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STATEMENT OF ENVIRONMENTAL EFFECTS

16 FAIRLIGHT CR FAIRLIGHT, NSW

Lot 9, DP3742

SECTION 4.6 – FLOOR SPACE RATIO

**New house and swimming pool
October 2021 – ISSUE 1**

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1. INTRODUCTION

This Submission seeks a variation to clause 4.4 of the Manly LEP 2013, which relates to floor space ratio.

The submission has been prepared in support of an application for alterations and additions to a new house at 16 Fairlight Cr in Fairlight.

As dictated in this written request for a variation to floor space ratio being a development standard under Manly LEP2013, the proposed development meets the requirements prescribed under clause 4.6 states the following:

4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:

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

(2) Development 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.

(3) Development 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.*

(4) Development 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 Secretary has been obtained.*

(5) In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.*

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note.

When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4.*
- (ca) clause 6.15,*
- (cb) a development standard on land to which clause 6.19 applies.*

The use of Clause 4.6 to enable an exception to this development control is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to the development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and

4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- 4.6(3) (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- 4.6(3) (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a 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*

The Environmental Planning Instrument to which these variations relate to is the Manly LEP 2013.

The development standard to which this variation relates to is Clause 4.4 – Floor space ratio, which reads as follows:

(1) The objectives of this clause are as follows:

- (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.*

(2) 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.

As demonstrated in Figure 1 below, the subject site is limited to a maximum floor space ratio of 0.6.



Figure 1 – Manly Floor Space Ratio Map

The floor space ratio of the proposed development is 0.61. Consequently there is an encroachment.

A written justification is therefore required for the proposed variation to the maximum floor space ratio development standard, in accordance with Clause 4.6 of the Manly LEP2013

2. EXTENT OF NON-COMPLIANCE

As noted above Clause 4.4 of the Manly LEP2013 states that the maximum floor space ratio for the site is 0.6. If the new development was compliant with this Clause the maximum gross floor area would be 367.92 m².

The design proposes the construction of a two-story new house plus a basement excavated into the slope of the land.

The proposed modification does not modify the building envelope and building footprint. However, the change on the room purposes in the basement leads to a floor space ratio slightly over the maximum approved floor space ratio.

As shown on Figure 2 below the new gross floor area will be 375.53m², a non-compliance of 7.61 m².

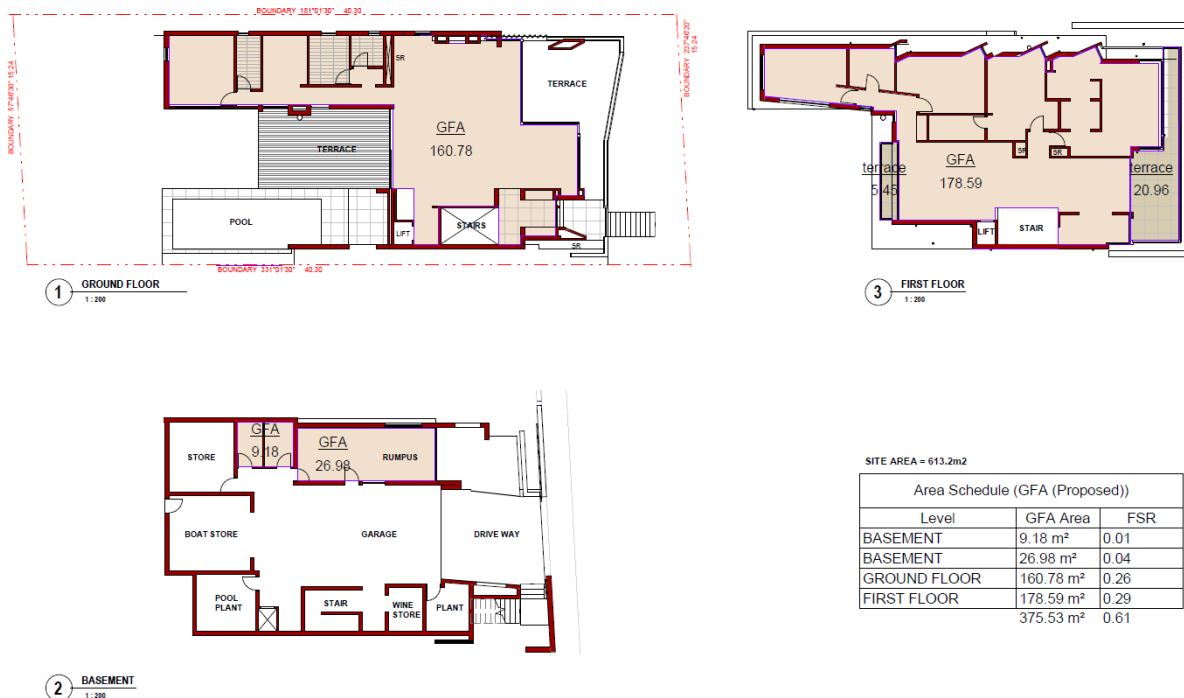


Figure 2: Proposed GFA

It is our submission that the additional gross floor area to the floor space ratio control is not out of scale with the other developments fronting Fairlight Crescent and that it will not have a negative impact on the amenity of the development or adjoining properties, nor will the variation compromise the bulk and

scale of the development. Therefore, it is considered the variation sought is minor and a degree of flexibility is considered reasonable in this instance.

As the above image and the FSR plans show, the new gross floor area is located in the basement. Therefore there is no change to overlooking, and is not visible to the public realm. Therefore no environmental impact.

3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?

The proposal addresses the site constraints, streetscape and relevant objective of both the standards and the zone. The proposal will not result in any unreasonable amenity or environmental impacts.

In this case, strict compliance with the development standard for floor space ratio of the Manly LEP2013 is unnecessary and unreasonable.

4. IS THE VARIATION IN THE PUBLIC INTEREST?

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4. The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.4.

Furthermore, it is important to also consider the objectives of the R1 General Residential zone in relation to the development, which are as follows:

Zone R1 General Residential

1 Objectives of zone

- *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.*

In response to the above the following is provided:

- The proposed new dwelling will maintain the general residential use in a general residential zone. The quality of housing will be improved by the works.
- No other land uses are proposed.

Accordingly, it is considered the proposed alterations and additions align with the objectives of the zone.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standards, noting the development will be in the public interest.

5. PUBLIC BENEFIT OF MAINTAINING THE STANDARD

It is considered that there is no benefit to the public or the community in maintaining the development standards. The proposed development will better interact with the adjoining properties being works of a high quality that meets the desired objectives of the floor space ratio standard.

The interface with adjoining properties will be enhanced, as discussed in the Statement of Environmental Effects.

The building form is consistent with building forms in the area and the variation sought is consistent with the character of the neighbourhood.

It is not considered that the variation sought raises any matter of significance for State or regional environmental planning.

The departure from the floor space ratio control within the Manly LEP2013 allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

6. IS THE VARIATION WELL-FOUNDED?

It is considered that this has been adequately addressed in Parts 3 and 4 of this submission. In summary, this Clause 4.6 Variation is well-founded as required by Clause 4.6 of the Manly LEP2013 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (floor space ratio) and objectives of the R1 General Residential zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with the revitalisation of the precinct.

Based on the above, the variation is considered to be well-founded.

7. GENERAL

Clause 4.6 also states that:

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4.

(ca) clause 6.15,

(cb) a development standard on land to which clause 6.19 applies.

This variation does not relate to the subdivision of land. The variation sought is thus not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying with the development.

A BASIX certificate has been provided for the development.

Clause 5.4 of the Manly LEP2013 does not apply to the proposal.

Clause 6.15 of the Manly LEP2013 does not apply to the proposal.

Clause 6.19 of the Manly LEP2013 does not apply to the proposal.

8. CONCLUSION

The proposal does not strictly comply with the maximum floor space ratio control as prescribed by Clause 4.4 of the Manly LEP2013. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Manly LEP2013 are satisfied as the breach to the controls does not create any adverse environmental impacts.

As reiterated throughout this report, the proposal seeks to be responsive to the requirements of the properties while respecting the surrounding context. The change of the room purposes on the basement leads to a floor space ratio slightly over the maximum approved floor space ratio. For this reason, the environment and physical characteristics of the site have been carefully considered in order to minimise any impacts on the environment and surrounding properties.

The proposal will on the whole improve the character of the neighbourhood and is mostly a compliant application.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Manly LEP2013 to vary this development controls appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the floor space ratio control is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Should you have any questions regarding the proposed development, please do not hesitate to contact me.



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