
From: karen Buckingham
Sent: 4/03/2025 1:43:57 PM
To: Claire Ryan; Council Northernbeaches Mailbox
Cc: [REDACTED] Mitchell Hale
Subject: Objection letter prepared on behalf of owners of Unit 2 - Re: DA2024/1835 - 33-35 Fairlight Street and 10-12 Clifford Avenue, Fairlight
Attachments: Unit 2 - Objection letter - DA20241835- 33-35 fairlight st and 10-12 Clifford Avenue, Fairlight.pdf;

Hi Claire,

I hope that you are well.

Please find attached an objection letter prepared on behalf of my clients at Unit 2, 31 Fairlight Street, Fairlight.

Please can the attached objection letter be recorded on the online file and assessment report as, 'on behalf of owners of Unit 2, 31 Fairlight Street', and their address recorded, rather than my PO Box (for relevance).

I am also acting for the owners of Unit 1 and 3 and have prepared separate objection letters which I will be submitting shortly. Importantly each letter is unique in terms of the impacts on amenity, and each should be read as individual letters, and assessed as such (each recorded individually).

Please don't hesitate to contact me should you have any queries.

Kind regards,

Karen Buckingham
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[REDACTED] - I use whatsapp

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3 March 2025

The Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
Dee Why NSW 2099

By e-mail: council@northernbeaches.nsw.gov.au

Dear Claire,

**Submission with regard to Development Application DA2024/1835
Demolition works and construction of a residential flat building
33-35 Fairlight Street and 10-12 Clifford Avenue, Fairlight NSW**

I write regarding the above Development Application DA2024/1835 (subject DA) to make a submission on behalf of the owners of Unit 2, 31 Fairlight Street (my clients). This submission details the individual concerns of my clients and should be read as a totally separate submission to the submissions made by the occupiers of Units 1 and 3, 31 Fairlight Street.

This submission is prepared further to the assessment of the plans, reports and Statement of Environmental Effects (SEE) submitted as part of the subject DA against the relevant EPIs and Planning Controls and with the benefit of a site visit to assess the impact of the proposed development on my clients.

The subject DA seeks consent for the construction of a residential flat building at 33-35 Fairlight Street and 10-12 Clifford Avenue, Fairlight, NSW (subject site).

My clients own and occupy unit 2, 31 Fairlight Street which is immediately to the east of the site boundary. I have reviewed submitted DA plans and reports and considered the impacts on my clients to arise by virtue of the proposed development against the relevant planning controls and in accordance with Section 4.15 of the Environmental Planning & Assessment Act (the Act).

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Additional information is required to fully assess the proposed development, as detailed in this submission. In summary the additional information required includes:

- Amended Boundary Identification Survey to detail the fenestration and rooms to which the windows of all units of 31 Fairlight Street serve.
- A building separation plan clearly showing the measured distance between the outer face of the building envelope which includes balconies and the adjacent building envelopes, as shown in figure 3F of the Apartment Design Guide (ADG).
- Certified height poles to be erected.
- Amended Visual Impact Assessment to show the view impacts from the kitchen window of Unit 2. Also note that the VIA report on page 27 references Bondi Junction skyline and the Eastern Suburbs in error.
- Certification of the submitted shadow diagrams
- Elevational shadow diagrams showing the solar impacts on the windows of all units of 31 Fairlight Street.
- Details of deep soil planting and if required, a revised landscaping plan – It is queried how 1012 sqm (78%) of landscaped area is achieved on a 2352 sqm site, with a gross floor area of 2626.47 and FSR breach of 1215.27 (86.1%).
- Details of the maintenance requirements of on-site treatment stormwater detention tanks (OSD).
- A revised acoustic assessment and plans detailing the location of mechanical ventilation systems, air conditioning units and all mechanical plant, including basement garage vents. It is noted from the Acoustic Assessment that detailed selections of the proposed mechanical plant and equipment, and the exact location of key plant items was not available at the time of the assessment.
- Revised geotechnical report, with on-site ground investigations. It is noted that the Geotechnical Assessment is only a review of the previous investigations carried out for 33-35 Fairlight Street in 2023, and at 10 Clifford Avenue in 2006. The Geotechnical Report includes only part of the site and the investigations at 10 Clifford Avenue are nearly 20 years old. Given the likely geotechnical risks and deep excavations, a desktop review of only part of the site from past investigations is not appropriate or adequate to assess the DA and associated risks.
- Revised waste management plan detailing dust mitigation measures during construction.

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- Revised Construction Traffic Management Plan requiring that all construction traffic is not to arrive before the conditioned demolition and construction hours of 7am.
- Details of the treatment and protection of the existing sewage pipe running across the site.
- Details of actions to protect during construction and shore up / rebuild the eastern boundary retaining wall between the site and 31 Fairlight Street.

It is requested that Council conduct a site visit from my client's property to fully assess the view and privacy impacts that result in significant harm to my client's amenity.

A summary of the impacts and non-compliance of the subject DA as determined from the information submitted is set out below.

Summary of submission

- Proposed development is a non-compliant development contrary to SEPP Housing 2021 and the ADG; Manly LEP 2013, Objectives of the zone and development standards of Clause 4.3 Height of Buildings and Clause 4.4 – Floor Space Ratio; and Manly DCP 2013, Controls 3.1.3 – Townscape Residential Areas, 3.4 – Amenity, 3.4.1 – Sunlight Access and Overshadowing, 3.4.2 – Privacy and Security, 3.4.3 – Maintenance of Views, 3.7 – Stormwater Management, 3.8 – Waste Management, 3.10 Safety and Security, 3.9 – Mechanical Plant Equipment, 4.1.1.1 -Residential density and size, 4.1.2.1- Wall height, 4.1.2.2 – Number of storeys and 4.1.4.2 – Side setbacks.
- Non-compliance with Cl.4.3 and 4.4 of the Manly LEP and failure to justify an exception to the development standards under Cl.4.6.
- Moderate view loss of an iconic view, brought about by non-compliant development contrary to DCP Control 3.4.3 and the established Planning Principle.
- Overshadowing and loss of sunlight impacts, by virtue of the height of the proposed development, inadequate building separation distance and setbacks contrary to DCP Control 3.4.1.
- Significant loss of visual privacy by virtue of the inadequate building separation distances, setbacks and close proximity of the windows serving the northern elevation of the Clifford Avenue units directly overlooking the principle indoor and outdoor space of Unit 2, 31 Fairlight Street and the rear balconies of the southern elevation of the Fairlight

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Street units into the principle balcony of Unit 2, contrary to DCP Control 3.4.2 – Visual Privacy.

- Significant loss of acoustical privacy to arise from the substantial increase in vehicle movements during construction and mechanical plant equipment once constructed, including garage vents, lifts and potentially air conditioning units, affecting all the units at 31 Fairlight Street contrary to DCP Control 3.4.2.3 – Acoustic Privacy.
- Overbearing / oppressive impact and overdevelopment of the site with an 86.1% FSR breach and height breach, for a tantamount 6 storey building with basement car parking in close proximity, with inadequate building separation and setbacks.
- Potential geotechnical and stormwater OSD tank impacts and lack of adequate reporting.
- Potential construction impacts given the lack of information regarding dust control measures and structural impacts on adjacent built form.
- Potential safety impacts due to lack of information of the structural integrity and potential required rebuilding of the eastern boundary retaining wall.

On the information submitted, it is recommended that the subject DA be refused for the reasons summarised above and as provided in greater detail in this submission. Should additional information or amended plans be submitted, my clients request the opportunity to provide further comments.

Site details and character of the area

The subject site is on the southern side of Fairlight Street. The site is located at 33-35 Fairlight Street and 10-12 Clifford Avenue, Fairlight. The total site area, as shown on the boundary identification survey and MasterSet plans is 2352 sqm.

The eastern boundary of the subject site which abuts my client's property at 31 Fairlight Street is approximately 80.47 metres, as calculated from the Boundary Identification Survey and combining the eastern boundary of the existing 33 Fairlight Street and 10 Clifford Avenue. The front boundary facing Fairlight Street 30.48 metres, as shown in the boundary identification survey. The site has a gradient running north to south from Fairlight Street.

Surrounding development is predominantly made up of two-three storey detached dwellings. My client's property at Unit 2, 31 Fairlight Street is located in very close proximity to the

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subject site, as shown in Figure 1. The access to my client's property fronts onto the development site and proposed flank walls.

Figure 1 – Aerial photo of subject site outlined in blue and proximity to my client's property, arrow indicator



Source: Northern Beaches Council DA Maps – Aerial view – own annotation added.

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Proposed development

Development Application DA2024/1835 seeks consent for the demolition of existing structure and construction of a residential flat building which includes the following:

- Demolition of the existing dwelling houses at 10-12 Clifford Avenue and 33-35 Fairlight Street.
- Construction of a predominately 6 storey new residential building with basement parking. The new 6 storey building is to be made up of the following:
 - 13 x 3 bed apartments (units) and 2 x 2 bed apartment
 - Car parking spaces at basement levels
 - Associated excavation

Impacts and non-compliance of proposed development

Relevant legislation and Planning Controls

In preparing this submission, I have carefully considered the following legislation and planning controls:

Environmental Planning & Assessment Act 1979 (the Act)
Environmental Planning and Assessment Regulation 2000 (the Regulations)
State Environmental Planning Policy (Housing) 2021 (Housing SEPP)
Development (SEPP 65) and associated Apartment Design Guide (ADG)
State Environmental Planning Policy (Resilience and Hazards)
State Environmental Planning Policy (BASIX) 2004
Manly Local Environmental Plan 2013 (LEP)
Manly Development Control Plan 2013 (DCP)

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State Environmental Planning Policy (Housing SEPP) 2021 and Apartment Design Guide

As specified in the Housing SEPP, the consent authority must consider whether the development complies with the ADG and Schedule 9 of the SEPP.

As detailed in this objection letter, and as shown on the submitted plans, the proposed development fails to meet the design principles of the Housing SEPP or the objectives of the ADG, as set out below.

ADG – Part 3D – Communal open space

There is limited communal open space which does not meet the requirements of the ADG. The proposed indoor gym cannot be accepted on merit given the lack of adequate outdoor communal open space required in accordance with the ADG.

ADG – Part 3E – Deep soil zone

It is queried how 19.6% of deep soil zone is provided over built form basement levels. It is requested that Council request further information to support this calculation.

ADG – Part 3F – Building separation

The aims of the building separation control is as follows:

Aims

- *ensure that new development is scaled to support the desired future character with appropriate massing and spaces between buildings*
- *assist in providing residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook*
- *provide suitable areas for communal open spaces, deep soil zones and landscaping*

Part 3F of the ADG sets the building separation controls to meet the above aims. For a development of up to four storeys, a minimum of between 6-12 metres is required.

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The consent authority, in its assessment will need to ensure compliance with the following, as per Part 3F of the ADG, including the key test of compliance with the building separation distances:

Design and test building separation controls in plan and section

Comment: A building separation plan has not been submitted as part of the subject DA and is required to fully assess the proposed development.

Test building separation controls for sunlight and daylight access to buildings and open spaces

Comment: It is requested that elevational shadow diagrams are submitted to assess the above impact.

Comment:

A building separation plan has not been submitted with the subject DA but is required to fully assessed the proposed development. It is requested that my clients are supplied with the building separation plan and option to provide additional comments.

The submitted plans show that adequate separation distance has not been achieved from the western elevation to the eastern elevation of my client's property, or the windows serving the northern elevation of the Clifford Avenue block and terraces, courtyards and windows southern elevation of the Fairlight units. This is discussed further under the Privacy concerns.

It is also important to note that although the subject site includes lots fronting Clifford Avenue and Fairlight Street, the pattern of development is such that surrounding development has respected the rear setback and includes appropriate building separation. The rear setback control seeks to protect amenity and the established pattern of development. Although the site amalgamation has removed the trigger for the rear building setback control, the impact on amenity and built form should be assessed.

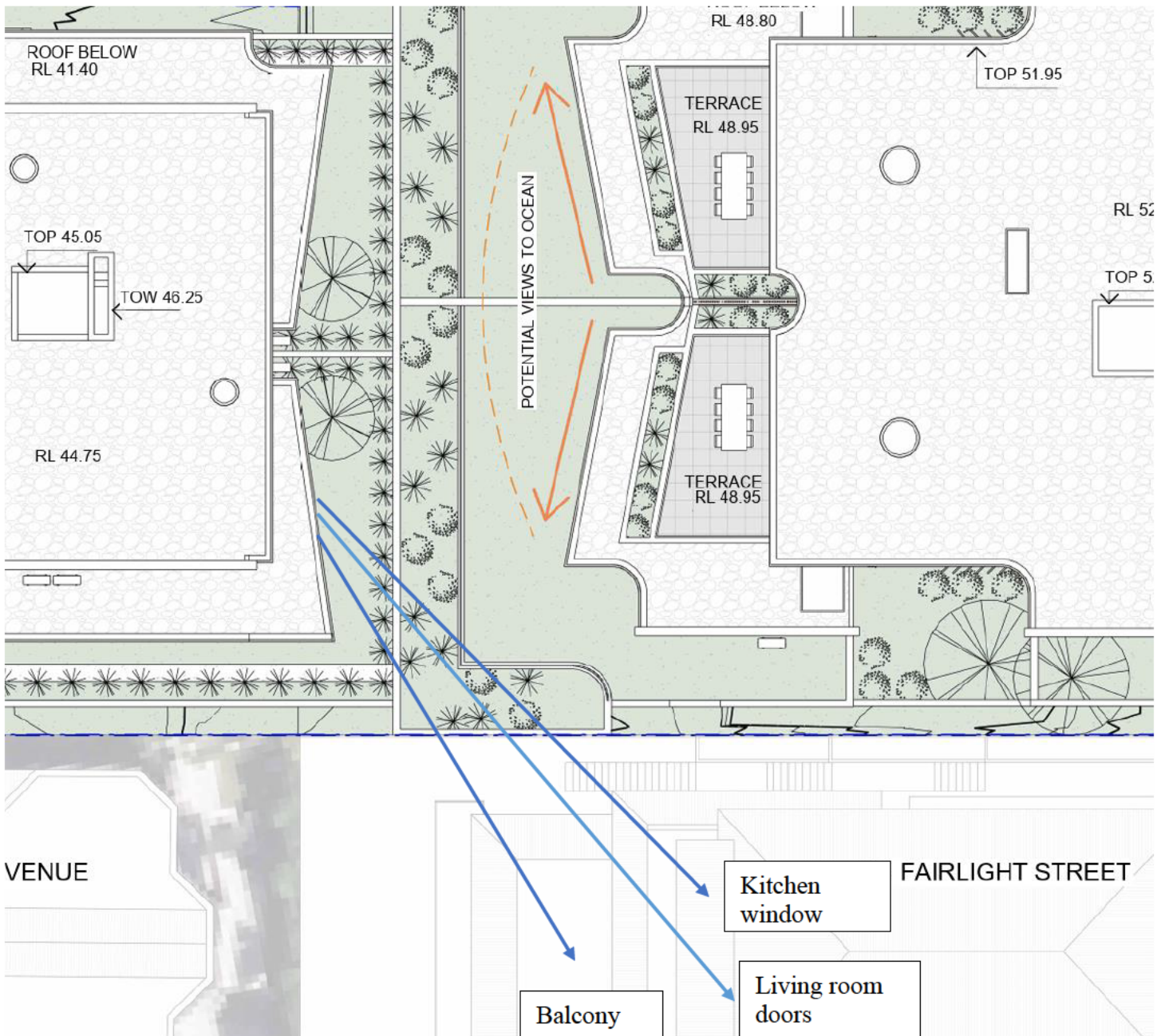
The proposed development does not achieve the minimum building separation distances as required under the ADG, 3F - Building separation and by virtue of this, fails to meet the standards of the Housing SEPP.

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Figure 2 –Non-compliant minimum separation distance of less than 12 metres between habitable rooms/balconies



Source: Extract from MasterSet Plans with own annotation added

Building separation may need to be increased to achieve adequate sunlight access and enough open space on the site...

Comment: The proposed development fails to achieve adequate communal open space, and it is queried how a 19% deep soil area is possible on the site, given the excavation and built form proposed, with extensive basement parking level. It is evident that there is not enough communal open space on the subject site, and further non-compliance with DCP Control 4.2.8.3 – Landscaping.

Increase building separation proportionally to the building height to achieve amenity and privacy for building occupants and a desired urban form

Comment: The windows on the rear /northern elevation of the apartment block fronting Clifford Avenue will result in a significant impact on the visual privacy of my clients in their principle living area, kitchen, balcony, bedroom and principle outdoor space. This is largely due to the lack of building separation distance. This is further discussed under DCP Control 3.4.2 -Privacy.

At the boundary between a change in zone from apartment building to a lower density area, increase the building setback from the boundary by 3m.

Comment: N/A

No building separation is necessary where building types incorporate blank party walls. Typically, this occurs along a main street or at podium levels within centres.

Comment: N/A

Required setbacks may be greater than required building separations to achieve better amenity outcomes.

Comment: The consent authority should require greater building separation distances than set out in the ADG and this is provisioned for under this consideration to achieve better amenity outcomes.

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ADG – Part 4K

The proposed development does not provide for a range of apartment types or sizes to meet current and future housing needs contrary to objective 4K-1 and 2.

The proposed development is for 13 x 3 bed apartments and 2 x 2 bed apartments. There is no apartment mix, and the type and size of apartments fails to meet the housing needs of the community.

The proposed development does not meet the aims, considerations or requirements under the ADG.

Local Environmental Plan (LEP) – Non-compliant development

Land use zone: The subject site is zoned R1 General Residential under the Manly LEP 2013 and although Residential Apartment Buildings are permitted in the zone, the proposed development fails to meet the objectives, for the following reasons:

1 Objectives of zone

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment: The apartment mix proposed fails to meet the housing needs of the community as there is a significant lack of variety types. 13 x 3 bed apartments and only 2 x 2 bed apartment does not meet housing needs. It is also unclear how the proposed development provides facilities and services to meet the day to day needs of residents. The proposed development fails to meet the objectives of the zone.

Clause 4.3 – Maximum Height of Buildings

The proposed development breaches the maximum height of buildings under Clause 4.3 of the Manly LEP and fails to meet the objectives of the clause as follows.

(1) The objectives of this clause are as follows—

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment: The proposed development is not consistent with prevailing building heights and when viewed from Clifford Avenue will appear as a continual 8 storey built form. The image in Figure 3 shows the site as viewed from Clifford Avenue. However, the elevational drawings submitted show the rear block faded out which obscures the resulting visual impacts on the streetscape locality within the foreshore protection area.

(b) to control the bulk and scale of buildings,

Comment: The proposed development has an 86.1% breach to the FSR. The overdevelopment of the site by virtue of the bulk and scale of the proposed building is as a direct result of the non-compliant FSR and breach to the height limit.

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment: The subject site is within the Foreshore Scenic Protection Area. The views from the harbour of the site could appear as an 8 storey building which would dominate the site and surrounding built form. See figure 3.

Figure 3 – Southern elevation when viewed from Clifford Avenue, with own annotation



E PAVILION

Source– Extract from Masterset plan with own annotation

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(c) to minimise disruption to the following—

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment: This submission cites concern and requires additional information regarding solar impacts.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or conservation zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).

Comment: The proposed development exceeds the maximum building height as shown on the submitted plans and it is requested that certified height poles are erected to ground proof the plans. A Clause 4.6 variation request has been submitted which fails to provide appropriate justification for the breach.

Clause 4.4 of the LEP – Floor Space Ratio

(1) The objectives of this clause are as follows—

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment: The proposed development does not comply with the Floor Space Ratio (FSR) development standards as shown on the floor space ratio map as specified under Cl. 4.4 of the LEP or meet the objectives of the clause. The proposed breach to the development standard is 86.1%. The previous DA 2022/0688 proposed a breach of 50.7%. The DA was refused by the Northern Beaches Local Planning Panel. The proposed development seeks a further 35.4% breach than that allowed in the Land and Environment Court decision.

A Clause 4.6 Variation Request has been submitted and reviewed in the following section of this report. However, as detailed in this submission, the proposed development, by virtue of the bulk, scale, siting and non-compliance with minimum building separation distances would unreasonably impact on character of the area and amenity of adjoining land users, contrary to the objectives of Cl. 4.4.

Clause 4.6 – exceptions to development standards at Clause 4.4 of the LEP - FSR

A Clause 4.6 variation request has been submitted to justify an exception to the development standards of Clause 4.4 – Floor Space Ratio. Of particular relevance to this application is Clause 4.6 objectives (1) (b) and 4 (ii), noting that the written variation request has been made and no exceptions to cl.4.3 are evident.

Objective clause 4.6 (1) (b), *‘to achieve better outcomes for and from development by allowing flexibility in particular circumstances.’*

Comment: The non-compliance clearly does not achieve better outcomes for and from the development. The corresponding impacts arising from non-compliance would have a significantly detrimental impact on neighbouring amenity and the surrounding environment, failing to be compatible with the objectives of the zone or Clause 4.4 of the Manly LEP 2013.

Objective Clause 4.6 (4), (a), (ii), *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out...*

Comment: As already set out in this submission, the proposed development is not consistent with the objectives of Cl.4.4 or the zone and by virtue of this, will not be in the public interest.

The Clause 4.6 variation request should not be granted to allow a variation to the development standards for the reasons already provided.

Clause 6.4 Stormwater management

Further details regarding the OSD should be requested by Council. This is not my area of expertise, and my clients are relying on Council for full consideration of this matter, given the risk to life should the OSD not be capable of the capacity of stormwater flow. My clients have reported significant stormwater flow across the site from Fairlight Street to Clifford Avenue.

Clause 6.8 Landside Risk

It is requested that Council require a revised Geotechnical Report to report on up to date, on site investigations across the entire site. It is noted that the submitted Geotechnical Report is a desktop study from the 2023 report on Fairlight Street and a 2006 report of 10 Clifford Avenue.

Given the topography of the site, the extensive level of excavation, and associated risk to life and property, a revised report is required and careful consideration of the associated risks.

Clause 6.9 Foreshore Scenic Protection Area

As discussed under Clause 4.3 and as shown in Figure 3 of this submission, the proposed development will appear as a bulky, 8 storey built form which would appear to over dominate the landscape and adjacent built form in the Foreshore Scenic Protection Area, contrary to the objectives of Clause 6.9.

Development Control Plan (DCP) - Non-compliant development and amenity impacts

Part 3 - DCP Control 3.1.1 – Townscape- Residential Areas

Comment: The proposed development fails to maintain and enhance the townscape of the residential area, zoned R1 under the Manly LEP or achieve the townscape objectives of the Manly DCP.

The scale and design of the proposed development conflicts with, rather than complements the adjacent buildings on both Fairlight Street and Clifford Avenue, by virtue of the siting, lack of building separation, height when viewed from Clifford Avenue, scale and design.

DCP Control 3.4.1 – Sunlight Access and Overshadowing

Comment: Elevational shadow diagrams have not been submitted and it is also not clear if the submitted shadow diagrams are certified.

The height and setting of the proposed 6 storey development could result in an acceptable loss of daylight and the open sky aspect currently enjoyed from the principal adjoining open space and living areas of Unit 2, 31 Fairlight Street, contrary to DCP Control 3.4.1.

DCP Control 3.4.2 – Privacy and Security

Relevant DCP objectives to satisfy in relation to this part include the following:

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

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Objective 3) To encourage awareness of neighbourhood security.

3.4.2.2 Balconies and Terraces

- a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.*
- b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.*

3.4.2.3 Acoustical Privacy (Noise Nuisance)

See also Noise Guide for Local Government prepared by NSW Department of Environment, Climate Change and Water in 2010.

- a) Consideration must be given to the protection of acoustical privacy in the design and management of development.*
- b) Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.*
- c) Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures. See particular requirements for noise control reports for licenced premises below at paragraph g) below.*

Comment: DCP Control 3.4.2 seeks to address loss of visual and acoustical privacy and sets out options to mitigate against the harm.

Figure 2 of this objection letter shows the location of balconies, terraces and windows in close proximity and directly overlooking, at close proximity (less than 9 metres) from my clients private indoor and outdoor areas.

Figure 4 shows the existing balcony of Unit 2, with loss of privacy to the rear and side of the balcony. The entire southern elevation of the proposed units would overlook this space and create an oppressive environment. No overlooking of this space occurs, as existing from the south.

Figure 4 – Site photo taken from the balcony of Unit 2



Source: Own site photo

As shown in the stated control, privacy screens are a recognised design approach to address privacy impacts. However, the proposed operable privacy screens in front of the windows on the northern elevation of the Clifford Avenue units would be ineffective and fixed screens resisted as it would block any outlook. The bulk, scale and layout of the apartments should be amended to remove the windows on the northern elevation.

Privacy screens along the eastern elevation of the proposed terrace and balconies serving the Fairlight Street units should be included to assist in mitigating privacy impacts from the southern elevation of the Fairlight Street units and amended plans should be part of a further consultation process to afford my clients the opportunity to review and provide comment.

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Unless significant amendments to the proposal are submitted and fully address privacy loss, the proposed development fails to comply with DCP Control 3.4.2.

In summary, it is the physical built form, scale, and proposed siting of the development which creates the harm in terms of loss of visual.

Acoustic privacy is potentially impacted by virtue of mechanical ventilation, garage vents, lift machinery, air conditioning and excessive intensification of residential use. Additional information is required to assess these impacts, as raised on page 2 of this submission. The Acoustic Report has not provided any details, given that lack of information available.

Given the stated reasons above, unless the harm is mitigated by amendments or conditions, the subject DA should be refused given that it is contrary to DCP Control 3.4.2, as well as the other stated controls.

DCP Control 3.4.3 – Maintenance of Views

Comment: The proposed development looks to impact views from my client's property of Manly Harbour and Forty Baskets Beach from the kitchen, living room, principal outdoor living space - balcony. A Visual Impact Assessment against the established Planning Principle has been submitted as part of the DA submission but only from the principal balcony.

As per the Planning Principle, views from a kitchen and principal living space are considered highly valuable and the view, as outlined in the VIA, is iconic. The view loss is considered moderate but given that the proposed built form is non-compliant, a moderate view loss of iconic views should not be permitted, as set out in the Planning Principle.

My clients request a revised VIA to include the view loss from the kitchen and an overlaid view impact over the image at Figure 15 of the VIA report but taken from standing at the same position as the photo in figure 5 of this submission (note the significant difference in view aspects from the image at Fig 15 of the VIA).

The view loss is as direct result of breach to the FSR and breach to height over the roof plane on the Clifford Avenue development which creates the view loss.

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Figure 5 - Existing view from the balcony



Figure 6 – Potential view from the balcony post construction



Using Figure 18 of the submitted VIA as a reference (as not overlaid is shown for Unit 2), it is anticipated that the view loss from the balcony would be as shown in Figure 6, impacting water, beach and headland views.

As requested, a VIA assessment should also be carried out from the kitchen, living room and from the same location on the balcony as the image in figure 5 of this submission

Noting, non-compliance, the moderate view loss of iconic views should not be accepted.

DCP Control 3.7 – Stormwater Management

Comment: There are potential impacts with the proposed on-site system for stormwater run-off, on-going maintenance and flow capacity that need to be addressed

It is not within my area of expertise to provide comments on the appropriateness of stormwater systems, and therefore, it is requested that Council's Planning Department and Water Management Engineers fully assess the implications of the proposal on my clients in light of the comments provided in this submission.

It is requested that my clients be given the opportunity to review and comment on any additional or amended information submitted.

DCP Control 3.9 – Mechanical Plant Equipment

Comment: It is unclear where the garage vents, and all mechanical plant, including air conditioning units will be located and it is requested that this information be made available to my clients prior to the assessment of this subject DA, with the opportunity to provide additional comments.

Given the close proximity of the proposed units to my clients at Unit 2, 31 Fairlight Street, it is anticipated that mechanical plant equipment will give rise to an unacceptable level of noise and odour contrary to DCP Control 3.9 and 3.9.3.

Part 4 – Residential development controls**4.1.1.1 – Residential density and size**

Comment: The proposed development is contrary to the above control in that 15 dwellings are proposed, rather than the 9.4 required. The impacts of the residential density and size, with regard to the objectives of the control, should also take into account the dwelling mix, which is largely 3 bed apartments and the excessive FSR. The merit based argument should not be accepted, as the objectives of the control are clearly not met.

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4.1.2.1 – Wall Heights

Comment: An 8 metres wall height is required and 8.5 proposed. Whilst it is argued that this is a minor breach, the level of breach across the size, and additional breach against the FSR and Maximum height limit should be considered. It is the cumulative impact of multiple breaches against the SEPP, LEP and DCP controls, resulting in significant impacts on the surrounding environment and amenity of neighbouring occupiers. Again, the objectives of the control are not met.

4.1.2.2 – Number of Storeys

Comment: Two storey height limit is required under the above control. Although the development would present as 2 storey development to Fairlight Street, it would present as 8 storeys to Clifford Avenue and from the Scenic Protection Foreshore Area. The bulk and scale are not consistent with surrounding development and the proposed units would appear out of keeping and scale with existing built form. The objectives of the control are not met.

4.1.3 – FSR

Comment: The proposed development exceeds the FSR as a development standard under Clause 4.4 of the LEP and fails to meet all 3 objectives of DCP Control 4.1.3 of the DCP. The excessive breach of 86.1% of the FSR results in the cited amenity impacts detailed in this submission.

4.1.4. Setbacks

Comment: The proposed development does not accord with DCP Control 4.1.4 in that the setbacks proposed would be undesirable in terms of the amenity of residential uses on existing adjoining land and exceed one third of the wall height from the side boundary.

For the above reasons, the proposed development does not meet the objectives or requirements of DCP Control 4.1.4.

DCP Control 4.2.8.3 – Landscaping

Comments: There appears to be little opportunity for deep soil planting on the site, although the landscaping plans and associated SEE detail otherwise. It is requested that the landscaping calculation and deep soil areas be clarified and checked for compliance with the control.

DCP Control 4.2.8.10 - Local Character provisions

Comments: The proposed development fails to consider context and site analysis to ensure that the design of the proposed development responds to the townscape design principles of the DCP to maintain and enhance local character.

Other matters of amenity concern

- Increase in demand for on street parking along Fairlight Street
- Bin rooms only accommodate wheelie bins – Are the bins to left for kerb side collection?
- Loss of green space, associated removal of almost entire vegetation across four lots.

Impact on amenity of neighbouring occupiers

The proposed development would clearly have a materially significant and wholly unreasonable impact on neighbouring amenity. The Development Application fails to comply with the EPIs and DCP controls referred to in this objection. The impact of the proposed development by virtue of the height, bulk, scale and siting (non-compliant building separation distance) and non-compliance with the stated SEPPs, LEP and DCP would create an unacceptable and unreasonable impact on neighbouring amenity from an oppressive overdevelopment of the site which would be overbearing, result in loss of privacy (visual and acoustical) and view loss.

It is recommended that the proposed development be refused given the objections raised and level of non-compliance.

Should Council be minded approving the proposed development, contrary to the concerns set out in this objection, then amendments and conditions are requested to mitigate against the harm discussed.

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Recommendations

1. Request additional information be submitted as follows:

- Amended Boundary Identification Survey to detail the fenestration and rooms to which the windows of all units at 31 Fairlight Street serve.
- A building separation plan clearly showing the measured distance between the outer face of the building envelope which includes balconies and the adjacent building envelopes, as shown in figure 3F of the Apartment Design Guide (ADG).
- Survey and certified height poles to be erected.
- Amended Visual Impact Assessment to show the view impacts from the kitchen window of Unit 2. Also note that the VIA report on page 27 references Bondi Junction skyline and the Eastern Suburbs in error.
- Certification of the submitted shadow diagrams
- Elevation shadow diagrams showing the solar impacts on the windows of all units of 31 Fairlight Street.
- Details of deep soil planting and if required, a revised landscaping plan – It is queried how 1012 sqm (78%) of landscaped area is achieved on a 2352 sqm site, with a gross floor area of 2626.47 and FSR breach of 1215.27 (86.1%).
- Details of the maintenance requirements of on-site treatment stormwater detention tanks (OSD).
- A revised acoustic assessment and plans detailing the location of mechanical ventilation systems, air conditioning units and all mechanical plant. It is noted from the Acoustic Assessment that detailed selections of the proposed mechanical plant and equipment, and the exact location of key plant items was not available at the time of the assessment.
- Revised geotechnical report, with on-site ground investigations. It is noted that the Geotechnical Assessment is only a review of the previous investigations carried out for the 33-35 Fairlight Street in 2023, and at 10 Clifford Avenue in 2006. The Geotechnical Report includes only part of the site and the investigations at 10 Clifford Avenue are nearly 20 years old. Given the likely geotechnical risks and deep excavations, a desktop review of only part of the site from past investigations is not appropriate or adequate to assess the DA and associated risks.
- Revised waste management plan detailing dust mitigation measures during construction.

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- Revised Construction Traffic Management Plan requiring that all construction traffic is not to arrive before the conditioned demolition and construction hours.
 - Details of the treatment and protection of the existing sewage pipe across the site.
 - Details of actions to protect during construction and shore up / rebuild western boundary retaining wall between the site and 31 Fairlight Street.
2. Should the consent authority be minded approving the proposed development, contrary to the objections raised in this submission, it is recommended that amendments include:
- Strictly comply with the height limit specified under Clause 4.3 of the LEP.
 - Pull back the rear and side elevations of the proposed development to strictly comply with the ADG building separation distances required.
 - Reduce the level of development on site to strictly comply with FSR development standard specified under Clause 4.4 of the LEP.
 - Provide an appropriate dwelling mix of one, two and 3 bed apartments in accordance with the LHS and reduce the size of the GFA of the apartments.
 - Remove the windows on the northern elevation of the units fronting Clifford Avenue to avoid direct overlooking into my client's property and principal amenity space (or include fixed privacy screens or obscure fixed shut glazing – noting that operable screens would be ineffective).
 - Provide privacy screens to the eastern elevation of the terrace and balconies serving the southern elevations of the units front Fairlight Street.
3. Should the consent authority be minded approving the proposed development, contrary to the objections raised, it is recommended that the following conditions are attached:
- A dilapidation report should be carried out from my client's property, and adjacent retaining structures and made available to my clients for independent verification.
 - The roof areas and landscaped parts of the site should be conditioned as non-trafficable, except for limited maintenance, in perpetuity, to avoid further privacy impacts.
 - The construction hours conditions should include details restricting demolition and construction vehicles and tradespersons to arrive on site any sooner than 7am, on the specified days.

- Dust mitigation measure should be conditioned and included in the construction management plan.
- The boundary retaining wall is to be included in any dilapidation report and shored up during development, if required and replaced or repaired post construction.
- Suitably worded condition to protect residential occupiers from exposure to asbestos during the demolition stage. It is noted that such a condition formed part of the approved consent under DA2022/0688.

Conclusion

This submission sets out my client's concerns regarding the proposed development under Development Application DA2024/1835.

The proposed development would have a materially detrimental impact on the amenity of neighbouring occupiers and is a non-compliant development with the Housing SEPP, SEPP 65 and associated ADG, Manly LEP 2013 including Clause 4.3 Height limits and 4.4 – FSR and Manly DCP 2013 Controls.

It is respectfully requested that the proposed development be refused to address the concerns outlined in this submission. Should additional and or amended plans be submitted, my clients request that they be given an opportunity to comment accordingly.

It is also request that a site visit be conducted from my client's property to consider the impacts on their amenity.

Thank you in advance for your consideration of the concerns raised in this submission.

Kind regards,

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On behalf of Unit 2, 31 Fairlight Street, Fairlight

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