

Development Assessment
Northern Beaches Council
1 Belgrave Street
Manly NSW 2095

7/8 Lauderdale Avenue
Fairlight NSW 2094

21 January 2025

Dear Assessing Officer,

DA 2024/1562 – 5 Lauderdale Avenue, Fairlight

We are the owners and occupiers of Unit 7 (Lot 7) of 8 Lauderdale Ave, Fairlight, NSW 2094.

We object to DA2024/1562 on the following grounds:

- There would be an adverse impact on the amenity of the adjoining and nearby foreshore public open spaces by virtue of the proposed overdevelopment.
- The proposed development is inappropriate and disrespectful to the context of the site with regard to Sydney Harbour and its character, and disrespectful to the preeminent position of the site on the Sydney Harbour walkway, and disrespectful to the local area and to the environment. It is wholly unsympathetic to its location in the Foreshore Scenic Protection Area.
- The proposed removal of all existing mature trees on the site, including two Norfolk Pines and two Banksias, and their replacement with an oversized five-storey structure on the Sydney Harbour Foreshore, would devalue the aesthetic from which that Foreshore derives its unique character.
- The proposed development would involve excessive excavation and give rise to traffic hazards and congestion, both during construction and after completion.
- The proposed development does not follow the principles of view sharing, and would have an unacceptably adverse impact on the views from our apartment.

We now elaborate on these matters, and also address the applicant's clause 4.6 variation requests.

Size, bulk and scale – Breaches of the MLEP 2013

Examination of the Master Drawings makes it obvious that this is a five-storey building. The use of the terms Basement, Lower Ground Floor, Upper Ground Floor, Level 1 and Level 2 should not disguise that fact. The proposed building involves very significant excavation. At its northern end, approximately 2.5 storeys are below current ground level and 2.5 above. At its southern end, 4 of the storeys are above current ground level and 1 below. Midway between its northern and southern ends, approximately 2 storeys are below current ground level and approximately 3 are above.

The height and bulk issues are exacerbated by the proposed (excessive) ceiling heights of the storeys – what is called the Basement has a ceiling height of 3.0 metres, and each of the other four storeys has a ceiling height of 3.25 metres.

The proposed development is in breach of the standards in the Manly Local Environment Plan 2013 (MLEP 2013), particularly in relation to:

- the number of storeys – 5, instead of the permitted 2
- the building height – 13.55 metres, when the control height is 8.5 metres (59% higher)
- the Floor Space Ratio (FSR) – a ratio of 1:1 rather than the standard of 0.6:1 (79% larger than allowed)
- the number of dwellings proposed – 5, when the MLEP allows only 3.9

These breaches are primarily responsible for the inappropriate size, bulk, density and scale of the proposed development. Along with the removal of the current iconic trees, they would

- diminish the visual attractiveness of the locality, Esplanade Park, the Harbour Foreshore and the Harbour (to us and to other residents, and to visitors) by presenting an inappropriate structure – what would appear as a four-storey rectangular structure – to the Foreshore and the Harbour
- have a major adverse impact on the views to and from these heritage areas, and be hugely detrimental to the prevailing landscape character when viewed from those places
- destroy the ambience of the sloping land towards the heritage Esplanade Park, the Harbour Foreshore and the Foreshore Walkway
- cause serious overshadowing of grassed parts of Esplanade Park
- impact the amenity of neighbours, locals and visitors (in relation to ambience, views and overshadowing)

In relation to the ambience of the sloping land, we note that in this LEP Zone (E4), Council expects that setbacks should be maximized to enable open space to dominate buildings, especially on the foreshore. However, the exact opposite is being proposed here – what will present to the foreshore as a huge four-storey rectangular building will consume much of the current open space on the subject site and dominate the adjoining foreshore and heritage area.

Views

We consider that the Bonus + Associates View Impact Assessment (Bonus VIA) lodged on behalf of the developer should not be taken as reliable. It is based entirely upon real estate photos taken at the time of the last sales of the subject properties (2016 in our case) and makes no attempt to ascertain the actual view impacts of the development. There is no allowance for the growth in trees and foliage since the last sales of the properties.

The owners at 8 Lauderdale Avenue have commissioned our own independent VIA report from Urbaine Design Group for all 7 of our apartments. Our Owners Corporation and owners are lodging this separately, as an objection. We object against the proposal on the basis that it is unreasonable in respect of the view loss we would suffer, as shown in the photomontage and visual impact assessment at Viewpoint 1 (our apartment) in that Urbaine Design Group VIA report. For your convenience, we attach extracts from that VIA report.

The “Tenacity” impact of the development upon our apartment (Unit 7) has been assessed by Urbaine Design Group as ‘Moderate-to-Severe’. *Tenacity Consulting v Warringah Council (2004) 134 LGERA 23; [2004] NSWLEC 140* makes it quite clear that where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. We suggest that where non-compliance is as egregious as in the current case, any impact at all must be unreasonable.

We note further that, for any development (especially a flat roof one) that ultimately occurs at 5 Lauderdale Avenue, it seems likely that photovoltaic panels (or other solar capture) will be installed on the roof. This could be required by Council or the LEC as a DA consent condition, or (if not) could subsequently be sought by the developer as a s. 4.55 modification. Such panels or other solar capture would further impact on our views.

We therefore request Council or the LEC to require that any maximum height allowed for **any** development on the site be reduced to allow for the height that would inevitably be added by such panels or other solar capture.

The quality of our view loss must also be considered. We will lose what view we have (across 5 Lauderdale Avenue as it currently is) of the close harbour and Fairlight Pool. The developer maintains that we will gain distant harbour views with the removal of the Norfolk Pine. But not only will our current ‘soft’ view containing many mature trees be replaced by a bulky man-made structure, we will lose our closer harbour views. Those close views are important to us as we can see, for instance, the water breaking over the reef at low tide, the surfers (on those rare occasions when there is surf off Fairlight Beach), the waves breaking over the end of Fairlight Pool, and when the pool has been drained for cleaning. This development will destroy those closer views and replace them with a view of a dominating flat roof.

We add that, when deciding whether to bid at auction for our apartment in 2016, we undertook extensive research (including obtaining professional advice) to satisfy ourselves that, under the MLEP 2103 and associated provisions, any future redevelopment of 5 Lauderdale Avenue should not materially impact our views. In considering council development requirements, we took considerable comfort from the approval in 2013 of a redevelopment of what are now 3A and 3B Lauderdale Avenue (the immediate eastern neighbour of 5 Lauderdale Avenue) within height, FSR, density and all other development standards. When making the major financial (and emotional) decision to purchase their future home, people should be able to rely upon council and courts to safeguard the integrity of the building control standards that protect them from future adverse impact. This is reinforced by the decision in *NSWLEC Pafburn v North Sydney Council [2005] NSWLEC 444*, where Roseth SC set out five themes that run through the principles to be applied to the assessment of impacts on neighbouring properties. These themes include the following:

*“22. **The fourth theme** is that the skill with which a proposal has been designed is relevant to the assessments of its impacts. Even a small impact should be avoided if a more skilful design can reduce or eliminate it.*

*23. **The fifth theme** is that an impact that arises from a proposal that fails to comply with planning controls is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.”*

We note that the size, slope and shape of the subject block are not such as to prevent a perfectly adequate complying development from being built on it.

Tree and wildlife issues

The proposal is to clear the site of all current trees. The existing mature trees on the site include two Banksias (one of which is 7 to 8 metres tall), a Norfolk Island Hibiscus (11 metres tall) and two Norfolk Island Pines (of which one is 18 metres tall).

These trees are important to the heritage value and amenity associated with the Harbour Foreshore and the Harbour. They are an important part of the landscape along the Foreshore Walkway, both the Fairlight section and the section adjacent to Reef Beach, and are visible from Vaucluse, the ferries crossing the harbour and Balgowlah Heights.

These trees also provide much-needed canopy cover and habitat for birds and other wildlife.

The property is within the Council Biodiversity Zone. The trees on the site contribute to the heritage values of the area.

The proposal to remove the trees is not respectful to the environment, to local fauna, to the area's heritage values or to the site's context in relation to Sydney Harbour, or to the iconic Norfolk Pines of Manly.

The most iconic of the trees proposed to be removed is the taller Norfolk Pine. The developer's arborist classified this Norfolk Pine as being of ***medium landscape significance***, and thus of ***medium retention value only***.

We challenge this assessment. We submit that the proper application of the IACA STARS assessment rating (which is the one the arborist stated that they applied, and which was attached to their report) would quite clearly designate this particular tree as having ***high significance in the landscape***, and thus as of ***high priority for retention***.

For classification as ***high significance in the landscape***, at least 3 of 7 criteria in ICAC STARS must be met. We submit that 6 of the criteria are met in the case of this tree ie:

- *The tree is in good condition and good vigour;*
- *The tree has a form typical for the species;*
- *The tree is of substantial age;*
- *The tree is visually prominent and visible from a considerable distance when viewed from most directions within the landscape due to its size and scale and makes a positive contribution to the local amenity;*
- *The tree supports social and cultural sentiments, reflected by the broader population or community group;*
- *The tree's growth is unrestricted by above and below ground influences, supporting its ability to reach dimensions typical for the taxa in situ - tree is appropriate to the site conditions.*

The estimated life expectancy of this tree is clearly in excess of 15 years. Therefore, under the ICAC STARS classification system, its ***high significance in the landscape*** means it is to be categorised as ***high priority for retention*** ie "these trees are considered important for retention and should be retained and protected".

In the Manly area, the Norfolk Pine is an iconic tree, and too many have been lost to development already. Of the many original Norfolk Pines planted on or near Fairlight Estate, few remain.

Clause 4.6 variation requests

We submit that the two Clause 4.6 submissions provided in support of the two Clause 4.6 variation requests fail to demonstrate either that compliance with the height and FSR development standards is unreasonable or unnecessary in the circumstances, or that there are sufficient environmental planning grounds to justify the contraventions.

Accordingly, we respectfully suggest that clause 4.6(3) of the MLEP 2013 requires that development consent not be granted.

Appendix A contains our detailed reasons why we consider that the case for the variation requests has not been made out.

Traffic and excavation

The proposed excavation below current ground level is truly remarkable. The number of storeys that would be excavated below existing ground level is 2.5 at the building's northern end and 1 at the building's southern end. With such excavation and the building having such a large footprint, it is difficult to see how any suitable deep-soiled plantings could usefully be cultivated.

It would be expected that major disruption to local traffic would arise from the equipment and effort required to effect such excavation and remove such a volume of excavated material. Further, we have concerns about how difficult this could make it to enter, and leave, 8 Lauderdale Avenue (across the road from the property) in a vehicle while these works were going on.

It would also, we believe, create further major hazards for pedestrians using the "refuge island" crossing at the bottom of Woods Parade, and for cars turning right out of Woods Parade.

The proposal is to have 11 car spaces at the underground level, with access to be by way of a car lift. After completion of construction, it is not difficult to envisage the back-ups and delays that would arise if multiple cars were seeking simultaneously to enter, or exit, the building (or possibly both). This is a particular concern because this part of Lauderdale Avenue has a bus stop on either side and is a "No Stopping" zone. The traffic hazards that would arise as vehicles (coming from either direction) waited to access the property entrance could be significant, particularly with no, or only an inadequate, driveway holding area. Given the frequently heavy foot traffic as people move to and from Fairlight Beach, traffic build-ups would hardly assist safe pedestrian use of the Refuge Island on Lauderdale Avenue, immediately outside the property.

Further, any backing up of vehicles waiting to enter the property could make vehicular egress from 8 Lauderdale Avenue more difficult.

We note that the proposal allows for only one "visitor" car space, which would be accessed only by the proposed car lift. This is clearly inadequate. Regulations require at least two for the number of units proposed, and logic suggests that more would be advisable given the demand for street parking in the immediate vicinity. Further, "visitor" parking suggests that any visitor would be required to wait for lift access to be granted, exacerbating the problems noted above.

Yours faithfully

Two handwritten signatures in black ink. The first signature on the left is a cursive signature that appears to be 'Kim Horton'. The second signature on the right is a cursive signature that appears to be 'Niall Healy'.

Kim Horton and Niall Healy

21 January 2025

Appendix A: Clause 4.6 variation requests

Appendix B: Extracts (specific to our apartment) from VIA commissioned from Urbaine Design Group

Appendix A – Clause 4.6 variation requests

The development application proposes very major breaches of the development standards in relation to height and FSR.

The MLEP Provisions

Clause 4.6(3) of the MLEP 2013 is as follows:

- (3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—
- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Note—The [Environmental Planning and Assessment Regulation 2021](#) requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

Clause 4.4 is as follows:

4.4 Floor space ratio

- (1) The objectives of this clause are as follows—
- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
 - (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
 - (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
 - (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
 - (e) to provide for the viability of Zone E1 and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Clause 4.6 is as follows:

4.3 Height of buildings

- (1) The objectives of this clause 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 conservation zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comments

We submit that the two Clause 4.6 submissions provided for the proposed development fail to demonstrate either that compliance is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds to justify the contraventions.

Accordingly, we respectfully suggest that clause 4.6(3) requires that development consent not be granted.

We will comment on just some of the more egregious aspects of the Clause 4.6 variation requests as submitted.

Impact on views

The Clause 4.6 Variation Request in relation to building height states (Appendix 1, top of page 12) that:

“The application is supported by a detailed Visual Impact Assessment prepared by Bonus + Associates, which demonstrates that the impacts to views currently enjoyed by adjoining properties and properties upslope to the north of the site are negligible to moderate and reasonable. This clause 4.6 variation request adopts and relies upon the findings of that Visual Impact Assessment.”

The Bonus + Associates' VIA was based on real estate photos, with no attempt made to determine what the current real impact would be. These photos generally date from when the relevant properties were last sold, and make no allowance for vegetation growth since then. The places from which the photos were taken would have been chosen based on real estate and sale objectives, and not any objective relevant to assessing view loss from the current proposal.

The Owners Corporation of SP 45435 (at 8 Lauderdale Avenue) has objected against the proposed development and has submitted a Visual Impact Assessment prepared by Urbaine Design Group. That Urbaine VIA includes photomontages based on photographs taken from 15 relevant locations within the 7 units in 8 Lauderdale Avenue. The Tenacity assessments in that report are that all 7 units suffer view loss – for the 15 locations, the assessments of the magnitude of the view and amenity loss range from Moderate (1) to Moderate-to-Severe (6) to Severe (6) to Severe-to-Devastating (2).

It is quite clear that, contrary to BBF's assertion that the proposal has been designed to minimise the impact on public and private views, this development makes no attempt to minimise view loss for anyone affected by it.

For the above and many other reasons, the Bonus + Associates VIA is not an appropriate or credible basis on which to draw any conclusions – or on which to base any clause 4.6 variation request.

Thus, since the clause 4.6 height variation request adopts and relies on the findings of that Bonus + Associates VIA report in relation to view loss, we submit that that variation request should fail – just for that reason alone.

Height issues – relationship with other buildings

The proposed development may indeed *at street level* be in line with the prevailing building heights of the buildings proximate to it - but it is claimed to comply with cl 4.3 at street level in any event. When viewed from the foreshore, it is an entirely different matter.

BBF acknowledge that it is not just the building's appearance from the street that needs to be considered, but also (and more importantly) its appearance from the harbour and the foreshore reserve. From these vantage points, its height and roof form may be of broadly similar height to some older unit blocks around it, but are by no means consistent with the newer buildings that abut the foreshore – and they are downright inconsistent with the desired future streetscape character in the locality.

The height restrictions in the MLEP 2013 were enacted precisely to protect against continuation of the historic overdevelopment of the foreshore - as typified by the buildings being used by the developer to justify its own attempt at overdevelopment. The MLEP 2013 Height of Buildings Map Sheet HOB_004 shows clear delineation of this part of the foreshore area as meriting special consideration. The MLEP 2013, including that Map, show a very clear intention that, after their introduction, subsequent development was intended to be lower and less bulky than was permitted prior to then. This has been reinforced by Council's response to DAs lodged since then.

Further, in seeking to argue that the building is consistent with surrounding buildings, the applicant deliberately defines its comparison area as one including predominately older style buildings, built prior to the current controls being introduced. When one has regard to the full arc of the foreshore, beyond Arlington Drive to the west one finds many lower, more modest structures.

Control of bulk and scale of buildings

By exceeding the height control by 59%, the storey limit by 100%, and the FSR by 79%, this building cannot possibly be said to be consistent with an objective to control the bulk and scale of buildings. Further, as noted immediately above, in its argument for consistency with surrounding buildings the developer has artificially limited the comparison area to include predominately older style buildings, built prior to the introduction of the current controls, thereby excluding the more modest structures to the west of Arlington Drive.

Contrary to BBF's assertion, we certainly would find the bulk and scale of the proposed development offensive, jarring AND unsympathetic.

Overshadowing of foreshore

It is quite clear from the solar diagrams provided (inadequate as they are in showing the full shade impact on the foreshore reserve) that the winter sun currently enjoyed in the area immediately adjoining the subject property will disappear. We regularly see people enjoying the wind-sheltered sun spot in that area in winter.

Clearance of vegetation

This development requires the clearance of all trees (all of which are healthy and mature) from the site, including mature ones – the jewel in the crown being a magnificent, perfectly healthy tall Norfolk Pine. It also makes no attempt to follow the slope of the land.

It is thus simply impossible to attach any credibility to BFF's assertion that the proposed development has had regard to the existing vegetation and topography.

Clause 4.3(a)

For reasons including the above, we submit that, far from compliance with cl 4.3 being unreasonable and unnecessary, such compliance is entirely necessary to prevent this over-development of what has been described as 'one of the last great untouched harbourfront estates' – refer sales descriptions of the property when the developer bought it in 2023 eg: <https://www.domain.com.au/5-lauderdale-avenue-fairlight-nsw-2094-2019410440>.

Environmental planning grounds – Clause 4.3(b) - FSR

The Clause 4.6 variation request re the FSR asserts (Appendix 2 page 29) three grounds to seek to justify contravention of the FSR standard:

Ground 1 – it is claimed that the bulk and scale of the proposal as reflected by the FSR is compatible with the bulk and scale established by development within the site's visual catchment. This is simply an unsubstantiated assertion, and is baseless. In this regard, one simply has to look at the developments at 3A and 3B Lauderdale Avenue, to the property's immediate east – these developments were carried out post the introduction of the MLEP 2013, and are fully compliant with the FSR (and all other) developments standards.

Ground 2 - Topography of the Site – it is claimed that the extent of non-compliance with the FSR is "only" 69% (instead of what it actually is ie 79.6%) when one has regard to the 80.78 sqm of GFA floor space that will be below existing ground level by virtue of the extensive excavation intended.

This is a curious argument, being offered by the applicant to claim that there are sufficient environmental planning grounds to justify the contravention of the FSR development standard. The argument merely needs to be stated to see how weak it is - "I (the developer) should be allowed to breach the environmental FSR standard because I would like to change the rules on how FSR is measured, and under my measurement rules I would breach the standard by only 69%".

Further, the MLEP 2013 actually defines floor space ratio:

(2) Definition of "floor space ratio" The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

So here, the developer seeks to ignore the provision of the MLEP 2013 that defines how FSR is to be measured. It does this in an attempt to argue that its breach of the FSR is a little less than it

actually is, in its attempt to find “sufficient environmental planning grounds” to justify its contravention of the FSR development standard!

This is a wholly unsupportable argument.

Ground 3 – it is claimed that the size, bulk and scale of the development will be compatible with the existing streetscape of Lauderdale Avenue, both when viewed from the street and from the foreshore and Harbour. “Exceptional design quality” is claimed with the FSR variation (the 79.6% excess over the standard) “facilitating a floor space that provides for contextual built form compatibility”.

If the assertion is that the proposed bulk and scale and size are compatible with the area, the foreshore, the heritage values and the neighbourhood, then the matter has already been addressed elsewhere in this objection.

It is further asserted that this is all “consistent with Objectives 1.3(c) and (g) of the [EP&A] Act”. That is simply an unsubstantiated assertion.

Environmental planning grounds – Clause 4.3(b) - Height

The Clause 4.6 variation request re the height asserts (Appendix 1, from page 14) three grounds to seek to justify contravention of the height standard:

Ground 1 – it is claimed that the height is consistent and compatible with the heights of adjoining buildings and other waterfront development within an artificially selected area, and with the scale and character of existing development in the area. It is asserted that the development has been sensitively designed to respond to the location of the site. These are simply assertions, and are baseless. Issues of bulk and scale and height have been addressed elsewhere in this objection. There seems to be no realisation that the MLEP 2013 was intended to put an end to the bulk and height and scale of developments that had occurred previously. There seems to be no understanding that the eastern neighbouring properties, at 3A and 3B Lauderdale, are the most immediate and relevant example of what development is permitted in this area under the MLEP 2023 – and that they comply with all of the development standards. To describe the proposal, which involves the removal of an icon of Manly, a mature, healthy Norfolk Pine (and other mature trees), as “sensitively designed” is, at best, inappropriate.

Ground 2 - Topography of the Site – it is claimed that the southern four-storey presentation is complimentary and compatible with the two immediately adjoining properties, and consistent with the built form characteristics established in the area. These are odd topographical claims to be made in relation to a proposal which fails utterly to adapt to the sloping site, and that have 3A and 3B Lauderdale as the eastern neighbours. Again, the claims fail to appreciate that the MLEP 2023 was intended to prevent a continuation of the type of development that had occurred at, for example, No. 7 Lauderdale Avenue. Also, the claims fail to appreciate that the most relevant post-MLEP 2013 developments – No. 3A and No. 3B Lauderdale Avenue – complied fully with the MLEP 2013.

Ground 3 – there is a reference to “Allowing for the height breach in response to the topography of the site...”. To suggest that the height breach should be allowed because of the topography is outrageous. This is because the development standards require a building in this area on a sloping site to adapt to the slope. So, in this case, the developer is intending to breach the development standard that requires adaptation to the slope (the first breach), and is then

asserting that the second breach (height) is justified as a response to the first breach. The obvious way of dealing with both breaches is not to permit the first breach.

It is then asserted that the height breach “facilitates housing supply at a time when there is a clear public and social benefit in the delivery of more housing in appropriately zoned locations in new South Wales”.

The permissible maximum density under the development standards for this site is 3.9 dwellings, not the proposed 5.

The developer’s purchase price of the site (a matter of public record) was \$16,650,000. The development cost disclosed in the application is \$13,010,800. When one has regard to these amounts, and to additional amounts by way of stamp duty, interest and other holding costs and a developer’s margin, no one would describe these proposed five units as affordable housing. However, for those already living in the area and regularly enjoying Fairlight Beach and the heritage foreshore and Harbour, there would be a major social detriment in the loss of sunlight and amenity.

Environmental planning grounds – summary

We submit that the applicant has failed to point to any environmental planning grounds which would justify allowing either their Clause 4.6 FSR variation request or their Clause 4.6 height variation request.

Further, we submit that the FSR and height objectives stated in Clauses 4.4 and 4.6 of the MLEP 2103 require the application to be refused.

Council should continue to enforce the Development Standards

We reject the applicant’s assertion that Council has “virtually abandoned” or “destroyed” the building height and FSR standards in its approval of waterfront development in the area from Fairlight Crescent / Arlington Drive (in the west) to Margaret Street (in the east). We request Council to continue to enforce all relevant Development Standards in dealing with this application.

The Statement of Environmental Effects prepared by BFF Town Planners for this proposed development asserts the following, on page 42:

“... strict compliance [with building height and floor space ratios] has been found to be unreasonable and unnecessary in this instance given the ... virtual abandonment of the building height and FSR standards by the consent authority in its approval of waterfront development within this particular street block ...”.

On the same page, “*this street block*” is defined by BFF Town Planners as

“... between Fairlight Crescent / Arlington Drive to the west and Margarett [sic] Street to the east”.

“*This street block*”, as defined by BFF Town Planners, would include the property at 5 Lauderdale Avenue which is the subject of this DA.

This claim is repeated in the Clause 4.6 FSR variation request (in section 2.4.2).

The assertion by BFF Town Planners that Council has “virtually abandoned” or “destroyed” enforcement of the building height and FSR standards of MLEP 13 in Lauderdale Avenue or this part of Fairlight is simply untrue.

That the assertion is untrue is evident from those developments in this area that Council has addressed since the adoption of MLEP 2013.

We note in particular DA39/2013 relating to 3A Lauderdale Avenue, Fairlight. Council’s Development Unit Assessment Report (“DUAR”) dated 11 June 2013 showed (page 16) that the proposed maximum height (8.5m) complied with the maximum height of buildings (8.5m) in the Principal Development Standard, and that the proposed Floor Space Ratio (0.59:1) complied with the maximum (0.6:1) required by the Standard. Even then, because of a recommendation of the Manly Independent Assessment Panel, the height of the proposed building was required to be reduced by 350mm (to below the maximum in the Standard) in order to protect the views of neighbours (see page 2 of Council’s Notice of Determination, dated 8 July 2013).

Further, Council’s DUAR recommended, and Council’s Notice of Determination required (see Item A5 on page 2) that

A5. The east facing and west facing terraces to the upper floors are to be deleted.

*Reason: To protect the amenity and privacy of neighbouring properties and ensure that development does not preclude the future redevelopment of neighbouring properties **within the local controls (emphasis added).***

Thus Council’s Notice of Determination in DA39/2013 does not merely evidence Council’s enforcement of the Development Standards in that case. **By Item A5 above, it makes clear Council’s intention to enforce the Development Standards in relation to any future redevelopment of neighbouring properties.**

No. 1 Fairlight Crescent is another application to have been considered since 2013. It was a conversion of an existing house to three units, but the developer there was respectful of the local requirements so that the plans as lodged were fully compliant and drew no objections.

From our searches, we believe that no other DAs have been determined in “*this street block*” (as defined by BFF Town Planners) since 2013.

There are properties in this area of Fairlight (of which No.1 Lauderdale Avenue is perhaps the most conspicuous example) that were developed before the introduction of the MLEP 2013, and which exceed the height, FSR or other standards of the MLEP 2013. The whole point of amending standards of any kind to make them more restrictive is that new buildings, products or services after the change have to comply with the new standards. Those new standards thus exist specifically to prevent a continuation of any prior practice that does not fit within the new standards.

We call on Council to reject BFF Town Planners’ untrue assertion, clearly and forcefully, in addressing this development proposal, and to enforce the Development Standards.

21 January 2025

Appendix B

Page 1 of 4

Urbaine Design Group Pty Ltd, 19c/74 , The Corso, Manly, NSW 2095



VISUAL IMPACT ASSESSMENT

OBJECTION to Development Application DA2024/1562 at

DP 24923, No.5, Lauderdale Avenue, Fairlight.

JANUARY 21 2025

VIEWPOINT 01



Existing site photo - Unit 7 - 8 Lauderdale Avenue

From standing position on the rooftop living area facing south
RL + 27.47m
Distance to boundary - 30.79m



Photomontage of Proposal



Visual Impact in cyan with red outline, view gain in yellow with red outline

Visual Impact Assessment

- *Visual impact – Amount of new development visible in view - 83%*
- *Visual impact ratio - view loss (including buildings) : sky view loss: 100% : 0%*
- *Existing Visual Assessment Scale no: 12 /15 & Visual Impact Assessment Scale no: 10 /15*

This is a static, private view from Unit 7 of 8 Lauderdale Avenue, south facing balcony, 1m back from the balustrade at standing height, facing due south towards the subject site at no.5 Lauderdale Avenue.

The foreground includes the residences along the southern side of Lauderdale Avenue and the rooftop of the subject site with large Norfolk pine bisecting the view to the harbour and multi residence apartment to the eastern side which is of a higher vertical aspect in relation to the adjacent parallel residential dwellings positioned on the same street. A wide expanse of water is visible on both sides of the large mature pine tree. To the west, the land water interface of Reef Beach and various anchored sailing vessels are observed, adjacent to Forty Baskets Beach, with the Dobroyd Head landform rising up behind, to the south. In the background, to the east of the trees, panoramic views over the harbour include the northern tip of Watsons Bay, South Head and Vaucluse.

The visual impact of the proposal will result in loss of a large area of the water element of North Harbour and a reduction in the quality of elements in the view, from natural, landscaped elements to a hard bulk and scale of the flat rooftop of the new proposal.

Tenacity Assessment Summary:

- *Value of view: High*
- *View location: Outdoor Living Area - Primary living area*
- *Extent of impact: Moderate-to-Severe*

Reasonableness of proposal: The non-compliant upper-level mass of the proposal sits directly in front of this viewpoint, removing visual access to a significant area of the water view. As a result of the unreasonable proposal, a more skilful design should be submitted to reduce the visual impact and adhere to the Council's guidelines for view-sharing.

4. SUMMARY ASSESSMENT

This Visual Impact Assessment from Urbaine Design seeks to provide an objective approach to the likely visual impact on the residents of 8 Lauderdale Avenue from the development proposal at 5 Lauderdale Avenue, Fairlight to the south.

This Visual Impact Assessment has undertaken a review of the proposal, within its future setting and concludes that the majority of viewpoints within the assessed property are impacted by the new development. The assessments of the magnitude of view and amenity loss, experienced by the neighbouring residents, as assessed within this report, varies between Moderate-to-Severe, through to Severe-to-Devastating. All viewing locations were assessed as having considerably, high-value view loss. In total, one location was assessed as receiving Moderate view loss, 6 viewpoints receiving Moderate-to-Severe view loss, 6 viewpoints receiving Severe view loss and 2 viewpoints receiving Severe-to-Devastating view loss.

While some view benefit may be gained from the removal, of what Northern Beaches locals might deem as an iconic Norfolk Pine and other local flora, the growth of any new planting would likely remove any view benefit except sky.

The visual impact is a change from natural elements and softer structures that filter the water view to an increase in bulk and scale and reducing the quality of the view with the upper level mass of the proposal sitting directly in front of the viewpoint, removing visual access to high value elements. In addition to the view loss caused by the proposed structure, there is the potential for this to increase if photovoltaic panels are incorporated onto the upper roof slab, as may be suggested. This additional view loss would be to the highest value components of the view.

In addition, the view loss and reduction in visual amenity from the proposal, which is non-compliant in its height, results in the visual impact being assessed as 'unreasonable' based on our 3D analysis, photography, and site visit. It would be my recommendation that the application is refused until a more skillful design can be presented that results in acceptable view-sharing and softer visual impact.



John Aspinall, Director,

urbaine design group pty ltd