

# View Impact Assessment

Residential Flat Building

33 Fairlight Street, 35 Fairlight Street, 10 Clifford Avenue and 12 Clifford Avenue, Fairlight

Submitted to Northern Beaches Council  
on behalf of Allen Group Developments Pty Ltd





**'Gura Bulga'**

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



**'Dagura Buumarri'**

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



**'Gadalung Djarri'**

Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past, present and emerging.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

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Chris Bain	13 January 2025	Chris Bain	13 January 2025
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# Executive summary

**Important note:** this document has been prepared in response to council's request for a non-redacted version

This view impact assessment (VIA) has been prepared as part of a development application (DA) made to the Northern Beaches Council (council) by Allen Group Developments Pty Ltd (the applicant) seeking development consent to redevelop land at 33 Fairlight Street, 35 Fairlight Street, 10 Clifford Avenue and 12 Clifford Avenue, Fairlight (the site) for the purposes of a residential flat building (the proposal).

It has been prepared by Ethos Urban in collaboration with Virtual Ideas and CMS Surveyors.

Its purpose is to assess the acceptability of the proposal's view impact on neighbouring residential properties.

To inform this assessment, an evidence base of photos and photomontages in accordance with Land and Environment Court of NSW 'Use of Photomontages and Visualisation Tools Policy' (the photomontage policy) was prepared for 5 viewpoints from 3 neighbouring residential buildings.

As required by the Manly Development Control Plan 2013, assessment of view impact was undertaken in accordance with the planning principle established by Roseth SC of the Land and Environment Court of New South Wales (LEC) in their judgement in *Tenacity Consulting v Waringah* [2004] NSWLEC 140 (Tenacity).

The proposal impacts views from neighbouring properties obtained obliquely across side and rear property boundaries. Due to this, these views are vulnerable to view impact.

The extent of view impact on the assessed viewpoints is as follows:

- 2/31 Fairlight St, minor
- 3/31 Fairlight St, minor
- 2/37 Fairlight St, minor
- 3/37 Fairlight Street, moderate
- 2/14 Clifford Street, negligible.

While either noticeable or prominent in these views, it does not unreasonably block iconic or high value elements

In particular, the majority of iconic water elements in the form Manly Cove, North Head, Sydney Harbour and the heads and their land / water interface are not blocked in these views

The extent of impact on the view from 3/37 Fairlight Street is moderate primarily due to blocking most of North Head. however, it noted that most of its vegetated silhouette is still visible, another view obtained across the rear property boundary more parallel to its side boundaries including Sydney Harbour and the heads is available and not blocked and the size and quality of its private landscaped open space in the form or a useable backyard provides a high level of visual amenity that in part helps to mitigate the loss of North Head in the background of the view.

Matters of non-compliance with planning controls are justified in the written clause 4.6 variation that accompanies the SEE. Setting aside numerical non-compliance, the proposal results in a built form that is compatible with that of nearby land.

Design options for the site are challenged by a number of factors, including the long, narrow nature of the site which influences the consolidation of building massing in a linear form parallel to its side boundaries as opposed to distributing it across the site. Due to this, any form of development of the site in accordance with that allowed under the height controls of the MLEP 2013 is likely to result in similar view loss impacts.

Nonetheless, responding to these challenges the proposal has adopted strategies to reduce view impact, including considerable overall and upper-level setbacks as well as separation distances to reduce the visual impact of scale and bulk and reduce view impact on neighbouring properties. Any further amendment to the scale and massing may compromise the ability to retain the same development potential and amenity for the applicant, in particular due to the combination of the long, narrow nature and steeply sloping nature of the site challenging the viability of alternative floor plans. As such, there are no other reasonable, practical alternative schemes that can deliver an outcome consistent with what is enabled by maximum building height under the MLEP 2013

Overall, the proposal is considered to achieve the balance sought by Tenacity of providing the applicant with the same development potential and amenity and reducing the impact on the views of neighbours.

On this basis, while acknowledging view impact, this impact is considered to be acceptable and the nature of view sharing reasonable.

# Glossary

Table 1 Abbreviations

Abbreviation	Meaning
DA	Development application
Council	Northern Beaches Council
FSR	Floor space ratio
LGA	Local government area
MLEP	Manly Local Environmental Plan 2013
MDCP	Manly Development Control Plan 2013
Photomontage policy	'Use of Photomontages and Visualisation Tools' Policy
Proposal	Residential flat building
Site	33 Fairlight Street, 35 Fairlight Street, 10 Clifford Avenue and 12 Clifford Avenue, Fairlight
Tenacity	Tenacity Consulting v Waringah [2004] NSWLEC 140
VIA	View impact assessment



# 1.0 Introduction

## 1.1 Purpose

This view impact assessment (VIA) has been prepared as part of a development application (DA) made to the Northern Beaches Council (council) by Allen Group Developments Pty Ltd (the applicant) seeking development consent to redevelop land at 33 Fairlight Street, 35 Fairlight Street, 10 Clifford Avenue and 12 Clifford Avenue, Fairlight (the site) for the purposes of a residential flat building (the proposal).

It has been prepared by Ethos Urban in collaboration with Virtual Ideas and CMS Surveyors.

Its purpose is to assess the acceptability of the proposal's view impact on neighbouring residential properties.

## 1.2 Structure

This VLA has the following structure:

- **Section 1 – Introduction:** identifies the purpose and structure of this VIA
- **Section 2 – The site and its context:** identifies and describes the site and its context
- **Section 3 – Planning framework:** identifies relevant parts of the planning framework to VIA
- **Section 4 – Planning history:** outlines previous development history on site
- **Section 5 – The proposal:** outlines the proposal
- **Section 6 – Methodology:** outlines the methodology used in the VIA
- **Section 7 – View loss assessment:** identifies and assesses the proposal's potential visual impact
- **Section 8 – Assessment against the planning framework:** assesses visual and view impact against relevant parts of the planning framework
- **Section 9 – Conclusion:** identifies whether the proposal can be supported on visual impact grounds
- **Appendices:** provides a copy of the visual impact evidence upon which this VIA relies.

As this VIA forms part of a larger suite of documents prepared to support the proposal's development application, it does not repeat matters more appropriately covered in these documents. As such, it should be read together with these other documents, in particular planning and urban design documentation.

# 2.0 The site and its context

## 2.1 The site

The site is located at 33 Fairlight Street, 35 Fairlight Street, 10 Clifford Avenue and 12 Clifford Avenue, Fairlight (refer to **Figure 1** below). It is within the Northern Beaches local government area (LGA).

The site has an area of 2,352sqm (approx.) and shares boundaries with 31 Fairlight Street and 8 Clifford Avenue to the east, and 37 Fairlight Street and 14 Clifford Avenue to the west. The site has two street frontages along Fairlight Street to the north (primary frontage), and Clifford Avenue to the south.



Each lot that makes up the site contains a single detached dwelling house ranging from one to three storeys in height.

The survey plans provided by Bee & Lethbridge indicate a large slope across the site from north (Fairlight Street) to south (Clifford Avenue). The existing reduced levels (RL) on site extend from 50.29 to 26.39, or a 23.9m total fall from north to south.



 The Site

 NOT TO SCALE

Figure 1 Aerial photograph of the site

Source: Nearmap and Ethos Urban



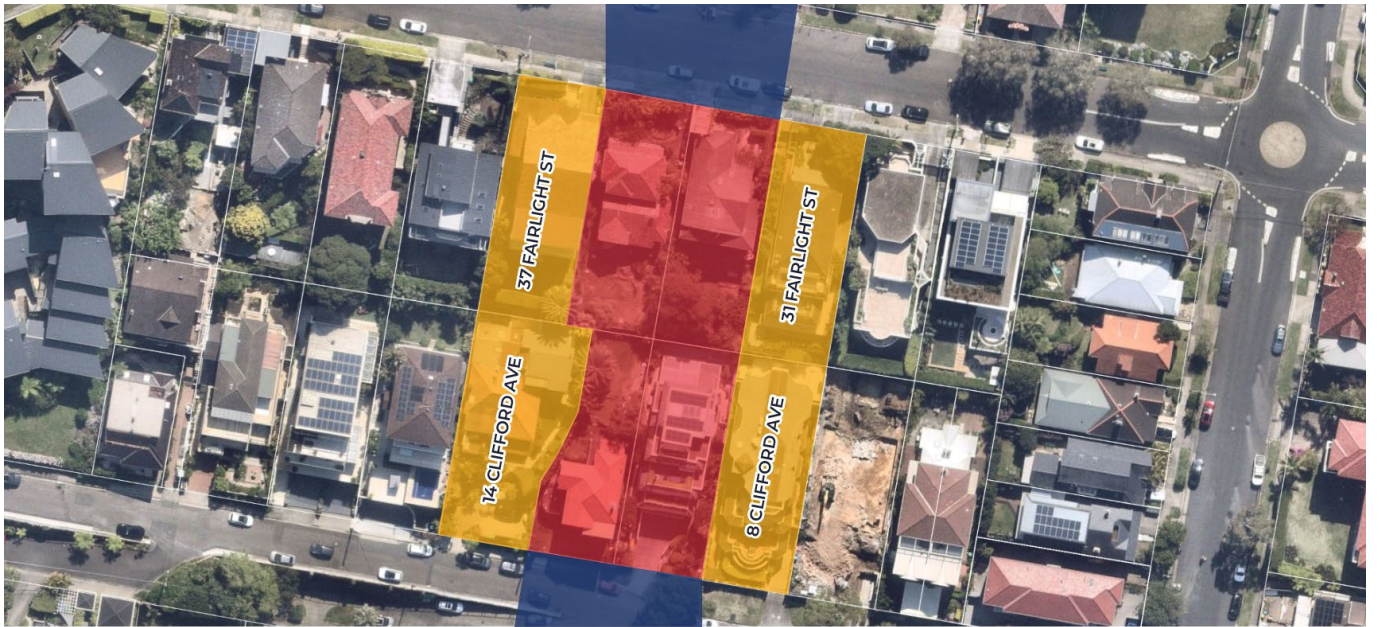
Figure 2 33 Fairlight Street

Source: REA Group

## 2.2 Adjoining land

The site is bounded by four residential lots on the east and west, and two suburban streets along the north and south frontages respectively. The site shares boundaries with 31 Fairlight Street and 8 Clifford Avenue to the East, and 37 Fairlight Street and 14 Clifford Avenue to the West. The site has two street frontages along Fairlight Street to the north (primary frontage), and Clifford Avenue to the south.





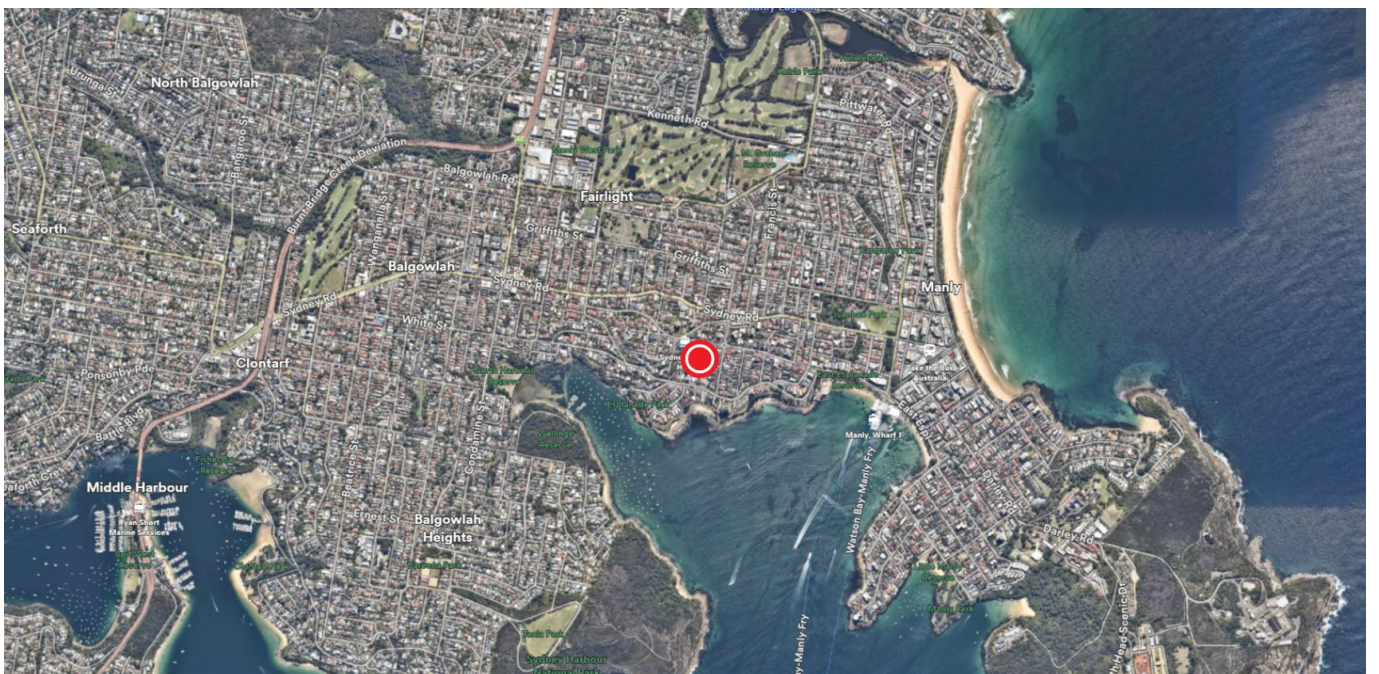
■ The Site   
 ■ Adjacent Lots   
 ■ Site Frontages   
 (⊙) NOT TO SCALE

Figure 3 Adjoining land

Source: Nearmap and Ethos Urban

### 2.3 Broader context

The site at 33 Fairlight Street, Fairlight, is situated approximately 800m west of the Manly town centre and 14km north-east of the Sydney Central Business District (CBD) (see **Figure 4** below).



⊙ The Site   
 (⊙) NOT TO SCALE

Figure 4 Broader context

Source: Nearmap and Ethos Urban





Figure 5 Southern side of Fairlight Street  
Source: Ethos Urban





Figure 6 Northern side of Fairlight Street  
Source: Ethos Urban



Figure 7 Views available between properties on the southern side of Fairlight Street  
Source: Ethos Urban





Figure 8 Clifford Avenue  
Source: Ethos Urban





Figure 9 Clifford Avenue at its intersection with Woods Parade  
Source: Ethos Urban

## 3.0 Planning framework

The planning framework comprises a series of acts, planning instruments and other NSW government planning documents that together help determine the acceptability of a proposal.

Not all parts of the planning framework are relevant to view analysis.

The most relevant part is:

- Tenacity Consulting v Waringah [2004] NSWLEC 140 (Tenacity).

Other relevant parts are:

- Environmental Planning and Assessment Act 1979 (EP&A Act)
- Manly Local Environmental Plan 2013 (MLEP 2013)
- Manly Development Control Plan 2011 (MDCP 2011).

### 3.1 Tenacity Consulting v Waringah [2004] NSWLEC 140

Dating back to a 1937 decision of the Australian High Court in Victoria Park Racing and Recreation Grounds Co Ltd v Taylor, it is a long held common law principle in Australia that no one 'owns' the right to a view across someone else's property.

Nonetheless, view impact may be considered part of broader amenity, impact and public interest considerations under the planning framework. In 2013, Roseth SC of the Land and Environment Court of New South Wales (LEC) established a planning principle to assist in guiding consideration of view impact in their judgement in Tenacity Consulting v Waringah [2004] NSWLEC 140 (Tenacity).

Tenacity focusses on 'reasonable view sharing':

- 'Clause 61 of the LEP states that development is to allow for the reasonable sharing of views. It does not state what is view sharing or when view sharing is reasonable
- The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.) To decide whether or not view sharing is reasonable, I have adopted a four-step assessment'

As Tenacity was an appeal about loss of existing views obtained from a nearby house in a low-density suburban context, in practice it has largely been applied to assessment of view loss from private property. It is important to note that Tenacity does not address matters of bulk and scale, streetscape or general character of a locality. Rather, it is about loss of elements and features in views, which can change the composition and characteristics of the view.

Tenacity establishes a four step process for consideration of reasonable view sharing:

- '26 The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured

- 27 The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic
- 28 The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating
- 29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable'.

In summary, the four steps focus on:

- the value of the view
- the location from where the view can be obtained
- the extent of impact
- the reasonableness of the proposal, and by association the reasonableness of the view sharing and the acceptability of the view impact.

## **3.2 Environmental Planning and Assessment Act 1979**

The most relevant section of the EP&A Act to view analysis is section 4.15 'Evaluation', in particular as it relates to the likely impacts of development.

## **3.3 Manly Local Environmental Plan 2013**

Development on the site for the proposal is subject to the following key parts of the MLEP 2013:

- Section 2.3 Zone objectives and Land Use Table, with the site being included in zone R1 General Residential
- Section 4.3 Height of buildings, with the site having a maximum building height of 8.5m
- Section 4.4 Floor space ratio, with the site having a maximum FSR of 0.6:1
- Section 6.9 Foreshore scenic protection area.

### **3.3.1 Section 2.3 Zone objectives and Land Use Table**

The objectives of this section for Zone R1 General Residential are as follows:

- 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.

### 3.3.2 Section 4.3 Height of buildings

The objectives of this section are as follows (emphasis added):

- (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
- (b) to control the bulk and scale of buildings
- (c) to **minimise disruption to the following** –
  - (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)
  - (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
- (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.

### 3.3.3 Section 4.4 Floor space ratio

The objectives of this section 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 Zone E1 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.

### 3.3.4 Section 6.9 Foreshore scenic protection area

The objective of this clause is to protect visual aesthetic amenity and views to and from Sydney Harbour, the Pacific Ocean and the foreshore in Manly.

Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore
- (b) measures to protect and improve scenic qualities of the coastline



- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

### 3.4 Manly Development Control Plan 2011

Part 3, 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise), 3.4.3 Maintenance of Views of the MDCP 2011 is of relevance to view impact.

The objectives of this section are (emphasis added):

- Objective 1) To provide for **view sharing** for both existing and proposed development and existing and future Manly residents
- Objective 2) To **minimise disruption to views** from adjacent and nearby development and views to and from public spaces including views to the **city, harbour, ocean, bushland, open space and recognised landmarks or buildings** from both private property and public places (including roads and footpaths)
- Objective 3) To **minimise loss of views**, including accumulated view loss 'view creep' whilst **recognising development may take place in accordance with the other provisions of this Plan.**

The provisions are:

- a) The design of any development, including the **footprint** and **form of the roof** is to minimise the loss of views from neighbouring and nearby dwellings and from public spaces
- b) **Views between and over buildings** are to be maximised and exceptions to **side boundary** setbacks, including zero setback will not be considered if they contribute to loss of primary views from living areas
- c) Templates may be required to indicate the height, bulk and positioning of the proposed development and to assist Council in determining that view sharing is maximised and loss of views is minimised. The templates are to remain in place until the application is determined. A registered surveyor will certify the height and positioning of the templates
  - Note: DA assessment is to determine the extent of, and impact on views at eye height in a **standing position** (eye height is **1.6m above floor level**) from within **the main living areas (and associated terraces/balconies)** of the proposed and existing, adjacent and nearby developments, as well as public spaces. Refer to Figure 11 - View Loss Assessment Diagram.
- d) Planning Principle. The ultimate assessment of views and view loss in this plan must be in accordance the following planning principle established by the NSW Land and Environment Court as follows. The provision then copies the 4 steps in Tenaicity referred to later in this VIA
  - Note: In relation to the protection of views, LEP clause 4.3A also identifies specific locations on the LEP Height of Buildings Map where the height of the building (including the roof structure) must not exceed the highest level of the adjoining road frontage, generally at the crown of the road. Other height controls also apply to this land including wall and roof height and maximum number of storeys. See paragraph 4.1.2 of this plan.

## 4.0 Planning history

The site is subject to a previous DA (DA2022/0688) (refer below figure).

On 17 May 2022, DA2022/0688 was granted development consent by the LEC. View loss was not raised as a ground of contention by council.

In its assessment report, council noted:

- 'The submitted Visual Impact Analysis has been prepared in accordance with the NSW Land and Environment Court's photomontage requirements and is sufficient for assessment purposes. The resulting view impacts to surrounding properties are considered to be acceptable and do not warrant refusal of the application'
- 'Despite the building height breach, the proposal is not considered to cause adverse impacts to views to, from or between nearby residential developments and public spaces, including the harbour and foreshores. A detailed assessment of view loss is completed under 3.4.3 in this report'
- 'The proposed bulk and scale of the development will not adversely impact views from surrounding properties or the public domain'.



Figure 10 Outline of the previous proposal for the site

Source: Urbaine

# 5.0 The proposal

The proposal is seeking development consent for the purposes of a residential flat building. The following table shows its key parameters. A site plan and elevation plan are shown in the below figures.

Table 2 Key proposal metrics

Matter	Description
Site Area	<ul style="list-style-type: none"> <li>2,352 sqm</li> </ul>
GFA	<ul style="list-style-type: none"> <li>2,653 sqm</li> </ul>
Height	<ul style="list-style-type: none"> <li>23.2m</li> </ul>
FSR	<ul style="list-style-type: none"> <li>1.13:1</li> </ul>
Setbacks	<ul style="list-style-type: none"> <li>Fairlight Street: 5.375m</li> <li>Clifford Avenue: 8.685m to 9.990m</li> <li>Eastern boundary:                             <ul style="list-style-type: none"> <li>Fairlight Street building: 3.440m to 5.910m</li> <li>Clifford Avenue building: 2.250m to 5.800m</li> </ul> </li> <li>Western boundary:                             <ul style="list-style-type: none"> <li>Fairlight Street building: 3.480m to 5.950m</li> <li>Clifford Avenue building: 1.830m to 4.650m</li> </ul> </li> </ul>
Separation distances	<ul style="list-style-type: none"> <li>12.025m between Fairlight Street building and Clifford Avenue building.</li> </ul>

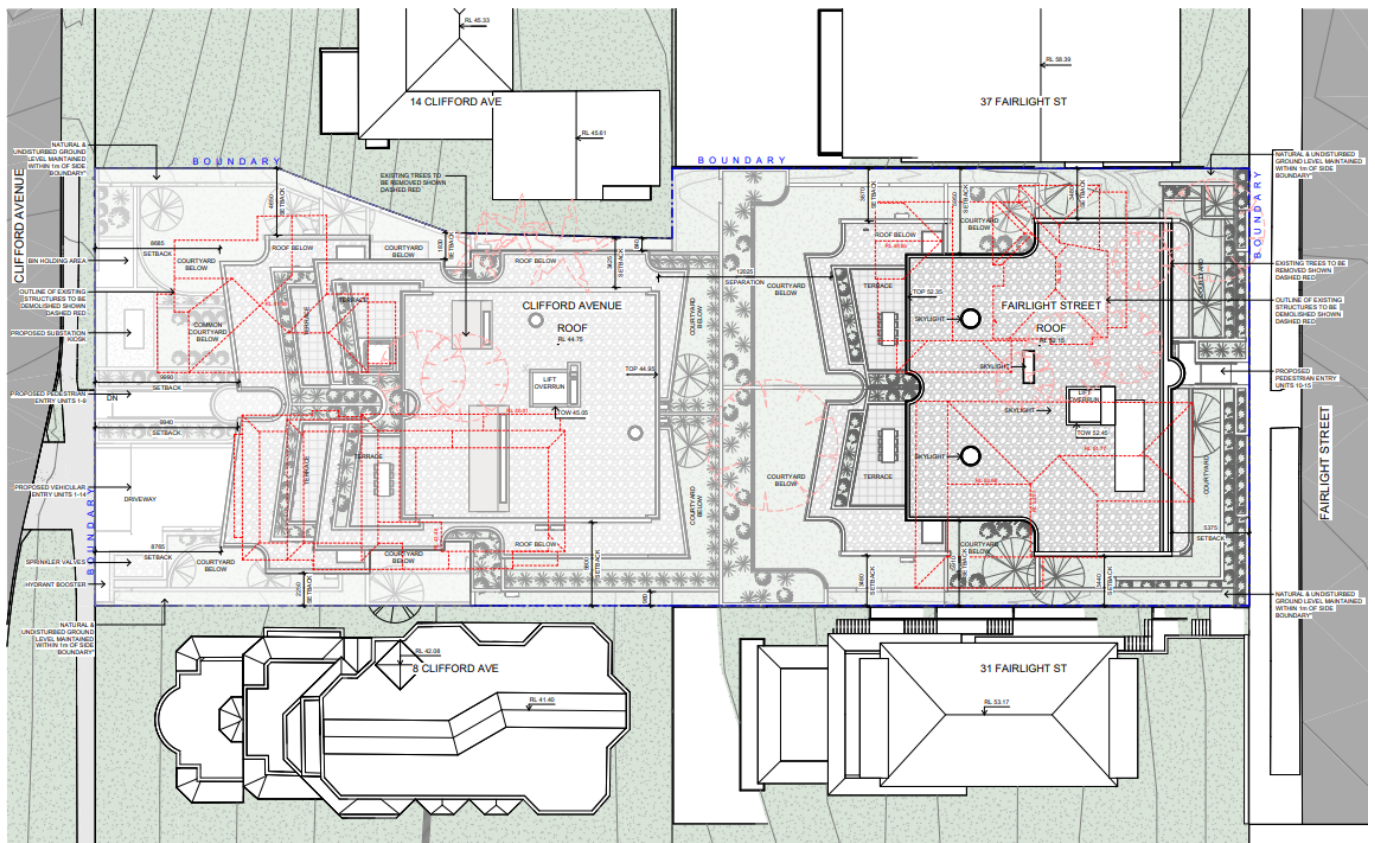


Figure 11 Proposed site plan

Source: Platform



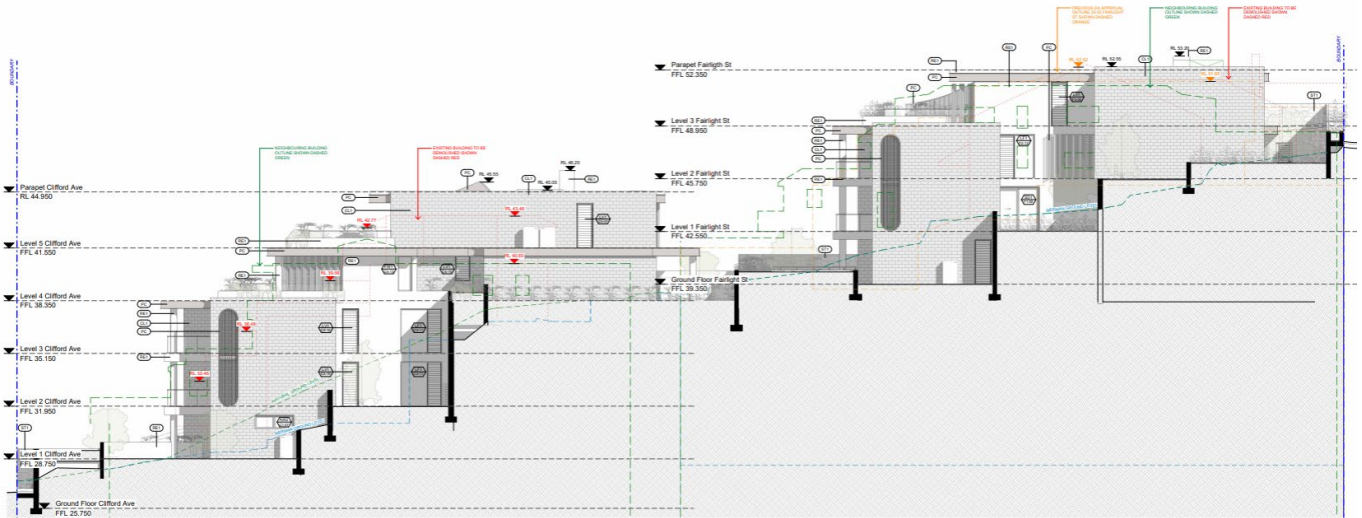


Figure 12 Proposed elevation plan (east)

Source: Platform

## 6.0 Methodology

The methodology adopted by this VIA has 2 main stages:

- **Stage 1 – Preparation of the evidence base:** preparing an evidence base of images to help inform assessment
- **Stage 2 – View impact assessment:** assessment of view impact.

### Stage 1 – Preparation of the evidence base

The main purpose of this stage is to prepare an evidence base of images to help inform assessment of view impact.

For the selected viewpoints, photos and photomontages prepared in accordance with the LEC 'Use of Photomontages and Visualisation Tools Policy (May 2024) were prepared.

**Appendix A** provides detail on this stage of the methodology.

### Stage 2 – View impact assessment

The main purpose of this stage is to determine the acceptability of the proposal's view impact on neighbouring residential properties.

This is undertaken by following the process outlined earlier in this VIA.

Due to their capacity for varied interpretation, value of the view and reasonableness of the proposal benefit from further elaboration.

#### 6.1.1 Value of the view

The concept of value is key to Tenacity.

As they make such a contribution to residential amenity, all views may subjectively be considered to have value. Views can also have particular value due to their extent, with panoramic or 'sweeping' views (which are often called 'vistas') that occupy the entire focal and peripheral field of view having particular value.

In particular, Tenacity assigns value in terms of the presence of particular elements and features, and the extent of their presence as follows:

- water views having greater value than land views
- views with icons having greater value than views without icons, providing a list of elements and features that can be considered icons
- whole views having greater value than partial views.

It is helpful to categorise views as having low, medium or high value. While there are no hard and fast rules around what makes a view low, medium or high value, there are some useful rules of thumb. The mere presence of one or more high value parts, being water, icons or whole views, is necessary but not sufficient to make a view high value. Rather, they need to be prominent in the view.

Prominence is often shaped by what part of the view, in terms of composition, and how much of the view, again by reference to composition, they occupy.

In general, prominence is greater where a high value element is closer to the view, eg it is located in the foreground, and it occupies multiple parts of an axis, eg left and centre of the horizontal axis. Due to the rarity of being able to see icons in totality, the ability to do so may also make a view high value

Whether the high value elements provides a high level of contrast to its surrounds, either by its inherent form or different form, materiality, colour or similar, is also often relevant.

In general, the following definitions of value are used in this report:

- **low value:** iconic or high value elements or features are not present
- **medium value:** iconic or high value elements or features are present, however are not prominent
- **high value:** iconic or high value elements or features are present, and are prominent; or iconic elements or features are present in their totality.

### 6.1.2 Reasonableness of the proposal

The focus of this part is on the reasonableness of the proposal, and not the view loss. There are two key considerations:

- compliance with planning controls
- skilful design.

While there is a large number and range of planning controls applying to proposals, of most interest are those that have a material impact on scale and massing such as height and FSR.

Skilful design does not mean architectural merit. Rather, it means whether there is an alternative 'more skilful design' that 'could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours'. This has been interpreted in LEC judgements subsequent to Tenacity as looking for opportunities in massing to reduce impact. As can be seen, this is a question of balance.

Where a more skilful design does not exist, 'the view impact of a complying development would probably be considered acceptable and the view sharing reasonable'.

In their judgement in Tenacity, Roseth SC noted that blocking the entirety of another property's view 'may, in some circumstances, be quite reasonable'. Further to this, the LEC judged in *Goyer v Pengilly* [2015] NSWLEC 54 that a devastating view impact is not in and of

own right determinative of a DA. In this judgement, and as noted by Moore SC and Adam SC in their judgement in *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046 (Rose Bay), view impact is one of a number of factors in the broader assessment process for the proposal. This interpretation was again in the judgement of O'Neill C in *Arnott v City of Sydney Council* [2015] NSWLEC 1052:

- 'While I am satisfied that the resident objectors' concern regarding the impact of the proposal on their harbour view is well founded; it is fair to weigh the detrimental impact of the proposal on their views against the reasonableness of the proposal'.

## 6.2 Assumptions, limitations and exclusions

In addition to any others expressed in the relevant part of this VIA, the following key assumptions, limitations and exclusions apply to this VIA:

- the statements in this VIA rely on inputs from other parties, including the planning and urban design team. In particular, reliance is placed on assessment of compliance with planning controls, consistency with objectives and justification for any non-compliance. It is assumed these inputs are accurate
- the evidence base of images provides an indication of view impact that focusses on those properties considered most likely to experience view impact and is also considered to be reasonable and proportion to the likely impacts of the proposal. It does not purport to represent every possible viewing condition within the visual catchment
- while photomontages provide an indication of likely future visual environment, they can only provide an approximation of the rich visual experience enabled by the human eye. As they are based on photographs, the same limitations that apply to photography, including optical distortion, apply (refer to **Appendix A** for further detail).

Consideration of the following matters is excluded as it is not within the scope of VIA:

- heritage, in particular impact on values and significance
- Aboriginal cultural heritage values and connecting with Country
- night-time impact, including lighting
- outlook
- visual privacy.

## 7.0 View loss assessment

View loss assessment was undertaken for the following properties:

1. 2/31 Fairlight St
2. 3/31 Fairlight St
3. 2/37 Fairlight St
4. 3/37 Fairlight St
5. 2/14 Clifford St.

## 7.1 2/31 Fairlight St

### 7.1.1 Existing context view

While the following view is not assessed by this VIA, it is provided to show the extent and nature of views that may be obtained from this part of the premises. Setting aside optical distortions that can arise from lens focal lengths other than 50mm (eg, reduction in the apparent size of elements, and increase in the apparent distance between the viewer and elements), it shows that the extent of views is considerably more expansive when moving around this part of the premises.



Figure 13 2/31 Fairlight St – context view

Source: Lighthouse Project Group



## 7.1.2 Existing view



Figure 14 View from 2/31 Fairlight Street (balcony next to living room) facing south-west

Source: Virtual Ideas

**Note:** the site is to the right

### Description of view

The foreground comprises part of the apartment's balcony and associated furnishings and solid balustrade.

The midground mainly comprises the upper parts of houses and apartment buildings and their associated trees and vegetation in Fairlight in and around Lauderdale Avenue. The higher-rise 'Fairshore' apartment building and a cluster of Norfolk Island Pines are noticeable.

The background is split between water and land components.

The water component comprises a large part North Harbour and its foreshore. Informally moored boats are noticeable within the harbour in the centre part of the view. That part of the harbour to the left of the view is open water free of moored boats.

While visibility of the harbour's northern foreshore is blocked by the houses and apartment buildings, a large part of its southern foreshore is visible. This includes the north-eastern rocky foreshore of the Dobroyd Head part of Sydney Harbour National Park, Forty Baskets Beach and its swimming enclosure and parkland. Other elements representative of Sydney Harbour including boatsheds and outdoor stored personal water-craft are visible.

The land component comprises the steeply sloping hillside associated with the Balgowlah Heights ridgeline. The crown of the ridgeline is undulating and largely vegetated, with minimal built form breaking its silhouette against the sky.

The left part of the hillside comprises contiguous dense bushland associated with Sydney Harbour National Park. The right part primarily comprises large, multi-storey houses oriented to the viewer and appearing to 'step' up the hillside. A distinct vertical line delineating the bushland from housing is evident.

A glimpse of the Eastern Suburbs, most notably part of the Bondi Junctions skyline, is visible in the far-left background of the view behind the ridgeline as it falls to meet Sydney Harbour.

**Tenacity step 1: Assess the view to be affected**

Is water present, and to what extent	Yes, water in the form of North Harbour is present. It is prominent in the midground of the view.
Are icons or other high value elements present, and to what extent	Yes, an icon in the form of North Harbour is present. As noted, it is prominent in the view. A high value element in the form of the Sydney Harbour National Park is also present and is also prominent in the view.
Is water, icons or high value elements seen whole?	Icons and high value elements are seen in part.
Assessed value of the view, and why	High. The view contains prominent iconic and high value elements, including North Harbour and its foreshore, and Sydney Harbour National Park. Furthermore, a variety of valuable elements associated with Sydney Harbour overall are present, including rocky foreshore, Forty Baskets Beach, parkland, boathouses and outdoor stored personal water-craft. Other elements also contribute to the value of the view, including the steeply sloping hillside, vegetated and undulating crown of the Balgowlah Heights ridgeline, the vertical line delineating bushland and urban areas and the glimpse of the Eastern Suburbs.

**Tenacity step 2: Consider from what part of the property the views are obtained**

Is this a front, rear or side view?	This part of the view is obtained obliquely across a rear and side boundary.
Is this a sitting or standing view?	This is a standing view. While the apartment's solid balustrade is likely in part to obscure sitting views from inside the apartment, it is reasonable to assume that

	much of this view may also be obtained from sitting positions.
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### Proposed view



Figure 15 2/31 Fairlight St, proposed view

Source: Virtual Ideas

### Tenacity step 3: Assess the extent of the impact

The proposal represents the insertion of a new element in the right midground.

While noticeable, its location, geographic extent, size and form do not make it prominent in the view.

In doing so its main view impact is to block visibility of the upper parts of apartment buildings and associated trees and vegetation in Fairlight in and around Lauderdale Avenue to the right of the higher-rise 'Fairshore' apartment building.

It also blocks visibility of a small part of North Harbour and its northern foreshore to the right of Forty Baskets Beach.

A very small part of the northernmost part of Forty Baskets Beach will be obscured.

The proposal does not impact most other high value elements in the view, including Sydney Harbour National Park, boathouses, outdoor stored personal water-craft, the steeply sloping hillside, vegetated and undulating crown of the Balgowlah Heights ridgeline, the vertical line delineating bushland and urban areas and the glimpse of the Eastern Suburbs.

From what room is the view obtained	Balcony.
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Assessed level of impact, and why	<p>Minor.</p> <p>The proposal will:</p> <ul style="list-style-type: none"><li>• not appear prominent in the view</li><li>• block part of a view obtained from a standing position obtained obliquely across a rear and side boundary</li><li>• not impact the main view to North Harbour obtained from the balcony and apartment in general in a more southerly direction obtained across its rear boundary parallel with the alignment of its side boundaries</li><li>• blocks a relatively small part of North Harbour and its foreshore</li><li>• does not block most other high value elements</li><li>• maintains the visual character of the view</li><li>• not unacceptably diminish the ability of the viewer to sufficiently understand and appreciate the nature of and attractive or significant elements within the view.</li></ul>
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## 7.2 3/31 Fairlight St

### 7.2.1 Existing context view

While the following view is not assessed by this VIA, it is provided to show the extent and nature of views that may be obtained from this part of the premises. Setting aside optical distortions that can arise from lens focal lengths other than 50mm (eg, reduction in the apparent size of elements, and increase in the apparent distance between the viewer and elements), it shows that the extent of views is considerably more expansive when moving around this part of the premises.



Figure 16 3/31 Fairlight St – context view

Source: Lighthouse Project Group

## 7.2.2 Existing view



Figure 17 View from 3/31 Fairlight Street (upper-level balcony middle) facing south-west

Source: Virtual Ideas

**Note:** the site is to the right

### Description of view

Compared to the previous view from the same site, this view is more layered due to a greater extent of foreground being visible.

The foreground comprises the upper parts of houses adjoining the site, including roofs and associated utilities that detract from visual amenity such as air-conditioning units. The current building on the site is prominent in the right of the foreground.

The midground mainly comprises the upper parts of houses and apartment buildings and their associated trees and vegetation in Fairlight in and around Lauderdale Avenue as well as part of what appears to be Bolingbroke Street. The higher-rise 'Fairshore' apartment building and a cluster of Norfolk Island Pines are noticeable.

The background is split between water and land components.

The water component comprises a large part North Harbour and its foreshore. Informally moored boats are noticeable within the harbour in the centre part of the view. That part of the harbour to the left of the view is open water free of moored boats.

While visibility of the harbour's northern foreshore is blocked by the houses and apartment buildings, a large part of its southern foreshore is visible. This includes the north-eastern rocky foreshore of the Dobroyd Head part of Sydney Harbour National Park, Forty Baskets

Beach and its swimming enclosure and parkland. Other elements representative of Sydney Harbour including boatsheds and outdoor stored personal water-craft are visible.

The land component comprises the steeply sloping hillside associated with the Balgowlah Heights ridgeline. The crown of the ridgeline is undulating and largely vegetated, with minimal built form breaking its silhouette against the sky.

The left part of the hillside comprises contiguous dense bushland associated with Sydney Harbour National Park. The right part primarily comprises large, multi-storey houses oriented to the viewer and appearing to ‘step’ up the hillside. A distinct vertical line delineating the bushland from housing is evident.

A glimpse of the Eastern Suburbs, most notably part of the Bondi Junctions skyline, is visible in the far-left background of the view behind the ridgeline as it falls to meet Sydney Harbour.

**Tenacity step 1: Assess the view to be affected**

Is water present, and to what extent	Yes, water in the form of North Harbour is present. It is prominent in the midground of the view.
Are icons or other high value elements present, and to what extent	Yes, an icon in the form of North Harbour is present. As noted, it is prominent in the view. A high value element in the form of the Sydney Harbour National Park is also present and is also prominent in the view.
Is water, icons or high value elements seen whole?	Icons and high value elements are seen in part.
Assessed value of the view, and why	High. The view contains prominent iconic and high value elements, including North Harbour and its foreshore, and Sydney Harbour National Park. Furthermore, a variety of valuable elements associated with Sydney Harbour overall are present, including rocky foreshore, Forty Baskets Beach, parkland, boathouses and outdoor stored personal water-craft. Other elements also contribute to the value of the view, including the steeply sloping hillside, vegetated and undulating crown of the Balgowlah Heights ridgeline, the vertical line delineating bushland and urban areas and the glimpse of the Eastern Suburbs.

**Tenacity step 2: Consider from what part of the property the views are obtained**

Is this a front, rear or side view?	This part of the view is obtained obliquely across a rear and side boundary.
Is this a sitting or standing view?	This is a standing view. While the apartment’s solid balustrade is likely in part to obscure sitting views from inside the



apartment, it is reasonable to assume that much of this view may also be obtained from sitting positions.

### Proposed view



Figure 18 3/31 Fairlight St, proposed view

Source: Virtual Ideas

### Tenacity step 3: Assess the extent of the impact

The proposal represents the replacement of the existing building within the site in the right foreground of the view.

As with the existing building within the site its geographic extent and size make it prominent in the view.

Its impact is largely the same as the existing building. While blocking a very small part of North Harbour and the northern end of Forty Baskets Beach, this impact is not considered to be significant. The main difference impact arising is the blocking of a greatest part of the steeply sloping hillside associated with the Balgowlah Heights ridgeline occupied by large, multi-storey houses oriented to the viewer and appearing to 'step' up the hillside. It is noted the entirety of the undulating and largely vegetated crown of the ridgeline silhouetted against the sky will remain visible.

From what room is the view obtained	Balcony.
Assessed level of impact, and why	<p>Minor.</p> <p>While it is prominent in the view, relative to the existing building within the site the proposal will:</p> <ul style="list-style-type: none"> <li>• block part of a view obtained from a standing position obtained obliquely across a rear and side boundary</li> <li>• not impact the main view to North Harbour obtained from the balcony and apartment in general in a more southerly direction obtained across its rear boundary parallel with the alignment of its side boundaries</li> <li>• blocks a relatively small part of North Harbour and its foreshore</li> <li>• does not block most other high value elements</li> <li>• maintains the visual character of the view</li> <li>• not unacceptably diminish the ability of the viewer to sufficiently understand and appreciate the nature of and attractive or significant elements within the view.</li> </ul>

## 7.3 2/37 Fairlight St

### Existing view



Figure 19 View from 2/37 Fairlight Street (balcony east) facing south-east

Source: Virtual Ideas

**Note:** the site is to the left

### Description of view

The foreground consists of vegetation within the site (notably a palm which truncates the extent of view to the right) and the existing dwellings and their surrounding open space within the site.

The midground mainly comprises the upper parts of houses and apartment buildings and their associated trees and vegetation in Fairlight. The higher-rise 'One Lauderdale' apartment building is dominant as a large scale built element.

One Lauderdale effectively splits the background into 2 parts.

The left part comprises a large part of Manly Cove, North Harbour and their northern foreshores including, Manly Point and Quarantine Beach. Part of Quarantine Beach and the foreshore to the north, including Cannae Point and the south facing foreshore of North Head where it meets Sydney Harbour and the heads is blocked by One Lauderdale. The heavily developed, linear foreshore of Manly Point is noticeable, including the landmark Kilburn Towers apartment building. To the right of this the less developed Quarantine Station is also noticeable. North Head is prominent in the view behind Manly Point, and mainly comprises dense bushland occupying steeply sloping land that rises to a vegetated



crown seen in silhouette against the sky. Small cleared areas associated with the Quarantine Station as well as Norfolk Island Pines are visible.

The left part of the background comprises open water of Sydney Harbour and the Pacific Ocean. The open water entrance to Sydney Harbour, often referred to as ‘the heads’, is the main part and focus of this part of the view.

**Tenacity step 1: Assess the view to be affected**

Is water present, and to what extent	Yes, water in the form of Manly Cove, North Harbour, the Pacific Ocean and the heads is present. It is prominent in the background of the view.
Are icons or other high value elements present, and to what extent	Yes, icons in the form of Manly Cove, North Harbour, the Pacific Ocean, the heads and North Head are present. As noted, they are prominent in the view. The prominent and heavily developed, linear foreshore of Manly Point may also be considered high value due to the contribution it makes to the overall visual character of Manly.
Is water, icons or high value elements seen whole?	Icons and high value elements are seen in part.
Assessed value of the view, and why	High. The view contains multiple prominent iconic and high value elements. In particular, the view comprises a relatively rare, expansive view of the highly valuable heads.

**Tenacity step 2: Consider from what part of the property the views are obtained**

Is this a front, rear or side view?	This part of the view is obtained obliquely across a side boundary.
Is this a sitting or standing view?	This is a standing view. It is reasonable to assume that much of this view may also be obtained from sitting positions.

**Proposed view**



Figure 20 2/37 Fairlight St, proposed view

Source: Virtual Ideas

**Tenacity step 3: Assess the extent of the impact**

The proposal represents the replacement of the existing buildings within the site and their associated open space in the foreground of the view.

As with the existing building within the site its geographic extent and size make it prominent in the view.

In doing so its main view impact is to block visibility of the upper parts of houses and apartment buildings and their associated trees and vegetation in Fairlight in the midground and a very small part of North Harbour to the bottom right of ‘One Lauderdale’ in the background.

The proposal will not impact the background. Critically, it will not block any part of the heads.

From what room is the view obtained	Balcony
Assessed level of impact, and why	<p>Minor.</p> <p>While it is prominent in the view, the proposal will:</p> <ul style="list-style-type: none"> <li>• block part of a view obtained from a standing position obtained obliquely across a side boundary</li> </ul>

	<ul style="list-style-type: none"><li>• not impact the main view to North Harbour obtained from the balcony and apartment in general in a more southerly direction obtained across its rear boundary parallel with the alignment of its side boundaries</li><li>• blocks a very small part of North Harbour</li><li>• does not block any part of Manly Cove, the Pacific Ocean, the heads or North Head</li><li>• prominent and heavily developed, linear foreshore of Manly Point</li><li>• does not block the prominent and heavily developed, linear foreshore of Manly Point</li><li>• maintains the visual character of the view</li><li>• not unacceptably diminish the ability of the viewer to sufficiently understand and appreciate the nature of and attractive or significant elements within the view.</li></ul>
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## 7.4 3/37 Fairlight St

A series of three views have been provided for this dwelling to illustrate differences in the view with regards to the ability to see water depending on the direction of the view.

### Existing view – 1 of 3



Figure 21 View 1 of 3 from 3/37 Fairlight Street (balcony middle) facing south-east

Source: Virtual Ideas

**Note:** the site is to the left



## Existing view – 2 of 3



Figure 22 View 2 of 3 from 3/37 Fairlight Street – location of viewpoint

Source: Virtual Ideas

**Note:** the site is to the left



## Existing view – 3 of 3



Figure 23 View 3 of 3 from 3/37 Fairlight Street – location of viewpoint

Source: Virtual Ideas

**Note:** the site is to the left

### Description of view

The foreground comprises the balcony railing and private landscaped open space associated with the dwelling, in particular the large spreading palm tree in the right of the view.

The midground comprises the existing dwelling and its surrounding open space within the site and the upper parts of nearby higher-rise apartment buildings.

In view 1 and 2 the background mainly comprises North Head between the nearby higher-rise apartment buildings and palm tree including its vegetated crown silhouetted against the sky. It also comprises part of the heavily developed, linear foreshore of Manly Point. Part of the Quarantine Station in the left background. A glimpse of a very small part of North Harbour is visible in the centre right background of the view just above the roof of the existing dwelling.

In view 3 the background is more balanced between North Head on the left and a glimpse of North Harbour, Sydney Harbour and the Eastern Suburbs to the right. The palm tree separates these two parts of the background, and if removed would likely open up views to a greater expanse of water.

Broader views across the rear boundary more perpendicular to its side boundaries are blocked by the property immediately behind. It is noted that a high level of amenity is

provided for the property by the relatively large, private landscaped open space in the form of a useable, level backyard.

**Tenacity step 1: Assess the view to be affected**

Is water present, and to what extent	Yes, water in the form of North Harbour and Sydney Harbour is present. It is seen as small parts in the background of the view.
Are icons or other high value elements present, and to what extent	Yes, icons in the form of North Harbour, Sydney Harbour and North Head are present. While North Harbour and Sydney Harbour are not prominent, North Head is prominent in the view. The prominent and heavily developed, linear foreshore of Manly Point may be considered high value due to the contribution it makes to the overall visual character of Manly. The glimpse of the Eastern Suburbs in the background also has value.
Is water, icons or high value elements seen whole?	Icons and high value elements are seen in part.
Assessed value of the view, and why	Moderate. While North Head is visible, it is critically is not seen in the context of expansive views of water and foreshore.

**Tenacity step 2: Consider from what part of the property the views are obtained**

Is this a front, rear or side view?	This part of the view is obtained obliquely across a side boundary.
Is this a sitting or standing view?	This is a standing view. It is reasonable to assume that much of this view may also be obtained from sitting positions.

## Proposed view – 1 of 3



Figure 24 View 1 of 3 from 3/37 Fairlight St, proposed view

Source: Virtual Ideas



Proposed view – 2 of 3



Figure 25 View 2 of 3 from 3/37 Fairlight St, proposed view

Source: Virtual Ideas

**Proposed view – 3 of 3**



Figure 26 View 3 of 3 from 3/37 Fairlight St, proposed view  
Source: Virtual Ideas

**Tenacity step 3: Assess the extent of the impact**

The proposal represents the replacement of the existing building within the site and its associated open space in the midground of the view.

As it occupies much of the midground of the view, its geographic extent and size make it prominent in the view.

In doing so its main view impact is to block visibility to parts of background of the view, including a large part of North Head and all of the heavily developed, linear foreshore of Manly Point. It also blocks the glimpse of a very small part of North Harbour is visible in the centre right background of the view just above the roof of the existing dwelling. However and critically, it retains the glimpse of North Harbour, Sydney Harbour and the Eastern Suburbs in the right of the background. The removal of existing vegetation also increases the extent of water visible.

From what room is the view obtained	Balcony (living room)
Assessed level of impact, and why	Moderate. While the proposal is prominent in the view and blocks much of the background of the view, including a large part of North Head and the glimpse of a very small part of North Harbour, it:

	<ul style="list-style-type: none"><li>• does not block part of a view obtained from a standing position obtained obliquely across a side boundary that is highly vulnerable to view impact due to its ground level position</li><li>• retains the glimpse of North Harbour, Sydney Harbour and the Eastern Suburbs in the right of the background obtained across the rear property boundary more perpendicular to its side boundaries</li><li>• retains part of North Head silhouetted against the sky.</li></ul>
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## 7.5 2/14 Clifford Street

### Existing view



Figure 27 View from 2/14 Clifford Street (living room) facing south-east

Source: Virtual Ideas

**Note:** the site is to the left

### Description of view

The foreground consists of the upper part of houses on the northern side of Clifford Street.

The midground mainly comprises the upper parts of houses and apartment buildings and their associated trees and vegetation in Fairlight. The higher-rise 'One Lauderdale' apartment building is dominant as a large scale built element in the left background of the view.

The combination of the upper parts of houses and 'One Lauderdale' truncate the left extent of the view.

The background comprises a large part of North Harbour and part of Sydney Harbour.

The tips of Cannae Point and Dobroyd Head and all of South Head are visible. Critically, the heads are visible in the centre background and are the main focus of the view. The Pacific Ocean is visible behind the heads.

### Tenacity step 1: Assess the view to be affected

Is water present, and to what extent	Yes, water in the form of North Harbour, Sydney Harbour, the heads and the Pacific Ocean is present. They are prominent in the background of the view.
Are icons or other high value elements present, and to what extent	Yes, icons in the form North Harbour, Sydney Harbour and the heads are present. As noted, they are prominent in the view. The Pacific Ocean is also a high value part of the view. While not as prominent as the other bodies of water, it is a noticeable part of the view.
Is water, icons or high value elements seen whole?	Icons and high value elements are seen in part.
Assessed value of the view, and why	High. The view contains multiple prominent iconic and high value elements. In particular, the view comprises a relatively rare, expansive view of the highly valuable heads.

### Tenacity step 2: Consider from what part of the property the views are obtained

Is this a front, rear or side view?	This part of the view is obtained obliquely across a side boundary.
Is this a sitting or standing view?	This is a standing view. It is reasonable to assume that much of this view may also be obtained from sitting positions.

## Proposed view



Figure 28 2/14 Clifford St, proposed view

Source: Virtual Ideas

### Tenacity step 3: Assess the extent of the impact

The proposal will not be visible in the view.

From what room is the view obtained	Balcony.
Assessed level of impact, and why	Negligible. The proposal will not be visible in the view

## 7.6 Summary

The following table provides a summary of the Tenacity assessment.

In summary, the main findings of the assessment are:

- as iconic water elements variously in the form Manly Cove, North Head, Sydney Harbour and the heads and their land / water interface are both visible and prominent, and other high value elements such as the Dobroyd Head and the Bondi Junction skyline are present, most views have a high value
- due to the absence of a prominent area of water, the view from 3/37 Fairlight Street has lesser value
- however, due to the presence of North Head this view had moderate value



- all assessed views are obtained obliquely across side and rear property boundaries from both standing and sitting positions within balconies are the rear of properties and from a standing and sitting positions
- all views apart from that from 3/37 Fairlight Street are obtained from upper levels
- the view from 3/37 Fairlight Street is obtained from a ground level
- due to being obtained obliquely across side and rear property boundaries the view are vulnerable to view impact
- furthermore, being from a ground level position level with adjoining land the view from 3/37 Fairlight Street is particularly vulnerable to view impact
- for most views the extent of view impact qualitatively assessed under Tenacity is minor
- while either noticeable or prominent in these views, it does not unreasonably block iconic or high value elements
- in particular, the majority of iconic water elements in the form Manly Cove, North Head, Sydney Harbour and the heads and their land / water interface are not blocked in these views
- due to it not being visible, the extent of impact on the view available from 2/14 Clifford Street is negligible
- the extent of impact on the view from 3/37 Fairlight Street is moderate primarily due to blocking most of North Head
- however, it noted that most of its vegetated silhouette is still visible, another view obtained across the rear property boundary more parallel to its side boundaries including Sydney Harbour and the heads is available and not blocked and the size and quality of its private landscaped open space in the form or a useable backyard provides a high level of visual amenity that in part helps to mitigate the loss of North Head in the background of the view.

Table 3 Summary of Tenacity assessment

View No.	Address	Tenacity step 1: Value of view	Tenacity step 2: Location of view	Tenacity step 3: Extent of impact
1.	2/31 Fairlight St	High	Balcony, standing and sitting position, upper level, oblique across a side and rear boundary	Minor
2.	3/31 Fairlight St	High	Balcony, standing and sitting position, upper level, oblique across a side and rear boundary	Minor
3.	2/37 Fairlight St	High	Balcony, standing and sitting position, upper level, oblique across a side and rear boundary	Minor
4.	3/37 Fairlight St	Moderate	Balcony, standing and sitting position, ground level, oblique across a side boundary	Moderate
5.	2/14 Clifford St	High	Balcony, standing and sitting position, upper level, oblique across a side and rear boundary	Negligible

## 8.0 Assessment against the planning framework

As it is of most relevance to view impact, this section focusses on assessment against Tenacity.

Nonetheless, where relevant, it also addresses

- The EP&A Act
- The MLEP 2013
- The MDCP 2011.

It is noted that the SEE is the primary source of assessment against those parts of the planning framework apart from Tenacity. As such, this assessment relies on and should be read together with the SEE.

### 8.1 Tenacity

#### 8.1.1 Step 4: Assess the reasonableness of the proposal that is causing the impact

As has been noted, the focus of this step of Tenacity is the reasonableness of the proposal. By association, this impacts acceptability of view impact and reasonableness of view sharing.

The two tests are:

1. **test 1:** compliance with planning controls
2. **test 2:** skilful design.

##### **Test 1: Compliance with planning controls**

Matters of non-compliance with planning controls are justified in the written clause 4.6 variation that accompanies the SEE.

##### **Test 2: Skilful design**

As is outlined in the separate design documentation supporting the DA the proposal has been informed by a comprehensive and detailed design process.

This involved site and context analysis, including consideration of view impact.

As has been noted, design options for the site are challenged by a number of factors, including:

- the long, narrow nature of the site which influences the consolidation of building massing in a linear form parallel to its side boundaries as opposed to distributing it across the site
- the steeply sloping nature of the site which influences the need for considerable earthworks to support development
- the proximity of development on adjoining properties which means that it may be more vulnerable to impact than would otherwise be the case with less density
- views being obtained obliquely across side, and to a lesser extent rear boundaries, which means they are more vulnerable to impact.

Due to this, any form of development of the site in accordance with that allowed under the height controls of the MLEP 2013 is likely to result in similar view loss impacts.

Nonetheless, responding to these challenges the proposal has adopted the deliberate strategy of achieving a height considerably less than what is enabled by the MLEP 2013 by

embedding floorspace within the slope of the site. a key finding of this analysis has been identification of the challenge posed by the steeply sloping nature of the site.

In addition, it also adopts other strategies to reduce view impact, including:

- clear stepping down on the site reflecting the natural fall of the land
- considerable overall and upper-level setbacks to Clifford Street to reduce view impact on adjoining land to the west which may obtain views to the east obtained obliquely across their side boundary
- large separation between the two parts of the proposal to also reduce view impact on adjoining land to the west which may obtain views to the east obtained obliquely across their side boundary
- creation of a built form that is similar to and as such compatible with that in the general context to reduce visual contrast and assist in integrating the proposal into the townscape
- articulation of elevations and the use of high-quality materials and neutral colours to mitigate visual impact.

Any further amendment to the scale and massing may compromise the ability to retain the same development potential and amenity for the applicant, in particular due to the combination of the long, narrow nature and steeply sloping nature of the site challenging the viability of alternative floor plans.

For example, to retain views to North Head currently available from 3/37 Fairlight Street a considerably greater separation distance would be required between buildings on the site. To maintain the large setback to Clifford Street, this would require the deletion of a large part of the southern building. Alternatively, this would require the redistribution of massing within this setback or upwards to meet maximum building height. This would result in other view impacts, and is considered a less desirable outcome.

As such, there are no other reasonable, practical alternative schemes that can deliver an outcome consistent with what is enabled by maximum building height under the MLEP 2013.

Overall, the proposal is considered to achieve the balance sought by Tenacity of providing the applicant with the same development potential and amenity and reducing the impact on the views of neighbours.



## 8.2 Environmental Planning and Assessment Act 1979

### 8.2.1 Section 4.15 'Evaluation'

- 1) Matters for consideration—general: In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application –
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

#### Assessment

This VIA provides a comprehensive and detailed assessment of the proposal's view impact. As such, it enables the consent authority to take into consideration these matters when evaluating the proposal.

It is noted that view impact is one of a large number and broad range of matters to be considered by a consent authority when evaluating a DA in accordance with section 4.15 'Evaluation' of the EP&A Act.

Relative weight is to be afforded to each of these matters.

As the Commonwealth Government has stated as part of the release of the National Housing Accord, housing is one of Australia's biggest current economic challenges. As a signatory to the National Housing Accord, delivery of a greater amount and choice of homes including affordable housing is a key NSW Government priority.

In particular, priority is to be given to delivery of these homes in 'well-located areas near transport, open spaces, schools, hospitals and community facilities' (NSW Government, 2024). As such, considerable weight should be given to delivery of a greater amount and choice of homes in well located locations.

In this regard, the following is noted:

- the site represents a rare, large, consolidated site that has considerable ability to deliver new, well designed and higher density housing
- the site has an excellent level of access to the strategic centre of Manly, which provides a range of services and facilities including direct access by public transport to the Sydney CBD
- the site benefits from other sources of amenity, being accessible to Sydney Harbour and its foreshores
- the site is located in an area that comprises existing higher-density development.

#### Compliance or consistency

The proposal is consistent with this section.

## 8.3 Manly Local Environmental Plan 2013

### 8.3.1 Section 2.3 Zone objectives and Land Use Table

The objectives of this section for Zone R1 General Residential are as follows:

- 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.

### Assessment

As has been noted, the proposal is permissible with consent in Zone R1 General Residential. Therefore, it is reasonable to expect the potential for this type and nature of development.

The objectives of this section do not address view impact.

### Compliance or consistency

The proposal is consistent with this section.

### 8.3.2 Section 4.3 Height of buildings

The objectives of this section are as follows (emphasis added):

- (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
- (b) to control the bulk and scale of buildings
- (c) to **minimise disruption to the following** –
  - (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)
  - (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
- (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.

### Assessment

The term 'minimise' is key to this section.

As was noted by Porter AJ in *Sultan Holdings Pty Ltd v John Fuglsang Developments*:

- 'Minimisation does not mean reduce to nothing or to something negligible, nor in this context is it to be examined in the abstract. The concept is relative to the situation. Assessments need to be made about the environs; and whether proposed measures for minimisation are appropriate given the situation'.

This was confirmed by panel members with respect to visual impact in their judgement in *Mount Wellington Cableway Company Pty Ltd v Hobart City Council and Others* [2022] TASCAT 128

- 'The requirement to avoid adverse impacts will also be something less than absolute, and will not require that impacts are eliminated. In respect to minimisation and mitigation, it is the result that will be the important consideration. Minimising and mitigating impacts cannot reasonably be seen to be an end in themselves, such that efforts to minimise or mitigate impacts results in a favourable exercise of the relevant discretion irrespective of the impact'.

Given the planning envelope established by the maximum building height, any form of development consistent with the built form typology envisaged by this control would have view impact.

Noting the constraints on massing imposed by the site's parameters, height has been distributed within the site to 'step down' the site in alignment with the natural slope of the land. This measure has the effect of further reducing view impact on nearby properties.

As such and on balance the proposal's height can be considered to minimise visual impact and disruption of views relative to its site and planning context.

### **Compliance or consistency**

The proposal is consistent with this section.

#### **8.3.3 Section 4.4 Floor space ratio**

The objectives of this section 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 Zone E1 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.

### **Assessment**

As has been noted, any form of development consistent with the built form typology envisaged for the site under the MLEP 2013 would have view impact similar to the proposal. In particular, this would involve blocking of views of North Head as a landscape feature.

While not complying with maximum floor space ratio, this floorspace is embedded in the slope of the land, does not generate non-compliance with maximum building height, results in a built form that is compatible with that of nearby land and is justified by a written clause 4.6 variation that accompanies the SEE.

### **Compliance or consistency**

The proposal is consistent with this section.

#### **Section 6.9 Foreshore scenic protection area**

The objective of this clause is to protect visual aesthetic amenity and views to and from Sydney Harbour, the Pacific Ocean and the foreshore in Manly.

Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore



- (b) measures to protect and improve scenic qualities of the coastline
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

### Assessment

As is shown in the photos and photomontages, the proposal protects all significant views of Sydney Harbour, the Pacific Ocean and the foreshore in Manly (as represented by the land / water interface) obtained from the assessed properties.

It is acknowledged that some loss of water will occur. However, the extent of loss of considered acceptable.

### Compliance or consistency

The proposal is consistent with this section.

## 8.4 Manly Development Control Plan 2011

Part 3, 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise), 3.4.3 Maintenance of Views of the MDCP 2011 is of relevance to view impact.

The objectives of this section are (emphasis added):

- Objective 1) To provide for **view sharing** for both existing and proposed development and existing and future Manly residents
- Objective 2) To **minimise disruption to views** from adjacent and nearby development and views to and from public spaces including views to the **city, harbour, ocean, bushland, open space and recognised landmarks or buildings** from both private property and public places (including roads and footpaths)
- Objective 3) To **minimise loss of views**, including accumulated view loss 'view creep' whilst **recognising development may take place in accordance with the other provisions of this Plan.**

The provisions are:

- a) The design of any development, including the **footprint** and **form of the roof** is to minimise the loss of views from neighbouring and nearby dwellings and from public spaces
- b) **Views between and over buildings** are to be maximised and exceptions to **side boundary** setbacks, including zero setback will not be considered if they contribute to loss of primary views from living areas
- c) Templates may be required to indicate the height, bulk and positioning of the proposed development and to assist Council in determining that view sharing is maximised and loss of views is minimised. The templates are to remain in place until the application is determined. A registered surveyor will certify the height and positioning of the templates
  - Note: DA assessment is to determine the extent of, and impact on views at eye height in a **standing position** (eye height is **1.6m above floor level**) from within **the main living areas (and associated terraces/balconies)** of the proposed and existing, adjacent and nearby developments, as well as public spaces. Refer to Figure 11 - View Loss Assessment Diagram.

- d) Planning Principle. The ultimate assessment of views and view loss in this plan must be in accordance the following planning principle established by the NSW Land and Environment Court as follows. The provision then copies the 4 steps in Tenaicty referred to later in this VIA
  - Note: In relation to the protection of views, LEP clause 4.3A also identifies specific locations on the LEP Height of Buildings Map where the height of the building (including the roof structure) must not exceed the highest level of the adjoining road frontage, generally at the crown of the road. Other height controls also apply to this land including wall and roof height and maximum number of storeys. See paragraph 4.1.2 of this plan.

### Assessment

- As required, assessment of view impact has been undertaken in accordance with Tenacity. While acknowledging view impact, this assessment has determined that view impact is considered to be acceptable and the nature of view sharing reasonable.

### Compliance or consistency

- The proposal is consistent with this section.

## 9.0 Conclusion

The proposal has an acceptable view impact on the following basis:

- for most assessed views the extent of view impact qualitatively assessed under Tenacity is minor
- while either noticeable or prominent in these views, it does not unreasonably block iconic or high value elements
- in particular, the majority of iconic water elements in the form Manly Cove, North Head, Sydney Harbour and the heads and their land / water interface are not blocked in these views
- due to it not being visible, the extent of impact on the view available from 2/14 Clifford Street is negligible
- the extent of impact on the view from 3/37 Fairlight Street is moderate primarily due to blocking most of North Head
- however, it noted that most of its vegetated silhouette is still visible, another view obtained across the rear property boundary more parallel to its side boundaries including Sydney Harbour and the heads is available and not blocked and the size and quality of its private landscaped open space in the form or a useable backyard provides a high level of visual amenity that in part helps to mitigate the loss of North Head in the background of the view
- due to being obtained obliquely across side and rear property boundaries, impacted views are vulnerable to view impact
- furthermore, being from a ground level position level with adjoining land the view from 3/37 Fairlight Street is particularly vulnerable to view impact
- matters of non-compliance with planning controls are justified in the written clause 4.6 variation that accompanies the SEE
- setting aside numerical non-compliance, the proposal results in a built form that is compatible with that of nearby land

- design options for the site are challenged by a number of factors, including the long, narrow nature of the site which influences the consolidation of building massing in a linear form parallel to its side boundaries as opposed to distributing it across the site
- due to this, any form of development of the site in accordance with that allowed under the height controls of the MLEP 2013 is likely to result in similar view loss impacts
- nonetheless, responding to these challenges the proposal has adopted the deliberate strategy of achieving a height considerably less than what is enabled by the MLEP 2013 by embedding floorspace within the slope of the site
- In addition, it also adopts other strategies to reduce view impact, including considerable overall and upper-level setbacks as well as separation distances to reduce the visual impact of scale and bulk and reduce view impact on neighbouring properties
- any further amendment to the scale and massing may compromise the ability to retain the same development potential and amenity for the applicant, in particular due to the combination of the long, narrow nature and steeply sloping nature of the site challenging the viability of alternative floor plans
- as such, there are no other reasonable, practical alternative schemes that can deliver an outcome consistent with what is enabled by maximum building height under the MLEP 2013
- overall, the proposal is considered to achieve the balance sought by Tenacity of providing the applicant with the same development potential and amenity and reducing the impact on the views of neighbours.

# Appendix A: View impact evidence

Virtual Ideas and CMS Surveyors

