

Case Note: Warden and Town of Mosman Park

Access to significant views

In *Warden and Town of Mosman Park* [2019] WASAT 88, the Tribunal approved an application for alterations and additions to an existing residential dwelling which was earlier refused by the Town. A key consideration in the decision was the proposal's impact on access to significant views from an adjoining property.

The Tribunal observed that "SPP 7.3 Vol 1 does not specify how one is to undertake the comparison between existing access to views and any change in the access brought about by a development" [61]. Consequently "... (w)hen considering amenity impacts, the concept of reasonable sharing of views is a useful tool to work out whether or not any impact on views is an unacceptable impact on amenity" [62].

In its determination, the Tribunal noted that "... Clause 5.1.6 P6 of SPP 7.3 Vol 1 is not about the subjective opinions of a land owner in relation to what he or she considers to be the importance of particular views. Rather, it requires an assessment of whether or not access to views is maintained, and to the degree they are not, whether that is appropriate..." [79].

The Tribunal observed that the proposal will change the locations from which views of significance can be accessed within the adjoining property [74]; however, it was satisfied that access to views of significance will be maintained, albeit not from all locations on the property from where they are now accessed.