

12<sup>th</sup> June 2019

The General Manager  
Northern Beaches Council  
Po Box 882  
**MONA VALE NSW 1660**

Attention: Maxwell Duncan – Town Planner

Dear Mr Duncan,

**Request for review of determination - Section 8.2(1)(a) of the Act  
Development Application DA2018/1634  
construction of a new dwelling house and swimming pool  
16 Fairlight Crescent, Fairlight**

## **1.0 Introduction**

On 3<sup>rd</sup> April 2019, the subject development application was reported to the Northern Beaches Local Planning Panel (NBLPP) with a recommendation for approval subject to conditions. The minutes of such meeting confirmed that NBLPP resolved to not support the staff recommendation and refused the application for the following reasons:

- 1. The first (top) floor on the eastern side does not comply with the side setback provisions contained in the Manly DCP 2013 and bedroom 1 on that floor does not comply with the front setback provisions in the Manly DCP 2013.*
- 2. The Panel is not satisfied that the extent of the lift overrun is necessary.*

The formal Notice of determination expended on the policy justification for such determination as follows:

- 1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed lift overrun is inconsistent with the provisions of Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the Manly Development Control Plan.*

2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed front and east side setback are inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan.

This request for review is to be read in conjunction with the accompanying plans DA00(6) to DA11(6) and DA13(6) to DA18(6) and DA 21(6) prepared by Vaughan Architects. These amended plans address reasons for refusal of the original application with such amendments able to be summarised as follows:

- The first floor bedroom façade front boundary setback has been increased to a minimum of 6 metres;
- The first floor eastern side boundary setbacks have been increased;
- Integrated privacy blades have been introduced to the east facing first floor bedroom and ensuite windows to prevent direct overlooking opportunities between these rooms and the adjoining apartments within No. 14 Fairlight Crescent. These projecting elements sit below the roof eave and consequently have no impact in terms of overshadowing, building bulk or view loss;
- The lowering of the first floor wall and eave heights by 260mm;
- Deletion of the lift overrun through the use of a hydraulic lift;
- Minor elongation of the western façade by 850mm and a lowering of the overall wall and eave heights in this location by 260mm;
- Minor elongation of the northern facade of the rumpus room by 1000mm and a lowering of the overall wall and eave heights in this location by 260mm;
- Previous eastern boundary facing windows WF11, WF12, WF13 have been deleted;
- Windows WF6, WF7, WF8 and new window WF11 orientated to the south east through the adoption of integrated privacy blades to prevent direct overlooking opportunities between these rooms and the adjoining apartments within No. 14 Fairlight Crescent;
- Window WF10 changed to a highlight window with a sill height of 1600mm to maintain privacy;
- Window WF17 previously facing north changed to a west facing highlight window with a sill height at 1600mm to maintain privacy.

Given the nature of the amendments sought, which go directly to responding to the stated reasons for refusal of the application, Council can be satisfied that the request for review is appropriately made pursuant to section 8.2(1)(a) of the Act.

## 2.0 Claim for review

Having regard to the stated reasons for refusal of the application we respond as follows:

1. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed lift overrun is inconsistent with the provisions of Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the Manly Development Control Plan.*

Response: Whilst the proposed lift overrun was compliant with the height of buildings standard, we confirm that the proposed lift overrun has been deleted from the plans through the use of a hydraulic lift. This reason for refusal has been comprehensively addressed.

2. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed front and east side setback are inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan.*

NOTE: The notice of determination makes a generic reference to front and side boundary setbacks. The minutes of the NBLPP meeting provides the specifics for the reasons for refusal, and only raise concerns in relation to the front and eastern side boundary setbacks at first floor level. As no other concerns are raised in the minutes, those specific reasons for refusal have been responded to. As a matter of procedural fairness, the review ought to be limited to the specific reasons, and this request for review has been lodged on that basis.

### Front setback

Response: Clause 4.1.4.1 contains the following controls in relation to front setbacks with our considered response to the performance of the development, as amended, when assessed against such provisions as follows:

- a) *Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity.*

Response: The prevailing front setbacks along the northern side of Fairlight Crescent are less than the default 6 metre front setback control with the exception of the residential flat building at No. 14 Fairlight Crescent, directly to the east of the subject site, which has a variable front setback of between 7.1 and 7.5 metres to its south facing balconies and between 8.7 and 9.1 metres to its southern façade.

These setbacks are not consistent with the prevailing setbacks, including those established by the existing dwelling house on the subject allotment, and are anomalous in this regard as depicted in Figure 1 below.

The dwelling house at No. 18 Fairlight Crescent has a garage with terrace over constructed on a 200mm setback to Fairlight Crescent. The front facade of the dwelling house on the same site is setback a minimum of 5 metres from the Fairlight Crescent frontage where adjacent to the subject property.



Source: Six Maps

**Figure 1** – Aerial photograph showing prevailing front building line (in red) in the immediate vicinity of the site being less than the default 6 metre control and significantly less than that at No. 14 Fairlight Crescent directly to the east of the subject site

The proposal, as amended, provides for a minimum first floor setback to Fairlight Crescent of between 6 and 8.2 metres with such setbacks relating to those established by the 2 immediately adjoining properties and those prevailing within the immediate vicinity of the site. The proposal, as amended, satisfies this provision.

- b) *Where the street front building lines of neighbouring properties are variable and there is no prevailing building line in the immediate vicinity i.e. where building lines are neither consistent nor established, a minimum 6m front setback generally applies.*

*This street setback may also need to be set further back for all or part of the front building façade to retain significant trees and to maintain and enhance the streetscape.*

Response: As previously indicated, the prevailing front setbacks along the northern side of Fairlight Crescent are less than the default 6 metre front setback control with the exception of the residential flat building at No. 14 Fairlight Crescent, directly to the east of the subject site, which has a variable front setback of between 7.1 and 7.5 metres to its south facing balconies and between 8.7 and 9.1 metres to its southern façade.

Again, these setbacks are not consistent with the prevailing setbacks, including those established by the existing dwelling house on the subject allotment, and are anomalous in this regard.

That said, even were the default 6 metre front setback applied to the first floor works, the proposal, as amended, provides for a minimum first floor front façade setback to Fairlight Crescent of between 6 and 8.2 metres with such setbacks exceeding the default control. The proposed south facing balcony does project to within 5 metres of the front boundary of the property however such projection is considered acceptable given the provisions at control (d) below. The proposal, as amended, satisfies this provision.

- c) Where the streetscape character is predominantly single storey building at the street frontage, the street setback is to be increased for any proposed upper floor level. See also paragraph 4.1.7.1.*

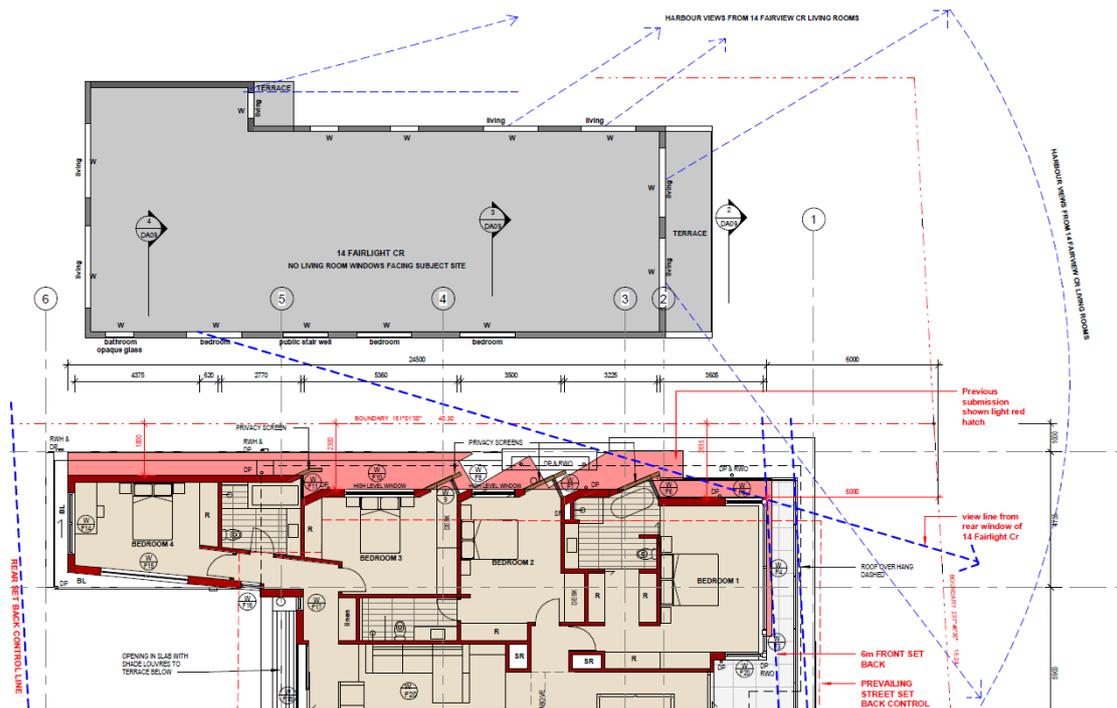
Response: The streetscape character cannot be described as containing predominately single storey buildings at the street frontage with a majority of properties occupied by multi-storey residential flat buildings. This provision is not applicable.

- d) Projections into the front setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, chimneys, meter boxes and the like, where no adverse impact on the streetscape or adjoining properties is demonstrated to Council's satisfaction.*

Response: Should Council consider the 6 metre default setback to be the applicable control, which we strongly dispute, the first floor south facing balcony does project within the setback by up to 1 metre at its eastern end and 300mm at its western end. This breaching element is unenclosed, sits behind the setback established by the existing dwelling house on the site and to that extent will not be perceived as inappropriate or jarring in a streetscape context.

Having inspected the site and determined the juxtaposition of this balcony element where it extends forward of the setback compliant front facade alignment:

- will not give rise to adverse privacy impacts to the south facing balconies at No. 14 Fairlight Crescent given the narrow width and limited utility of the balcony at its western end and will not give rise to any adverse privacy impacts on No. 18 Fairlight Crescent to the west of the site;
- will not give rise to any adverse shadowing impact on any adjoining property as depicted on the accompanying shadow diagrams; and
- will not give rise to any adverse view affectation given available view lines from both adjoining properties. The available harbour views from the south and east facing living room window and balconies at No. 14 Fairlight Crescent are depicted on plan DA05 and the accompanying marketing photographs at Figures 2, 3 and 4 below and over page. A view sharing outcome is maintained.



**Figure 2** – Plan extract DA05(6) showing retained view corridors from the south and east facing living room windows and balconies of No. 14 Fairlight Crescent to the east of the subject site



**Figure 3** - Indicative view looking south from apartments at No. 14 Fairlight Crescent. The sweeping views to the south and south east are unaffected by the minor balcony encroachment as are the views available in a south westerly direction towards Reef Bay and Forty Baskets.



**Figure 4** – View looking south from the top floor apartment 5/14 Fairlight Crescent

In this regard, we have formed the considered opinion that the minor area of first floor balcony that projects into the 6 metre front setback satisfies the variation provision in that it is an unenclosed element that will not give rise to any adverse impact on the streetscape or adjoining properties. This control is satisfied.

#### Side boundary setback

Clause 4.1.4.1 contains the following controls in relation to side boundary setbacks with our considered response to the performance of the development, as amended, when assessed against such provisions as follows:

- 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.*

Response: The plans have been amended to provide for compliant first floor eastern side boundary setbacks for the section of the eastern façade extending from the south east corner of the floor plate back to the northern wall of bedroom 3. The section of east facing first floor wall to bedroom 4 and the adjacent ensuite encroach into the required 2000mm side boundary setback by 200mm representing a variation of 10%. The acceptability of this variation is addressed later in this submission.

- b) *Projections into the side setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, 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.*

Response: The projecting element is a solid wall containing no windows and therefore this projection allowance does not apply.

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

Response: As previously indicated, the previous eastern boundary facing windows WF11, WF12, WF13 have been deleted with windows WF6, WF7, WF8 and new window WF11 orientated to the south east through the adoption of integrated privacy blades to prevent direct overlooking opportunities between these rooms and the adjoining apartments within No. 14 Fairlight Crescent. Window WF10 has been changed to a highlight window with a sill height of 1600mm to maintain privacy to the eastern adjoining property.

Although these windows are located within 3 metres from the side boundary all windows, other than window WF10 have not been oriented to face the side boundary with WF10 adopting a sill height of 1600mm to ensure the maintenance of an appropriate privacy interface. The acceptability of this variation is addressed later in this submission.

- d) For secondary street frontages of corner allotments, the side boundary setback control will apply unless a prevailing building line exists. In such cases the prevailing setback of the neighbouring properties must be used. Architecturally the building must address both streets.*

Comment: N/A

- 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.*

Comment: The eastern side boundary setbacks proposed achieve this control with soft landscape treatments proposed down the entire eastern boundary of the property. This control is satisfied.

- f) In relation to the setback at the street corner of a corner allotment the setback must consider the need to facilitate any improved traffic conditions including adequate and safe levels of visibility at the street intersection. In this regard Council may consider the need for building works including front fence to be setback at this corner of the site to provide for an unobstructed splay.*

*The maximum dimension of this triangular shaped splay would be typically up to 3m along the length of the site boundaries either side of the site corner.*

Comment: N/A

Whilst the setback to various wall elements from both side boundaries do not strictly comply with the 1/3<sup>rd</sup> wall height setback control they do not defeat the associated objectives as follows:

- 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;*

Comment: The only area of eastern side boundary setback non-compliance is where the first floor wall to bedroom 4 and the adjacent ensuite encroach into the required 2000mm side boundary setback by 200mm representing a variation of 10%.

This non-compliant section of wall is setback approximately 22 metres from the front boundary of the property and approximately 5 metres from the residential flat building at No. 14 Fairlight Crescent.

Such setback characteristics will ensure that the non-complaint section of wall will not be readily discernible when viewed from the street and to that extent will not compromise the developments contribution to, and enhancement of, the existing streetscape including the desired spatial proportions of the street, street edge treatments and presentation and its landscape character. The proposal satisfies this objective.

2) *To ensure and enhance local amenity by:*

- *Providing privacy;*

Comment: The breaching section of eastern wall will not give rise to any adverse privacy impacts given that it does not contain any side boundary facing windows. The proposal satisfies this objective.

- *Providing equitable access to light, sunshine and air movement; and*

Comment: The breaching section of eastern wall will not give rise to any adverse shadowing impact on any adjoining property as depicted on the accompanying shadow diagrams. The 5 metre spatial separation maintained to No. 14 Fairlight Crescent will ensure the maintenance of equitable air movement. The proposal satisfies this objective.

- *Facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces;*

Comment: The breaching section of eastern wall will not give rise to any adverse view affectation given available view lines from both adjoining properties. The available harbour views from the south and east facing living room window and balconies at No. 14 Fairlight Crescent are depicted on plan DA05 and the accompanying marketing photograph at Figures 2 and 3. A view sharing outcome is maintained. The proposal satisfies this objective.

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

Comment: As previously indicated, the non-compliant section of wall is setback approximately 22 metres from the front boundary of the property and approximately 5 metres from the residential flat building at No. 14 Fairlight Crescent.

Such setback characteristics will ensure that the non-complaint section of wall will not be readily discernible when viewed from the street and to that extent will not compromise the developments contribution to, and enhancement of, the existing streetscape including the desired spatial proportions and rhythm or pattern of spaces between buildings. The proposal satisfies this objective.

- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment: The breaching section of eastern wall does not compromise this objective.

3) *To promote flexibility in the siting of buildings.*

Comment: The flexible application of the control has enabled the building to be pulled away from the south eastern corner of No. 18 Fairlight Crescent to facilitated enhanced solar access to the living room windows located in this area. Such built form outcome has also enhanced privacy between properties by ensuring no direct view lines within a 9 metre radius of the rear private open space area of this adjoining property. The flexible application of this policy has facilitated a better planning outcome on this particular site. The proposal is consistent with this objective.

4) *To enhance and maintain natural features by:*

- *Accommodating planting, including native vegetation and native trees;*

Comment: The breaching section of eastern wall is at first floor level with the ground floor setback in this location compliant with the setback control. The non-compliance does not compromise the landscape regime proposed. The proposal satisfies this objective.

- *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 land and National parks; and*

Comment: The breaching section of eastern wall does not compromise the developments consistency with this objective.

- *Ensuring the provisions of State Environmental Planning Policy No. 19 – Urban Bushland are satisfied.*

Comment: This objective is not applicable given the site does not adjoin bushland.

5) *To assist in appropriate bush fire asset protection zones.*

Comment: The site is not bushfire prone. This objective is not applicable.

We have formed the considered opinion that the objectives of the side boundary setback controls are achieved notwithstanding the minor side boundary setback variation proposed to the eastern boundary.

It is therefore demonstrate that the minor variation to the side boundary setback control as identified succeeds having regard to section 4.15(3A)(b) of the Act which requires the Consent authority to be flexible in applying DCP controls and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development.

### **3.0 Conclusion**

This submission demonstrates that the amended plans comprehensively address the reasons for refusal of the original application. Having given due consideration to the relevant matters pursuant to section 4.15(1) of the Act it has been demonstrated that the proposed development, as amended, succeeds on merit and is appropriate for the granting of consent.

Please do not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

**Boston Blyth Fleming Pty Limited**



**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

**Director**