



**12 Peronne Avenue
CLONTARF**

**STATEMENT OF ENVIRONMENTAL EFFECTS FOR
DEMOLITION OF THE EXISTING DWELLING AND
CONSTRUCTION OF A NEW DWELLING
AND SWIMMING POOL**



Report prepared for
Watershed Design
February 2020

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1.0 Introduction

- 1.1 This is a statement of environmental effects for demolition of the existing dwelling and construction of a new dwelling and swimming pool at 12 Peronne Avenue Clontarf.
- The report describes how the application addresses and satisfies the objectives and standards of the Manly Local Environmental Plan 2013, the Manly Development Control Plan 2013 and the heads of consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979 (as amended).
- 1.2 This statement of environmental effects has been prepared with reference to the following:
- ◆ Site visit
 - ◆ Survey Plan prepared by C.M.S Surveyors
 - ◆ Architectural drawings prepared by Watershed Design
 - ◆ Waste Management Plan
 - ◆ BASIX Certificate
 - ◆ Geotechnical Report
 - ◆ Arborist Report prepared by Blues Bros Arboriculture
 - ◆ Stormwater plan prepared by Stellen
 - ◆ Landscape Architect Plans prepared by Sticks and Stones
- 1.3 The proposed dwelling is consistent with the objectives of all Council controls, considerate of neighbouring residents and will result in improved amenity for the residents of the site. It is an appropriate development worthy of Council consent.

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- This aerial map displays a residential neighborhood with various property lots. A central triangular lot, DP 34439, is highlighted in green. Surrounding lots are labeled with their respective DP numbers: DP 124641, DP 28250, DP 15358, DP 15359, DP 15360, DP 15361, DP 15362, DP 15363, DP 15364, DP 15365, DP 15366, DP 15367, DP 15368, DP 15369, DP 15370, DP 15371, DP 15372, DP 15373, DP 15374, DP 15375, DP 15376, DP 15377, DP 15378, DP 15379, DP 15380, DP 15381, DP 15382, DP 15383, DP 15384, DP 15385, DP 15386, DP 15387, DP 15388, DP 15389, DP 15390, DP 15391, DP 15392, DP 15393, DP 15394, DP 15395, DP 15396, DP 15397, DP 15398, DP 15399, DP 15400, DP 15401, DP 15402, DP 15403, DP 15404, DP 15405, DP 15406, DP 15407, DP 15408, DP 15409, DP 15410, DP 15411, DP 15412, DP 15413, DP 15414, DP 15415, DP 15416, DP 15417, DP 15418, DP 15419, DP 15420, DP 15421, DP 15422, DP 15423, DP 15424, DP 15425, DP 15426, DP 15427, DP 15428, DP 15429, DP 15430, DP 15431, DP 15432, DP 15433, DP 15434, DP 15435, DP 15436, DP 15437, DP 15438, DP 15439, DP 15440, DP 15441, DP 15442, DP 15443, DP 15444, DP 15445, DP 15446, DP 15447, DP 15448, DP 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15849, DP 15850, DP 15851, DP 15852, DP 15853, DP 15854,

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Figure 2. The site within the locality

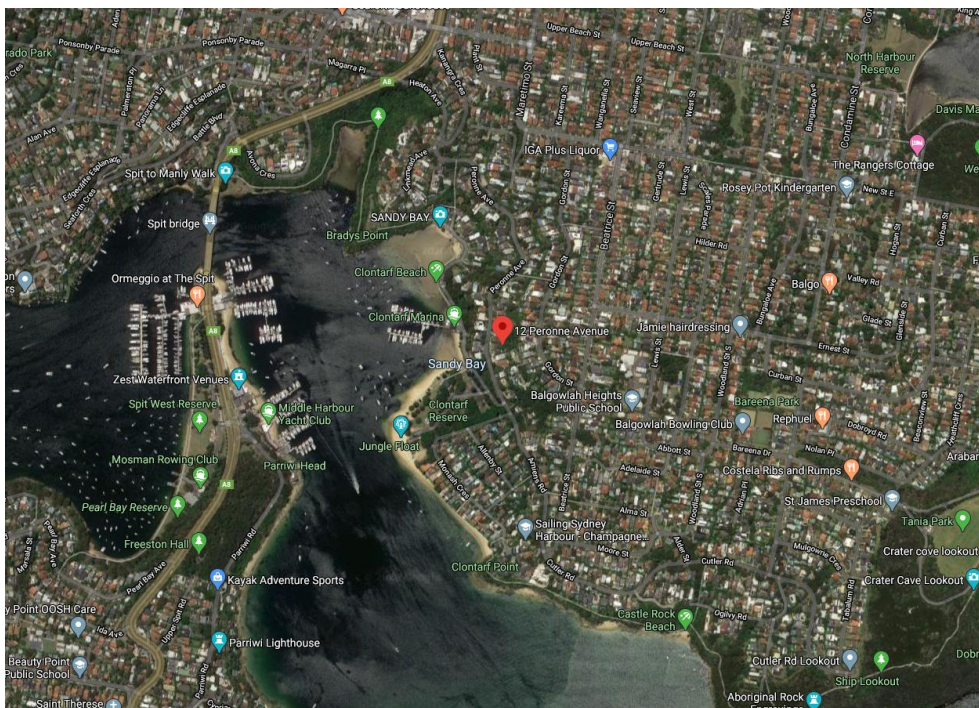


Figure 3. Aerial image of the site within the locality

3. Site Photos



Figure 4. The subject site viewed from Peronne Avenue, looking east.



Figure 5. The elevated shared driveway and rock outcrops, looking south.



Figure 6. The existing dwelling, view from the shared driveway, looking east.



Figure 7. The view from the subject site, looking west.



Figure 8. The subject site and the adjoining property to the south.



Figure 9. The subject site and the adjoining property to the north.



Figure 10. The rear yard of the subject site, looking north east.



Figure 11. The rear yard of the subject site, looking north.

4. Background

A pre-lodgement meeting was held with Council on 28 January 2020 (PLM2019/0294). In accordance with the advice from this meeting the following additional information and amendments are included with this development application:

Issues Raised

<i>Issue Raised</i>	<i>Council Response</i>	<i>Comment</i>
<p><u>Pool in frontage</u> The proposal includes a pool at the first floor level in front of the dwelling.</p> <p><u>Relevant MDCP Clause</u> Clause 4.1.9 Swimming Pools, Spas and Water Features</p>	<p>Clause 4.1.9 of the DCP states that pools must be no higher than 1m above ground, and must not be located in the front setback.</p> <p>A precedent is set by existing pools within the front setback area at number 10 immediately adjacent), and number 16 to the north. The pool design appears to be such that it will not be readily visible from the public domain, particularly combined with the topography of the site.</p> <p>Given these factors, Council is generally supportive of the proposed pool location in this case. However, care should be taken in the design and the application to address the objectives of the control, in particular:</p> <p><i>Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;</i></p> <p><i>Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality.</i></p>	<p>In accordance with Council comments care has been taken to ensure that privacy is maintained between properties and that the character of the streetscape is not impacted.</p> <p>Further discussion is provided within this SEE.</p>
<p>Height The design results in a height of up to approximately 9.4m.</p> <p><u>Relevant MLEP Clause</u></p>	<p>Clause 4.3 of the LEP states that there is an 8.5m height limit.</p> <p>The design will breach the height limit at the front of the new upper level roof.</p>	<p>The development proposes a maximum height of 9.326 metres.</p> <p>A variation to the maximum building height is considered appropriate, in this case as the proposed variation is very minor at just 0.83 metres or</p>

<p><i>Clause 4.3 Height of buildings</i></p>	<p>Given the height and scale of surrounding development, Council is satisfied that there may be reasonable justification for a minor non-compliance. However, the overall height should be minimised as much as possible. Where the height of the proposal is found to unreasonably impact on any views (from either public or private land) Council is unlikely to support any proposed height non-compliance.</p> <p>It is therefore suggested that the applicants undertake a view loss analysis from surrounding properties. Council is unable to make a full assessment in this regard until the application is notified and submissions are received. Any view loss will assessment will refer to the Planning Principle established by the Land and Environment Court in <i>Tenacity Consulting v Warringah Council</i> (2004) NSWLEC 140.</p> <p>If non-compliance with the overall height is proposed, the application must include a written request under clause 4.6, which adequately addresses all relevant clauses of clause 4.6, and the relevant objectives of clause 4.3 and zone, and provides adequate justification for Council to approve the non-compliance.</p>	<p>9.76%. The variation is largely the result of the slope of the site and the vast majority of the building complies with the maximum height control. The resulting dwelling is of a lesser scale than the neighbouring dwellings and presents as a largely compliant residence to Peronne Avenue.</p> <p>A clause 4.6 variation request is provided with this application.</p> <p>In addition, a view loss assessment is provided as Appendix 2 which demonstrates the proposal will have only a minimal impact and retains appropriate view sharing.</p>
<p>Side setbacks The proposal includes breaches to the side setbacks for the upper level.</p> <p><u>Relevant MDCP/MLEP Clause</u> <i>Clause 4.1.4 Setbacks (front, side and rear) and Building Separation</i></p>	<p>The extent of non-compliance is difficult to assess, as no elevations were provided, although the applicants stated that Section C-C shows the worst of the non-compliance. The application should demonstrate fully the extent of non-compliance proposed.</p> <p>Based on Section C-C, the non-compliance is considered to be relatively minor, and may be supported by Council. However, the proposal is for a new</p>	<p>A side boundary setback equivalent of 1/3 of the wall height is required.</p> <p>The development proposes a minimum side setback of 1.5m (north) and 1.05 m (south).</p>

	dwelling. As with the height of the building, if the non-compliance results in unreasonable view impacts, or any other unreasonable impacts to neighbouring properties, the non-compliance is unlikely to be supported. The application should address the objectives of the control, and demonstrate that the non-compliance will cause no unreasonable impacts.	
<p>Neighbouring balcony</p> <p>The applicants stated that care has been taken to avoid any impacts on the neighbouring balcony to the south.</p> <p><u>Relevant MDCP/MLEP Clause</u> <i>Various</i></p>	<p>This is a difficult issue to assess until the application has been notified, and any submissions received. It seems likely this balcony may be impacted upon to some extent in terms of views. If concerns are raised by the neighbours during the application process, it is likely height poles will be required to accurately assess impacts in this regard. The design adequately protects privacy to the south. Shadow diagrams have not been provided. Impacts on this deck and the rest of the property in generally can only be assessed in full upon notification of the application, however, the design is considered to be generally supportable, subject to assessment of any objections received.</p>	<p>Privacy will be retained for neighbours with ample setbacks and no direct overlooking into any key living areas.</p> <p>The side boundary fencing and landscaping maintains privacy between dwellings on the ground floor. The new dwelling design incorporates design elements to ensure privacy is maintained such as orienting windows and doors to the front and rear of the lot and incorporating fixed, opaque and louvred glazing to side windows.</p> <p>Privacy between dwellings from the proposed front terrace and swimming pool area is achieved by locating the pool forward of the dwelling to the south (No. 10 Peronne Ave) to offset any overlooking. In addition, a fin wall is proposed between the subject site and the adjoining property to the north (14 Peronne Ave) to ensure privacy is maintained</p>

All relevant LEP and DCP controls are set out and assessed within the following sections of this Statement of Environmental Effects.

5. Proposed Development

5.1 The proposed development is for demolition of the existing dwelling and construction of a new dwelling with associated parking and swimming pool, within a more formal landscaped setting.

5.2 The proposed development remains consistent with the streetscape and the locality. The proposal is consistent with Council controls, ensures privacy and solar access are maintained for surrounding properties and the subject site.

5.3 The new dwelling will be made up as follows:

Ground Floor

- New driveway and double garage with storage/gym area
- Living room (with bar)
- Guest bedroom
- Laundry
- Bathroom
- Front and rear terraces
- Stair access to upper levels
- Front entry lobby & Lift

First Floor

- Open plan living/ dining/ kitchen
- Walk in pantry
- w/c
- Lift
- Stair access to other levels
- Rear deck with built in BBQ
- Large front terrace including pool

Second Floor

- Master bedroom with WIR and ensuite
- 3 x bedrooms
- Linen storage
- Stair access to lower level
- Lift
- Bathroom
- Front Balcony

6. Statutory Framework

6.1 State Environmental Planning Policies

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

Schedule 1 of the Environmental Planning and Assessment Regulation (2000) sets out the requirement for a BASIX certificate to accompany any BASIX affected building, being any building that contains one or more dwellings, but does not include a hotel or motel. SEPP BASIX applies to the proposal and a compliant BASIX certificate is provided with this application.

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 replaces the repealed provisions of clause 5.9 of the standard instrument LEP relating to the preservation of trees and vegetation.

The aims of this Policy are to protect the biodiversity values of trees and other vegetation, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The development remains consistent with the provisions of the SEPP as it does not propose the removal of any significant vegetation, with just one tree proposed for removal.

6.2 Manly Local Environmental Plan 2013

The relevant clauses of the Manly Local Environmental Plan 2013 are addressed below.

Zoning

The site is zoned R2 Low Density Residential pursuant to the provisions of the Manly Local Environmental Plan 2013.

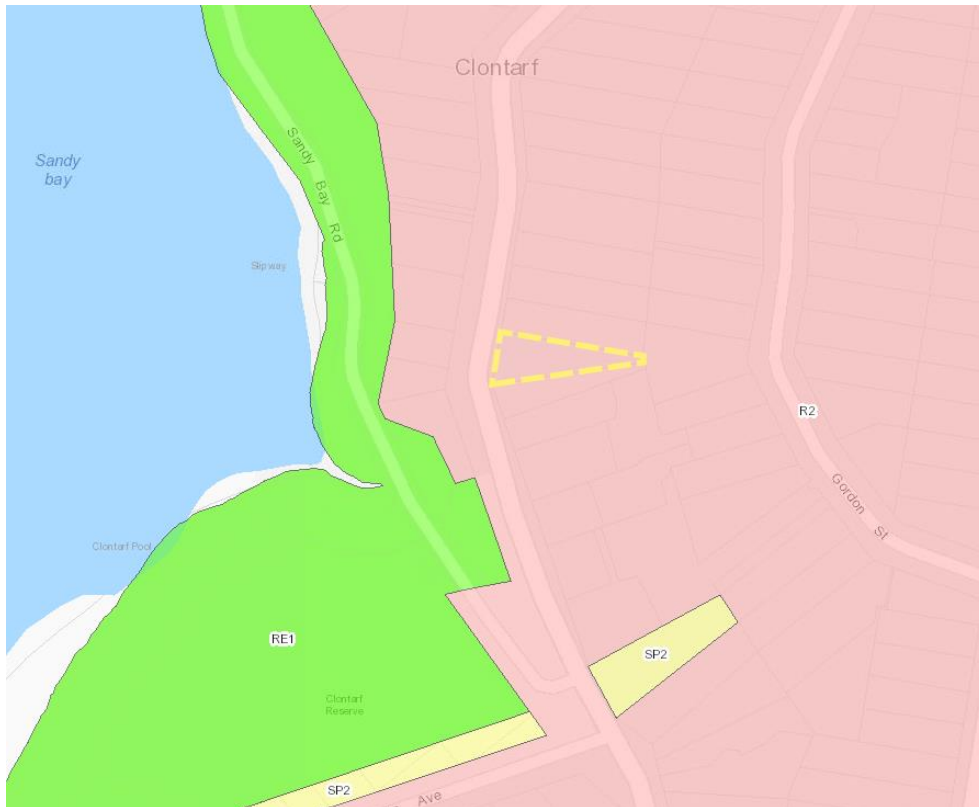


Figure 12. Extract from Manly LEP 2013 zoning map

The proposed development is a permissible use in the R2 zone which permits residential dwellings, with development consent.

Demolition

Consent is sought for demolition of the existing dwelling to make way for construction of the proposed new dwelling.

Minimum Lot Size

The site is mapped with a minimum subdivision lot size of 1150m². The subject site is an existing undersized parcel, comprising an area of 910.6m² and no subdivision is proposed.

Height

Clause 4.3 of the LEP restricts the height of any development on the subject site to 8.5 metres and the development proposes a maximum height of 9.326 metres.

A variation to the maximum building height is considered appropriate, in this case as the proposed variation is very minor at just 0.83 metres or 9.76%. The variation is largely the result of the slope of the site and the vast majority of the building complies with the maximum height control. The resulting dwelling is of a lesser scale than the neighbouring dwellings and presents as a largely compliant residence to Peronne Avenue.

A clause 4.6 variation request is provided with this application.

Floor Space Ratio

A maximum floor space ratio of 0.4:1 is permitted for the site which equates to 364.24m² for the site area of 910.6m².

The development proposes a compliant maximum FSR of 0.37:1, or gross floor area of 337m².

Heritage

The site is not a heritage item, located within a heritage conservation area, or located near any heritage items.

Acid Sulfate Soils

The site is not located within 500 metres of adjacent class 1,2,3 or 4 land that is below 5 metres AHD and the proposed development is not likely to lower the watertable below 1 metre AHD.

Earthworks

Excavation and earthworks are proposed to prepare the site for construction and allow for construction of the proposed dwelling. All works will be undertaken in accordance with engineering specifications, Councils controls and any conditions of consent.

Stormwater Management

Rainwater from the proposed dwelling will be 3kl rainwater tank. Surface stormwater will be directed to the proposed 9kl litre OSD tank and infrastructure in Peronne Avenue. The pool will be connected to the existing sewer.

Foreshore Scenic Protection Area

The subject site is mapped as foreshore scenic protection area, as such, development consent must not be granted unless the consent authority has considered the matters set out in clause 6.9 of LEP 2013:

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

The proposed dwelling is designed and sited to work with the site and presents a modern, aesthetically pleasing addition to Peronne Avenue. The new dwelling will not result in any overshadowing of the foreshore or loss of views from a public place to the foreshore.

(b) measures to protect and improve scenic qualities of the coastline,

The proposed dwelling will improve the visual amenity of the site by replacing the existing ageing dwelling with a modern, aesthetically pleasing dwelling. The proposed dwelling blends with the surrounding development when viewed from the coast. The proposed development incorporates coastal character, landscaping and layered textures to present a design in keeping with the coastal location, while maintaining the scenic quality of the coastal foreshore.

(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,

The proposed development is for a new residential dwelling, which is permitted landuse in the residential zone. The proposed works will not impact on the foreshore.

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

The subject site is located approximately 85 metres from the water, within an existing residential lot. The proposed works will not create conflict between land-based and water-based coastal activities.

Essential Services

All essential services are existing on the site.

6.3 Manly Development Control Plan 2013

The relevant sections of the DCP are addressed below.

3. General Principles of Development

3.1 Streetscape and Townscapes

The development proposes a modern, aesthetically pleasing dwelling to replace the existing ageing dwelling on the site. The new dwelling is of a lesser scale than surrounding properties and is in keeping with the character of the residential streetscape.

Garbage Areas

Compliant bin storage areas are available on the site.

Complementary Design and Visual Improvement

The proposed development remains consistent with the local character and streetscape in the locality.

The new dwelling will be constructed of materials consistent with the residential use and coastal locality and are of an appropriate scale for the area.

Front Fences and Gates

The development does not propose new front fencing or gates. New stonefaced retaining walls are proposed on the property frontage, as detailed in the plans. Glass balustrading is proposed around the swimming pool.

Roof and Dormer Windows

A non-reflective metal roof with a 2 degree fall is proposed. No roof or dormer windows are proposed.

Garages, Carports and Hardstand Areas

A double lock up garage is proposed in the new dwelling, which is integrated into the dwelling design to ensure it remains subservient.

3.3 Landscaping

The development proposes to formalise the landscaping on the site, as detailed in the attached landscape architect plans. The proposed design appropriately complements the residential and coastal character of the area and no significant trees are proposed to be removed as part of this application.

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

3.4.1.1 Overshadowing adjoining open space

The DCP requires that new development not eliminate more than 1/3 of existing sunlight accessing the private open space of adjoining properties between 9am and 3pm on 21 June.

The following observations are made in relation to shadowing:

9am – The development will result in a minor increase in shadowing to a small portion of the side and front yard of No. 10 Peronne Ave.

12pm – The development will result in a minor increase in shadowing to a small portion of the side and front yard of No. 10 Peronne Ave.

3pm - The development will result in a minor increase in shadowing to a small portion of the side and rear yard of No. 10 Peronne Ave.

It is concluded that although the development will result in a minor increase to shadowing to 10 Peronne Avenue at 9am, 12pm and 3pm, the increase is only to a very small portion of this property. No 10 Peronne Avenue is a significantly larger dwelling than what is proposed by this development application and No. 10 will retain excellent solar access to front balconies and the rear yard for the enjoyment of the residents.

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties.

The subject site and adjoining lots have an east-west orientation, as such the DCP requires a minimum 2 hours solar access be maintained to the glazing in living rooms between 9am and 3pm on 21 June.

As described above and illustrated in the attached shadow diagrams, the proposed development maintains appropriate levels of solar access for the subject site and its neighbours.

3.4.1.3 Overshadowing Solar Collective System

The proposed development will not overshadow neighbouring solar collector systems.

3.4.1.3 Overshadowing Clothes Drying Areas

The proposed development will not overshadow neighbouring clothes drying areas.

3.4.1.5 Excessive Glare or Reflectivity Nuisance

All external material and finishes will be constructed of non-reflective materials in keeping with this clause.

3.4.2 Privacy and Security

Privacy will be retained for neighbours with ample setbacks and no direct overlooking into any key living areas.

The side boundary fencing and landscaping maintains privacy between dwellings on the ground floor. The new dwelling design incorporates design elements to ensure privacy is

maintained such as orienting windows and doors to the front and rear of the lot and incorporating fixed, opaque and louvred glazing to side windows.

Privacy between dwellings from the proposed front terrace and swimming pool area is achieved by locating the pool forward of the dwelling to the south (No. 10 Peronne Ave) to offset any overlooking. In addition, a fin wall is proposed between the subject site and the adjoining property to the north (14 Peronne Ave) to ensure privacy is maintained.

3.4.2.3 Acoustical Privacy (Noise Nuisance)

The development is appropriate and will not result in noise levels inappropriate to a residential area.

Pool plant is proposed to be located on the southern side of the dwelling, in an approved sound-proof enclosure.

3.4.3 Maintenance of Views

The subject site and adjoining properties enjoy water views to the west, to Clontarf and the spit waterway. A site visit and view loss assessment have been undertaken and it is considered that the proposed dwelling will have a minor impact on adjoining properties.

A view loss assessment is provided as Appendix 2.

3.5 Sustainability

A compliant BASIX Certificate is provided with the attached plan set and the new dwelling proposes a photovoltaic system.

The proposed dwelling and swimming pool provide compliant solar access and ventilation and will result in improved amenity for the residents of the site.

3.7 Stormwater Management

Rainwater from the proposed dwelling will be detained in the proposed 3kl rainwater tank, with water reused onsite. Surface stormwater will be directed to the proposed OSD and drainage infrastructure in Peronne Avenue.

3.8 Waste Management

Appropriate waste management will be undertaken during the demolition and construction process.

All demolished materials will be recycled where possible which is detailed in the accompanying Waste Management Plan.

The new dwelling proposes appropriate waste storage areas, with waste to be collected by Councils regular service.

Part 4 Development Controls and Development Types

4.1 Residential Development Controls

No change is proposed to the existing residential density which comprises of a single dwelling house.

4.1.2 Height of Buildings (incorporating wall height, number of storeys and roof height)

Clause 4.3 of the LEP restricts the height of any development on the subject site to 8.5 metres and the development proposes a maximum height of 9.326 metres. As described above a clause 4.6 variation request is provided with this application.

The subject site slopes steeply to the Peronne Avenue frontage and the new dwelling proposes 3 stories to accommodate the slope of the site. The design is in keeping with the precedent set by adjoining dwellings, which present with a significantly larger scale than what is proposed.

A metal roof with a 2 degree fall is proposed.

4.1.3 Floor Space Ratio (FSR)

As described above a maximum floor space ratio of 0.4:1 is permitted for the site which equates to 364.24m² for the site area of 910.6m².

The development proposes a compliant maximum FSR of 0.37:1, or gross floor area of 337m².

4.1.4 Setback (front, side and rear) and Building Separation

4.1.4.1 Street Front setbacks

A front setback consistent with the prevailing setback, or a minimum 6 metres, is required on the site.

The development proposes a front setback in excess of the minimum 6 metre control, as illustrated in the architectural plans.

4.1.4.2 Side setbacks and secondary street frontages

A side boundary setback equivalent of 1/3 of the wall height is required, which equates varies along the length of the dwelling due to varying heights with the fall of the land

and a varying setback due to the shape of the lot. Sections CC and DD demonstrate the compliant setback/height lines.

The development proposes a minimum side setback of 1.5- 1.6 m (north) and 1.05 – 3.25 m (south). These setbacks are primarily compliant with a minor variation on the southern side to allow for the lift well and similar minor variation at the highest component of the site on the north. These variations are set at the rear of the site and are of negligible impact with the bulk impacts for neighbours and the dwelling stepping back up the site. The objectives of the setback clause are achieved. In particular:

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

The streetscape will be vastly improved by the positive design allowing for landscaping and providing a dwelling of lesser scale than those immediately neighbouring.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

The proposal allows for ample privacy and solar access. View sharing is demonstrated to be compliant and space is provided between dwellings.

Objective 3) To promote flexibility in the siting of buildings.

Achieved

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *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 ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

The landscape space and appearance of the site will be improved and enhanced by the proposed development. All of the above factors are considered and achieved.

Objective 5) To assist in appropriate bush fire asset protection zones.

N/A

4.1.4.4 Rear Setbacks

A minimum rear setback of 8 metres is required on the site and the development proposes a compliant rear setback, far in excess of the minimum 8 metre requirement.

4.1.5 Open Space and Landscaping

4.1.5.1 Minimum Residential Total Open Space Requirements

The DCP requires a total of 60% of the site to be open space with a minimum 40% of that open space to be landscaped area (area OS4). This equates to 546.36m² of open space for the site area and 218.54m² of landscaped area.

The development will result in a compliant open space area of 558m² or 61% and a landscaped area of 442m² or 79%. Far exceeding the minimum requirement.

4.1.6 Parking, Vehicular Access and Loading (including bicycle facilities)

A new driveway is proposed, accessed via the existing right of carriageway from Perrone Avenue.

An integrated double garage, with storage areas.

4.1.9 Swimming Pools, Spas and Water Features

The DCP requires that swimming pools not be elevated more than 1 metre above natural ground level and be located to the rear of the dwelling.

The development proposes a swimming pool on the first floor, forward of the building line, as such must demonstrate that it:

- *Would not detract from the amenity or character of the neighbourhood, and*
Comment

It is considered that the proposed swimming pool will not detract from the character or amenity of the neighbourhood as the subject site is located on an elevated lot which is accessed via a right of carriageway. The property is only visible from the right of carriageway which services 3 other dwellings, it is not readily visible from Perrone Avenue or the public domain.

In addition, the design of the proposed swimming pool is integrated into the dwelling and presents as a terrace to neighbouring dwellings and right of carriageway frontage.

Furthermore, swimming pools within the front setback are present at 2 properties in close proximity to the subject site, including the adjoining property to the south (No. 10 Peronne Ave) and No. 16 Peronne Ave to the north.

- *Is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level, and*

Comment

The swimming pool is proposed at a height of 2.65 metres above the proposed finished floor level and is setback a minimum 3.25 metres from the nearest side boundary.

- *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 existing ground level.*

The swimming pool is proposed at a height of 2.65 metres above the proposed finished floor level and is setback in excess of the 5.3 metres from the front boundary, required by this clause and in excess of the 6 metres required by the DCP front setback control.

In accordance with the DCP, the outer edge of the pool concourse from the side and rear boundaries is at least 1 metre, and the water line is setback at least 1.5 metres.

a. Other Development

i. Demolition

Consent is sought for demolition of the existing dwelling to make way for construction of the proposed new dwelling.

Appropriate waste management will be undertaken during the demolition and construction process. All demolished materials will be recycled where possible which is detailed in the accompanying Waste Management Plan.

4.4.5 Earthworks (Excavation and Filling)

Excavation is proposed to a maximum depth of 2.2 metres to accommodate the basement car parking area as permitted by the DCP. Approximately 313m³ of material is proposed to be excavated from the site.

New retaining walls are proposed to a maximum height of 1.8 metres to formalise the garden and provide an accessible and useable outdoor area to this steep lot.

5.4 Environmentally Sensitive Lands

5.4.1 Foreshore Scenic Protection Area

This matter is discussed under SEPP (Coastal Management) and LEP Foreshore Scenic Protection Area above.

7. Section 4.15 Considerations

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15 of the Environmental Planning and Assessment Act 1979 (as amended). Guidelines to help identify the issues to be considered have been prepared by the former Department of Urban Affairs and Planning. The relevant issues are:

The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations

This report clearly and comprehensively addresses the statutory regime applicable to the application and demonstrates that the proposed land use is complimentary and compatible with adjoining development. The proposal achieves the aims of the Manly LEP and DCP.

The development is permissible in the zone.

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

7.1. *Context and Setting*

What is the relationship to the region and local context in terms of:

- *the scenic qualities and features of the landscape?*
- *the character and amenity of the locality and streetscape?*
- *the scale, bulk, height, mass, form, character, density and design of development in the locality?*
- *the previous and existing land uses and activities in the locality?*

These matters have been discussed in detail in the body of the statement.

What are the potential impacts on adjacent properties in terms of:

- *relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)?*
- *visual and acoustic privacy?*
- *views and vistas?*
- *edge conditions such as boundary treatments and fencing?*

The proposed dwelling has been designed to complement the site and its surrounds. The proposal is appropriate and will have negligible impact on adjacent properties.

7.2. *Access, transport and traffic*

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *travel demand?*
- *dependency on motor vehicles?*
- *traffic generation and the capacity of the local and arterial road network?*
- *public transport availability and use (including freight rail where relevant)?*
- *conflicts within and between transport modes?*
- *traffic management schemes?*
- *vehicular parking spaces?*

No change is proposed to the existing right of carriageway, with a new driveway and double garage proposed. No conflict or issues will arise as a result of the proposed development.

7.3. Public domain

There will be no impact.

7.4. Utilities

There will be no impact on the site, which is already serviced.

7.5. Flora and fauna

There will be no impact.

7.6. Waste

There will be no impact.

7.7. Natural hazards

The site is not constrained by natural hazards.

7.8. Economic impact in the locality

There will be no impact, other than the possibility of a small amount of employment during construction.

7.9. Site design and internal design

Is the development design sensitive to environmental conditions and site attributes including:

- *size, shape and design of allotments?*
- *the proportion of site covered by buildings?*
- *the position of buildings?*
- *the size (bulk, height, mass), form, appearance and design of buildings?*
- *the amount, location, design, use and management of private and communal open space?*
- *landscaping?*

The proposed development is highly appropriate to the site with regard to all of the above factors. The proposed development fits well within the context of the surrounds and is an appropriate scale.

How would the development affect the health and safety of the occupants in terms of:

- *lighting, ventilation and insulation?*
- *building fire risk – prevention and suppression/*
- *building materials and finishes?*
- *a common wall structure and design?*
- *access and facilities for the disabled?*
- *likely compliance with the Building Code of Australia?*

The proposed development will comply with the provisions of the Building Code of Australia and all relevant Council controls.

7.10. Construction

What would be the impacts of construction activities in terms of:

- *the environmental planning issues listed above?*
- *site safety?*

Site safety measures and procedures compliant with relevant legislation will ensure that no site safety or environmental impacts will arise during construction.

The suitability of the site for the development

Does the proposal fit in the locality?

- *are the constraints posed by adjacent developments prohibitive?*
- *would development lead to unmanageable transport demands and are there adequate transport facilities in the area?*
- *are utilities and services available to the site adequate for the development?*

The adjacent development does not impose any unusual development constraints.

Are the site attributes conducive to development?

The site is appropriate for the proposed dwelling.

Any submissions received in accordance with this Act or the regulations

It is envisaged that the consent authority will consider any submissions made in relation to the proposed development.

The public interest

It is considered that the proposal is in the public interest as it allows for appropriate use of the residential site.

Section 4.15(1) of the Environmental Planning and Assessment Act has been considered and the development is considered to fully comply with all relevant elements of this section of the Environmental Planning and Assessment Act 1979.

8. Conclusions

- 8.1 The proposed development for demolition of the existing dwelling and the construction of a new dwelling and swimming pool at 12 Peronne Avenue Clontarf is appropriate considering all State and Council controls.
- 8.2 When assessed under the relevant heads of consideration of s4.15 of the Environmental Planning and Assessment Act, the proposed development is meritorious and should be granted consent.
- 8.3 Considering all the issues, the fully compliant development is considered worthy of Council's consent.

Appendix One – View Loss Analysis

Tenacity Consulting v Warringah Council (2004) NSWLEC 140. The Planning Principle established a four-step process for considering the impact of a development on views.

Step 1. An assessment of the value of views to be affected by reference to their nature, extent and completeness.

The views subject to this assessment are 270 degree district views to Clontarf and water views to the Spit waterway from No. 10 and 14 Peronne Avenue.

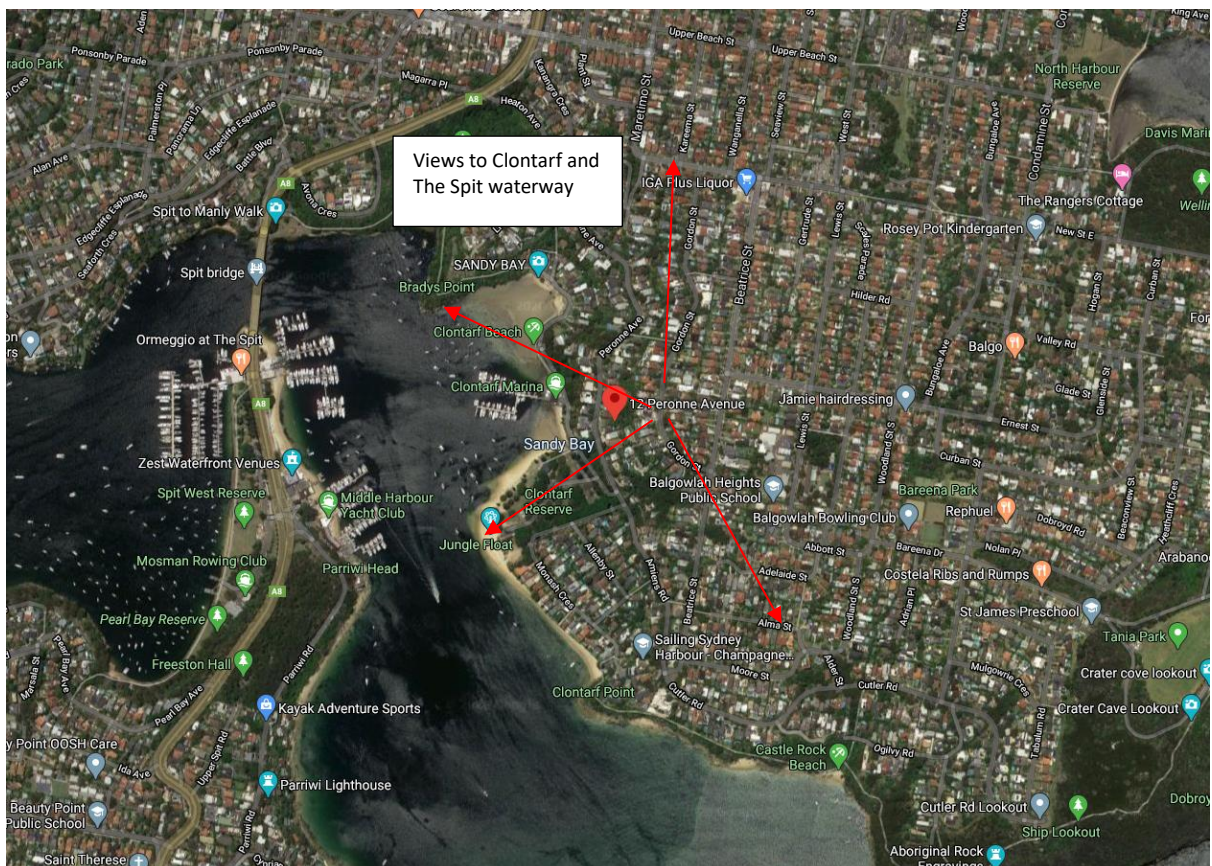


Figure 1: Aerial Image of the subject site and views subject to this assessment

Step 2. A consideration of how views are obtained and what part of the property the views are obtained from.

Views are obtained from a terrace, living room and 2 bedrooms, across 3 levels, at No. 10 Peronne Ave and from the enclosed verandah, across 2 levels, at No. 14 Peronne Avenue.

The primary water view is obtained from the front of the dwellings (west facing rooms), with further water and district views available from north and south facing rooms. Views are obtained from both a standing and sitting position.

A site visit to both No. 10 and No. 14 Peronne Avenue has been undertaken.

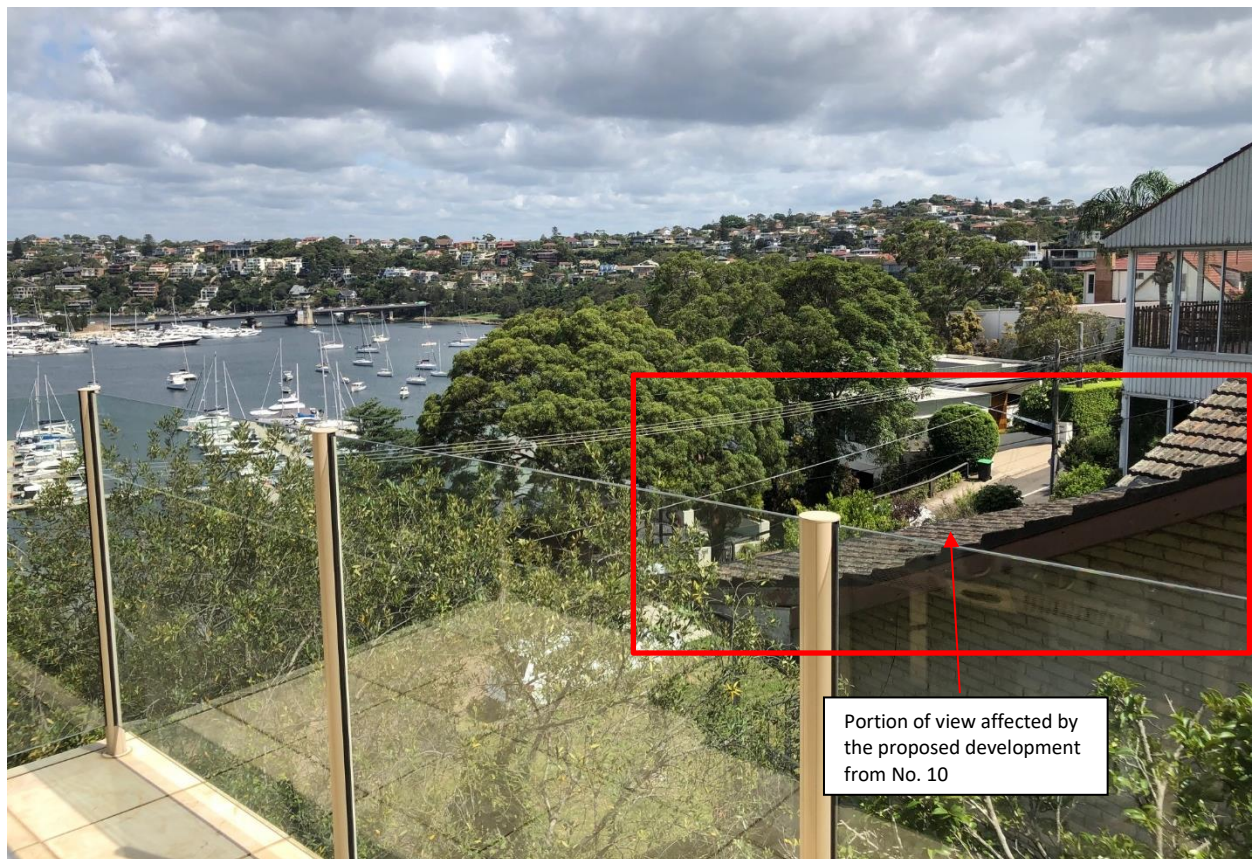


Figure 2: View subject to this assessment. Photograph taken from the terrace at No. 10 Peronne Avenue.

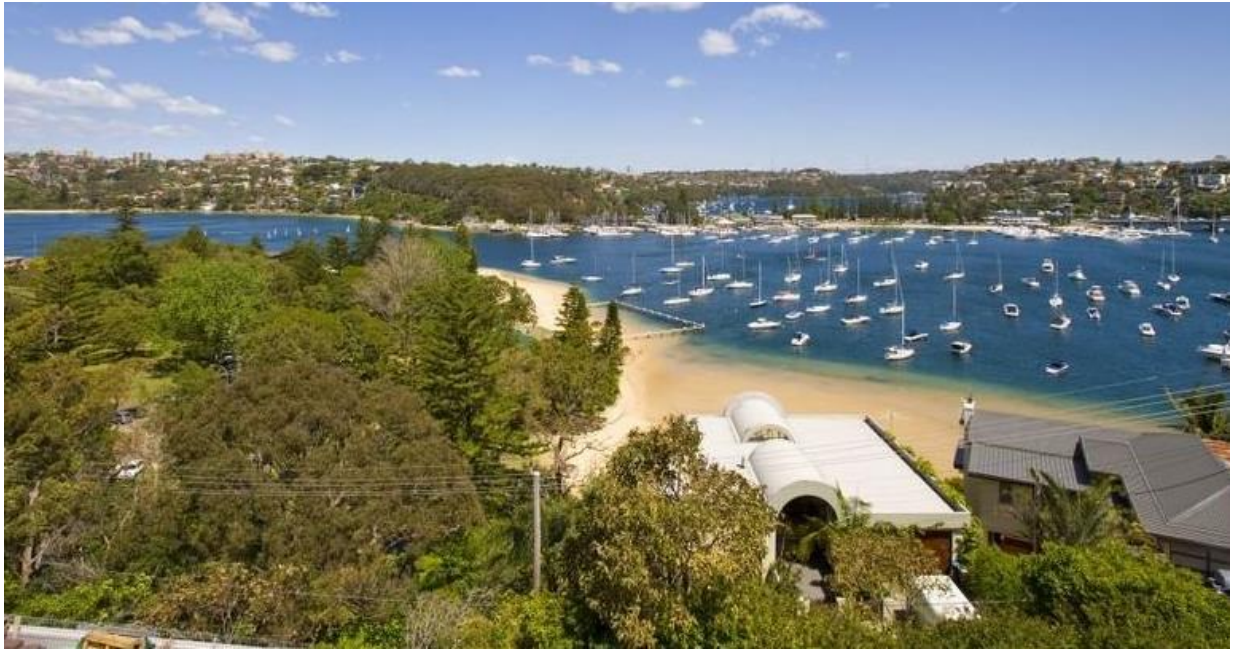


Figure 3: The view from 10 Peronne Avenue, not affected by the proposed development.



Figure 4: View subject to this assessment. Photograph taken from the study on the ground floor at No. 14 Peronne Avenue.



Figure 5: Retained view from 14 Peronne Avenue Clontarf

Step 3. A qualitative assessment of the extent of the impact in terms of severity particularly as to whether that impact is negligible, minor, moderate, severe or devastating.

The extent of the impact in terms of severity is considered negligible, as the proposed new dwelling will result in negligible, district view loss from No. 10 and No. 14 Peronne Avenue. The impact is considered negligible as both properties retain significant 180 - 270 degree views across the spit waterway, as illustrated in the site photos above. The proposed development will have no impact on these more significant water views for either property and will allow the subject site to enjoy the same views.

Step 4. An assessment of the reasonableness of the proposal causing the impact particularly in terms of compliance with applicable planning controls and whether a different or complying design must produce a better result. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.

The proposed development is considered reasonable, as the new dwelling will result in only negligible district view loss. Both No 10 and No 14 Peronne Avenue retain their more significant 180 - 270 degree views across the spit waterway.

The proposed development is non-complaint with Building Height Controls, however the proposed variation does not increase view loss or impact on the more substantial water views from No 10 and No 14 Peronne Avenue, which are obtained to the west.

Appendix Two - Clause 4.6 Exceptions to Development Standards – Height of Buildings

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The aims and objectives of Manly LEP 2013 Clause 4.6 are as follows:

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

Under Clause 4.6(3) and (4) of the MLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

(3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(3)(b) there are sufficient environmental planning grounds to justify contravening the development standard.

(4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

1. Environmental Planning Instrument Details (Manly LEP 2013)

1.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013

1.2 What is the zoning of the land?

R2 – Low Density Residential

1.3 What are the objectives of the zone?

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

1.4 What is the development standard being varied?

Cl 4.3 - Height of Buildings

1.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl 4.3 of the Manly Local Environmental Plan 2013

1.6 What are the objectives of the development standard?

(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.

1.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.

1.8 What is proposed numeric value of the development standard in your development application?

The development proposes a maximum building height of 9.326 metres.

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is 9.76% or 0.83 metres.

2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 Wehbe v Pittwater [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827*, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
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 (Fourth Way).*
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 (Fifth Way).*

In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in Wehbe) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the*

case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.

4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four²five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

5. Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

3. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - *Wehbe v Pittwater*

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*

The objectives of the standard are:

(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,

Comment

The proposed variation is largely the result of the slope of the site and the vast majority of the building complies with the maximum height control. The resulting dwelling is of a lesser scale than the neighbouring dwellings and presents as a largely compliant residence to Peronne Avenue.

The proposed breach is minor at 830mm and proposes a maximum height of 9.326 metres, in the control area of 8.5 metres. The resulting dwelling is considered to be compatible with the prevailing height of buildings and streetscape character within the locality, despite the non-compliance.

It is considered this objective is met, despite the numerical variation.

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

Comment

The proposed built form for the most part is below the maximum height of 8.5m. The proposed height exceedance of an additional 830mm is considered to be negligible in relation to bulk and scale, given that it is of a lesser scale than surrounding dwellings.

The proposed development will not present with excessive bulk from the public domain due to the sloping topography of the site and surrounding area.

It is considered this objective is met, despite the numerical variation.

(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),

Comment

The proposed variation in height of 830mm will not result in any unreasonable material view loss when assessed in relation to the view sharing principles set out in Tenacity Consulting v Warringah Council [2004].

The view loss assessment undertaken for this proposal is provided as Appendix 2 and concludes that the impact will be minor.

It is therefore considered this objective is met, despite the numerical variation.

(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,

Comment

The proposed variation to height does not result in any unreasonable solar access impacts to adjoining dwellings.

As described in the SEE the proposed development will result in a minor increase to shadowing to 10 Peronne Avenue at 9am, 12pm and 3pm. The increase is only to a very small portion of this property and No 10 Peronne Avenue and this property will retain excellent solar access to front balconies and the rear yard for the enjoyment of the residents.

Given that compliant solar access is achieved, despite the height variation sought, it is considered the underlying objective of this clause has been satisfied.

(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.

Comment:

No applicable as the subject site is not located in a recreation or environmental protection zone.

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*

This exception to development standards request does not rely on this reason.

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*

This exception to development standards request does not rely on this reason

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 (Fourth Way).*

This exception to development standards request does not rely on this reason.

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 (Fifth Way).*

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

Thus it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. In particular:

- The proposed variation is very minor at just 830mm or 9.76% and does not result in any unreasonable impacts.
- The proposed variation satisfies the objectives of the underlying intent of Clause 4.3, and therefore the merits of the proposal are considered to be worthy of approval. It has been demonstrated within Council and the Courts to apply a reasonable approach in supporting variations to development standards.

- Strict numerical compliance would not necessarily result in a materially better urban design outcome and would thwart the underlying objectives of the controls
- The proposed development will not present with excessive bulk from the public domain due to the sloping topography of the site and surrounding area. It is considered this objective is met, despite the numerical variation.
- By supporting this variation to building height in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, consistent with newer dwelling houses in the locality.
- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone.
- The proposed variation adequately satisfies the underlying objectives of the controls and will not result in any unacceptable built, natural, social or economic impacts for consideration under the Act.
- A variation of 10% is generally accepted by the Land and Environment Court in relation to a negligible/minor non-compliance and impact. In this instance, the proposal seeks a variation of 9.76%.

3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R2 Low Density Residential

Objectives of zone

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

Consistent. The proposal is for a new dwelling house.

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

Not relevant. The proposal is for a residential dwelling.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effects as it represents a minor exceedance and is consistent with surrounding development.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Strict compliance with the 8.5 metres height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper*

construction and maintenance of buildings, including the protection of the health and safety of their occupants.

Conclusion

The proposed development is for a new dwelling house and swimming pool on land zoned R2 – Low Density Residential.

As stated above the proposed non-compliance is minor at just 830mm or 9.76% and does not result in any unreasonable impacts. The variation is largely the result of taking into account the slope of the site and the majority of the dwelling will present with a compliant building height. Overall the proposed development does not present with excessive bulk and is of a lesser or consistent scale to surrounding properties. There will not be unreasonable view loss for surrounding properties.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation of which have been reasonably satisfied under the provisions of Clause 4.6.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.3, and therefore the merits of the proposed variation are considered to be worthy of approval.