

28th March 2018

The General Manager
Manly Council
Belgrave Street
MANLY NSW 2095

Statement of Environmental Effects

REQUEST FOR a S96 MODIFICATION of DA 436/2008 (as modified)

Lot 2 DP 7180 No. Commonwealth Parade, Manly

INTRODUCTION

The sequence of previous approvals is as follows:

2004	DA 211/04 approval
29 September 2006	Determination under Section 81(1)(a) of 211/04 approval
30 March 2009	DA 436/08 Basement additions supersede basement and GF plans previously approved
22 June 2009	Council confirms totality of 2 previous approvals as the same DA
24 July 2014	Email SC confirming the works have substantially commenced
20 December 2017	Section 81(1)(a) approval

This application seeks approval for minor modifications of the approved Section 81(1)(a), 20 December 2017.

1 - PROPERTY DESCRIPTION

Site Area:	461.69m ² .
Commonwealth Pde frontage:	15.2m
The Crescent Frontage:	9.1m

2 - APPLICATION FOR S96 MODIFICATION

This application is lodged as a S96 (2) modification and it is not considered the changes to the detail of the works substantially alters or changes the development as consented or to such that it would not be considered to be the same, or substantially the same development. The land use outcome remains within the ambit of the approved land use as referred to within the notice of determination. The building form, bulk and scale remains (generally) the same.

4 - DRAWINGS

The following drawings prepared by Baxter and Jacobson Architects describe the changes

Job No	Dwg No	Drawing	Revision
110-09	1.00	LOCATION & SITE PLAN	A
110-09	1.20	SITE ANALYSIS PLAN	A
110-09	2.20	BASEMENT FLOOR PLAN	A
110-09	2.21	GROUND FLOOR PLAN - UNIT 01	A
110-09	2.22	LEVEL 01 FLOOR PLAN - UNIT 02	A
110-09	2.23	LEVEL 02 FLOOR PLAN - UNIT 03	A
110-09	2.24	LEVEL 03 FLOOR PLAN - UNIT 03	A
110-09	2.25	ROOF PLAN	A
110-09	3.00	ELEVATIONS	A
110-09	3.10	ELEVATIONS	A
110-09	3.20	ELEVATIONS	A

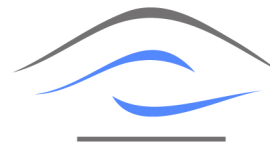
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110-09	3.30	SECTIONS A & B	A
110-09	3.40	SECTION C & D	A
110-09	3.50	SECTION E & F	A
110-09	3.60	SECTION G	A
110-09	3.70	SECTION H	A
110-09	4.00	LANDSCAPE PLAN	A
110-09	6.00	SHADOW DIAGRAMS - 01	A
110-09	6.10	SHADOW DIAGRAMS - 02	A
110-09	6.20	SHADOW DIAGRAMS - 03	A
110-09	6.30	SHADOW DIAGRAMS - 04	A
N-01	N-01	NOTIFICATION PLAN	A

5 - DETAILS OF CHANGES:

Level	Change	Reason and impact
Basement	Minor changes to layout: <ul style="list-style-type: none"> Relocation of egress stairs Relocation of mechanical services Relocation of garbage room Additional excavation to car stacker to accommodate car lift 	More efficient & simplified.
Ground Level - Unit 1	Minor changes to layout & addition of a bedroom and en-suite. Cut out of slab over to provide light and ventilation to adjoining courtyard. New roof to over Northern end of room to allow for glass blocks to West to allow for additional light into room.	Improvement in use of available floor area at ground level. Boundary wall adjoining extends above FL over so no impact on neighbours.
	Bedroom 2 on south boundary extends 0.5m with an area increase of 0.5m ²	Improved spatial planning of rooms on south elevation. No loss of views from No. 7
1st Level - Unit 2	Minor changes to layout, increase to external envelope on south side and reduction on north side	More efficient & simplified.
	Bedroom 3 on south boundary extends 0.5m with an area increase of 0.5m ²	Improved spatial planning of rooms on south elevation. No loss of views from No. 7
2nd Level - Unit 3	Minor changes to layout	More efficient & simplified.
	Bedroom 3 on south boundary extends 0.5m with an area increase of 0.5m ²	Improved spatial planning of rooms on south elevation. No loss of views from No. 7
3rd level - Unit 3	Minor changes to layout	More efficient & simplified more efficient & simplified.
Roof Level	Additional skylights. Roof extends 500mm to cover the extension of lower levels	Improved north light, minimal impact

6 - PRE-DA MEETING

A Pre-DA meeting was held on 6 March 2018 with Mr Rod Piggott and received favourable support.

- Minor changes to internal layout of Units

7 - FLOOR AREA AND FSR

Total Site Area	460
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Area	Area Change
Basement -	
Area change	-10
Ground floor - Unit 1	
Increase due to additional Bedroom	28
Increase due to Bed 2	0.5
Total Ground Level area increase	28.5
1st Floor Level - Unit 2	
Decrease over light well	-1.8
Increase to bedroom 3	0.5
Total 1 st Floor area Change	-1.3
2nd Floor Area - Unit 3	
Increase to bedroom 3	0.5
Total 2 nd Floor Level change	0.5
3rd Level - Unit 3 master bedroom	0
TOTAL FA increase excl basement	28m2

The additional floor area is generated due to two changes.

1. The Bedroom on GF which also requires a reduction in the ensuite above to allow for the light well/courtyard
2. The additional 0.5m to bedrooms on GF, Lvl 1, Lvl 2
3. Reconfiguration of Level 3 master bedroom within the roof/wall envelope within the 2.1m ceiling height.

Councils' Pre DA minutes for the previous S96 changes identified the Proposed Floor Area as 545m² and FSR as 1.18:1.

The above changes to Floor area will generate an FSR of $573/460 = 1.245 : 1$

The maximum floor space ratio for the subject site is 0.75:1 (345sqm). [*Manly DCP 2013* Clause 4.1.3]

It is noted however that the original FSR non-compliance was approved on the basis that the existing dwelling already exceeds the FSR. In the context of the site, the FSR non-compliance has minimal impact. It does not impact on view corridors from the dwellings behind or privacy, bulk and overshadowing of the adjoining properties. An LEP Clause 4.6, Application Form to Vary a Development Standard is added.

8 - HERITAGE CONSERVATION

A heritage report prepared by Graham Brookes and associates was submitted with the original Application and is still relevant.

The minor changes to the external envelope do not impact the heritage of this building.

9 - AMENITY (OVERLOOKING / PRIVACY):

The level of the ground floor with the new bedroom is RL 22.10

The boundary masonry wall adjoining the new bedroom courtyard is RL 27.20. (as per the survey)

This wall is located on the adjoining property. As the top of the wall is 5.10m above the FL of the unit, there will not be any loss of privacy.

The changes will not have any adverse impact on privacy of adjoining properties. The additional bedroom and courtyard/light well to Unit 1 is below the level of the boundary wall so will not impact on privacy.

11 - SETBACKS

The new GL bedroom now extends to the boundary but is effectively below the ground level so will not have any adverse impact.

12 - SHADOW DIAGRAMS

The roof projects 500 mm towards Commonwealth Pde and is set back 1100 from south boundary. As such any change in sun shading will be minimal. See diagrams

Clause 4.6 Variation

Variation to FSR Development Standard

1 - INTRODUCTION

This variation under Clause 4.6 of Manly Local Environmental Plan 2013 (LEP 2013) has been prepared by BJA. It is submitted to Manly Council in support of a S96 Development Application (DA) for the redevelopment of 5 Commonwealth Pde. Manly for residential purposes.

Clause 4.6 of Manly LEP 2013 allows Council to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This Clause 4.6 variation should be read in conjunction with the original Statement of Environmental Effects (SEE) prepared by BJA dated March 2018.

2 - CLAUSE 4.6 FRAMEWORK

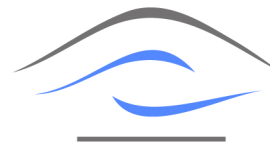
Clause 4.6 (Exceptions to Development Standards) of the LEP allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That 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.

The consent authority's satisfaction as to those matters must be informed by the objective of providing flexibility in the application of the relevant control.

3 - DEVELOPMENT STANDARD PROPOSED TO BE VARIED



The development standard that is sought to be varied as part of this application is Clause 4.4 of LEP 2013, relating to *Floor Space Ratio of the building*. Under Manly LEP 2013 the site has a maximum FSR of 0.75:1.

4 - IS THE PLANNING CONTROL IN QUESTION A DEVELOPMENT STANDARD?

'Development Standards' are defined under Section 4(1) of the EP&A Act as follows: *development standards mean provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...*

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

The maximum FSR control under Clause 4.4 of the LEP is clearly a development standard.

5 - EXTENT OF VARIATION SOUGHT

The FSR for the site is 0.75:1.

The approved FSR in the original approval dated March 2004 was 1.25 :1

The FSR approved in the S96 modification dated 20 Dec 2017 was determined by council as $573/460 = 1.245 : 1$

This equates to a 66% variation on the Floor Space Ratio Development Standard of Clause 4.4 of the Manly LEP 2013 and a 5% variation on the existing non-compliance. Given the existing context of the site and the minor increase to gross floor area proposed within the approved building envelope, variation to the Floor Space Ratio development standard can be supported.

6 - JUSTIFICATION FOR CONTRAVENTION OF DEVELOPMENT STANDARD

The original FSR non-compliance was approved on the basis that the existing dwelling already exceeds the FSR. In the context of the site, the FSR non-compliance has minimal impact. The additional areas are largely due to increases on Ground Level which extends to where store & service areas were previously located. As such it does not impact on view corridors from the dwellings behind or privacy, bulk and overshadowing of the adjoining properties.

The SEE by Planning Overload (Paul Drake, submitted in the original Application and dated March 2004, noted that the existing house FSR is 1.11:1 and the subsequently approved scheme had a FSR of 1.25:1. (see excerpt below)

4.2.4 Density

The development provides medium/high density urban housing. The total site area is 461.69 square meters and the gross floor area is 581 square metres, resulting in a floor space ratio of 1:25.1. The existing FSR is 1.11:1 with a gross floor area of 499.6 square metres.

6.1 - Public Benefit

Clause 4.6(4)(a)(ii) of the LEP requires that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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.

The proposal is assessed against the objectives for the R1 Residential zone development standard.

Despite the variation from the FSR, the proposal is considered to be in the public interest as it nevertheless satisfies the objectives of the zone and the development standard.

Consistency with the Objectives of the Zone and Standard

Table 1 demonstrates that the proposed variation standard will still result in a development that achieves the objectives height of buildings development standard. The response also considers the appropriateness of the building in the context of the adjoining developments.

Table 1 – Assessment against zone objectives and objectives of the development standard

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,	The bulk and scale of the building maintains that - of the existing dwelling including the street scape set-backs. It is consistent with properties along Commonwealth Pde built under the old Density Control of 1960 which allowed 1 dwelling/100m2.
(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,	There is a minor change along the southern elevation that will not impact the streetscape.
(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,	No change to previous approval
(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,	The proposal does not change the impact on public land
(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.	Not applicable to residential area

6.2 - Compliance with the development standard is unnecessary and unreasonable

Clause 4.6(3)(a) of the LEP requires the departure from the development standard to be justified by demonstrating:

that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

1. The objectives of the standard are achieved notwithstanding noncompliance with the standard.

3. The underlying object or purpose would be defeated

The objectives of the standard are otherwise achieved

The objectives of the FSR standard predominantly set out to ensure that proposed developments have a bulk and scale that is compatible with the surrounding character, to ensure development does not cause unreasonable amenity impacts on surrounding properties and to protect public and private views.

These objectives are satisfied by the proposal despite the numerical variation from the FSR standard. The proposed development, will continue to achieve the objectives of the standard for the following reasons:

- The exceedance of the FSR will have a negligible impact upon the streetscape in terms of visual privacy and solar access provisions for surrounding residential development. View corridors to the side of the development have been maintained. The view lines over the roof are also maintained as the proposed height is no higher than the existing building or the approved building.
- The proposal is of a suitable bulk and scale given its context. It is consistent with the streetscape, which includes buildings approved under the old planning ordinance which allowed greater bulk and density than the current LEP.

The underlying purpose or objective would be thwarted or defeated

The third way relates to compliance with a development standard resulting in the underlying purpose being defeated or thwarted. The underlying purpose of the development standard is to ensure that built form is appropriate and consistent with the surrounding context of the site and desired future streetscape character.

Strict adherence to the development standard would result in a poor development of the site, and would diminish the site's scale in relation to the adjoining properties.

Having regard to the above, in our view it would be unreasonable and unnecessary to enforce compliance with the FSR controls contained within Clause 4.4 of Manly LEP 2013.

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

Clause 4.6(3)(b) of the LEP requires the departure from the development standard to be justified by demonstrating:
that there are sufficient environmental planning grounds to justify contravening the development standard.

The streetscape context of the proposal and the scale of the existing building on the site provide sufficient justification for the variation in FSR standard.

7 - SUMMARY

Clause 4.4 of the LEP applies a maximum FSR of 0.75:1 to the site.
Council assessed the previous S96 modification as having 545m and FSR 1.18:1.

The proposed changes to Floor area will generate an additional FA of 28m² and an FSR of $573/460 = 1.245 : 1$. The additional is within the excavated area and is below the party wall to the adjoining property so will not impact their amenity.

This request under Clause 4.6 of the LEP is submitted to Council in support of this departure.

There are unique constraints which affect the site and a context whereby adjoining buildings already exceed the FSR.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility in certain circumstances to achieve better outcomes for and from development, a departure from the FSR standard is considered appropriate in these circumstances.

Despite the numerical non-compliance with the FSR, the proposed development is considered to satisfy the objectives of the development standard, as well as those of the R1 Residential zone, and it will provide environmental benefits particular to the site by providing improved residential amenity. On this basis, the Clause 4.6 variation is considered well founded and Council's support for the variation is requested.