

## Article Information

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# Protecting Side Boundary Views of High Value: Furlong v Northern Beaches Council [2022] NSWLEC 1208 Refines the View Loss Planning Principle

***The decision Furlong v Northern Beaches Council [2022] NSWLEC 1208 (Furlong) promotes the protection of side boundary views of high value when considering the impacts of developments on neighbouring properties. In doing so, Furlong refines the view loss planning principles from Tenacity Consulting v Warringah Council [2004] NSWLEC 140 (Tenacity). Home owners should be aware of how the law affects their renovation plans.***

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## Background

Mr Furlong (**Applicant**) applied for development consent to renovate his three storey home at Dee Why. The application was refused by the Northern Beaches Council (**Council**) because of the potential view loss impacts for a neighbouring property. The Applicant appealed the decision to the Land and Environment Court.

## Court's Decision

Commissioner Walsh upheld the Council's decision on the basis that the proposal would bring about "severe view loss impacts" when there was a reasonable design alternative available which would significantly moderate the impact.

The Commissioner assessed the view loss impacts in line with the principles from *Tenacity*:[\[1\]](#)

### 1. What are the views to be affected?

The primary view to be affected had "panoramic" and "iconic" views of North Head, Curl Curl Beach, the ocean and horizon, as well as foreground suburbs. The whole view would be lost, leading the Commissioner to find the neighbour would suffer from a "devastating view loss".

### 2. What part of the property are the views obtained from?

The view is obtained across a side boundary. The general rule drawn from *Tenacity* is that views across side boundaries are more difficult to protect than views from the front and rear boundaries of a home.

The Commissioner did not agree with that proposition entirely and found that protection of side boundary views may be appropriate in some circumstances and is not always unrealistic. This suggests that the location of the vantage point may be offset by some other factor, such as the value of the view.

### 3. What is the extent of the impact on the whole property?

There were other views which would be affected, however they were of lesser value than the primary view. Despite this, the Commissioner assessed the impact on the property as a whole as "severe".

#### 4. What is the reasonableness of the proposal that is bringing about the impact?

The assessment of reasonableness considers compliance with the local planning controls and whether there are any reasonable design alternatives which would reduce the impact on view loss.

The Commissioner found that compliance with development controls does not, of itself, overcome policy settings aimed at reasonable view sharing. The Commissioner held that the proposal “does not pay sufficient regard” to the local development control plan which required view sharing.

Further, the Commissioner found that a design alternative which shifted the position of the proposed extension by 3.5m was reasonable and would not impede the view to the same extent.

#### **Key Takeaways**

As opposition to development applications by neighbours due to view loss is quite common, it is important to be aware of the ramifications of *Furlong*. In particular, the decision in *Furlong* refines the steps in *Tenacity* and gives stronger protection to neighbouring properties who might suffer from view loss.

Further, a design alternative which reduces the view loss is more likely to be accepted. This goes to the reasonableness of a proposal under the fourth step in *Tenacity*. The reasonableness of the proposal is also influenced by planning policies and controls, which often prescribe a range of competing objectives. Interpreting and applying these objectives can be confusing and difficult. As this a key factor in having your proposed renovations approved, you should seek legal advice to assist you in complying with the relevant planning policies and controls.

Since *Tenacity*, side boundary views were considered difficult to protect for home owners who will suffer from view loss from a proposed development. However, *Furlong* suggests that for side boundary views which are of a high value and not replicated in other areas of the property, it is appropriate to protect those views and refuse the proposed development. In this way, *Furlong* refines the planning principle in relation to view loss by placing greater emphasis on the perceived value of the view.

[1] *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 [26]-[29].