

8 November 2024

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Your ref:
Our ref: KZDS/AJWS/3801183

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Dear Carl and William,

Development Application for 5 Lauderdale Avenue, Fairlight

We confirm that we have been engaged to review and advise on the development application (including all documents, plans and reports to be submitted with the application) for the proposed development of 5 Lauderdale Avenue, Fairlight (**the Development Application**).

The Mills Oakley Planning and Environment team, led by partner Anthony Whealy, is a leading, specialist team with extensive experience in the interpretation and application of environmental planning laws and policies and the development approval process. The team acts for and assists over a hundred clients each year to navigate the development approval process and obtain consent for their development. Anthony Whealy has experience acting for both small and large scale developers from the development concept phase through to negotiations with councils and running any subsequent negotiations or Court proceedings. The Mills Oakley team understands the regulatory framework and is able to provide commercial advice to assist in obtaining development consent. Due to the large number of development applications we review, the number of local Councils we deal with and the high number of land and environment court proceedings we act in, Mills Oakley is well placed to provide accurate, commercial advice regarding both a development proposal as well as the specific documents to be submitted with any application.

In our opinion, the Development Application is one which can and should be approved by Council.

The proposed development not only meets but enhances the objects of the relevant C4 Environmental Living Zone. The development is an attractive development which has been architecturally designed to complement the surrounding area. The FSR and height non-compliances are supported by sufficient environmental planning grounds and strict compliance with the relevant development standards has been shown to be unreasonable and unnecessary given the ability of the proposal to meet the objectives of both controls. The clause 4.6 written requests are robust documents which meet all the legal requirements of a clause 4.6 request. In our opinion, this proposed development should be approved in any merit assessment of the Development Application.

Documents reviewed

We confirm that we have been provided with a number of documents and plans which will be submitted to Northern Beaches Council (**Council**) along with a development application for the demolition of existing structures and construction of a residential flat building comprising 5 residential apartments and car-parking for 11 vehicles at 5 Lauderdale Avenue, Fairlight. We have reviewed and considered the documents for the purpose of preparing this letter. We note that

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we have reviewed and considered in particular detail the following:

- The Statement of Environmental Effects prepared by Boston Blythe Fleming Pty Ltd;
- The Clause 4.6 written request in relation to Building Height prepared by Boston Blythe Fleming Pty Ltd;
- The Clause 4.6 written request in relation to FSR prepared by Boston Blythe Fleming Pty Ltd;
- The Visual and View Impact Assessment prepared by Bonus and Associates;
- The Design Verification Statement prepared by Platform Architects.

Comments on Development Application

In our opinion, the proposed development is an attractive, high-end, architecturally designed development which provides much needed housing in the Manly/Fairlight area consistent with the existing and desired future character of the area.

The proposed development is not only consistent with the objectives of the C4 Environmental Living Zone but actively promotes and achieves those objectives. The proposed development is a low impact residential development which does not present any adverse effect on the special ecological, scientific or aesthetic values of the area and does not dominate the natural scenic qualities of the foreshore nor negatively impact the foreshore, any geological features or bushland; any impacts on stormwater runoff are minimised and the design has considered existing vegetation, topography and surrounding land uses (all objectives of the C4 Zone).

The high quality and contextually appropriate built form responds to adjacent and nearby development and the built form characteristics established by waterfront development within the local context.

The development has been specifically designed to complement the surrounding properties and natural forms and to sit comfortably within the foreshore strip as demonstrated by the comprehensive Visual and View Impact Assessment. The articulated building form and façade have been designed to complement the natural environment and cultural significance of the area.

Although the development is not strictly compliant with the height control in the Manly Local Environmental Plan 2013, this non-compliance is largely due to the steep decline towards the foreshore and, at the streetscape, the proposal is height compliant and presents as a two-storey form. Both height and density are compatible with the balance of waterfront development within the immediate context.

Importantly, the clause 4.6 written requests state that there are no adverse impacts from the height or FSR non-compliances and outline evidence supporting this, including evidence as to no adverse impacts in terms of shadowing, view loss or heritage impacts.

We have reviewed the clause 4.6 written requests from a legal perspective and confirm that both are robust legal documents which meet both the requirements of a clause 4.6 request as outlined in the *Environmental Planning and Assessment Act 1979* as well as recent case law which has considered the requirements of a clause 4.6 written request. In particular, Boston Blythe Flemming has demonstrated that there are sufficient environmental planning grounds to support both the height and FSR non-compliances.

We note that the development is fully compliant with all other controls.

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Conclusion

In our opinion the proposed development is one which is consistent with the objects of the C4 zone and will assist in providing a notable increase to the supply of premium housing on a site ideally suited to increased residential densities and which satisfies the design principles of residential apartment development. The attractive development will sit well within the broader area and can and should be approved by Council.

If you have any questions, please call Anthony Whealy on direct line +61 2 8035 7848 or Kate Garnock on direct line +61 2 9121 9038.

We look forward to working with you.

Yours sincerely



Anthony Whealy
Partner

Accredited Specialist — Local Government and Planning

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