

3.3 DA2017/1333 - 50 LAUDERDALE AVENUE, FAIRLIGHT - DEMOLITION AND CONSTRUCTION OF A NEW DWELLING HOUSE

PROCEEDINGS IN BRIEF

The Panel visited the site prior to the meeting. The Panel also visited the neighbour's property at 35 Upper Clifford Avenue, which included the neighbour from the adjoining property at 1/37 Upper Clifford Avenue. The Panel considered the Assessment Report, recommendation and special conditions.

The Panel was provided with copies of the late submissions from the neighbours at 1 and 2/37 Upper Clifford Avenue and 35 Upper Clifford Avenue.

The Panel heard submissions from an architect from Archisoul Architects on behalf of the neighbours at 48 Lauderdale Avenue. The Panel also heard from the neighbours at 1/37 Upper Clifford Avenue and 35 Upper Clifford Avenue. The consultant planner from Boston Blyth and Fleming attended to answer questions from the Panel on behalf of the applicants and landowners.

The main issues discussed in the meeting were the loss of solar access to 48 Lauderdale Avenue, the size and impact of the roof terrace and gym on views and amenity of the residents to the north in Upper Clifford Avenue, the setback of the roof terrace to the western boundary and the non-compliances with building height and wall height.

The Panel also heard submissions from the neighbours and consultant planner on the approval at 52 Lauderdale Avenue (same architect and same consultant planner as 50 Lauderdale Avenue). It became apparent that a condition referred to in the Assessment Report to require a 2.0m setback from the edge of the building on the western side of the roof terrace had not been included in the recommended conditions (an omission). The Applicant was willing to accept a 1.0m setback requirement only.

Based on those discussions, it was decided to defer the determination of this matter to allow a joint inspection to take place at the neighbouring property at 48 Lauderdale Avenue to better ascertain the impact on existing solar access.

Joint Inspection and Determination

Following on from the deferral of this matter at the meeting on 28 March, the Panel visited the adjoining property at 48 Lauderdale Avenue on 17 April. The owners of that property led the Panel through the rooms within the western side of the dwelling, comprising a bedroom, living room and dining room. The inspection also took in the deck off the front of the house and the rear yard.

The owners of No. 48 Lauderdale Avenue also made comment during the site visit that they were seeking to have the window (W11) on the eastern elevation fitted with obscure glazing to address privacy their concerns.

The fact that the proposal will result in a further reduction in sunlight access is of concern to the Panel. The Manly Development Control Plan (MDCP) states that "*no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours*".

The Land and Environment Court (LEC) Planning Principles on Solar Access state that "*at low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight*", however it also states that "*even at low densities, there are sites and buildings that are highly vulnerable to being overshadowed*". This is one of those cases, as the rooms and windows on the western elevation of the dwelling at No. 48 Lauderdale Avenue are at ground floor

level and sunken below the levels of the subject site.

Notwithstanding, the proposal involves non-compliances with the side setback and wall height controls under the MDCP, albeit those non-compliant areas are further to the south of the building envelope. In this regard, there are “*more sensitive design*” (Planning Principle) modifications that can be made to the proposal to minimise the overshadowing and visual bulk on the adjoining property to the east (48 Lauderdale Avenue), whilst achieving the same amenity without substantial additional cost to the Applicant. These modifications include:

- a. Reducing the floor to ceiling heights on the first floor level from 3.0m to 2.7m, thus reducing the overall building height.
- b. Deleting the roof covering over the “Entry Court” in the north-eastern corner of the dwelling such that the length of roofed area on the eastern elevation is no greater than the existing dwelling.

In relation to submissions on view loss by neighbours to the north of the subject site, the Panel does not consider the view impacts to be unreasonable and concurs with the views analysis in the assessment report.

The Panel also noted the following in its review:

- The Assessment Report does not contain a detailed assessment of the front setback, rear setback, number of storeys, side setback and wall height variations, although they are noted as non-complying in the Compliance Table on page 14 of the report and the table states “See Comments”. On this, the Panel sought advice from the Assessment Officer and Manager Development Assessment on the omitted commentary on these planning controls.

It appears there was a technical/systems issue when the Assessment Report was generated, whereby the assessment comments on the above controls did not appear in the final version of the report. Hence the Panel requested a Supplementary Report be prepared by the assessment officer including the omitted assessment. That Report was provided for the Panel’s consideration.

It is noted that the public submissions made on this application did not raise specific issue with the non-compliances and did not raise issue with the fact that the assessment report omitted the relevant assessment.

- The Panel notes that the proposal is only 3 storeys at any one point and the side setback and wall height variations apply to the southern half of the building, all of which are reasonable and acceptable considering the constraints imposed by the steep slope of the site.
- Notwithstanding, the Panel are of the opinion that the reduction in floor to ceiling height of Level 2 is warranted as this will lessen the side setback and wall height non-compliances and reduce the visual bulk and scale when viewed from the adjoining property to the east.
- On page 18 of the Assessment Report, there is a typographical error in the conclusion on *Privacy and Security*, where it reads “inconsistent” and should read “consistent”, as confirmed with the assessment officer.
- On page 7 and 17 of the Assessment Report, there is reference to a condition requiring the roof top terrace to be setback 2.0m from the western side boundary, however that condition is not in the draft conditions attached to the report. The Supplementary Report by the assessment officer deals with that omission. On this issue, the Panel consider the setback to the roof top terrace should be 1.0m from the edge of the building, hence a condition will be imposed to that affect.
- An additional condition is required to protect the privacy of the front deck of No. 48 Lauderdale Avenue, being a planter box (500mm in width) on the eastern edge of the

terrace on Level 2.

- An additional condition is required to protect the privacy of No. 48 Lauderdale Avenue in the form of window W11 on the eastern elevation being obscure glass.

Conclusion

The Panel considered the Assessment Report and Supplementary Report, supporting documentation, submissions by the applicant and objectors and carried out site visits and the Panel supports the Clause 4.6 Variation in relation to the building height control, finding it is well founded and justified.

Subject to the imposition of additional conditions as detailed above, the proposed development is satisfactory and should be approved.

DECISION

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standard contained in Clause 4.3 (Height of Buildings) of that Plan is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. DA2017/1333 for demolition and construction of a new dwelling house at 50 Lauderdale Avenue, Fairlight be **approved** subject to the conditions outlined in the assessment report and the addition of Condition No. 1A as follows:

1A. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- a. The roof top terrace is to be setback 1.0m from the western edge of the building.
- b. A planter box, 500mm in width and 1.0m in height (above finished floor level) is to be provided on the eastern edge of the terrace on Level 2. The planter is to maintain suitable screen planting to a height no greater than 400mm above the finished height of the planter.
- c. Window W11 on the eastern elevation is to be fitted with obscure glass.
- d. The floor to ceiling heights on the first floor level are to be reduced from 3.0m to 2.7m, thus reducing the overall height of the building by 300mm.
- e. The roof covering over the "Entry Court" in the north-eastern corner of the dwelling is to be deleted and the eave is to match the remainder of the eaves on the dwelling.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to release of the Construction certificate.

Reason : To ensure satisfactory privacy, sunlight access and visual amenity for neighbouring properties. (DACPLB02)

