



Land and Environment Court
New South Wales

Case Name: 30 Fairlight Pty Limited v Northern Beaches Council

Medium Neutral Citation: [2022] NSWLEC 1615

Hearing Date(s): 27 October 2022

Date of Orders: 01 December 2022

Decision Date: 1 December 2022

Jurisdiction: Class 1

Before: O'Neill C

Decision: The orders of the Court are:
(1) The applicant is granted leave to amend the application to rely on the plans listed under condition 1(a) of the conditions of consent at Annexure A.
(2) The appeal is upheld.
(3) Development Application No. 2021/2034 for the demolition of existing structures and construction of a residential flat building, at 30 Fairlight Street, Fairlight, is determined by the grant of consent, subject to the conditions of consent at Annexure A.
(4) The exhibits, other than Exhibits 1, A, F and H, are returned.

Catchwords: DEVELOPMENT APPLICATION – construction of a residential flat building – exceedance of the floor space ratio development standard – whether the bulk and scale of the proposal is consistent with the existing and desired streetscape character

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 8.7, 8.15
Environmental Planning and Assessment Regulation 2000, cl 55
Environmental Planning and Assessment Regulation 2021, Sch 6, cl 3

Land and Environment Court Act 1979, ss 34, 39
Manly Local Environmental Plan 2013, cl 1.2, 4.3, 4.4,
4.6
State Environmental Planning Policy No. 65 – Design
Quality of Residential Apartment Development, cl 4, 28

Cases Cited:

Cumming v Cumberland Council (No 2) [2021]
NSWLEC 117
Davies v Penrith City Council [2013] NSWLEC 1141
Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC
90
Gisona Pty Ltd v Northern Beaches Council [2020]
NSWLEC 1669
Initial Action Pty Ltd v Woollahra Municipal Council
(2018) 236 LGERA 256; [2018] NSWLEC 118
RebelMH Neutral Bay Pty Limited v North Sydney
Council [2019] NSWCA 130
STM 123 No. 7 Pty Ltd v Waverley Council [2020]
NSWLEC 1495
Wehbe v Pittwater Council (2007) 156 LGERA 446;
[2007] NSWLEC 827

Texts Cited:

Apartment Design Guide, NSW Department of Planning
Manly Development Control Plan 2013

Category:

Principal judgment

Parties:

30 Fairlight Pty Limited (Applicant)
Northern Beaches Council (Respondent)

Representation:

Counsel:
J Smith (Applicant)
S Patterson (Solicitor) (Respondent)

Solicitors:
McKees Legal Solutions (Applicant)
Wilshire Webb Staunton Beattie Lawyers (Respondent)

File Number(s):

2021/356650

Publication Restriction:

No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the

refusal of Development Application No. 2021/2034 for the demolition of an existing dwelling and construction of a residential flat building (the proposal) at 30 Fairlight Street, Fairlight (the site), by Northern Beaches Council (the Council).

- 2 The appeal was subject to conciliation on 8 April 2022, in accordance with the provisions of s 34 of the *Land and Environment Court Act 1979* (LEC Act). As an agreement was not reached, the conciliation conference was terminated, pursuant to s 34(4) of the LEC Act.

Issues

- 3 The Council's contentions can be summarised as:
 - The proposal should be refused due to its excessive gross floor area, reflected in the contravention of the FSR development standard, which is inconsistent with the existing and desired streetscape character.
 - The insufficient side setbacks of the proposal, which do not comply with the separation distances in the Apartment Design Guide (ADG) under Part 3F, result in visual privacy impacts on adjoining properties.
- 4 The Council's contentions raised in an earlier iteration of the Statement of Facts and Contentions regarding view sharing, overshadowing of adjoining properties, site isolation, the quantum and quality of the front setback, stormwater management, traffic and parking, and waste management, were not pressed in the hearing.

The site and its context

- 5 The site is legally known as Lot 50 in DP 705739. The site is rectangular in shape, with a southern frontage of 16.01m to Fairlight Street, and an area of 861.7m².
- 6 The site falls over 7m to Fairlight Street, with views to the south over North Harbour and environs.
- 7 The adjoining property to the west at 32 Fairlight Street is a single storey Federation cottage positioned above the street with a sandstone retaining wall on the street boundary, on a property with similar dimension to the site. The adjoining significantly larger property to the east is a three-storey residential flat

building which terraces up the hill, with a driveway positioned adjacent to the shared boundary.

- 8 Development in the vicinity of the site includes a seven-storey residential flat building at 22 Fairlight Street, a three-storey residential flat building over a basement level at 24 Fairlight Street, a two-storey residential flat building over basement level at 34 Fairlight Street, and high-rise residential buildings as a backdrop to the development fronting the high side of Fairlight Street.

The proposal is amended

- 9 The Environmental Planning and Assessment Regulation 2000 (EPA Regulation 2000) continues to apply to the application because the application was lodged with the Council on 2 November 2021, the Class 1 application was filed with the Court on 16 December 2021 and the appeal had not been determined at the commencement of the new regulation on 1 March 2022 (cl 3 of Sch 6 to Environmental Planning and Assessment Regulation 2021).
- 10 The Court granted the applicant leave to amend the application, to rely on an amended proposal, on 7 July 2022, subject to an order that the applicant pay the Council's costs thrown away as a result of the amendment, pursuant to s 8.15(3) of the EPA Act.
- 11 At the commencement of the hearing, the applicant sought the Court's leave to amend the application to rely on a further amended proposal, which raised the sill height of a window on the eastern elevation and showed a fence along the eastern boundary. The Court's leave was unopposed and granted. The amendments made to the proposal are minor within the meaning of s 8.15(3) of the EPA Act.
- 12 The Council, as the relevant consent authority under cl 55(1) of the EPA Regulation 2000, agreed to the amendment of the application and the amended application was lodged on the NSW planning portal on 27 October 2022.

The proposal

- 13 The application seeks consent for the demolition of all structures and construction of a three-storey residential flat building, comprising 5 three-

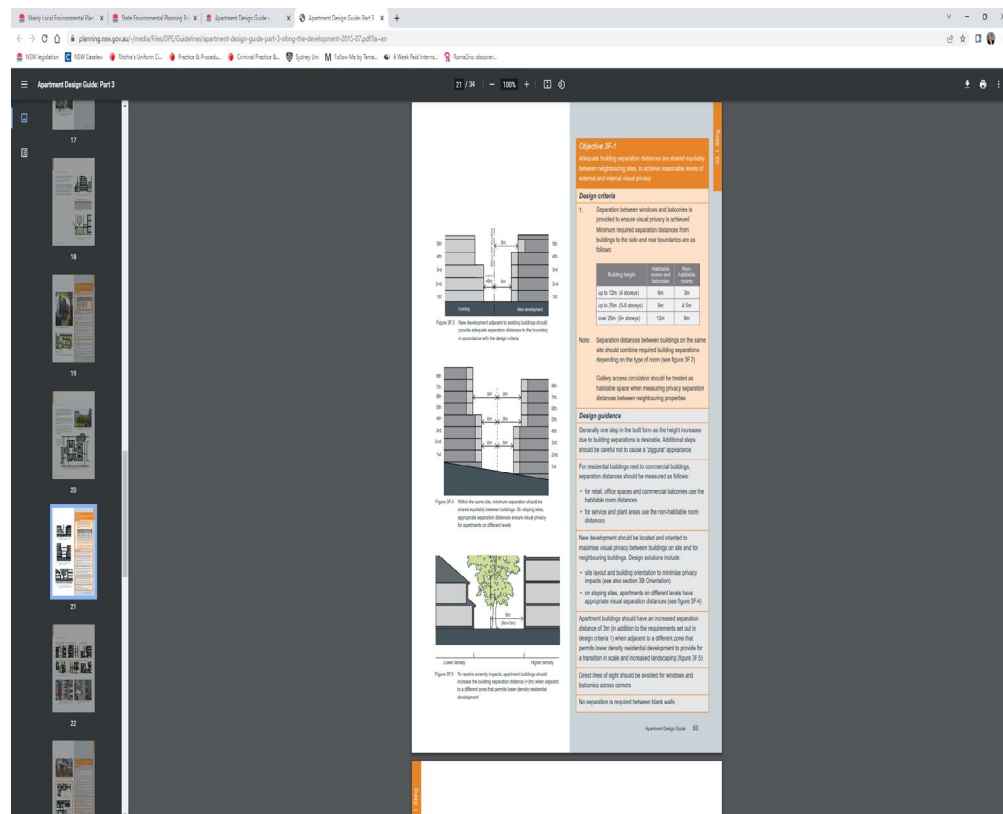
bedroom residential apartments, basement parking for 10 cars, stormwater infrastructure, new driveway crossing and driveway, and landscaping.

Planning framework

- 14 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) applies to the proposal at cl 4(1). The ADG must be taken into consideration in determining an application to which SEPP 65 applies, at cl 28(2)(c).

- 15 Part 3F of the ADG, Visual Privacy, relevantly includes the following:

“Visual privacy allows residents within an apartment development and on adjacent properties to use their private spaces without being overlooked. It balances the need for views and outlook with the need for privacy. In higher density developments it also assists to increase overall amenity.”



- 16 The relevant aims of Manly Local Environmental Plan 2013 (LEP 2013), at cl 1.2, are as follows:

to promote a high standard of urban design that responds to the existing or desired future character of areas

to ensure high quality landscaped areas in the residential environment

- 17 The site is zoned R1 General Residential under LEP 2013 and a residential flat building is a nominate permissible use with consent. The objectives of the R1 zone, to which regard must be had, are:
- 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.
- 18 The proposal complies with the height of buildings development standard of 11m (cl 4.3 of LEP 2013 and Height of Buildings Map Sheet No. HOB_003).
- 19 The floor space ratio (FSR) development standard for the site is 0.75:1 (cl 4.4 of LEP 2013 and Floor Space Ratio Map Sheet No. FSR_003). The proposal does not comply with the FSR development standard. The relevant objectives of the FSR development standard, at cl 4.4(1) of LEP 2013 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,
- 20 Clause 4.6 of LEP 2013 is in the compulsory terms of the Standard Instrument LEP.
- 21 Manly Development Control Plan 2013 (DCP 2013) applies to the site at 1.2.
- 22 The General Principles of Development at Part 3 of DCP 2013 include the following objectives for streetscape at 3.1:
- “Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.
 - Objective 2) To ensure development generally viewed from the street complements the identified streetscape.
 - Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.”
- 23 The objectives for privacy and security, at 3.4.2 of DCP 2013, are as follows:
- “Objective 1) To minimise loss of privacy to adjacent and nearby development by:

appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;

mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.

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

24 The wall height control, at 4.1.2.1 of DCP 2013, is 9.5m.

25 The objectives and “note” for setbacks and building separation, at 4.1.4 of DCP 2013, are as follows:

“Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

providing privacy...

defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces

Objective 4) To enhance and maintain natural features by:

accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees

ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks...

Note: In addition to the setbacks required in this plan, residential development subject to the Residential Apartment Code is subject to additional setback requirements for adequate building separation to achieve reasonable levels of privacy e.g. 12m separation between habitable rooms and balconies between buildings up to 4 storeys either on the same site or across a site boundary to a neighbouring building.”

26 The controls for side setbacks and secondary street frontages, at 4.1.2.2 of DCP 2013, include:

“a) Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building

b) Projections into the side setback may be accepted for unenclosed balconies, roof eaves, sunhoods, and the like, if it can demonstrate there will be no adverse impact on adjoining properties including loss of privacy from a deck or balcony

c) All new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries...

e) Side setbacks must provide sufficient access to the side of properties to allow for property maintenance, planting of vegetation and sufficient separation from neighbouring properties”

Public submissions

27 Three resident objectors gave evidence at the commencement of the hearing on site, one on behalf of a number of residents. Their concerns can be summarised as:

- The proposal is an overdevelopment of the site.
- The proposed front setback is insufficient and should relate to the front setbacks of the adjoining development.
- The proposed balconies facing the street will compromise the privacy of the front courtyard to an apartment within the adjoining residential flat building to the east.
- There is no justification for the exceedance of the floor space ratio (FSR) development standard.
- The proposal impacts on the amenity, both visual privacy and solar access, of adjoining development.
- The design of the proposal has not considered the future development of the adjoining property to the west. The future development of the adjoining property will result in the proposal not achieving the solar access requirements under the ADG.
- The proposal will overshadow the eastern setback and eastern elevation of the adjoining dwelling to the west.
- The proposal will interfere with drainage and run-off down the hill and towards the street.

Expert evidence

28 The applicant relied on the expert evidence of Andrew Minto (planning) and Ilia Kokalevski (landscaping).

29 The Council relied on the expert evidence of Adam Croft (planning) and Joseph Tramonte (landscaping).

30 The experts prepared joint reports: the planning experts' joint report was admitted into evidence as Ex 4, and the landscaping experts' joint report as Ex 5. The experts were not required to give oral evidence.

Submissions

- 31 The applicant relied on a recent development approval of a three-storey residential flat building over a basement on a site with an area of 559m² at 16 Upper Gilbert Street, Manly (*Gisona Pty Ltd v Northern Beaches Council* [2020] NSWLEC 1669), which has a FSR of 0.946:1 (where the FSR development standard is 0.75:1) and an eastern side setback ranging between 2.4m and 3m.
- 32 The Council submitted that the environmental planning grounds relied on by the applicant in the written request to contravene the FSR development standard (Ex 4) merely promote the benefits of carrying out the development as a whole and as such are not environmental planning grounds (*STM 123 No. 7 Pty Ltd v Waverley Council* [2020] NSWLEC 1495 at [82]-[91]); nor are they sufficient environmental planning grounds to justify the contravention of the development standard. The Council relied on the revised planning principle, “criteria for assessing impact on neighbouring properties” in *Davies v Penrith City Council* [2013] NSWLEC 1141 at [121], particularly the question as to the reasonableness of the proposal causing the impact.
- 33 The Council submitted that the “Note” under setbacks and building separation at 4.1.4 of DCP 2013 and quoted above at [25], are part of the provisions of the DCP and qualifies the requirements for setbacks and building separation for residential flat building development to which the ADG applies.
- 34 The parties agreed that the R1 zone objectives are met by the proposal.

Contravention of the FSR development standard

- 35 The proposal has a FSR of 0.9:1 (gross floor area of 776m²). The FSR development standard for the site is 0.75:1 (gross floor area of 646.3m²).
- 36 The applicant provided a written request seeking to justify the contravention of the FSR development standard (Ex 4).
- 37 Clause 4.6(4) of LEP 2013 establishes preconditions that must be satisfied before a consent authority or the Court exercising the functions of a consent authority can exercise the power to grant development consent (*Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018]

NSWLEC 118 at [13] “*Initial Action*”). The consent authority must form two positive opinions of satisfaction under cl 4.6(4)(a). As these preconditions are expressed in terms of the opinion or satisfaction of a decision-maker, they are a “jurisdictional fact of a special kind”, because the formation of the opinion of satisfaction enlivens the power of the consent authority to grant development consent (*Initial Action* [14]). The consent authority, or the Court on appeal, must be satisfied that the applicant’s written request has adequately addressed the matters required to be addressed by cl 4.6(3) and that the proposal development will be in the public interest because it is consistent with the objectives of the contravened development standard and the zone, at cl 4.6(4), as follows:

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

(b) the concurrence of the Secretary has been obtained.

38 On appeal, the Court has the power under cl 4.6(2) to grant consent to development that contravenes a development standard without obtaining or assuming the concurrence of the Secretary of the Department of Planning and Environment, pursuant to s 39(6) LEC Act, but should still consider the matters in cl 4.6(5) of LEP 2013 (*Initial Action* at [29]).

The applicant’s written request to contravene the FSR development standard

39 The first opinion of satisfaction required by cl 4.6(4)(a)(i) is that the applicant’s written request seeking to justify the contravention of a development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3) (see *Initial Action* at [15]), as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard

- 40 The applicant bears the onus to demonstrate that the matters in cl 4.6(3) have been adequately addressed by the written request in order to enable the Court, exercising the Council's consent authority functions, to form the requisite opinion of satisfaction (*Initial Action* at [25]). The consent authority must be satisfied that the applicant's written request has in fact demonstrated those matters required to be demonstrated by cl 4.6(3) and not simply that the applicant has addressed those matters (*RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [4]).
- 41 The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [42]-[51] ("*Wehbe*") and repeated in *Initial Action* [17]-[21]:
- the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
 - the underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
 - the underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
 - the development standard has been abandoned by the council;
 - the zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).
- 42 The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (*Initial Action* [22]).
- 43 The applicant's written request justifies the contravention of the FSR development standard on the basis that compliance is unreasonable or unnecessary, for the following reasons:
- The objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard.
 - The proposal is consistent with the predominant form of development located within the vicinity of the site. Of the 14 developments on the northern side of

Fairlight Street between Woods Parade and George Street, nine of the developments are residential flat buildings.

- The proposal complies with the height of buildings development standard of 11m.
- The proposal complies with the front setback controls. The front setback of the proposal increases at each level of the building. The proposed front setback is responsive to the setback of the adjoining dwelling to the east.
- The volume of the building envelope has been designed to have the least amenity impacts on adjoining development and to reduce the presentation of bulk and scale in the streetscape.
- The increased volume of the building envelope as a result of the exceedance of the FSR development standard does not result in any increase in amenity impacts on adjoining development.
- The proposal does not interrupt existing views across the site.

Environmental planning grounds

- 44 The grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature. Environmental planning grounds is a phrase of wide generality (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]) as it refers to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects of the Act (*Initial Action* at [23]).
- 45 The environmental planning grounds relied upon must be sufficient to justify contravening the development standard and the focus is on the aspect of the development that contravenes the development standard, not the development as a whole (*Initial Action* at [24] and *Cumming v Cumberland Council* (No 2) [2021] NSWLEC 117 at [78]). Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).
- 46 I accept the Council’s submission that the majority of the “environmental planning grounds” cited by the applicant in the written request merely promote the benefits of carrying out the development as a whole and cannot be characterised as environmental grounds that justify the contravention of the FSR development standard. Nevertheless, I am satisfied that the written request identifies an environmental planning ground sufficient to justify the

exceedance of the FSR development standard by referring to the proposal as being compatible with the existing bulk and scale of the built form in the context of the site, and that this can be properly described as an environmental planning ground within the meaning identified by his Honour in *Initial Action* at [23]. The development in the vicinity of the site, particularly on the high side of Fairlight Street, has a medium density residential character, as it consists of residential flat buildings of varying scales on a variety of allotment sizes, set in landscaped grounds, with high-rise residential towers in the background.

- 47 I am satisfied, pursuant to cl 4.6(4)(a)(i) of LEP 2013, that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3). The applicant's written request defends the exceedance of the FSR development standard as justified by an absence of amenity impacts on adjoining development and responsive to the existing character of the high side of Fairlight Street.

Whether the proposal is in the public interest because it is consistent with the objectives of the contravened development standard and the zone

- 48 The second opinion of satisfaction required under cl 4.6(4)(a)(ii) of LEP 2013 is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard that is contravened and the zone objectives. The consent authority must be satisfied that the development is in the public interest because it is consistent with these objectives, not simply that the development is in the public interest (*Initial Action* at [27]). The consent authority must be directly satisfied about the matters in cl 4.6(4)(a)(ii) (*Initial Action* at [26]).
- 49 I accept and adopt the agreement of the parties that the R1 zone objectives are met by the proposal.
- 50 I am satisfied that the proposal achieves the objectives of the FSR development standard, for the following reasons:
- The proposed building envelope is consistent with the existing streetscape character on the high side of Fairlight Street. The proposal will sit comfortably in the streetscape and be commensurate with the scale of development in the vicinity of the site, and with the proportions of the site.

- The side setbacks of the proposal, when viewed from the street, are 2.6m on the western side and 3.16m on the eastern side. The proposal is two storeys over a basement when viewed from Fairlight Street. The streetscape elevation and proportions in relation to the site are typical of residential development in the vicinity of the site. The side setbacks are adequate given the proportions of the site and the lack of amenity impacts on adjoining development. When viewed from the street, the proposal will complement the streetscape.
- The proposed building envelope is consistent with the future streetscape character of the high side of Fairlight Street. The proposed building envelope has a volume broadly envisaged by the development standards for the site, being a two-storey building over a basement, with an uppermost level setback from the façades below.

Consideration

51 I accept the agreement of the landscaping experts that the amended landscape plans (Ex H) successfully address the contentions raised by the Council regarding landscaping and the provision of deep soil areas; and that the landscaping proposed achieves the objectives for landscaping under SEPP 65 and the ADG and DCP 2013.

52 I am satisfied that the Council's contention that the proposal results in visual privacy impacts on adjoining development as a result of insufficient side setbacks is not made out, and the side setbacks achieve a reasonable level of privacy, for the following reasons:

- The apartments are orientated to the south, towards the view; the private open space of all apartments are at the front and rear of the site; no dwelling "faces" a side boundary and the windows in the side elevations are not the primary outlook from any of the apartments; privacy concerns on Levels 1 and 2 have been addressed by the position and treatment of those windows; the encroachment of the bedrooms on the Ground Floor and Level 1 into the side setbacks have no windows in those side elevations; and the balconies on Levels 1 and 2 include planters to prevent residents from being able to stand at the edge of balconies.
- The side elevations are articulated and modulated and designed so as to minimise loss of privacy to adjacent development and mitigate direct viewing between windows and outdoor living areas.
- I accept the planning experts' agreement that the proposal complies with the side setback controls under 4.1.4.2 of DCP 2013 and that full compliance with the ADG separation distances would render the site undevelopable without amalgamation with the adjoining property to the west.
- An increase in the side setbacks of the proposal, which the Council submitted should be somewhere between the DCP control and the (unachievable) ADG

separation distance, would not significantly alter the level of visual privacy between the site and adjoining properties.

- There is no minimum site area development standard or control in LEP 2013 or DCP 2013 for residential flat buildings in the R1 zone. Had the Council had a concern about residential flat building development in the R1 zone on sites that cannot achieve the ADG separation distances, the Council would have included a minimum site area development standard or control for residential flat building development as part of a strategic planning exercise.
- 32 Fairlight Street can be developed as a residential flat building with a similar spatial layout to the proposal. Neither the building envelope or the treatment of side façades of the proposal necessarily impinges on the development potential of the neighbouring property.
- Increasing the side setbacks of the proposal would preclude the proposed spatial layout of the Ground Floor and Level 1, with two north-south orientated long apartments side by side, separated by a party wall and the core, because of the relatively narrow width of the site. The proposed spatial layout achieves the desired southern outlook for all apartments, and apartments with generous access to natural light and ventilation. The proposed spatial layout locates all private open space on the upper two floors at the front and rear of the site, where it has the least impact on adjoining properties. The proposal is a superior outcome in terms of high amenity for all apartments when compared to a building envelope with increased side setbacks and two apartments per level.

- 53 The wall height control of 9.5m, at 4.1.2.1 of DCP 2013, is exceeded by 400mm at the front of the building. The proposal complies with the height of buildings development standard of 11m. I am satisfied that the proposal achieves the objectives for streetscape at 3.1 of DCP 2013 because the presentation of the proposal to the street is compatible with the scale of development on the high side of Fairlight Street and the landscape experts agreed that the proposal's presentation to the street is consistent with the landscape character of the locality.

Conclusion

- 54 I am satisfied that the applicant's written request to contravene the FSR development standard has adequately addressed the matters required to be demonstrated by subcl 4.6(3) of LEP 2013 and that the proposal will be in the public interest because it is consistent with the objectives of the FSR development standard and the objectives for development within the R1 zone.
- 55 I am satisfied that the side setbacks of the proposal do not result in unreasonable visual privacy impacts on adjoining properties.

Orders

56 The orders of the Court are:

- (1) The applicant is granted leave to amend the application to rely on the documentation listed under condition 1(a) of the conditions of consent at Annexure A.
- (2) The appeal is upheld.
- (3) Development Application No. 2021/2034 for the demolition of existing structures and construction of a residential flat building, at 30 Fairlight Street, Fairlight, is determined by the grant of consent, subject to the conditions of consent at Annexure A
- (4) The exhibits, other than Exhibits 1, A, F and H, are returned.

Susan O'Neill

Commissioner of the Court

Annexure A

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.