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**Sent:** 16/04/2020 11:11:55 AM  
**Subject:** Objection Letter for DA2020/0302  
**Attachments:** Gale Objection Letter to DA2020 0302 16 April 2020.docx;

Dear Sir/Madam,

Thanks for your letter dated 31 March 2020 providing notice of the development application for DA2020/0302 for 41 Upper Clifford Avenue Fairlight.

Please find attached our objection letter. Should you have any questions, please feel free to call or contact me via email.

Could you acknowledge receipt of the attached objection letter.

Regards

Michael and Kerstin Gale  
3/43 Upper Clifford Avenue Fairlight.

**Michael Gale**

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Northern Beaches Council

1 Belgrave Street

MANLY NSW 2095

15 April 2020

Re: Notice of Proposed Development NO: 2020/0302

41 Upper Clifford Avenue Fairlight.

Dear Sir/Madam,

I am in receipt of your letter of notification in relation to the development proposal referred to above.

I strongly object to the proposed development on the grounds of:

- Loss of privacy;
- Non compliance with setback requirements;
- Traffic Management and street access issues;
- Overshadowing and loss of sunlight;
- Non compliance with height requirements;
- Inadequate Geotechnical assessment; and
- Impact to view.

A proper assessment of the Plans is not possible given the identified errors in the submission and lack of detail on the plans and the failure by the applicant to comply with Council's DA Lodgement Requirements 19/20 ("Lodgement Requirements").

### **Privacy Issues**

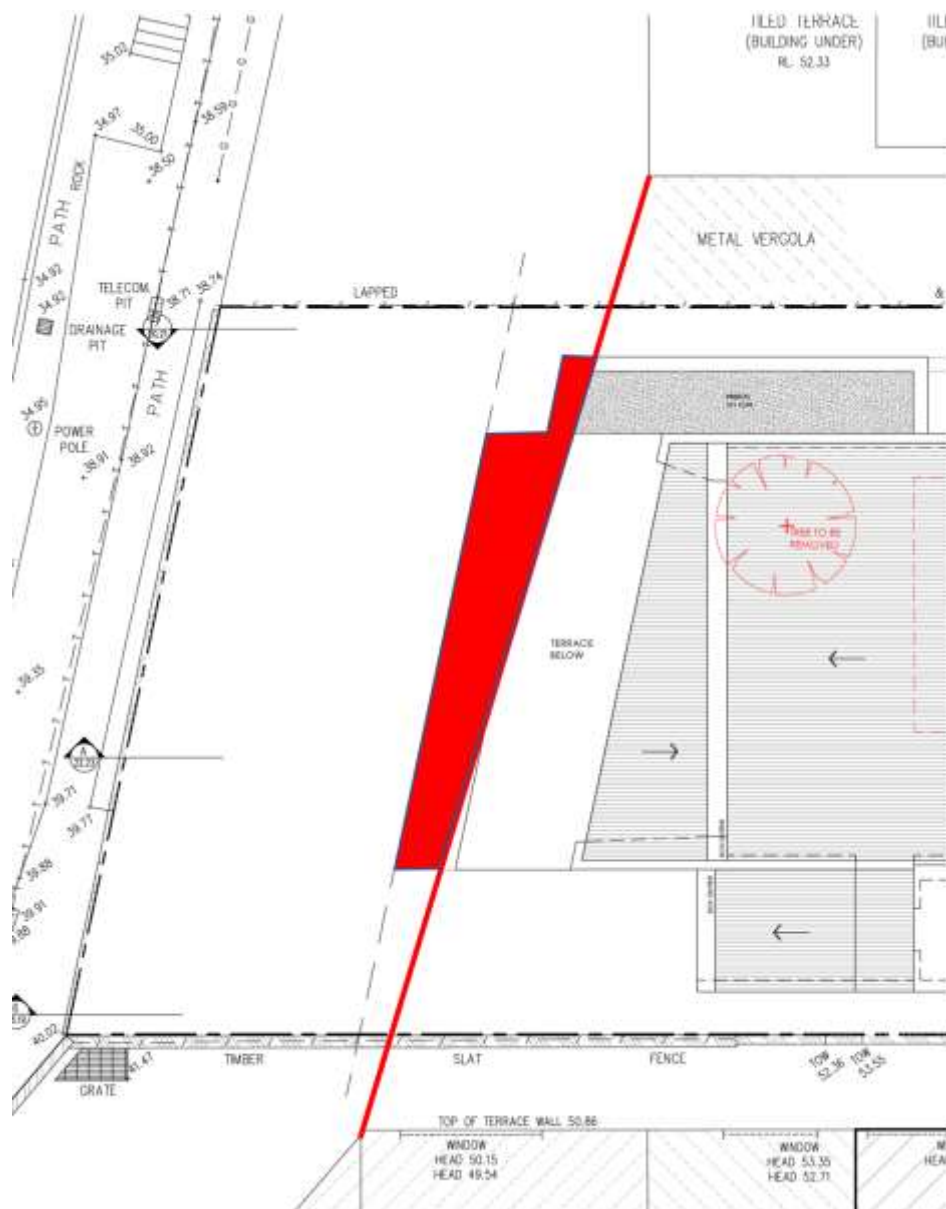
Privacy will be significantly compromised as occupants from unit 2 and unit 3 will be able to look directly into our bedroom and living areas facing south. This is particularly the case from the upper southern deck of unit 2 as depicted in the digital representation (05 and 06). The deck access on all levels of unit 2 and unit 3 will enable people to look back at the southern end of lower level of 43 Upper Clifford Avenue (bedrooms) and second level of 43 Upper Clifford Avenue (lounge and living areas). This would require us to have our blinds drawn at all times in our bedrooms and require installation of new blinds in our lounge area.

The privacy considerations fail to take into account the loss of privacy from the eastern facing large window and sliding doors on the second and third levels of 43 Upper Clifford Avenue.

### **Non Compliance of Side and Front Setbacks**

The Manly Development Control Plan (4.1.4.2) makes reference to the side setback being at least one third of the wall height. The setback on the western side of the southern building is 1045mm compared to a wall height of three stories (at least 6 meters). This will give us the “looming tower” effect from our bedroom area on the south eastern corner of the lower level of 43 Upper Clifford Avenue. The intent of the control objective is to avoid this impact and reduce the sense of overcrowding within the community. This proposal does not achieve this outcome.

The Manly Development Control Plan (4.1.4.1) makes reference to the prevailing building line. The southern setback of 6 meters is not in line with the prevailing building which is more like 8 meters from the southern frontage on the western side of the boundary.



### **Traffic Management, Access and Construction Methodology**

The Traffic Management, Access and Construction Methodology only refers to access from Upper Clifford Avenue and not from Lauderdale Avenue. The majority of the excavation over 3 months will be performed at the Lauderdale Avenue level and require lifting excavated material up a height of over 15 meters. This is both impractical and unlikely and should be challenged. Excavators generally start high and remove the burden from the lowest access point which in this case is Lauderdale Avenue. There is no Traffic Management plan or access planned in Lauderdale Avenue and the impact to traffic and public safety will be significant.

The current traffic management has trucks progressing from Fairlight Street into Ashley Parade which is a “difficult” corner with limited visibility. Ashley Parade is effectively single lane and there is limited parking available. These factors have not been adequately considered.

### **Over Shadowing and Loss of Sunlight**

The available direct sun light for gardens on the southern end of 43 Upper Clifford Avenue will be significantly affected given the nature of the building (facing south and sloping towards the south). The newly established trees (Crepe Myrtles) in the Lauderdale Avenue gardens in 43 Upper Clifford Avenue will have substantially less sunlight caused by overshadowing of the morning sun which is currently the predominant period when this garden receives sun. We have lived in 43 Upper Clifford Avenue since 1994 and worked extremely hard to establish a reasonable garden in what is a difficult site with limited sun and a steep slope. The proposed southern building will reduce available sunlight, limit the growth and flowering potential of established plants.

### **Excessive Height**

The proposed plan exceeds the 8.5 meter height limit based on the incorrect surveys. Taking the correct heights into consideration, the height of southern unit exceeds this by around 1 meter at the western southern end of the building. Although this is clearly shown in the Western elevation, it is conveniently not shown in the digital representation showing the blanket yellow boundary of 8.5 meters above the ground level. The additional height is specified in the DA as a minor noncompliance however it is a noncompliance that has a significant impact on us.

The southern building is effectively a five storey vertical building and is not in keeping with the tiering used elsewhere to satisfy the two storey form principles set out in the Manly Development Control Plan (4.1.2.2).

### **Geotechnical stability**

The geotechnical report identifies an “acceptable” risk of excavation but did not mention the many free boulders and unstable cliff overhang that currently exist. In page 6 paragraph 4 of the Geotechnical Report, there is a caveat that assumes no responsibility however this cannot be confirmed because the cliff is obscured by vegetation. It references *“There were no indications of instability in the cliffs, though they were mostly obscured by vegetation.”* The block has been overrun with noxious weeds for many years and it is impossible to see what the stability of the rock formations are without significant vegetation removal. Prior to this application being approved, the

Council should request removal of the vegetation and confirmation of stability from the Geotechnical Engineers.

### **Errors and Discrepancies in the DA.**

On closer analysis of the DA submission we noted several errors and inconsistencies. These include:

- The survey does not reflect the actual topology of the land. There is a substantial cliff that runs across the block immediately to the south of the existing building. The height of this cliff is between 4 and 5 meters. This feature is conveniently left out and instead portrays a cliff face that extends to the south side of the cheese tree (to be removed).
- The survey does not accurately reflect the lowest part cross section and conveniently uses extrapolation where it suits.
- The RLs are incorrect in several places. For example, the outline of 43 Upper Clifford Avenue in the western elevation of the southern building is not complete and does not appear accurate.
- The digital impressions of the view impact are incorrect. The southern elevation shows the top of the proposed building roughly 3 meters above the level of southern most deck of 43 Upper Clifford Avenue and yet this is not reflected in the image which has the incorrect RL. View 04 appears to be taken above the southern most deck at the height of the deck above, and View 05 appears to be taken at the level of the lower deck but from a position of the deck above.
- The digital impressions of the 8.5 meter above natural ground limit are incorrect and inconsistent with that depicted in the western elevation of the southern building.

To address this, we request the applicant provide a template showing each extremity of the building including the height. Without this, it is difficult to understand the true height implications, overshadowing and impact on privacy.

### **Planting of trees in the Southwest Corner**

The proposed landscape plan includes planting an *Acmena Smithii* (Lilly Pilly) which has the capacity to reach 10-12 meters. At that height it will obscure both the views from the lower levels of the southern building (unit 3) towards North Harbour, and the lower levels of 43 Upper Clifford Avenue towards North Head. There is no reason to have a tree that has the potential to grow this high and we request the applicant plant a tree that will not grow to a height above 5 meters.

### **View Sharing Principles**

The position of the southern building, its vertical stature, and the proposed setback from the southern and western boundaries are not in keeping with Manly Council's view sharing principles.

The view from all rooms within our house is breathtaking and the ocean views out of the Heads adds substantial value to our property. This view is highly valued as it has a balance of water, natural land and the iconic images of North Head, Middle Head and South Head.



The impact to our view towards the south and south East is significant whether in a standing or sitting position. The proposed southern building will result in a degradation of our view from multiple positions in our home including:

- Standing on our deck as the southern building will inhibit the easterly component of our view ruining its panoramic nature.
- Sitting at our outdoor dining area approximately 3 meters back from the southern glass balustrade
- The view from within our building including through a large picture window in our kitchen area and from our dining area.
- The view from our master bedroom on the south eastern corner of the lower level.

The impact to the view represented by the digital image 05 does not provide a correct sense of the view loss. I have taken a photo from approximately the same location and height as depicted and transposed the outline of the proposed building.



Clearly the impact is significant and we invite Council to our property to understand the real impact of the proposed development to our view and the corresponding degradation of our property value. In addition, erecting a template of the south western corner of the building (including balconies and upper level south western corner) would enable Council to understand the impact from other parts of our property.

We fully accept the importance of view sharing and recognise there will be some impact to our view however, we believe it should be an equitable sharing. We believe a more reasonable design would be to set the building further north in line with the prevailing setback of 43 Upper Clifford avenue and 54 Lauderdale avenue. This would bring the south western corner of the building approximated 2.5 meters further south and allow for more terracing of the upper levels. With this style of design, the privacy, overshadowing, bulk and scale, and view sharing issues can be addressed in part.

### **Other Issues**

The void level above the basement is likely to be converted to additional living area or storage similar to changes made in other buildings. This appears a common building practice and we ask Council to take appropriate precautions to prevent this occurring.

The proposal will add to the bulk and scale issues already proposed from Lauderdale Avenue. This building, the adjacent 54 Lauderdale Avenue and the current constructions at 52 and 50 Lauderdale Avenue will give the sense of a high density development particularly with another five storey building close to the Lauderdale Avenue boundary.

This DA was prepared without our consultation and appears to be without regard to the impact the building will have on the community and the impact to neighbours.

For the reasons referred to above, the development application in its current form should be rejected.

Yours faithfully,

Michael and Kerstin Gale

Unit 3, 43 Upper Clifford Avenue Fairlight