
Sent: 20/04/2020 10:33:53 AM
Subject: 41 Upper Clifford Avenue, Fairlight
Attachments: Objection letter - 41 Upper Clifford Avenue, Fairlight.pdf;

Hi Claire,

Following on from our correspondence last week, please find attached an objection to the current application at 41 Upper Clifford avenue, Fairlight. We appreciate your allowing the additional time to complete the review and prepare this letter. As detailed in the letter, we request that you visit my client's site to make an assessment of the view loss which would result from the proposed development.

Kind Regards

Sarah McNeilly
Director

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The General Manager
Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

20 April 2020

Attention: Claire Ryan

Dear General Manager,

41 Upper Clifford Avenue, Fairlight
Development Application No. 2020/0302
Demolition works and construction of multi dwelling housing

Background

We have been engaged by the owner of 1 Ashley Parade, Fairlight, who has recently been notified of a Development Application at 41 Upper Clifford Avenue, Fairlight to provide an objection to the above-mentioned Development Application. No. 1 Ashley Parade, Fairlight is located to the north of the subject site.

DA2020/0302 involves the demolition of the existing dwelling and construction of a new 7 storey development with 3 x 3 bedroom 2 level units and parking for 6 vehicles.

View of Locality

The general locality can be described as a mix of residential uses with primarily lower scale detached dwellings to and some medium density uses. The subject site benefits from 2 street frontages with Lauderdale Avenue as its southern boundary and falls steeply away from Upper Clifford Avenue. The locality, which is a short walk from Fairlight Beach and shops and is within a hilly area with views of the harbour characterising the local streets.

The opportunity has been taken to view the subject property in the context of surrounding development and to consider plans and supporting documents relating to the development application which was available on the Northern Beaches Council website. Additionally, the site has been viewed from our client's property.

Currently 1 Ashley Parade benefits from views over the subject development site to the harbour and the heads.

Zoning and Land Use Generally

The property is zoned R1 General Residential under the provisions of the Manly Local Environmental Plan 2013 as are most dwellings in the immediate vicinity.

Nature of Submission

Having considered the site, its surrounds, neighbours and the details of the application currently before Council, our clients are happy to see the site redeveloped and the area improved. However, they wish to ensure that this be done in a manner considerate of neighbouring properties views, privacy and amenity.

Accordingly, this submission is an objection to the current Development Application based on various grounds which are detailed in the following paragraphs.

Views

Views achieved from the key living area of 1 Ashley of high value. They include the harbour, the land and water interface and the heads. The views are from the key indoor living spaces of the premises. When considered under the principles of Tenacity Consulting Pty Ltd V Warringah Council (2004) NSWLEC 140, the views would be considered high value.

The views are available from the living area on the ground floor and secondarily through the bedroom on the first floor. See photograph below.



Figure 1. Photograph from primary living room window

The impact of the loss will be significant for this property and no analysis of the view loss appears to be included in the Development Application. We note that the view available to this property has decreased over the years with properties on either side of 41 Upper Clifford Avenue, and no 46 Upper Clifford Avenue developing under previous planning schemes. The owners have provided copies of photographs showing the reducing views that have occurred over the time period since they purchased the property in 1993. The remaining view corridor is invaluable to the amenity of the property and could be easily retained with an alternate design approach.

Considering the extent of the site and other development opportunities available, it is considered that this design with the top floor sitting at a maximum RL significantly above what is existing on the site is unreasonable. We request that the Council officer visit 1 Ashley Parade, Fairlight to understand the significant implications, particularly from the key living area.

The development as currently proposed has not been tested with regard to the subject site or others neighbouring to determine if it meets the Tenacity test by the applicant. We would strongly argue that it does not and that there are design alternatives which would allow for it to be achieved.

In determining the extent of potential view loss to 1 Ashley Parade, Fairlight, the 4 planning principles outlined within Land and Environment Court case of tenacity Consulting Pty Ltd V Warringah Council (2004) NSWLEC 140, are applied to the proposal.

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured

The existing views from 1 Ashley Parade, Fairlight which will be affected are valuable views of the water and land interface and within the harbour and of the heads.

No additional views are available to the site, with the view over 41 Upper Clifford Avenue to the south being the only view available.

The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The views are over the front of the property and enjoyed from both a sitting and standing position. A standing view is provided in the photograph above. It is considered a realistic expectation that this view could be maintained.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

The key view loss of concern is from the principal living area and great significance should be placed on these views as they form part of the key amenity and value for the dwelling. It appears that the land/ water interface view will be lost, but inadequate detail is provided to adequately determine the exact view loss. More information is required from the applicant and we suggest that height poles are essential to allow for a view analysis to be completed.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. 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. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

The overall view loss is of great significance and ample to refuse the development. The design as proposed incorporates a height which has been realised without ample site and view analysis being undertaken. A revised plan which relocated the bulk of the building down the site and out of the view line of 1 Ashley Parade is the appropriate means to develop the site and meet the requirements of the Land and environment Court principles for view loss.

Public Views

The locality and character of both Ashley Parade and Upper Clifford Avenue will be detrimentally impacted by the significant view loss from the public space. The public vista as you travel south along Ashley Parade will be lost through the development of the site in the manner proposed. As discussed above, an alternate means of siting the development further down the site is essential to ensure that the character of the location is not lost through development which has many other feasible design opportunities to achieve the same floor area. We strongly urge Council to require height poles to allow for this to be better analysed and tested.

Height details on plans

We believe additional information is required to ensure that the development does meet the height controls. Spot levels were not available on the survey at points where we would like to better check the exact height, particularly at the high point of the living room for dwelling 1. We note that the SEE states that the development is compliant at one point, but then later refers to a Clause 4.6 variation to support the non-compliant height (see page 24)

Similarly, there are many RLs not readily available on the plans, such as for the garage fronting Upper Clifford Avenue, with only an FFL available. It appears the new garage will be both higher and wider on the front setback, than that currently existing. This is unreasonable and has huge implications for views and the street presence of the site.

Side Setbacks/ Wall Height

Setbacks are not provided on the plans for all levels, but it does appear that there are many non-compliances with insufficient side setbacks and excessive wall heights along the lengths of the site as acknowledged by the applicant. This has impacts on many levels, including increasing the building bulk and reducing the view corridors available to 1 Ashley Parade. It also results in landscaped areas being reduced with issues in achieving deep soil planting.

More detail on side setbacks, wall heights and available soft planting is requirement for assessment to be complete. It is critical where view loss is an issue that these issues are complied with irrespective of the difficult nature of developing a sloping site.

Storeys

The MDCP requires a maximum of 2 storey development in this location. While it is agreed some variation could be considered on this very steep site, an additional 5 levels is beyond reasonable. A reduction in the number of levels would allow for valuable views to be retained and a development worthy of consent. The current variation of this control is excessive and should not be considered by Council.

Front Setback

The development is proposed to be built to the front boundary of Upper Clifford Avenue. This is a significant noncompliance and unsupportable with significant view loss impacts resulting from the location and height of the garage. The application should be reused on this basis alone, when an alternate frontage, with no view impacts, can be utilised form Lauderdale Avenue.

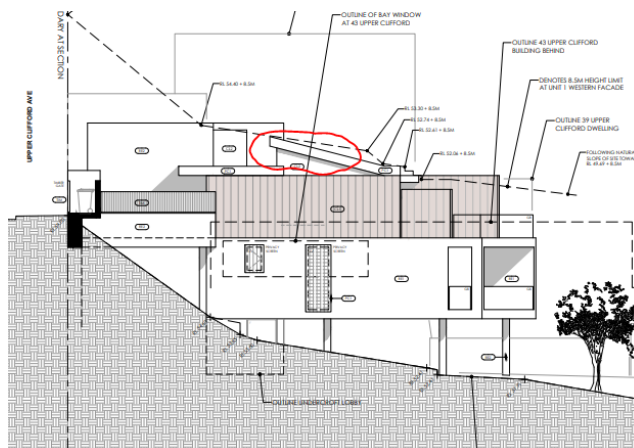
Vegetation

The development proposes the inclusion of vegetation which will likely grow to a height which will result in loss of further views. It is critical that species which have a reasonable height be deleted from the landscape plan. Additionally, we would request that when any development on this site is finally approved, that a condition be placed on the consent to ensure that the height of planting is to be below the RL of the top of the current dwelling's roof ridge, thus ensuring views are maintained.

Design Considerations

We believe that all of the following design opportunities should be explored to allow for a better result for neighbours and the public views and vista available.

1. Lower the roof form at the Upper Clifford Avenue frontage



2. Move the entire development down the site as there is ample space in the middle which could be utilised in a different manner, allowing for views at the top to be unaffected.
3. Increase excavation to move the development lower
4. Design to include single level dwellings, rather than double level.
5. Move all parking to Lauderdale Avenue and remove the need for a garage on Upper Clifford Avenue
6. Reduce floor to ceiling heights

There are many means available to come up with a development which can fulfil the requirements of tenacity and allow for our client's views and public view to be retained. It is also crucial that any assessment of the application be undertaken with the benefit of height poles being erected and viewed from neighbouring sites including 1 Ashley parade, Fairlight.

Conclusion

The proposed application results in a development which is unreasonable based on the significant view loss. The view and amenity impacts for neighbours, including our client, are extensive and are ample grounds alone for refusal. Non-compliances listed in the above letter further enhance this key issue. Additionally, a lack of key details with regard to RLs, setbacks and heights prevents a thorough and complete assessment.

Considering of all these factors we urge the Council to request the applicant revise the proposal. Alternatively, we believe the application must be refused in its current form. If you have any further enquiries on any matters in this regard, please do not hesitate to contact me on 0413341584.

Yours faithfully,



Sarah McNeilly
Director
Watermark Planning