - 9.07m AC units - 14.17m AC units - 9.04m	Yes Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	28.96% (799sqm of LOS) 37.11% (1,024m ² of deep soil plus planter boxes)	No change	N/A

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
D7 Views	No	No
D9 Building Bulk	No	No

Detailed Assessment

A.5 Objectives

A detailed assessment of the proposal has found that the proposed amendments made under the review are not consistent with the following provisions of the WDCP 2011:

- Part D7 Views; and
- Part D9 Building Bulk.

Hence, the proposal is not consistent with the following objectives of WDCP 2011:

- To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood; and
- To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome.

Therefore, it is recommended that the application be refused based on its failure to meet the objectives of the WDCP 2011.

D7 Views

In the previous assessment of the view loss undertaken for application MOD2018/0432, consideration of the potential view loss for the following properties was conducted:

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

During the notification of the subject proposal, submissions were received from the following properties, raising objection in regard to view loss:

- 182 Wyndora Avenue
- 2/15 McDonald Street
- 32 Coles Road

- 31 Coles Road

As part of this review, a full consideration of the potential view loss of the application, consistent with the objectives of Part D7 and the the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, is provided below:

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 protrude. These affected views consist of district views of the suburbs of Freshwater and Curl Curl, and views of the ocean and the horizon.

The photograph below illustrates the views enjoyed by the property to the east, No.2/15 McDonald Road, looking to east:



And from the same property to the south-east:



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 obtained from the upper level front rooms and balconies and over the front boundaries of the properties listed above, with the exception of 31 Moore Street. 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 No.15A McDonald Street, will be retained. All other district and ocean views to each side of the subject site will be unaffected.

The views are mostly 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 No.15A 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. 2/15 McDonald Street - Moderate
No.17 McDonald Street - Moderate
No.182 Wyndora Avenue - Negligible
No.32 Coles Road - Negligible
No.31 Coles Road - Negligible

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 noted in the previous assessment, the decision to locate the AC units on the roof of the townhouses has been made at the convenience of the occupants of the development. The justifications put forward to retain the AC units on dwellings 1 to 7 in this application again, centre on the convenience of the residents and issues of building management ie. lack of space and generation of heat. These justifications are not considered valid. As stated in the previous assessment, 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 conclusion is concurred with, as part of this review.

The key development standard that impacts on view loss for the affected properties in this particular case is the height of the AC units. 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 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

Four of seven units would exceed the height standard.

The non-compliant AC units on dwellings 11, 12, 13 and 14, cause view loss as they sit on the highest parts of the development and result in loss of the horizon and ocean views from adjoining 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 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, the retention of these units is not supported. The unit on dwelling 12 could 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 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 for dwelling to 7-11, 13 and 14 cause unreasonable view loss and should be removed. 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.

- *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.

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

Comment: No existing canopy trees are impacted by the modification.

Conclusion

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.

Notwithstanding the amendments proposed, the expected view loss to the following dwellings:

- No.15 McDonald Street; and
- No.17 McDonald Street;

as a result of the retention AC units to dwellings 13 and 14, are still considered to be unreasonable.

In conclusion, a review of the view loss made in the original assessment confirms two (2) important findings, being that:

- this assessment was fair and correct; and
- the amendments proposed made as part of the review are insufficient to meet the objectives of Part D7 Views.

Therefore, the application is recommended to be refused.

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; and*
- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The potential view loss impact of the AC units for dwellings 7 to 14 have been assessed in detail above (Part D7 Views). The retention of the AC for units 7 to 14 would still result in a development that is not acceptable from the perspective of building bulk. Therefore, the application is recommended for refusal.

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

The subject application seeks to review the determination (approval) made by the NBLPP on 9 May 2019. The approved plans required the relocation of all 14 air conditioning units from the roof.

The subject review seeks to retain the air conditioning units on dwelling 7 to 14.

The application received 16 submissions, with 8 of these submissions objecting to the proposal. Concerns raised included, noise, 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 review of the assessment has found that the proposed retention of the 7 AC units will still result in unreasonable view loss and should be removed from the roof. It is also affirmed that the original height estimate and finding of adverse view loss in the original assessment was correct.

Therefore, it is recommended that the application be refused and the applicant remove all the AC units from the roof and retain the the ventilation stack in its approved form. 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE REV2019/0028 for the Review of Determination of Modification 2018/432 Demolition works construction of attached dwellings and subdivision of land 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, 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 Part A.5 Objectives of the Warringah Development Control Plan 2011.
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 Part D7 Views of the Warringah Development Control Plan 2011.
3. 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 Part D9 Building Bulk of the Warringah Development Control Plan 2011.