

An aerial photograph of a suburban neighborhood with numerous houses, many featuring swimming pools. A specific property is highlighted with a red rectangular border. The property is a rectangular lot with a yellowish-green lawn and a small, light-colored building or structure in the center. The surrounding area is densely packed with similar residential lots.

CLAUSE 4.6 VARIATION TO DEVELOPMENT APPLICATION

BURNS + SOGHOMONIAN RESIDENCE

14 Nolan Place
Balgowlah Heights

14.8.2023

landart.
HOME + GARDEN + BEYOND

TABLE OF CONTENTS

1.0	Introduction	
1.1	Site	3
1.2	Local Authority	3
1.3	Environmental Planning Instrument That Applies to the Land	4
1.4	Zoning	4
1.5	Objectives of Zone	4
2.0	Clause 4.6 Variation to Development Application	
2.1	Development Standard Being Varied	4
2.2	Clause of the Development listed in the Environmental Planning Instrument	4
2.3	Objectives of the Development Standard	
2.4	Numeric value of the development standard in the environmental planning instrument	6
2.5	Proposed numeric value of the development standard in your development application	6
2.6	Percentage variation between the proposal and the environmental planning instrument	6
2.7	How is strict compliance with the development standard unreasonable or unnecessary in this particular case?	6
2.8	How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?	8
2.9	Is the development standard a performance based control?	8
2.10	Would strict compliance with the standard be unreasonable or unnecessary?	9
2.11	Are there sufficient environmental planning grounds to justify contravening the development standard?	9
3.0	Conclusion	

1.0 INTRODUCTION

This report pertaining to Clause 4.6 Variation accompanies the Development Application for the proposed alterations & additions at 14 Nolan Place in Balgowlah Heights.

1.1 SITE

The residence is located on the northern side of Nolan Place in the residential neighbourhood of Balgowlah Heights.

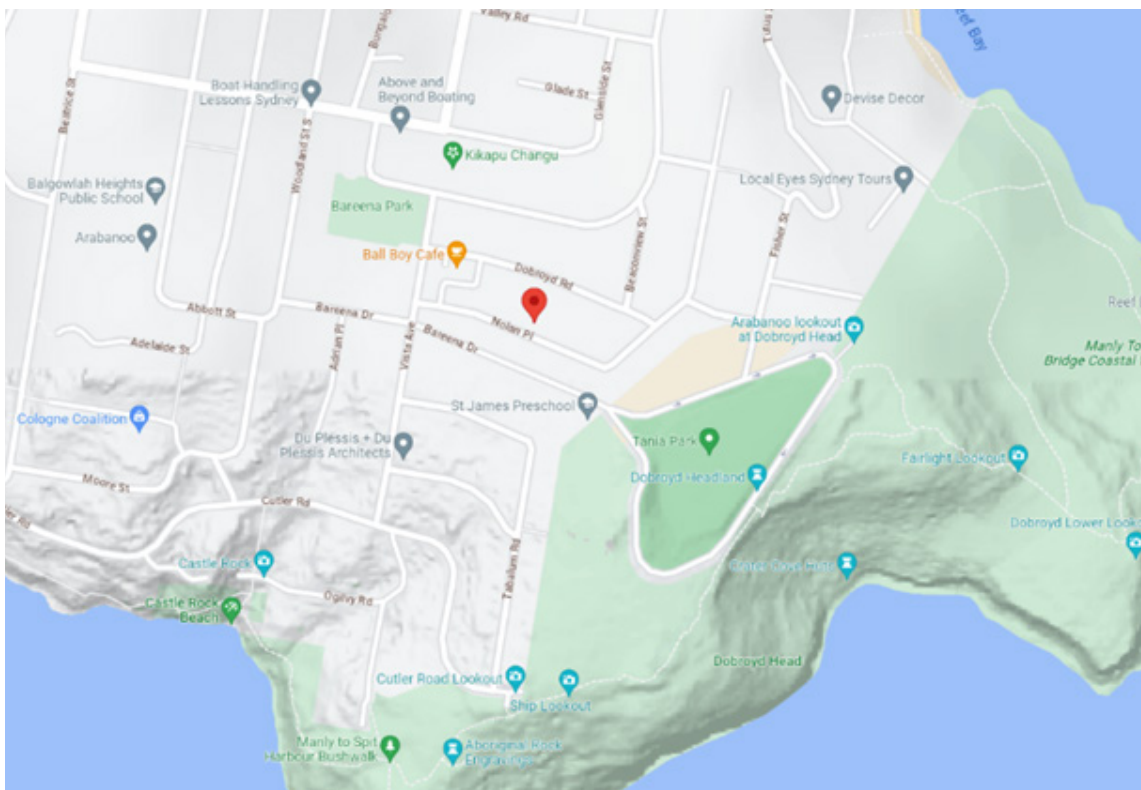


Figure 1. Locality Map (source: Google Maps) - Site shown in red marker

1.2 LOCAL AUTHORITY

The local authority for this site is:
Northern Beaches Council (Manly)
Civic Centre, 725 Pittwater Road,
Dee Why NSW 2099
DX 9118 Dee Why
Telephone: 9942 2111

1.3 ENVIRONMENTAL PLANNING INSTRUMENT THAT APPLIES TO THE LAND

Manly Local Environment Plan 2013

1.4 ZONING

R2 Low Density Residential

1.5 OBJECTIVES OF ZONE

- 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.

2.0 CLAUSE 4.6 VARIATION TO DEVELOPMENT APPLICATION

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.

2.1 DEVELOPMENT STANDARD BEING VARIED

After reviewing Manly LEP 2013 we advised that a Clause 4.6 Exception to Development Standard is required due to:

- This development is classified as a non-complying development due to the floor area being over the floor space ratio
- The favourable option for Council is a Development Application with a Clause 4.6 Variation for the structures to be considered for approval.

2.2 CLAUSE OF THE DEVELOPMENT STANDARD LISTED IN THE ENVIRONMENTAL PLANNING INSTRUMENT

Manly LEP 2013 Part 4.4 Floor Space Ratio

2.3 OBJECTIVES OF THE DEVELOPMENT STANDARD

- to ensure the bulk and scale of development is consistent with the existing and desired streetscape character.
- to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features. to maintain an appropriate visual relationship between new development and the existing character and landscape of the area
- to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain
- 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.

2.4 NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE ENVIRONMENTAL PLANNING INSTRUMENT

MLEP2013 FSR = 0.45:1 (264.15m²)

2.5 PROPOSED NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN YOUR DEVELOPMENT APPLICATION

Proposed FSR = 0.53:1 (311m²)

2.6 PERCENTAGE VARIATION BETWEEN THE PROPOSAL AND THE ENVIRONMENTAL PLANNING INSTRUMENT

Proposed FSR variation= 8%

2.7 HOW IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THIS PARTICULAR CASE?

The minor variation in this case is very moderate & is within 10% of the required FSR. Due to the existing topography & the sloping site the bulk & the scale of the building has predominantly remained the same and is consistent with the zoning & planning objectives. This application is in keeping with a low-density residential environment desired by Council in this area. The development has no negative consequence of significance as a result of this minor noncompliance, further it meets all of the objectives of the development standard, and therefore strict compliance with the development standard would be unreasonable and unnecessary.

In this circumstance, it is unreasonable and unnecessary to strictly comply with the floor space ratio standard given that the resulting development will be absent of any negative environmental or planning outcomes. The proposal would be indiscernible to a development that strictly complied with the numerical control. For the reasons stated above, it is argued that a variation be supported as it ultimately results in an improved planning outcome for the daily lives and wellbeing of the residents and adjoining neighbours.

Bulk and Scale: The proposed development at 14 Nolan Place involves a minor extension of the existing ground floor and the conversion of the existing basement floor (previously approved DA 207/2011) to include a newly proposed zen room and basement storage room. It is important to note that the proposed additions do not significantly increase the bulk of the existing dwelling, as they are within the existing bulk and outline of the current building. There is no adverse visual impact as viewed from Nolan Place as there is no change to the existing streetscape, building frontage or building facade. The proposed refurbishment and conversion of the basement floor is primarily located to the rear of the property and is within the existing bulk of the building, this therefore suggests that the proposed changes would not have a significant impact on the overall size and scale of the property.

- **Compliance with Adjacent Neighbors:** The argument is made that the FSR should be allowed as the proposed additional floor space is hidden underneath the existing ground floor out of plain sight and has the same FSR as the adjacent neighbors. It is mentioned that the adjacent neighbors were granted approval for an increase in their floor space ratio from 0.45:1 to 0.54:1. Since the proposed development at 14 Nolan Place aligns with the same FSR as the adjacent neighbors, it is argued that it should be granted the same approval for an increase in floor space ratio.

- **Openness** - The proposed development demonstrates a thoughtful approach to creating a better sense of openness. Through design considerations such as an increased landscaped area, hidden additional floor space, and a seamless flow between internal and open spaces, the development maximizes the visual and physical spaciousness of the property. Adequate provision of landscaped and private open space further enhances the overall sense of openness. Additionally, careful attention has been given to preserving public views, ensuring that the development correlates with the surrounding environment. Overall, the proposed development successfully achieves a better sense of openness, contributing to the visual appeal and livability of the property.
- **Public & Private Views** - The proposed development prioritises the protection of both public and private views through thoughtful design strategies. By carefully considering the placement and height of the privacy wall adjacent to the existing pool, the development avoids obstructing neighboring properties and public viewpoints. It maintains existing sightlines and ensures that the views from adjacent dwellings or public spaces remain unobstructed. The design is sensitive to the privacy and views of neighboring properties, respecting setbacks and incorporating features that preserve privacy while allowing for enjoyable views. Furthermore, the development integrates seamlessly with the surrounding environment, maintaining the visual harmony and iconic northern views. Overall, the proposed development demonstrates a commitment to preserving and enhancing the visual experiences of both the community and neighboring properties.
- **Site Access + circulation** - The proposal incorporates provisions for convenient well-planned pedestrian circulation, and a logical internal layout. Outdoor amenities and common areas are strategically positioned to encourage movement and interaction within the site, The rear decks & stairs provides improved access & circulation to the rear yard for the owners. Overall, the development creates a user-friendly environment that facilitates smooth and efficient circulation for residents and visitors, emphasising functionality and convenience. It is anticipated that the proposed development will have no detrimental impact on traffic flow as there is no change to the existing crossover or driveway.w

- Landscape - The proposed development has garnered multiple local gardening awards from Council, highlighting its positive impact on the local landscape. Through meticulous landscaping, the development actively promotes the use of indigenous local flora and fauna. By incorporating native plants, the property showcases a deep appreciation for the natural environment and contributes to the preservation of local biodiversity. This approach not only enhances the visual appeal of the landscape but also fosters a sustainable ecosystem that supports the thriving of local plants and wildlife. The recognition received through these gardening awards underscores the development's commitment to creating an environmentally conscious and visually stunning landscape enhancing the livability of the property.

2.8 HOW WOULD STRICT COMPLIANCE HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN SECTION 5(A)(I) AND (II) OF THE ACT?

Strict compliance with the FSR would hinder the attainment of the development's objectives in multiple ways. It would limit the additional floor space that can be added to the existing building, potentially compromising the liveability and functional needs of the project and its tenants. By allowing a minor variation in the FSR, the development can align with adjacent properties that have already been approved for increased ratios, maintaining consistency with the neighborhood's character and streetscape. The proposed variation has no significant negative consequences and satisfies all the objectives of the development standard. Therefore, strict compliance would impose unnecessary restrictions and hinder the overall planning outcome without providing any substantial benefits. Allowing a minor variation in the FSR would support an improved planning outcome for the development while ensuring the preservation of its integrity and overall liveability.

2.9 IS THE DEVELOPMENT STANDARD A PERFORMANCE BASED CONTROL?

The objectives of the development standard provide the controls to allow a performance based solution. For the reasons outlined herein, it is demonstrated the proposal meets the objectives of the development standard, therefore Council should consider "compliance to the standard unreasonable in the circumstances of the development".

2.10 WOULD STRICT COMPLIANCE WITH THE STANDARD BE UNREASONABLE OR UNNECESSARY?

Yes, please refer to answer in 2.7, 2.8 and 2.9 preceding.

2.11 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

Yes, Section 4.6 enables a development standard within an LEP to be varied, providing sufficient and compelling arguments based on sound planning rationale and legislation are put forward to support the variation.

The following environmental planning grounds justify contravening the development standard.

- The proposal provides a more environmentally friendly dwelling.
- The proposal utilizes existing services.
- The proposal provides compliant open space and landscaping.
- The proposal provides compliant heights & setbacks.
- The proposal provides onsite parking.

The proposal provides improved housing in a low-density environment.

The variation to the maximum floor space ratio requirements is, in our opinion, acceptable and there are appropriate planning grounds in support of the non-compliance.

3.0 CONCLUSION

The resulting development has been designed to enhance the existing residential building by improving the amenity for the residents while maintaining, where possible, the conditions set out by Manly Local Environment Plan 2013. The proposed works included in this report are, in our opinion, reasonable in relation to the existing built works & do not adversely impact the surrounding properties whilst justifying the environmental planning grounds for Northern Beaches Council. We consider that the proposal will impose minimal impact and improves the liveability and privacy for the owners and adjoining neighbours. We request that council support the Clause 4.6 Variation of the Development Application.