MEMORANDUM

DATE: **11 December 2019**

TO: **Development Determination Panel**

CC: **Matthew Edmonds, Manager Development Assessments**

FROM: **Megan Surtees, Student Planner**

SUBJECT: **DA2019/1161 – 48 Lindley Avenue, Narrabeen**

Dear Panel,

Supplementary to the assessment report for DA2019/1161, below are responses to a submission by Outlook Planning and Development on behalf of the owners of 46 Lindley Avenue. The submission was provided outside of the notification period, after the preparation of the draft assessment report, but prior to the date of determination. The matters raised within the submissions are addressed as follows:

Privacy

Comment:

The owners of 46 Lindley Avenue have raised concern with regards to the proposed development impacting upon their privacy, primarily when using their swimming pool. The proposed site plan (drawing no. A3 of the plans submitted) shows that the proposed balconies are 1.5m in width less than that of the existing top floor balcony of 46 Lindley Avenue. As such, the existing top floor balcony at 46 Lindley Avenue is set forward 1.5m more than the proposed balconies at 48 Lindley Avenue. The existing balcony and vegetation at 46 Lindley Avenue will obscure direct overlooking from the proposed balconies at 48 Lindley Avenue. Additionally, the proposed privacy screens along the eastern and western elevations of the proposed balconies will encourage and orientate views to the north to Narrabeen Lagoon.

46 Lindley Avenue: Standing on the rear deck facing south-west towards the rear deck of 46 Lindley Avenue and the rear of 48 Lindley Avenue.

46 Lindley Avenue: Standing at the most northern point of the rear deck, facing south-west towards 48 Lindley Avenue.

46 Lindley Avenue: Standing along eastern pool coping; Rear deck facing west toward 48 Lindley Avenue.

Tree Removal

Comment:

Concern has been raised by the owners of 46 Lindley Avenue in regards to the proposed removal of trees. Council's Landscape Officer has reviewed the application and determined that, of the four (4) trees proposed for removal, three (3) are exempt species that can be removed without Council consent. Furthermore, Council's Landscape Officer is satisfied that the removal of one (1) tree that requires consent is satisfactory, subject to a condition of consent to ensure one (1) replacement canopy tree of native species is planted on site.

View Loss

Comment:

Concern has been raised by the owners of 46 Lindley Avenue in regards to potential view loss as a result of the proposed development. As such, a detailed view loss assessment is as follows:

View Loss Assessment

The affected view is accessed from 46 Lindley Avenue, at the window at the kitchen sink, across the side boundary, from a standing position. Due to the view being available during use of the sink, assessment of the potential view impact from a seated position is not required. The proposed development will result in the loss of view to adjacent properties and vegetation. No loss of view to Narrabeen Lagoon occurs as a result of this development.

Clause D7 Views of the Warringah Development Control Plan (WDCP) 2011 requires all view loss assessments to refer to the Planning Principle established by the New South Wales (NSW) Land and Environment Court in *Tenacity Consulting v Warringah Council (2004) NSWLEC 140.* It is a requirement of this Planning Principle that a four-part test be undertaken to consider the extent of views potentially impacted by the proposed development. A view loss assessment, undertaken with reference to the Planning Principle established by the NSW Land and Environment Court is as follows:

Step One

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (such as the Sydney Opera House, Sydney Harbour Bridge and North Head) are valued more highly than views without icons. Whole views are valued more highly than partial

views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The site was inspected on 9 December 2019 with a relative of the owner present. The occupants of this property currently enjoy partial land and adjoining property views to the west, across the side boundary, from the kitchen window in question (see photograph below). The view does not contain any water or icons.

46 Lindley Avenue: Standing at the kitchen sink, facing west.

Step Two

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 far more difficult than the protection of views from the 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:

The occupants obtain their view across a side boundary, from a standing position when using the kitchen sink.

Step Three

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:

The proposed rear dwelling extension, including 3.5m wide decks on the top and ground floor with 1.6m high privacy screens along the eastern and western elevations, will result in minimal views being impacted when viewed from 46 Lindley Avenue. The views being impacted by the proposed development are located across the side boundary along the western elevation of 46 Lindley Avenue. As outlined under Step One and Step Two, partial land views obtained over side boundaries are valued less than whole views and are considered to be more difficult to protect.
Considering the nature of the view impacted, being of other properties and vegetation, and the retention of the existing partial water views to the north, the extent of view loss best described in this instance is considered to be minor.

Step Four
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:
The proposed development is recognised as resulting in some minor non-compliant built form elements. Due to the significant slope of the land and the siting of the existing dwelling, the proposed alterations and additions to the rear of the dwelling will result in a breach to the maximum building height. However, it is considered that the proposed design of the rear balconies has allowed for an unobtrusive built form, which will be compatible with surrounding developments. Compliance with the side and rear boundary line setbacks has resulted in a development that has been consistently designed to complement the design of the existing dwelling and that of adjoining dwellings.

Clause D7 Views WDCP 2011
The development has been considered against the underlying outcomes and controls within D7 Views of WDCP as outlined below:

To allow for the reasonable sharing of views.
Comment:
The proposed development will maintain a reasonable sharing of views amongst dwellings. The application has provided adequate information to undertake a full and proper assessment of any view loss. The proposal will result in a minor loss of view from the kitchen sink at 46 Lindley Avenue facing west across the side boundary. This loss of view is not unreasonable and will maintain adequate view sharing through properties.
The proposed development has been assessed against the four-part View Loss Assessment established by the NSW Land and Environment Court and is considered to be acceptable.

To encourage innovative design solutions to improve the urban environment.
Comment:
The proposed development has been designed in a way that maintains the visual bulk and scale of the existing dwelling, as well as achieving visual continuity of surrounding developments. The proposed development is unlikely to impact upon the amenity of adjoining properties and will increase the usability and amenity of the subject site.

To ensure existing canopy trees have priority over views.

Comment:

The proposed development seeks consent for the removal of four (4) trees – three (3) within the front setback and one (1) located along the eastern side boundary of 48 Lindley Avenue. None of the trees proposed for removal will enhance water and/or land views for the occupants of 48 Lindley Avenue.

Megan Surtees
Student Development Assessment Officer