

STATEMENT OF ENVIRONMENTAL EFFECTS

**FOR PROPOSED ADDITIONS AND ALTERATIONS TO AN EXISTING DWELLING
INCLUDING A NEW SWIMMING POOL, PATIO, DRIVEWAY
AND NEW GARAGE**

AT

4 NORTH HARBOUR STREET, BALGOWLAH

FOR

K & N READER



**Prepared
March 2020**

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1.0 Introduction

This Statement of Environmental Effects accompanies architectural details prepared on behalf of K & N Reader by Paul Carrick Associates, Job No. 1030, Drawing No. 1 – 12, dated February 2020, to detail proposed alterations and additions to the existing dwelling including new garage, driveway, swimming pool, and associated landscaping at **4 North Harbour Street, Balgowlah**.

This Statement reviews the proposed development by assessing the relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, (as amended) including:

- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *State Environmental Planning Policy No 55 – Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Manly Local Environmental Plan 2013*
- *Manly Development Control Plan 2013*

2.0 Property Description

The subject allotment is described as **4 North Harbour Street, Balgowlah**, being Lot 1 within Deposited Plan 543563 and is zoned R2 Low Density Residential under the Manly Local Environmental Plan 2013.

The dwelling is not listed as a heritage item within Schedule 5 of the Manly Local Environmental Plan 2013, nor is it noted as being within a Conservation Area.

The land is identified on Council's Foreshore Scenic Protection Map. This will be discussed further within this submission.

The site is listed as being with the Class 5 Acid Sulfate Soils Area. This will be discussed further within this submission.

The site is not identified as bushfire prone land.

There are no other known hazards affecting the site.

3.0 Site Description

The site is located on the western side of North Harbour Street with a general fall to the north-east of approximately 2m.

The site is irregular in shape and has an angled front boundary measuring 21.045m in total. The northern and southern sides boundaries measure 13.97m and 15.24m respectively. The rear boundary measures 22.565m. The total site area is 325.4m².

The eastern portion of the site is currently affected by a drainage easement (as noted as "A" on the survey). It is understood that this easement is currently being extinguished in conjunction with

Council and evidence of the extinguishment would be provided prior to the determination of a development application submission.

The existing dwelling is a two storey clad dwelling with a tile roof and an in-ground swimming pool in the north-eastern corner of the front yard.

Stormwater from the roofed areas is directed to the street gutter.

Vehicular access is currently available from North Harbour Street via a paved driveway to an existing garage.

The details of the site are included on the survey plan prepared by C.M.S Surveyors Pty Ltd, Reference No. 18959, dated 20 November 2019, which accompanies the DA submission.

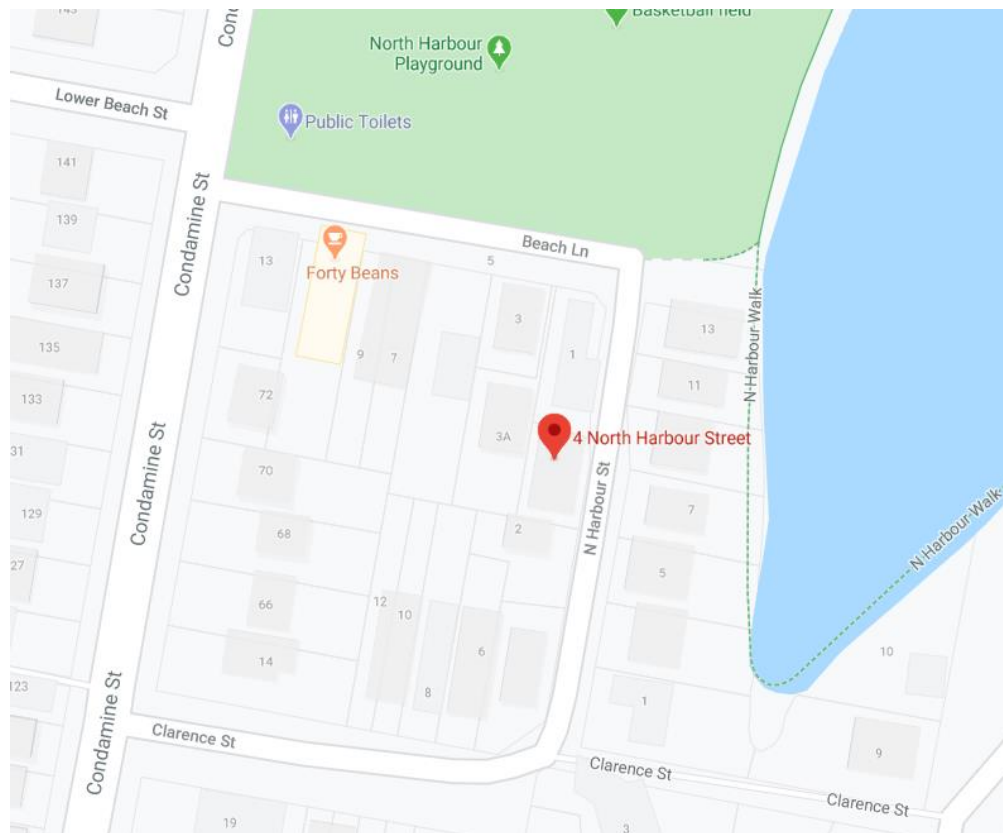


Fig 1: Location sketch
(Source: Google Maps)



Fig 2: View of subject dwelling, looking west from North Harbour Street



Fig 3: View of subject dwelling and neighbouring dwelling at No 1 Beach Lane, looking north-west from North Harbour Street



Fig 4: View of front yard of subject site and neighbouring dwelling at No 4 North Harbour Street, looking south-west

4.0 Surrounding Environment

The area surrounding the site is predominantly represented by a mix of development comprising dwellings of varying sizes.

The dwellings in the vicinity have been designed with living areas and associated open space that are oriented to take advantage of the district views available to the site.

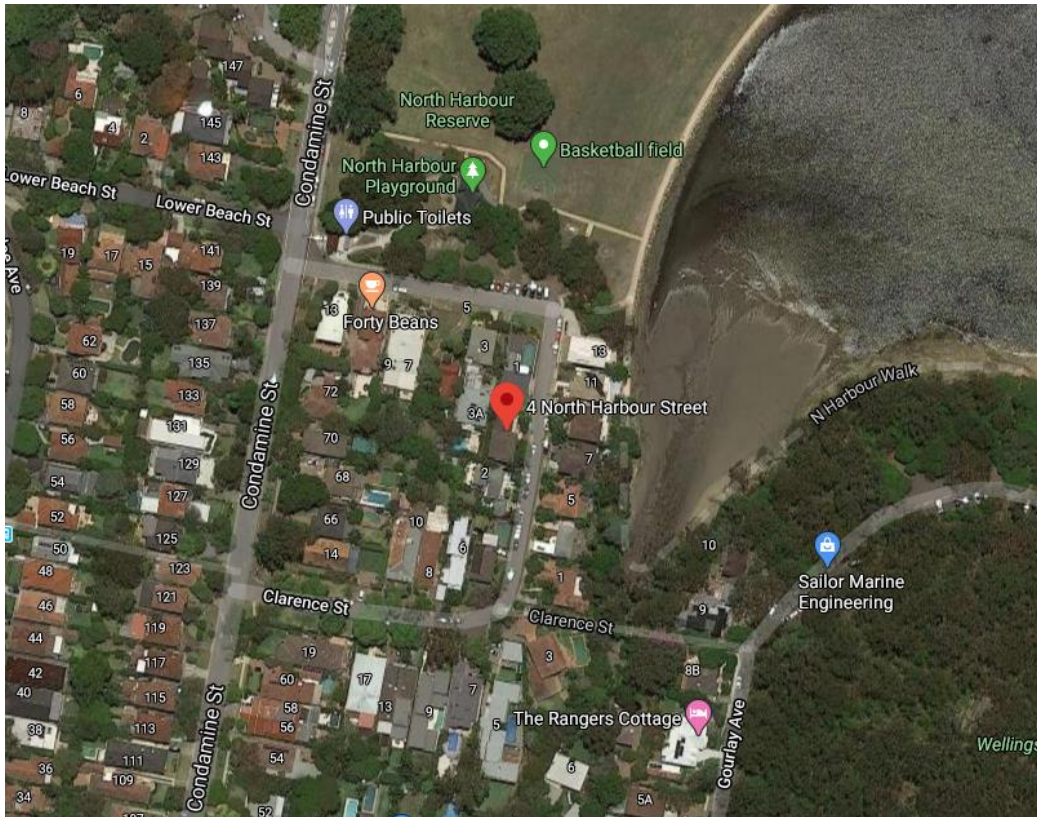


Fig 5: Aerial view of subject site
(Source: Google Maps)

5.0 Proposed Development

As detailed within the accompanying plans prepared by Paul Carrick Associates, the proposal seeks consent for proposed alterations and additions to the existing dwelling including a new garage, driveway, swimming pool, and associated landscaping.

The following design statement is provided by the project designer – Paul Carrick & Associates and is offered in support of the proposed design.

Design Statement

The objective scope of this project is to maintain the weatherboard structure whilst updating the 60's cottage with elegant appeal to today's standards, improving occupant amenity and street appeal.

The current street parking is dire on week days and worse at weekends.

To assist a double garage is sought to replace the existing single garage which is undersized and dilapidated.

The garage will house 2 cars and refuse to present a much-improved streetscape and a wider vehicle apron which will greatly improve ingress and egress and pedestrian safety in a very restricted road area.

The garage concrete roof will allow improved amenity forming a patio area directly from the living area.

The revised layout allows a concentrated green space and pool to the front court behind a screened fence and feature stone wall giving a cohesion between indoor and outdoor living spaces.

These additions will allow a private open space away from the constant foot traffic of the Spit to Manly walk.

All windows and doors are to be replaced with thermally efficient glazing for aesthetics and amenity. The window apertures have been reduced in number and located to best assist the amenity of the neighbours and occupants.

The design seeks to find the balance of form and function on an undersized block.

The proposal will see the removal of the existing garage and swimming pool to accommodate the proposed new driveway and garage.

The new works comprise:

Ground Floor

Alterations and additions to existing ground floor to provide for new kitchen and foyer, linen, laundry, robe to bed 4, refurbishment of bath 1, alterations to existing window openings and internal access stairs

Upper Floor	Alterations and additions to existing upper floor to provide for internal alterations to existing master bedroom, new robe to bed 2 and alterations to existing window openings
External Works	Proposed new driveway, new double garage with patio over, external stairs and new swimming pool

The proposed works will not exceed the existing maximum ridge height of the dwelling (RL 22.48m).

The external finishes of the new works will complement the existing dwelling.

The proposal does not seek the removal of any significant vegetation.

The development indices for the site are:

Site Area	325.4m ²
Required Open Space/Landscape	55% of site area/35% of open space
Proposed Open Space	36% or 117m ²
Proposed Landscape	23% or 41.5m ²

6.0 Zoning and Development Controls

6.1 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject site is located such that this proposal requires consideration against the provisions of State Regional Environmental Planning Policy (Sydney Harbour Catchment) 2005 (SREP 2005).

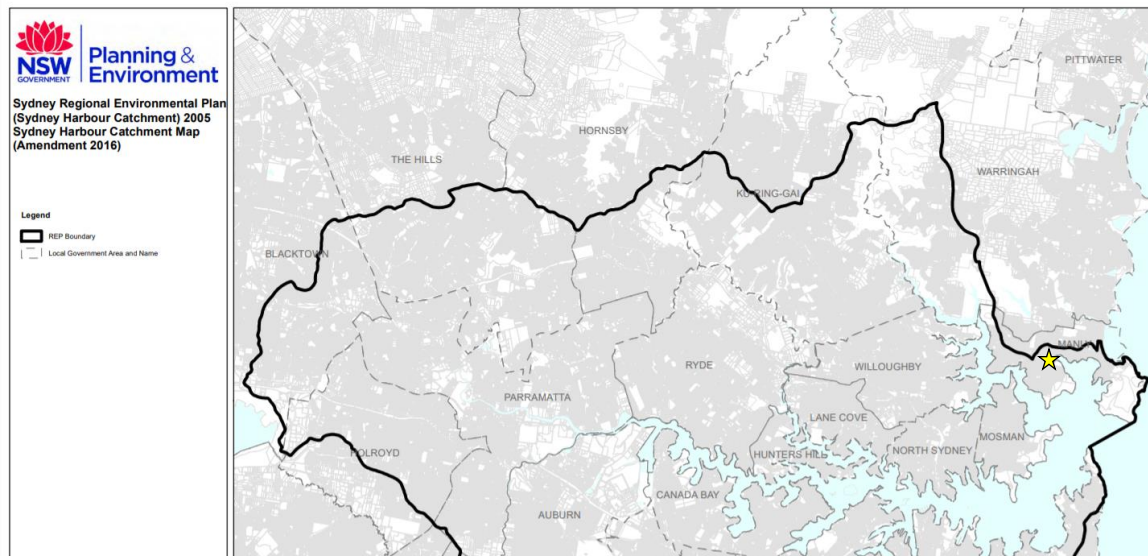


Fig 6: Extract from SH SREP

The proposed works are assessed against the requirements of this Policy as follows.

The subject site is located within the Sydney Harbour Catchment, however it is not identified as being within the Foreshores and Waterways Area.

The site does not adjoin any “Strategic Foreshore Sites”.

Clause 13 provides the planning principles for land within the Sydney Harbour Catchment and these are noted as:

- (a) *development is to protect and, where practicable, improve the hydrological, ecological and geomorphological processes on which the health of the catchment depends,*
- (b) *the natural assets of the catchment are to be maintained and, where feasible, restored for their scenic and cultural values and their biodiversity and geodiversity,*
- (c) *decisions with respect to the development of land are to take account of the cumulative environmental impact of development within the catchment,*
- (d) *action is to be taken to achieve the targets set out in Water Quality and River Flow Interim Environmental Objectives: Guidelines for Water Management: Sydney Harbour and Parramatta River Catchment (published in October 1999 by the Environment Protection Authority), such action to be consistent with the guidelines set out in Australian Water Quality Guidelines for Fresh and Marine Waters (published in*

- November 2000 by the Australian and New Zealand Environment and Conservation Council),*
- (e) development in the Sydney Harbour Catchment is to protect the functioning of natural drainage systems on floodplains and comply with the guidelines set out in the document titled Floodplain Development Manual 2005 (published in April 2005 by the Department),*
 - (f) development that is visible from the waterways or foreshores is to maintain, protect and enhance the unique visual qualities of Sydney Harbour,*
 - (g) the number of publicly accessible vantage points for viewing Sydney Harbour should be increased,*
 - (h) development is to improve the water quality of urban run-off, reduce the quantity and frequency of urban run-off, prevent the risk of increased flooding and conserve water,*
 - (i) action is to be taken to achieve the objectives and targets set out in the Sydney Harbour Catchment Blueprint, as published in February 2003 by the then Department of Land and Water Conservation,*
 - (j) development is to protect and, if practicable, rehabilitate watercourses, wetlands, riparian corridors, remnant native vegetation and ecological connectivity within the catchment,*
 - (k) development is to protect and, if practicable, rehabilitate land from current and future urban salinity processes, and prevent or restore land degradation and reduced water quality resulting from urban salinity,*
 - (l) development is to avoid or minimise disturbance of acid sulfate soils in accordance with the Acid Sulfate Soil Manual, as published in 1988 by the Acid Sulfate Soils Management Advisory Committee.*

As the proposal is seeking to provide for modest additions and alterations to an existing dwelling, with minimal site disturbance, the proposal is considered to be consistent with the relevant aims of the Clause.

The works are largely contained within the existing built footprint and as such, the stormwater characteristics of the site will be generally unchanged, with no increased stormwater loading to the public foreshore or waterway.

Any impacts resulting from the minor site disturbance associated with the reconstruction of the garage will be addressed through the installation of sediment barriers.

Clause 14 provides the planning principles for land within the Foreshores and Waterways area. The relevant principles are discussed below:

- (a) development should protect, maintain and enhance the natural assets and unique environmental qualities of Sydney Harbour and its islands and foreshores*

Comment: The proposed works are mostly within the footprint of the existing dwelling. Given the reasonable separation from the foreshore area, it is not considered that there will be any significant impact on the natural assets or unique environmental qualities of Sydney Harbour and foreshores.

- (b) public access to and along the foreshore should be increased, maintained and improved, while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation*

Comment: The proposed works are wholly within private property and do not result in the removal or detrimental impact on any natural assets of the catchment. The extent of existing public access to the foreshore will not be unreasonably diminished as a result of the proposed works.

- (c) access to and from the waterways should be increased, maintained and improved for public recreational purposes (such as swimming, fishing and boating), while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation.*

Comment: As discussed, the proposed works are wholly on private property and do not result in the removal or detrimental impact on any natural assets of the catchment. The extent of existing public access to the foreshore will not be unreasonably diminished as a result of the proposed works.

- (d) development along the foreshore and waterways should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands and foreshores*

Comment: The proposed works will see alterations and additions to an existing dwelling which will complement existing neighbouring dwellings by being at a similar height and scale to the surrounding development along North Harbour Street, and will not detract from the natural assets of the harbour locality.

The proposal will not see any substantial change to the bulk and scale of the existing dwelling and is complementary to the existing development in the locality.

- (e) adequate provision should be made for the retention of foreshore land to meet existing and future demand for working harbour uses*

Comment: As discussed, the proposed works are wholly on private property and do not result in the removal or detrimental impact on any natural assets of the catchment. The proposal will not impact on the working function of the Harbour waters.

- (f) public access along foreshore land should be provided on land used for industrial or commercial maritime purposes where such access does not interfere with the use of the land for those purposes*

Comment: N/A to the proposed residential use.

- (g) the use of foreshore land adjacent to land used for industrial or commercial maritime purposes should be compatible with those purposes*

Comment: N/A to the proposed residential use.

- (h) *water-based public transport (such as ferries) should be encouraged to link with land-based public transport (such as buses and trains) at appropriate public spaces along the waterfront*

Comment: N/A to the proposed residential use.

- (i) *the provision and use of public boating facilities along the waterfront should be encouraged.*

Comment: N/A to the proposed residential use.

Part 3, Division 2 details the *Matters for Consideration* to be considered by the consent authority in the assessment of a proposal within the land subject to SREP 2005. As the works seek consent for alterations and additions to the existing dwelling, which are well removed from the waterfront, the following Clauses of Division 2 are considered to be relevant to the proposal.

Clause 20 - General requires that Council take into consideration the Division prior to granting consent.

Clause 21 - Biodiversity, ecology and environment protection

The matters to be taken into consideration in relation to biodiversity, ecology and environment protection are as follows:

- (a) *development should have a neutral or beneficial effect on the quality of water entering the waterways,*
- (b) *development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),*
- (c) *development should promote ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),*
- (d) *development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action and changes to water quality) as a result of increased access,*
- (e) *development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*
- (f) *development should retain, rehabilitate and restore riparian land,*
- (g) *development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetative buffer to protect the wetlands,*
- (h) *the cumulative environmental impact of development,*
- (i) *whether sediments in the waterway adjacent to the development are contaminated, and what means will minimise their disturbance.*

As the works will not have any physical impact on the waterway or the land adjoining the waterfront, the proposal is considered to be reasonable. No significant vegetation is to be removed to facilitate the construction.

The proposal is considered to have a neutral effect on the waterway.

22 Public access to, and use of, foreshores and waterways

The proposed works will not have any direct effect on the public use of the waterfront and will not diminish the public's ability to have access to and utilise the waterway.

23 Maintenance of a working harbour

The proposal will not have any impact on the harbour and will not affect the principles encouraging the maintenance of the harbour as a functional, working harbour.

24 Interrelationship of waterway and foreshore uses

The proposed works will not impact on the relationship between the public land and the waterway. The proposal is not inconsistent with the identified principles within Clause 24.

25 Foreshore and waterways scenic quality

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows:

- (a) the scale, form, design and siting of any building should be based on an analysis of:
 - (i) the land on which it is to be erected, and*
 - (ii) the adjoining land, and*
 - (iii) the likely future character of the locality,**
- (b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries,*
- (c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.*

The bulk and scale of the proposed works is compatible with the surrounding development along North Harbour Street and due to the modest form will not have any detrimental impact on the visual qualities of the harbour and the foreshore area. The continued residential use of the land is a characteristic of the area and the anticipated future character of this locality.

26 Maintenance, protection and enhancement of views

By observing the objectives of Council's maximum height controls and allowing for views to and from the public spaces, the proposal will not have any detrimental effects on views to and from Sydney Harbour or the waterway.

27 Boat storage facilities

The proposed works are within private land and will not have any impact on boat storage facilities in the locality.

There are no other provisions of SREP (Sydney Harbour Catchment) 2005 that applies to the proposed development. It is considered that the proposal complies with SREP (Sydney Harbour Catchment) 2005.

6.2 State Environmental Planning Policy No. 55 – Remediation of Land

SEPP 55 – Remediation of Land and in particular Clause 7(1)(a) suggests that a consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated.

Given the history of residential use of the land, the site is not considered to be subject to contamination and further investigation is not required at this stage.

6.3 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The proposal has been designed to respect the water, thermal and energy standards required by BASIX. A BASIX certificate has been submitted with the development application.

6.4 Manly Local Environmental Plan 2013

The land is zoned R2 Low Density Residential under the provisions of the MLEP 2013.

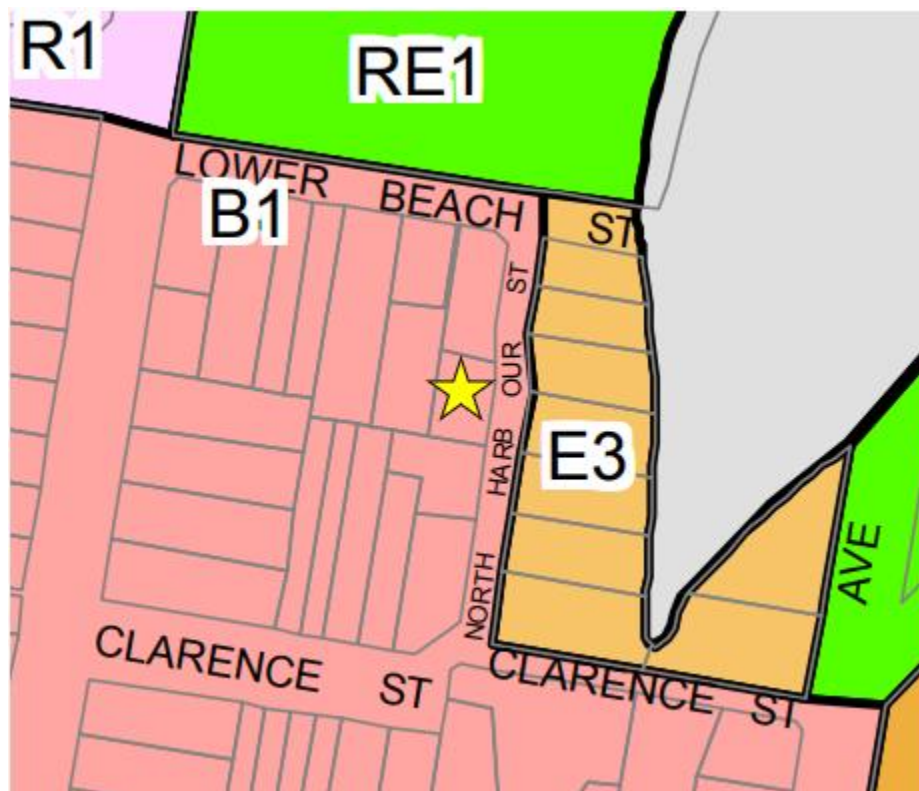


Fig 7: Extract of Manly Local Environmental Plan 2013 Zoning Map

The development of and use of the land for residential purposes is consistent with the objectives of the R2 Low Density Residential, which are noted as:

- *To provide for the housing needs of the community within a low density residential environment.*

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

It is considered that the proposed additions and alterations to the existing dwelling will achieve the zone objectives and are consistent with the established character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing detached style housing within the locality.
- The proposed development respects the scale and form of other dwellings in the vicinity and therefore complements the locality.
- The setbacks are compatible with the existing surrounding development.
- The site is utilised as housing and will continue to maintain the residential use.
- The works will provide for alterations and additions to an existing dwelling which will maintain the residential scale and character of the locality.
- The proposal will maintain an appropriate level of amenity to the adjoining properties.
- The proposal does not unreasonably obstruct any significant views from private property or the public domain.
- As detailed in this report the proposal maintains appropriate solar access to the surrounding properties.

Clause 4.3 – Height of buildings

The dictionary supplement to the LEP notes building height to be:

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.

The building height limit for development in this portion of Balgowlah is 8.5m. The proposed new works to the existing dwelling will present a maximum building height of approximately 6.5m which complies with this control.

Clause 4.4 – Floor space ratio

A maximum floor space ratio control of 0.45:1 or 145.12m² for a site with an area of 325.4m² is required for development in this locality. The existing dwelling has a floor area of 253m² or 0.784:1. The proposal provides a total floor area of 260m² or floor space ratio of 0.80:1, which does not meet this provision.

Accordingly, the proposal is accompanied by a Clause 4.6 submission in support of the variation.

It is noted that under the provisions of Clause 4.1.3.1 of Manly Development Control Plan 2013 Amendment 14, an exception to the FSR control can be considered for undersized allotments, when the development is considered to suitably address the relevant LEP objectives and DCP provisions.

In this instance, the FSR can be calculated based on a minimum lot size of 500m² (Area "I" on LSZ Map). On this basis, the proposal presents a revised FSR calculation of 0.799:1, which is a reduced extent of non-compliance with the FSR control. The design and its merits are discussed within the Clause 4.6 submission which is included as an appendix to this statement.

Clause 6.1 – Acid sulfate soils

The site is within the Class 5 Acid Sulfate Soils area. The proposed works will not require any substantial disturbance of the existing site conditions, and therefore no further investigation is deemed necessary in this instance.

Clause 6.2 – Earthworks

The proposed works are largely contained within the existing building footprint and will not require any substantial disturbance of the existing site conditions, with the exception of the minor excavation required to accommodate the proposed swimming pool.

All works will be carried out under the supervision and direction of a Structural Engineer and will be managed to ensure that the amenity and safety of the subject and neighbouring dwellings will be protected.

Clause 6.4 – Stormwater management

The proposal meets the objectives of the clause as stated below in that:

- (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- (b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- (c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

The new roof areas will be connected to the existing stormwater system which directs roofwater to the street gutter. As the extent of hard and soft areas will remain largely unchanged, the proposal will not see any change to the existing stormwater arrangements.

Clause 6.8 – Landslide risk

The site is identified on Council's DCP mapping as being within Area G4 on the Landslip Hazard Map. All works will be carried out under the supervision and direction of a Structural Engineer and will be managed to ensure that the amenity and safety of the subject and neighbouring dwellings will be protected. The proposal will therefore satisfy the provisions of this clause.

Clause 6.9 – Foreshore scenic protection area

Clause 6.9 relates to development within the Foreshore Scenic Protection Area and notes within (3):

- 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.*

In this regard, it is considered that the proposal is suitable in the Foreshore Scenic Protection area, as the works will respect the height, scale and form of the surrounding residential development and the existing development on the site.

There are no other clauses of the MLEP 2013 that are considered to be relevant to the proposed development.

It is considered that the proposal achieves the requirements of the MLEP.

6.5 Manly Development Control Plan 2013

Council's DCP Development Control Plan 2013 – Amendment 14 provides the primary control for development within the area.

The DA submission will address the Council's submission requirements outlined in Part 2 – Process.

The primary areas which are applicable to the proposed works are detailed within Part 3 – General Principles of Development & Part 4 – Development Controls and Development Types.

Clause 3.1.1 Streetscape (Residential Areas)

The proposed alterations to the dwelling will enhance the street view of the site. The proposed works to the dwelling will not see any change to the bulk and scale of the existing dwelling, thereby reducing the visual impact of the development on the streetscape. The proposed works are mostly to the rear and side of the dwelling and will not be highly visible from the streetscape.

The intended outcomes are noted as:

- i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
- ii) ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*
- iii) maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;*
- iv) avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;*
- v) address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;*
- vi) visually improve existing streetscapes through innovative design solutions; and*
- vii) Incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design*

The proposal will see the construction of alterations and additions to the existing dwelling including a new garage and swimming pool.

The proposed works will not see any substantial increase to the bulk and scale of the dwelling as viewed from the streetscape, and the maximum ridgeline of the building will remain unchanged.

The proposed extension to the rear of the existing upper floor level will not be prominently visible from North Harbour Street.

The new works are complementary to the existing locality and the surrounding development. The proposal is in keeping with the character of the North Harbour Street streetscape, and is therefore worthy of Council's support.

Clause 3.3 Landscaping

The proposed new works will largely maintain the existing area of soft landscaping within the site. The new works will present an appropriate form and footprint, which is appropriately set back from the street, side and rear boundaries.

The existing landscaping on site will continue to minimise overlooking to neighbouring properties.

Clause 3.4 Amenity (Views, Overshadowing, Overlooking/Privacy, Noise)

The objectives of the clause are noted as:

- | | |
|---------------------|---|
| <i>Objective 1)</i> | <i>To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties.</i> |
| <i>Objective 2)</i> | <i>To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.</i> |

It is suggested that the works will achieve these objectives as:

- The proposed alterations and additions to the dwelling comprise a new swimming pool which is located within the front yard, and are therefore not considered to result in any impacts on the privacy of neighbouring dwellings.
- The proposed additions will not see any unreasonable diminution of the solar access enjoyed by the neighbouring properties. The new works are modest in bulk and scale, and maintain the existing roof form of the dwelling.
- The proposed additions to the existing dwelling will not increase the existing maximum ridge height of the dwelling. The new works readily comply with the statutory height limit.

Clause 3.5 Sustainability

A BASIX Certificate has been prepared to support the new works and confirm that the additions will achieve the appropriate thermal performance criteria.

Clause 3.7 Stormwater Management

It is proposed to retain the existing stormwater arrangements which direct water to the rear of the site. The works will not see any increase in the built footprint.

Part 4 – Residential Development Controls**Site Area 325.4m² - Density Sub Zone D5 (500m² per lot)****Compliance Table**

Control	Required	Proposed	Compliance
Clause 4.1.1 Residential Density & Subdivision	Density Area D5 – 1 dwelling per 500m ²	Site area 325.4m ²	Yes – existing site and dimensions are unchanged
Clause 4.1.2 Height of Buildings	Maximum height – 8.5m Wall height – 7.6m Max two storeys Roof height – 2.5m above wall height	Maximum height of new works – 6.5m N/A – remains unchanged Max two storeys (existing) N/A – remains unchanged	Yes N/A Yes N/A
Clause 4.1.13 Floor Space Ratio (FSR)	0.45:1	Minor increase in floor area by 7 m ² - see clause 4.6 submission.	Yes – on merit
Clause 4.1.4 Setbacks (front, side and rear)	<u>Front</u> a) Relate to neighbouring sites and the prevailing building lines or 6m c) Projections into the front setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, chimneys, meter boxes and the like, where no adverse impact on the	The proposed garage will be setback approximately 460mm to the front boundary and therefore does not comply with this control. The adjoining dwellings along North Harbour Reserve comprise garages with a minimal setback to the street.	Yes – on merit

Control	Required	Proposed	Compliance
Side Boundary setback – 1/3 of wall height	streetscape or adjoining properties is demonstrated to Council's satisfaction. <u>Side</u> 1/3 x 2.4m = 0.8m	The siting of the proposed garage is considered to be consistent with that of existing surrounding development. Proposed garage will stand 553mm from northern side boundary. As the proposed northern elevation contains no windows, is less than 3m in height as it presents to the side boundary, and is well separated from the southern side boundary, it is considered to be in keeping with the provisions of 4.1.4.3(b). The siting of the garage is therefore considered worthy of support on merit.	Yes – on merit
Rear setback – 8m		The proposal will not see any change to the existing rear setback.	N/A
Clause 4.1.5 Open space and Landscaping	Area OS 3 Open space: Min 55% site area Landscaping: 35% of open space	Proposed open space - 36% Proposed soft open space - 23% The existing development varies the open space and landscaped area controls, and the	Yes – on merit

Control	Required	Proposed	Compliance
		<p>proposal results in an increase in the available open space area of 19m². The existing landscaped area is constrained by the extent of the existing development on site.</p> <p>The existing development presents a constraint to designing works that are fully compliant with this control.</p> <p>The site will not see the removal of any trees or vegetation and will retain an appropriate level of soft landscaping within the front setback to soften the built form.</p> <p>The site will maintain the dominance of soft landscaping over the built form, and is therefore considered worthy of support on merit.</p>	
Clause 4.1.6 Parking	Min 2 spaces	Parking for two cars will be provided in the new double garage.	Yes

<p>Clause 4.1.6.4 Vehicular Access</p>	<p>a) All vehicles should enter and leave the site in a forward direction.</p> <p>b) Vehicular access and parking for buildings with more than 1 dwelling is to be consolidated within one location, unless an alternative layout/design would better reflect the streetscape or the building form.</p> <p>c) Vision of vehicles entering and leaving the site must not be impaired by structures or landscaping.</p> <p>d) Particular attention should be given to separating pedestrian entries and vehicular crossings for safety.</p>	<p>The proposal will provide for a new driveway, which will provide safe vehicular access to the site. The proposal is supported by civil plans prepared by NB Consulting engineers job number 200120 dated January 2020.</p>	<p>Yes</p>
<p>Clause 4.1.6.6 Tandem, Stacked and Mechanical Parking Areas</p>	<p>The design location and management of parking facilities involving tandem, stacked and mechanical parking (including car stackers, turntables, car lifts or other automated parking systems) must consider the equitable access and distribution of</p>	<p>N/A – double garage provided.</p>	<p>N/A</p>

	<p>parking spaces to all occupants and visitors to the building. In this regard:</p> <p>a) all parking spaces in any tandem or stacked arrangement are to be allocated to the same dwelling/strata unit and must not be used as visitors parking; and</p> <p>b) where the proposed development involves a tandem, stacked and mechanical parking arrangement which necessitates more than one parking space being attributed to a single dwelling unit under paragraph i) above; Council must be satisfied that sufficient parking spaces are reasonably allocated to all other dwelling units within the development.</p>		
<p>Clause 4.1.7 First Floor and Roof Additions</p>	<p>a) First floor additions must complement the architectural style of the ground floor and where possible retain existing roof forms. Notwithstanding</p>	N/A	N/A

	<p>setback provisions, the addition may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues.</p> <p>b) The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of Manly. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure.</p>		
<p>Clause 4.1.8 Development on Sloping Sites</p>	<p><i>Area G4 – Potential Hazards and Requirements</i> Geotechnical assessment may be required depending on location and nature of development and man-made cut and fill.</p>	<p>The proposed works are largely contained within the existing building footprint, with the exception of the proposed new garage and swimming pool.</p> <p>All works will be carried out under the supervision and direction of a Structural Engineer and will be managed</p>	<p>Yes</p>

		to ensure that the amenity and safety of the subject and neighbouring dwellings will be protected.	
Clause 4.1.9 Swimming pools, spas and Water features	<p>Height above ground not more than 1m</p> <p>Setback of outer edge of pool concourse from side and rear boundaries must be at least 1m with water line being at least 1.5m from the boundary</p> <p>Pool not to exceed 30% of total open space</p>	<p>Proposed pool flush with existing ground level.</p> <p>Southern side – 1.51m North Harbour Street frontage – 1.59m</p> <p><30%</p>	<p>Yes</p> <p>Complies</p> <p>Complies</p> <p>Complies</p>
Clause 4.1.10 Fencing	Freestanding walls and fences between the front street boundary and the building are to be no more than 1m high above ground level at any point.	No freestanding walls or fences proposed	N/A

7.0 Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979

7.1 The provisions of any environmental planning instrument

The proposal is subject to the provisions of the Manly Local Environmental Plan 2013 and the relevant supporting Council policies. It is considered that the provisions of this environmental planning instrument have been satisfactorily addressed within this report and that the proposal achieves compliance with its provisions.

There are no other environmental planning instruments applying to the site.

7.2 Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

There are no draft instruments applying to the land.

7.3 Any development control plan

The development has been designed to comply with the requirements of Council's Manly Development Control Plan 2013.

It is considered that the proposed design respects the aims and objectives of the DCP however we note that the Environmental Planning and Assessment Amendment Act 2012 No 93 (Amendment Act) which received assent on 21 November 2012 commenced on 1 March 2013.

Key amongst the amendments are requirements to interpret DCPs flexibly and to allow reasonable alternative solutions to achieve the objectives of DCP standards.

The new section 3.42 provides that the 'principal purpose' of DCPs is to 'provide guidance' on:-

- giving effect to the aims of any applicable environmental planning instrument
- facilitating permissible development
- achieving the objectives of the relevant land zones.

The key amendment is the insertion of section 4.15(3A) which:

- prevents the consent authority requiring more onerous standards than a DCP provides,
- requires the consent authority to be 'flexible' and allow 'reasonable alternative solutions' in applying DCP provisions with which a development application does not comply,
- limits the consent authority's consideration of the DCP to the development application (preventing consideration of previous or future applications of the DCP).

We request that Council applies considered flexibility where the application seeks variations to numerical development controls in the DCP as justified in this report. In particular we consider that the variation to the front and side setback criteria and landscaped area controls is a

reasonable alternative solution to compliance where the site conditions results in a challenge to designing for new development which fully respects the landscaped area criteria.

It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing residential character of the area and is compatible with the existing uses in the vicinity.

7.4 Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

No matters of relevance are raised in regard to the proposed development.

7.5 The regulations (to the extent that they prescribe matters for the purposes of this paragraph),

No matters of relevance are raised in regard to the proposed development.

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

It is considered that the proposal, which seeks consent for proposed alterations and additions to the existing dwelling including new garage, driveway, swimming pool, and associated landscaping, will not unreasonably impact upon the amenity of adjoining properties or upon the character of the surrounding area. It is considered that the resultant development is compatible with and will complement the residential character of the area.

The proposal is considered to be well designed having regard to the relevant provisions of the Council's MLEP 2013 and Council's Codes and Policies, in particular the Manly DCP 2013.

7.7 The suitability of the site for the development

The subject land is currently zoned R2 Low Density Residential under the Manly Local Environmental Plan 2013 and is considered suitable for the proposed development.

7.8 Any submissions made in accordance with this Act or the regulations

This is a matter for Council in the consideration of this proposal.

7.9 The public interest

The proposal will not impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered to be within the public interest.

8.0 Conclusion

The principal objective of this development is to provide for the proposed construction of alterations and additions to the existing dwelling including new garage, driveway, swimming pool, and associated landscaping, which respects and complements the site's location.

It is considered that the proposed works satisfy the stated objectives of Council's Development Controls. By maintaining our neighbours amenity and by complementing the existing style and character of the surrounding locality, the stated objectives have been satisfied.

As the proposed development will not have any significant impact on the environment, scenic quality of the area or the amenity of the adjoining allotments, the issue of Development Consent under the delegation of Council is requested.

VAUGHAN MILLIGAN

Town Planner

Grad. Dip. Urban and Regional Planning (UNE)

APPENDIX 1
CLAUSE 4.6 – FLOOR SPACE RATIO

**WRITTEN SUBMISSION PURSUANT TO CLAUSE 4.6 OF
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

4 NORTH HARBOUR STREET, BALGOWLAH

ADDITIONS AND ALTERATIONS TO AN EXISTING DWELLING

**VARIATION OF A DEVELOPMENT STANDARD RELATING TO COUNCIL'S FLOOR SPACE RATIO
CONTROL AS DETAILED IN CLAUSE 4.4 OF THE MANLY
LOCAL ENVIRONMENTAL PLAN 2013**

For: Additions and alterations to an existing dwelling
At: 4 North Harbour Street, Balgowlah
Owner: Mr & Mrs Reader
Applicant: Mr & Mrs Reader
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum floor space ratio development standard as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.4 restricts the maximum floor space area control within this area of the Balgowlah locality and refers to the floor space ratio noted within the "*Floor Space Ratio Map*."

The relevant maximum floor space control in this locality is 0.45:1 or for this site with an area of 325.4m², the maximum gross floor area is 146.43m² and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The existing dwelling on the site presents a gross floor area of 253m² or 0.77:1.

Due to the extent of existing development on site, the proposed new works will present a minor increase in floor area of 7m² or to a maximum of floor area of 260m² or 0.799:1, and therefore presents a variation of 113.57m² or 0.4 to the control.

The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

It is noted that the Council's Manly Development Control Plan 2013 Amendment 14 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is less than

minimum required lot size under Council's LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 500m² and when calculated against this required lot size, the development prescribes a FSR of 0.52:1, which is a reduced non-compliance compared to the control.

Is clause 4.4 of MLEP a development standard?

- (a) The definition of "development standard" in clause 1.4 of the EP&A Act includes:

"(d) the cubic content of floor space of a building."

- (b) Clause 4.4 relates to floor space of a building. Accordingly, clause 4.4 is a development standard.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

- (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.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP provides:

- (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.*

Clause 4.4 (the FSR development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

- (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.*

The proposed development does not comply with the FSR development standard pursuant to clause 4.4 of MLEP which specifies an FSR of 0.45:1 however as the proposal will result in a very minor increase in the calculable floor area of 7m² when compared to the current dwelling, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

(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 Planning Secretary has been obtained.

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained.

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

(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.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

- (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.*

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes, in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum floor space ratio, together with the fact that the development will result in a very minor increase in the calculable gross floor area of 7m² when compared to the current development, the new works will provide attractive alterations and additions to a residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed alterations and additions will not see any adverse impacts on the views enjoyed by neighbouring properties.

The works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in North Harbour Street & from the surrounding private properties will be largely maintained.

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the FSR development standard contained in clause 4.4 of MLEP.
- 5.2 Clause 4.4 of MLEP specifies an allowable gross floor area for a site in this part of Balgowlah of 0.45:1 or for this site, the allowable gross floor area is 146.43m².
- 5.3 The subject site has an area of 325.4m².
- 5.4 The existing dwelling has a gross floor area of 253m² or FSR of 0.777:1. The proposal has a calculable gross floor area of 260m² or FSR of 0.799:1. The proposal will see a minor increase in the calculable floor area of 7m² when compared to the current dwelling.
- 5.4 The total non-compliance with the FSR control is 113.57m² which equates to 77.5%.
- 5.5 When assessed against a minimum lot area of 500 m², the proposal presents an FSR of 0.52:1, which is a reduced extent of non-compliance with the control.

6.0 Relevant Caselaw

- 6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:
 - 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
 - 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
 - 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
 - 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence*

compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the R2 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

7.0. Request for Variation

7.1 Is clause 4.4 of MLEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:

“(d) the cubic content of floor space of a building.”

- (b) Clause 4.4 relates to floor space of a building. Accordingly, clause 4.4 is a development standard.

7.2 Is compliance with clause 4.4 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the FSR standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The objective of Clause 4.4(1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The proposal provides for alterations and additions to an existing dwelling which largely maintain the built form of the existing development on site.

The contemporary building form with a low profile roof and earthy external finishes are considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade, together with the retention of the existing side setbacks and recessive external finishes will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and as such, will not be a visually dominant element in the area.

(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,

The proposal will not see the loss of any significant vegetation. The built form of the existing dwelling remains largely unchanged, and is therefore not considered to result in any adverse effects on the scenic qualities of the foreshore.

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

The site is considered to be sufficient to provide for the proposed works, with the dimensions of the lot to be unchanged.

The proposal will retain an appropriate area of soft landscaping, and the site will maintain an appropriate balance between the landscaping and the built form.

On the basis that the proposal maintains the majority of the existing landscaped area, the site is considered to maintain an appropriate balance between the site's landscaping and the built form.

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

The proposed works are wholly contained within the site and will not result in any adverse impacts for any adjoining land.

(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.

The site is not located within a business zone and by providing for the construction of alterations and additions to an existing dwelling, is not contrary to the viability of any local business activity.

7.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the*

development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

There are sufficient environmental planning grounds to justify contravening the development standard.

The aspect of the development which is considered to contravene the development standard is a modest addition of 7m² to the rear of the first floor level of the dwelling. The low pitch roof form further introduces modulation and architectural relief to the building's facade, which further distributes any sense of visual bulk.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The new floor area which contravenes the development standard are at the existing rear of the first floor level and introduce modulation and architectural relief to the building's facade, which further distributes any sense of visual bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).
- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of North Harbour Street which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new works which exceed the gross floor area control and FSR standard of 0.45:1 are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act. This is a suitable environmental planning ground which justifies the flexible application of the development standard.
- The alterations demonstrate good design and improves the amenity of the built environment by creating improved and functional living area and also maintains the amenity of the existing dwelling house and neighbours in terms of views by locating the new floor area at the first floor level, where it will not obstruct views across the site and will maintain the views from the site (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants whilst reducing the calculable gross

floor area and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R2 Low Density Residential zone?

- (a) Section 4.2 of this written request suggests the 1st test in *Wehbe* is made good by the development.
- (b) Each of the objectives of the R2 Low Density Residential zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone*".

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the modest form of the proposed additions which see a minor increase in the calculable gross floor area of 7m², the proposed

alterations and additions to the existing dwelling will be consistent with the individual Objectives of the R2 Low Density zone for the following reasons:

- ***To provide for the housing needs of the community within a low-density residential environment.***

As found in *Nessdee*, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

The R2 Low Density Residential Zone contemplates low density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed alterations and additions to an existing dwelling which will provide for an appropriate level of amenity and in a form, and respect the predominant bulk and scale of the surrounding dwellings.

The development will see a minor increase in floor area of 7m² when compared to the current dwelling. The proposal maintains the existing overall ridge height of the dwelling, together with the general bulk and scale of the existing dwelling.

The non-compliance, which is a result of the existing floor area which does not comply with the standard and the new works including a new modest rear addition, will increase the amenity for the buildings' owners by providing a new living room in a form which complements the architectural style and scale of the surrounding development.

The compatible form and scale of the alterations and additions will meet the housing needs of the community within a single dwelling house which is a permissible use in this low-density residential zone.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

The subject proposal relates to a residential dwelling and this provision is therefore not relevant.

maintain the built form of the existing development on site.

7.5 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.6 Has the Council considered the matters in clause 4.6(5) of MLEP?

- (a) The proposed non-compliance does not raise any matter of significance

for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

7.0 Conclusion

This development proposes a departure from the maximum floor space ratio control, with the proposed additions to the existing dwelling to provide a maximum floor space ratio of 0.799:1.

As discussed, it is noted that the Council's Manly Development Control Plan 2013 Amendment 14 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is undersized and is less than minimum required lot size under Council's LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 500m² and when calculated against this required lot size, the development prescribes a FSR of 0.52, which results in a reduced non-compliance with the FSR control comfortably complies with the FSR variation.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



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