

**STATEMENT OF
ENVIRONMENTAL EFFECTS**

Proposed semi-detached dwellings
and Torrens Title subdivision

**52 LAUDERDALE AVENUE
FAIRLIGHT**



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Statement of Environmental Effects

Proposed semi-detached dwellings and Torrens Title subdivision

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1.0 INTRODUCTION

This document forms a component of a development application proposing the demolition of existing site structures and the construction of semi-detached dwellings with integrated basement garage accommodation on the subject site. The application also proposes the Torres Title subdivision of the completed development and the implementation of an enhanced site landscape regime.

On 20th April 2017 development consent 311/2016 was granted by the Northern Beaches Independent Assessment Panel proposing the demolition of existing site structures and the construction of a dual occupancy development with integrated basement parking on the subject site. We note that 7 objections were received by Council to the application from immediately adjoining property owners raising concerns in relation to height, bulk, scale, privacy, the extent of excavation and view loss.

This application proposes an alternate scheme on the site which provides for far superior built form, environmental and residential amenity outcomes for the site and its immediate neighbours with such outcome developed through detailed site analysis and formal pre-DA discussions with Council and all immediately adjoining property owners. The final design is responsive to the issues raised by Council and adjoining property owners to the extent that this application is accompanied by correspondence from all immediately adjoining property owners who raise no fundamental objection to the current proposal. A copy of these submissions are at Attachment 1.

The highly considered and resolved outcome is a building of exceptional design quality which steps down the site in an articulated and modulated building form and which provides for a complimentary and compatible building presentation. The materials and finishes proposed will ensure the development will blend into the vegetated escarpment with the refined nature and detailing ensuring that the building will reinforce the desired future character of the locality and contribute to the built form quality of development within the sites visual catchment.

Having regard to the issues previously raised by adjoining property owners and the desire to enhance buildability and reduce the previously approved extent of excavation, the current proposal differs from the previously approved scheme as follow:

- The deletion of the uppermost storey resulting in a reduction in overall building height of 2.23 metres. This reduction in building height provides for a significant enhancement of views available across the subject site from the properties to the rear on Upper Gilbert Street;
- A significant reduction in excavation through the provision of a more compact and efficient basement design;
- Enhanced visual and aural privacy through the integration of privacy attenuation measures into the building form;
- Reduced shadowing impacts through the lowering of the building form;
- Enhanced streetscape outcomes through a reduction in building height and the introduction of a greater level of visual articulation and faceted modulation;
- Greater certainty in terms of construction impact management and methodology through the preparation of a detailed Construction Management Plan; and
- Enhanced pedestrian safety through the replacement of the existing antiquated and dangerous public stairs located within the road reserve with new compliant and safe access stairs.

In preparation of this document, consideration has been given to the following:

- The Environmental Planning and Assessment Act, 1979 as amended (the Act);
- The Environmental Planning and Assessment Regulation;
- Manly Local Environmental Plan 2013 (MLEP); and
- Manly Development Control Plan 2013 (MDCP).

The application is also accompanied by a complete set of architectural drawings, landscape plans, survey (site and footpath), view loss analysis, geotechnical report and assessment of the subject and the stability/ safety of the adjacent public stairs, stormwater concept plans, arborist report, transport impact assessment, Construction Management Plan, waste management plan, schedule of finishes, photomontage and a BASIX certificate.

The proposal is permissible and generally in conformity with the development standards and built form controls contained within the applicable statutory planning regime as reasonably applied to the subject site.

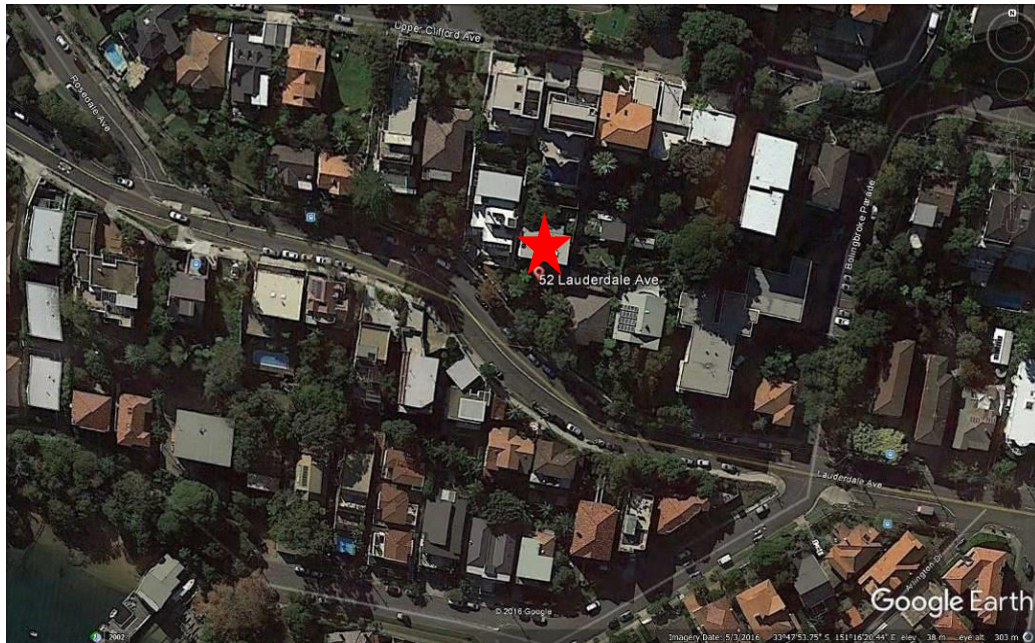
Whilst the application requires council to give favourable consideration to a building height and FSR non-compliances, the accompanying clause 4.6 variation requests demonstrates that strict compliance is both unreasonable and unnecessary under the circumstances with sufficient environment planning grounds to justify the variations sought. Such variation requests are well founded.

This report demonstrates that the wall heights, setbacks and total open space proposed satisfy the objectives of the applicable MDCP controls and accordingly strict compliance is unreasonable and unnecessary under the circumstances. Such variations succeed having regard to section 4.15(3A)(b) of the Act which requires the Consent authority to be flexible in applying DCP controls and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act, 1979 as amended and is appropriate for the granting of consent.

2.0 SITE DESCRIPTION AND LOCATION

The site known as Lot 1, DP 172127, No. 52 Lauderdale Avenue, Fairlight is irregular in shape having splayed frontage and address to Lauderdale Avenue of 20 metres, variable depth of between 28.49 and 41.440 metres and a site area of 531 square metres. The site falls approximately 17 metres across its surface in a southerly direction and contains a number of trees at the front and rear of the site.



Source: Google Earth

Figure 1 – Aerial location and context photograph

The site is occupied by a 2 storey brick clad dwelling with pitched and tile roof located towards the rear of the site together with various ancillary structures. A rock embankment is situated between the front boundary and the adjacent road alignment with no off-street parking currently available on-site. A low fence delineates the front boundary of the property with a public pathway located immediately adjacent to the frontage and above the level of the road below. The established site levels, tree locations and built form characteristics are depicted on the survey extract at Figure 2 over page with a photograph of the property as viewed from the street at Figure 3.

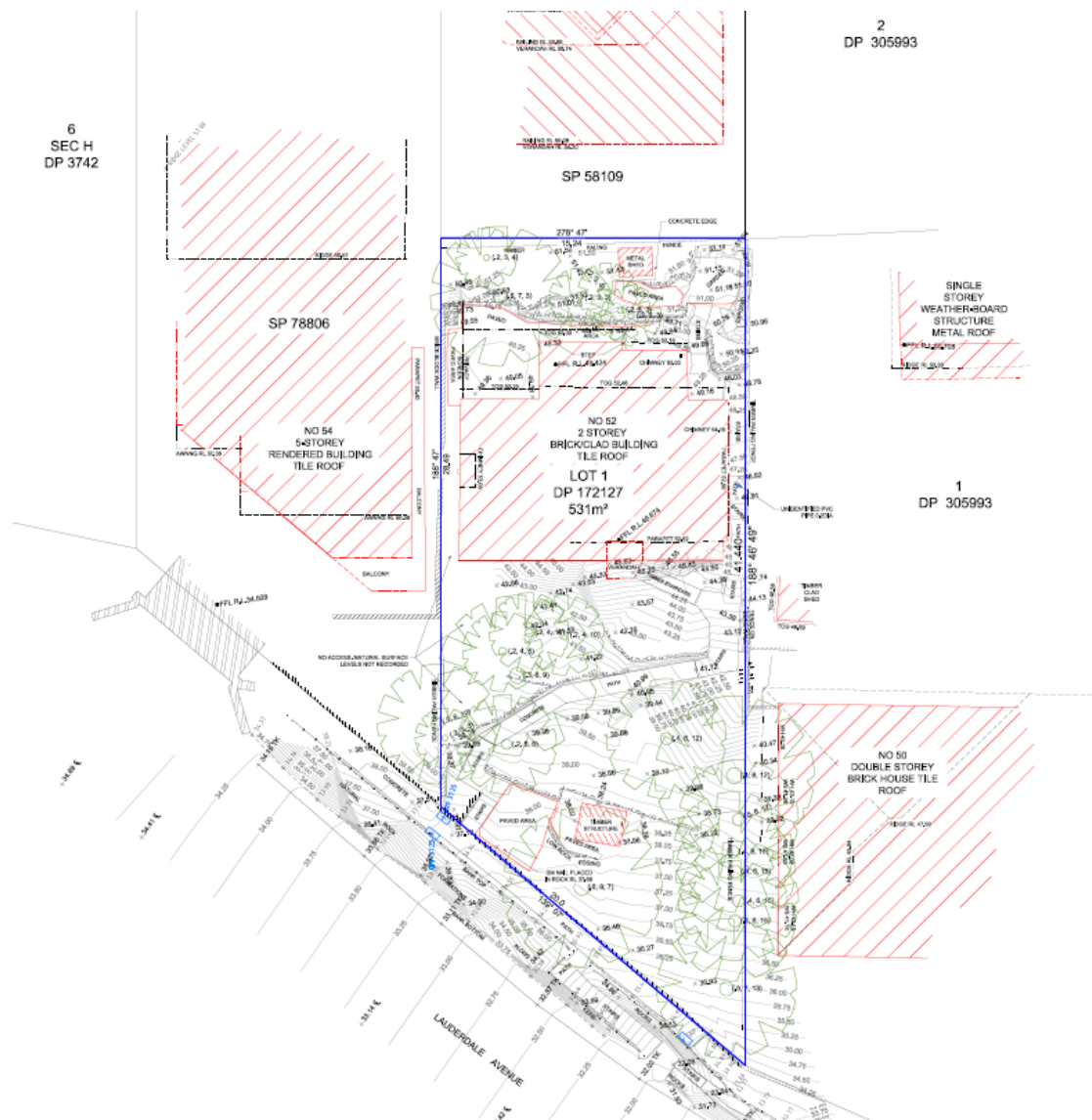
**Figure 2 – Survey extract**



Figure 3 – Subject property as viewed from Lauderdale Avenue

The property to the west, No. 54 Lauderdale Avenue, is occupied by a 5 level dual occupancy (attached) with basement car parking excavated into the site and accessed from the Lauderdale Avenue frontage. This development was constructed pursuant to DA595/2000. This property steps down the site in response to topography with the development, the subject of this application, adopting a number of design cues from this adjoining development including a highly articulated and modulated stepped building form and basement parking accessed from Lauderdale Avenue. This adjoining property is depicted in Figure 4 over page.

The property to the east is occupied by a 2 storey brick house with pitched and tile roof located towards the front of the site. This property has access to a single garage from Lauderdale Avenue as depicted in Figure 5 over page.



Figure 4 - The property to the west, No. 54 Lauderdale Avenue, as viewed from the street



Figure 5 - The property to the east, No. 50 Lauderdale Avenue, as viewed from the street

The properties to the north are located at a much higher elevation with frontage and address to Upper Clifford Avenue. These properties obtain views across the properties along Lauderdale Avenue. The balance of development within the sites visual catchment is characterised by an eclectic mix of residential accommodation including detached dwellings, dual occupancies, and residential flat development. A majority of properties are oriented to take advantage of available views across Middle Harbour.

The locality benefits from a plethora of foreshore recreational areas.

3.0 PROPOSED DEVELOPMENT

This document forms a component of a development application proposing the demolition of existing site structures and the construction of semi-detached dwellings with integrated basement garage accommodation on the subject site. The application also proposes the Torres Title subdivision of the completed development and the implementation of an enhanced site landscape regime.

The building steps down the site in response to topography in a highly articulated and modulated building form and which provides for a complimentary and compatible building presentation to that of the adjoining dual occupancy development at No. 54 Lauderdale Avenue. Particular attention has been given to addressing the existing antiquated off-street carparking circumstance again consistent with that established on the adjoining site.

The proposed development is depicted on architectural plans A0.00(A), A0.02(A), A0.04(A), A1.00(A) to A1.06(A), A2.01(A) to A2.04(A), A4.01(A) to A4.03(A) and A5.01(A) to A5.03(A) prepared by Platform Architects Pty Limited. Specifically, the proposed development displays the following built form characteristics.

Basement Floor Plan

Basement garages are excavated into the site with vehicular access obtained from the Lauderdale Avenue frontage. The basement garages accommodate car parking for 2 vehicles with turntables enabling vehicles to enter and exit the site in a forward direction. Garbage bin storage and internal lift access is also provided at this level which is secured by separately operated garage doors.

The driveway entrance is cut into the existing rock embankment with the existing public stairs within the road reserve demolished and reconstructed further to the east. We note that the accompanying assessment of the existing public stairs prepared by Crozier Geotechnical Consultants contains the following conclusions:

- *Under the existing conditions of the existing stairway, there is a significant hazard of “Slip, Trip and Fall” due to the uneven rock surface and slippery surface over concrete steps of the stairway which is a major risk for public safety.*
- *The long term stability of the existing stairway is at high risk due to cracks within the concrete structure and undercutting of the founding bedrock which is also prone to further destabilization due to erosion of clay seams along bedding defects.*

- *In view of the above mentioned risks regarding public safety and stability of the existing stairway, it is recommended that the stairway be relocated to a proposed location to the east of the existing stairway,*

The upper level pedestrian pathway, which runs parallel to the property frontage, is reinstated above the driveway entrance below as has occurred at No. 54 Lauderdale Avenue. This will require the complete closure of the footpath during the course of construction with pedestrians diverted onto the footpath located on southern side of Lauderdale Avenue as detailed in the accompanying Construction Management Plan prepared by Low Impact Development Consulting.

Basement Mezzanine Plan

A mezzanine area is provided within the basement to accommodate mechanical plant and services.

Footpath Level

Pedestrian access is provided to each dwelling from the reconstructed public footpath with a sandstone wall with 1 metre high open style fencing above delineating the front property boundary. Letterboxes are set into an entrance feature with stairs leading to the formal entrance above.

Formal Entrance/ Undercroft Floor Plan

This level contains the formal entrance lobbies to each dwelling and laundries. Open undercroft areas occupy the balance of the building footprint at this level with a spa proposed generally within the House 1 undercroft area. Internal stair and lift access is provided to the levels above.

Ground Floor Plan (Typical)

This floor plate contains 2 bedrooms, bathroom and family room with the south facing bedroom and family room opening onto small balconies. The rear bedrooms are constructed to the boundary to facilitate south facing windows for light and ventilation. These rooms are located well below the level of the existing boundary fence treatments and will not be discernible as viewed from either adjoining property. Lift and stair access are provided to the levels above and below.

First Floor Plan (Typical)

This floor plate contains open plan kitchen, living and dining areas and a small powder room. The living areas open onto a south facing balcony and north facing courtyard with integrated privacy screening provided to the outside edge of the balcony to prevent overlooking between properties. Side boundary facing fenestration is blinkered through building design which directs the line of sight away from the neighbouring properties towards available views and outlook. Lift and stair access are provided to the levels above and below.

Second Floor Plan (Typical)

This floor plate contains the master bedroom with WIR and ensuite. A void is provided over the kitchen below to enable sunlight penetration deep into this lower level floor plate. The bedroom opens onto a small south facing balcony with integrated privacy screening.

Torrens Title Subdivision

The subdivision component of the application proposes the Torrens Title subdivision of the allotment to create 2 Lots having areas of 251.8 and 281.3 square metres respectively as detailed on the accompanying plan of subdivision prepared by Bee & Lethbridge Surveyors.

The application is accompanied by a schedule of materials and finishes which utilises a palette of natural materials and finishes which will be complimentary and compatible with those established in the immediate locality and enable the building to blend into the escarpment which forms a backdrop to the site.

The accompanying arborist report prepared by Landscape Matrix confirms that of the 22 trees on or adjoining the site none of the trees has been identified as having high landscape value and as a priority for retention. Whilst the development involves the removal of a majority of existing trees such tree loss adequately compensated for through the implementation of the enhanced site landscape regime as detailed on the accompanying landscape plans prepared by Paul Scrivener.

The extent of excavation proposed has been addressed in the geotechnical report, dated February 2019, prepared by Crozier Geotechnical Consultants which recommends dilapidation reporting and vibration monitoring during construction. All stormwater will be gravity drained to the street drainage system as detailed on the concept stormwater design prepared by RTS Civil Consulting Engineers.

4.0 STATUTORY PLANNING FRAMEWORK

4.1 General

The following section of the report will assess the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15(1) of the Environmental Planning & Assessment Act, 1979 as amended. Those matters which are required to be addressed are outlined, and any steps to mitigate against any potential adverse environmental impacts are discussed below.

4.2 Manly Local Environmental Plan 2013

4.2.1 Zone and Zone Objectives

The subject site is zoned R1 General Residential pursuant to the provisions of Manly Local Environmental Plan 2013 (“MLEP”). Dual occupancies (attached are permissible in the zone with the consent of council. The stated objectives of the zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal is permissible and consistent with the stated objectives in it provides for a variety of housing types and densities to meet the housing needs of the community.

Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

4.2.2 Height of Buildings

Pursuant to Clause 4.3 of MLEP 2013 the height of a building on the subject land is not to exceed 8.5 metres in height.

The objectives of this control 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 environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Building height is defined as follows:

building height (or **height of building**) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

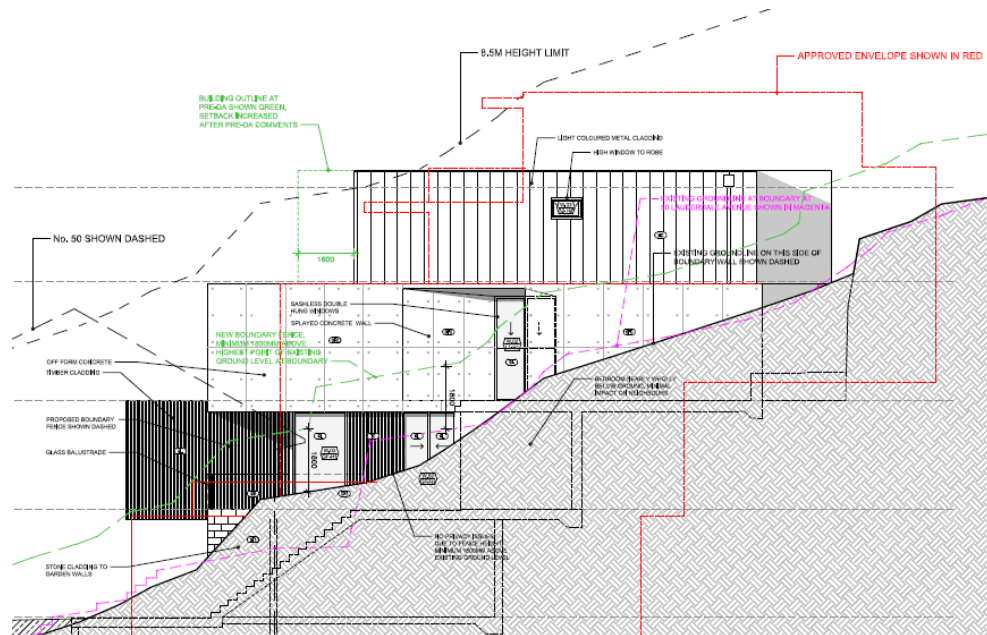


Figure 7 – Plan extract Eastern Elevation showing minor 8.5m height breach

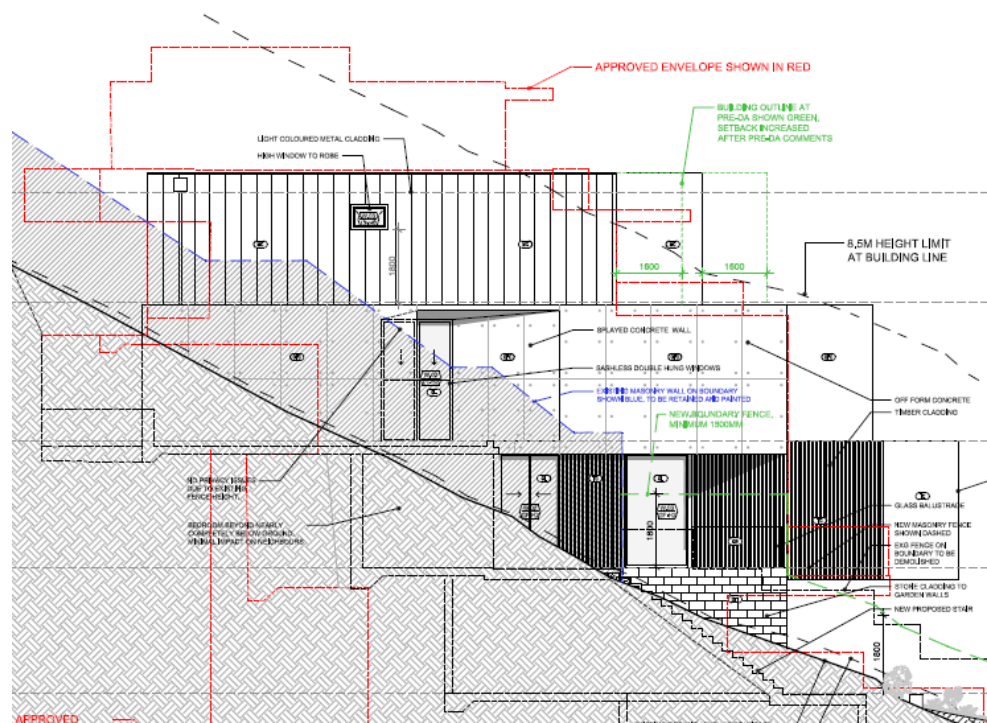


Figure 8 – Plan extract Western Elevation showing 8.5m height breach

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(4) states consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Claim for Variation

Zone and Zone Objectives

The developments permissibility and consistency with the zone objectives has been discussed in detail in section 4.2.1 of this statement.

Height of Buildings Standard and Objectives

This standard and the associated objectives have been previously identified. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- (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,*

Comment: In the context of the steep topography of the site (gradient of 1:2.2) the extent of non-compliance is appropriately described as minor.

The height, bulk and scale of the development is entirely consistent with the built form characteristics established by the adjoining dual occupancy development at No. 54 Lauderdale Avenue and other residential development within the site's visual catchment.

The overall height of the development, and associated extent of height non-compliance, is significantly less than that previously approved pursuant to development consent 311/2016 with the deletion of the uppermost storey resulting in a reduction in overall building height of 2.23 metres. This reduction in building height provides for a significant enhancement of views available across the subject site from the properties to the rear on Upper Gilbert Street and places the overall building height well below that established on No. 54 Lauderdale Avenue.

We have formed the considered opinion that the building height and roof form proposed are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality noting that required excavation is significantly less than that previously approved on the site pursuant to development consent 311/2016. In forming such opinion, we rely on the photomontage at Figure 9 below.



Figure 9 – Photomontage of development as viewed from Lauderdale Avenue with the previously approved development outlined in black

The proposal is consistent with this objective.

(b) to control the bulk and scale of buildings,

Comment: The minor breaching elements do not in any quantitative or qualitative manner contribute to unacceptable bulk and scale with the overall height of the development, and associated extent of height non-compliance, significantly less than that previously approved pursuant to development consent 311/2016.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

The proposal is consistent with this objective.

(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),*

Comment: The deletion of the uppermost storey previously approved pursuant to development consent 311/2016 and the resultant reduction in overall building height of 2.23 metres significantly enhances views available across the subject site from the properties to the rear on Upper Gilbert Street. Letters of support from all immediately adjoining property owners are at Attachment 1.

The proposal provides for the sharing of private views as depicted on the view study plans A4.01(A) to A4.03(A) which demonstrate that both seated and standing views across Middle Harbour from the upper and lower balconies and adjacent living rooms of No. 37 Upper Clifford Avenue will be maintained with such views significantly enhance compared to the outcome approved pursuant to development consent 311/2016. This is depicted in Figure 10 over page.

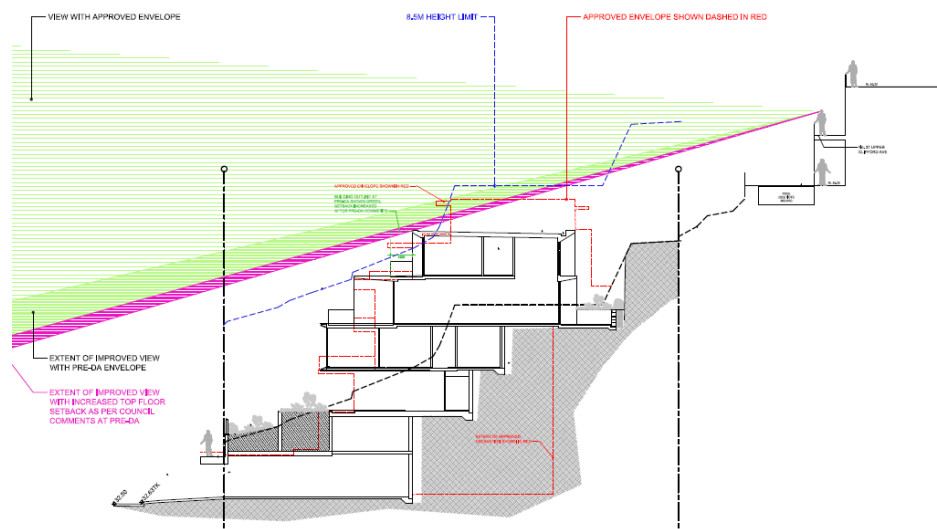


Figure 10 – View analysis diagram

The height and front alignment of the proposal, relative to No's 50 and 54 Lauderdale Avenue, will ensure that all critical view elements will be maintained from both a standing and seated position within the living rooms and adjoining private open space areas across Middle Harbour from both these properties.

Accordingly, we have formed the considered opinion that a view sharing scenario is maintained in accordance with the DCP provision and the view sharing principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140.

The proposal is consistent with this objective.

- (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,*

Comment: Detailed shadow diagrams have been prepared demonstrating the maintenance of existing levels of solar access to the north, east and west facing living room windows and adjacent private open space area of both adjoining properties between 9am and 3pm on 21st June.

The proposal is consistent with this objective.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment: Not applicable

Sufficient site specific environmental planning grounds exist to justify the variation in circumstances where the relatively minor non-compliances are directly attributed to the topography of the land. Compliance with the objectives of the standard and the absence of environmental impact also give weight to the acceptability of the variation sought. Further, the built form outcome able to be achieved through approval of the building heights proposed is consistent with objectives 1.3(c) and 1.3(g) of the Act.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and

- (e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such, we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

4.2.3 Floor Space Ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.6:1 representing a gross floor area of 319.8 square metres. The stated objectives of this clause are:

- (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 business zones 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.*

It has been determined that the overall proposal, involving floor space across both Lots has a total combined GFA of 320.6 square metres representing a compliant floor space ratio of 0.6:1. Notwithstanding, as the proposal involves the Torrens Title subdivision of the completed development, and given the irregular geometry of the site which prevents a 50/50 lots size/ compliant GFA split, the proposal results in the following GFA/ FSR outcome:

TOTAL HOUSE 1 - 52A

SITE AREA	281.3M ²
TOTAL GFA	160.3M ²
FSR	0.57:1

TOTAL HOUSE 2 - 52B

SITE AREA	251.7M ²
TOTAL GFA	160.3M ²
FSR	0.63:1

This represents a non-compliance for proposed House 2 of 9.28 square metres or 6% with proposed House 1 having a GFA/ FSR below the maximum prescribed by the same amount.

Again, clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. With such clause applying to the clause 4.4 FSR Development Standard.

Claim for Variation**Zone and Zone Objectives**

The developments permissibility and consistency with the zone objectives has been discussed in detail in section 4.2.1 of this statement.

Floor Space Ratio Standard and Objectives

This standard and the associated objectives have been previously identified. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Response: The height, bulk and scale of proposed House 2, as reflected by floor space, are entirely consistent with the built form characteristics established by adjoining development and development generally within the site's visual catchment. We note that the overall GFA/ FSR of the development across the consolidated development site is compliant with the FSR standard with the non-compliance a consequence of the Torrens Title subdivision of the completed development. In this regard, the irregular geometry of the site prevents a 50/50 lots size/ compliant GFA split.

We have formed the considered opinion that the bulk and scale of House 2 are consistent with the bulk and scale of surrounding development and development generally within the site's visual catchment.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its form, massing or scale (as reflected by FSR), offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

The proposal is consistent with this objective.

- (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,*

Response: Having inspected the site and its surrounds we have formed the considered opinion that the development will not obscure any important landscape or townscape features with a compliant landscape area curtilage maintained.

The proposal is consistent with this objective.

- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Response: The minor variation proposed will not compromise the developments ability to satisfy this objective. Deep soil landscaped areas at the front and rear of the site provide appropriately for landscaping such that the development will sit within a complimentary and compatible landscape setting.

The proposal is consistent with this objective.

- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Response: Detailed shadow diagrams have been prepared demonstrating the maintenance of existing levels of solar access to the north, east and west facing living room windows and adjacent private open space area of both adjoining properties between 9am and 3pm on 21st June.

The deletion of the uppermost storey previously approved pursuant to development consent 311/2016 and the resultant reduction in overall building height of 2.23 metres significantly enhances views available across the subject site from the properties to the rear on Upper Gilbert Street. Letters of support from all immediately adjoining property owners are at Attachment 1.

The proposal provides for the sharing of private views as depicted on the view study plans A4.01(A) to A4.03(A) which demonstrate that both seated and standing views across Middle Harbour from the upper and lower balconies and adjacent living rooms of No. 37 Upper Clifford Avenue will be maintained with such views significantly enhance compared to the outcome approved pursuant to development consent 311/2016. This is depicted in Figure 11 over page.

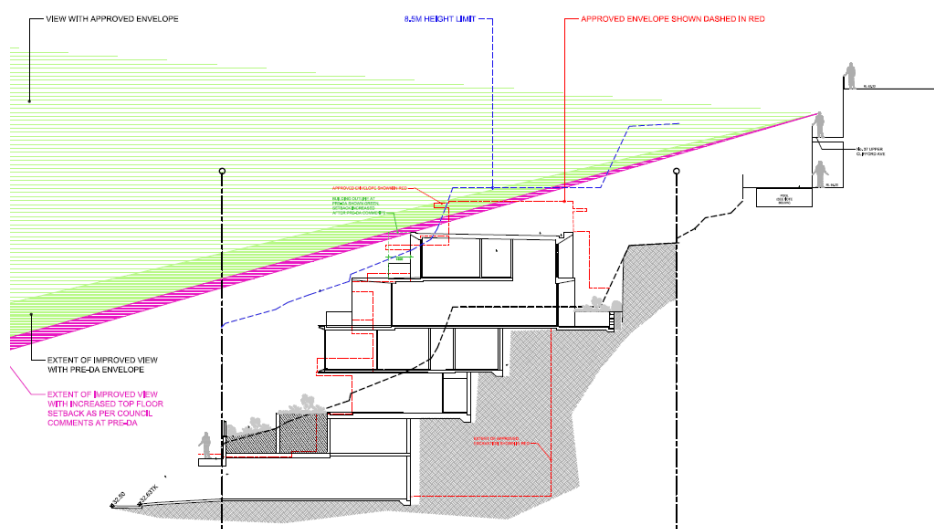


Figure 11 – View analysis diagram

The height and front alignment of the proposal, relative to No's 50 and 54 Lauderdale Avenue, will ensure that all critical view elements will be maintained from both a standing and seated position within the living rooms and adjoining private open space areas across Middle Harbour from both these properties.

Accordingly, we have formed the considered opinion that a view sharing scenario is maintained in accordance with the DCP provision and the view sharing principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140.

In relation to privacy, we confirm that in the preparation of the current building design particular attention was given to orientating all elevated living rooms and adjacent primary balconies towards the front and rear of the site. The living areas open onto a south facing balconies with integrated privacy screening provided to the outside edge of the balcony to prevent overlooking between properties. Side boundary facing fenestration is blinkered through building design which directs the line of sight away from the neighbouring properties towards available views and outlook.

The proposal will not give rise to any public domain amenity impacts with pedestrian safety significantly enhanced through the replacement of the existing antiquated and dangerous public stairs located within the road reserve with new compliant and safe access stairs.

The proposal is consistent with this objective.

In the recent 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

Further, the floor space proposed promotes/ reflects the orderly and economic use and development of the land, consistent with objectives 1.3(c) and (g) of the Act.

The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also give weight to the acceptability of the variation sought.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the floor space ratio standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case, and

- (e) that given the developments ability to comply with the zone and floor space ratio standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such, we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a floor space ratio variation in this instance.

4.2.4 Minimum Lot Size

Pursuant to clause 4.1 of the MLEP 2013 the minimum lot size development standard is 250m². The objectives of the clause are as follows:

- a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*
- b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*
- c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*
- d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

The subdivision component of the application proposes the Torrens Title subdivision of the allotment to create 2 Lots having areas of 251.8 and 281.3 square metres respectively as detailed on the accompanying plan of subdivision prepared by Bee & Lethbridge Surveyors. The propose Lot sizes are compliant with the standard and associate objectives.

4.2.5 Earthworks

Pursuant to the clause 6.2 MLEP 2013 provisions we have formed the considered opinion that the proposed excavation is consistent with that reasonably anticipated on a steeply sloping site and will not give rise to any adverse environmental or residential amenity impacts. The extent of excavation proposed has been addressed in the geotechnical report, dated February 2019, prepared by Crozier Geotechnical Consultants.

We note that a significant reduction in excavation has been achieved compared to that previously approved on the site pursuant to development consent 311/2016 through the provision of a more compact and efficient basement design. The concern expressed in the submission at Attachment 1 from the owner of No. 2/54 Lauderdale Avenue regarding potential excavation impacts have been addressed in the accompanying geotechnical report which recommends dilapidation reporting and vibration monitoring during construction.

Subject to appropriate conditions pertaining to the installation of erosion and sediment controls measures and dilapidation reporting these provisions have been satisfied

4.2.6 Stormwater management

In accordance with these provisions all stormwater will be gravity drained to the street drainage system as detailed on the concept stormwater design prepared by RTS Civil Consulting Engineers.

4.2.7 Foreshore Scenic Protection Area

Pursuant to clause 6.9(2) the land is identified on the Foreshore Scenic Protection Area Map. Pursuant to clause 6.9(3) development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*

(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Having regard to these provisions we have formed the considered opinion that the proposed development will not result in any actual or perceivable impact on the Foreshore Scenic Protection Area in that:

- When viewed from Middle Harbour and its foreshores the height, bulk and scale of the development will not be perceived as inappropriate or jarring in its context with the building blending into the escarpment.
- Clearly, the height, scale and architectural presentation of the development are contextually appropriate having regard to the built form characteristics established by the adjoining development at No. 54 Lauderdale Avenue.
- Having regards to the Land and Environment Court of NSW planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the proposed building offensive, jarring or unsympathetic to its context or surrounds.
- For these reasons Council can be satisfied that the development will not give rise to any actual or perceived impact on the Foreshore Scenic Protection Area having regard to the Clause 6.9 considerations.

4.2.8 Essential Services

Pursuant to clause 6.12 development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*

- (d) stormwater drainage or on-site conservation,*
- (e) suitable vehicular access.*

We confirm that essential services and access are available to the proposed development without the need for augmentation.

4.3 Manly Development Control Plan 2013

This DCP contains development controls for the design and construction of buildings and the subdivision of land in Manly. The proposed development has been assessed against the relevant provisions of the DCP as outlined in the following sections of this report

4.3.1 General Principles of Development

4.3.1.1 Streetscapes

The proposed development steps down the site in response to topography and maintains a complimentary and compatible streetscape alignment. The garaging is contained within a subterranean structure with landscaping over, sandstone faced retainage walls and a reinstated public footpath over the driveway entrance. Such outcome is entirely consistent with that established at No. 56 Lauderdale Avenue as depicted in Figure 12 below.



Figure 12 – Photographic mintage showing proposed streetscape presentation compared to that of No. 56 Lauderdale Avenue

The proposed development by virtue of its heights, setback and presentation to the street will not be perceived as inappropriate or jarring in a streetscape context with the design, height and location of the driveway and garaging complimentary and compatible with other properties located on the high side of the street where garaging with landscaping over extending forward of the front building are characteristic.

4.3.1.2 Landscaping

The accompanying arborist report prepared by Landscape Matrix confirms that of the 22 trees on or adjoining the site none of the trees has been identified as having high landscape value and as a priority for retention. Whilst the development involves the removal of a majority of existing trees such tree loss adequately compensated for through the implementation of the enhanced site landscape regime as detailed on the accompanying landscape plans prepared by Paul Scrivener.

The proposed landscaping incorporates both deep soil and on-slab plantings around the entire perimeter of the development to soften the edges of the building as viewed from outside the site. The development will sit within an in formal landscaped setting as anticipated by the control.

4.3.1.3 Amenity (Views, Overshadowing, Overlooking/ Privacy, Noise)

The development has been designed through detailed site analysis to ensure that appropriate privacy is maintained between adjoining development through building design, the appropriate use and placement of fenestration, the use of fixed privacy screens and the implementation of appropriate intervening screen planting.

Detailed shadow diagrams have been provided demonstrating the maintenance of existing levels of solar access to the north, east and west facing living room windows and adjacent private open space area of both adjoining properties between 9am and 3pm on 21st June.

The proposal also provides for the sharing of both seated and standing views across Middle Harbour from the upper and lower balconies and adjacent living rooms of No. 37 Upper Clifford Avenue as previously outlined in this report.

The height and front alignment of the proposal, relative to No's 50 and 54 Lauderdale Avenue, will ensure that all critical view elements will be maintained from both a standing and seated position within the living rooms and adjoining private open space areas across Middle Harbour from both these properties.

Accordingly, we have formed the considered opinion that a view sharing scenario is maintained in accordance with the DCP provision and the view sharing principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140.

4.3.1.4 Sustainability

A BASIX Certificate accompanies this application which confirms that the residential component of the development will exceed the NSW Government's requirements for sustainability.

4.3.1.5 Stormwater Management

In accordance with these provisions all stormwater will be gravity drained to the street drainage system as detailed on the concept stormwater design prepared by RTS Civil Consulting Engineers.

4.3.1.6 Waste Management

Bins will be stored within the garage before being wheeled to the street for collection. Such location ensures that they will not be discernible as viewed from the street. The application is accompanied by a waste management plan prepared by Platform Architects.

4.3.2 Residential Development Controls

4.3.2.1 Dwelling Density and Subdivision

The property is located within Density Subzone: D3 which provides for a maximum dwelling density of 1 dwelling/ 250 square metre of site area. Based on a site area of 531 square metres the provision of 2 dwellings complies with the dwelling density control.

4.3.2.2 Height of Buildings

The developments performance when assessed against the clause 4.3 Manly LEP height of buildings development standard has been detailed at section 4.2.2 of this report. Council is aware that the Act provides that a DCP provision must not derogate from an LEP development standard and to that extent the primary control remains the 8.5m height standard within the LEP.

Notwithstanding, consideration has been given to the maximum wall height control contained a clause 4.2 of Manly DCP. Given the slope of the land being approximately 1:2.2 a maximum wall of 8 metres applies with a 600mm allowance for parapeted roof forms. The elevations prepared in support of the application demonstrated that the entire eastern façade complies with the wall height control with some minor sections of western façade breaching such control.

For the same reasons outlined in the clause 4.6 variation request prepared in support of the minor breach of the overall building height standard, as outlined at section 4.2.2 of this report, strict compliance has been found to be both unreasonable and unnecessary under the circumstances including the ability to satisfy the underlying objectives of the standard/ control.

The non-compliance is directly attributed to the topography of the land which at a gradient of 1:2.2 makes strict compliance extremely difficult. Such variations also succeed pursuant to section 4.15(3A)(b) of the Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.

4.3.2.3 Floor Space Ratio

This matter has been discussed in detail at section 4.2.4 of this report.

4.3.2.4 Setbacks

The proposed development steps down the site in response to topography and maintains a complimentary and compatible streetscape alignment. The garaging is contained within a subterranean structure with landscaping over, sandstone faced retainage walls and a reinstated public footpath over the driveway entrance. Such outcome is entirely consistent with that established at No. 54 Lauderdale Avenue as depicted in Figure 10.

The proposed dwelling by virtue of its heights, setback and presentation to the street will not be perceived as inappropriate or jarring in a streetscape context with the design, height and location of the driveway and garaging complimentary and compatible with other properties located on the high side of the street where garaging with landscaping over extending forward of the front building are characteristic.

We note that development is to maintain side boundary setbacks equivalent to $1/3^{\text{rd}}$ the wall height.

In this regard, the proposed development maintains highly variable setbacks to both side boundaries with articulation and modulation occurring in both the vertical and horizontal planes. Whilst the setback to various wall elements from both side boundaries do not strictly comply with the $1/3^{\text{rd}}$ wall height setback control they do not defeat the associated objectives as follows:

Objective 1 - The proposal will enhance the streetscape with the side setbacks not giving rise to any adverse or jarring streetscape consequences;

Objective 2 - The building design and setbacks proposed, including associated landscape opportunity, will ensure that appropriate amenity is maintained in relation to visual privacy, equitable access to light, sunshine and air movement. Further, a view sharing outcome is maintained;

Objective 3 - The flexible application of the control has facilitated a more highly articulated and modulated side boundary presentation than a single plane wall of compliant setback;

Objective 4 - The setbacks accommodate appropriate plantings around the entire perimeter of the site as detailed on the accompanying landscape plans of a height and density which will soften and screen the building form as viewed from outside the site;

Objective 5 - The site is not bushfire prone.

In relation to the required 8 metre rear setback control we note that a compliant setback of between 8.3 and 10.4 metres is maintained to the façade of the proposed dwellings houses in strict accordance with the control with minor blade elements encroaching by a minor amount for House 2.

In relation to the ground floor bedroom 2 nil boundary setbacks proposed we note that clause 4.1.4.3 of the DCP states that walls without windows may be constructed to one of the side boundaries provided it has a maximum wall height of 3 metres and a maximum wall length of 35% of the boundary length and providing the objectives of the part are met. Further the applicant must demonstrate no disadvantage to the adjacent allotment through increased overshadowing, or loss of view and no impediment to property maintenance.

In this regard we note that the sections of wall located on the boundaries have maximum heights predominantly below existing ground level and, in any event, well below 3 metres above ground level. The wall lengths are well short of 35% of the boundary length. Such characteristics are fully compliant with the numerical controls. Having regard to the objectives of the control we respond as follows:

- The single storey wall elements are setback between 13 and 22 metres from the front boundary and not readily discernible when viewed from the street. The existing streetscape is maintained.
- The single storey wall elements are located below the level of existing boundary treatments and have no windows such that they will not give rise to any adverse privacy impacts.

- The single storey wall elements will not give rise to any additional shadowing impact on any adjoining property.
- The single storey wall elements will not give rise to any private or public view affectation.
- The single storey wall elements do not require the removal of any landscape elements with deep soil landscape opportunities available down the balance of the southern boundary.
- The provisions of SEPP 19 do not apply to the subject site and the site is not bushfire prone.

Accordingly, it can be demonstrated that the bedroom 2 setbacks comply with the 3 metre maximum wall height and maximum 35% wall length controls, satisfy the objectives of such controls and will not disadvantage the adjacent property through increased overshadowing or loss of view. In relation to property maintenance no objection is raised to a condition requiring the wall to be constructed of face brick to ensure no ongoing maintenance.

Given the fully compliant nature of the subject walling elements when assessed against the concessional setback provisions and the acceptable streetscape outcomes previously identified we urge Council to reinforce the notion of certainty and consistency in the assessment and determination process and support the variation.

Having regard to the objectives the setbacks control we have formed the considered opinion that the setbacks associated with the development as a whole:

- Will not give rise to adverse or non-compliant shadowing impacts with compliant solar access maintained to both immediately adjoining properties;
- Will not give rise to any public or private view affectation;
- Will not require the removal of any significant trees or vegetation; and

- Are complimentary and compatible with those established by adjoining development and development generally within the site's visual catchment.

Consistent with the provisions of section 4.15(3A)(B) of the Act that prescribe that Council must apply some flexibility in applying DCP provisions particularly in circumstances where it can be demonstrated that the objectives of the control are achieved we are satisfied that strict compliance is both unreasonable and unnecessary under the circumstances.

Accordingly, the setbacks are considered entirely appropriate under the circumstances.

4.3.2.5 Open Space and Landscaping

Pursuant to clause 4.1.5 development on the land shall provide a minimum total open space of 55% of the site area of which 35% shall be landscaped area. Open space must be at least 3 m in any direction and have a minimum unbroken area of 12m².

The proposed total open space, as defined, for Houses 1 and 2 is calculated at 183 and 156.5 square metres respectively representing 65% and 62%% of the site area which complies with the minimum 55% control in the MDCP.

The application also proposes 94.73 and 70.87 square metres respectively of landscaped area which represents 33.67% and 28.13% of the required total open space.

These provisions are satisfied.

4.3.2.6 Parking, Vehicular Access and Loading

The basement garages accommodate car parking for 2 vehicles each with a turntable enabling vehicles to enter and exit the site in a forward direction.

This design provides safe and convenient off street parking in accordance with the control as detailed in the accompanying Transport Impact Assessment, dated 1st May 2019, prepared by GTA Consultants.

4.4 Compliance Table

Site Area – 531sqm	Control	Proposed	Compliance
Manly Local Environmental Plan 2013			
Height of Buildings	Max 8.5m overall	Maximum 9.5 metres	NO Refer to clause 4.6 variation
Floor Space Ratio	Max 0.6:1	House 1 – 0.57:1 House 2 – 0.63:1	YES NO Refer to clause 4.6 variation
Minimum Lot Size	250m ²	251.8 and 281.3 m ² respectively	YES
Manly Development Control Plan 2013			
Front Setback	Maintain consistent setback	Maintains consistent setback in the street	YES
Side Setbacks	1/3rd wall height.	Various non-compliances both facades	NO Satisfies objectives of control
Rear Setback	8 metres	Min 8.3m	YES
Wall and Building Height	Max wall height 8 metres and 2 storey form	Minor non-compliances western façade Highly articulated, modulated and stepped 2 and 3 storey building form.	NO Satisfies objectives of control NO Satisfies objectives of control
Open Space	Min 55% of which 30% is to be soft landscaped	House 1 - 65% House 2 - 62% of which 33.67 and 28.13% is soft landscaped area	YES
Carparking	Min 2 Spaces/dwelling	2 spaces per dwelling	YES

4.5 Matters for Consideration Pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979(as amended). Guidelines (*in italic*) to help identify the issues to be considered have been prepared by the Department of Urban Affairs and Planning. The relevant issues are:

4.5.1 The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations.

The proposal is permissible and generally in conformity with the development standards and built form controls contained within the applicable statutory planning regime as reasonably applied to the subject site.

Whilst the application requires council to give favourable consideration to a building height and FSR non-compliances, the accompanying clause 4.6 variation requests demonstrates that strict compliance is both unreasonable and unnecessary under the circumstances with sufficient environment planning grounds to justify the variations sought. Such variation requests are well founded.

This report demonstrates that the wall heights, setbacks and total open space proposed satisfy the objectives of the applicable MDCP controls and accordingly strict compliance is unreasonable and unnecessary under the circumstances. Such variations succeed having regard to section 4.15(3A)(b) of the Act which requires the Consent authority to be flexible in applying DCP controls and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development.

4.5.2 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economical impacts in the locality.

Context and Setting

- i) *What is the relationship to the region and local context on terms of:*
 - *the scenic qualities and features of the landscape?*

- *the character and amenity of the locality and streetscape?*
- *the scale, bulk, height, mass, form, character, density and design of development in the locality?*
- *the previous and existing land uses and activities in the locality?*

The context and setting of the development has been discussed in detail in the body of this report.

ii) *What are the potential impacts on adjacent properties in terms of:*

- *relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)?*
- *visual and acoustic privacy?*
- *views and vistas?*
- *edge conditions such as boundary treatments and fencing?*

The nature of the works proposed will ensure that a compliant level of solar access is maintained to the principal living and private open space area of adjoining development between 9am and 3pm on 21st June. It is considered that a view sharing scenario is maintained having regard to the Planning Principle outlined in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140 and as detailed in this report.

Access, transport and traffic

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *travel demand?*
- *dependency on motor vehicles?*
- *traffic generation and the capacity of the local and arterial road network?*
- *public transport availability and use (including freight rail where relevant)?*
- *conflicts within and between transport modes?*
- *traffic management schemes?*
- *vehicular parking spaces?*

The proposed development does not represent an intensification of use on the site that is well serviced by roads and public transport. The development provides compliant off street parking as detailed in the accompanying Transport Impact Assessment, dated 1st May 2019, prepared by GTA Consultants.

Public domain

The driveway entrance is cut into the existing rock embankment with the existing public stairs within the road reserve demolished and reconstructed further to the east. We note that the accompanying assessment of the existing public stairs prepared by Crozier Geotechnical Consultants contains the following conclusions:

- *Under the existing conditions of the existing stairway, there is a significant hazard of “Slip, Trip and Fall” due to the uneven rock surface and slippery surface over concrete steps of the stairway which is a major risk for public safety.*
- *The long term stability of the existing stairway is at high risk due to cracks within the concrete structure and undercutting of the founding bedrock which is also prone to further destabilization due to erosion of clay seams along bedding defects.*
- *In view of the above mentioned risks regarding public safety and stability of the existing stairway, it is recommended that the stairway be relocated to a proposed location to the east of the existing stairway,*

The upper level pedestrian pathway, which runs parallel to the property frontage, is reinstated above the driveway entrance below as has occurred at No. 54 Lauderdale Avenue. This will require the complete closure of the footpath during the course of construction with pedestrians diverted onto the footpath located on southern side of Lauderdale Avenue as detailed in the accompanying Construction Management Plan prepared by Low Impact Development Consulting.

Utilities

Existing utility services will adequately service the development.

Flora and fauna

The accompanying arborist report prepared by Landscape Matrix confirms that of the 22 trees on or adjoining the site none of the trees has been identified as having high landscape value and as a priority for retention. Whilst the development involves the removal of a majority of existing trees such tree loss adequately compensated for through the implementation of the enhanced site landscape regime as detailed on the accompanying landscape plans prepared by Paul Scrivener.

Waste

Normal domestic waste collection applies to this development.

Natural hazards

There are no identified natural hazards.

Economic impact in the locality

The proposed development will not have any significant impact on economic factors within the area.

Site design and internal design

i) *Is the development design sensitive to environmental conditions and site attributes including:*

- *size, shape and design of allotments?*
- *the proportion of site covered by buildings?*
- *the position of buildings?*
- *the size (bulk, height, mass), form, appearance and design of buildings?*
- *the amount, location, design, use and management of private and communal open space?*
- *landscaping?*

These matters have been detailed in the body of this report.

ii) *How would the development affect the health and safety of the occupants in terms of:*

- *lighting, ventilation and insulation?*
- *building fire risk – prevention and suppression/*
- *building materials and finishes?*
- *a common wall structure and design?*
- *access and facilities for the disabled?*
- *likely compliance with the Building Code of Australia?*

The proposed works can comply with the provisions of the Building Code of Australia.

Construction

- i) *What would be the impacts of construction activities in terms of:*
- *the environmental planning issues listed above?*
 - *site safety?*

As previously indicated, the upper level pedestrian pathway, which runs parallel to the property frontage, is reinstated above the driveway entrance below as has occurred at No. 54 Lauderdale Avenue. This will require the complete closure of the footpath during the course of construction with pedestrians diverted onto the footpath located on southern side of Lauderdale Avenue as detailed in the accompanying Construction Management Plan prepared by Low Impact Development Consulting.

4.5.3 The suitability of the site for the development.

Does the proposal fit in the locality?

- *are the constraints posed by adjacent developments prohibitive?*
- *would development lead to unmanageable transport demands and are there adequate transport facilities in the area?*
- *are utilities and services available to the site adequate for the development?*

The adjacent development does not impose any unusual or impossible development constraints. The site is well located with regards to public transport and utility services. The development will not cause excessive or unmanageable levels of transport demand.

Are the site attributes conducive to development?

The site being of adequate area and having no special physical or engineering constraints is suitable for the proposed development.

4.5.4 Any submissions received in accordance with this Act or the regulations.

It is anticipated that Council will appropriately consider any public submissions received.

4.5.5 The public interest.

The proposal is permissible and generally in conformity with the development standards and built form controls contained within the applicable statutory planning regime as reasonably applied to the subject site.

The proposal will not give rise to any adverse environmental, residential amenity or streetscape impacts. Accordingly, approval of the development would not be antipathetic to the public interest.

5.0 CONCLUSION

The proposal is permissible and generally in conformity with the development standards and built form controls contained within the applicable statutory planning regime as reasonably applied to the subject site.

This application proposes an alternate scheme on the site from that approved pursuant to development consent 311/2016 which provides for far superior built form, environmental and residential amenity outcomes for the site and its immediate neighbours with such outcome developed through detailed site analysis and formal pre-DA discussions with Council and all immediately adjoining property owners. The final design is responsive to the issues raised by Council and adjoining property owners to the extent that this application is accompanied by correspondence from all immediately adjoining property owners who raise no fundamental objection to the current proposal. A copy of these submissions is at Attachment 1.

The highly considered and resolved outcome is a building of exceptional design quality which steps down the site in an articulated and modulated building form and which provides for a complimentary and compatible building presentation. The materials and finishes proposed will ensure the development will blend into the vegetated escarpment with the refined nature and detailing ensuring that the building will reinforce the desired future character of the locality and contribute to the built form quality of development within the sites visual catchment.

Having regard to the issues previously raised by adjoining property owners and the desire to enhance buildability and reduce the previously approved extent of excavation, the current proposal differs from the previously approved scheme as follow:

- The deletion of the uppermost storey resulting in a reduction in overall building height of 2.23 metres. This reduction in building height provides for a significant enhancement of views available across the subject site from the properties to the rear on Upper Gilbert Street;
- A significant reduction in excavation through the provision of a more compact and efficient basement design;
- Enhanced visual and aural privacy through the integration of privacy attenuation measures into the building form;

- Reduced shadowing impacts through the lowering of the building form;
- Enhanced streetscape outcomes through a reduction in building height and the introduction of a greater level of visual articulation and faceted modulation;
- Greater certainty in terms of construction impact management and methodology through the preparation of a detailed Construction Management Plan; and
- Enhanced pedestrian safety through the replacement of the existing antiquated and dangerous public stairs located within the road reserve with new compliant and safe access stairs.

Whilst the application requires council to give favourable consideration to a building height and FSR non-compliance, the accompanying clause 4.6 variation requests demonstrate that strict compliance is both unreasonable and unnecessary under the circumstances with sufficient environmental planning grounds to justify the variations sought. Such variation requests are well founded.

This report demonstrates that the wall heights, setbacks and total open space proposed satisfy the objectives of the applicable MDCP controls and accordingly strict compliance is unreasonable and unnecessary under the circumstances. Such variations succeed having regard to section 4.15(3A)(b) of the Act which requires the Consent authority to be flexible in applying DCP controls and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

Having given due consideration to the matters pursuant to Section 4.15(1) of the Act it is considered that there are no matters which would prevent Council from granting consent to this proposal in this instance.

Boston Blyth Fleming Pty Limited

A handwritten signature in black ink, appearing to read 'Greg Boston', written over a horizontal line.

**Greg Boston
Director**

Attachment 1

5/17/2019

David Allen Properties Pty Ltd Mail - 52 Lauderdale Ave Fairlight



David Allen <da@daproperties.com.au>

52 Lauderdale Ave Fairlight

1 message

Tom Ristoski <tomristoski@gmail.com>

Fri, May 17, 2019 at 6:05 AM

To: David Allen <da@daproperties.com.au>

Cc: Billie Ristoski <billieristoski@gmail.com>, Jim Casey <jjim@jpscasybuilders.com.au>

Dear David,

Thank you for your collaborative approach to your build at [52 Lauderdale Avenue](#), and the opportunity to provide feedback.

As discussed with you, we appreciate many of the changes you are making to the new development to make it more street and neighbour friendly.

The plans appear to be particularly positive for our adjoining neighbours on Upper Clifford St, however the new plans have much more impact on our house than any other.

It appears that by bringing the development further South, you will be closing off any light to our bedroom, as well as partially shading our bathroom and our kitchen. In the kitchen in particular, we will likely need to make changes to our windows now.

We provide broad support for the new plan, however need to see the details to assess the specific concerns raised.

Thank you

Tom

--

Tom and Billie Ristoski
[50 Lauderdale Avenue Fairlight](#)
Ph 0412398676



2 May 2019

David Allen
DA Properties
Level 1, 28 North Steyne
Manly NSW 2095

Dear Mr Allen,

Re: 52 Lauderdale Avenue, Fairlight

I act on behalf of Murray, Max and Juanita Walls of 37 Upper Clifford Avenue, Fairlight.

Thank you for providing me with preliminary plans of your proposed development at 52 Lauderdale Avenue, Fairlight, being the following drawings:

- A0.00, Revision PR8 – Site Analysis Plan
- A0.01, Revision PR – Notification Plans
- A2.02, Revision PR11 – West Elevation
- A2.04, Revision PR11 – East Elevation
- A4.01, Revision PR11 – View Analysis 1
- A4.02, Revision PR11 – View Analysis 2
- A0.03, Revision PR11 – View Analysis 3
- SH1, Revision PR11 – Shadow Diagrams June 21st
- 19/2053, Sheet 1, Issue E – Landscape Site Plan / Landscape Calculations
- 19/2053, Sheet 2, Issue E – Landscape Planting Plan

No objections are raised to the proposal as shown on those drawings.

We will request that Council impose a condition of consent limiting the height of plantings within the rear setback area to a mature height of 4.0 metres, and that landscaping be maintained at this height. This will ensure that views from 37 Upper Clifford Avenue are retained whilst also providing for a softening of the visual appearance of the development and maintenance of privacy between dwellings.

Yours sincerely,

Geoff Goodyer
Symons Goodyer Pty Ltd

c:\users\geoff\documents\data\planning\walls murray\19-117\letter allen 1.docx

Symons Goodyer Pty Ltd
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5/9/2019

David Allen Properties Pty Ltd Mail - Re: 52 Lauderdale Avenue, Fairlight



David Allen <da@daproperties.com.au>

Re: 52 Lauderdale Avenue, Fairlight

1 message

James Spencer <jamesfspencer@hotmail.com>
To: David Allen <da@daproperties.com.au>

Thu, May 9, 2019 at 9:31 AM

David

We have reviewed the 8 drawings contained within the "package" linked to your email dated 19th April 2019.

We confirm that we have no objection to the proposed amendments to the current approvals, as shown on those drawings, subject to the changes to the landscaping referred to in your email dated the 1st May 2019 and subject to our review of the final submission to Council.

In writing we would like to express our appreciation of your efforts to be a good neighbour.

Regards

Dianne & James Spencer

From: David Allen <da@daproperties.com.au>**Sent:** Wednesday, 1 May 2019 4:12 PM**To:** dianne_julia@hotmail.com; James Spencer**Subject:** Fwd: 52 Lauderdale Avenue, Fairlight

Good afternoon Dianne and James

I was able to speak with James this afternoon. I also left a voice mail for you Dianne prior to reaching James at home.

As discussed with James, Geoff hadn't heard if you were intending to utilise his service or if you were going to review the plans by yourselves.

Geoff is ready to send our planner a short correspondence to confirm he is happy with the proposed development and notes that we have changed a plant species on the landscaping to meet his request and will likely request that we seek council to condition the approval so that species for rear (adjacent to yours and Walls properties) are not higher than 4 metres.

I will leave it with you if you wanted to join with the Walls to use Geoff or alternatively if you wished to email the same type of correspondence to me that also works.

Thanks for your openness and frankness on the phone James. No doubt we will see you both around in the coming months.

Regards

DAVID ALLEN

5/9/2019

David Allen Properties Pty Ltd Mail - Development Application 52 Lauderdale Avenue Fairlight



David Allen <da@daproperties.com.au>

Development Application 52 Lauderdale Avenue Fairlight

1 message

Brett Riddington <brettriddo@bigpond.com>

Wed, May 8, 2019 at 5:24 PM

To: David Allen <da@daproperties.com.au>

Hello David.

As the owner of No1/54 Lauderdale Avenue Fairlight, thank you for your time recently to review your development application for No 52 Lauderdale Avenue Fairlight.

Following those discussions, thank you also for the designs updated today and then sent to me as attached.

I support the application as per the attached design for your DA submission to the Northern Beaches Council.

As per our discussions with David Jund from No2/54 Lauderdale Avenue, we will need to ensure that the geotechnic assessments and dilapidation reports are performed as per the previous approved DA, to ensure the stability and safety of our property and building during your excavation and construction.

Best regards, Brett.

Sent from my iPhone

attachment 1.pdf
731K

5/16/2019

David Allen Properties Pty Ltd Mail - Proposed Development at 52 Lauderdale Ave Fairlight



David Allen <da@daproperties.com.au>

Proposed Development at 52 Lauderdale Ave Fairlight

1 message

David Jurd <David.Jurd@midl.com.au>
To: David Allen <da@daproperties.com.au>

Thu, May 16, 2019 at 9:12 AM

David,

Thank you for your engagement on the subject of your development at 52 Lauderdale Ave, as detailed in the attachment 1 file, and your subsequent adjustment of the level 2 western wall detailed in the west elevation file.

I reside at [2/54 Lauderdale Ave](#), and appreciate that your proposed development is a big improvement in scale and form on the current approved design. I support the application as per the attached design for your DA submission to the Northern Beaches Council with the following caveats as discussed:

- I reserve my rights regarding the DA process;
- I have concerns regarding the geotechnical stability of my property, in the excavation of your property, particularly the basement. My concerns would be addressed by the application of conditions to your DA, similar to the existing DA Conditions 311/2016 Nos 2,3,4,5,6 and 45, with outcomes similar to the Crozier Geotechnical Report for the existing DA, being rock-sawing prior to rock-breaking, full time vibration monitoring and Peak Particle Velocity of 5mm/s; and
- A maximum roof RL of 52.200 being established.

Regards

David

David Jurd
[2/54 Lauderdale Ave](#)
0418 225 209

2 attachments **attachment 1.pdf**
731K **A2.02 WEST ELEVATION issue A.PDF**
501K