

**STATEMENT OF ENVIRONMENTAL EFFECTS**

**39A CUTLER ROAD, CLONTARF**

**PROPOSED ALTERATIONS/ADDITIONS TO GARAGE TO  
PERMIT A STUDIO**

**PREPARED ON BEHALF OF  
MR & MRS CHADBAN**

**NOVEMBER 2021**

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## **APPENDICES**

### **APPENDIX A – CLAUSE 4.6 - FSR**

## 1. INTRODUCTION

This application seeks approval for alterations and additions to an existing garage to create a studio upon land at Lot 2 in DP 527793 which is known as **39a Cutler Road, Clontarf**.

By way of background Development Consent (DA2018/1674) was issued on 13 March 2019 for the construction of a detached secondary dwelling. Works have not yet commenced on this Consent; however, the consent remains valid until 13/03/2024. This application seeks approval for essentially the same building envelope; however, it is now proposed to utilise the building for a studio and not proceed with the secondary dwelling.

In preparation of this development application consideration has been given to the following:

- Environmental Planning & Assessment Act, 1979.
- Manly Local Environmental Plan 2013.
- Manly Development Control Plan 2013.

The following details and documents have been relied upon in the preparation of this document:

- Survey Plan prepared by Detailed Surveys, Reference No. 079/07 and dated 28 August 2021.
- Architectural Plans prepared by Scope Architecture, Project No. 01804, Revision B and dated 26.05.2021.
- Bushfire Assessment Report prepared by Australian Bushfire Consulting Services, Ref No. 21-381 and dated 27 July 2021.
- BASIX Certificate #A413415\_02 and issued 2 September 2021.

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. It provides an assessment of the proposed development against the heads of consideration as set out in Section 4.15 of the Environmental Planning and Assessment Act 1979. As a result of that assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

### 3. SITE DESCRIPTION AND LOCALITY

The site is identified as Lot 2 in DP 527793 which is known as No. 39A Cutler Road, Clontarf. The site is an irregular shaped allotment located to the southern side of Cutler Road. The site has an area of 472m<sup>2</sup> with a street frontage of 13.715m. The rear boundary has a width of 7.645m. It is noted that the property has a wide road verge with the boundary setback approximately 26m from the kerb and gutter of Cutler Road. This verge has a steep slope towards the south.

The locality is depicted in the following map:



Site Location Map

Access to the site is currently provided via a shared concrete driveway that meanders down the street verge. The property itself has a gently cross flow from east to west. A drainage easement 1.83m wide currently dissects the site running from the front south west corner of the property towards the northeast corner.

The subject site currently provides for a two and three storey detached dwelling located towards the south (rear) of the site. The dwelling currently extends over the drainage easement. A detached double garage is located adjacent to the front boundary of the site. The garage is setback approximately 1.005m to the northern front boundary.

By way of background Development Consent (DA2018/1674) was issued on 13 March 2019 for the construction of a detached secondary dwelling. Works have not yet commenced on this Consent, however the consent remains valid until 13/03/2024. This application merely seeks to permit a change of use of the approved secondary dwelling to be used as a studio, with some minor alterations. Council would not accept the application as a modification, hence this new DA.

The site is depicted in the following photographs:





**View from Cutler Road towards site**



**View of Existing Garage**



The existing surrounding development comprises a mixture of large two and three storey dwellings with some attached dwellings and dual occupancies. The existing surrounding development is depicted in the following aerial photograph:



**Aerial Photograph of Locality**

#### 4. THE DEVELOPMENT PROPOSAL

This proposal seeks approval for the construction of alterations and addition to the existing detached garage. The additions will provide for a detached studio with living area and study. It is also proposed to provide some minor alterations to the approved structure.

Development Consent (DA2018/1674) was issued on 13 March 2019 for the construction of a detached secondary dwelling. Works have not yet commenced on this Consent; however the consent remains valid until 13/03/2024. This application seeks approval for essentially the same building envelope however will provide for a studio with only a sink with living area on the ground level and office to the first floor. The proposal does not seek use of this building as a secondary dwelling.

The additions to the existing ground floor level provide for additional floor area at the rear (south) of the existing garage. This element is setback 900mm from the western boundary and 1.765m to the eastern side boundary. This addition provides for the a living area with wet bar. The existing stairs on the eastern side of the garage will be demolished with a new stair to be located adjacent to the addition. The proposal provides for a new first floor level to accommodate an office with terrace. The wall of the upper level is setback 4.715m to the front boundary with the terrace setback 1.81m to the front boundary.

For reference, the only changes proposed to the approved Consent (DA2018/1674) are described below:

- Convert the approved use from a secondary dwelling to a detached studio.
- Delete ground floor western window.
- Remove window on first floor eastern elevation and replace with two smaller windows.
- Internal alterations to accommodate new floor layout.
- Change in roof form from parapet to a skillion roof form.

The proposal will result in the following numerical indices:

<b>Site Area:</b>	<b>472m<sup>2</sup></b>
<b>Proposed FSR:</b>	<b>295.2m<sup>2</sup> or 0.625:1</b>
<b>Total Open Space:</b>	<b>287m<sup>2</sup> or 60%</b>
<b>Landscaped Space:</b>	<b>195m<sup>2</sup> or 67% of the total open space.</b>

Note: The proposed development indices do not alter the approved FSR or open space calculations approved under DA 2018/1674.

## 5 ZONING & DEVELOPMENT CONTROLS

The proposed development is identified as development requiring the consent of the Council under the provisions of the Environmental Planning and Assessment Act 1979, as amended. The following is an assessment of the proposal against the relevant provisions of the Act and all of the relevant planning instruments and policies of Manly Council.

### 5.1 Planning for Bushfire Protection 2006



**Extract of Bushfire Map**

The subject site is identified as bushfire prone land on Council's Bushfire Prone Land Map and therefore the provisions of Planning for Bushfire Protection 2006 apply. A Bushfire Assessment Report has been prepared by Australian Bushfire Consulting Services, which in summary provides:

*The subject property is determined to be bushfire prone land and the proposal must achieve compliance with the NCC by meeting the aims and objectives of PBP 2019. This is achieved by providing construction measures to mitigate against the impacts from bush fire including smoke, embers, radiant heat and flame contact and including suitable access, services supply and means of maintaining the bushfire protection measures for the life of the development.*

*This bushfire hazard and determination has been made on a site specific basis which includes an assessment of the local bushland area and its possible impact to the subject property. The highest Bushfire Attack Level to the proposed new works was determined to be BAL 12.5. Suitable recommendations have been made herein to enable Council to issue development consent inclusive of conditions required to ensure compliance with all requirements of PBP 2019.*



*The proposal meets the aims and objectives of PBP 2019 by means of compliance with the deemed to satisfy provisions of that document.*

## 5.2 Manly Local Environmental 2013



**Extract of Zoning Map**

The subject site is zoned R2 Low Density Residential. The objectives of the R2 Zone are as follows:

- *To provide for the housing needs of the community.*
- *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 development achieves these objectives by:

- Providing additions to an existing detached garage to accommodate a studio.
- Retaining the existing amenity to the surrounding residences.
- Providing a development that is compatible in terms of bulk, scale and height to surrounding properties.

Dwelling houses and associated dwellings are permissible use in the R2 Low Density Residential zone with the consent of Council.

The following numerical standards are applicable to the proposed development:

Clause	Development Standard	Proposal	Compliance
Clause 4.3 Height of Buildings	8.5m	7.8m	Yes
Clause 4.4 Floor Space Ratio	0.4:1	295.2m <sup>2</sup> or 0.625:1	Clause 4.6 Variation included in <b>Appendix A</b> .

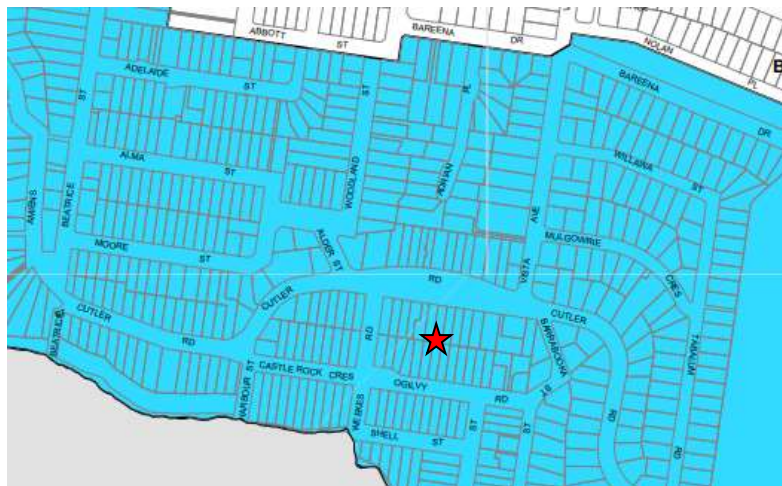
## Clause 5.10 Heritage



**Extract of Heritage Map**

The subject site is not a heritage item nor located within a heritage conservation area. Further there are no heritage items within the vicinity.

## Clause 6.9 Foreshore Scenic Protection Area



**Extract of Scenic Protection Map**

The subject site is identified as being within the Foreshore Scenic Protection Area and therefore this clause applies.

It is considered that the proposal achieves the requirements of this clause for the following reasons:

- The proposed works are not visible from the foreshore or waterway.
- The proposal does not require the removal of any vegetation visible from the foreshore or waterway.

- The proposal does not hinder access to the foreshore nor result in potential conflict between land-based and water-based coastal activities
- The proposed additions are consistent with the envelope approved under DA2018/1674.

No further information is required in this regard.

There are no other specific clauses that specifically relate to the proposed development.

#### **4.3 Manly Residential Development Control Plan 2013**

The Manly DCP 2013 applies to all land where the LEP applies. Therefore, the DCP applies to the subject development.

##### **Part 3**

Part 3 provides general principles applying to all development and Part 4 outlines development controls for specific forms of development including residential. The relevant provisions of **Part 3** are summarised below:

##### **Clause 3.1.1 – Streetscape (Residential Areas)**

The subject site is located well below the street level and the existing development is not visible. The proposed additions to the detached garage are not visible from the street and as such will not have any impact on the streetscape.

##### **Clause 3.3 - Landscaping**

The proposed additions are to the rear of the existing detached garage and do not require the removal of any significant vegetation or trees. The site maintains sufficient area of the site available for landscaping. There are a number of large trees on site and the Council's road reserve which will be retained as part of this application.

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

The objectives of the clause are noted as:

- |                     |   |
|---------------------|---|
| <i>Objective 1)</i> | <i>To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties.</i> |
| <i>Objective 2)</i> | <i>To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.</i>  |

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

- The proposal provides for additions to detached garage. The additions are relatively minor and do not result in any unreasonable bulk or scale.
- The materials and finishes are consistent with the existing finishes and the building envelope has not been significantly altered.
- The proposed additions do not reduce the level of privacy currently enjoyed by the adjoining properties. In this regard the ground floor provides for a living area with only an office/study to the upper level which is not a high use living area. Whilst the upper level provides for a terrace, this terrace is on the front face and overlooks the road verge and does not provide views into habitable areas or private open space of the adjoining properties. It is further noted that previous Consent (DA2018/1674) granted approval for a secondary dwelling with the same envelope, this current proposal provides for a better privacy outcome.
- The proposal does not obstruct any significant views.

### Clause 3.5 - Sustainability

A BASIX Certificate has been prepared to support the new works and confirm that the proposed additions will achieve the appropriate thermal performance criteria.

### Clause 3.7 - Stormwater Management

The proposal does not require a Stormwater Management Plan as the proposal provides for only minimal additional hard surface area. All collected stormwater will discharge to the existing stormwater system.

## **Part 4**

The following numerical provisions of **Part 4** are considered relevant to the proposal:

Clause/ Design Element	DCP Requirement	Compliance/Comments
Residential Density & Subdivision	Density Area D7 – 1 dwelling per 750m <sup>2</sup>	The site has an area of 472m <sup>2</sup> , however the proposal does not increase dwelling density.
Floor Space Ratio	Refer to LEP 0.4:1	Proposed FSR is 0.625:1. Refer to Clause 4.6 Variation.
Wall Height	Height – 6.5m	Yes Maximum proposed wall height is 7.02m, however this is for a flat roof dwelling and discounting 600mm for the parapet the proposal will comply with this clause. Notwithstanding the proposal is considered appropriate for the following reasons:
Number of Storeys	Two Storeys	
Roof Height	2.5m above wall height	



Clause/ Design Element	DCP Requirement	Compliance/Comments
<p>Parapet Height: 600mm above wall height.</p> <p>Maximum Roof Pitch</p>	<p>600mm above wall height</p> <p>35°</p>	<ul style="list-style-type: none"> <li>The proposal provides for a low pitched roof and as such does not result in unreasonable overall height or bulk.</li> <li>The proposal complies with the maximum overall height controls of the LEP.</li> <li>The area of the wall height exceeding this clause is centrally located and provided with sufficient setbacks to the boundaries of the site.</li> <li>The height is compatible with the existing surrounding development. It is noted that the adjoining property at No. 39 Cutler Road is significantly higher than the proposed development. The development to the east No. 37 Cutler provides for a large three storey dwelling.</li> <li>The site is located on the low side of the street and the proposal will not be visible from the street.</li> </ul> <p>Yes</p> <p>Not Applicable</p>
Building Setbacks	Front Setback – Min. 6.0 metres or consistent with neighbouring.	<p>The existing garage is setback 1.005m to the street frontage. The proposed additions are setback 4.715m to the street frontage. This setback is considered appropriate for the following reasons:</p> <ul style="list-style-type: none"> <li>The setback provided to the new works are consistent with the setback provided to the adjoining western dwelling at No. 39 Cutler Road.</li> </ul>

Clause/ Design Element	DCP Requirement	Compliance/Comments
	<p>Side Setback – 1/3 of the height of wall.</p> <p>Walls without windows may be constructed to one side boundary only, providing the objectives of this part can be met and the applicant can demonstrate no disadvantage to the adjacent allotment through increased overshadowing, or loss of view and no impediment to property maintenance.</p>	<ul style="list-style-type: none"> <li>The site is located on the low side of the street, with a wide road verge with a significant slope towards the site. The slope in-conjunction with the existing vegetation ensures that the development will not be visible from the street or the public domain.</li> <li>The setback is also consistent with the predominant building line in this portion of Cutler Road as is depicted in the aerial photograph.</li> <li>The proposed front elevation is well articulated and does not result in unreasonable bulk or scale.</li> </ul> <p>Setback of approximately 2.4m required for the upper level. However, it is considered that the proposed setbacks are justified in this instance for the following reasons:</p> <ul style="list-style-type: none"> <li>This portion of the site has a width of only 7.645m and strict compliance with this clause would prohibit any development.</li> <li>The proposal provides for a development that presents as two storey when viewed from the front elevation. This is compatible with the adjoining properties at No. 39 and 37 Cutler Road which both provide for large three storey dwellings.</li> <li>The proposal has been designed to maintain privacy to the adjoining properties. This is a detached outbuilding with ground floor living area and only a study to the upper level. The new terrace is on the front</li> </ul>

Clause/ Design Element	DCP Requirement	Compliance/Comments
	Rear Setback – Minimum 8.0 metres	<p>elevation and allows for views of the dwelling approach only.</p> <ul style="list-style-type: none"> <li>The elevations of the development are well articulated through the use of change in setbacks and external finishes.</li> </ul> <p>Yes Proposal provides for ample setback to the rear boundary. Existing rear setbacks retained.</p>
Landscaping/Open Space	<p>Open Space Area 4: Minimum total open space: 60% of site area.</p> <p>Minimum soft open space as % of total open space: 40%</p> <p>Minimum number of endemic trees: 4</p> <p>Private open space to be directly accessible from living areas. Minimum dimension 3m. Minimum area of 18m<sup>2</sup>.</p>	<p>Yes The proposal provides for 287m<sup>2</sup> or 60% of the site for open space.</p> <p>The proposal provides for 195m<sup>2</sup> of soft open space or 67% of the total open space.</p> <p>The proposal does not require the removal of significant trees.</p> <p>The existing dwelling maintains sufficient area of private open space that is accessible from internal living areas.</p>
Parking and Access	<p>Minimum 2 Spaces per Dwelling.</p> <p>Garages/carports shall be sited so as to not dominate the street frontage through the use of appropriate materials.</p> <p>Carports forward of the building line shall be open on all sides. Maximum width of structures forward of the building line is</p>	<p>Yes The subject site currently provides for 2 parking spaces within the detached garage. There is no change to the existing parking.</p>

Clause/ Design Element	DCP Requirement	Compliance/Comments
	6.2m or 50% of site width whichever is the greater.	
First Floor Additions	Additions may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues. Must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences	Yes The first-floor retains the existing side setbacks provided to the ground floor which is considered appropriate for the following discussed previously.
Fences	Maximum height 1.0m for solid Maximum height 1.5m where at least 30% is transparent.	Not Applicable – existing fence retained.

There are no other provisions of the Manly DCP that apply to the proposed development.



## **6. EP & A ACT - SECTION 4.15**

### **The Provisions of any Environmental Planning Instruments**

The proposal is subject to the provisions of the Manly Local Environmental Plan 2013 and the Manly DCP 2013. It is considered that the provisions of these documents have been satisfactorily addressed within this report.

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

### **The Likely Impacts of the Development**

It is considered that the development will provide for additions to a detached garage to provide for a studio without detrimentally impacting on the character of the area. The proposal does not result in the removal of any significant vegetation. The design of the proposal is such that they do not result in any unreasonable loss of privacy.

### **The Suitability of the Site for the Development**

The subject site is zoned R2 Low Density Residential and the construction of additions to a garage that are permissible with the consent of Council and consistent with the existing approved envelope. The resultant development is of a bulk and scale that is consistent with existing surrounding developments. The proposal does not result in the removal of any significant vegetation.

For these reasons it is considered that the site is suitable for the proposed development.

### **The Public Interest**

It is considered that the proposal is in the public interest in that it will provide for additions to an existing detached garage that is compatible with other development in this locality without unreasonably impacting the amenity of the adjoining properties or the public domain.

## 7. CONCLUSION

This application seeks approval for the construction of alterations and additions to an existing garage. As demonstrated in this report the proposal is consistent with the aims and objectives of the Manly Local Environmental Plan 2013 and the Manly DCP 2013. It is considered that the Clause 4.6 variation is justified and should be supported. The proposal does not have any detrimental impact on the amenity of the adjoining properties or the character of the locality.

It is therefore considered that the proposed of alterations/additions to an existing detached garage upon land at **No. 39A Cutler Road, Clontarf** is worthy of the consent of Council.

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**Nolan Planning Consultants**  
November 2021

**APPENDIX B – CLAUSE 4.6 VARIATION  
VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM  
FLOOR AREA REQUIRED BY CLAUSE 4.4 OF THE MANLY LOCAL  
ENVIRONMENTAL PLAN 2013**

**For:** Proposed Additions to Detached Garage  
**At:** 39a Cutler Road, Clontarf  
**Applicant:** Mr & Mrs Chadban

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## **Introduction**

This Clause 4.6 variation is a written request to vary a development standard to support a development application for construction of additions to an existing detached garage at **39A Cutler Road, Clontarf**.

The specified maximum floor area for the site under Clause 4.4 of the Manly Local Environmental Plan 2013 (the LEP) is 0.4:1.

The development proposes a departure from this numerical standard and proposes a maximum floor area of 295.4m<sup>2</sup> or 0.625:1.

The floor area requirement is identified as a development standard which requires a variation under Clause 4.6 of the Manly Local Environmental Plan 2013 (the LEP) to enable the granting of consent to the development application.

## **4.4 Floor Space Ratio**

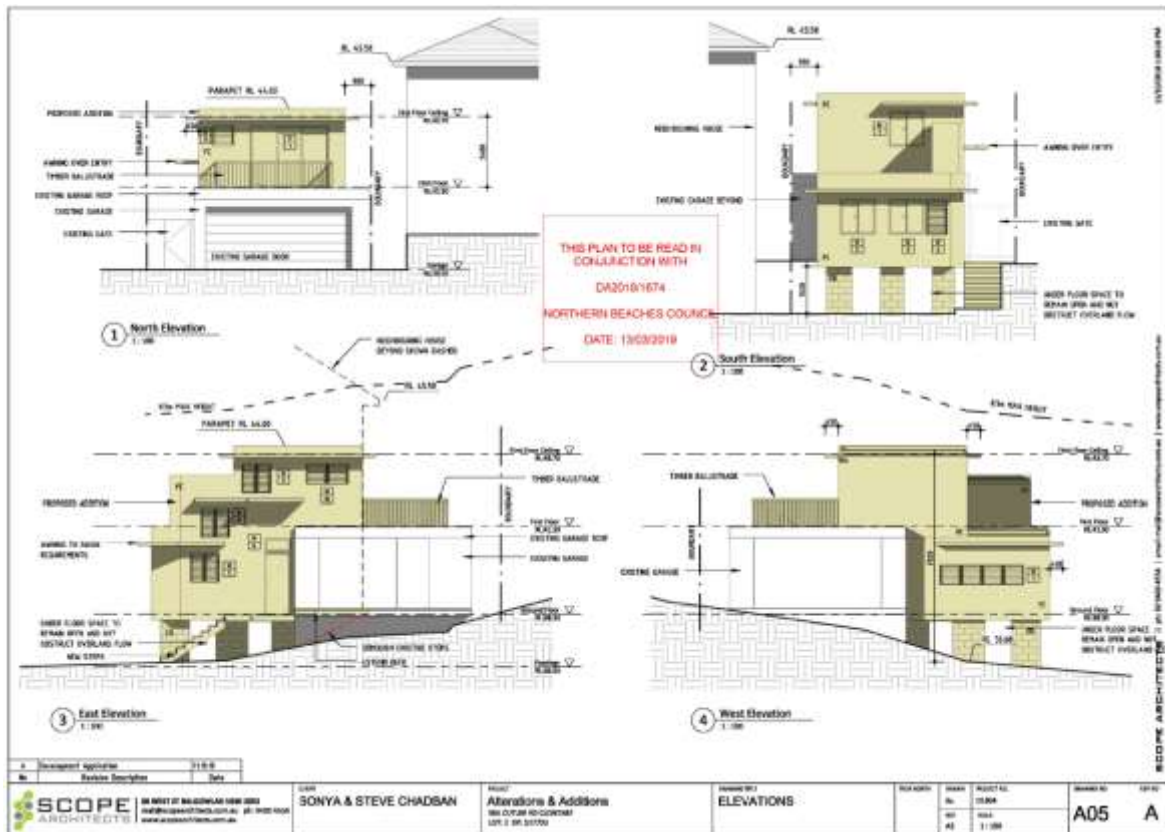
- (1) *The objectives of this clause are as follows—*
- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
  - (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape 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.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The floor space ratio map indicated that the maximum floor space ratio that applies to the site is 0.4:1.

The proposal results in a maximum floor space ratio of 0.625:1, a non-compliance of 106.6m<sup>2</sup> or a 56% variation.

It is noted that the proposed building envelope has been approved under DA2018/1674 and this application merely seeks to change the approved use. An extract of both the approved plans and proposed plans depicting the building envelopes are depicted below.





Stamped approved plans – DA2018/1674



Proposed Plans

This clause 4.6 written request has been prepared having regard to clauses 4.3 and 4.6 of the Manly Local Environmental Plan 2013 and recent judgments of the Land and Environment Court. It is concluded that the variation is well founded.

**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 standard to be varied is a Development Standard to which Clause 4.6 applies**

Clause 4.3 of the Manly Local Environmental Plan 2013 is contained within Part 4 and is titled Development Standards to be complied with. I am of the opinion that the wording of the clause is consistent with previous decisions of the Land & Environment Court in relation to matters which constitute development standards.

Clause 4.3 does not contain a provision which specifically excludes the application of clause 4.6 and vice a versa.

I consider that clause 4.4 is a development standard to which clause 4.6 applies.

**Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case**

Sub-clause 4.6(3) sets out the matters that must be demonstrated by a written request seeking to justify a contravention of the relevant development standard:

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.*

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC118, Preston CJ sets out ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, although he emphasised that his list was not exhaustive. These include:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
- The underlying objective or purpose of the standard is not relevant to the development.*
- The underlying objective or purpose would be defeated or thwarted if compliance was required.*
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard or*

- *The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.*

The proposal provides additions to the existing detached garage that are consistent with the development previously approved (DA2018/1674). The proposal is compatible with the existing surrounding development in the immediate vicinity. The resultant bulk is compatible with the existing surrounding development which is characterised by two and three storey dwellings.

It is unreasonable and unnecessary to require strict compliance with the development standard given the existing surrounding development and the circumstances of the site. In this regard the Manly Development Control Plan at '4.1.3.1 Exceptions to FSR for Undersized Lots' provides:

*On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a).*

*The undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3). a) The extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 in this plan is to be no greater than the achievable FSR for the lot size indicated in Figure 30 - Extent of FSR Variation for Undersized Lots*

The subject is identified as within 'R' on the Lot Size Map which requires a minimum allotment size of 750m<sup>2</sup> and as such the DCP permits a variation with the calculation of FSR based upon a lot size of 750m<sup>2</sup>. In this regard based upon a lot size of 750m<sup>2</sup> the maximum floor space is 300m<sup>2</sup>. The proposal provides for a maximum floor area of 295.4m<sup>2</sup> which complies.

The objectives of the Floor Space Ratio standard are set out in clause 4.4(1) of Manly Local Environmental Plan 2013:

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

The proposal provides for additions to an existing detached garage. Due to the slope of the site, existing vegetation and the wide road verge the subject site is not visible from the street. The proposed works will not have any impact on the streetscape. The proposal is consistent with objective (a).

The proposal provides for a structure that presents as two storeys as viewed from the front elevation. The development does not obscure any landscape or townscape features. The proposal complies with objective (b).

The proposal provides for side setbacks of at least 900mm to ensure appropriate visual separation. As noted above the proposal is not visible from the streetscape. The proposal complies with objective (c).

The proposal will not have adverse impacts on the adjoining land or the public domain. As noted above the proposal will not be visible from the public domain as it is well screened from the street by the slope, vegetation and wide road verge. The proposal will not have adverse impacts on the adjoining properties. This has been achieved by locating only an ancillary living area on the ground floor and an office/study on the upper level. The proposal does not result in any unreasonable solar access. The proposal complies with objective (d).

Objective (e) is not applicable.

**There are sufficient environmental planning grounds to justify contravening the development standard**

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.

In this regard the following has been considered: -

- The non-compliance is a direct result of the reduced allotment size. Strict compliance would hinder any further development of the site and not enable the property to be developed in a way that is compatible with the existing surrounding development.
- The proposed envelope/footprint has been previously approved (DA2018/1674) and this consent remains valid. This application does not seek to further increase the approved FSR, rather it seeks to change the use from a secondary dwelling to a studio. The proposed floor area has been approved under DA2018/1674, and this application does not alter the approved floor area.
- The proposal does not result in any unreasonable loss of privacy or solar access to the adjoining properties.

When 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 area.



The existing surrounding development and the desired architectural outcome combine to produce a meritorious development despite the minor numerical variation to the floor area requirement.

**Is the proposed development 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.**

The proposed development is consistent with the objectives of the Height of Buildings development standard, which is demonstrated in the analysis in section 3.

The proposed development is also consistent with the R2 Low Density Residential Zone objectives in Manly Local Environmental Plan 2013.

The objectives of the R2 zone are:-

- *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.*

### **Comments**

The development proposal includes the construction of alterations/additions to an existing garage. The proposal is considered to meet the objectives of the R2 zone for the following reasons:

- Providing minor alterations to the existing detached garage to provide for a additions ancillary to an existing dwelling which are permissible in this zone.
- Retaining the existing amenity to the surrounding residences.
- Providing a development that is compatible in terms of bulk, scale and height to surrounding properties.

**Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.**

Sub-clause 4.6(4) requires that the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained and sub-clause 4.6(5) enumerates matters that the Planning Secretary must consider in deciding whether to grant concurrence.

The Planning Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, that the Planning Secretary's concurrence may be "assumed" for exceptions to development standards, subject to certain conditions contained in the notice.

The non-compliance with the Floor Space Ratio does not require the concurrence of the Planning Secretary. This is no impediment to the grant of consent by the Council.

Further, it is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning and there is no identifiable public benefit in maintaining the development standard.

## **CONCLUSION**

The development proposes a departure from the maximum floor area development standard. The proposal produces an appropriate development outcome. The variation to the floor area is a direct result of the reduced allotment size. The DCP specifically indicates that variation to the FSR Development Standard can be sought where the allotment size is below the minimum required by the LEP, as is the case in this instance. This non-compliance will not result in any detrimental impact to the surrounding properties or the character of the locality. Furthermore, the overall design is of good architectural quality and the development satisfies the zone objectives and the objectives of the development standard. The proposal is not visible from the street and provides for a bulk and scale that is compatible with the existing surrounding development.

As there is no material impact on adjoining properties or the public domain arising from the variation to the floor area development standard and the objectives of the control are satisfied, it is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

Therefore, we request that council support the variation on the basis that there are sufficient environmental planning grounds to justify a variance to the development standard.

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