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**Sent:** 6/05/2019 3:22:56 PM  
**Subject:** DA 0342/2019 - Address - 79A Lauderdale Avenue, Fairlight - Objection  
Submission by Michelle Montgomery  
**Attachments:** Objection Submission 5th May 2019.pdf;

Dear Sir,

Please find attached my Objection Submission in relation to 79A Lauderdale Avenue Fairlight.

Kind regards,  
Michelle Montgomery

0416 098979

**APPLICATION NO: DA 2019/0342**

**ADDRESS; 79A LAUDERDALE AVENUE, FAIRLIGHT**

**OBJECTION SUBMISSION FROM:**

**MICHELLE MONTGOMERY (OWNER 72 LAUDERDALE AVENUE, FAIRLIGHT)**

### **SUMMARY POINTS**

#### **Fundamental Concern**

Our family lives at 72 Lauderdale Avenue Fairlight, which is on the northern side of Lauderdale Avenue. The proposed development of 79A on the southern side of Lauderdale Avenue will cause view loss to all living areas of our home. It will cause severe view loss to the intended independent living space of our disabled son who has very restricted opportunity to leave his home.

As Council's expert Planner Mr Stephen Layman agreed (Land and Environment Court proceedings Joint Expert Report December 2018), if approved the proposal will invite long-term "creep" of non-compliance with Height of future development along south side Lauderdale Avenue, immediately in front of our home which will cause severe loss of views. Since 1968 and including several developments over the last 15 years, Council has consistently enforced compliance with LEP Height limits along the south side Lauderdale Avenue. The LEP Height standard is not unreasonable and the proposal is neither necessary nor reasonable because more skilful design can achieve the dual residential, strata development within allowed LEP Height (Council has opinion of Mr Koopman Architect, AJ&C Architects from our submissions in DA 326/2016).

In the proposed parking design, the vehicle manoeuvre required to enter and exit via a narrow driveway to the below property 79B, is too restrictive to be expected to result in actual use by the number of cars shown in the plans. There is no street parking on the south side of Lauderdale Avenue and the north side is constantly parked out.

The DA Plans and Statement of Environmental Effects are full of errors and omissions, leaving neighbours unable to know what is applied for. These errors and omissions make inaccurate reference to the Land and Environment Court Judgement dated 11<sup>th</sup> December 2018 (Stepping Stone Proprietary Limited v Northern Beaches Council [2018] NSWLEC 1638).

Because of the gross non-compliances with building controls of Height and FSR, residential density controls and view loss caused to neighbours; in the event of a grant of Approval (which we oppose) Council should impose Conditions which will ensure that further exceedance does not occur by variations during the course of construction. Given the Applicant's claim that this DA is a "replica" of the Application for which judgement of the Land and Environment Court granted Approval on 11/12/2018 (Stepping Stone Proprietary Limited v Northern Beaches Council [2018]



NSWLEC 1638, referred to below as the “judgement”) and because the Application is for multi owner, strata development; appropriate Conditions of Approval to protect neighbours from further loss of views and amenities would be:

- 1- The development, except where modified by the conditions of consent in the judgement is to be carried out in accordance with the plans and reference documentation identified in Annexure A to the judgement and otherwise in compliance with the judgement.
- 2- Plans of the top floor (“second floor”) structure shown in judgement annexure A plan 79 Lauderdale /181207/ V9 be amended to show its dimensions defining the north/south and east/west walls and roof extremities.
- 3- It be a condition of use of the land known as 79B Lauderdale Avenue, Fairlight, Sydney 2094 [insert title particulars] that planting of vegetation, landscaping and external structures not cause view loss from neighbouring properties.
- 4- It be a condition of use of the land known as 79B Lauderdale Avenue, Fairlight, Sydney 2094 [insert title particulars] that the height of the top floor roof (“second floor”) is not to exceed RL 35.10 at the northern end and RL 34.78 at the southern end.
- 5- It be a condition of use of the land known as 79B Lauderdale Avenue, Fairlight, Sydney 2094 [insert title particulars] that no structure, furnishings, balustrades, planting, traffic or occupation or use by persons be placed or occur on the non-trafficable area of the second floor being the roof of the first floor.
- 6- It be a condition of use of the land known as 79B Lauderdale Avenue, Fairlight, Sydney 2094 [insert title particulars] that the view corridors created by the eastern and western setbacks of the second floor and across the first floor roof as depicted in judgement Annexure A plan 79 Lauderdale Avenue /181207/V9 be maintained free and clear from interruption of neighbours’ views.

**POINTS OF OBJECTION ARE:**

1. Given there is an existing Land and Environment Court (LEC) Judgement dated 11/12/18 (formerly DA 326/2016) which is presently subject to proceedings seeking judicial review, and the Applicant’s Statement of Environmental Effects says this DA is a “replica” and “the same as approved via agreement with Council during the [Land and Environment Court] proceedings”; this DA is an abuse of process and oppressive. Council should not permit it to proceed. We require Council to advise the legal basis upon which it has permitted the DA to proceed given the Judgement of the Land and Environment Court.
2. The DA plans on Council’s website are misleading and confusing as to what the DA is because they include architectural drawings showing the proposed top floor in different positions and of different dimensions. In some plans it is situate in the middle of the building between eastern and western setbacks (see for example DA Rev L, 7/12/18 drawings 17, 25, 26, 3D31 and 3D32); but in others it is situate at the eastern extremity of the building without any set back (see for example DA Rev I, 18/7/18



drawings 21, 3D30). The position and dimensions (size of) the proposed top floor are inconsistent between those plans. The result is neighbours are confused and cannot discern what the external dimensions of the as erected proposed structure are. Council's notification does not comply with Regulation 56 or with procedural fairness.

3. The notification is invalid because the architectural drawings show 2 different top floor proposals. The plans show top floors of different dimensions and in different positions. They therefore do not show the proposed structure. The DA plans on Council's website (we think) mix July 2018 and December 2018 editions of the earlier DA 326/2016. Neighbours cannot know what is what. Accordingly the as erected external dimensions of the proposed structure have not been notified, in breach of Reg. 56, Council's DCP and procedural fairness.
4. The architectural drawings in the DA omit dimensions such that the external dimensions of the proposed structure are not defined. See below **PLANS MISLEADING AND NOT IN ACCORDANCE WITH LAND AND ENVIRONMENT COURT JUDGEMENT.**
5. The Statement of Environmental Effects and therefore the DA is misleading because it is not based on Plans incorporated in the Applicant's agreement with Council and the Land and Environment Court Judgement as it claims to be: see **STATEMENT OF ENVIRONMENTAL EFFECTS IS MISLEADING** below.
6. The Statement of Environmental Effects and its incorporated LEP 4.6 Applications is misleading as to description of surrounding development and topography: see below **STATEMENT OF ENVIRONMENTAL EFFECTS IS MISLEADING.**
7. The Proposal is for a gross overdevelopment which for approval, would require abandonment of Council's development standards as follows:

The proposal seeks:

- (a) 1.3 times Height standard: standard 8.5m; proposed 11.3m
  - (b) 2.4 times the FSR standard: standard 0.5:1; proposed 1.1:1
  - (c) 2.6 times zoned residential density: zoned 300m<sup>2</sup> per dwelling; proposed 132m<sup>2</sup> per dwelling
  - (d) Severe view loss to living space of our LGF.
8. The LEP 4.6 Applications do not satisfy the requirements of that Clause and the Applications for flexibility of Height and Floor Space Ratio fail to compare the proposed with compliant development as required and wrongly compare the proposed with the existing non-compliant structure. The Applications are otherwise misleading: see below.

### **STATEMENT OF ENVIRONMENTAL EFFECTS IS MISLEADING**



A. The Statement avoids any mention of interruption of views caused to our disabled son's independent living space - our lower ground floor. The Council, Applicant and Applicant Planner ABC are aware that this view loss was our major concern and a significant issue in the DA 326/2016 process including in the Land and Environment Court. The Judgement ordered specific restriction on development to protect neighbours views: see Stepping Stone v Northern Beaches Council 11/12/18 General Conditions 1(plans included photomontage CDH08 - View from 72 Lauderdale Avenue- Lower Ground; 13A (planting not to cause view loss); 13C (limiting the north/south deck to 4m); 26A (Height north end not to exceed RL 35.10 and Height south end not to exceed RL 34.78); and 30 (prohibiting structures or pedestrian use of the second floor roof surrounding the top floor. This omission from the Statement and from both LEP 4.6 Applications seeking flexibility of standards under Manly LEP 4.3 Height and 4.4 FSR is obviously significant.

B. Inconsistent with this is omission (A above); both LEP 4.6 Applications rely on the photomontage at Figure 5 (re: Height) and (without a Figure number) on page 30 (re: Floor Space Ratio).

The photomontage (incorporated in the Land and Environment Court Judgement Condition 1 Plan CDH08 - View from 72 Lauderdale Avenue - Lower Ground), purports to be a representation of view from our son's LGF living space and Morris AC relied on it.

Unfortunately, but significantly, that photomontage which was relied upon by the Applicant and by Council in the Land Environment Court and is relied upon now in this DA, is inaccurate and misleading. The photograph upon which it is based was not taken from the camera position shown in CDH08, but from an internal position near the extreme western wall and front area of our son's LGF living space. This did not meet the Tenacity Case principles or Land and Environment Court Photomontage Policy. The photomontage exaggerated the claimed view benefits of the development and diminished the real view loss caused. The as erected external dimensions of the top floor proposed structure will cause greater loss of views from living space than that shown in the photomontage. In addition, the DA plans do not give parapet Height for the "second floor" and because the second floor exceeds LEP allowed Height of 8.5m (see DA 2 28 Rev.L), the parapet will increase neighbour's view loss.

C. The increased height of the proposed top floor (0.41m according to the Statement) will result in 3 metres to 4 metres (approximately) vertical loss of iconic harbour water and shoreline views. The Statement's claim that view loss caused by the increased height will be minimal and in keeping with a single storey above street height building is inaccurate.

D. The Statement is misleading both because it describes the DA plans on Council's website as those the subject of the Land and Environment Court Judgement Approval 11/12/18 when they are not; and because claims to be based on architectural plans which are not those in the DA:

(a) The Statement represents "This Statement should be read in conjunction with the architectural drawings prepared by MM&J Architects, dated 6 December 2018 (Rev. K). These plans are the same as approved via agreement with Council during the Land and Environment Court proceedings.



As no change has been made to the design of the approved dual occupancy development, it is considered that there is no additional impact beyond that approved and the Application can therefore be approved by Council”.

This statement is incorrect:

(ai) the Land and Environment Court Judgement orders incorporated plans Revision L dated 7 December 2018, not Revision K dated 6 December 2018 on which the Statement is based;

(aii) neither the Statement nor the DA incorporate the Land and Environment Court Judgement Conditions which limited Height of the top floor and use of the “second floor” roof to protect neighbours views and ordered change to the REV. L plans (see reference to conditions at A above);

(aiii) some plans the subject of the Land and Environment Court Judgement approval are not included in the DA at all (eg: DA L 74 sec.31 7/12/18).

(aiv) neither the DA nor the Statement are based on the plans stamped by Council 20/12/18 which incorporated the Land and Environment Court Judgement approval except for the omission to comply with reduction of the top floor deck, Condition 13C.

In these ways, the DA seeks to avoid the limits and conditions which the Court judgement imposed on the development in the prior DA 326/2016 process.

Council's notification does not comply with Regulation 56 or with procedural fairness because the information within the DA is misleading and the plans are confusing. The Applicant's statement that the DA is as approved by the Court in December 2018 is wrong. Neighbours cannot know what is what. On that basis alone, Council would be wrong to permit the DA to proceed.

E. This is not the Statement relied on in the Land and Environment Court Conciliation /Hearing 6<sup>th</sup> and 7<sup>th</sup> December 2018. It contains fresh LEP 4.6 Applications not seen by the Court, which require Council's fresh consideration and determination. The Land and Environment Court Judgement is in no way an approval based on this new Statement and new LEP 4.6 Applications. It is wrong to state that the Land and Environment Court judgement approval on 11 December 2018 dispenses with Council's discretion to refuse approval. We repeat that this DA 342/2019 is an abuse of process and ought not be permitted to proceed.

The proposed development is not compatible with the scale of development along south side Lauderdale Avenue as the Statement submits in relation to both LEP 4.6 (Height and FSR) Applications. There are no buildings of 2 storeys height above Lauderdale Avenue surrounding or within the “topographic landscape” of 79A. The photographs contained in the Applications are not a fair representation:



- (i) The house in Figures 7 and 12 is several hundred metres east of the subject property, on different facing topography and below the elevation of the high cut escarpment on the north side such that residents' see over it; unlike the relative position of 72 Lauderdale to 79A. The ABC photograph does not show the relative heights of south and north side residences; and
- (ii) The unit blocks in figures 9 and 13 are hundreds of metres west of the subject property, on different topography below the road and are only one storey above Lauderdale Avenue. The ABC Planning photograph views a downward angle and misrepresents building height to street height.

### **PLANS ARE MISLEADING AND NOT IN ACCORDANCE WITH LAND AND ENVIRONMENT COURT JUDGEMENT**

For the further reasons below, the DA is misleading because:

- A.
  - (a) The architectural plans are not in accordance with the Land and Environment Court Judgement as the DA claims them to be; and
  - (b) The architectural plans are misleading and lacking in dimensions such that they fail to show the "as erected" external structure: as required of notification- Regulation 56

No architectural plans in the DA documents show where the top floor sits in space or its width and length because:

- (i) There is no dimension given which defines the southward position of its southern face -this means the north to south width of the top floor is not dimensioned: and
- (ii) The dimensions of eastern and western extremities do not meet satisfactory architectural detail or Northern Beaches Council DA Lodgement 18/19 requirements:
  - a. The western building wall position is dimensioned unusually to a window shading device not to wall - so the plans do not provide an accurate dimension of west wall or of overall width of the building; and
  - b. The eastern and western top floor extremities are not set back from the sides of the building but less accurately from the land boundaries.

That the position, size and dimensions of the top floor are not precisely defined gives the Applicant/ Developer "wriggle room" to build further in each direction according to construction solutions.

B. This same inadequacy and inaccuracy in the architectural drawings applies to the top floor deck because its eastern and northern dimensions are not defined.

C. THE DA PLANS ARE NOT IN ACCORDANCE WITH THE LAND AND ENVIRONMENT COURT JUDGEMENT: This has been explained above-see STATEMENT OF ENVIRONMENTAL EFFECTS IS MISLEADING. For example, Condition 13C Ordered 11/12/18 that the top floor deck be reduced from 5.424m



north to south shown in Applicant Plans 6/12/18 to 4m. On the DA Plans it remains at 5.424.

D. Privacy issues could arise because there are no window dimensions or set outs as required by Northern Beaches DA Lodgement requirements 18/19.

E. It is totally unreal to expect the structure to be erected in compliance with the Heights indicated in the DA plans. Each floor and ceiling height assumes construction to the 1cm of allowed limits of construction according the Australian building standards. There is absolutely no margin for variation. Specifically the top floor Height which is limited by Land and Environment Court Judgement Condition 26A to RL 34.78 south and 35.10 north, assumes achievement of the absolute minimum ceiling Height of 2.4 m for 2/3rds of the top floor living space. 1/3<sup>rd</sup> of the ceiling is below that standard, which is the maximum non-compliance allowed. Any tiny building solution in the course of construction of the floors below or of the top floor affecting the planned ceiling height shown will cause the Applicant to seek a variation to increase the RL roof height above 34.78. The Applicant is seeking to avoid those conditions of the judgement because it knows that it cannot construct within the Heights shown in the DA plans. It knows it will seek variations to increase Height. This will impact neighbour's views.

F For all of the reasons above, it can only be concluded that the purpose of this DA is to confuse neighbours so they do not know what to object to and to seek to avoid the controls and limits ordered by the Land and Environment Court on the appeal of DA 326/2016 of which the Applicant describes this DA to be a "replica".

Thank you for considering my family's submission of objection.



Michelle Montgomery  
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5th May 2019