

STATEMENT OF ENVIRONMENTAL EFFECTS

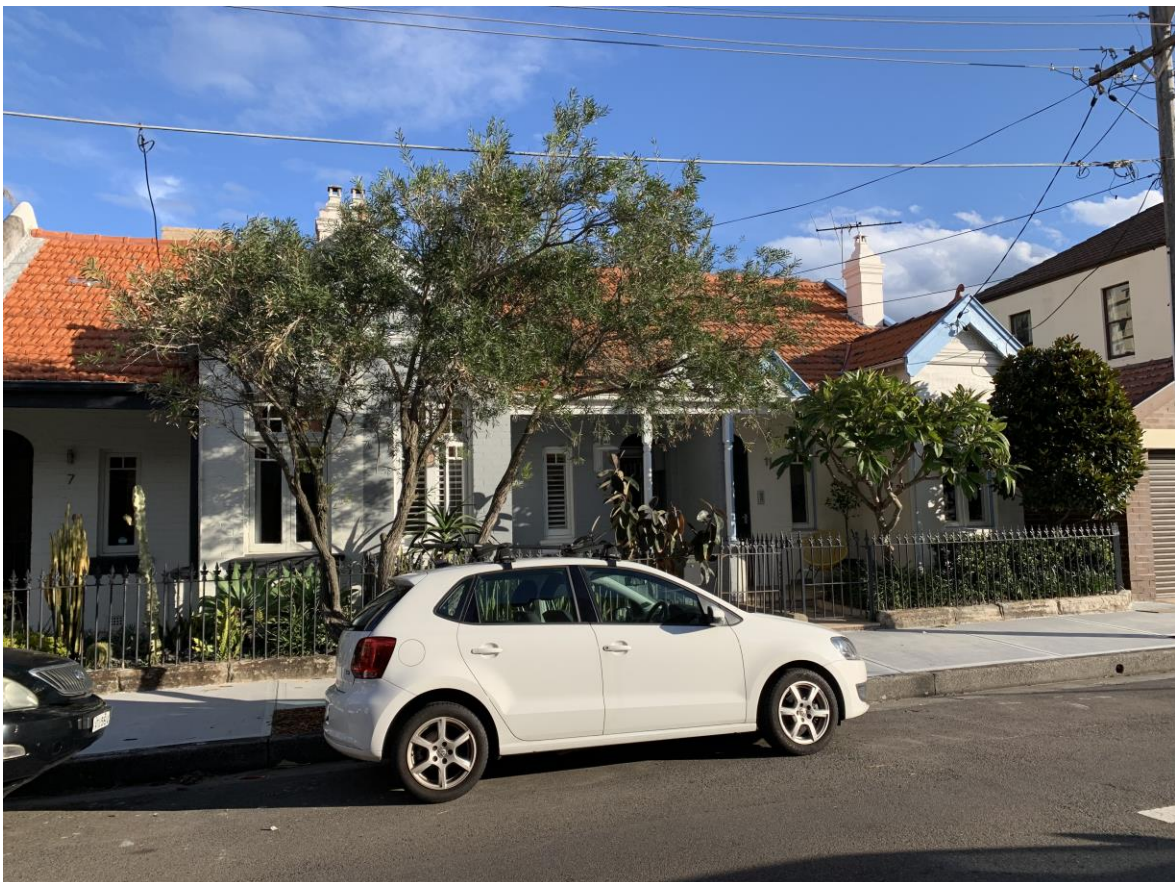
**FOR THE CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN
EXISTING ATTACHED DWELLING**

LOCATED AT

9 STEINTON STREET, MANLY

FOR

ELLISA BENNETT & GRANT BRITS



**Prepared
June 2020
(As revised November 2020)**

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1.0 Introduction

This Statement of Environmental Effects accompanies details prepared on behalf of Ellisa Bennett and Grant Brits by Action Plans, Drawing No. DA00 – DA21, Revision B, dated 25 September 2020, to detail the construction of alterations and additions to an attached dwelling at **9 Steinton Street, Manly**.

A Pre-Lodgment Meeting No. 2019/0198 was held on 24 October 2019 to discuss the proposed additions and alterations to the existing attached dwelling. The subject design has been prepared to suitably respond to the issues raised by Council.

The proposal is supported by a Heritage Impact Statement, prepared by Brad Inwood Architects, dated 20 March 2020, which concludes that *“the proposed works will have no significant impact on the Pittwater Road Heritage Conservation Area as determined by Manly Council”*.

Additionally, the heritage assessment concludes that *“the proposed works do not result in any adverse effects to the existing dwelling, the output adjoining dwellings or to the heritage conservation listing of the streetscape”*.

As discussed further within this statement, the proposal presents a compatible built form, which has a regard for its adjacent neighbours and which will contribute positively to the area.

The massing of the building to achieve an appropriate built form which is complementary to its neighbours and to provide for a reasonable level of family accommodation in the site are considered to be factors which warrant Council’s favourable consideration of the proposed development.

The architectural plans which are addressed within this statement have been prepared following Council’s initial assessment of DA2020/0702 and the proposed revisions are provided within the architectural plans prepared by Action Plans noted as Revision B dated 25 September 2020.

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:

- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Coastal Management) 2018*
- *Manly Local Environmental Plan 2013*
- *Manly Development Control Plan 2013*

2.0 Property Description

The subject allotment is described as **9 Steinton Street, Manly**, being Lot 102, within Deposited Plan 586416 and is zoned R3 Medium Density Residential under the Manly Local Environmental Plan 2013.

The site does not contain any heritage items, however it is located within Pittwater Road Conservation Area. In addition, the site is within the vicinity of a number of heritage items, including dwellings at 80 and 82 Pittwater Road (Items No. I202 and I203).

As discussed, proposal is supported by a Heritage Impact Statement, prepared by Brad Inwood Architects, dated 20 March 2020, which is discussed in further detail within this Statement.

The land is noted as being within a Foreshore Scenic Protection Zone and is identified as being within the Class 4 Acid Sulfate Soils Area.

The site is identified as being within the Coastal Use Area under the provisions of the SEPP (Coastal Management) 2018.

The property is noted as being within a Low and Medium Risk Flood Planning Area, however as the medium flood risk area affects only the front boundary, with the building located within the low risk flood planning area, no further consideration is considered to be necessary at this stage.

Furthermore, the property is within Area G3 on Council's DCP Landslip Hazard Map. The proposal does not involve any substantial disturbance to the existing site conditions, and therefore no further investigation is required.

These matters will be discussed further within this statement.

3.0 Site Description

The site is located on the southern side of Steinton Street, between Pittwater Road and Whistler Street. The site is relatively flat.

The site has a frontage to Steinton Street of 4.97m and eastern and western boundaries of 29.465m and 30.887m respectively. The rear boundary measures 4.8m. The site area has an area of 152.3m².

The site is currently developed with a single storey attached brick dwelling with a tile roof. No vehicular access is currently available to the site.

The details of the site are included on the survey plan prepared by DA Surveys, Job No. 4970 dated 3 May 2019 which accompanies the DA submission.

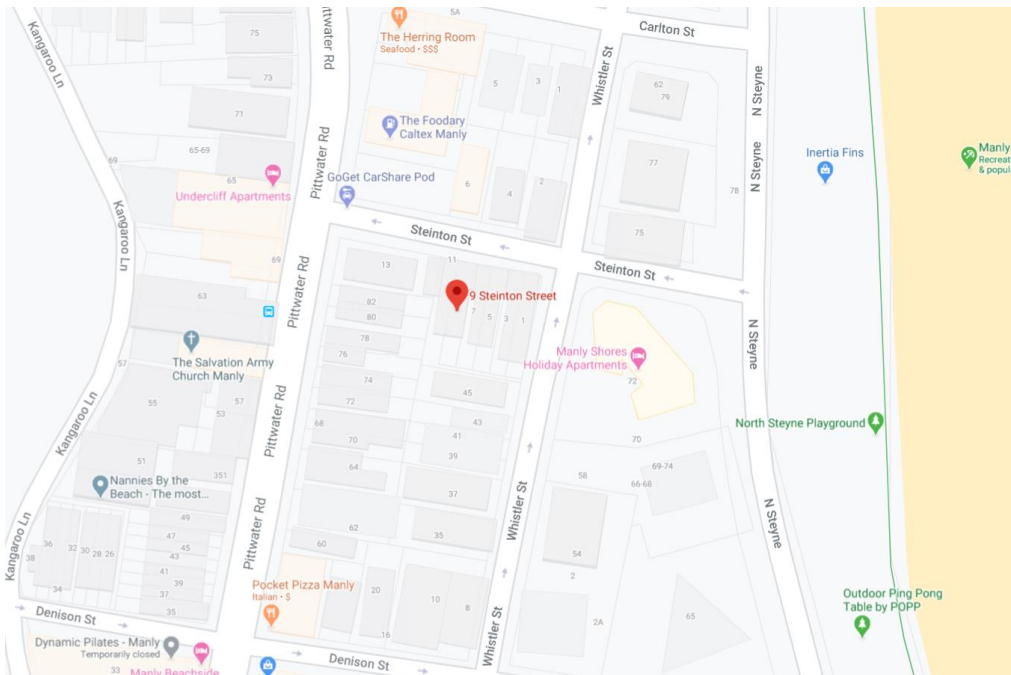


Fig 1: Location sketch
(Source: Google Maps)



Fig 2: View of subject site, looking south from Steinton Street (subject dwelling centre of view)



Fig 3: View looking south – east towards the subject site from Steinton Street



Fig 4: View of neighbouring dwellings to the east of the site, looking south-east



Fig 5: View of the wider streetscape to the east of the site looking south-east



Fig 6: View of the existing mixed development on the northern side of Steinton Street, looking north-west



Fig 7: View of the existing mixed development on the northern side of Steinton Street, looking north-east

4.0 Surrounding Environment

The area surrounding the site is represented by a mix of development comprising one and two storey attached and detached dwellings, together with residential flat development and a variety of commercial development. The adjoining properties to the east and west are developed with attached two storey dwellings.

The site is within close proximity to the Manly Beach foreshore.



Fig 8: Aerial view of subject site
(Source: Google Maps)

5.0 Proposed Development

As detailed within the accompanying architectural plans it is proposed to provide for alterations and additions to the existing single story attached dwelling, comprising:

Ground Floor

- Alterations and additions to existing ground floor level to provide for new sitting room, internal access stairs, bath/laundry and living/dining/kitchen

First Floor

- Proposed new first floor addition to provide for three bedrooms including master bedroom with walk-in robe and ensuite, linen and bathroom

External Works

- New landscaping and outdoor shower within rear yard

The external finishes of the new works will comprise a mix of rendered and face brickwork, with metal roof sheeting. The proposed new works will complement the existing dwelling in terms of form, colours and finishes.

The stormwater from the new roof areas will be directed to the existing stormwater system which diverts runoff to the street gutter.

The development indices for the site are noted as:

Site area	152.30m ²
Allowable FSR	0.75:1 or 114.225m ²
Proposed FSR	0.96:1 or 146.79m ²
Required Open space (Area OS2) – 50% total/30% soft open space	83.77m ² (55%)/29.32m ² (35%)
Proposed total open space	63.66m ² or 42% (remains unchanged)
Proposed soft open space	30.07m ² or 35.6%

6.0 Zoning and Development Controls

6.1 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.

6.2 State Environmental Planning Policy (Coastal Management) 2018

The subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is applicable to the proposed development.

The stated Aim of the Policy under Clause 3 is to:

The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016, including the management objectives for each coastal management area, by:

- (a) managing development in the coastal zone and protecting the environmental assets of the coast, and*
- (b) establishing a framework for land use planning to guide decision-making in the coastal zone, and*
- (c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.*

The Coastal Management Act 2016 states within **Clause 3**:

The **objects** set out in **Clause 3** of the Coastal Management Act 2016 are:

- (a) to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience, and*
- (b) to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety, and*
- (c) to acknowledge Aboriginal peoples' spiritual, social, customary and economic use of the coastal zone, and*
- (d) to recognise the coastal zone as a vital economic zone and to support sustainable coastal economies, and*
- (e) to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making, and*
- (f) to mitigate current and future risks from coastal hazards, taking into account the effects of climate change, and*
- (g) to recognise that the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline, may result in the loss of coastal land to the sea (including estuaries and other arms of the sea), and to manage coastal use and development accordingly, and*

- (h) *to promote integrated and co-ordinated coastal planning, management and reporting, and*
- (i) *to encourage and promote plans and strategies to improve the resilience of coastal assets to the impacts of an uncertain climate future including impacts of extreme storm events, and*
- (j) *to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities, and*
- (k) *to support public participation in coastal management and planning and greater public awareness, education and understanding of coastal processes and management actions, and*
- (l) *to facilitate the identification of land in the coastal zone for acquisition by public or local authorities in order to promote the protection, enhancement, maintenance and restoration of the environment of the coastal zone, and*
- (m) *to support the objects of the Marine Estate Management Act 2016.*

It is submitted that the assessment detailed under the Statement of Environmental Effects suggests that the proposed development is consistent with the objects of the SEPP (Coastal Management) 2018, as set out in Clause 3 of the Coastal Management Act 2016.

The matters for consideration under Division 4 of SEPP (Coastal Management) 2018 are:

14 Development on land within the coastal use area

Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—

- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following—*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*
- (b) *is satisfied that—*
 - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
- (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

The proposed alterations and additions to the existing dwelling are wholly contained within the subject site and will not result in any adverse impacts on the foreshore area in terms of solar access, visual amenity or public access.

The matters for consideration under Division 5 of SEPP (Coastal Management) 2018 are:

15 *Development in coastal zone generally—development not to increase risk of coastal hazards*

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

The proposal provides for the construction of alterations and additions to an existing dwelling. The proposed new works are largely contained within the proximity of the existing building and do not require significant disturbance to the site and are not considered to increase the risk of coastal hazards for the subject property or adjoining land.

The assessment has concluded that the proposed development is consistent with the matters for consideration under the SEPP (Coastal Management) 2018.

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 R3 Medium Density Residential under the provisions of the MLEP 2013.

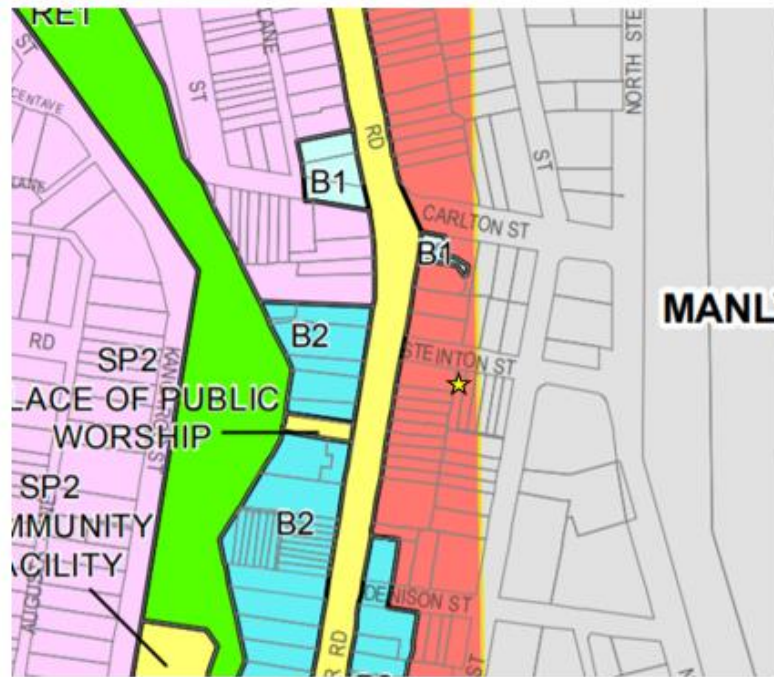


Fig 9: Extract of Manly Local Environmental Plan 2013

The development of and use of the land for residential purposes is consistent with the objectives of the R3 zone, which are noted over as:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*
- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

It is considered that the proposed additions and alterations to the dwelling will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing attached style housing within the locality.
- The proposed development respects the scale and form of other new development in the vicinity and therefore complements the locality. The proposal provides for alterations and additions to an existing attached dwelling, which complement the bulk and scale of the existing dwelling.
- The setbacks are compatible with the existing surrounding development.

- The proposal does not have any significant impact on long distance views for the neighbouring properties.
- The site is utilised as housing and will continue to maintain the residential use.
- The works will provide for additions and alterations to the 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.
- As detailed in this report the proposal maintains appropriate solar access to the surrounding properties.

Clause 4.3 provides controls relating to the 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 Manly is 11m. The proposed new works will present a maximum height of 8.3m and will therefore readily comply with the maximum height control.

Clause 4.4 provides a maximum floor space ratio control of 0.75:1 for development in this locality. The proposal provides a floor space ratio of 0.96:1, and therefore does not comply with this control. Accordingly, a submission has been prepared pursuant to Clause 4.6 and accompanies this statement.

Clause 5.10 relates to Heritage Conservation.

The site does not contain any heritage items, however it is located within the Pittwater Road Conservation Area. In addition, the site is within the vicinity of a number of heritage items, including dwellings at 80 and 82 Pittwater Road (Items No. I202 and I203).

The objectives of the clause are noted as:

- (a) *to conserve the environmental heritage of Manly,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

The proposal is supported by a Heritage Impact Statement, prepared by Brad Inwood Architects, dated 20 March 2020, which concludes that “*the proposed works will have no significant impact on the Pittwater Road Heritage Conservation Area as determined by Manly Council*”.

Additionally, the heritage assessment concludes that “*the proposed works do not result in any adverse effects to the existing dwelling, the output adjoining dwellings or to the heritage conservation listing of the streetscape*”.



Fig 10: Extract of Manly Local Environmental Plan 2013

The proposed works seek to provide for the construction of alterations and additions to an existing attached dwelling.

The proposal will provide a complementary two storey scale as it presents to Steinton Street.

The proposed works have been designed to reflect the existing styling and form of the existing dwelling, and are sensitive to the nearby heritage items and the conservation area.

The proposed new works have been designed in a form which matches the style and scale of the existing building and by integrating the new works with the existing building, will maintain the scenic quality of the area.

Clause 6.1 addresses the impact of works in relation to acid sulfate soils. The area is noted as being within the Class 4 Acid Sulfate Soils Area. As no substantial excavation is required, the proposal is not expected to disturb any acid sulfate soils. Accordingly, it is considered that no further investigation of the soil is warranted in this instance.

Clause 6.2 relates to earthworks. The proposal will not require any disturbance of the existing site conditions, and the works will be carried out in accordance with the recommendations of a consulting Structural Engineer. The proposal will therefore satisfy the provisions of this clause.

Clause 6.3 relates to flood planning.

The property is noted as being within a Low and Medium Risk Flood Planning Area.

As noted in the extract below from the Northern Beaches Council Flood Hazard Map, the area of Medium Flood Risk affects only the front portion of the site and the adjoining street area. The majority of the site is free of flood hazard or affected by low hazard only. Given that the works are to be at the above the floor levels, no further investigation is considered to be necessary at this stage.



Fig 11: Extract of Northern Beaches Council Flood Hazard Map

Clause 6.9 relates to foreshore scenic protection areas. The site has been identified as being within a foreshore scenic protection zone. The proposal will not see the removal of any significant vegetation, and the bulk and scale of the new works is compatible with the character of the locality.

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 WLEP.

6.5 Manly Development Control Plan 2013

Council's DCP Development Control Plan 2013 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 proposal will provide for the construction of alterations and additions to an existing dwelling, which retains the existing front façade and primary roof form. As the proposed first floor addition is set back behind the existing primary roof form, the proposal will not have a significant impact on the view of the site from the Steinton Street 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 provides for contemporary additions which will complement the style and form of the existing dwelling, and will therefore respect Council's residential streetscape controls.

Clause 3.1.1.3 Roofs and Dormer Windows

The proposed low profile roof over the first floor addition will complement the existing building and the roof form is complementary to the style and scale of the surrounding development.

The proposed low profile roof form further assists with minimising the visual impact of the development within the locality.

Clause 3.3 Landscaping

The proposed new works will continue to retain a substantial area of soft landscaping. The required minimum soft landscaped area under the DCP is 29.32m². The site will continue to maintain a minimum of 30.07m² of soft landscaped area which complies with this control.

The works to the dwelling will maintain a modest form, which is well set back from the front and rear boundaries. The existing front yard area facing Steinton Street will retain the existing landscape planting which assists in softening the built form of the dwelling.

No substantial planting is to be removed to accommodate the new works.

New plantings are provided within the rear yard.

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

The objectives of the clause are noted as:

- Objective 1) 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.*
- Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.*

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

- Due to the siting of the subject and neighbouring properties, the proposed works will not result in any reduction of the available views for the neighbouring properties to the west.
- The proposal has been designed to minimise any potential privacy impacts for neighbouring properties. Opaque glazing and louvers have been provided to side and rear-facing windows to maximise privacy for neighbouring properties. The internal living areas are maintained at the ground floor level.
- The modest bulk and scale of the proposed works will not see any significant loss of solar access for the subject site and adjoining properties.

The proposal is supported by a comprehensive shadow analysis prepared by Action Plans, which includes an elevational and plan view assessment of the overshadowing impacts resulting from the proposed additions.

Shadow analysis notes the impacts resulting from the proposed development, and provides a comparison with a similar development which fully complies with Council's built form controls.

The proposal notes that additional shadowing will be cast to the multi-dwelling development to the south, however over the 9am to 3pm period, the neighbouring properties will retain in excess of three hours of solar access to their north facing windows in accordance with Council's controls.

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 connect all collected stormwater to the existing stormwater system which directs stormwater runoff to the street gutter in Steinton Street.

Part 4 – Residential Development Controls


Site Area 152.3m² – Density Sub Zone D2 (150m² per lot)

Compliance Table

Control	Required	Proposed	Compliance
Clause 4.1.1 Residential Density & Subdivision	Density Area D2 – 1 dwelling per 150m ²	Site area is 152.3m ²	Yes - existing site and dimensions are unchanged
Clause 4.1.2 Height of Buildings	Maximum height – 11m	Maximum height – 8.3m	Yes
	Wall height – 9m	Max proposed wall height approx. 8.1m	Yes
	Max two storeys	Two storeys proposed	Yes
	Roof height – 2.5m above wall height	Only a modest skillion roof addition proposed to new outbuilding <2.5m	Yes
Clause 4.1.13 Floor Space Ratio (FSR)	0.75:1	0.96:1	No – refer to Clause 4.6 submission

<p>Clause 4.1.4 Setbacks (front, side and rear)</p>	<p>a) Relate to neighbouring sites and the prevailing building lines or 6m</p> <p>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 streetscape or adjoining properties is demonstrated to Council's satisfaction.</p>	<p>New works maintain existing front setback to Steinton Street.</p>	<p>Yes</p>
<p>Side Boundary setback – 1/3 of wall height</p>	<p>N/A – subject site is an attached dwelling</p> <p>b) Projections into the side setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, and the like, if it can demonstrate there will be no adverse impact on adjoining properties including loss of privacy from a deck or balcony.</p>	<p>The proposed alterations and additions follow the siting of the existing dwelling.</p>	<p>Yes</p>
<p>Rear setback – 8m</p>		<p>The proposal will stand a minimum of 7.79m from the rear boundary and therefore presents a minor variation to the setback control.</p> <p>The proposed rear setback follows the siting of the</p>	<p>Yes – on merit</p>

		<p>neighbouring properties.</p> <p>The proposal will not result in any adverse impacts for neighbouring properties in terms of solar access, privacy or general amenity.</p> <p>Accordingly, the proposed rear setback is considered acceptable on merit.</p>	
Clause 4.1.5 Open space and Landscaping	Area OS 2 Min 50%/30%	The existing open space area remains unchanged, with 35.6% of the required open space area to be available as soft landscaping.	Yes
Clause 4.1.6 Parking	2 spaces	No vehicular access or parking on site. Existing parking arrangements remain unchanged.	N/A
Clause 4.1.6.4 Vehicular Access	<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</p>	No vehicular access or parking on site.	N/A

	<p>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>		
Clause 4.1.9 Swimming Pools, Spas and Water Features	N/A	N/A	N/A
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.	N/A	N/A
Clause 4.1.8 Development on Sloping Sites	<p>Extract of Map of Geotechnical Areas:</p>  <p>Legend</p> <ul style="list-style-type: none"> Area G1 Area G2 Area G3 Area G4 	<p>The site is identified on Council's DCP Landslip Hazard Map as Landslip Prone Land (Area G3).</p> <p>The proposal will not see any substantial disturbance of the existing site conditions, and no further investigation is deemed necessary.</p>	Yes

		The works will be carried out in accordance with the recommendations of the consulting Structural Engineer, and therefore satisfy the provisions of this clause.	
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7.0 Matter for Consideration under the 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 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 21 Development Control Plan 2013.

The application has been prepared having regard to the requirements of Section B, Section C and Section D of the Pittwater 21 DCP.

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 rear setback control is a reasonable alternative solution to compliance where the site conditions results in a challenge to designing for new development which fully respects the setback control.

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

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

7.5 Any matter prescribed by the regulations that apply to the land to which the development relates.

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 approval for alterations and additions to an existing attached dwelling, is reasonable.

The development will maintain a favourable bulk and scale relationship with other development in the vicinity. It is considered that the resultant development is compatible with and will complement the character of the area.

The proposal is considered to be well designed having regard to the relevant provisions of the Council's LEP and Council's Codes and Policies.

7.7 The suitability of the site for the development

The subject land is currently zoned R3 Medium Density Residential under the Manly Local Environmental Plan 2013 and is considered suitable for the proposed development.

The subject site does not exhibit any significant constraint to the construction of the proposed development.

7.9 Submissions made in accordance with this Act or the regulations

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

7.10 The public Interest

The proposal will not unreasonably 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 support the proposed construction of alterations and additions to an existing attached dwelling, which satisfies the stated objectives of Council's Development Controls.

By maintaining our neighbour's amenity and by complementing the scale and form of other development in the immediate 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

APPENDIX

CLAUSE 4.6 – FLOOR SPACE RATIO

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

**9 STEINTON STREET, MANLY
FOR PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN EXISTING
ATTACHED DWELLING**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM FLOOR SPACE
RATIO CONTROL AS DETAILED IN CLAUSE 4.4 OF THE MANLY LOCAL ENVIRONMENTAL
PLAN 2013**

For: Construction of alterations and additions to an attached dwelling
At: 9 Steinton Street, Manly
Owner: Ellisa Bennett & Grant Brits
Applicant: Ellisa Bennett & Grant Brits
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 as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.4 restricts the floor space ratio of a building within this area of the Manly locality to a maximum floor space ratio of 0.75:1.

Due to the small size of the site (152.3m²), the proposed new works which present a gross floor area of 146.79m², will result in a floor space ratio of 0.96:1 or a variation of 32.565m² or 28.5% to the control.

The proposal is considered acceptable and there are sufficient environmental planning grounds to justify contravening the development standard.

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

Is Clause 4.4 of the LEP a development standard?

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

"(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work."

- (b) Clause 4.4 relates to the maximum floor area a building which reflects the density of the development. 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 LEP 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 the LEP 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 Maximum Floor Space Ratio Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP 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 maximum floor space ratio development standard pursuant to Clause 4.4 of MLEP which specifies a maximum floor space ratio of 0.75:1 in this area of Manly. The proposed new development will result in a maximum floor space ratio of 0.96:1 and exceed the floor space ratio control by 32.565m² or 28.5%.

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 (*Initial Action* at [28]).

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 the LEP 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 the LEP 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 attached dwelling, which is consistent with the stated Objectives of the R3 Medium Density Residential Zone, which are noted over as:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*
- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

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 provide a bulk and scale which is in keeping with the desired future character of the locality, with a consistent palette of materials and finishes which will provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum floor space ratio control, the new works will provide an attractive 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 new works will not see any unreasonable impacts on the views enjoyed by neighbouring properties.

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

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum floor space ratio standard contained in Clause 4.4 of MLEP.
- 5.2 Clause 4.4 of MLEP specifies a maximum floor space ratio of 0.75:1 in this area of Manly.
- 5.3 The proposed alterations and additions to the existing attached dwelling will have a floor space ratio of 0.96:1, which exceeds the floor space ratio control by 32.565m² or 28.5%.

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 R3 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:

“(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work.”

- (b) Clause 4.4 relates to the floor area of the building which reflects the density of the development and 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 & 2nd ways identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) The second way *Wehbe* is to establish that the objectives of the standard are not relevant to the development
- (c) Each objective of the maximum floor space ratio 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 attached dwelling which presents a compatible scale and form to the surrounding development, which assists in respecting the existing streetscape character and the surrounding development pattern.

The surrounding area is predominantly characterised by one and two storey development.

The proposal seeks to accommodate the new development within a compatible building form, with suitable setbacks to property boundaries.

The proposed low profile roof form reflects the contemporary design of the development, whilst complementing existing surrounding development. The building form with a low profile roof & matching external finishes are considered to suitably reduce the visual bulk of the dwelling.

The proposal will be consistent with and complement the existing attached 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 and as the streetscape appearance of the existing attached dwelling remains largely unchanged, the proposal will not obscure any important townscape features in the locality.

(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.

As the proposal will result in an increase in the available area of soft landscaping, and the site will maintain an appropriate balance between the landscaping and the built form.

On the basis that the existing landscaped area is unchanged, 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. The proposal is supported by shadow analysis which confirms that equitable access to daylight and solar access is maintained for the surrounding properties.

The subject and adjoining properties enjoy views to the east towards Manly Beach. The site and surrounding properties receive limited views due to the flat terrain, and the proposal will not remove any substantial view opportunities for the surrounding properties.

The proposal will not result in any loss of views from nearby public 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. This objective is not considered to be relevant to the proposal.

Despite the variation to the floor space ratio control, we are of the view that the proposal is consistent with the objectives of the development standard.

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

- The proposed development will maintain the general bulk and scale of the existing surrounding development 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 development will provide for residential amenity within a built form which is compatible with the streetscape of Steinton Street which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new development is 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).
- The proposed development will not result in the loss of any substantial views for neighbouring properties (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 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 maximum 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 R3 Medium Density Residential Zone?

- (a) Section 4.2 of this written request suggests the 1st & 2nd tests in *Wehbe* are made good by the development.
- (b) Each of the objectives of the R3 Medium 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 variation of to the floor space ratio control, the proposed alterations and additions to the existing attached dwelling will be consistent with the individual Objectives of the R3 Medium Density Residential Zone for the following reasons:

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

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

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

The R3 Medium Density Residential Zone contemplates medium density residential uses on the land.

The housing needs of the community are appropriately provided for in this instance through the proposed construction of alterations and additions to an existing attached dwelling which will provide for an appropriate level of amenity and in a form which will respect the predominant bulk and scale of the surrounding residential development.

The proposed works will respect and complement the existing style of development within the locality and the wider Manly area.

The compatible form and scale of the new development will meet the housing needs of the community within a residential flat building which is a permissible use in this residential zone.

- **To provide a variety of housing types within a medium density residential environment.**

The proposal provides for housing diversity within the Manly locality through the provision of the proposed alterations and additions to the existing attached dwelling.

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

This control is not relevant to the subject residential development.

- **To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.**

The proposal provides for alterations and additions to an existing dwelling which will substantially enhance the appearance of the dwelling.

The proposed new works result in development which complements the locality whilst being suitable for the subject site.

- **To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.**

This provision does not apply to the subject residential development.

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 new alterations and additions to the existing attached dwelling 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.

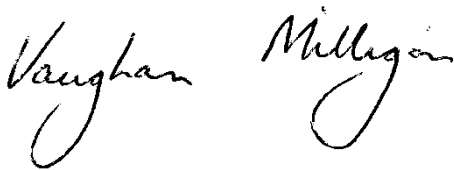
7.0 Conclusion

This development proposed a departure from the maximum floor space ratio development standard, with the proposed new alterations and additions to the existing attached dwelling to provide a maximum floor space ratio of 0.96:1.

This written request to vary to the maximum floor space ratio specified in Clause 4.4 of the Manly LEP 2013 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum floor space ratio control would be unreasonable and unnecessary in the circumstances of this case.

A handwritten signature in black ink, reading 'Vaughan Milligan'. The signature is written in a cursive, flowing style.

VAUGHAN MILLIGAN
Town Planner