

**STATEMENT OF ENVIRONMENTAL EFFECTS**

**FOR THE CONSTRUCTION OF ADDITIONS & ALTERATIONS TO AN EXISTING  
DWELLING INCLUDING A NEW SWIMMING POOL AND  
ASSOCIATED LANDSCAPING**

**LOCATED AT**

**29 FISHER STREET, BALGOWLAH HEIGHTS**

**FOR**

**DAVID HOLIHAN**



**Prepared  
May 2020**

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## 1.0 Introduction

This Statement of Environmental Effects accompanies details prepared on behalf of David Holihan by Premier Pools, Project No. 1184, Drawing's No L-00 to L-11, dated 5 May 2020, to detail the construction of additions and alterations to an existing dwelling, including a new deck, pergola and swimming pool and associated landscaping at **29 Fisher Street, Balgowlah Heights**.

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. As a result of this assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

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*
- *Manly Local Environmental Plan 2013*
- *Manly Development Control Plan 2013*

## 2.0 Property Description

The subject allotment is described as **29 Fisher Street, Balgowlah Heights**, being Lot A, Deposited Plan 364675 and is zoned R2 Low Density Residential in the Manly Local Environmental Plan 2013.

The dwelling is not listed as a heritage item or being within a heritage conservation zone.

The land is noted as being within a Foreshore Scenic Protection Area, and this will be discussed in further detail within the report.

There are no other hazards affecting the site.

## 3.0 Site Description

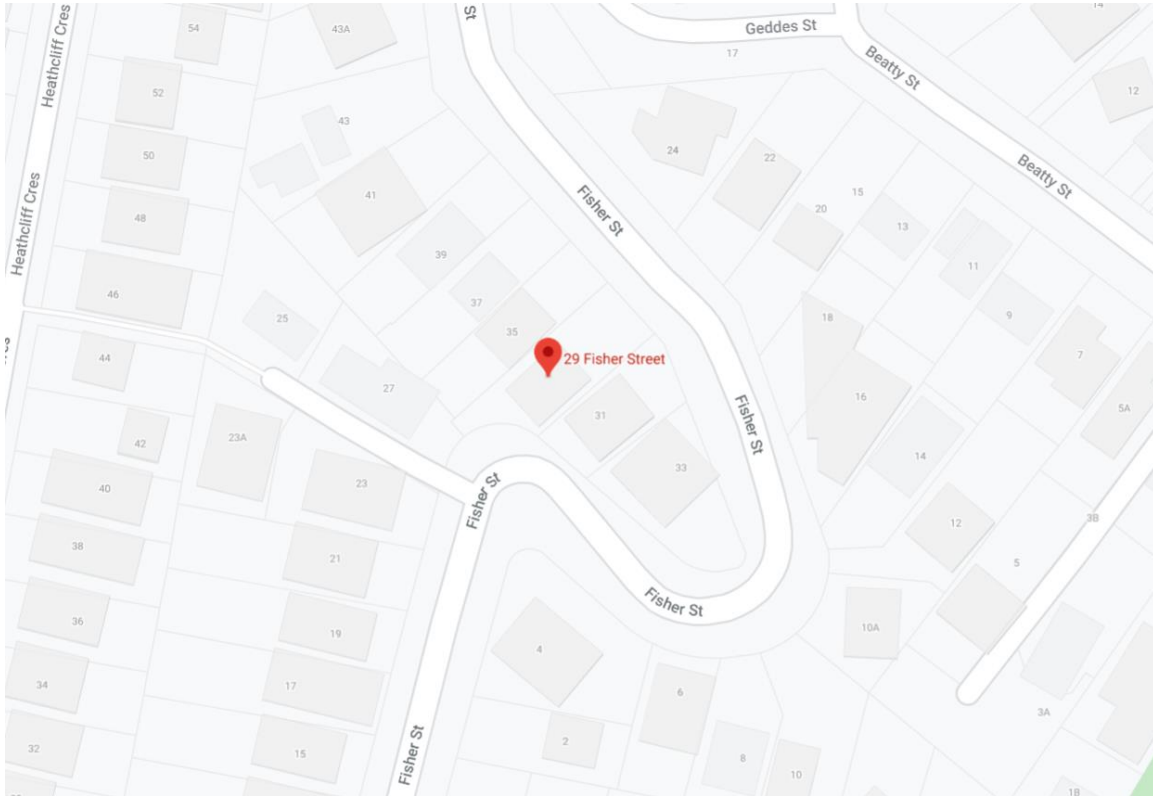
The site is located on the northern, lower side of Fisher Street, with a rear frontage to the northern end of Fisher Street as it continues towards the intersection with Tutus Street. The site's as its primary frontage to its southern boundary to Fisher Street and enjoys an outlook to the north and north-east towards Manly. Vehicular and pedestrian access to the site is from the south-western frontage to Fisher Street, with a garage provided within the site.

The site has an irregular shape with the primary frontage to Fisher Street being a curved boundary with an arc length of 18.37m and the site's secondary, north-eastern frontage to Fisher Street being 15.24 m. The south-eastern and north-western side boundaries measure 36.575m & 49.13m respectively. The total site area is of 642.1m<sup>2</sup>.

Stormwater from the roofed areas is directed to the northern street gutter in Lauderdale Avenue.

The site is currently developed by a one and two brick and clad house with a tile roof and an attached carport with a metal roof.

The details of the existing site configuration are indicated in the detailed levels Survey Plan prepared by C.M.S Surveyors Pty Ltd, Reference No. 17893, dated 13 July 2018, which accompanies the DA submission.



**Fig 1: Location sketch**  
(Source: Google Maps)





**Fig 2: View of subject dwelling, looking north from Fisher Street**



**Fig 3: View of proposed deck, pergola and pool location, looking west along rear elevation of the existing dwelling**



**Fig 4: View over proposed deck and pool location, looking north-west**



#### 4.0 Surrounding Environment

The area surrounding the site is predominantly represented by a mix of development comprising one and two level dwellings and a mix of medium density development and residential flat buildings.

The dwellings in the vicinity have been designed with living areas and associated open space that are oriented to take advantage of the easterly aspect. It is not uncommon for properties to have a swimming pool on site.



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

## 5.0 Proposed Development

As detailed within the accompanying plans, it is proposed to construct a new timber deck with pergola over, to the rear of the existing dwelling, together with a new concrete swimming pool which is partially elevated due to the slope of the site, towards the north .

The pool coping level (RL 61.00) has been stepped below the proposed deck level which at RL 62.30, will be 1. above the pool level. The proposed deck itself is 330 mm below the floor level of the existing dwelling.

At its north-western extremity, the pool coping will be up to 4m above ground level as a result of the site's slope to the north. The pool shell will be finished with off form concrete finish with painting or similar with a recessive colours to ensure that the works blend with the existing stone retaining walls and stone features within the site which will be retained. Is of a recessive colour finish will ensure that the visual impact of the proposed development is minimised. .

The proposed timber deck and open pergola over the new deck will provide for weatherboard balustrades for privacy, which combined with the existing and proposed landscaping to the perimeter of the new structures will retain suitable privacy to neighbouring properties.

Given the slope of the site, swimming pools forward of the dwelling is within the northern yard and elevated as a result of the site slope are common features in the immediate vicinity.

Appropriate sediment and erosion measures will be carried out prior and throughout the construction process.

The overflow from the pool will be drained to the existing stormwater management system, which currently flows to the street gutter in Fisher Street.

The development indices for the site are:

Site Area	642.1m <sup>2</sup>
Required Open Space (Area OS3) –at least 55% of site area	353.1m <sup>2</sup>
Proposed Total Open Space	399m <sup>2</sup> or 62% (remains unchanged)
Required Landscaped Area (Area OS3) – at least 35% of total open space	123.55m <sup>2</sup>
Proposed Soft Landscaped Area	231m <sup>2</sup> or 65.4% of required open space



## 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 (Building Sustainability Index: BASIX) 2004

The proposal meets water, thermal and energy standards required by BASIX. A BASIX certificate is not required in this instance as the pool is less than 40KL (proposed pool volume is 36KL).

### 6.3 Manly Local Environmental Plan 2013

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



Fig 6: Extract of Manly Local Environmental Plan 2013 zoning map

The development of and use of the land for residential purposes is consistent with the R2 Low Density Residential objectives, 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 construction of a timber deck with pergola and swimming pool 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 development in the vicinity and therefore compliments the locality.
- 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.
- Maintaining 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. The neighbouring properties to the east will continue to maintain the existing district views available to the site
- As detailed in this report the proposal maintains appropriate solar access to the surrounding properties.

#### **Clause 4.3 – Height of Buildings**

The maximum building height in this portion of Manly is 8.5m. The proposed pergola will have a height of approximately 6m above existing ground level and will therefore readily comply with Council's height controls.

#### **Clause 6.2 - Earthworks**

The proposal will see some further excavation of the site, however the works are not substantial, with the excavation limited to the swimming pool area.

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 proposed open pergola over the new deck and new swimming pool will not have any adverse impacts on downhill properties, with runoff to be connected to the existing stormwater system and directed to the street gutter in Fisher Street.

### **Clause 6.8 – Landslide Risk**

The site is not identified on Council's LEP Mapping as being subject to landslip, however the site is identified as being Landslip Hazard 'Area G2' on Council's DCP Mapping. The works will be carried out in accordance with the recommendations of the consulting Structural Engineer and will therefore satisfy the provisions of this clause.

### **Clause 6.9 – Foreshore Scenic Protection Area**

The proposal is located within the Foreshore Scenic Protection Area. The provisions of this clause are as follows:

- (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.*

The modest works comprising a new timber deck with pergola over together with a swimming pool and associated landscaping will not impact upon the visual amenity within the area and views to the foreshore from public land and uphill properties will be maintained.

The proposed development is considered suitable for the subject 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.

## 6.4 Manly Development Control Plan 2013 – Amendment 11

Council's DCP Development Control Plan 2013 – Amendment 11 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 timber deck with a pergola over and a new swimming pool will be located in the northern yard of the site, which faces the lower end of Fisher Street, with the structures to be sited above ground level as a result of the site's sloping topography. The deck, pergola and pool will not be prominently visible from any public place as a result of the existing landscape planting which will be further supplemented with tree cover and proposed new plantings. Swimming pools and similar elevated outdoor recreational structures are not uncommon in this locality given the slope of the site towards the north.

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 new works are complementary to the existing locality and will not be prominently viewed from any surrounding public areas. The pool facade is to be finished in recessive colours and finishes to complement the existing stone retaining walls within the site to provide a natural



appearance with new landscaping to the perimeter of the pool to screen the built form. The existing natural escarpment will also be retained.

### **Clause 3.3 Landscaping**

The proposed new works will retain an appropriate area of soft landscaping.

The new works will present an appropriate form and footprint, which is well set back from the site's boundaries. As detailed in the building elevations, the proposed perimeter plantings will soften and screen the built form of the works. The planting schedule is detailed on Page No. L-04 & L-11.

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

### **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 pool has been designed to minimise opportunities for overlooking to neighbouring properties. The generous setbacks to the side boundaries and proposed screen plantings will maximise privacy and further enhance the amenity enjoyed by occupants of the subject site and neighbouring properties.

The modest extent of the new works will ensure that the existing views received by uphill properties will be maintained. The proposal will not result in any loss of solar access for neighbouring properties.

### **Clause 3.5 Sustainability**

The pool has been restricted in size to be less than 40,000L (36KL) to meet the NSW Planning outcomes of reduced energy and water demand.

**Part 4 – Residential Development Controls****Site Area 642m<sup>2</sup> - Density Sub Zone D3 (250m<sup>2</sup> per lot)****Compliance Table**

<b>Control</b>	<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
<b>Clause 4.1.1</b> Residential Density & Subdivision	Density Area D3 – 1 dwelling per 250m <sup>2</sup>	Site area is 642m <sup>2</sup> .	Complies - existing site and dimensions are unchanged
<b>Clause 4.1.5</b> Open space and Landscaping	Area OS3 Min 55%/35%	Proposed open space 399m <sup>2</sup> or 62%  Proposed soft open space 231m <sup>2</sup> or 65.4% of total open space.	Complies
<b>Clause 4.1.8</b> Development on Sloping Sites	Landslip Hazard 'Area G2' on Council's DCP Mapping	The site is not identified on Council's LEP Mapping as being subject to landslip, however the site is identified as being Landslip Hazard 'Area G2' on Council's DCP Mapping.  The proposal will not require any substantial disturbance of the existing site conditions and a Geotechnical Report is not considered necessary in this instance.  The works will be carried out in accordance with the recommendations of the consulting Structural Engineer and will therefore	Complies

		satisfy the provisions of this clause.	
<b>Clause 4.1.9</b> Swimming pools, spas and Water features	Height above ground not more than 1m	As a result of the sloping topography the pool will present a height of approximately 4000mm above ground.  The proposed new swimming pool will not be prominently visible from Fisher Street and neighbouring properties as a result of generous setbacks, existing vegetation and proposed new screen plantings. The proposed new works are not considered to detract from the amenity and character of the neighbourhood, and the siting of the pool is considered worthy of support on merit.	Complies – on merit
	Setback of outer edge of deck & pool concourse from side and rear boundaries must be at least 1m with water line being at least 1.5m from the boundary	South-eastern side – 1.63m North-western side – 1.020 (deck) & 1.592m to pool concourse Fisher Street frontage – 7.789m	Complies  Complies  Complies
	Pool not to exceed 30% of total open space	<30%	Complies

<b>Clause 4.4.5.2</b> Earthworks	Excavation limited to 1m below ground level with exception of basement parking and swimming pools. A dilapidation report and geotechnical assessment may be required for works exceeding 1m.	Proposed pool is mostly above ground as a result of sloping topography and will therefore require limited excavation to accommodate the new swimming pool.  The proposed excavation will not see any major disturbance to the soils or water table.	Complies
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## **7.0 Matter 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 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 – Amendment 11.

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 swimming pool height above ground, as the existing site conditions

present a challenge to compliance and the minor nature of the works is a reasonable alternative solution which results in a development which addresses Council's Objectives.

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 approval for the construction of a timber deck with pergola over together with a new swimming pool, 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 R2 Low 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.

**7.8 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 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 construction of a new timber deck with pergola over and a new swimming pool and associated landscaping, 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.

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