

# 17 DALWOOD AVE SEAFORTH

The General Manager  
Northern Beaches Council  
1 Belgrave St, Manly NSW 2095

17/05/2024

## **Statement of Development Standard Exception – minor alterations and additions, 17 Dalwood Avenue, Seaforth**

Dear Sir

This Statement of Development Standard Exception (SDSE) has been prepared to seek development consent for alterations and additions to the existing dwelling (the Proposal) at 17 Dalwood Avenue, Seaforth (the Site) in accordance with Part 4 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act).

This SDSE has been prepared, in accordance with clause 4.6 of the Manly *Local Environmental Plan 2013* (MLEP 2013) as a result of the Proposal including a floor space ratio (additional floor space) above the development standard (clauses 4.4 and 4.4A of the MLEP 2013).

Of note is that albeit the Proposal does not comply with the FSR development standard of the MLEP 2013, it complies with the FSR control within the DCP 2013. The DCP 2013, allows for a variation to the FSR control where blocks are undersized, which is relevant to the Site. Therefore, the MDCP 2013 provides an alternative approach to calculating FSR, enabling the Proposal to be compliant.

This SDSE is structured in accordance with the requirements of clause 4.6 of the MLEP 2013. The purpose of this SDSE is to illustrate that the addition to floor space would not result in adverse impacts on the locality or neighbouring properties. This SDSE's primary focus is the impact of the additional floor space not the potential impacts of other aspects of the Proposal, which are addressed within the Statement of Environmental Effects.

### **1. Development standards to be varied**

The development standards for which an exception is sought are clauses 4.4, 'Floor space ratio' of the MLEP 2013. Clause 4.4 of the MLEP 2013 provides standards for the floor space ratio of certain buildings within the Northern Beaches Council Local Government Area (LGA). This clause is shown in Table 1. In addition to this Table 1 identifies the FSR requirement for this clause based on the site area.

Table 1 Floor space ratio development standards for exception

Development Standard	Details	Control
<b>Floor space</b> (Clause 4.4)	<p>(1) <i>The objectives of this clause are as follows—</i></p> <p>(a) <i>to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,</i></p> <p>(b) <i>to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,</i></p> <p>(c) <i>to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,</i></p> <p>(d) <i>to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,</i></p> <p>(e) <i>to provide for the viability of Zone E1 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.</i></p> <p>2) <i>The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.</i></p>	0.4:1

Clause 4.5 of the MLEP 2013 provides details in relation to the calculation of floor space ratio and site area. Further guidance for the determination of floor space ratio is through the definition of 'gross floor area' (GFA) which is included within the Dictionary of the MLEP 2013 and is as follows:

**“gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
  - (b) habitable rooms in a basement or an attic, and
  - (c) any shop, auditorium, cinema, and the like, in a basement or attic,
- but excludes:
- (d) any area for common vertical circulation, such as lifts and stairs, and
  - (e) any basement:
    - (i) storage, and
    - (ii) vehicular access, loading areas, garbage and services, and
  - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
  - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
  - (h) any space used for the loading or unloading of goods (including access to it), and
  - (i) terraces and balconies with outer walls less than 1.4 metres high, and
  - (j) voids above a floor at the level of a storey or storey above.”

## 2. Proposed variation

The Proposal includes alterations and additions to an existing dwelling. The proposed alterations and additions are to be undertaken to improve the amenity and usability of the dwelling for the intended residents and also to soften the appearance of the building and maximise its integration into the surrounding streetscape. An overview of the proposed changes to the built-form, and their compliance with the key planning controls (MLEP 2013 and MDCP 2013) are provided in Table 2.

Table 2 Built-form alterations and additions numeric summary

Detail	Existing	Proposed
Site area	473.7m <sup>2</sup>	473.7m <sup>2</sup>
GFA	198.02m <sup>2</sup>	204.03m <sup>2</sup>
FSR (site area) – LEP (c4.4) – 0.4:1	0.418:1 (8.54m <sup>2</sup> (4.51%) above control)	0.43:1 (14.55m <sup>2</sup> (7.68%) above control)
FSR (750m <sup>2</sup> ) DCP (s4.1.3) – 0.4:1	0.264:1 (compliant)	0.272:1 (compliant)

Additional floor space is proposed to be added to enclose the existing outdoor reflection area and extend the existing study area. The location where this additional floor space is proposed has been selected based upon its ability to ensure no negative impacts on either the immediate neighbours or the surrounding streetscape. The additions are generally considered minor in nature. This additional floor space would be below the existing roof line, consistent with the current setback of the dwelling and not be viewed from neighbouring properties or the streetscape.

A comparison of the development standard (clause 4.4 of the MLEP 2013) and the existing and proposed GFA and FSR is provided within Table 2, above. As is shown in Table 2, the existing dwelling is currently above the existing development standard. The Proposal includes only a minor increase in floor space above the existing dwelling, approximately 6m. Overall this additional floor space is considered minor (when combined with the existing floor space non-compliance) in the context of the existing dwelling and locality.

## 3. Clause 4.6 Assessment

This statement of variation has been prepared in accordance with the requirements of clause 4.6 of the MLEP 2013. Clause 4.6 (3) of the MLEP 2013 states that “*consent must not be granted for a 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.”*

An assessment of the additions to floor space in consideration of the requirements of clause 4.6 of the MLEP 2013 is provided below. The Department of Planning and Environment (now Department of Planning, Housing and Infrastructure) “Guide to

exclusion from clause 4.6 of the Standard Instrument” (November 2023) has also been considered in preparing this report.

### **3.1 Is the development standard unreasonable or unnecessary in this circumstance?**

The Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 provides the five part test to determine if compliance with a development standard is unreasonable or unnecessary with only one test needing to be satisfied. In our opinion, the Proposal satisfies Test 1 as the objectives of the development standard are achieved notwithstanding the non-compliance (refer to Section 3.3).

Further, the existing building is currently above the floor space development standard, meaning that any increase (minor or otherwise) in floor space results in a non-compliance. Notwithstanding this, the existing dwelling is considered to integrate into the street-scape and does not result in an adverse impact on the amenity of surrounding properties. The design of the existing dwelling is considered to provide the opportunity for an increase in floor space (at a certain location) while retaining the character and nature of the dwelling.

The Proposal would result in a generally minor increase in floor space to a discrete area of the dwelling. This results in a minor alteration to the northern façade, covering in a balcony, below the existing roof line and achieving a consistent and unbroken façade.

The Proposal would retain the beneficial elements of the existing built-form (the dwelling) with only minor floor space additions. In consideration of the existing design (and floor space) and the ability of the dwelling to be altered (with additional floor space) without adverse impact on the surrounding locality this additional floor space is considered acceptable and appropriate.

Further, albeit the Proposal does not comply with the FSR development standard of the MLEP 2013, it complies with the FSR control within the DCP 2013. The DCP 2013, allows for a variation to the FSR control where blocks are undersized, which is relevant to the Site. Therefore, the MDCP 2013 provides an alternative approach to calculating FSR, enabling the Proposal to be compliant (with the DCP).

In summary, under the circumstances and in this instance, the development standard, for floor space, is considered unreasonable and its application for the Proposal is unnecessary. Therefore, the Proposal is consistent with clause 4.6(3)(a) of the MLEP 2013.

### **3.2 Are there sufficient environmental planning grounds to justify the variation to the development standard?**

In considering whether there are sufficient environmental planning grounds to justify the FSR non-compliance, the following principles are relevant:

*In Initial Action Pty Ltd v Wool/ahra Municipal Council* [2018] NSWLEC 118, Preston CJ further clarified the correct approach in the consideration of clause 4.6 requests. This advice further confirms that the clause does not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not.

*As held in Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [39], Preston CJ confirmed (at[25]) that the test in 4.6 (4)(a)(i) does not require the consent authority to directly form the opinion of satisfaction regarding the matters specified. Rather. it needs to do so only indirectly in forming its opinion of satisfaction that the

applicant's written request has adequately addressed the matters required to be demonstrated.

By contrast, the test in cl4.6(4)(a)(ii) requires that the consent authority must be directly satisfied about the matter in that clause (at[26]); namely that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone in which the development is proposed to be carried out.

The Proposal is considered to exhibit sufficient environmental planning grounds consistent with these principles in that:

- It would have a neutral or better environmental planning outcome for the Site, namely:
  - Views – the Site and buildings (neighbouring property to the north) are separated by dense vegetation and are at considerably differing ground levels (due to topography – residential dwelling is generally below the ground level of the neighbouring buildings). There would be extremely limited, to no views from neighbouring buildings to the addition. The addition would be below the existing established roofline and retain the existing setback and character of the dwelling.
  - Privacy - the addition would result in a positive impact on privacy within the dwelling (i.e. the conversion of a balcony into a room). There would be a minor decrease in noise, with there no longer being a balcony on this façade. There would be no adverse impacts on privacy of surrounding dwellings or land uses.
  - Character - the Proposal would not adversely alter the presence of the dwelling. It would be under the roof line, have the same articulation as the existing façade and utilise the same materials to integrate into the dwelling.

The Proposal also meets the objectives of the development standard and zone and therefore is considered in the public interest (refer to Section 3.3).

The proposed additions to floor space and departure from the development standard is therefore considered sufficient and justified on environmental planning grounds and complies with clause 4.6(3)(b) of the MLEP 2013.

### 3.3 Is the development consistent with the objectives of the standard and zone, and therefore within the public interest?

The additions to floor space are considered to be consistent with the objectives for the floor space development standard (clause 4.4 of the MLEP 2013) and the zone 'R2 Low Density' (under the MLEP 2013). Table 3 identifies the compliance of the additions to floor space with these objectives.

*Table 3 additions to floor space compliance with development standard and zone objectives*

Development Standard	Details	Discussion
<b>Development standard</b>		
<b>Floor space</b> (Clause 4.4)	<p>(1) The objectives of this clause are as follows:</p> <p>(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,</p> <p>(b) to control building density and bulk in relation to a site area to ensure that</p>	<p>The additions to floor space are considered consistent with these objectives in that:</p> <ul style="list-style-type: none"> <li>▪ The bulk and scale of the dwelling as viewed from the streetscape would not be altered</li> </ul>

Development Standard	Details	Discussion
	<p><i>development does not obscure important landscape and townscape features,</i></p> <p><i>(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,</i></p> <p><i>(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,</i></p> <p><i>(e) to provide for the viability of Zone E1 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.</i></p>	<ul style="list-style-type: none"> <li>▪ There would be no change to important landscape and townscape features</li> <li>▪ The additions would be consistent with the character of the existing dwelling</li> <li>▪ There would be no adverse impacts on the public domain or adjoining land.</li> </ul>
<b>Zone</b>		
<b>Zoning</b> (Land Use Table)	<p>The objectives of the Zone R2 Low Density are as follows:</p> <ul style="list-style-type: none"> <li>▪ <i>To provide for the housing needs of the community within a low-density residential environment.</i></li> <li>▪ <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></li> </ul>	<p>The additions to floor space are considered consistent with these objectives in that:</p> <ul style="list-style-type: none"> <li>▪ They would allow for the provision of housing in accordance with the needs of the community while maintain the principles of a low-density residential environment</li> <li>▪ They would not preclude the development of other land uses (in the locality) that service the residential area.</li> </ul>

In summary, the additions to floor space, are considered consistent with the objectives of the development standard (clause 4.4 of the MLEP 2013) and the zone (Land Use Table of the MLEP 2013). The additions to floor space are therefore considered in the public interest.

### 3.4 Does the exception raise matters of significance for State or regional environmental planning?

The additions to floor space and the resulting exception does not result in an impact on any matters of State or regional environmental planning significance. In particular, it has been designed to be consistent with the principles of State and regional planning legislation and policy, namely:

- **Policy-** the floor space addition (and the Proposal) would implement the key objectives of State and regional policy in particular facilitating for the provision of housing as identified within the 'Greater Sydney Regional Plan, A Metropolis of Three Cities'.
- **Legislation-** the floor space additions (and the Proposal) would not impact on the implementation of any relevant State Environmental Planning Policies (SEPPs).

In summary, the exception to the development standard included within the Proposal would support state policy and legislation and therefore not raise any matters of significance for State or regional environmental planning. The additions to floor space therefore comply and are considered suitable for the concurrence of the Secretary.

### **3.5 What is the public benefit of maintaining the development standard?**

As discussed above, the additions to floor space have been discretely located to result in no adverse impacts on the immediate neighbouring property and the locality. The addition to floor space do not result in unacceptable adverse impacts on key environmental values of the area.

In this circumstance the maintenance of the development standard is not considered to increase the public benefits to the locality. In the instance that this development standard is maintained the public benefit of improving the functionality and presence of the dwelling (included with the Proposal) would not be realised.

On this basis, and the generally positive public benefit provided by the additions to floor space, to not proceed (i.e. maintain the development standard) would not be within the public interest.

### **3.6 Is there any other matters to be taken into consideration?**

No other matters are considered suitable to be taken into consideration. Further information is provided within the SEE for the Proposal. Overall, the additions to floor space would result in a positive contribution to the streetscape and not unreasonably adversely impact on surrounding properties.

## **4. Conclusion**

The Proposal includes the alteration and addition to a residential dwelling on the Site. The Proposal (and the included additions to floor space) seek an exception to the floor space development standard (clauses 4.4 of the MLEP 2013) in accordance with clause 4.6 'exceptions to development standards' of the MLEP 2013. This report has been prepared to support the Development Application (DA) prepared for the Proposal under Part 4 of the EP&A Act.

This report illustrates that the Proposal, although including a departure from the floor space development standard, provides a positive outcome which would be realised through an improved presence and aesthetics of the dwelling. There would be extremely minor to no visual change from surrounding residential properties.

In consideration of the benefits provided by the additional floor space (and the Proposal) and the absence of unreasonable adverse impacts as a result of this variation from the development standard, the requirements of clause 4.6 are considered to be satisfied and it is recommended that this exception be approved.

Please do not hesitate to contact the undersigned should you have any questions regarding any of the above.

Yours sincerely



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