

STATEMENT OF ENVIRONMENTAL EFFECTS

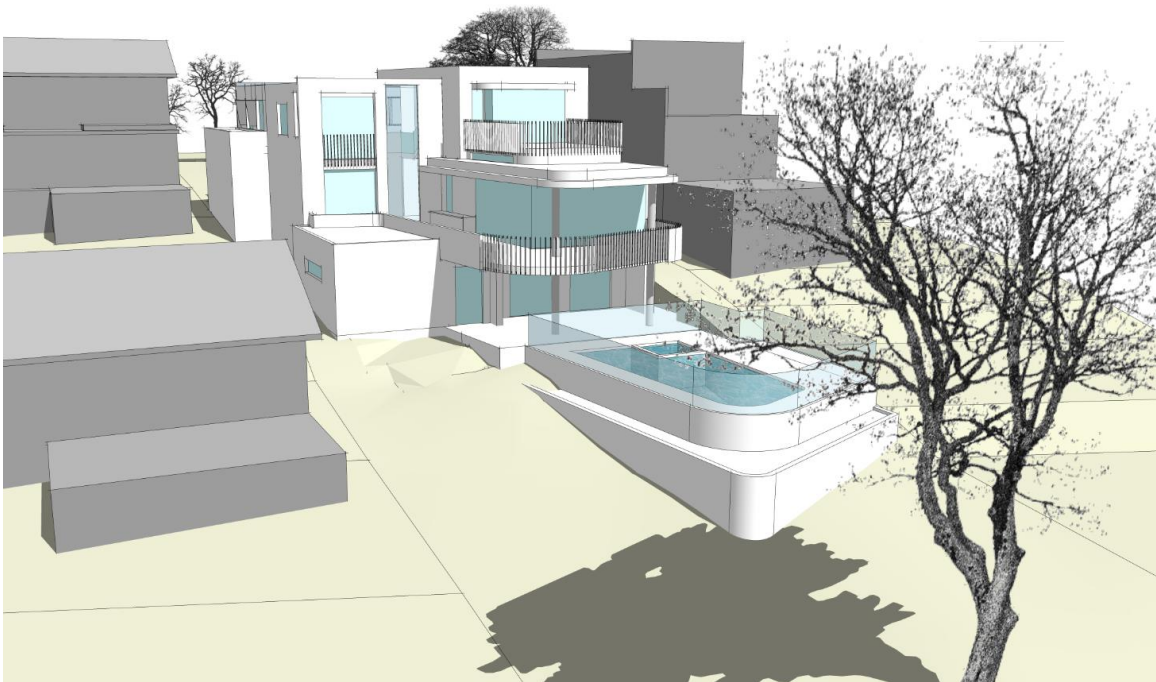
**FOR PROPOSED ADDITIONS AND ALTERATIONS TO AN EXISTING
DWELLING, INCLUDING CONSTRUCTION OF A SWIMMING POOL,
TERRACES AND ASSOCIATED LANDSCAPING**

AT

20 FISHER STREET, BALGOWLAH HEIGHTS

FOR

MEL AND CHRIS BRADLEY



**Prepared
August 2019**

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1.0 Introduction

This Statement of Environmental Effects accompanies details prepared on behalf of Mel and Chris Bradley by Bawtree Design, Project No. 1811, Drawing No. DA01-DA10, DA20, DA21, Issue A, dated 12 August 2019, to detail proposed additions and alterations to an existing dwelling, including the construction of a new swimming pool, terraces and associated landscaping at **20 Fisher Street, Balgowlah Heights**.

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*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Manly Local Environmental Plan 2013*
- *Manly Development Control Plan 2013 Amendment 11*

2.0 Property Description

The subject allotment is described as **20 Fisher Street, Balgowlah Heights**, being Lot 51 within Deposited Plan 9202 and is zoned R2 Low Density Residential under the Manly Local Environmental Plan 2013.

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

The site is noted as being within the Coastal Use Area and Coastal Environment Area under the provisions of the State Environmental Planning Policy (Coastal Management) 2018. This will be addressed in further detail within this report.

The site is listed as Scenic Protection Land, and this will be discussed further within this report.

The site is not identified as being affected by any other known hazards.

3.0 Site Description

The site is located on the north-eastern side of Fisher Street, with a secondary street frontage to Beatty Street at the rear. The site has a general fall to the north-eastern corner of the site.

The site is irregular in shape, with a total angled frontage of 18.85m to Fisher Street. The north-western and south-eastern side boundaries measure 54.85m and 62.735m respectively. The secondary frontage to Beatty Street measures 16.765m. The total area of the site is 970.3m².

Stormwater from the roofed areas is directed to the street gutter in Beatty Street.

The site is currently developed with a three storey brick residence with a tile roof. Vehicular access is currently available via a concrete driveway from Fisher Street to an attached garage. Pedestrian access is available to the site via a concrete path from Fisher Street and a gravel path from Beatty Street.

The details of the site are included on the survey plan prepared by TSS Total Surveying Solutions, Drawing No. 182723, dated 13 December 2019, which accompanies the DA submission.

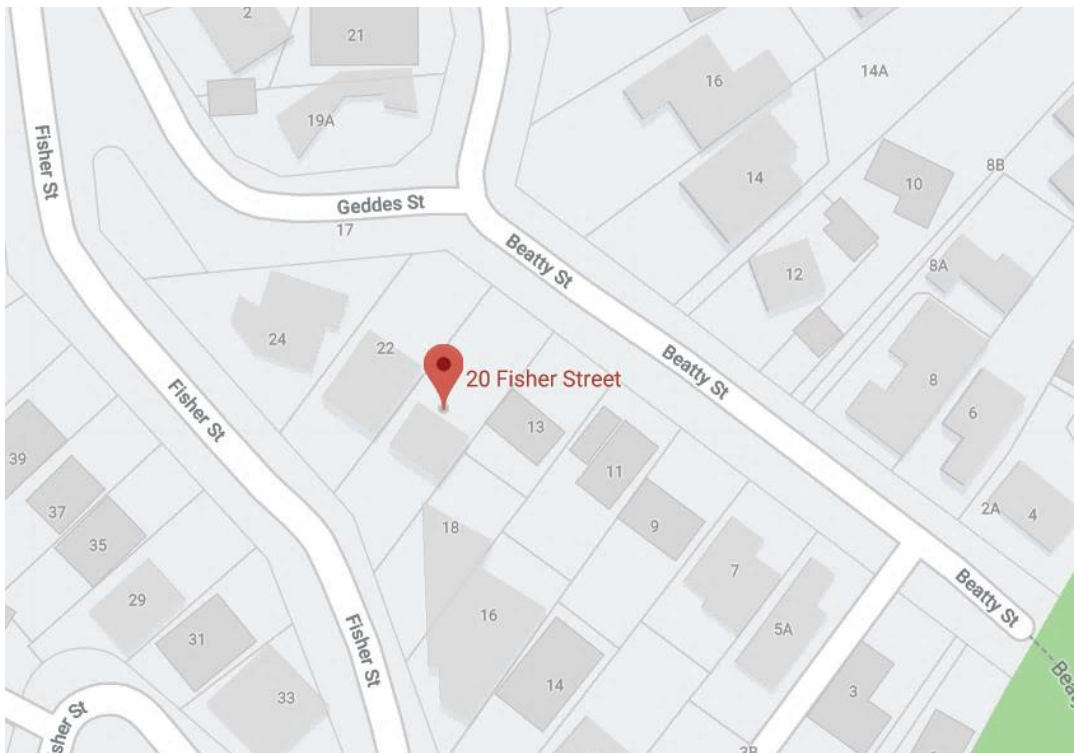


Fig 1: Location sketch
(Source: Google Maps)



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



Fig 3: View of neighbouring dwelling at No 22 Fisher Street, looking north



Fig 4: View of neighbouring dwelling at No 18 Fisher Street, looking east



Fig 5: View of existing development opposite the site in Fisher Street, looking south-west



Fig's 5 & 6: Views of neighbouring dwelling at No 18 Fisher Street, looking south-east



Fig's 7 & 8: Views of subject dwelling from Beatty Street setback, looking east

4.0 Surrounding Environment

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

The dwellings in the vicinity have been designed with living areas and associated open space that are oriented to take advantage of the harbour and district views available to the site. It is not uncommon for dwellings within this area to have a pool within their rear yard or within the front setback.

The adjoining dwelling to the south-east at No 13 Beatty Street has recently received consent for a swimming pool within the front setback under DA No 201/2017.



Fig 9: Aerial view of subject site
(Source: Google Maps)



Fig 10: Example of views of surrounding development and outlook available to subject site, looking south-east towards Manly

5.0 Proposed Development

As detailed within the accompanying plans prepared by Bawtree Design, the proposal seeks consent for additions and alterations to the existing dwelling, including the construction of a new swimming pool, terraces and associated landscaping.

A significant area of the existing building and its floor plates will be retained, with the new works to be provided as additions and alterations to the existing built form.

The new works will comprise:

Lower Ground Floor Plan

- Alterations and additions to the existing lower ground floor level to provide for a rumpus room, internal access stairs to upper levels, music room, entry, refurbishment and extension of existing bathroom

Ground Floor Plan

- Alterations and additions to existing ground floor plan to provide for new entry, bedroom, mud room, laundry, study, kitchen, walk in pantry, living, dining and terrace
- New green roof over lower ground floor terrace

First Floor Plan

- Alterations and additions to existing first floor to provide for extension to existing bedrooms 1, 3 and 4, new ensuite and walk in robe to existing bedroom 1, new bedroom 2 with ensuite, bathroom and green roof planter
- New terrace and green roof

External Works

- New swimming pool and terrace
- Associated landscaping

The proposed alterations and additions will maintain the existing three storey scale of the dwelling. The contemporary design of the new works with a flat roof form assists with minimising the visual bulk of the dwelling.

The colours and finishes of the new works have been selected to complement the existing dwelling and locality.

The development indices for the site are:

Site Area	970.3m ²
FSR permissible	0.4:1 or 388.12m ²
FSR proposed	0.438:1 or 425.2m ²

Required Open Space (Area OS4) – 60%/site	582.18m ²
Proposed Open Space	608.5m ² or 62.7%
Required Landscape – 40% of open space	232.88m ²
Proposed Landscape	260m ² or 44.7%

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

6.3 State Environmental Planning Policy (Coastal Management) 2018

The subject site is 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 5 of SEPP (Coastal Management) 2018 are:

The relevant provisions of this clause are addressed as follows:

Division 3 Coastal environment area

13 Development on land within the coastal environment area

- (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - (b) coastal environmental values and natural coastal processes,
 - (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

- (f) Aboriginal cultural heritage, practices and places,*
 - (g) the use of the surf zone.*
- (2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

Comment:

The proposal provides for the construction of alterations and additions to an existing dwelling, including the construction of a new swimming pool, terraces and associated landscaping. The proposed works will be carried out in accordance with the recommendations of the consulting Structural Engineer, which will ensure that appropriate structural integrity for the site will be maintained.

The collected stormwater will be directed to Beatty Street, which eventually flows to Sydney Harbour. The proposed stormwater management system will be designed to comply with Council's Water Management Policy. Sediment and erosion control measures will be carried out to minimise the impact of the works on the waterway.

Division 4 Coastal use area

14 Development on land within the coastal use area

- (1) 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.*
- (2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

Comment

The proposal will not result in the removal of any existing public access along the foreshore.

Shadow diagrams have been prepared which demonstrate that the proposal will not result in any overshadowing to the foreshore area.

The proposed new development is modest in height and scale, and will not result in any loss of views to the foreshore area. By being stepped to follow the sloping topography of the site, the proposal will protect the visual amenity of the locality.

The site does not contain any heritage items, nor is it within a conservation area. The site has been previously cleared, and it is not anticipated that any items of Aboriginal heritage will be encountered.

Division 5 General

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.

Comment

The proposal provides for the construction of alterations and additions to an existing dwelling, including the construction of a new swimming pool, terraces and associated landscaping. The proposed new works are not considered to increase the risk of coastal hazards for the subject property or adjoining land.

16 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment: No coastal management programs have been identified.

17 Other development controls not affected

Subject to clause 7, for the avoidance of doubt, nothing in this Part:

- (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or*
- (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.*

Comment: Noted

18 Hierarchy of development controls if overlapping

If a single parcel of land is identified by this Policy as being within more than one coastal management area and the development controls of those coastal management areas are inconsistent, the development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency:

- (a) the coastal wetlands and littoral rainforests area,*
- (b) the coastal vulnerability area,*
- (c) the coastal environment area,*
- (d) the coastal use area.*

Comment

Noted

6.4 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The SEPP commenced on 25 August 2017 and replaced Clause 5.9 of Manly Local Environmental Plan 2013.

The aims of the SEPP are detailed in Clause 3 and note:

The aims of this Policy are:

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

The proposal will maintain a sufficient level of soft landscaping on site.

In this instance, the proposal will not see any loss of any substantial vegetation and is therefore considered to be consistent with the aims of the SEPP.

6.5 Manly Local Environmental Plan 2013

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

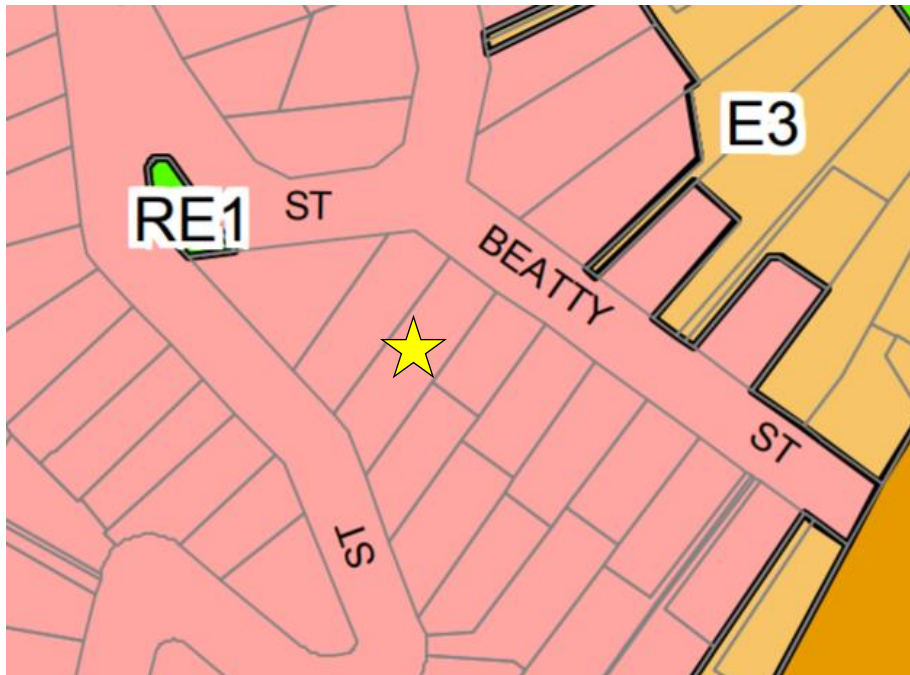


Fig 11: Extract of Manly Local Environmental Plan 2013 Zoning Map

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 R2 Low Density Residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

It is considered that the proposed additions and alterations to the existing dwelling, including a new swimming pool, terraces and associated landscaping will achieve the zone objectives and are consistent with the established character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing detached style housing within the locality.
- The proposed development respects the scale and form of other dwellings in the vicinity and therefore complements the locality.
- The setbacks are compatible with the existing surrounding development.
- The 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 alterations to an existing dwelling which will maintain the residential scale and character of the locality.

- 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.
- As detailed in this report the proposal maintains appropriate solar access to the surrounding properties.

Clause 4.3 – Height of buildings

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

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The building height limit for development in this portion of Balgowlah Heights is 8.5m. The proposed new works will be generally less than 8.5m above existing ground level, however the existing south-western corner of the dwelling, which is to be unaltered, is up to 9.05m above ground level. The extended main bedroom will have a height at its south-eastern corner of up to 8.7m in height.

Accordingly, a clause 4.6 submission has been prepared and is attached to this report.

Clause 4.4 – Floor space ratio

A maximum floor space ratio control of 0.4:1 for development in this locality is required. The proposed additions will provide a gross floor area of 425.2m² or 0.438:1 which does not comply with this control. A clause 4.6 submission has been prepared and is attached to this report.

Clause 6.2 – Earthworks

The proposal will require some minor excavation of the site to accommodate the proposed swimming pool and a portion of the lower ground floor.

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

Clause 6.4 – Stormwater management

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

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

The proposal is accompanied by a Stormwater Management Plan prepared by Waddington Consulting Pty Ltd, Drawing No. 11635-C1.00, Rev B, dated July 2019. It is proposed to direct stormwater via a rainwater reuse tank to the street gutter in Beatty Street. The proposal will therefore satisfy the provisions of this clause.

Clause 6.8 – Landslide Risk

The site is identified within Council's Geotechnical Area G2. In accordance with Council's Checklist for Preliminary Assessment of Site Conditions, no further investigation is required.

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 6.9 – Foreshore Scenic Protection Area

The site has been identified as being within the "Foreshore Scenic Protection Area". The proposed works will continue to provide view corridors over and beside the dwelling and will protect visual aesthetic amenity. The proposed new ridge height of the works is 1.49m lower than that of the existing right height of the dwelling and will therefore provide for increased view sharing from neighbouring properties and Fisher Street towards the foreshore area.

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.

6.6 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 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 alterations and additions to an existing dwelling, including a new swimming pool, terraces and associated landscaping which are complementary to the existing locality, presenting a modest two storey dwelling when viewed from Fisher Road.

The proposed rear addition mostly complies with the maximum building height and will provide for increased residential amenity. The stepping of the rear extension with the sloping topography of the land will reduce the bulk of the dwelling when viewed from neighbouring dwellings and from Beatty Street.

The proposal is therefore in keeping with the character of the Fisher Street streetscape, and is worthy of Council's support.

Clause 3.3 Landscaping

The proposed new works will continue to retain generous areas of soft landscaping on the site. The site will retain a generous level of soft landscaping, which readily complies with Council's landscaped area requirements.

Planter boxes and green roof terraces with plantings will be provided to supplement the bulk and scale of the proposed works.

A Landscape Plan has been prepared by Site Design Studios, Drawing No 1288, Sheets L-01 – L08 dated 1 August 2019 to provide for the managed re-planting of the site.

The potential to overlook the neighbouring properties and the street area will be suitably minimised through the proposed planting zones and limited pool coping area.

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:

- Maintaining an acceptable level of privacy to the adjoining allotments has been addressed by limiting the window openings along the side elevations and providing highlight windows. In addition, the proposed green roof plantings will assist with maximising privacy.
- The proposed additions will not see any unreasonable diminution of the solar access enjoyed by the neighbouring properties. The north-easterly aspect enjoyed by the properties in this immediate area ensures that appropriate access to sun is available to the sites.

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

The proposal is accompanied by a Stormwater Management Plan prepared by Waddington Consulting Pty Ltd, Drawing No. 11635-C1.00, Rev B, dated July 2019. It is proposed to direct stormwater via a rainwater reuse tank to the street gutter in Beatty Street. The proposal will therefore satisfy the provisions of this clause.

Part 4 – Residential Development Controls**Site Area 970.3m² - Density Sub Zone D7 (750m² per lot)****Compliance Table**

Control	Required	Proposed	Compliance
Clause 4.1.1 Residential Density & Subdivision	Density Area D7 – 1 dwelling per 750m ²	Site area is 970.3m ²	Yes - existing site and dimensions are unchanged
Clause 4.1.2 Height of Buildings	Maximum height – 8.5m Wall height – 7.0mm	Maximum height 8.56m Max proposed wall height 8.9m and therefore does not comply with this control. The objectives of this control are outlined in clause 4.3 of the LEP: <i>a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality, b) to control the bulk and scale of buildings, c) to minimise disruption to the following, i) views to nearby residential development from public spaces (including the harbour and foreshores), ii) views from nearby residential</i>	No – see clause 4.6 submission Yes – on merit

		<p><i>development to public spaces (including the harbour and foreshores),</i></p> <p><i>iii) views between public spaces (including the harbour and foreshores),</i></p> <p><i>d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,</i></p> <p><i>e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.</i></p> <p>The proposed new works will provide a contemporary, flat roof form, the maximum height of which is 1.49m lower than the existing pitcher roof form.</p> <p>The bulk and scale of the proposed new works maintains consistency with existing surrounding development, and will present as a modest two storey dwelling to Fisher Street.</p>	
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		<p>The external form of the building follows the sloping topography of the site, which assists with minimising the visual bulk of the development.</p> <p>The proposal will maintain suitable view opportunities for uphill properties, with views available over the roof form and along the side boundaries.</p> <p>The proposal will not result in any unreasonable impacts for neighbouring properties in terms of solar access.</p> <p>The proposal is therefore considered worthy of support on merit.</p>	
	Max two storeys	Existing dwelling is 3 stories. New works will maintain 3 storey form.	Yes
	Roof height – 2.5m above wall height	Flat roof form proposed	Yes
Clause 4.1.13 Floor Space Ratio (FSR)	0.4:1	0.438:1	No – see clause 4.6 submission
Clause 4.1.4 Setbacks (front, side and rear)	<p>Front</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,</p>	Minimum proposed setback is 7.1m which is in keeping with the setback of neighbouring properties.	Yes – on merit

	chimneys, meter boxes and the like, where no adverse impact on the streetscape or adjoining properties is demonstrated to Council's satisfaction.		
Side Boundary setback – 1/3 of wall height	<p><u>Side</u></p> <p>1/3 x 8.9m = 2.97m</p>	<p>North-western side: min 1.75m</p> <p>South-eastern side: min 1.25m</p> <p>Whilst the proposal does not comply with the side setback controls, the proposed new works have been designed to follow the siting of the existing dwelling.</p> <p>The proposal is in keeping with The Objectives of this control, which read as follows:</p> <p><i>Objective 1) To maintain and enhance the existing streetscape.</i></p> <p><i>Objective 2) To ensure and enhance local amenity by:</i></p> <ul style="list-style-type: none"> • <i>providing privacy;</i> • <i>providing equitable access to light, sunshine and air movement;</i> • <i>facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces; and</i> • <i>facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the</i> 	<p>Yes – on merit</p> <p>Yes – on merit</p>

		<p><i>street intersection. See also objectives at paragraph 3.4 Amenity.</i></p> <p><i>Objective 3) To promote flexibility in the siting of buildings.</i></p> <p><i>Objective 4) To enhance and maintain natural features by:</i></p> <ul style="list-style-type: none"> <i>•accommodating planting, including native vegetation and native trees;</i> <i>•ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and</i> <i>•ensuring the provisions of State Environmental Planning Policy, No 19 - Urban Bushland are satisfied.</i> <p><i>Objective 5) To assist in appropriate bush fire asset protection zones.</i></p> <p>The siting of existing development and the sloping topography of the site has made it difficult to design works that comply with this control.</p> <p>The proposed new works will main suitable privacy, amenity and solar access for neighbouring properties. The proposed terraces are well separated from neighbouring properties, and will not result in any unreasonable overlooking.</p> <p>The proposed setbacks are considered acceptable on merit.</p>	
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Rear setback – 8m	<u>Rear</u>	The proposed new works are well setback from the rear boundary.	Yes
Clause 4.1.5 Open space and Landscaping	Area OS 4 Open space: Min 60% site area	Proposed open space 608.5m ² or 62.7%.	Yes
	Landscaping: 40% of open space	Proposed soft landscaping 260m ² or 44.7% of total open space. The Objectives of this control are as follows: <i>Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.</i> <i>Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.</i> The proposal is in keeping with the Objectives of this control, as adequate landscaped areas are provided, and the natural landscape of the site is maintained.	Yes
Clause 4.1.6 Parking	Min 2 spaces	Parking for two vehicles provided within existing garage	Yes
Clause 4.1.6.4 Vehicular Access	a) All vehicles should enter and leave the site in a forward direction.	The proposal maintains existing driveway and vehicular access to existing attached garage.	Yes

	<p>b) Vehicular access and parking for buildings with more than 1 dwelling is to be consolidated within one location, unless an alternative layout/design would better reflect the streetscape or the building form.</p> <p>c) Vision of vehicles entering and leaving the site must not be impaired by structures or landscaping.</p> <p>d) Particular attention should be given to separating pedestrian entries and vehicular crossings for safety.</p>		
<p>Clause 4.1.6.6 Tandem, Stacked and Mechanical Parking Areas</p>	<p>The design location and management of parking facilities involving tandem, stacked and mechanical parking (including car stackers, turntables, car lifts or other automated parking systems) must consider the equitable access and distribution of parking spaces to all occupants and visitors to the</p>		N/A

	<p>building. In this regard:</p> <p>a) all parking spaces in any tandem or stacked arrangement are to be allocated to the same dwelling/strata unit and must not be used as visitors parking; and</p> <p>b) where the proposed development involves a tandem, stacked and mechanical parking arrangement which necessitates more than one parking space being attributed to a single dwelling unit under paragraph i) above; Council must be satisfied that sufficient parking spaces are reasonably allocated to all other dwelling units within the development.</p>		
<p>Clause 4.1.7 First Floor and Roof Additions</p>	<p>a) First floor additions must complement the architectural style of the ground floor and where possible retain existing roof forms.</p>	<p>The proposal will maintain existing 3 storeys.</p>	<p>N/A</p>

	<p>Notwithstanding setback provisions, the addition may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues.</p> <p>b) The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of Manly. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure.</p>		
<p>Clause 4.1.8 Development on sloping sites</p>	<p>a) Site Stability Report may be required in Geotechnical Areas G2, G3 and G4 i) The applicant should complete Council's Checklist for Preliminary Assessment of Site Conditions (Landslip) at</p>	<p>The site is identified within Council's Geotechnical Area G2. In accordance with Council's Checklist for Preliminary Assessment of Site Conditions, no further investigation is required.</p>	<p>Yes</p>

	<p>Schedule 11 of this plan to determine whether a Site Stability Report is required. All development involving load bearing building works must complete the checklist for Preliminary Assessment of Site Conditions (Landslip) to ensure developments follows good engineering practice.</p> <p>b) Area G2 - Potential Hazards i) Potential Geotechnical hazards in this area include:</p> <ul style="list-style-type: none"> • Rock falls and slumping of soil and fill materials from unsupported cuts and natural cliffs onto public and private pathways and roadways. • Possible creep of talus materials on steeper soil covered slopes. • Possible movement of detached blocks of sandstone. Limited to moderate damage of some or part of structures (for example dwelling or roadway), with part 		
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	of site requiring some stabilisation works. Large scale stabilisation works unlikely to be required.		
Clause 4.1.9 Swimming pools, spas and Water features	<p>Height above ground not more than 1m</p> <p>a) Swimming pools and spas must not be located within the front setback i.e. between the front boundary of the lot and the building line. Consideration of any exception to the required location must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse:</p> <p>i) does not detract from the amenity or character of the neighbourhood; and</p> <p>ii) is a minimum distance from the front boundary equivalent to at least twice the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above</p>	<p>The proposed pool is up to 1.74m above existing ground level.</p> <p>The proposed new swimming pool is located to the rear(eastern) yard of the existing dwelling and is well set back from the secondary frontage to Beatty Street.</p> <p>The swimming pool waterline is setback a minimum of 3.8m from any boundary, and readily complies with the setback requirement.</p> <p>The proposed new swimming pool will be supplemented with planter boxes to ensure visual privacy and amenity is maintained for residents and neighbouring properties.</p> <p>Appropriate swimming pool fencing as per the swimming pool safety regulations will be constructed.</p>	Yes

	<p>existing ground level.</p> <p>b) Setback of outer edge of pool concourse from side and rear boundaries must be at least 1m with water line being at least 1.5m from the boundary</p>		
<p>Clause 4.1.10 Fencing</p>	<p>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.</p>	<p>No freestanding walls or fences proposed</p>	<p>N/A</p>

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

7.1 The provisions of any environmental planning instrument

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

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

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

There are no draft instruments applying to the land.

7.3 Any development control plan

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

The application has been prepared having regard to the requirements of Part 3, 4 and 5 of the Manly 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 building envelope 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 building envelope criteria.

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

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

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

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

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

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

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

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

7.7 The suitability of the site for the development

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

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

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

7.9 The public interest

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

8.0 Conclusion

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

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

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

VAUGHAN MILLIGAN

Town Planner

Grad. Dip. Urban and Regional Planning (UNE)

Appendix A: Clause 4.6 Submission – Maximum Building Height

Appendix B: Clause 4.6 Submission – Floor Space Ratio

APPENDIX A:
CLAUSE 4.6 SUBMISSION – MAXIMUM BUILDING HEIGHT

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

20 FISHER STREET, BALGOWLAH HEIGHTS

**PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING,
INCLUDING A NEW SWIMMING POOL, TERRACES AND ASSOCIATED LANDSCAPING**

For: Proposed construction of alterations and additions to an existing dwelling,
including a new swimming pool, terraces and associated landscaping
At: 20 Fisher Street, Balgowlah Heights
Owner: Mel and Chris Bradley
Applicant: Mel and Chris Bradley
C/- Vaughan Milligan Development Consulting

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 building height as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.3 restricts the height of a building and refers to the maximum building height noted within the “*Height of Buildings Map*.”

The maximum building height for this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed new works will be generally less than 8.5m above existing ground level, however the existing south-eastern corner of the dwelling, which is to be unaltered, is up to 9.05m above ground level.

The proposed variation for the existing portion of the dwelling which will maintain of 9.05m will exceeds Council’s maximum building height by 550mm or 6.47% and therefore does not comply with this control.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

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 LEP 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 considered 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 development will achieve a better outcome in this instance as the site will provide for the construction of a new dwelling, which is consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

- *To provide for the housing needs of the community within a R2 Low Density Residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

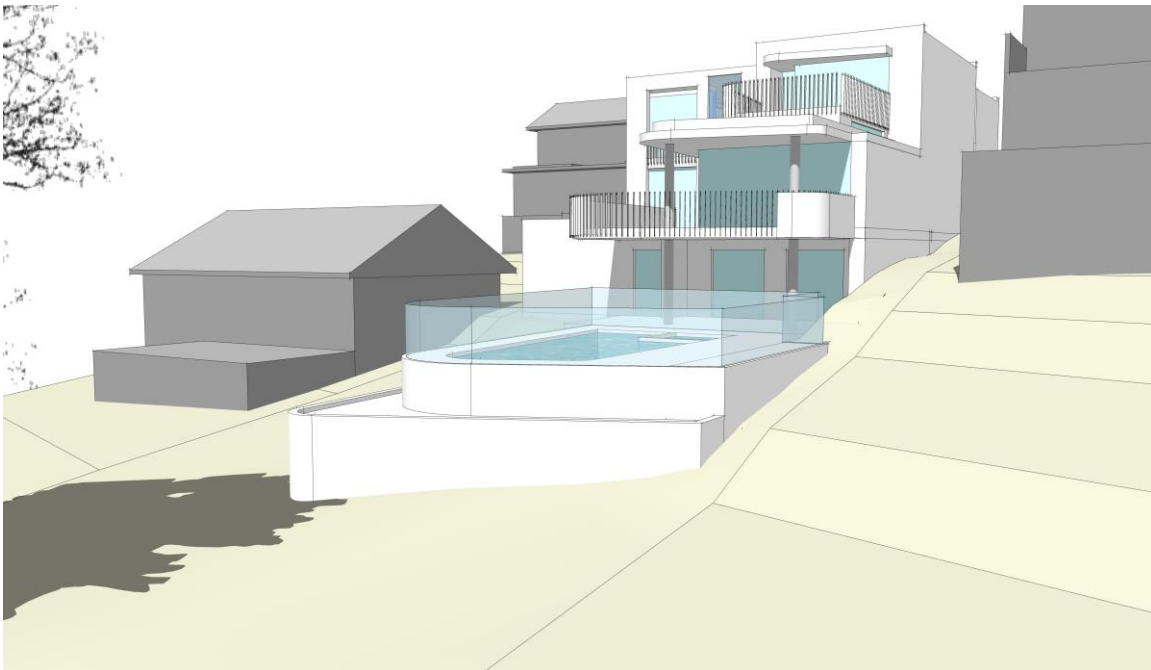
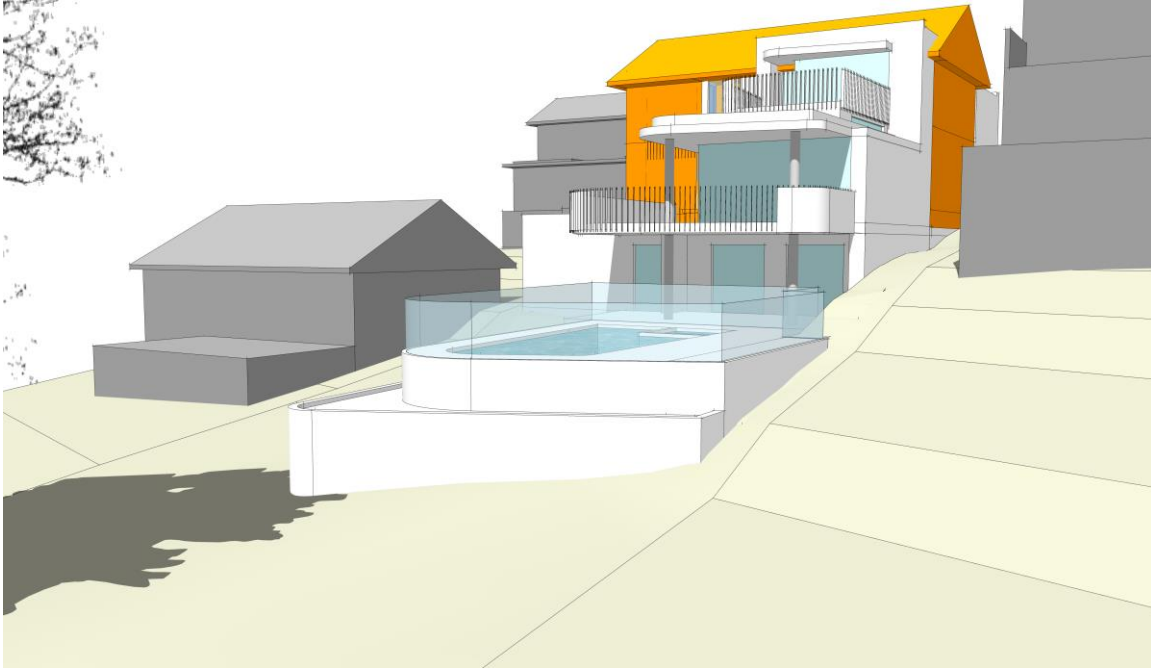
The proposal will provide for the construction of alterations and additions to an existing dwelling, including a new swimming pool, terraces and associated landscaping to provide for increased amenity for the site's occupants.

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

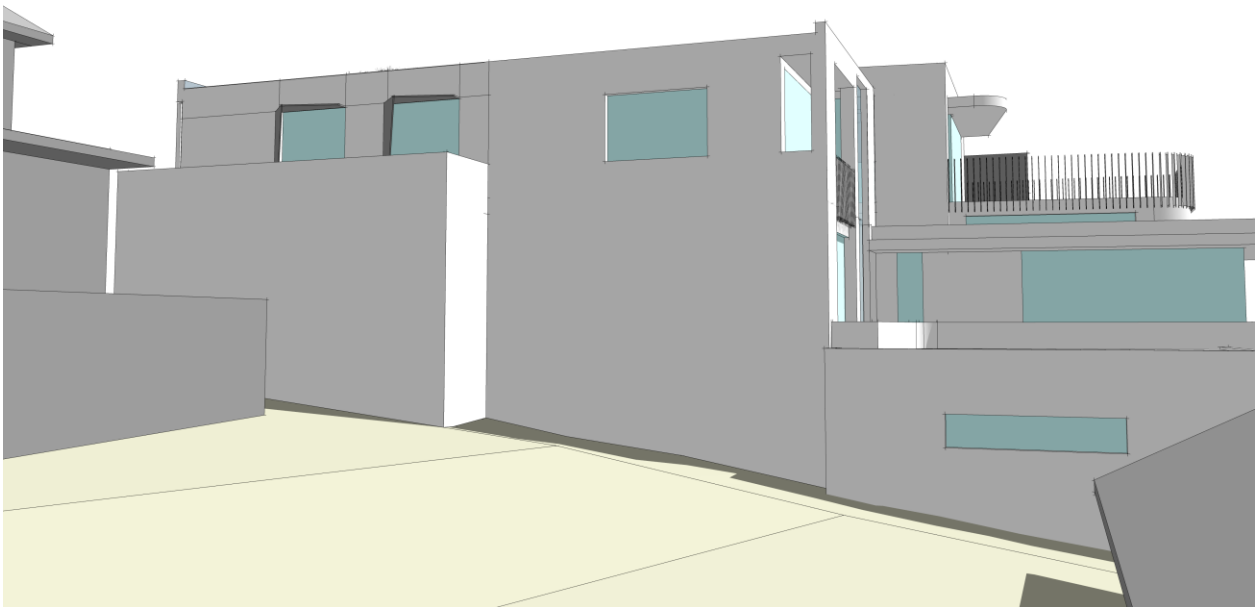
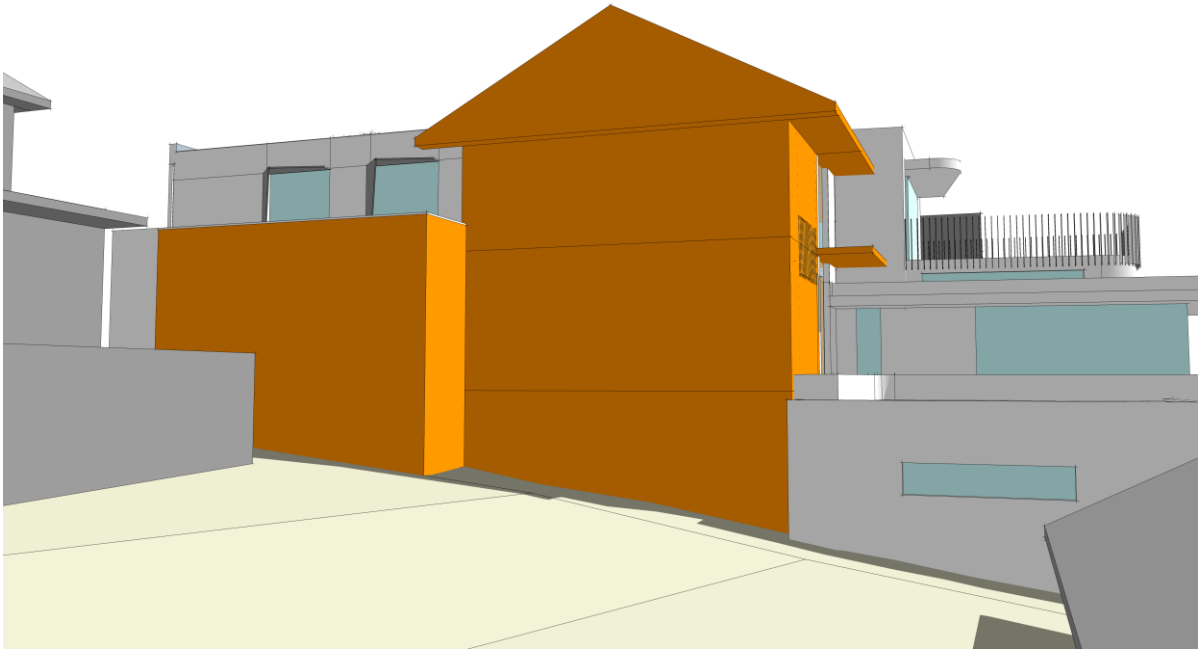
The maximum ridge level will stand at RL 56.70m, with the new flat roof form to result in a reduction in the existing overall ridge height of 1.49m. Notwithstanding the existing non-compliance with the maximum overall height, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

The proposed works have been designed to mitigate any adverse impacts of overshadowing and loss of view towards any neighbouring properties.

The development will not see any unreasonable impacts on view sharing.



Fig's 12 & 13: Comparison views to indicate extent of reduced bulk through lowering of existing overall height through removal of pitched roof and replacement with new flat roof form



Fig's 14 & 15: Comparison views to indicate extent of reduced bulk through lowering of existing overall height through removal of pitched roof and replacement with new flat roof form

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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.*

This written request has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11 Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the Samadi judgement states:

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The site is located in the R2 Low Density Residential Zone. The objectives of the R2 zone are noted as:

- *To provide for the housing needs of the community within a R2 Low Density Residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comments

It is considered that notwithstanding the extent of the non-compliance with the maximum building height control (550mm), the proposed additions to the existing dwelling will be consistent with the individual Objectives of the R2 Low Density zone for the following reasons:

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

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

The development will see the retention of an existing portion of the dwelling which is up to 550mm above ground level, and a new bedroom extension to the upper level, which will have a height of up to 200mm above the existing ground level. The new works introduce a minor noncompliance with the building height control of between 200mm (new works) and 550mm (existing south-eastern corner). The contemporary building form with a flat roof and the complementary external finishes are considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade and building elevation, will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

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

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

The development does not suggest any alternate land uses and this Objective is not directly relevant to the subject single residential proposal.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.3 are articulated at Clause 4.3(1):

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

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following:*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comments

Despite the minor variation to the maximum building height, the proposed alterations and additions are considered to be in keeping with the relevant Objectives of Clause 4.3 for the following reasons:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

The Objective of Clause 4.3 (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 surrounding area is predominantly characterised by two – three storey development, often located over basement garages and service rooms.

The proposal seeks to provide for alterations and additions to an existing dwelling within a contemporary building form, with the slope of the site resulting in a portion of the roof being up to 9.05m in height.

The overall building height respects the surrounding character and the design seeks to minimise the visual height by providing for increasing setbacks to the upper floor levels at the rear and garden terraces to minimise visual bulk.

The proposed external colour and materials palette utilises complementary finishes and is intended to ensure that the building's visual height and scale is further minimised.

(b) to control the bulk and scale of buildings,

The proposed new dwelling will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

Further, the modulation of the front façade and building elevations where visible from the public domain minimises the visual impact of the development.

The proposal presents a compatible height and scale to the surrounding development and the articulation to the building facades and flat roof form will suitably distribute the bulk of the new floor area.

(c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),***
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),***
- (iii) views between public spaces (including the harbour and foreshores),***

Due to the general slope of the site towards the north east and east, the properties to the west of the site enjoys views towards the harbour. Views past the site are generally along the side setback areas.

As indicated in Figure 15, an overall lowering of the building through the removal of the pitched roof form will result in some increased view opportunity for the surrounding properties to the west.

Views from the surrounding public spaces are not adversely affected.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

As the proposal will see the replacement of an existing dwelling, the shadow analysis prepared by Bawtree Design includes plan views of the proposed shadow impacts.

The assessment confirms that the primary living room windows and the external private recreational spaces of the adjacent south-eastern neighbour will continue to receive appropriate solar access.

The increased setbacks to the upper floor at the rear and flat roof form will assist in minimising the effects of overshadowing and will appropriately maintain the neighbour's amenity.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The site is not within a recreation or environmental protection zone and is well removed

from the foreshore area. The site is not within a conservation area or in the vicinity of any heritage items.

The proposal is intended to reflect the predominant scale and form of the surrounding development in Fisher Street and will reflect the existing single dwelling uses in the vicinity.

Despite the variation to the building height control which occurs as a result of the sloping topography of the site, proposal is generally consistent with the height and scale of newer development in the locality.

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

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for the construction of alterations and additions, which is constrained by the nature of the existing development on site and the sloping topography of the site.

Council's controls in Clause 4.3 provide a maximum building height of 8.5m. As a result of the sloping topography of the site, a portion of the existing wall plane to the south-east, which is to be retained. will be up to 9.05m above ground level.

It is considered that the proposal achieves the Objectives of Clause 4.3 and that the development is justified in this instance for the following reasons:

- The development will maintain a compatible scale relationship with the existing residential development in the area. Development within Fisher Street has a wide range of architectural styles and given the variety in the scale of this development, the proposal will be consistent with surrounding development and will not adversely affect the streetscape.
- The proposed modest additions to the dwelling will maintain amenity and appropriate solar access for the subject site and neighbouring properties.
- The proposal will maintain a generous area of soft landscaping which readily complies with Council's landscaping requirements, and the site will maintain an appropriate balance between the landscaping and the built form.

In the *Wehbe* judgment (*Wehbe v Pittwater Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded, and that approval of the Objection may be consistent with the aims of the policy.

These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: It is considered that the purpose of the standard is relevant, but the purpose is satisfied.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Comment: Whilst it is not suggested that Council has abandoned its control, variations to the maximum building height control have been granted in the immediate vicinity, where Council has considered it appropriate to do so for development that meets the objectives of the zone. In this instance it is considered that the proposed development appropriately addresses the zone objectives and is worthy of the support of Council.

5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Comment: The development standard is applicable to and appropriate to the zone.

For the above reasons, it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Council's controls in Clause 4.3 provide a maximum building height of 8.5m for the subject development.

The proposed additions and alterations to the dwelling will provide a height of 9.05m or a 550mm/6.47% variation to the control.

The development is justified in this instance for the following reasons:

- The works will present a minor variation to the building height control which occurs as a result of the site's sloping topography and the location of existing development. The additions to the dwelling are considered to be compatible with the form and nature of the surrounding development.
- The proposal is consistent with the character of development in the locality.
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The proposed new works do not present any unreasonable additional impacts in terms of view loss for neighbours, or bulk and scale.
- The proposed development is considered to promote good sustainable design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum building height.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does **not** mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court

dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

Accordingly, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The external form of the proposed dwelling is stepped to follow the sloping topography of the site and results in a dwelling which is compatible in scale to its surrounding neighbours, which promotes the orderly & economic use of the land.
- Similarly, the proposed development will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Fisher Street, which also promotes the orderly and economic use of the land.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the neighbouring properties.

The above are the environmental planning grounds which are the circumstance which are particular to the development which merit a variation to the development standard.

7.0 Conclusion

This development proposes a departure from the maximum building height control, with the proposed new dwelling to provide a maximum building height of 9.05m.

This variation occurs as a result of the siting of the sloping topography of the site and the proposed additions will maintain a compatible bulk and scale to the existing dwelling and the surrounding development.

This objection to the maximum building height control specified in Clause 4.3 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 building height 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

APPENDIX B:
CLAUSE 4.6 SUBMISSION – FLOOR SPACE RATIO

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

20 FISHER STREET, BALGOWLAH HEIGHTS

PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO EXISTING DWELLING, INCLUDING A NEW SWIMMING POOL, TERRACES AND ASSOCIATED LANDSCAPING

For: Proposed construction of alterations and additions to an existing dwelling, including a new swimming pool, terraces and associated landscaping
At: 20 Fisher Street, Balgowlah Heights
Owner: Mel and Chris Bradley
Applicant: Mel and Chris Bradley
C/- Vaughan Milligan Development Consulting

1.0 Introduction

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

2.0 Background

Clause 4.4 restricts the maximum floor space ratio for residential development in this locality to 0.4:1 or 388.12m² and is considered to be a development standard as defined by Section 4 of the *Environmental Planning and Assessment Act 1979* (NSW).

The proposed development will present a total gross floor area of 425.2m² or 0.438:1, which will result in a noncompliance of 37.1m² from the development standard.

3.0 Purpose of Clause 4.6

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

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

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

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

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

- *To provide for the housing needs of the community within a R2 Low Density Residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal will provide for the construction of alterations and additions, including a new swimming pool, terraces and associated landscaping to provide for increased amenity for the site's occupants.

A portion of the new floor area is located below the existing ground level, which further minimises any increase in bulk and scale.

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

Notwithstanding the minor 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.

The proposed works have been located to mitigate any adverse impacts of overshadowing and loss of view towards any neighbouring properties.

The development will not see any unreasonable impacts on view sharing for the surrounding properties.

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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.*

This written request has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11* & *Samadi v Council of the City of Sydney [2011] NSWLEC 1199*.

Paragraph 27 of the Samadi judgement states:

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The site is located in the R2 Low Density Residential Zone. The objectives of the R2 zone are noted as:

- *To provide for the housing needs of the community within a R2 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 notwithstanding the extent of the additional floor area that exceeds the maximum floor space ratio control (37.1m²), the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the R2 Low Density zone for the following reasons:

Comments

It is considered that notwithstanding the extent of the non-compliance with the maximum floor space ratio control (37.1m²), the proposed additions to the existing dwelling will be consistent with the individual Objectives of the R2 Low Density zone for the following reasons:

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

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

The development will see a noncompliance with the floor space ratio control of 37.1m², and the contemporary building form with a flat roof and the complementary external finishes are considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade and building elevation, together with the proposed external finishes, will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

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

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

The development does not suggest any alternate land uses and this Objective is not directly relevant to the subject single residential proposal.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum floor area control, whilst maintaining consistency with the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.4 are articulated at Clause 4.4(1):

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

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Despite the minor variation to the maximum floor space ratio, the proposed alterations and additions are considered to be in keeping with the relevant Objectives of Clause 4.4 for the following reasons:

(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 surrounding area is predominantly characterised by two – three storey development, often located over basement garages and service rooms.

The development will maintain a compatible scale relationship with the existing residential development in the area. Development within Fisher Street has a wide range of architectural styles and given the variety in the scale of this development, the proposal will be consistent with surrounding development and will not adversely affect the streetscape.

The proposal seeks to accommodate the additions to the existing dwelling within a contemporary building form, with the proposed design seeking to include a noncompliance with the floor space ratio of 37.1m², with the contemporary building form with flat roof form considered to suitably reduce the visual bulk of the dwelling.

The reduction in the overall building height respects the surrounding character and the design seeks to minimise the sense of bulk and scale by providing terrace gardens above ground and stepping of the rear extension with the sloping topography of the land.

The proposed external colour and materials palette utilises complementary finishes to buildings' façade and are intended to ensure that the building's visual height and scale is further minimised.

(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 proposed additions to the existing dwelling present a compatible scale and form to the surrounding newer development and will not obscure any important landscape and townscape features within the low density residential area.

The site is not within a recreation or environmental protection zone and is well removed from the foreshore area. The site is not within a conservation area or in the vicinity of any heritage items.

The proposal will not have any adverse impacts upon view sharing and view corridors of the scenic protection area.

The proposal is intended to reflect the predominant scale and form of the surrounding development in Fisher Street and will reflect the existing single dwelling uses in the vicinity.

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

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

The proposal will maintain a generous area of soft landscaping which readily complies with Council's landscaping requirements, and the site will maintain an appropriate balance between the landscaping and the built form.

On the basis that the existing landscaped area is maintained at an appropriate level, 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,

Due to the general slope of the site towards the north and east, the properties to the south of the site enjoys views towards the harbour. Views past the site are generally over the roof and along the side setback areas.

The proposal will provide for a flat roof form which will allow for suitable views to be maintained through and over the site.

Views from the surrounding public spaces are not adversely affected.

Suitable erosion control and sedimentation designs, together with stormwater management will be provided to mitigate any environmental impacts to the adjoining lands and the nearby public domain.

(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

The site is not located within a business zone and by providing for a new residential dwelling, is not contrary to the viability of any local business activity.

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.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for the construction of a new dwelling.

Council's controls in Clause 4.4 provide a maximum floor area of 0.4:1.

The proposed development will present a total gross floor area of 425.2m² or 0.438:1, which will result in a noncompliance of 37.1m².

It is considered that the development is justified in this instance for the following reasons:

- The development will maintain a compatible scale relationship with the existing residential development in the area. Development within Fisher Street has a wide range of architectural styles and given the variety in the scale of this development, the proposal will be consistent with surrounding development and will not adversely affect the streetscape.
- The proposed works will maintain amenity and appropriate solar access for the subject site and neighbouring properties.

In the *Wehbe* judgment (*Wehbe v Pittwater Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy.

These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;

Comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied by the proposed revised design.

3. the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development. Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

4. the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

Comment: Not applicable.

5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Comment: The development standard is applicable to and appropriate to the zone.

For the above reasons, it would therefore be unreasonable and unnecessary to require strict compliance with the standard.

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Council's controls in Clause 4.4 provide a maximum floor space ratio of 0.4:1 for residential development in this locality.

The proposed development will present a total gross floor area of 428.2m² or 0.428:1, which will result in a minor noncompliance of 19.45m² or 4.8% from the development standard.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does **not** mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

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"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

Accordingly, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The proposed dwelling will maintain a bulk and scale which is consistent with that of existing surrounding development in the locality, which promotes the orderly & economic use of the land.
- Similarly, the proposed development will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Fisher Street which also promotes the orderly and economic use of the land.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the neighbouring properties.

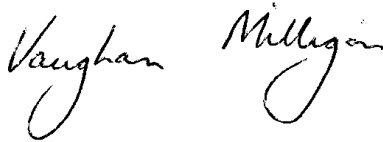
Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum floor space ratio.

7.0 Conclusion

The proposed development will present a total gross floor area of 425.2m² or 0.438:1, which will result in a noncompliance of 37.1m² from the development standard stipulated under Clause 4.4 of MLEP 2012.

This written request to vary 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.

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

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VAUGHAN MILLIGAN
Town Planner