

STATEMENT OF ENVIRONMENTAL EFFECTS

Proposed Residential
Flat Development

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

Suite 1, 9 Narabang Way Belrose NSW 2085

Phone: (02) 9986 2535 | Web: www.bbfplanners.com.au

NOTE: This document is Copyright. Apart from any fair dealings for the purposes of private study, research, criticism or review, as permitted under the Copyright Act, no part may be reproduced in whole or in part, without the written permission of Boston Blyth Fleming Pty Ltd, 1/9 Narabang Way Belrose, NSW, 2085.

Statement of Environmental Effects

Proposed Residential Flat Development



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

Greg Boston

B Urb & Reg Plan (UNE) MPIA
Boston Blyth Fleming Pty Ltd
(ACN 121 577 768)

Suite 1/9 Narabang Way
Belrose NSW 2085

Tel: (02) 99862535

December 2024

TABLE OF CONTENTS

1	Introduction.....	5
2	Site Analysis	8
2.1	Site Description and location.....	8
2.1.1	The Site	8
2.1.2	The Locality	12
2.1.3	Site Analysis	17
3	Description of Proposed Development.....	18
3.1	Details of the proposed development.....	18
4	Statutory Planning Framework	21
4.1	Manly Local Environmental Plan 2013.....	21
4.1.1	Zoning.....	21
4.1.2	Height of buildings	22
4.1.3	Floor space ratio	24
4.1.4	Heritage conservation.....	24
4.1.5	Earthworks.....	25
4.1.6	Stormwater management	25
4.1.7	Foreshore scenic protection area	25
4.1.8	Essential Services	26
4.2	Manly Development Control Plan 2013.....	26
4.2.1	Townscape (Local and Neighbourhood Centres).....	26
4.2.2	Heritage Consideration	27
4.2.3	Landscaping	27
4.2.4	Sunlight Access and Overshadowing	27
4.2.5	Privacy and Security	27
4.2.6	Maintenance of Views	28
4.2.7	Sustainability.....	28
4.2.8	Accessibility	28
4.2.9	Stormwater Management	29
4.2.10	Waste Management	29
4.2.11	Mechanical Plant Equipment	29
4.2.12	Safety and Security	29
4.2.13	Earthworks (Excavation and Filling)	29
4.2.14	Residential Built Form Controls Compliance Table.....	30
4.3	State Environmental Planning Policy (Resilience and Hazards) 2021	33
4.3.1	Remediation of Land.....	33
4.4	State Environmental Planning Policy (Biodiversity and Conservation) 2021	34
4.4.1	Sydney Harbour Catchment	34
4.5	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	34

4.6	State Environmental Planning Policy (housing) 2021	34
4.7	Matters for Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended	35
5	Conclusion	40

ANNEXURE 1 – CLAUSE 4.6 REQUEST – BUILDING HEIGHT

ANNEXURE 2 - CLAUSE 4.6 VARIATION REQUEST – FSR

1 Introduction

This Statement of Environmental Effects (SEE) has been prepared on behalf of Allen Group Developments Pty Ltd in support of a development application proposing the demolition of the existing structures and the construction of a residential flat development across the consolidated allotment building comprising 15 residential apartments and carparking for 35 vehicles accessed from the Clifford Avenue frontage. The application also includes the implementation of an integrated site landscape regime and all associated infrastructure.

We confirm that on 20th September 2023 the Land and Environment Court of New South Wales granted development consent DA 2022/0688 involving the demolition of existing site structures and construction of a residential flat building and associated works at 33-35 Fairlight Street, Fairlight. The approved developments relied on a car lift from the Fairlight Street frontage to provide vehicular access to the approved basement carparking. Such arrangement was suboptimal and to that extent the subject application seeks to remedy such circumstances through the consolidation of two additional allotments having frontage and address to Clifford Avenue from which at-grade vehicle access is able to be obtained to the basement car parking proposed. The general form and massing of the approved development is maintained where it adjoins Fairlight Street ensuring that the built form, streetscape and residential amenity outcomes afforded through approval of this previous scheme are not compromised.

Platform Architects, the project architect, have responded to the client brief to expand on this previous approval through the development of a contextually responsive building of exceptional quality with high levels of amenity for future occupants. In this regard, the scheme has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the development of this site having regard to the topography, height, scale, proximity, use and orientation of surrounding development.

This document demonstrates that the proposal will not give rise to unacceptable streetscape, foreshore scenic protection or residential amenity outcomes with the development increasing the supply of housing on a site ideally suited to increased residential densities given its proximity to the Manly Town Centre and the range of public transport options available. In addition to this SEE, the application is also accompanied by the following:

- Architectural Plans
- Survey
- Landscape Plans
- Traffic and Parking Assessment Report
- Construction Traffic Management Plan
- Accessibility Report
- BCA Compliance Report
- Acoustic Report

- Stormwater Management Plans
- Arboricultural Impact Assessment Report
- Geotechnical Report
- Visual Impact Assessment
- Heritage Impact Assessment Report
- Waste Management Plan
- QS Report
- Design Verification Statement
- ADG Compliance Table
- BASIX and NatHERS Certificates

In preparation of this document, consideration has been given to the following:

- Environmental Planning and Assessment Act 1979 (**EP&A Act**),
- Manly Local Environmental Plan 2013 (**MLEP 2013**),
- Manly Development Control Plan 2013 (**MDCP 2013**),
- State Environmental Planning Policy (Sustainable Buildings) 2022,
- State Environmental Planning Policy (Biodiversity and Conservation) 2021,
- State Environmental Planning Policy (Resilience and Hazards) 2021,
- State Environmental Planning Policy (Housing) 2021), and
- The Apartment Design Guide (**ADG**).

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15(1) of the EP&A Act. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- The accompanying plans depict a high quality and contextually appropriate built form outcome that responds to adjacent and nearby development and the surrounding environment. The proposed development is a suitable design solution in light of the zoning of the site and the slope of the land.
- The apparent height and bulk of the proposed development is compatible with that of surrounding development, and consistent with the desired future character of the locality.

- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, we have formed the considered opinion that most observers would not find the apparent size of the proposed development offensive, jarring or unsympathetic in the streetscape context.
- Whilst the proposal requires the consent authority to give favourable consideration to a variation to the building height and floor space ratio development standards, strict compliance has been found to be unreasonable and unnecessary in this instance as the development is otherwise consistent with the objectives of the development standards and sufficient environmental planning grounds exist to support the variation (as outlined in the attached Clause 4.6 variation requests).
- The areas of non-compliance with the dwelling density, side boundary setback and wall height controls prescribed by MDCP 2013 have been acknowledged and appropriately justified having regard to the associated objectives. Such variations succeed pursuant to section 4.15(3A)(b) of the EP&A Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.
- The proposal will provide a notable increase to the supply of premium housing on a site ideally suited to increased residential densities.
- The site is assessed as suitable for the proposal having regard to the relevant considerations pursuant to the Chapter 4 - Design of residential apartment within SEPP (Housing) 2021 and the Apartment Design Guide (ADG).

2 Site Analysis

2.1 Site Description and location

2.1.1 The Site

The site is comprised of the following land holdings:

- Lot 9 in Section B in DP 3742 (33 Fairlight Street, Fairlight)
- Lot 8 in Section B in DP 3742 (35 Fairlight Street, Fairlight)
- Lot 20 in Section B in DP 3742 (10 Clifford Avenue, Fairlight)
- Strata Plan SP 20752 (12 Clifford Avenue, Fairlight)

The consolidated site is highlighted in the aerial image in Figure 1 below.



Figure 1: Aerial photograph of consolidated development site

The consolidated allotment is irregular in shape, with a 30.48m wide frontage to Fairlight Street to the north and Clifford Avenue to the south, a depth of approximately 80 metres and total combined area of 40.235m and a total area of 2352m². The western boundary of 12 Clifford Avenue is irregular in shape. The site slopes from the Fairlight Street boundary to the Clifford Avenue boundary by approximate 22 metres.

Each allotment currently has residential accommodation of varying densities and form. Existing canopy trees on the site are predominantly exempt species and are in poor health. The physical and topographical characteristics of the site are depicted on the site survey extracts over page.

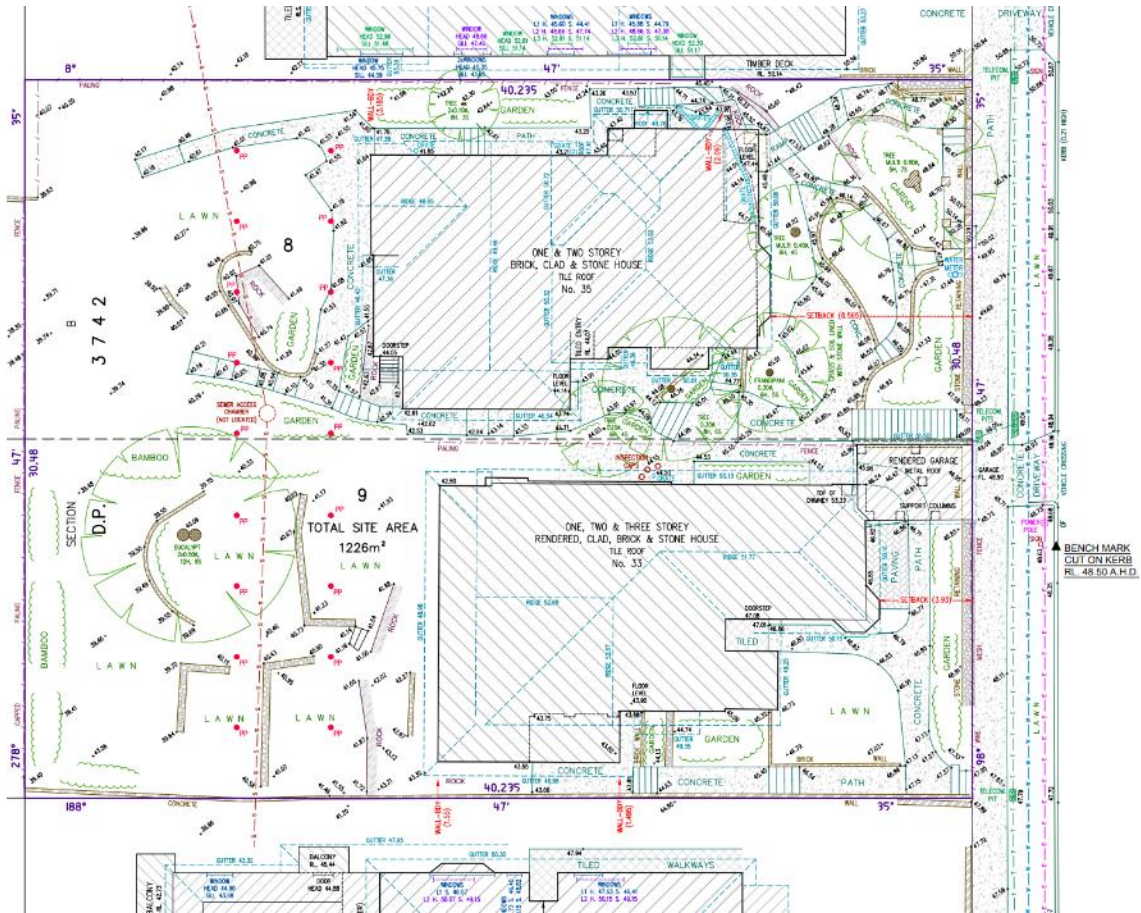


Figure 2: Site survey extract 33 and 35 Fairlight Street

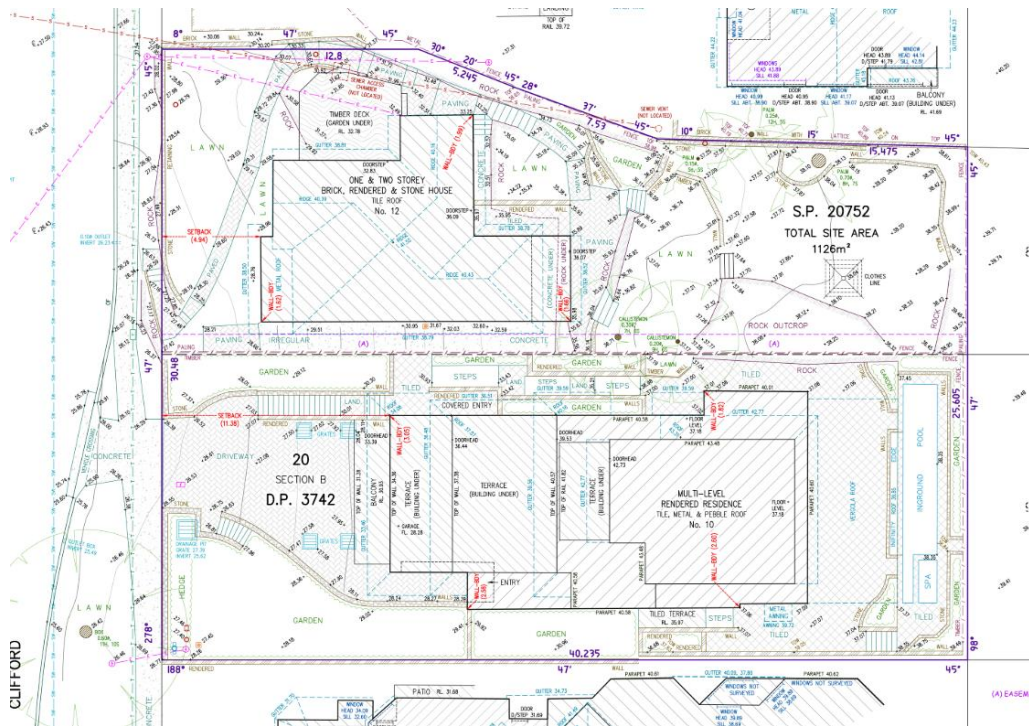


Figure 3: Site survey extract 10 and 12 Clifford Avenue



Figure 4: Subject property as viewed from Fairlight Street (east)



Figure 5: Subject property as viewed from Fairlight Street (west)

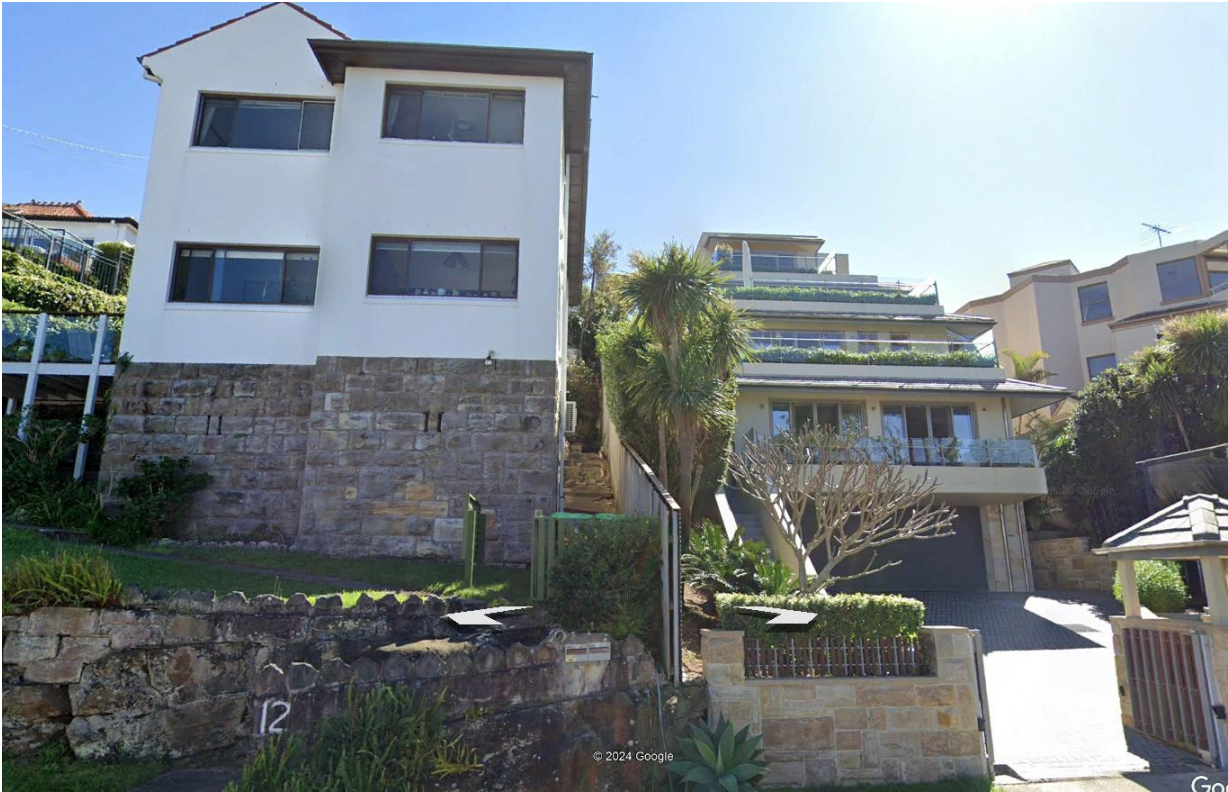


Figure 6: Subject property as viewed from Clifford Avenue

2.1.2 The Locality

The site is located within the R1 General Residential Zone under MLEP 2013 (Figure 4).

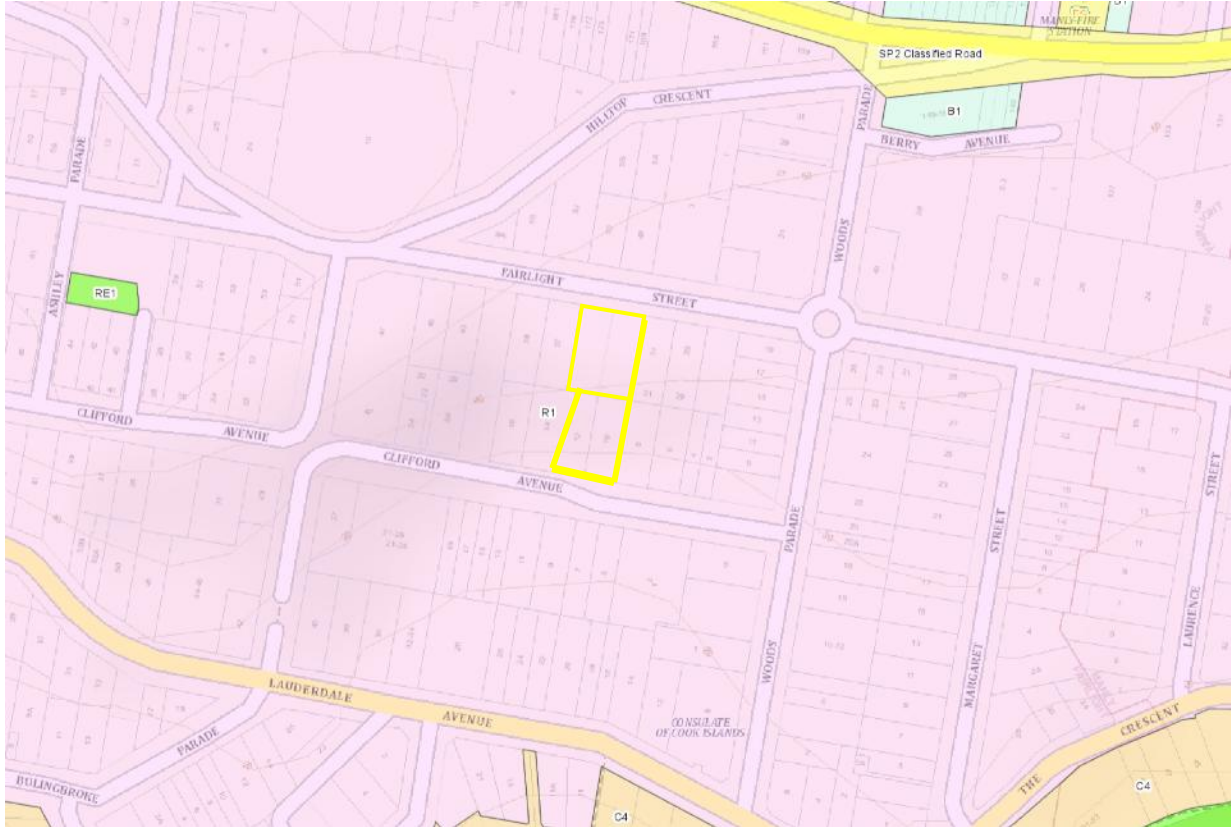


Figure 7: Extract of Zoning Map

The surrounding area comprises residential development of varying scale, density, age and architectural style.

A visual representation of the surrounding development, including development in the wider R1 zone is shown in Figures 8 to 15.



Figure 8: Development to the east of the subject property on Fairlight Street



Figure 9: Development to the west of the subject property on Fairlight Street



Figure 10: Development to the north-east of the subject property



Figure 11: Development to the north-west of the subject property



Figure 12: View of Fairlight Street as seen from the east



Figure 13: Development on the northern side of Clifford Avenue



Figure 14: View looking west past subject site on Clifford Avenue



Figure 15: View looking east past subject site on Clifford Avenue

2.1.3 Site Analysis

Detailed site analysis has been undertaken by Platform Architects to form the basis of the proposal now before Council. A Site Analysis Plan is included in the architectural drawings set accompanying this application, an extract of which is provided in Figure 16, below.

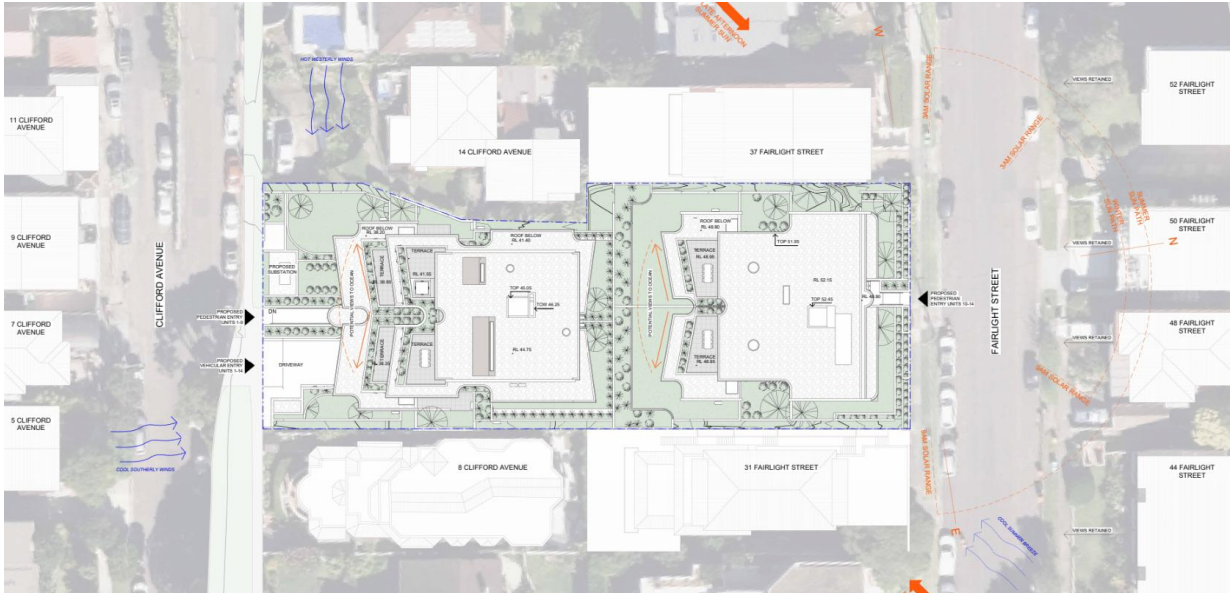


Figure 16: Site Analysis Plan by Platform Architects

The relationship of the proposed development to the adjacent sites provides for appropriate and anticipated built form separation. The development does not result in any unacceptable impacts upon the amenity of surrounding developments and is complementary and compatible in the streetscape context.

3 Description of Proposed Development

3.1 Details of the proposed development

The proposed development is depicted on the following architectural plans prepared by Platform Architects:

NUMBER	Sheet Name	ISSUE	DATE
DA0000	Cover Page	A	05/12/2024
DA0050	Site Analysis	A	05/12/2024
DA0100	Site Plan	A	05/12/2024
DA0400	Demolition Plan	A	05/12/2024
DA0500	Excavation Plan	A	05/12/2024
DA1000	Ground Floor Clifford Ave	A	05/12/2024
DA1001	Level 1 Clifford Ave	A	05/12/2024
DA1002	Level 2 Clifford Ave	A	05/12/2024
DA1003	Level 3 Clifford Ave	A	05/12/2024
DA1004	Level 4 Clifford Ave + Ground Floor Fairlight St	A	05/12/2024
DA1005	Level 5 Clifford Ave + Level 1 Fairligh St	A	05/12/2024
DA1006	Roof Plan Clifford Ave + Level 2 Fairlight St	A	05/12/2024
DA1007	Level 3 Fairlight St	A	05/12/2024
DA1008	Roof Plan	A	05/12/2024
DA1950	Adaptable & Post-Adaptation Floor Plan	A	05/12/2024
DA2000	North and South Elevations - Fairlight St Pavilion	A	05/12/2024
DA2001	North and South Elevations - Clifford Ave Pavilion	A	05/12/2024
DA2002	East Elevation	A	05/12/2024
DA2003	West Elevation	A	05/12/2024
DA3000	Sections AA	A	05/12/2024
DA3001	Sections BB	A	05/12/2024
DA3002	Sections CC	A	05/12/2024
DA3003	Sections DD	A	05/12/2024
DA4000	Window Schedule	A	05/12/2024
DA4001	Window Schedule	A	05/12/2024
DA5000	External Finishes Schedule	A	05/12/2024
DA5100	GFA Summary 1/2	A	05/12/2024
DA5101	GFA Summary 2/2	A	05/12/2024
DA5200	Open Space Summary	A	05/12/2024
DA5201	Open Space Summary	A	05/12/2024
DA5202	Landscaping Summary	A	05/12/2024
DA5203	Landscaping Summary	A	05/12/2024
DA5300	Shadow Diagrams	A	05/12/2024
DA5301	Shadow Diagrams	A	05/12/2024
DA5302	Shadow Diagrams	A	05/12/2024
DA5303	Shadow Diagrams	A	05/12/2024
DA5400	Height Blanket Diagram	A	05/12/2024
DA5500	Views from the Sun Diagram - Sheet 1	A	05/12/2024
DA5501	Views from the Sun Diagram - Sheet 2	A	05/12/2024
DA5502	Views from the Sun Diagram - Sheet 3	A	05/12/2024
DA5503	Views from the Sun Diagram - Sheet 4	A	05/12/2024
DA5504	Views from the Sun Diagram - Sheet 5	A	05/12/2024
DA5505	Views from the Sun Diagram - Sheet 6	A	05/12/2024
DA5700	Streetscape View	A	05/12/2024

This application provides for the following built form and land use outcomes:

- Demolition of the existing site structures,
- Tree removal,
- Construction of 2 residential flat buildings comprising:
 - 13 x 3 bedroom apartments and 2 x 2 bedroom apartments,
 - carparking for 35 vehicles, comprising 31 residential and 4 visitor spaces, accessed via a driveway from Clifford Avenue,
- Internal lift and stair access,
- Landscaping, and
- Stormwater infrastructure,

The proposed development has been broken into two residential flat pavilions with the northern pavilion presenting as a single storey structure to Fairlight Street. The development then steps down the site in response to topography with another pavilion constructed adjacent to the Clifford Avenue front. Basement parking is accessed via Clifford Avenue. The buildings are appropriately articulated in both the horizontal and vertical planes.

Each unit is designed to take advantage of harbour views to the south, with access to sunlight maximised through skilful design encompassing clerestory windows and strategically placed courtyards.

The proposal features a refined and contextually responsive materials palette, as shown in the External Finishes Schedule by Platform Architects.

Consideration of the SEPP Housing Chapter 4 Design Principles and the assessment of the proposal's performance against the relevant criteria of the ADG is provided with the accompanying Design Verification Statement and ADG compliance table by Platform Architects.

The application is supported by detailed Visual Impact Assessments prepared by Urbaine Architecture and Ethos Urban that confirm that the proposal has been designed and sited to minimise impacts upon views currently enjoyed by surrounding properties. A view sharing outcome is achieved.

The residential flat buildings will sit in a landscaped setting, comprised of at-grade and upper level plantings, as shown on the Landscape Plans prepared by Paul Scrivener Landscape. Impact upon existing canopy trees is addressed in the Arboricultural Impact Assessment prepared by Ezi Grow.

The acceptability of the access, car parking and servicing arrangements are detailed within the accompanying Traffic and Parking Assessment Report prepared by Genesis Traffic with the proposal's acceptability in relation to accessibility addressed in the accompanying Access Assessment prepared by Accessible Building Solutions.

The proposal's readiness to comply with the relevant provisions of the BCA is detailed in the BCA Compliance Report prepared by Concise Certification.

Stormwater is to be collected from the site, directed to the required on-site detention and filtration systems and piped to Clifford Avenue. The proposed stormwater management solution developed for the site is detailed in the Stormwater Plans prepared by JN Engineers.

The application is supported by an Acoustic Report by Pulse White Noise Acoustics Pty Ltd that provides a series of detailed recommendations to ensure that the acoustic amenity of future occupants is maximised and that any impacts to adjoining properties associated with mechanical plant is minimised.

The suitability of the proposal with regard to the local heritage significance of the stone kerbing within the adjacent road reserve is considered and positively confirmed in the Heritage Impact Statement prepared by Architectural Projects Pty Ltd.

The application is supported by a BASIX Certificate and a NatHERS Certificate prepared by Credwell Energy Pty Ltd, confirming that the building performs well with regard to sustainability and meets and/or exceeds relevant industry standards.

Finally, the application is supported by a Waste Management Report prepared by Senica Consulting Group detailing how waste is to be managed during demolition, construction and throughout the life of the development.

4 Statutory Planning Framework

The following section of the report will assess the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15 of the EP&A Act, as amended. Those matters which are required to be addressed are outlined, and any steps to mitigate against any potential adverse environmental impacts are discussed below.

4.1 Manly Local Environmental Plan 2013

An assessment of the relevant provisions of MLEP 2013 is undertaken, below.

4.1.1 Zoning

MLEP 2013 applies to the subject site and this development proposal. The subject site is located within the R1 General Residential zone and the proposed residential flat building is permissible with consent.

The proposal is consistent with the stated objectives of the R1 General Residential zone, as follows:

- *To provide for the housing needs of the community.*

Comment: The proposed development comprises 15 residential apartments that will positively contribute to housing supply in the Fairlight area and provide additional housing for the Northern Beaches community.

- *To provide for a variety of housing types and densities.*

Comment: The proposed development will complement the existing supply of housing within the R1 zone, providing a premium housing product that takes advantage of available views towards the harbour. The proposed development provides a mix of generously proportioned 2 and 3 bedroom apartments.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment: This objective is not applicable as the application proposes residential/housing development.

Accordingly, there is no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

4.1.2 Height of buildings

Pursuant to the Height of Buildings Map of MLEP 2013, the site has a maximum building height limit of 8.5m.

The objectives of this control are as follows:

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (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 environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses*

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

I note that We note that Council has adopted the interpretation of ground level (existing) as that established in the matter of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* where at paragraphs 73 and 74 O'Neill C found:

73. The existing level of the site at a point beneath the existing building is the level of the land at that point. I agree with Mr McIntyre that the ground level (existing) within the footprint of the existing building is the extant excavated ground level on the site and the proposal exceeds the height of buildings development standard in those locations where the vertical distance, measured from the excavated ground level within the footprint of the existing building, to the highest point of the proposal directly above, is greater than 10.5m. The maximum exceedance is 2.01m at the north-eastern corner of the Level 3 balcony awning.

74. The prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.

Whilst the bulk of the development is maintained below the 8.5m maximum building height, minor elements of the proposal protrude above the height plane as depicted in the following height blanket diagram.

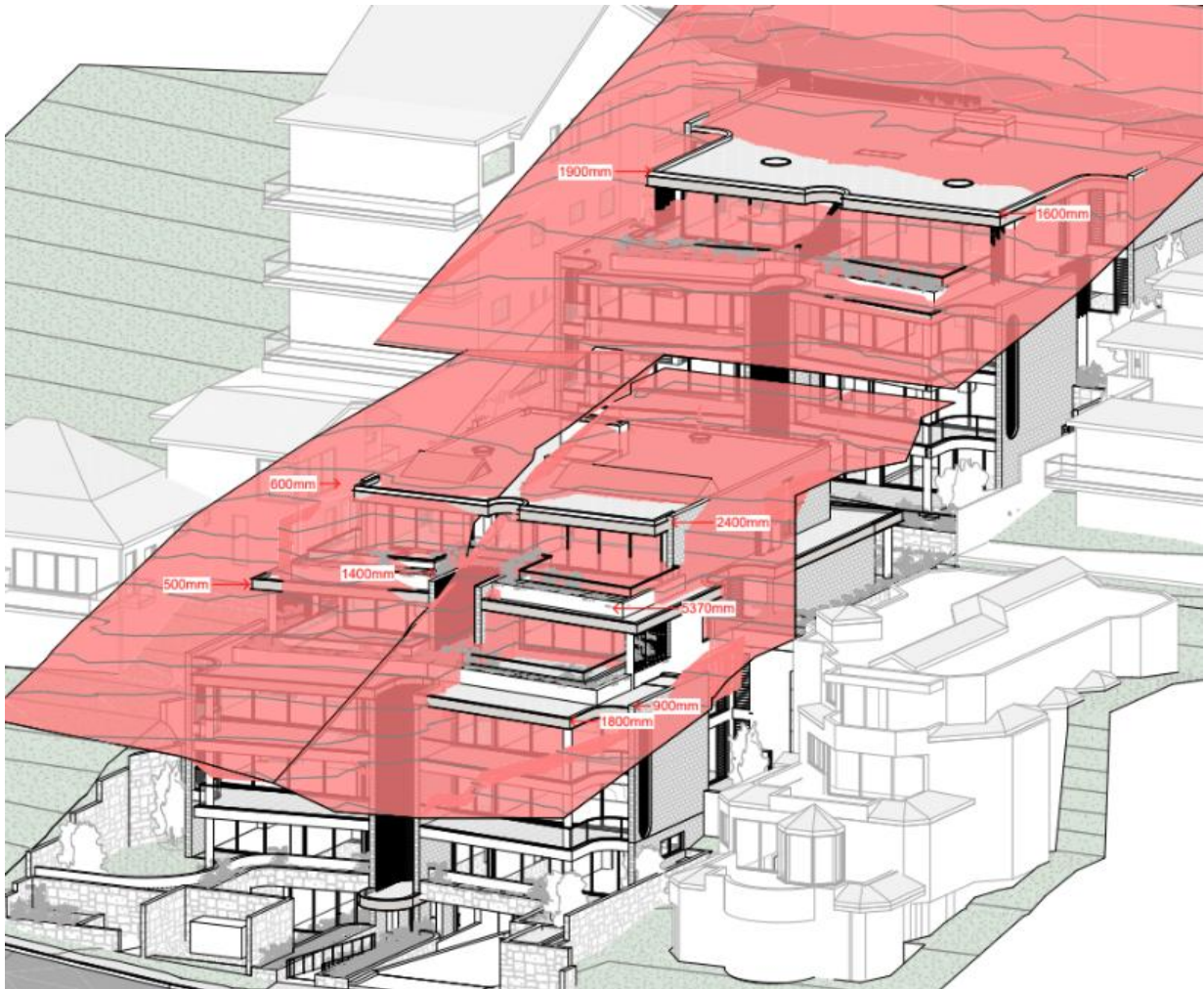


Figure 17: building height blanket diagram depicting building height breaching elements

The breaches range from between 500mm (5.8%) and 5.37 metres (63.1%).

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Having regard to these provisions, strict compliance has been found to be unreasonable and unnecessary having regard to the particular circumstances of the case including the ability to satisfy the objectives of the zone and the objectives of the development standard. Sufficient environmental planning grounds exist to support the variation proposed, as outlined in the accompanying clause 4.6 variation request at **ANNEXURE 1**.

4.1.3 Floor space ratio

Clause 4.4 of MLEP 2013 prescribes a maximum floor space ratio of 0.6:1 with respect to the subject site. The objectives of this clause are:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

The proposed development has a gross floor area of 2626.47m² and a floor space ratio of 1.12:1 resulting in a 1215.27m² (86.1%) non-compliance with the FSR development standard prescribed by clause 4.4 of MLEP 2013.

Strict compliance with the 0.6:1 FSR development standard has been found to be unreasonable and unnecessary having regard to the particular circumstances of the case including the ability to satisfy the objectives of the zone and the objectives of the development standard. Sufficient environmental planning grounds exist to support the variation proposed, as outlined in the accompanying clause 4.6 variation request at **ANNEXURE 2**.

4.1.4 Heritage conservation

Existing stone kerbing located within the adjoining public road reserve is identified as an item of local heritage significance under the provisions of clause 5.10 of MLEP 2013. The proposed development is accompanied by a Heritage Impact Statement prepared by Architectural Projects Pty Ltd confirming that the proposed development will not have an adverse impact upon the heritage significance of this item.

4.1.5 Earthworks

The consent authority can be satisfied that the excavation proposed to accommodate the basement will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, consistent with the provisions of clause 6.2 of MLEP 2013.

4.1.6 Stormwater management

The consent authority can be satisfied that the proposed development—

- (a) has been designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and
- (b) includes on-site stormwater retention for use as an alternative supply to mains water, and
- (c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

As such, the consent authority can be satisfied that the proposal is consistent with the provisions of clause 6.4 of MLEP 2013.

4.1.7 Foreshore scenic protection area

Clause 6.9 of MLEP 2013 identifies matters that must be considered before consent is granted to the proposed development. These matters are considered, as follows:

- (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,*

Comment: The proposed development will not overshadow the foreshore. Further, as evident in the Visual Impact Assessment prepared to support this application, the proposed development will not result in any unreasonable impacts upon harbour views currently enjoyed by upslope properties.

- (b) *measures to protect and improve scenic qualities of the coastline,*

Comment: The proposed development is a high-quality architectural design response that will positively contribute to the scenic quality of the area.

- (c) *suitability of development given its type, location and design and its relationship with and impact on the foreshore,*

Comment: The proposed has been designed to sensitively respond to the natural topography of the land, with definitive steps in the built form that follow the slope of the site. The proposed development has also had appropriate regard for the amenity of adjoining properties, ensuring that resultant impacts upon sunlight, visual privacy and views are minimal and not unreasonable.

When viewed from the waterway, the proposed development will be seen to be complementary and compatible with surrounding residential development.

- (d) *measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment: The proposed development will not result in any conflict between land-based and water-based coastal activities.

The consent authority can be satisfied that the proposal is consistent with the objective and requirements of clause 6.9 of MLEP 2013.

4.1.8 Essential Services

Pursuant to clause 6.12 development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable vehicular access.*

The consent authority can be satisfied that these services will be available prior to occupation, and conditions of consent can be imposed in this regard.

4.2 Manly Development Control Plan 2013

4.2.1 Townscape (Local and Neighbourhood Centres)

The proposed development is consistent with the requirements and objectives of clause 3.1.1 of MDCP 2013, as follows:

- The proposed residential flat buildings have been designed to sensitively respond to the context of the site, to ensure that the bulk of the development does not detract from the scenic amenity of the area as seen from the street, nearby properties and the waterway.
- The development has a single storey presentation to Fairlight Street and a 3 storey stepped presentation to Clifford Avenue ensuring that the apparent size of the development is contextually appropriate.
- The front setbacks of the development is responsive to the setbacks of adjoining and nearby development, to positively contribute to the established streetscape setting.

- The proposed driveway access from Clifford Avenue has been designed as an integrated element of the development to ensure that the street frontage is not dominated by garages and parking areas.
- The proposed fencing is complementary to the existing streetscape and will not detract from the character of the street frontages.
- The garbage store is unobtrusive and has been integrated into the design of the development.

4.2.2 Heritage Consideration

Existing stone kerbing located within the adjoining public road reserve is identified as an item of local heritage significance under the provisions of clause 5.10 of MLEP 2013. The proposed development is accompanied by a Heritage Impact Statement prepared by Architectural Projects Pty Ltd confirming that the proposed development will not have an adverse impact upon the heritage significance of this item.

4.2.3 Landscaping

The application is supported by detailed Landscape Plans prepared by Paul Scrivener that demonstrate a highly considered landscape solution for the site. The landscaping complements the proposed architectural form and positively contributes to the amenity of the proposed development and the surrounding environment.

The proposed landscaping is consistent with the requirements and objectives of clause 3.3.1 of MDCP 2013.

4.2.4 Sunlight Access and Overshadowing

Clause 3.4.1.1 of MDCP 2013 prescribes that new development must not eliminate more than one-third of the existing sunlight accessing the private open space of adjacent properties between 9am and 3pm in midwinter. Further, clause 3.4.1.2 prescribes that the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for at least 4 hours between 9am and 3pm in midwinter.

The proposed development generally maintains existing levels of solar access to areas of private open space and windows to living rooms of adjoining dwellings during mid-winter, as shown on the Shadow Diagrams prepared by Platform Architects to support this application.

Adjoining properties have the benefit of rear northerly orientation with north facing windows continuing to receive compliant solar access.

4.2.5 Privacy and Security

The proposed dwellings are primarily oriented towards the harbour views available to the south, with minimal openings along the side elevations. Where windows are located along side elevations, the openings are narrow or are appropriately screened by louvres or landscaping.

Upper-level balconies are set further back from the side boundaries and comprise integrated planters to prevent downward overlooking of neighbouring dwellings.

The proposed development is consistent with the objectives and requirements of clause 3.4.2 of MDCP 2013.

4.2.6 Maintenance of Views

Views of the harbour are available in a southerly direction from the subject site and adjoining and nearby properties. For properties upslope to the north of the subject site, these views are obtained over the roof of the existing buildings on site and the roofs of neighbouring buildings to the east and west.

In order to minimise the impacts upon these views, the height of the proposed development presenting to Fairlight Street has been limited to single storey and the bulk of the new development has been generally maintained within the volume of the existing buildings on site.

Detail Visual Impact Assessment have been prepared by Urbaine Architectural and Ethos Urban to support this application, which demonstrates that the impacts to views currently enjoyed by properties upslope to the north of the site are acceptable. Further, in some instances, the extent of harbour views will be increased as a result of the proposed development.

In this respect, Council can be satisfied that the disruption of views from nearby properties has been reasonably minimised and that view sharing between properties is achieved, consistent with the objectives and requirements of clause 3.4.3 of MDCP 2013.

4.2.7 Sustainability

The design provides for sustainable development, utilising passive solar design principles, thermal massing and achieves cross ventilation to a complying number of dwellings within the development.

The application is supported by BASIX and NatHERS Certificates to confirm that the proposed development meets or exceeds necessary requirements and industry standards.

4.2.8 Accessibility

Clause 3.6.1 of MDCP 2013 requires all new development to meet the relevant requirements of the Disability (Access to Premises – Buildings) Standards 2010 and the BCA with respect to the design of equitable access. Further, at least 2 apartments (25% rounded up) within the development, including associated parking and access thereto, is to comply with the provisions of with AS4299 – Adaptable Housing.

The application is supported by an Access Report prepared by Accessible Building Solution that confirms compliance with the provisions of this clause.

4.2.9 Stormwater Management

Clause 3.7 of MDCP 2013 requires the management of stormwater to comply with the provisions of Council's *Water Management for Development Policy*.

Stormwater is to be collected from the site, directed to the required on-site detention and filtration systems and piped to Clifford Avenue. The proposed stormwater management solution developed for the site is detailed in the Stormwater Plans prepared by JN Engineers.

4.2.10 Waste Management

Clause 3.8 of MDCP 2013 requires all development to comply with the appropriate sections of Council's Waste Management Guidelines, with all development applications to be accompanied by a Waste Management Plan.

The application is supported by a Waste Management Report prepared by Senica Consulting Group detailing how waste is to be managed during demolition, construction and throughout the life of the development.

4.2.11 Mechanical Plant Equipment

The proposed lift overrun does not project above the dominant roof plane and is integrated into the design of the development. Plant equipment will be sited and maintained to prevent adverse acoustic impacts for future occupants of the development and adjoining properties.

The application is supported by an Acoustic Report by Pulse White Noise Acoustics Pty Ltd that provides a series of detailed recommendations to ensure that the acoustic amenity of future occupants is maximised and that any impacts to adjoining properties associated with mechanical plant is minimised.

The proposed development is consistent with the requirements and objectives of clause 3.9 of MDCP 2013.

4.2.12 Safety and Security

The proposed residential flat building has been designed to appropriately respond the CPTED design principles, providing an environment that is safe and secure for all future residents and visitors, consistent with the provisions of clause 3.10 of MDCP 2013.

4.2.13 Earthworks (Excavation and Filling)

The level of excavation proposed on the site is appropriate for the type of development proposed and in consideration of the slope of the land. The application is supported by a Geotechnical Investigation by JK Geotechnics Pty Ltd which has assessed and considered the subsurface conditions of the site and provides comments and recommendations in relation to excavation and hydrogeology, retention, footings, slabs on grade, engineered fill and aggressivity, to ensure that the development is undertaken safely, with minimal impact to the surrounding environment.

4.2.14 Residential Built Form Controls Compliance Table

A table demonstrating compliance with the relevant provisions of the DCP is detailed as follows:

Control	Requirement	Proposed	Compliance
Part 4 – Residential Development Controls			
4.1.1.1 Residential Density & Size	9.4 dwellings (D3 – 1 dwelling per 250m ²)	15 Dwellings The proposed exceedance does not detract from consistency with the objectives of this clause, with a variety of dwelling sizes proposed with high levels of internal amenity. The large consolidated nature of the property facilitates the residential density proposed.	Acceptable on merit
4.1.2.1 Wall Height	8m wall height given slope of the land	3 – 8.5 metres. Minor breaches with no adverse streetscape or residential amenity impacts. The majority of the building sits well below the maximum prescribed wall height control with the slope of the land contributing towards the non-compliant elements proposed.	Acceptable on merit
4.1.2.2 Number of storeys	2 storeys	2-4 storeys The proposed development has a single storey presentation to Fairlight Street and is stepped to respond to the slope of the land. The majority of the development is limited to 3 storeys in height, with a minor overlap occurring through the centre of the proposed building. The development is generally located below the 8.5m height limit prescribed by MLEP 2013 and the bulk and scale of the proposal is consistent with surrounding development.	Acceptable on merit

Control	Requirement	Proposed	Compliance
4.1.2.3 Roof Height	Pitched Roof: 2.5m (max.)	Compliant	Yes
	Parapet: 0.6m (max.)		Yes
4.1.4.1 Street Front Setbacks	Consistent with adjoining setbacks.	Front façade setback: 5.375m to Fairlight Street and between 8.685 and 9.99 m to Clifford Avenue. The proposed front setbacks are entirely consistent with the setbacks established by adjoining properties along both street frontages.	Yes
4.1.4.2 Side Setbacks	Setbacks to the side boundary must not be less than 1/3 of the wall height.	The majority of the development is compliant with the one third wall height control with minor areas of non-compliance appropriately compensated for with significantly greater setbacks than those required are provided.	No. Minor variations acceptable on merit.
	Window setback: 3.0m (min.)	All windows are setback at a minimum distance of 3.0m from the site setbacks.	Yes
4.1.4.4 Rear Setbacks	Rear setback: 8.0m (min.)	N/A	N/A
4.1.5.1 Minimum Total Open Space	Total Open Space = 55% of site area (min.)	Total Open Space = 1945m ² or 82% of the site area	Yes
	Landscaped Area = 35% of total open space (min.)	Landscaped Area = 1012m ² or 78% of required total open space	Yes
	Above ground = 40% of open space (max.)	Above Ground = 630.17m ² or 32% of total open space	Yes
	4 trees to be planted on site	6 trees proposed.	Yes

Control	Requirement	Proposed	Compliance
4.1.6.1 Parking Design and Location of Garages	The design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.	The basement parking has been appropriately integrated into the development, to minimise the visual impact of the parking in a streetscape context.	Yes
	Max. garage width = 6.2m	The width of the garage door is less than 6.2m.	Yes
	Residential Spaces: 23	Residential Spaces = 35 spaces	Yes
	Visitor Spaces: 4	Visitor Spaces = 4 spaces	Yes
4.1.6.4 Vehicular Access	All vehicles should enter and leave the site in a forward direction.	All vehicles will be able to enter and existing the site in a forward direction.	Yes
	Vehicular access and parking for buildings with more than 1 dwelling is to be consolidated within one location.	Vehicle access for the dwellings is consolidated into one access driveway.	Yes
4.1.6.6 Tandem, Stacked and Mechanical Parking Areas	The design location and management of parking facilities involving tandem, stacked and mechanical parking must consider the equitable access and distribution of parking spaces to all	The acceptability of the access, car parking and servicing arrangements are detailed within the accompanying Traffic and Parking Assessment Report prepared by Genesis Traffic with the proposal's acceptability in relation to accessibility addressed in the accompanying access report	Yes

Control	Requirement	Proposed	Compliance
	occupants and visitors to the building	prepared by Accessible Building Solutions.	
4.1.8 Development on Sloping Sites	<p>The design of development must respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.</p> <p>The application is to be supported by a Site Stability Report.</p>	<p>The proposed built form has been designed to step and follow the slope of the land. The development is largely maintained within the volume of existing development on the site and will not result in any adverse impacts upon the amenity of adjoining properties with respect to view loss.</p> <p>The application is supported by a Geotechnical Investigation by JK Geotechnics Pty Ltd, consistent with the provisions of this clause.</p>	<p>Yes</p> <p>Yes</p>
4.1.10 Fencing	In relation to open/transparent fences, height may be increased up to 1.5m where at least 30 percent of the fence is open/transparent for at least that part of the fence higher than 1m.	The height of the front fencing is stepped and does not exceed 1.5m in height.	Yes

4.3 State Environmental Planning Policy (Resilience and Hazards) 2021

4.3.1 Remediation of Land

Chapter 4 of SEPP (Resilience and Hazards) applies to all land and aims to provide for a state-wide planning approach to the remediation of contaminated land.

Clause 4.6(1)(a) of this policy requires the consent authority to consider whether land is contaminated. The site has been used for residential purposes for an extended period of time with no known prior land uses. In this regard, the potential for contamination is considered to be extremely unlikely.

The site is not identified as a contaminated site on the NSW EPA's list of notified sites, nor is it in the vicinity of any listed sites. The consent authority can be satisfied that the subject site is suitable for the proposed development.

As such, the proposed development is consistent with the provisions of Chapter 4 of this policy.

4.4 State Environmental Planning Policy (Biodiversity and Conservation) 2021

4.4.1 Sydney Harbour Catchment

The subject property is located within the Sydney Harbour Catchment and therefore, the provisions of Chapter 10 of this policy apply to this development. An assessment of the proposal against the relevant aims of the chapter has been undertaken, and the consent authority can be satisfied in this regard. Whilst referral to the Foreshores and Waterways Planning and Development Advisory Committee is at the discretion of Council, it is our opinion that referral is not warranted in the circumstances of this application.

4.5 State Environmental Planning Policy (Sustainable Buildings) 2022

This SEPP applies to the residential component of the development and aims to encourage sustainable residential development.

A BASIX Assessment accompanies the development application and demonstrates that the proposal achieves compliance with the BASIX water, energy and thermal efficiency targets.

4.6 State Environmental Planning Policy (Housing) 2021

Chapter 4 - Design of residential Apartment development within SEPP Housing applies to new residential flat buildings, the substantial redevelopment/refurbishment of existing residential flat buildings and conversion of an existing building to a residential flat building.

The proposed development is for the erection of a 4 storey residential flat building re containing 15 apartments. As per the definition of a 'Residential Flat Building' these provisions apply to the proposed development.

Clause 147(1)(a) of the SEPP requires any development application for residential flat development to be assessed against the design principles contained in Schedule 9. The proposal's compliance with the design quality principles is detailed in the accompanying Architect Design Verification Statement.

Pursuant to clause 147(1)(b) of the SEPP 65 in determining a development application for consent to carry out residential flat development the consent authority is required to take into consideration the Apartment Design Guide. In this regard an Apartment Design Guide compliance table is attached to the accompanying Architect Design Verification Statement.

4.7 Matters for Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the EP&A Act (as amended):

(i) *any environmental planning instrument*

The proposed residential flat building is permissible and consistent with the intent of the MLEP 2013 and MDCP 2013 as they are reasonably applied to the proposed works given the constraints imposed by the site's location, environmental and topographical characteristics.

(ii) *Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

There are no draft environmental planning instruments relevant to the proposed development.

(iii) *Any development control plan*

MDCP 2013 is applicable to this application and has been considered in detail in this report.

(iiia) *Any Planning Agreement that has been entered into under section 7.4 or any draft planning agreement that a developer has offered to enter into under Section 7.4, and*

N/A

(iv) *The Regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*

N/A

(v) *Any Coastal Zone Management Plan (within the meaning of the Coastal Protection Act 1979)*

N/A

(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,*

[The assessment considers the Guidelines (in italics) prepared by the Department of Planning and Environment in this regard].

Context and Setting

i. What is the relationship to the region and local context in terms of:

- *The scenic qualities and features of the landscape*
- *The character and amenity of the locality and streetscape*
- *The scale, bulk, height, mass, form, character, density and design of development in the locality*
- *The previous and existing land uses and activities in the locality*

These matters have been discussed in the body of this report.

ii. *What are the potential impacts on adjacent properties in terms of:*

- *Relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)*
- *visual and acoustic privacy*
- *views and vistas*
- *edge conditions such as boundary treatments and fencing*

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be acceptable with regard to SEPP 65 and the ADG.

Access, transport and traffic:

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *Travel Demand*
- *dependency on motor vehicles*
- *traffic generation and the capacity of the local and arterial road network*
- *public transport availability and use (including freight rail where relevant)*
- *conflicts within and between transport modes*
- *Traffic management schemes*
- *Vehicular parking spaces*

These issues have been discussed in detail in the report. The development provides adequate carparking facilities in conformity with the policy controls.

Public Domain

The proposed development will have no adverse impact on the public domain. Rather, the proposal will result in a significant enhancement of the public domain, by virtue of the high-quality architectural design solution proposed.

Utilities

This matter has been discussed in detail in the body of this report.

Flora and Fauna

The proposal will result in a significant improvement to the quality and quantity of landscaping across the site, providing increased habitat value for fauna.

Waste Collection

The application is supported by a Waste Management Report prepared by Senica Consulting Group detailing how waste is to be managed during demolition, construction and throughout the life of the development. *Natural hazards*

N/A

Economic Impact in the locality

The proposed development will generate temporary employment during construction. On-going employment will be provided through the employment of building and strata managers for the building and on-going maintenance requirements.

Site Design and Internal Design

i) *Is the development design sensitive to environmental considerations and site attributes including:*

- *size, shape and design of allotments*
- *The proportion of site covered by buildings*
- *the position of buildings*
- *the size (bulk, height, mass), form, appearance and design of buildings*
- *the amount, location, design, use and management of private and communal open space*
- *Landscaping*

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be minimal and within the scope of the general principles, desired future character and built form controls.

ii) *How would the development affect the health and safety of the occupants in terms of:*

- *lighting, ventilation and insulation*
- *building fire risk – prevention and suppression*
- *building materials and finishes*
- *a common wall structure and design*
- *access and facilities for the disabled*
- *likely compliance with the Building Code of Australia*

The proposed development will comply with the provisions of the Building Code of Australia as detailed within the accompanying report prepared by Concise Certification. The proposal complies with the relevant standards pertaining to health and safety and will not have any detrimental effect on the occupants.

Construction

i) *What would be the impacts of construction activities in terms of:*

- *The environmental planning issues listed above*
- *Site safety*

Normal site safety measures and procedures will ensure that no safety or environmental impacts will arise during construction.

(c) *The suitability of the site for the development*

- *Does the proposal fit in the locality*
- *Are the constraints posed by adjacent development prohibitive*
- *Would development lead to unmanageable transport demands and are there adequate transport facilities in the area*
- *Are utilities and services available to the site adequate for the development*
- *Are the site attributes conducive to development*

The adjacent development does not impose any unusual or impossible development constraints. The development will not cause excessive or unmanageable levels of transport demand.

The development responds to the topography and constraints of the site, is of adequate area, and is a suitable design solution for the context of the site.

(d) *Any submissions received in accordance with this act or regulations*

It is envisaged that Council will appropriately consider any submissions received during the notification period.

(e) *The public interest*

The proposed works are permissible and consistent with the intent of the LEP and DCP controls as they are reasonably applied to the proposed development. The development would not be contrary to the public interest.

5 Conclusion

The proposal is permissible and in conformity with the objectives of MLEP 2013 as they reasonably relate to this form of development on this particular site. The proposed development appropriately responds to the guidelines contained within the MDCP 2013 and the massing and built form established by nearby contemporary residential developments. The proposal satisfies the design quality principles contained within SEPP Housing and the design guidance within the Apartment Design Guide.

We confirm that on 20th September 2023 the Land and Environment Court of New South Wales granted development consent DA 2022/0688 involving the demolition of existing site structures and construction of a residential flat building and associated works at 33-35 Fairlight Street, Fairlight. The approved developments relied on a car lift from the Fairlight Street frontage to provide vehicular access to the approved basement carparking. Such arrangement was suboptimal and to that extent the subject application seeks to remedy such circumstances through the consolidation of two additional allotments having frontage and address to Clifford Avenue from which at-grade vehicle access is able to be obtained to the basement car parking proposed. The general form and massing of the approved development is maintained where it adjoins Fairlight Street ensuring that the built form, streetscape and residential amenity outcomes afforded through approval of this previous scheme are not compromised.

Platform Architects, the project architect, have responded to the client brief to expand on this previous approval through the development of a contextually responsive building of exceptional quality with high levels of amenity for future occupants. In this regard, the scheme has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the development of this site having regard to the topography, height, scale, proximity, use and orientation of surrounding development.

This document demonstrates that the proposal will not give rise to unacceptable streetscape, foreshore scenic protection or residential amenity outcomes with the development increasing the supply of housing on a site ideally suited to increased residential densities given its proximity to the Manly Town Centre and the range of public transport options available.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15(1) of the EP&A Act. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- The accompanying plans depict a high quality and contextually appropriate built form outcome that responds to adjacent and nearby development and the surrounding environment. The proposed development is a suitable design solution in light of the zoning of the site and the slope of the land.
- The apparent height and bulk of the proposed development is compatible with that of surrounding development, and consistent with the desired future character of the locality.

- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, we have formed the considered opinion that most observers would not find the apparent size of the proposed development offensive, jarring or unsympathetic in the streetscape context.
- Whilst the proposal requires the consent authority to give favourable consideration to a variation to the building height and floor space ratio development standards, strict compliance has been found to be unreasonable and unnecessary in this instance as the development is otherwise consistent with the objectives of the development standards and sufficient environmental planning grounds exist to support the variation (as outlined in the attached Clause 4.6 variation requests).
- The areas of non-compliance with the dwelling density, side boundary setback and wall height controls prescribed by MDCP 2013 have been acknowledged and appropriately justified having regard to the associated objectives. Such variations succeed pursuant to section 4.15(3A)(b) of the EP&A Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.
- The proposal will provide a notable increase to the supply of premium housing on a site ideally suited to increased residential densities.
- The site is assessed as suitable for the proposal having regard to the relevant considerations pursuant to the Chapter 4 - Design of residential apartment within SEPP (Housing) 2021 and the Apartment Design Guide (ADG).

Boston Blyth Fleming Pty Limited



Greg Boston

Director

ANNEXURE 1

CLAUSE 4.6 VARIATION REQUEST – HEIGHT OF BUILDINGS

Circulated separately

ANNEXURE 2

CLAUSE 4.6 VARIATION REQUEST – FLOOR SPACE RATIO

Circulated separately