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Principal Objection

No. 5 Lauderdale Avenue FAIRLIGHT NSW 2094

DA2024/1562

Ref: OBJ66-A2(PO) Lauderdale Avenue 5

Date: 2 February 2025

Prepared for:

The General Manager

C/O: Mr Maxwell Duncan

Northern Beaches Council

Summary

This planning submission responds to responds to Council's request for comment in accordance with the public exhibition of **DA2024/1562** at **No. 5 Lauderdale Avenue FAIRLIGHT NSW 2094**. It has been prepared on behalf of our Clients**, Ms Fiona Chresworth, Ms Jane Taylor, Mr Rob de Beer, Ms Melonie Farrugia, Ms Hannah Killen and Ms Margaret Hellings** owners of Unit 4, 6, 8, 10, 14 and 16 respectively at **No. 7 Lauderdale Avenue FAIRLIGHT NSW 2094.** The official DA description notes the project entails:

> *New - Demolition works and construction of a residential flat building including strata subdivision*

Accordingly, iObject conducted a preliminary audit of the DA against the relevant state and local planning controls, including the following planning instruments:

- ***Manly Local Environmental Plan 2013***
- ***Manly Development Control Plans 2013***
- ***Other Environmental Planning Instruments (where applicable)***

Subsequently, multiple issues were uncovered as part of this process that will likely pose a nuisance or significantly degrade our Clients' amenity. These issues unfortunately were not properly evaluated in the Applicant's Statement of Environmental Effects (SEE), which utilised absentia and/or misrepresentation to describe a future development scenario that would pose minimal impact on surrounding properties. This Principal Objection therefore, offers an alternative professional appraisal based on recognised planning grounds for the following issues:

1. Solar Access
2. Height
3. Floor Space Ratio
4. Rear Setbacks

1. Submission Details

DA Reference	**DA2024/1562**
DA Address	No. 5 Lauderdale Avenue FAIRLIGHT NSW 2094
Clients	Ms Fiona Chesworth (enduring power of attorney for Mr Nicholas Kringas (owner)) Of: Unit 4 No. 7 Lauderdale Avenue FAIRLIGHT NSW 2094 Ms Jane Taylor Owner of: Unit 6 No. 7 Lauderdale Avenue FAIRLIGHT NSW 2094 Mr Rob de Beer Owner of: Unit 8 No. 7 Lauderdale Avenue FAIRLIGHT NSW 2094 Ms Melonie Farrugia Owner of: Unit 10 No. 7 Lauderdale Avenue FAIRLIGHT NSW 2094 Ms Hannah Killen Owner of: Unit 14 No. 7 Lauderdale Avenue FAIRLIGHT NSW 2094 Ms Margaret Hellings Owner of: Unit 16 No. 7 Lauderdale Avenue FAIRLIGHT NSW 2094
Stage	Principal Objection (Stage A2)
DA Description	New - Demolition works and construction of a residential flat building including strata subdivision

Planning Grounds

1. Solar Access

DCP 3.4.1 Sunlight Access and Overshadowing

Objectives of DCP 3.4.1 are as follows:

Objective 1) To provide equitable access to light and sunshine.

Objective 2) To allow adequate sunlight to penetrate:

i.) private open spaces within the development site; and

ii.) private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

i.) encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and

ii.) maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.

DCP 3.4.1.1 relating to the overshadowing adjoining open space states:

> ***New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June).***

Under this development proposal, sunlight will likely be effectively stripped from in the morning to the majority of No. 7's eastern elevation, whilst a severe reduction in solar access to the private open spaces (POS's) will also occur.

Figure 1: No. 7's rear facade (Source: iObject 2024)

Private Open Spaces

For the purposes of this evaluation, No. 7's affected Private Open Spaces (POS's) are defined accordingly:

- Rear Recreation Area: Raised grassed area at the rear of the building/lower ground (communal POS)
- Unit 4: Balcony at the rear of the building (Level 2)
- Unit 8: Balcony at the rear of the building (Level 3)

Rear Recreation Area

The main communal open space (i.e. the grassed area to the rear of the building) will have solar access severely restricted under the development scenario in accordance with incomplete shadow diagrams provided by the applicant. Examination of the diagrams show that currently, the Rear Recreation Area (RRA) currently receives solar access from **9am to 10am (1 hour) in mid-winter to 30-40% of the space**.

Figure 2: No. 7's Rear Recreation Area (Source: iObject 2024)

Under the development scenario, sunlight will be mostly removed, with approximately **5% coverage from 9am to 10am**. This represents an **86% reduction in solar access** to an area which serves all residents of No.7, but importantly, almost half the residents who do not possess individual POS such as a balcony. Given the existing sunlight cannot be reduced by more than one third, the proposal will result in a mammoth **53% exceedance** of this control.

Unit 4

In relation to solar access to Unit 4 in the development scenario, examination of the Applicant's shadow diagrams revealed the Client's rear balcony will have solar access severely restricted. Examination of the diagrams shows the balcony currently receiving about one hour of sunlight to roughly 20% of the space in winter.

The DCP non-compliance posed by the DA will reduce solar access to this POS with next to no sunlight to be available during the winter solstice. This represents a **100% reduction in solar access** to Unit 4's only individual POS. Given the existing sunlight cannot be reduced by more than one third, the proposal will result in a mammoth **67% exceedance** of this control.

Unit 6

In relation to solar access to Unit 6 in the development scenario, examination of the Applicant's shadow diagrams revealed the Client's eastern side balcony will have solar access severely restricted. Examination of the diagrams shows the balcony currently receiving about two hours of sunlight to the space in winter.

Figure 3: Unit 6's side balcony (Source: iObject 2024)

The DCP non-compliance posed by the DA will reduce solar access to this POS by approximately 1 hour, leaving only one hour of sunlight available during the winter solstice. This represents a **50% reduction in solar access** to Unit 6's only individual POS. Given the existing sunlight cannot be reduced by more than one third, the proposal will result in a significant **17% exceedance** of this control.

Unit 8

In relation to solar access to Unit 8 in the development scenario, examination of the Applicant's shadow diagrams revealed the Client's rear balcony will have solar access severely restricted. Examination of the diagrams shows the balcony currently receiving about one hour of sunlight to roughly 15% of the space in winter.

Figure 4: Unit 8's side balcony (Source: iObject 2024)

The DCP non-compliance posed by the DA will reduce solar access to this POS with next to no sunlight during the winter solstice. This represents a **100% reduction in solar access** to Unit 8's only individual POS. Given the existing sunlight cannot be reduced by more than one third, the proposal will result in a mammoth **67% exceedance** of this control.

Please note: Owing to incomplete solar access diagrams provided by the Applicant, further investigation is needed, particularly in relation to Uni 8.

Evaluation

Contrary to DCP Control a), the proposal will have a severe impact on the evaluated POS's highlighted above. All cases either grossly or significantly fail the one third test, reducing these areas' solar access to the point of becoming almost unusable during mid-winter. We note in this situation, No. 7's affected POS's all possess limited solar access already, warranting further attention for greater protection.

Submitted diagrams indicate that all the abovementioned POS's will be in shadow during the development scenario, which will further erode solar access to this vital space by burdening No. 7 with significant additional overshadowing. This reflects a significant non-compliance – compounding an existing deficient situation, in contravention of DCP Objective 3.

This major non-compliance is underpinned to varying degrees by a range of other non-compliances, including exceedances of the applicable LEP height and floor space ratio.

Exceptional circumstances such as being part of a Heritage Conservation Area (HCA) do not apply in this situation to justify such a deviation from the solar access control. Alternative design treatments are available to re-orient building bulk and provide greater upper floor recessing – not to mention elimination of the non-compliant penthouse suite.

Glare

Finally, we note DCP 3.4.1.5 seeks to reduce instances of excessive glare or reflectivity nuisance

> ***All external material and finishes incorporated into the development must consider and mitigate any excessive glare or reflectivity nuisance.***

We note that proposed materials do not complement existing surrounding building materials (generally masonry exteriors). It is noted that the proposed external metal cladding may cause excessive glare and heat affecting the habitable rooms of No. 7 adjacent.

Summary

The proposal unmistakably represents a major solar access encroachment upon the adjacent western neighbours at No. 7. Height and FSR non-compliances (as discussed later in this submission) are interdependent with the solar access encroachments. Insufficient recessing of the front western corner of the proposal will mean No. 7's important POS's will likely be made unusable during the hours when they are most needed. Notably, solar access to Units 4 and 8 will be eliminated under the proposed scenario.

Contrary to Objective 4 seeking to maximise penetration of sunlight to the windows, living rooms and to principal outdoor areas via modulation of building bulk and maximising setbacks, we observe insufficient modulation and setback, affecting POS's (as described above), as well as living room window solar access.

In view of the ample development potential available at the subject site, no exceptional circumstance could justify a non-compliance being worsened to the degree sought by the Applicant. Thus, to allow the further reduction of adjacent solar access below what is generally considered acceptable by DCP controls is a very serious matter indeed. Such a situation should be rare. As No. 7 experiences low levels of solar access already, any further reduction would be considered unreasonable and unnecessary.

The case in question thus constitutes a siting arrangement that overly disadvantages No. 7's solar access, owing to the confluence of several compounding factors, including height of the proposed development and FSR. Given current DA plans cannot protect the solar access enjoyed by the neighbour, alternative design solutions are needed to resolve this matter.

Proposed Solutions:

A. Major redesign of the proposal to ensure No. 7's POS's receive DCP-compliant solar access in mid-winter. Suggestions include reduction in the bulk and scale of the top floor, with further recessing of the front western corner of the proposal.

B. Replace the external metal cladding with a more suitable material that mitigates any excessive glare or reflectivity nuisance.

2. Height

LEP 4.3 Height of Buildings

The proposal seeks a major exceedance of the overall building height control at the rear. The southern façade of the building breaches the standard by 5050mm (59%), resulting in an imposing structure that will unnecessarily reduce view capture from Units 8, 10, 14 and 16 across the subject site.

The Objectives of LEP 4.3 seek:

(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 -

(d) views to nearby residential development from public spaces (including the harbour and foreshores),

(e) views from nearby residential development to public spaces (including the harbour and foreshores),

(f) views between public spaces (including the harbour and foreshores),

(g) 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.

(h) 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.

The proposal seeks a major exceedance of the overall building height control at the rear. The top floor of the proposed building breaches the standard by 5.05m. The DA has been accompanied by a formal request to vary the control (Clause 4.6 application). Although located at the decline of the slope, the breach runs almost the entire length of the top floor, which will likely result in unreasonable amenity impacts to No. 7 in terms of visual bulk, view loss, solar access and/or outlook.

Bulk and scale contrary to desired future character

The unnecessary additional bulk at the rear of the building does not conform with the desired future streetscape character in the locality. The 59% exceedance will unnecessarily translate to additional building scale above that which is considered reasonable for the desired future character of the street. Instead of leaving behind historic overdevelopment under previous planning framework that would seek to dominant the land-to-water interface, the proposal instead follows past ideals with a built form that is no longer acceptable under today's planning climate.

Visual Amenity

The proposal neither follows the topography, evidenced by non-compliant upper floor mass resisting the notion of stepping down the slope. Being highly visible from the promenade at the rear, this upper floor massing arrangement will subsequent present with a degree of verticality that will cause detrimental impacts to visual outlook and scenic protection for passers-by and local residents alike.

Views from nearby residential development to public spaces (including the harbour and foreshores) will be disrupted by this height non-compliance, which will particularly affect Unit 16 at No. 7 adjacent. Furthermore, solar access to POS's of the adjacent at No. 7 will be severely impacted as a result.

Summary

The proposal's height non-compliance will therefore fall short of the Objectives of LEP 4.3 in relation to overall height. Contrary to the Clause 4.6 Application seeking to vary the FSR standard, the above analysis thus demonstrates the onuses of proof cannot be met to allow a Clause 4.6, given the proposal's performance against these two key tests:

- Compliance with the development standard is considered reasonable and necessary in this situation.
- Sufficient environmental planning grounds do not exist to justify contravening the development standard.

C. **Proposed Solution:** A new design is sought that reduces the proposed height to generally comply with the LEP standard.

3. Floor Space Ratio

LEP 4.4 Floor space ratio

Relevant Objectives of LEP 4.4 seek:

(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 maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

The proposed development does not comply with the Floor Space Ratio (FSR) development standard and has been accompanied by a formal request to vary the

control (Clause 4.6 application). Clause 4.4 requires a maximum FSR of 0.6:1, however the proposed development has a gross floor area of 1056m2 and a floor space ratio (FSR) of 1.07:1, resulting in non-compliance of 79.6%. The FSR non-compliance underpins several other issues found and will result in additional building bulk and overshadowing.

Visual Amenity

Contrary to the Clause 4.6 Application seeking to vary the FSR standard, exceedance of the control will in fact create additional building bulk resulting in unreasonable environmental amenity impacts in terms of visual amenity for No. 7 adjacent. Excessive upper floor area, and general lengthening of the residential flat building (RFB) will unnecessarily add to the structure's visual dominance, as viewed from adjacent properties, as well as the foreshore.

Contrary to this Objective (b), the proposal seeks a building density and bulk well-beyond DCP expectations for this area (which differs significantly from historic expectations under previous regulatory framework). By extending the rear building form floor well-past the rear setback and adding an extra floor (in defiance of the LEP height control), unwelcome building density and bulk shall result, having the effect of obscuring important landscape and townscape features from public and private locations (including views from No. 7 of the land-to-water interface and Manly district and surrounds).

SEE Claims

Whilst strict compliance with the FSR development standard may be unreasonable, the vast exceedance proposed in this circumstance is unreasonable and unnecessary. Contrary to claims within the SEE, there are very few circumstances of the case that would exempt the proposal from generally complying with the standard. As described above, the objectives of the standard cannot be fully met under the current arrangement negatively impacting visual amenity.

The suggestion however there has been 'a virtual abandonment of the FSR standard by the consent authority in its approval of waterfront development within this particular street block' mischaracterises the historic nature of those approvals. On the contrary, existing dwellings within this section of Lauderdale Avenue were mostly approved decades ago. For the Applicant's argument to carry sufficient planning weight, a similar approval in proximity under *Manly Local Environmental Plan 2013* would have to be identified.

Onuses of Proof

As further described in this submission, the proposal is considered incompatible with the bulk and scale of the desired character of the locality. The onuses of proof therefore cannot be met then to allow a Clause 4.6 in this case, due to the proposal's following performance against these two key tests:

- Compliance with the development standard is considered reasonable and necessary
- Sufficient environmental planning grounds do not exist to justify contravening the development standard.

D. **Proposed Solution:** New design reducing the proposed FSR to generally comply with the standard.

4. Rear Setbacks

DCP 4.1.4.4 Rear Setbacks

Relevant Objective of DCP 4.1.4 in relation to setbacks include:

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

- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Objective 4) To promote flexibility in the siting of buildings

Objective 5) 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; and*

The proposed 4 to 6-metre rear building setback does not comply with the 8-metre rear building setback control, effectively creating a new protrusion that will cause a multitude of amenity impacts, including view loss to Units 4, 8 and 16.

Adjacent Amenity

In considering the matter on merit, the amenity of adjoining properties must be the primary consideration, per DCP Objective 2). Overlooking opportunities into adjacent balconies and windows at No. 7 become less easy to address with such a rear protrusion.

Facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces is also made more difficult to achieve without adherence to the control. Extending upper floor balconies to this degree

will compound overlooking concerns at Units 4 and 8 of No. 7 adjacent, whilst noise from the creation of significant entertainment spaces will ultimately carry across.

Finally, the rear setback non-compliance shall translate to additional building bulk, which may cause an adverse sense of enclosure to No. 7's occupants, affecting its eastern outlook.

Local Character

Without a pitched roof form like No. 7 and other existing development along this strip, any flat roofed proposal must ensure an appropriate stepping of upper floor massing. In this DA, we witness very little stepping at the rear, which will have a dominating impact on the land-to-water interface, as viewed from the promenade.

In addition, the lack of ground floor space to accompany the public landscape setting around the rear promenade, the setback arrangement will likely disrupt the rhythm of spaces. Such a minimalist approach to green areas will again make for an unnecessary incursion on the aesthetic quality of the neighbourhood.

Figure 5: Land-to-water interface, as viewed from Unit 16 (Source: iObject 2024)

Summary

The non-compliant rear setbacks are thus considered unreasonable in this circumstance, with the rear building line at each level effectively creating a new protrusion along this section of the Lauderdale Avenue.

Finally, the proposed ground floor setback will guarantee the site's open space arrangement will be dominated by hard surfaces. The scale of rear setback non-compliance will unnecessarily erode the landscape setting of the site, which invariably assists in softening building mass from dominating the harbourside.

Without the capability of preserving the amenity of existing dwellings, nor the local characteristics inherent to the streetscape, the proposed setbacks cannot be justified on merit, thus failing the Objectives and merit-based controls of this DCP Subsection.

E. **Proposed Solution:** That Council enforce the applicable DCP rear building setback control.

Conclusion

Based on the above preliminary evaluation of **DA2024/1562,** significant non-compliances occur that urgently require addressing in relation to Solar Access, Setbacks, Height and FSR. These non-compliances will contribute to excessive building bulk, unnecessarily blocking essential sunlight from No. 7 adjacent in an already solar-deficient scenario, whilst compromising local character. Therefore, the proposal as it stands does not merit approval without meaningful design changes that remedy these non-compliances.

Composed by:

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PRINCIPAL TOWN PLANNER