IMPACT OF SOLAR ACCESS ON NEIGHBOURS

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Those involved in undertaking developments within built areas are aware of the need to have regard to the potential loss of amenity on adjoining properties due to overshadowing.

In a recent case before the Land & Environment Court an adjoining owner objected to a development on the basis of overshadowing, but with an added twist - the adjoining owner claimed a right to solar access because his house was built to capture sunlight and had gained an award for solar design. Any loss of sunlight would reduce the passive solar performance of the house.

The case involved the proposed demolition of a residence in Bannockburn Road, Turramurra, NSW and the establishment of a new dual occupancy residence under State Environmental Planning Policy 53. The adjoining owner objected to the development application because of loss of sunlight. The Council initially refused development consent, and the developer appealed.

In order to reduce overshadowing the developer accepted a condition proposed for the development consent, which reduced the pitch of the roof of the proposed new building from 27 degrees to 22 degrees. Council accepted the developer's position and with the developer sought consent orders from the Court. The case was argued by the adjoining owner.

Senior Commissioner Roseth observed that the provision of SEPP53 establishes a qualitative requirement that there should be 'adequate sunlight' to the main living areas of neighbours and referred to the Australian Model Code of Residential Development ('AMCORD') for qualitative assessment. The Commissioner held that the proposed development more than satisfied the AMCORD) requirements, but felt he should consider whether the impact on the adjoining property could be further mitigated without significant detriment to the proposal.

The Court laid down the following principles in using solar access numerical guidelines:

•   The ease with which sunlight access can be protected is inversely proportional to the density of development.

•   The amount of sunlight lost should be taken into account as well as the amount of sunlight retained.

•   Overshadowing arising out of poor design is not acceptable, even if it satisfies the numerical guidelines.

•   To be assessed as being in sunlight the sun should strike a vertical surface at a horizontal angle of 22.5 degrees or more.

•   For a window, door or glass wall to be assessed as being in sunlight half of its area should be in sunlight.

•   For private open space to be assessed as being in sunlight either half its area or a use able strip adjoining the limiting areas should be in sunlight, depending on the size of the space.

•   The amount of sunlight on private open space should be measured at ground level.

•   Overshadowing by fences, roof hangings and changes in level should be taken into account.

•   Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence

•   In areas undergoing change the impact of what is likely to be built on adjoining sites should be considered as well as existing developments.

The Court concluded that the financial burden to the developer of imposing the condition would be significant

In this case it was estimated that the additional costs of restricting the wall location would be about $20,000. The benefit to the adjoining property of that change would be an additional 30 minutes of sunlight per day. The Court concluded that the financial burden to the developer of imposing the condition would be significant and did not justify the small amount of additional sunlight obtained by the neighbour. Accordingly, the objection to the development failed.

The case provides useful detailed guidelines for landowners, developers and consultants in planning development of land where overshadowing of adjoining properties is an issue [Parsonage v Ku-ring-gai Council].

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