

Attachment E

Case Report – View Loss – D/2015/1200

MEMO

FILE: S115745-02 **DATE:** 3 February 2017
TO: Appeal Notification Group
FROM: Andrew Simpson, Senior Solicitor – Legal & Governance
SUBJECT: Owners Corporation SP 56631 v City of Sydney Council: L&E Court Proceedings 2016/00157986

Property: 13-17 Ithaca Road, Elizabeth Bay; D/2015/1200

Main Issue: View Impacts

Background: Appeal against deemed refusal of development application D/2015/1200 for alterations and additions to an existing 5 storey residential flat building including 2 new levels containing 4, 3 bedroom apartments.

Following a section 34 conciliation conference, the applicant amended the proposal considerably to delete the top/7th storey and to reduce the floor plate of the 6th storey to improve the loss of views from adjoining properties. The applicant also agreed to numerous design changes to the facades of the building to address Council's heritage and urban design issues.

As a result of these amendments, the Council agreed to enter into consent orders with the applicant. The consent orders were opposed by numerous objectors based mainly on view loss.

Decision: Commissioner Hussey approved the consent orders. The Commissioner noted that the amended proposal with a height of 18.29m comfortably complied with the 22m height control in the LEP. Similarly, the proposed f.s.r of 2.2:1 was well with the 2.5:1 maximum control for the site.

The main issue that the Commissioner had to decide was the extent of the view loss to adjoining residents. The Commissioner noted and accepted from the joint view loss report that a number of apartments would experience "devastating" view loss. The Commissioner considered the planning principles in the decision of *Tenacity Consulting v Warringah Council [2004] NSW LEC 140* and noted the limitations of that decision concerning impacts on individual apartments where there are often limited opportunities to address because individual units often have a singular orientation to a view. He noted that the proposal was in the public interest because it was a complying proposal that had attempted to minimise view loss in terms of the amendments that had been made. In addition, the Commissioner noted that the height and storey controls in the LEP and DCP were informed by an earlier study that had recommended greater building heights on the lower slopes of the vicinity.

Relevance for the City of Sydney: Moderate. Council's assessment of the acceptability of the view impacts and applicable view sharing principles were found to be correct.

Date of hearing: 8 December 2016

Date of Judgment: 13 January 2016

City of Sydney File No: S115745

Prepared by: Andrew Simpson, Senior Solicitor
